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## Appeal Decision

Hearing held on 17 November 2015

Site visit made on 17 November 2015

by **Kenneth Stone Bsc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 December 2015

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**Appeal Ref: APP/V2255/W/15/3130656**

**Lamberhurst Farm, Dargate Road, Yorkletts, Kent ME13 9EP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr John Smith against the decision of Swale Borough Council.
  - The application Ref 15/501135/FULL, dated 6 February 2015, was refused by notice dated 18 May 2015.
  - The development proposed is described as 'proposed industrial building'.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The day before the hearing I was notified that a site survey had been undertaken and there was a discrepancy between the plan submitted with the application and the survey plan. At the hearing the appellant produced a site plan that illustrated the proposed industrial building re-sited some 10m further off the north west boundary of the site, that with the White House. This amended plan has not been the subject of consultation and parties who may wish to comment on it have not had the opportunity to do so. This would include the Parish Council and the Woodland Trust who were not at the hearing. The Council and occupant of the White House, who were at the hearing, only had a limited opportunity to consider the implications of the amendment. In these circumstances and taking account of the 'Wheatcroft principles'<sup>1</sup> this could lead to prejudice for those parties and I have therefore not taken into account the amended plan, but determined the appeal on the basis of the original plans as considered by the Council.

### Main Issues

3. The main issues are the effect of the proposed development on:
  - The character and appearance of the surrounding area; and
  - The living conditions of the occupants of the White House, with particular reference to noise and disturbance.

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<sup>1</sup> Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]:

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### Reasons

4. The appeal site is part of a larger area of land that benefits from an Established Use Certificate for the 'storage and repair of heavy plant and vehicles'. According to the Council this allows for open storage on the site and which is a relatively low key business with no buildings or permanent features on the site. The appellant notes that the intensity of use has varied over the years and he has previously operated up to 30 trucks from the site but presently there are some 10 trucks operating from the site. At the time of my visit there were a number of storage containers arranged along the north western boundary, various vehicles and caravans and some general storage. I was informed that until recently a scaffolding firm had operated from the site but this had recently vacated.
5. The site was generally hard surfaced and enclosed by metal mesh fencing. Land levels in the immediate vicinity of the site varied with the site being approximately 1m higher than the adjacent access road. Victory Wood, a woodland trust site was on elevated land to the north and which contains a public view point that overlooks the site and beyond to the lower lying and open farmland to the south. Although named 'Victory Wood' it is a relatively open hillside with little tree coverage. It was separated from the site by an open mown field which I was informed was currently used as a private air field. To the north west is the White house, a large detached house in substantial grounds and to the south east is an MOT and vehicle repair unit that is within the wider area covered by the Established Use Certificate.
6. The access road also provides the only access to the original Lamberhurst farm buildings which have been converted into a small industrial estate and which contains some 39 units, the permission allowing for a range of uses including B1, B2 and B8.

### *Character and appearance*

7. The appeal site is set within a landscape on rising ground with the area to the rear containing Victory Wood and in which there is a public view point. The land to the south falls away to the lower level and flatter farmland beyond. The Council's supplementary planning document the 'Swale Landscape Character and Biodiversity Appraisal 2011' characterises the landscape within which the appeal site is located as 'Waterman Clay Farmlands' landscape type. This is described as containing a low lying central area divided by the A299 corridor with the landscape rising on either side with steeply formed domed hills used for grazing and arable farming. The area is generally open with field boundaries delineated by low hedges.
8. Within the landscape are a number of built developments including the settlement of Yorkletts with industrial developments, ribbon development along Dargate Road and the more isolated farm buildings at the end of the access road.
9. The proposed industrial building would be in excess of 40m in length and 10 m in width with an eaves height of 5m and an overall ridge height in the region of 7m. The building would be clad in a corrugated metal and include a number of large industrial roller shutter doors on its ear elevation facing the proposed parking area. The bulk, scale and mass of the proposed building would be substantially larger than any of the other structures nearby, including the

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White House, with its residential proportions, or the MOT centre, which is a significantly smaller building. The fenestration of the building, including the personnel doors and windows in association with the larger roller shutter doors add to the industrial and urban appearance of the building. The building is industrial in design and has little detail that would assist in providing it with a more rural or agricultural appearance. I accept that the colour, dark green, would be of some benefit, and that agricultural buildings are becoming more industrial in appearance but this building would appear very much as a large and incongruous industrial building in this rural setting.

