APPENDIX 1

The Planning Inspectorate

Appeal Decisions

Site visit made on 20 November 2012

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 14 December 2012

Appeal A: APP/U2235/A/12/2178326
Oakhurst, Scragged Oak Road, Detling, Maidstone, Kent ME14 3HJ

- 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 Mrs Linda Turner against the decision of Maidstone Borough Council.
- The application ref no MA/11/1439, dated 16 August 2011, was refused by notice dated 23 December 2011.
- The development proposed is described on the application form as: 'Retention of single storey building and use as holiday accommodation and for teaching of spiritual therapy including student accommodation'.

Summary of Decision: The appeal is dismissed.

Appeal B: APP/U2235/A/12/2178334
Oakhurst, Scragged Oak Road, Detling, Maidstone, Kent ME14 3HJ

- 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 Mrs Linda Turner against the decision of Maidstone Borough Council.
- The application ref no MA/11/1438, dated 16 August 2011, was refused by notice dated 23 December 2011.
- The development proposed is described on the application form as: 'Change of use of part of orchard to residential curtilage and retention of driveway (retrospective)'.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. By the time of my visit, the development the subject of both appeals had already taken place.

2. The description given on the application form of the development now the subject of Appeal B, as set out in the above heading, is inadequate as a basis for a grant of planning permission. Rather than connoting a use of land, the term 'residential curtilage' is a legal concept defining an area of land in relation to a building. Permission should more properly be sought for a *material* change of use (this being the act of development as defined by statute) to use incidental to the enjoyment of the adjacent dwellinghouse as such.

3. Moreover, 'retention' of the driveway does not amount to development. Permission should instead be sought retrospectively for its construction. I will therefore determine Appeal B on the basis of a revised description, which reads: *The material change of use of orchard land to land used for purposes incidental to the enjoyment of the adjacent dwellinghouse as such and the*

construction of a driveway. There is no prejudice to the interests of any party in doing so.

4. I note that, in its statement on Appeal B, the Council refers to the construction of a vehicular access as forming part of the appeal development. However, this is not the case. The creation of a new access is specifically excluded from the development for which planning permission is sought, by reason of section 6 of the application form. The Appellant maintains that the access point at the south-western end of the driveway was an established field access. Nothing before me suggests that the Council took a contrary view in determining the application and it provides no cogent explanation on appeal as to why I should now do so. Therefore, neither the creation of the access nor the erection of the gates, piers and walling across and adjacent to its bellmouth are before me to consider. My decision on Appeal B must be confined to the hardsurfacing works that have taken place and the material change of use associated therewith.

5. A Certificate of Lawful Use or Development (LDC) was granted under section 191 of the 1990 Act as amended on 30 January 2012 for use of an area of land at Oakhurst as residential garden (ref no MA/11/1437). The driveway traverses this area of land and the Appellant suggests that, consequently, only part of it (to the south-west of the land in question) now falls outside the residential curtilage of Oakhurst and continues to be subject to Appeal B. However, this suggestion is ill-founded.

6. Appeal B is against the refusal of planning permission for the construction of the driveway as a whole and the material change of use of the land it occupies, this being the scope of the planning application at the point of determination by the Council. A subsequent grant of planning permission for part of that driveway, let alone a LDC relating to land that it occupies, could not alter that fact or reduce the scope of the appeal. Rather, such considerations can, in some circumstances, provide a fallback position that must be taken into account in determining the appeal.

7. Moreover, although the Appellant's reasoning is not set out explicitly, she appears to suggest that the LDC conveys curtilage status to part of the land occupied by the driveway and that, consequently, that section of driveway benefits from deemed planning permission pursuant to Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 as amended (the GPDO), by reason of Class F of Part 1 of Schedule 2 thereto. I am unable to accept such an argument, for a number of reasons.

8. Even if I were to regard that part of the land crossed by the driveway as now falling within the curtilage of the dwellinghouse by reason of the LDC, I do not know whether use of the land in question as residential garden attained lawfulness by reason of the passage of time before or after construction of the driveway commenced, precise information as to the timing of either event not having been provided[1]. If the lawfulness of the garden use had not been attained by the time that construction began, the driveway could not benefit from permitted development rights under the GPDO, by reason of Article 3(5) thereof.

