



Appeal Decision

Site visit made on 2 August 2022

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 September 2022

Appeal Ref: APP/U2235/W/19/3238603

The Mellows, Marley Road, Harrietsham, Maidstone ME17 1BS

- 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 Bridget Cash against the decision of Maidstone Borough Council.
 - The application Ref 19/502352/FULL, dated 01 May 2019, was refused by notice dated 25 July 2020.
 - The development proposed is described on the application form as: Retention of dayroom, demolition of utility block, retention of re-sited mobile home.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal is described on the application form as being for the retention of a dayroom, demolition of utility block and retention of re-sited mobile home. When determining the proposal the Council considered that the re-siting of the mobile home did not need planning permission on account of the fact that the occupants had permission to occupy a mobile home at the site under the terms of a planning permission granted in 2015¹. Thus, the Council did not consider that as part of the proposal. I have no reason to depart from that position.
3. The building had already been constructed but was not fitted out internally at the time the application was made. Planning permission had previously been granted, retrospectively, for the structure to be used as a dwelling, subject to a number of conditions, including one which required a 'Site Delivery Scheme' setting out how the scheme would be completed in accordance with various details². The condition set out clear timetable for the submission of various elements and was worded in such a way that the use of the building should cease, the building should be demolished and the land returned to its former condition if there was a failure to meet the requirements of the condition within the specified timeframe. From the information before me the appellant did not comply with the requirements of that condition.
4. Subsequently, the appellant applied to retain the building for the purpose of a dayroom. 'Retention' is not an act of development and technically, the application is for the erection of a building for a dayroom. As noted in the delegated officer report, the plans submitted with the application did not depict

¹ LPA reference 14/504218/FULL

² LPA reference 20/500780/FULL

the building as-built in terms of the footprint, roof design and fenestration. I have been provided with the submitted floorplan and an elevational plan showing the front, rear and side elevations. However, the footprint of the building is notably larger than that shown on those plans, being wider and deeper. The roof form is markedly different. In effect, the building shown on those plans is not the same building currently on site.

5. Nonetheless, rather than invalidate the application, the Council continued to determine the proposal based on the building, as constructed. From the appeal statement it is also clear that the appellant seeks permission for the current building, as opposed to that presented on the plans submitted with the application. A further plan numbered 62-19 and dated July 2019, showing a proposed floor plan, elevations and section of the building has been submitted with the appeal. That appears to reflect the external form of the building, save for some minor differences, notably, the additional window opening that has been installed in the first floor of the front gable. Internally, the plan depicts how the building would be laid out as a day room. The Council has not commented specifically on this plan but, given that they considered the application on the basis that the appellant sought to retain the existing building, I am satisfied that no injustice would arise if I were to consider the appeal proposal on the basis of the layout and details shown on the plan.
6. It was evident at my recent site visit that the internal space has now been fitted out and furnished, at least on the ground floor level. It was not in use as a dayroom but was clearly occupied as a dwelling. The broad layout was the same as shown on drawing No. 62-19 but two bedrooms had been created in place of the rest room and study/storage room. Judging by the beds, clothes and other furniture those rooms were clearly occupied. The dining kitchen, lounge and bathrooms were broadly as shown. A staircase, which is not shown on plan 62-19, leads directly from the hallway to further rooms upstairs. Given that the proposed dayroom was single storey only I did not inspect the upstairs space.
7. For the avoidance of any doubt I must make clear that the application before me relates to the erection and use of the building as a dayroom and not as a dwelling. Any breach of planning control in that respect is not a matter for consideration in the current appeal. Consequently, I have considered the proposal as a dayroom based on the elevations and layout shown on plan No. 62/19.

Main Issues

8. The main issues in the determination of the appeal are:
 - i) The effect of the proposal on the character and appearance of the area, including the Kent Downs Area of Outstanding Natural Beauty; and
 - ii) If any harm arises in relation to the first main issue, whether that harm is outweighed by other material considerations, having particular regard to the personal circumstances of the appellant and her dependant son.

