



Appeal Decision

Site visit made on 14 June 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 7 August 2023

Appeal Ref: APP/U1430/W/22/3301354

Land at 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 and Mrs Joe Thompsett against the decision of Rother District Council.
 - The application Ref RR/2021/2447/P, dated 4 October 2021, was refused by notice dated 22 December 2021.
 - The development proposed is construction of single detached 2 storey chalet dwelling with associated access.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Within the application and appeal documents the appellant's surname was spelt "Thompsett" and "Thomsett." It has been confirmed in correspondence with the appellant's agent that the appellant's surname is "Thompsett."

Procedural Matter

3. As part of the appeal submission, the appellant put forward an amended plan showing the proposed dwelling sited closer to Battle Great Barn and outside of the Green Gap, as designated by the Battle Civil Parish Neighbourhood Plan 2019-2028 (BCPNP), Plan Proposal, Final Version, June 2021. I am mindful that the appeal process should not be used to evolve a scheme to overcome the Local Planning Authority's reason for refusal and instead a fresh planning application should be made¹. I have had regard to the 'Wheatcroft Principles'² and the interests of fairness. I have therefore determined the appeal on the basis of the plans that were before the Council when it made its decision and on which parties were consulted.

Main Issues

4. The main issues of this appeal are:
 - the effect of the proposed development on the character and appearance of the area, including the effect on the High Weald Area of Outstanding Natural Beauty;

¹ Annex M of the *Procedural Guide Planning Appeals – England* advises that the appeal process should be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

² *Bernard Wheatcroft Ltd vs Secretary of State for the Environment* [JPL, 1982, P37]

- the effect of the proposed development on the setting of designated heritage assets;
- whether the site is an appropriate location for the proposed development having regard to the development strategy and accessibility of services and facilities; and,
- the effect of the proposed development on protected species.

Reasons

Character and appearance

5. The appeal site is located within the High Weald Area of Outstanding Natural Beauty (AONB) and an area identified as a Green Gap within the BCPNP. The site is located on Marley Lane and is accessed via a gate in the corner of a public car park. It is an irregular shape and adjoins an area of Ancient Woodland. The site undulates but generally rises toward the corner nearest Battle Great Barn, which is a Grade II listed building. A public right of way (PRoW) passes through the site, connecting the public car park with the area of Ancient Woodland.
6. The site itself is generally free from development other than a small boundary fence. Two of its borders accommodate mature, dense vegetation, including the boundary with Marley Lane, and there are several trees and shrubbery scattered across the site. These aspects, combined with the long grassland, contribute to the site's tranquil and verdant character.
7. The High Weald AONB is characterised by its undulating, open and verdant landscapes, with clusters of woodland sporadically sited throughout the area. This pattern is occasionally disrupted by small villages or hamlets. As above the appeal site is located in a part of the AONB which is open and verdant in character and is adjacent to a pocket of woodland.
8. The proposed development would include a modestly sized, timber clad dwelling which is reflective of the regional vernacular with a green roof and a driveway made up of a permeable surface and reinforced grass. Nevertheless, the built development would accommodate a large footprint, including the long driveway from the car park area to the corner of the site nearest Battle Great Barn. Also, the introduction of activity associated with the movement of people and vehicles as well as the introduction of lighting would erode the tranquillity associated with the site. These factors combine to have an urbanising effect on the appeal site and would diminish its verdant character. The proposed development would also erode the open and verdant character of the AONB.
9. Furthermore, as the proposed development is at one end of ribbon development along Marley Lane, it would lead to an extension of built development into an area that is largely free from development and is open in character.
10. The appellant has explained they could recontour the site without the need for planning permission. However, they have indicated that they do not intend to do this, and I have not been provided with any alternative circumstances under which they would consider doing this. I therefore do not consider it to be a realistic fallback position that would materialise following the dismissal of the appeal and the appeal scheme is therefore assessed on this basis.