10. The formalised parking layout and general arrangement of the site would further add to the urbanising effect of the development. Given that the site is prominently located on higher ground than the land to the south it would be readily visible. Moreover, when standing on the viewpoint in Victory Wood and from many public vantage points within that area, the site would be readily visible. Given its position it would interrupt views from the Wood and would be seen as an alien intrusion in the views down towards the low lying land to the south.
11. I accept that there are other buildings in the surrounding area including the original farm buildings for Lamberhurst Farm and the MOT centre but these either still retain their agricultural appearance or are smaller less bulky structures than that proposed. The Lamberhurst Farm Buildings are set in a more low lying location and therefore not so prominent a position in the wider landscape.
12. The existing use of the site would include open storage of heavy plant and vehicles and their repair. The potential for such a use to have significant visual impacts with an accumulation of various forms of vehicles is significant given the open nature of the description. The impact of the proposed development therefore needs to be considered in this context. I have concluded that the proposed building would represent an industrial and urban form of development that would be inappropriate in the countryside and, given its prominent position, would be harmful to the character and appearance of the area. Whilst the existing use would allow for open storage this would not enable a consolidated built form and would not lead to a significant urbanising effect. For this reason I conclude that the existing open storage, given its low level of activity, or even the potential impact from greater open storage that may still fall within the established use, whilst detrimental to the character of the area, would in my view be less harmful than the proposed building. Any further intensification of the existing use would be a matter for the Council to consider as to whether or not a material change had occurred.
13. A number of other developments and buildings were drawn to my attention, however, many of these were located in more low lying, and therefore less intrusive positions, than that the subject of this appeal, or were more closely related to the existing settlement pattern and built development in the area.
14. The proposed development is not required for agriculture, does not involve the re-use of existing buildings or provide a service that would enable the rural community to meet their essential needs as such it is not supported by policies for development in the countryside that might otherwise allow for some impact on the landscape.

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15. For the reasons given above I conclude that the proposed development would result in material harm to the character and appearance of the surrounding area. Consequently it would conflict with SP1, SP2, E1, E6, E9 and E19 of the Swale Borough Local Plan 2008 which collectively include, amongst other matters, requirements for high quality, well designed, sustainable development that would protect and enhance the distinctive character of the countryside.

*Living conditions*

16. The established use includes the repair of heavy plant and vehicles. The Council accepted that this was a use that could fall within a B2 definition. The Council's Environmental Health department raised concerns at a B2 use being introduced, noting the location of the doors in relation to the adjoining residential property, the White House. At the hearing however the Council were concerned at the noise and disturbance that would arise through the intensified activity on the site and the coming and going of vehicles.
17. I have not been provided with any acoustic data on which to base a robust and sound technical assessment of the noise impact. However I note at paragraph 123 of the National Planning Policy Framework (the Framework) that it is advised that planning decisions should avoid noise from giving rise to significant adverse impacts on health and quality of life. Reference is made to the Noise Policy Statement for England, to which I have also had regard.
18. Whilst I have no detailed noise data it is evident that the existing use, with open storage and the potential for repair of heavy plant and vehicles, has significant potential to allow for noisy uses in the open air, and that these activities are unrestricted. The proposed development would introduce a building to accommodate the proposed uses and a parking area to the rear. The proposed building could be the subject of conditions including noise proofing, requirements to keep the doors closed when working and restrictions on hours of operation. The appellant confirmed they would be happy with such restrictions. This would have the significant benefit of being able to reduce and mitigate the noise from the proposed uses. Furthermore the appellant accepted that an acoustic fence could be placed on the boundary with the White House and that restrictions could be placed preventing any open storage, and with restrictions on the hours of use to include the access to the site, this could reduce the impact of any activity that may arise outside the building.
19. Given the combination of the fact the uses would be contained within a building and the potential for conditions to mitigate the potential noise impact I am satisfied that the proposed noise impact from the development would be no worse than that which arises from the existing lawful use of the site, and indeed would likely improve the situation. On this basis this would provide improvements to the potential impact on the well being and health of the occupier of the adjoining property.
20. The level of activity of the existing use is difficult to compare against that of the proposed. I have been provided with no traffic figures about existing vehicle movements to and from the site. However, given the unrestricted nature of the use this could generate a significant number of movements and the appellant has indicated that historically up to 30 large vehicles were operated from the site, a figure that was not contested by the Council. On this basis it is unlikely that the proposed development would generate traffic movements significantly in excess of these historical levels.