[1] The date on which a section 191 LDC is granted is not the date on which lawfulness of the matter it addresses is attained. The latter is also unlikely to be the date on which the LDC application was made, to which the grant of the LDC relates in accordance with section 191(4). In all probability, lawfulness will have been attained some time before a successful application is made.

9. Additionally, a single development cannot be subdivided into parts that are permitted development and parts that are not, a point of law long established by the judgment in *Garland v MHLG* [1968] 20 P&CR 93. It has not been shown that the driveway was constructed in two distinct phases, one of which fell within curtilage land and one which did not. This being so, I must assume that it was a single operation and, this being so, no part of the driveway can benefit from Class F rights, irrespective of when work commenced.

10. In any event, lawful use as garden land does not necessarily convey residential curtilage status. Although residential curtilage will frequently equate with the residential planning unit, it is not uncommon for land beyond the curtilage, but nonetheless in the same unit of occupation, to be used lawfully for residential purposes incidental to the enjoyment of a dwellinghouse as such. The Appellant has not demonstrated by reference to the relevant case law that the land subject to the LDC forms part of the curtilage of the dwellinghouse at Oakhurst. Nor is it readily apparent from other evidence before me, including observations made during my visit to the site, that this is the case. As the burden of proof rests firmly with the Appellant in such circumstances, I must assume for the purposes of both appeals that the LDC land does not enjoy curtilage status and thus cannot benefit from rights pursuant to Part 1 of Schedule 2.

11. The Appellant has submitted a revised drawing with Appeal B, which I am asked to accept as an amendment to the driveway scheme. This depicts a 0.3 metre reduction in the width of the driveway for which permission was initially sought. The revised drawing also depicts the retention of an existing gate adjacent to the dwellinghouse as an emergency access, whereas this was proposed on the original plan for stopping up by means of a hedgerow.

12. Having regard to case law arising from the judgment in *Bernard Wheatcroft Ltd v SSE & Harborough DC* [1982] JPL 37, I am satisfied that the development is not so changed by reason of this drawing that to approve it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation and am mindful that the Council has addressed the amendment in its submissions on the appeal. I will therefore accept it as an amendment to the Appeal B scheme.

13. I also note the Appellant's intention to remove or grass over the turning head at the south-western end of the driveway once building works to the dwelling have been completed. However, this facility is shown in both the original and revised drawings as forming part of the development for which permission is sought and has been constructed on site. I will therefore regard it as part of the development for the purposes of determining Appeal B but, in doing so, will bear in mind the possible merits of removing or grassing over the turning head.

Main Issues

14. The main issues in determining these appeals are the effect of the development on:
    - In the case of both appeals, the character and appearance of the surrounding area, having regard to the location of the site within the Kent Downs Area of Outstanding Natural Beauty (AONB) and the North Downs Special Landscape Area (SLA);
    - in the case of Appeal A only, objectives of sustainable development; and

- whether any harm arising from the above issues is outweighed by other material considerations.

Planning Policy

15. The development plan includes the South East Plan 2009 (SEP) and certain policies of the Maidstone Borough Wide Local Plan 2000 (LP) that have been saved following a Direction made by the Secretary of State. It is the Secretary of State's stated intention to revoke the SEP. Nonetheless, it continues to have effect at the present time and I therefore give full weight to its policies for the purposes of these appeals.

16. Paragraph 215 of the National Planning Policy Framework (NPPF) indicates that due weight should be given to saved policies in existing Local Plans according to their degree of consistency with the NPPF. I find no significant conflict in this regard and, accordingly, will give the saved LP Policies cited full weight insofar as they are relevant to the appeals.

Reasoning

Character and appearance

17. Oakhurst occupies a very attractive location, characterised by narrow rural lanes, high hedgerows and predominantly agricultural land, interspersed with pockets of woodland and isolated clusters of buildings. Its setting is therefore particularly sensitive in landscape terms. The statutory purpose of an AONB, as set out in section 82(2) of the Countryside and Rights of Way Act 2000 as amended, is the conservation and enhancement of the natural beauty of the area. Under section 85(1) thereof, I am obliged to have regard to this purpose. Although paragraph 115 of the NPPF refers only to the conservation of landscape and scenic beauty of AONBs it does not supersede statute and, in any event, both set a high hurdle.