Reasons

Character and Appearance

9. The appeal site is situated on the northern fringes of Harrietsham, a linear settlement which stretches out along the A20. The northern edges of the village, including the appeal site, are within the Kent Downs Area of Outstanding Natural Beauty (AONB). The most concentrated section of the settlement in terms of housing and local services is situated alongside the A20 to the south-west of the appeal site. As one moves north along Marley Road the built form becomes more sporadic with houses set on large plots with substantial gardens and a patchwork of paddocks directly to the rear. The lane itself is narrow and enclosed by mature hedgerows which provides a rural feel.
10. Marley Road begins to rise up as it passes the appeal site, leading towards the escarpment to the north with its associated downland character. There is a notable transition from the network of smaller orchards and paddocks and associated dwellings on the edge of the settlement to the more open landscape on the south facing escarpment beyond. The soft transition created by the dwellings and small paddocks to the north and west of Marley Road is important to the rural character of the settlement which contributes to the wider character of the AONB.
11. It is clearly an area that is sensitive to change. Infill or urbanisation of the low-density plots of land could easily erode the established rural character. The use of the site as a caravan site has resulted in a degree of urbanisation on account of the hard surfacing and the presence of caravans, cars and other domestic paraphernalia. Nonetheless, aside from the now proposed dayroom, any structures or caravans are relatively low key in terms of their scale and visual impact. Mature hedgerows surround the site and they largely screen views of caravans and internal spaces, particularly when the entrance gates are closed. The hedgerows also help to maintain the outward form of the former field network which is reflective of the pattern of development described above.
12. However, the building in question is substantially larger than any other structure on the site with a large footprint and steeply pitched roof with forward facing gable. The height and volume of the roofspace is sufficient to provide accommodation at first floor level. The position of the building towards the front of the site increases its prominence from Marley Road and also from the public footpath which runs to the side of the site. Although well-built, in terms of workmanship, a number of elaborate touches give the property an extremely urban appearance, including the detailed string course, the dog tooth edging to the front gable, prominent round upper window opening and domesticated door and window openings in brown UPVC.
13. The result is the incursion of a substantial residential structure into the countryside at a sensitive point on the edge of the village. In contrast to the comparatively low-key development elsewhere at the site the building has an urbanising and harmful effect on the rural character of the area. I recognise that there are other dwellings within the AONB to the north of Marley Road. However, those properties are situated on the roadside facing towards the village and the gardens and paddocks to the rear provide a soft transition to the countryside beyond. In this case, the building is surrounded by paddocks to the north and west and represents a notable expansion of the built form northwards into the AONB.
14. Overall, the building has a harmful effect on the character and appearance of the area and would fail to preserve the scenic quality and beauty of the AONB

on account of its scale, design and location. For those reasons it fails to comply with the requirements of policy SP17 of the Maidstone Borough Local Plan (2017) (the LP) and paragraph 176 of the National Planning Policy Framework (the Framework) which identify that great weight should be given to preserving the landscape and scenic beauty of the AONB.

15. The proposal would also be contrary to the design related aims of policy DM1 of the LP, particularly sub-sections (ii) and (vi) which state that development should respond to local character and provide high quality design which responds to the landscape value of an area. For the same reasons, the proposal would contravene the design related aims of policy DM30 which relates to development within the countryside and requires, amongst other things, buildings of high-quality design that would maintain or enhance local distinctiveness, including landscape features.
16. In addition, policy DM15 requires that additional accommodation for Gypsy and Travellers should not result in significant harm to the landscape and rural character of the area having regard to local landscape character, cumulative effects, and whether existing landscape features are capable of screening the development. Whilst the dayroom would be ancillary to the residential use of the caravans it would still provide additional accommodation such that policy DM15 is relevant to the proposal. In the context of the AONB designation and the sensitive location of the site I find that the harm would be significant in the local context, particularly taking account of cumulative urbanising impacts associated with the existing development. The scale of the building is such that screening could not successfully mitigate the impacts.

Other Material Considerations

17. It is clear that there is a need for a purpose built dayroom to provide adequate space for the appellant and her family, particularly having regard to the medical needs of her adult son, including a need to house medical equipment, hoists, walking support, adapted spaces and bathrooms, and associated storage. I shall not repeat the full details within my decision letter to avoid unnecessary publication of personal information but I have read the information provided, including letters from medical professionals, and have no reason to doubt the ongoing and pressing need for a purpose built dayroom of some size.
18. Those needs could not practically be met within a caravan. The Council does not seek to dispute the needs of the appellant and her son in that regard. Therefore, the personal circumstances advanced weigh heavily in favour of the provision of a purpose-built facility on the site. Although not explicitly raised by the parties it appears to me that this is a case where Article 8(1) of the Human Rights Act 1998 is engaged because a decision to refuse planning permission for a day facility is likely to lead to a prolonged period where the occupants need to utilise accommodation which does not properly meet their particular needs, with consequential effects on their health and wellbeing.
19. However, the appellant has provided little to justify why a building of the scale and volume proposed is necessary. As noted, the roof is steeply pitched and designed to provide first floor accommodation. The upper sections and roof of the building are particularly prominent from outside the site. The appellant's statement indicates that a single ceiling is needed from which to attach a hoist

system. Consequently, the information provided indicates that a single storey structure, with a much lower roof, would fulfil the identified needs.