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21. In terms of the physical impacts of the building I am satisfied that, given the separation and boundary treatment, the location, height and dimensions of the building would be such that it would not significantly affect the daylight or sunlight reaching the adjoining property, the White House. Nor would it result in a significant enclosing affect detrimental to the outlook from that property.
22. For the reasons given above I conclude that the proposed development would not harm the living conditions of the occupiers of the adjoining property, with particular reference to noise and disturbance. Consequently it would not conflict with policy E1 of the Swale Borough Local Plan 2008 which amongst other matters seeks to ensure development does not harm residential amenity.

*Other matters*

23. The appellant has suggested that the development would introduce a significant economic benefit to the local area safeguarding existing jobs and potentially increasing employment opportunities in the area. It was noted that the site presently has some 35 employees related to activities on the site. The proposed development would safeguard many of these jobs and provide the operators with more suitable accommodation thereby securing their commitment to the site and the area. As, in the absence of the development, they may look for alternative accommodation. It was suggested that the development could employ up to 40 jobs.
24. The appellant suggested that unemployment in the area was high and above the national average; this was not disputed by the Council.
25. I have not been provided with details of the existing occupiers or their intentions and this therefore limits the weight I can give to these comments. However, there is still significant weight to be given to a small employment generating use in an area where unemployment is relatively high.

**Overall conclusions**

26. The Framework introduces a presumption in favour of sustainable development which is a golden thread that runs through it. At paragraph 7 the Framework identifies the three dimensions of sustainable development as economic, social and environmental. Whilst the proposed development would support the economic role, the nature and form of the development is not such that it supports the environmental or social role. The poorly designed building would be inappropriately sited and harmful to the character of the area. The adverse effects arising from the development would not be outweighed by the positive benefit deriving from any economic benefit.
27. For the reasons given above I conclude that the appeal should be dismissed.

*Kenneth Stone*

INSPECTOR

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**APPEARANCES**

FOR THE APPELLANT:

Edward Newfield	Albion Property
Keith Plumb	Woodstock Associates
John Smith	Appellant
Darren Smith	Family member of Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Spiers	Planning Officer Swale Borough Council
Alice Reeves	Planning Officer Swale Borough Council

INTERESTED PERSONS:

Charles Boyle	Resident of the White House
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**DOCUMENTS SUBMITTED AT THE HEARING**

- 1) Tech Surveying Services PLAN 9718/15 @ A3 scale 1:500 with relocated building identified submitted by appellant.
- 2) Tech Surveying Services Plan 9718/15 @ A1 Scale 1:100 with relocated building identified submitted by appellant.
- 3) Swale Landscape Character and Biodiversity Appraisal Supplementary Planning document September 2011 submitted by Swale Borough Council
- 4) Copy of Established Use Certificate SW/91/56 for storage and repair of heavy plant and vehicles at yard adjacent to Lamberhurst Farm, Dargate, Hernhill nr Faversham Kent submitted by Swale Borough Council.