18. There is a well-established hedgerow along the Scragged Oak Road frontage of the site, which partially screens the subject building and driveway from public view. I also acknowledge that neither development is unduly prominent in views from the public footpath to the south-west. However, both driveway and building can be seen through the vehicular access adjacent to the dwellinghouse, whilst part of the driveway can also be seen through the access at its south-western end. I found the Appeal A building to be significantly more harmful in visual terms than the Appellant contends, bearing in mind the sensitive nature of the landscape. Rather than being subsumed by the adjacent cluster of built development, it compounds the visual impact of the former on the countryside. Moreover, it has a residential rather than agricultural appearance by reason of its porch and fenestration, which is not mitigated significantly by its external materials and finishes.

19. I therefore found it to read in the landscape as a domestic intrusion into a highly sensitive rural setting that results in visual harm. I have noted comments by some local residents to the effect that the building has replaced a somewhat ramshackle collection of sheds, greenhouses and sundry debris. However, in the absence of photographic evidence to the contrary it seems likely that these lacked the domestic qualities of the appeal development. In any event, I have no knowledge of their scale or prominence and any visual detriment associated therewith could have been resolved by simple demolition and clearance rather than replacement.

20. The driveway is similarly intrusive. I note the Appellant's reasons for providing a solid durable surface to the bellmouth access and, in making my assessment, have disregarded the gates, piers and walling. However, setting these features aside I still found the driveway as constructed to draw the eye by reason of its width and the golden gravel with which it is surfaced. Notwithstanding the Appellant's assertion that this material is common in the rural parts of the area it is, in my experience, more commonly associated with residential properties than agricultural settings. Consequently, the south-western end of the driveway in particular, being located so far from the dwellinghouse at Oakhurst, appears incongruous and introduces a further unwelcome domestic element to the rural lane. The existing hedgerow and additional planting proposed on either side of the driveway or further from the road provide, by their very nature, only temporary visual mitigation.

21. The Appellant's account of the width of the driveway as existing varies between 4.2 metres and 5.5 metres, depending on the plan or statement consulted. However, assuming that the driveway is presently 5.5 metres wide, as shown on the original layout drawing, a reduction in width of only 0.3 metres as indicated in the amended layout would make very little difference in terms of visual impact. Nor would the removal of the turning head help significantly in this regard. Retention of the vehicular access adjacent to the dwellinghouse, as now proposed, rather than stopping it up would merely consolidate the prominence of the driveway at its north-eastern end. Even if stopping up were to be re-considered, planting would not provide sufficient permanence as a visual screen and a solid frontage treatment, such as a fence, would itself be intrusive.

22. Although a permitted development fallback position for the driveway has not been demonstrated, I have nonetheless considered whether the fact that part of it runs through what is now a lawful residential garden has any implications for my assessment of its visual consequences. I acknowledge that surfacing of this kind might, in some circumstances, be more readily assimilated into such a setting. However, the considerable width for which permission is sought, which is markedly greater than usually associated with a residential property, and the starkness of its surface prevent the driveway from being subsumed by its surroundings. In any event, most of it remains outside the lawful garden and, given that its purpose is to provide access to the entire property, there is no logical basis for granting planning permission for only part of the driveway.

23. I find that neither building nor driveway conflicts significantly with the objectives of maintaining the Strategic Gap between Maidstone and the Medway Towns in which the appeal site lies, as set out in saved LP Policy ENV31. However, this finding does not outweigh the harm to the AONB and SLA that has arisen in this case. I also note that there are other unsightly developments in the lane, as cited by the Appellant. Nonetheless, each scheme must be assessed primarily on its own merits and I have no knowledge of the circumstances relevant to those other cases. In any event, such examples are far from characteristic of the area and, where they do occur, are unworthy of replication.

24. I conclude that the development the subject of both Appeals A and B fails to conserve and enhance the natural beauty of the AONB and SLA. Both building and driveway are therefore contrary to SEP Policies CC6 and C3, saved LP Policies ENV28, ENV33 and ENV34 and the relevant provisions of the NPPF.

