



Appeal Decision

Site visit made on 23 May 2023

by S M Holden BSc(Hons) MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2023

Appeal Ref: APP/U1430/W/22/3294887

Marley House – Outbuilding (Former Squash Court), Marley Lane, Battle TN33 0RB

- 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 & Mrs T Desoutter against the decision of Rother District Council.
 - The application Ref RR/2020/357/P, dated 2 March 2020, was refused by notice dated 20 September 2021.
 - The development proposed is conversion of outbuilding (Former Squash court) into a dwelling house with gardens and use of existing parking area and access.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Marley House is a Grade II listed building. The appeal relates to the outbuilding which is a curtilage listed building. Applications for listed building consent and planning permission for an identical scheme to convert the building to a dwelling were submitted at the same time. The internal works to the outbuilding were the subject of a separate decision and were permitted. This appeal only addresses the building's change of use to a dwelling and its proposed access.

Main Issue

3. The main issue is the effect of the proposal on highway safety.

Reasons

4. Marley House is a large country dwelling set in substantial grounds with formal gardens to the west and north. The main entrance is via a driveway through a field to the south of the house. There is a secondary access further north along Marley Lane immediately beyond a bend in the road. This serves a timber storage building which could be used as a garage. There is a dispute between the parties regarding the extent to which this secondary access has been and is currently used. Adjacent to the building there is an area of brick paviours and gravel which, although in a poor state of repair, enables vehicles to enter and leave the road. On the day of my site visit 3 cars were parked on the gravel. There is also photographic evidence of occasional use of the access by the gardener and for deliveries. It is proposed that this access, which appears to have two potential entry points, should be improved to provide access to the proposed independent dwelling.
5. Marley Lane is a rural road with no footways and limited verges. It is one of two routes that connect the centre of Battle to the A21. It is subject to the national speed limit of 60mph and in November 2020 it carried an average of more than 2,000 vehicle movements per day (vpd). Its alignment, which includes numerous

bends and changes in elevation, is not conducive to drivers approaching the maximum permitted speed. Speed surveys undertaken close to the proposed access observed the 85th percentile speed in dry conditions to be 40.4mph northbound and 42mph southbound. Although the equivalent speeds were observed to be below 40mph when the road was wet, the latest guidance from the Department for Transport advises that 4kph (approximately 2.5mph) should be added to the observations for the purpose of assessing an appropriate design speed.

6. Taking account of the traffic using Marley Lane, its role in the network, and the observed speeds on the section near Marley House, the highway authority contend that it is appropriate to require visibility splays in accordance with the Design Manual for Roads and Bridges (DMRB). Applying those standards to the observed 85th percentile speed, would require visibility splays of 2.4m x 112m to the north and 2.4m x 103m to the south. The proposal would close the southern entry point and provide an improved entry/exit point at the northern side of the site. This would enable visibility splays to be provided of 2m x 118m to the north and 2m x 63m to the south. Whilst the visibility splay to the north would be acceptable the southern one would fall significantly below the standard required by the DMRB.
7. In view of the observed speeds the appellant contends that it would be appropriate to apply the standards set out in Manual for Streets (MfS) rather than those in the DMRB. However, MfS primarily provides advice relating to development in urban areas where traffic flows are light. It therefore only sets out guidance in respect of visibility splays where the 85th percentile speed is 37mph or less, which is not the case here. Even if the observed wet weather speed was used, the required adjustment would take the design speed to more than 37mph. This would take it outside the range of published standards within MfS which for a 37mph design speed requires visibility splays of 2.4m x 59m.
8. The DMRB standards were developed primarily for application on the strategic road network. However, in applying them to this case the highway authority has used the results of speed surveys undertaken in Marley Lane, rather than the national speed limit. I consider this to be a reasonable approach having regard to both the speed and volume of traffic along Marley Lane. In my view it is not appropriate to apply the standards set out in MfS, which apply in urban areas with light traffic flows, not rural roads such as Marley Lane. There is therefore no basis for using it to extrapolate or adjust the standards to a situation where the 85th percentile speed exceeds 37mph and flows are more than 2,000 vpd.
9. The proposal fails to comply with either of the required X and Y dimensions set out in the DMRB. An X distance of 2m is only acceptable when traffic flows are light, so would not be appropriate in this case. The shortfall of 0.4m would encourage vehicles to edge out into the carriageway to look right along Marley Lane. Even having done so my understanding is that drivers would not be able to see further than 63m along the road, rather than the recommended Y distance of 103m. It is therefore necessary to consider whether these shortfalls would present an unacceptable risk to highway safety, or there are exceptional factors which would suggest that a departure from the DMRB standards may be justified in this case.
10. There was limited evidence relating to the historic use of the existing access. Use associated with the squash club apparently ceased some 40 years ago. Photographs suggested occasional current use, of the order of a few times per week. By contrast the introduction of an independent dwelling would be likely to result in an average of 4-6 daily movements. This would be a material intensification above that likely to arise from the building's use as an ancillary accommodation.