20. The fact that the building has been occupied as a dwelling also leads me to question whether a building of the size proposed is necessary to function purely as a dayroom. In other words, if the space is adequate to serve the identified 'day' needs and also provide sleeping accommodation, it would seem logical that less space would be needed if the sleeping accommodation was retained in the caravans to the rear of the site.
21. In addition, the Council granted permission for a dayroom on the site in 2017. The current appellant was the applicant and the information before me suggests that building was also intended to meet the needs of her family and the medical needs of her son. The approved building had a reasonably substantial floor area (just under 17m in length and over 7m in width) and was shown to have a wetroom inside and wide doors to allow for access. The ridge height was significantly lower than that proposed in this instance and the overall scale and volume significantly less. Although the appellant has provided updated information regarding the needs of the family and the medical needs of the appellant's son that information does not explain why a substantially larger dayroom than that previously approved is needed.
22. At the time the current application was made the approved dayroom had not been constructed. However, a dayroom is now in place in the position shown on the approved plans and the site has been subdivided with one half named Chestfields and the other the Mellows. It appears that the dayroom is associated with additional caravans that have been brought onto the land at Chestfields. At the time of writing, the use of the site for additional caravans above those permitted in 2014³ is unauthorised. In the associated appeal I have quashed the enforcement notice for reasons set out in a separate decision letter⁴.
23. Until that situation is resolved, the rationale for having an additional and extremely substantial dayroom on a site where the permitted number of caravans is three, of which no more than two should be statics, is questionable. However, setting any ongoing enforcement proceedings aside, even if considered in isolation no compelling case has been made as to why a building of such scale, elaborate design and visual prominence is needed to meet the daytime needs of the appellant and her family.

The Planning Balance and Conclusion

24. Having regard to the above, there is a clear need for suitable dayroom accommodation to meet the needs of the family and the medical needs of the appellant's adult son. The implications are such that Article 8(1) of the Human Rights Act is engaged. Article 8(2) states that there shall be no interference by a public authority with the exercise of such rights except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

³ LPA ref: 14/504218/FULL

⁴ Appeal reference APP/U2235/C/19/3239276

25. The concept of proportionality is crucial to such considerations and I must consider whether interference with rights under Article 8(1) is justified in the context of wider public interests as set out in Article 8(2). Planning laws exist to protect the economic well-being of the country and the health of its population and interference can be justified on planning grounds, depending on the specific circumstances of the case.
26. The NPPF identifies that great weight should be given to conserving the scenic beauty and landscape of AONBs, which have the highest status of protection in relation to those issues. The conservation of AONBs can clearly be linked to the health of the population through access to the countryside and economic well-being through the maintenance of an attractive landscape and the rural economy. It follows that the significant harm arising from the scale, location and design of the building attracts great weight.
27. When set against that I attribute significant weight to the needs of the family and the medical needs of the appellant's son. The proposal would meet those needs. However, in the context of the sensitive setting within the AONB no convincing justification has been provided to explain why a building of such scale and volume is required. The needs could equally be met through the provision of a single storey building with a much lower roofline and reduced volume which would have less visual impact. The fact that the same benefits could be achieved through a building that would cause less harm than the current structure tempers the weight I attach to the scheme before me.
28. There is also uncertainty as to the dayroom needs across the site as a whole, including the Mellows and Chestfields until such time as the merits of the unauthorised additional caravans has been considered. In light of that uncertainty the need for an additional dayroom of the scale proposed in addition to the existing structure has not been demonstrated.
29. Therefore, whilst I continue to attach significant weight to the benefit of additional dayroom accommodation that weight is clearly outweighed by the harm associated with the present scheme. Even if I were to set aside the uncertainty regarding the presently unauthorised additional caravans and any associated dayroom needs the balance of material considerations indicates that planning permission should be refused having regard to the scale and impact of the structure. That would amount to a justified and proportionate interference with the Article 8(1) rights of the appellant and her family having regard to the importance of conserving the scenic beauty of the AONB.
30. For the reasons set out above I shall dismiss the appeal and refuse to grant planning permission for the proposed scheme.

Chris Preston

INSPECTOR