Sustainable development

25. This issue is relevant only to Appeal A. The appeal premises are located in the countryside, well outside the confines of any built-up area as defined by the development plan and are not within easy reach of public transport facilities. I acknowledge that those attending for spiritual tuition may well remain at the appeal premises for the whole of their stay and take note of the supporting information provided by the Appellant in this regard. However, this activity would account for only 40 days per year, with the remainder devoted to holidaymakers in the broader sense.

26. The Appellant intends to market the facility in such a way that holidaymakers such as ramblers and cyclists, referred to by the Appellant as 'non car owners' would be targeted. However, such an objective cannot be enforced by means of planning controls and, in any event, these are not mutually exclusive categories. I think it probable, in the absence of evidence to the contrary, that many visitors with such interests would bring at least one vehicle to add flexibility and convenience to their stay. Car movements thus generated would therefore, in all likelihood, amount to considerably more than the Appellant's estimated worst case scenario of two per day.

27. Accordingly, I find it probable that most visitors would be highly dependent on the private car when travelling to and from the site. I note that the Appellant is prepared to drive people between Oakhurst and the railway station. However, this again could not be enforced and it remains the case that, irrespective of this option, visitors who do not drive themselves may choose to travel by taxi during their stay in addition to arrival and departure.

28. The NPPF seeks to ensure that proposals are sustainable economically, socially and environmentally, in accordance with a definition of sustainable development set out in paragraphs 7 and 8 thereof. Indeed, there is a presumption in favour of sustainable development at the heart of the NPPF, as stated in paragraph 14. The economic component is addressed in this case by the employment prospects facilitated by the Appellant's' business and the contributions that guests are likely to make to the local economy. However, the appeal facility fulfils no significant community function of which I have been made aware.

29. I have no reason to consider that the building is contrary to the sustainable design and construction objectives of SEP Policy CC4. However, the environmental objectives of sustainable development are compromised significantly by the harm to the AONB and SLA that results from the building itself and by high dependence on the private car and the adverse implications that this has for the prudent use of natural resources, minimisation of pollution and movement towards a low carbon economy. Paragraph 29 of the NPPF recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Nonetheless, the general thrust of national policy remains, in essence, the channelling of traffic-generating uses to built-up areas wherever practicable.

30. I conclude that, on balance, the Appeal A development is contrary to national and local objectives related to sustainable development. It therefore conflicts with SEP Policy CC1 and the relevant provisions of the NPPF.

Other material considerations

31. I have considered all the other matters raised, including national and local policy related to tourism. Although I have not seen inside the building, I have no reason to question that the facilities are of a high standard and take note of the advice from Tourism South East that there is a healthy demand for high quality self catering accommodation in the North Downs. I also acknowledge that tourism can contribute to the local economy and is encouraged in general terms in rural areas by SEP Policies TSR2 and TSR5 and paragraph 28 of the NPPF.

32. However, whilst saved LP Policy ENV44 supports the reuse and adaptation of existing rural buildings for such purposes, it does not provide for new-build tourist accommodation in the countryside. As the Appeal A development is unlawful, it cannot be regarded as an 'existing building' for the purposes of applying this policy. Acceptable development outside defined confines is limited by saved LP Policy ENV28 to certain categories, which do not include new-build tourism facilities. Rather, saved LP Policy ED17 provides for such proposals within urban and village boundaries.

33. I do not question that the Appeal A accommodation is well-located for those seeking a peaceful environment or intending to walk the local footpaths. However, these considerations alone cannot justify additional built development that fails to conserve the natural beauty of the AONB. I am not persuaded that the specific nature of the holiday/tuition service offered in this case is such that it could not be provided through the conversion of an existing rural building or that a village or urban location would be prohibitive.

34. Whilst I note the Appellant's comments to the effect that spiritual tuition alone would not draw sufficient income to finance premises elsewhere, it has not been demonstrated that a joint holiday/tuition venture similar to that currently operating at Oakhurst would be similarly unviable. Nor has it been shown that the tuition provided is of such significance that an isolated rural location is justified as an exception to established policy or, whilst I appreciate that spiritual tuition can benefit from a quiet environment, that such a degree of seclusion is essential thereto.