11. It is acknowledged that the scheme before me is a resubmission of a previously refused scheme, and the volume of the proposed dwelling is reduced compared to that scheme. The appeal proposal would include some earthworks as the proposed dwelling would be cut into the slope, but this would be less than the previously proposed scheme. The appeal proposal would also include planting and tree screening to improve future occupiers' privacy and reduce the effect upon the landscape. Nevertheless, formal planting could increase the sense of urbanisation and harm the open character of the site. Likewise, the unnatural recontouring of the land could appear incongruous against the wider landscape.
12. A sizeable proportion of Rother is within the AONB, including the residential development in the local area. The council also acknowledge that some residential development in the AONB will need to be allowed to address the shortfall in the provision of housing land. Regardless, this development would still need to conserve the landscape and scenic beauty of the AONB.
13. The lack of an effect on the PRoW is a neutral factor and does not weigh in favour or against the appeal proposal.
14. The proposed development would have a harmful effect on the character and appearance of the area. It would also not conserve the landscape and scenic beauty of the AONB. It would therefore be contrary to policies OSS4, BA1, RA2, RA3 and EN1 of the Rother Local Plan Core Strategy (CS), September 2014. These policies require all development to respect the character and appearance of the locality; maintain the local character and setting of Battle; to conserve the intrinsic value, locally distinctive rural character; to be of an appropriate scale and will not impact on the landscape character; and, protect the distinctive identified landscape character of the AONB and the open landscape between defined settlements.
15. It would also be contrary to policies DEN1 and DEN2 of the Development and Site Allocations Local Plan (DASA), December 2019, and BCPNP policies HD5, HD7 and EN3. These policies indicate that the siting, layout and design of development should maintain and reinforce the natural and built landscape character of the area; all development within the AONB shall conserve and seek to enhance its landscape and scenic beauty; proposals which have an impact on the landscape should be supported by a landscape and visual assessment; and, in the Green Gap development will only be supported if it maintains the openness of the area.
16. Finally, the proposed development does not accord with paragraph 176 of the National Planning Policy Framework (the Framework) which indicates that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs.

Designated heritage assets

17. The proposed dwelling is sited in proximity to the grade II listed Battle Great Barn and grade II listed Marley House. Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 requires me to pay special regard to the desirability of preserving listed buildings and their setting. Paragraph 195 of the Framework requires me to assess the particular significance of any heritage asset.

18. The significance of Battle Great Barn is derived, in part, from its architectural and historic interests, and from its position set back from the road within its setting adjacent to the verdant field and Ancient Woodland.
19. Whilst the appeal site is separated from the listed building by thick vegetation, the appellant highlights that it was previously under the same ownership. Nevertheless, the boundary alters the legibility of the relationship between Battle Great Barn and its landscape setting. Despite this, the appeal site makes a positive contribution to the setting of the Barn, as it provides a verdant, undeveloped setting for the building to be appreciated.
20. The appellant contends that recontouring of the land and additional planting would screen the development from Battle Great Barn. However, the proposed development would still be seen within wider views of the listed building; in particular from the public car park adjacent to the site and the PRoW running through the site. Besides, formal planting and unnatural recontouring could harm the verdant, undeveloped setting of Battle Great Barn.
21. Due to the scale of the proposed development, it would undermine and detract from the landscape setting of Battle Great Barn. This would result in less than substantial harm to the significance of the listed building because it would result in partial loss of its historic landscape setting.
22. The appellant contends that the proposed development would cause less harm than the approved holiday accommodation close to Battle Great Barn. However, that proposal was set further back from the road and would be less apparent in wider views and in any event the appeal proposal is judged on its own merit.
23. The significance of Marley House is also derived from its architectural and historic interest, including its historic relationship with the surrounding land and outbuildings. Given the distance to and the intervening development, as well as the topography and significant vegetation buffer, the proposed development would not cause harm to the significance or setting of the grade II Listed Marley House.
24. Overall, the proposed development would have a harmful effect on the setting of a designated heritage asset, as it would impact the setting of Battle Great Barn. It would therefore be contrary to CS Policy EN2 and BCPNP Policy EN4 which indicate that development affecting the historic built environment should preserve and ensure clear legibility of locally distinctive vernacular building forms and their settings; and heritage assets in the parish will be preserved and enhanced including the contribution made by their settings.
25. The proposed development is also contrary to paragraphs 197 and 199 of the Framework which outline in determining applications, local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets; and when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

Appropriate location

26. CS Policy OSS2 explains that development boundaries around settlements will indicate where most forms of new development would be acceptable. This approach is consistent with BCPNP Policy HD1 which provides a development

boundary for the purpose of identifying policies, which relate to the acceptability of proposals falling within the boundary.