11. At the appeal site Marley Lane is only 5.5m wide. On the western side of the road there is no verge. Mature vegetation at the edge of the carriageway and a bend significantly restrict visibility towards the south. Enlarging the area on the site and improving its surfacing would provide space for vehicles to manoeuvre and ensure that they could enter and leave the site in a forward gear. However, undertaking a right turn towards Battle would incur a risk arising from the combination of limited visibility and the uphill gradient. Although the risk of a crash could be considered small, the consequences of any collision could be very serious for those involved.
12. There is no record of injury accidents within the immediate vicinity of the site. Nevertheless, since July 2015 there have been two crashes along the nearby section of Marley Lane. One to the south of the Forestry Commission access and another some distance to the north. I do not have details of those incidents or whether poor visibility contributed to them, but it suggests that there is a medium risk of crashes along Marley Lane. Its safety record should therefore not be set aside or used as a justification for increasing the use of an access which would fall significantly below the appropriately required standards.
13. I am aware that other accesses on Marley Lane have been permitted where visibility standards were not fully met, and these cases have some similarities with the situation at Marley House. Nevertheless, the evidence before me suggests that observed speeds exceeded 40mph and the highway authority sought to resist schemes where there was a shortfall in the visibility splays and/or an intensification in the use of an access. There was nothing to suggest that the shortfalls elsewhere were as significant as they would be with the appeal proposal. I do not have details of the visibility splays that were considered acceptable to the Inspector who allowed an appeal at Battle Great Barn, but when making his assessment he thought it likely that speeds were below 40mph. Taking account of the information from the other cases I find them not to be directly comparable with Marley House.
14. Whilst it may be the Government's intention to update its guidance on visibility splays through a future publication of revisions to MfS, that is not relevant to my assessment. I have come to my view based on the Government's current advice to highway authorities, the written evidence of the main parties and the site-specific circumstances of this case. Consequently, I do not find any justification for setting aside the requirements of the DMRB.
15. Moreover, even if the access was adequate for vehicles, the main parties did not consider the needs of pedestrians. From what I saw on site, it would be difficult for any pedestrian (such as a child catching a bus to school) to walk safely to and from the access in the absence of footways and verges. It is suggested that an alternative route for pedestrians through the retained grounds of Marley House would be unacceptably long (110m compared with 28m) and would disturb the occupants of the main dwelling. However, even though it would be significantly safer for anyone on foot, it was not part of the appeal proposal.
16. Taking all the above into account, I conclude that the proposed access arrangement would give rise to unacceptable risks to highway and pedestrian safety contrary to Policy RC6(ii) of the Rother Local Plan Core Strategy, adopted 2014, which requires development to avoid prejudice to road and/or pedestrian safety. It would also fail to comply with paragraphs 110 c) and 111 of the National Planning Policy Framework (the Framework) which requires safe and suitable access to development to be achieved for all users, and that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety.

Other Matter

17. The significance of Marley House and its outbuilding derives from their original role as part of an 18th century oast complex. In the early 20th century, the oast house was largely demolished with part being retained as the outbuilding which was subsequently used as a squash court. The Council has already given listed building consent to the alterations to this curtilage listed building and in so doing has acknowledged that its conversion to residential use would secure its future preservation as a heritage asset.
18. The sub-division of the plot and creation of an independent dwelling would separate the building from its historic connection with Marley House. This could affect its setting, a matter to which I am required to have special regard to the desirability of preserving. However, the formal gardens and historic curtilage are primarily to the west of the house. The north facing side of the building appears to have been extended and includes a modern conservatory but is not a primary elevation. The area which includes the outbuilding appears to have been used for gardening and growing produce. It therefore makes only a minor contribution to the setting of the listed building. Subject to ensuring that any proposed boundary treatment separating the properties was sensitive to its rural context, the proposal would cause minimal alteration to the setting of Marley House. I am therefore satisfied that the setting of the listed building would be preserved in accordance with local and national policies to conserve heritage assets in a manner appropriate to their significance.

Planning Balance

19. The Council acknowledges that it only has a 2.89-year supply of deliverable housing sites. Consequently, paragraph 11 d) of the Framework is engaged. However, although the Core Strategy was adopted in 2014, Policy CO6(ii), which is the most important policy in respect of this appeal, is up-to-date and consistent with the Framework's approach to access and highway safety.
20. I acknowledge there would be a benefit in the provision of an additional family home in an area with an acute shortfall. This could be achieved without adversely affecting the setting of Marley House, a Grade II listed building, and by undertaking works to the curtilage listed building which have already been permitted by the Council. This would be consistent with the Framework's approach to the conservation of heritage assets. These benefits are factors in the scheme's favour and carry moderate weight.
21. However, the proposed improved access would create additional hazards for the occupants of the dwelling and other road users. This would be a significant and serious shortcoming. Consequently, I conclude that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the Framework's policies as a whole. The presumption in favour of sustainable development therefore does not apply to this case.

Conclusion

22. The proposal conflicts with the development plan and there are no other considerations, including the Council's housing land supply position, that indicate that a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

S M Holden

INSPECTOR