35. I have taken into account the advice regarding sustainability contained in the CLG publication *Good Practice Guide on Planning for Tourism* (GPG) at paragraph 5.4. This records that, sometimes, the chosen location for a tourism development will not be sustainable, as it may have been determined by a functional need. It also suggests that for small-scale schemes, the traffic generated is likely to be fairly limited and additional traffic movements are therefore unlikely to be a reason for refusal for otherwise suitable tourism developments.

36. However, I find that the Appeal A development is not 'otherwise suitable' by reason of the visual impact of the building. Moreover, I am not aware of a significant functional need for an unsustainable location in this case and, having applied the considerations set out in paragraph 5.5 of the GPG, do not find that these balance out in favour of the Appeal A scheme. I am also mindful of the greater emphasis placed on sustainable development by the NPPF since the GPG was published in 2006. Accordingly, I find no reason in this particular case to depart from the presumption in the development plan against new-build holiday accommodation in rural locations.

37. I note that saved LP Policy ED20 permits holiday caravans and tents in remote countryside locations subject to certain criteria and acknowledge that such facilities could generate more traffic. However, unlike the Appeal A development accommodation of this kind is, by its very nature, impermanent. In any event, it is not readily apparent that such facilities on the appeal site could fulfil the first policy criterion of avoiding detriment to visual amenity, given the sensitive nature of the location. Indeed, the supporting text discourages such facilities within AONBs.

38. The Appellant suggests that permitted development rights pursuant to Class E of Part 1 of the GPDO provide a fallback position in respect of Appeal A, as they provide for the erection of buildings of similar size within the curtilage of a dwellinghouse that are required for purposes incidental to the enjoyment of the dwellinghouse as such. Land between the dwelling and garage at Oakhurst is identified for this purpose and I acknowledge that the Appeal A building or a similar structure, if erected in that location, would be more prominent in the landscape by reason of the more elevated position and closer proximity to the road.

39. However, even if I were to accept that this alternative location amounts to curtilage land, it has not been shown that there is a likelihood that an incidental building on such a large scale would be reasonably required for incidental purposes in the event that the appeal is dismissed. Although the Appellant suggests that the Appeal A building falls within the area subject to the LDC, it appears from the plan attached to the Certificate that most of the footprint lies outside it. In any event, as already addressed in relation to the driveway, it has not been shown on the balance of probabilities that that this land falls within the curtilage of the dwellinghouse.

40. I acknowledge that visibility for drivers leaving the site is better at the south-westernmost access than at the north-easternmost access that has long served the appeal property. However, traffic levels along Scragged Oak Road are very low and, on the evidence before me, this part of the lane has no record of traffic-related accidents. This being so, I find the access adjacent to the dwellinghouse to be adequate as a means of serving lawful activity at the appeal site, subject to due care and attention being exercised, and that improvements to highway safety facilitated by the driveway would not be so significant as to outweigh considerations of visual harm.

41. The Appellant states that the Appeal A building was erected in August 2008. However, this assertion is not substantiated by cogent evidence and, therefore, I am not persuaded on the information before me that the building is now immune from enforcement action. I note the assertion that income from students and holidaymakers is intended to finance restoration of the orchard at the property together with more tree and hedge planting, in accordance with the objectives of the Kent Downs AONB Management Plan. However, the channelling of income to that effect cannot be secured by means of conditions.

42. Although cited by the Council I find saved LP Policy H31, which militates against changes of use of agricultural land to domestic garden, to be of limited relevance. The driveway does not in itself amount to a garden use and does not occupy a significant area of former agricultural land. I have considered the support for the appeals forthcoming from a number of local residents and former students, the high regard in which the Appellant is held, the financial commitments she has made and the accounts of the

improvements she and her partner have made to the property since they acquired it. I also note the Appellant's comments to the effect that she erected the Appeal A building without permission on the basis of erroneous professional advice. However, neither these nor any other matters are of such significance as to outweigh the considerations that have led to my conclusions on the issues of character and appearance and sustainable development.

Conclusions

43. For the reasons given above I conclude that both appeals should be dismissed.

Formal decisions

Appeal A: APP/U2235/A/12/2178326

44. The appeal is dismissed.

Appeal B: APP/U2235/A/12/2178334

45. The appeal is dismissed.

Alan Woolnough

INSPECTOR