27. Both parties acknowledge that the appeal site is not located within either the boundary identified in the CS or the BCPNP. As such, for the purposes of the development plan, the appeal site is in the countryside, despite being located close to ribbon development on Marley Lane.
28. CS Policy RA2 outlines a general strategy for the countryside, including strictly limiting new development to that which supports local agricultural, economic or tourism needs and maintains or improves the rural character. For the reasons given above I do not consider that the proposed development maintains or improves the rural character of the area. Therefore, the appeal proposal is contrary to CS Policy RA2.
29. CS Policy RA3 identifies what development would be considered acceptable in the countryside, including the creation of new dwellings in extremely limited circumstances. The policy sets out four circumstances where the creation of new dwellings may be acceptable. The proposed development does not conform with any of the exceptions. Nevertheless, the list is preceded by the word "including" which suggests the list is not exhaustive and there may be other acceptable circumstances.
30. The appeal site is not isolated as it is located close to other development along Marley Lane. Nevertheless, it is remote from services and facilities, the nearest of which are found in Battle which is a significant distance away.
31. This section of Marley Lane is subject to the national speed limit and is a narrow winding lane, with no footpath and it does not accommodate street lighting. The appellant has highlighted a woodland path adjacent to the site that leads to the centre of Battle, but this is an unmade path which would be unsuitable for regular long journeys, and the site is a significant distance to Battle. There is also a very limited bus service operating from Marley Lane. Given the above, the future residents of the proposed development would be disincentivised from using public transport or non-vehicular modes of transport. As such, future residents would be reliant on the use of private motor vehicles.
32. It has also been put to me that vehicular journeys from the site may reduce, as the appellant would not have to travel to the land to manage it. I have not been provided with any evidence on the number of vehicle journeys associated with the current use of the site or for the proposed development. A residential use is likely to generate a significant number of vehicular journeys as people access services and facilities alongside deliveries to residential properties. Albeit in this instance, the increase in the number of journeys would be limited given the size of the proposed development. Notwithstanding, without specific evidence I cannot conclude that this would be offset by a reduction in the number of existing journeys.
33. Paragraph 112 of the Framework explains that development should give priority first to pedestrian and cycle movements and second, so far as possible, facilitate access to high quality public transport. As such, the prevalence of electric vehicles and the inclusion of an electric vehicle charging point does not negate the harm caused by the location of the appeal site.

34. The appellant has argued that the Blackfriars development has compromised the council's position on a low carbon future. The Blackfriars development is an allocated site, the accessibility of services and facilities from that site was considered acceptable during the examination of the local plan. I have no substantive evidence before me to disagree with that assessment.
35. Likewise, the proposed development would generate less journeys than the larger properties which have been granted permission along Marley Lane. Nevertheless, I have not been provided with the pertinent details of these applications and whether any journeys generated by the new development would have been offset by existing journeys or whether these developments needed planning permission. I therefore cannot conclude that the council has been inconsistent in their approach. In any event each application is assessed on its own merits.
36. Throughout the representations the appellant has explained that the land has been within their family's ownership since the 1980s and they intend to manage the land more effectively. However, it has not been demonstrated that a permanent presence would be required on site or why the land could not be more effectively managed by people living off site.
37. The council acknowledge the shortfall in housing delivery. Therefore, they have sought to allow development which accords with the development plan, are suitable, deliverable, and otherwise contribute to sustainable development, which may not be within the development boundary. For the reasons given above, I do not consider the proposed development to be suitable or contribute to sustainable development.
38. The appeal site is not an appropriate location for the proposed development having regard to the development strategy and accessibility of services and facilities. The proposed development is therefore contrary to CS policies OSS2, OSS3, BA1, RA3, SRM1 and TR3 and BCPNP policies HD1 and IN4.
39. These policies set the development boundaries around settlements and indicate where most forms of new development would be acceptable; advise proposals should accord with relevant policies and be considered in the context of the spatial strategy for a particular settlement; require proposals in Battle to maintain the essential physical form and setting of the town; restricts residential development in the countryside to extremely limited circumstances; to mitigate and adapt to the impacts of climate change more sustainable travel patterns will be promoted; advises new development should minimise the need to travel; and require all new housing development to provide safe pedestrian access to link up with existing footway networks.
40. The appeal is also contrary to paragraphs 8 and 110 of the Framework which indicate to support strong, vibrant, and healthy communities by fostering well-designed, beautiful, and safe places, with access services; and when assessing proposals, it should be ensured that appropriate opportunities to promote sustainable transport modes can be or have been taken up.
41. BCPNP Policy HD2 was referenced within the first reason for refusal on the decision notice. This policy relates to the allocation of housing sites within the BCPNP but is silent on unallocated sites. As the appeal site is an unallocated site, BCPNP Policy HD2 neither weighs in favour or against the proposed development.

Protected species

42. Circular 06/2005³ identifies that it is essential that the presence, or otherwise, of protected species, and the extent that they may be affected by the proposed development is established before planning permission is granted. Further to this, Circular 06/2005 caveats that developers should not be expected to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the decision.
43. A Preliminary Ecological Assessment (PEA) was provided as part of the application documents and subsequently with the appellant's representations of this appeal. The PEA concludes that there is the potential presence of protected species within the appeal site, including breeding birds, reptiles, amphibians, and hazel dormice. The PEA does not identify to what extent they may be affected by the proposed development. As per Circular 06/2005, planning permission cannot be granted until this has been established.
44. The appellant contends it would be unreasonable to expect further evidence at this stage; nevertheless, the council cannot grant permission until the potential extent of the effect on protected species is known.
45. It is acknowledged that other developments have not been required to provide information relating to the presence, or otherwise, of protected species. Based on the evidence before me it is not clear whether these developments required full planning permission or what the most pertinent details of those applications were including whether there was a reasonable likelihood that protected species were present.
46. In relation to protected species a precautionary approach should be taken when assessing whether a proposed development would affect them. I consider that the proposed development is likely to have a harmful effect on protected species, but the extent of the harm and whether it could be mitigated has not been demonstrated. The proposed development is therefore contrary to CS Policy EN5 and DASA Policy DEN4, which indicate that development retains, protects, and enhances habitats of ecological interest; and require development proposals to support the conservation of biodiversity and multi-functional green spaces.

Planning Balance

47. The Framework states that great weight should be given to an asset's conservation, with any harm to the significance of a designated heritage asset, including from development within its setting, requiring clear and convincing justification. Moreover, if less than substantial harm is caused to the significance of any asset, that harm should be weighed against the public benefits.
48. The public benefits of the scheme include the provision of a small scale, eco-minded home on a site which would allow the residents to effectively manage the land, the provision of an electric vehicle charging point, and economic benefits associated with construction and community infrastructure levy payments and additional tax paid to the council.

³ Government Circular: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system, Office of the Deputy Prime Minister, August 2005

49. The council can only demonstrate less than three years' worth of deliverable housing land supply. Therefore, the provision of a single home would boost the delivery of housing in the area, and this can be ascribed moderate weight. Only limited weight can be ascribed to other benefits given the modest scale of development.
50. A lack of an effect on the living conditions of neighbouring residents is a neutral factor.
51. Cumulatively the benefits are matters to which moderate weight is ascribed. On the other hand, I have found less than substantial harm would be caused to the setting of the grade II listed Battle Great Barn, and the benefits associated with the proposal do not outweigh the less than substantial harm that I have identified and the great weight that must be given to the conservation of heritage assets.
52. As there are no policies in the development plan that positively favour development of this nature and the appeal scheme is contrary to the policies listed above, there would be a conflict with the development plan when considered as a whole.
53. The council acknowledge that they cannot demonstrate a five year supply of deliverable housing land. Paragraph 11 of the Framework explains that in these circumstances the policies which are most important for determining the application are out-of-date. In this instance planning permission should be granted unless the application of policies in the Framework that protect areas of particular importance provides a clear reason for refusing the development proposed. Footnote 7 of the Framework details that this includes policies relating to AONBs and designated heritage assets.
54. As the proposed development would have a harmful effect on the AONB and a designated heritage asset, the application of policies in the Framework provide a clear reason for refusing permission for the development proposed.
55. When considered as a whole the proposed development does not conform with the presumption in favour of sustainable development outlined in paragraph 11 of the Framework and reflected within CS Policy PC1.

Other Matters

56. An amendment to the boundary of the Green Gap identified in the BCPNP occurring between the consultation version and the final version of the plan is acknowledged. However, the BCPNP was made prior to the determination of the planning application and therefore it formed part of the development plan, and the proposed development should accord with its policies.
57. Several planning permissions for similar development have been put before me including those along Marley Lane; however, I have not been provided with the most pertinent circumstances of each of those applications. For these reasons I cannot draw a conclusion on their similarity with the appeal proposal and therefore they do not set a precedent for the appeal proposal.
58. The council's support for custom and self-build housing, alongside their reliance on windfall development is acknowledged. Nevertheless, it would not justify allowing a development which is in an inappropriate location and harmful to the setting of a listed building and the AONB.

Conclusion

59. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
60. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

J Hobbs

INSPECTOR