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# Appeal Decision

Site visit made on 23 August 2023

**by Jane Smith MA MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 September 2023**

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**Appeal Ref: APP/U2235/W/22/3305888**

**Land to north of Timbers, Boarley Lane, Sandling, Maidstone ME14 3DE**

- 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 Wright against the decision of Maidstone Borough Council.
  - The application Ref 22/500146/FULL, dated 12 January 2022, was refused by notice dated 6 April 2022.
  - The development proposed is described as 'Part change of use of land to residential and equestrian use, and erection of a residential dwelling with associated parking'.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. In the banner heading above, I have used the description of the proposed development as it appeared on the Council's decision notice. The description was amended following submission of the application, in line with correspondence between the appellant and the Council at that time. I am satisfied that the amended description accurately describes the proposed development.
3. A screening direction was issued on behalf of the Secretary of State on 27 February 2023, confirming that an Environmental Impact Assessment for purpose of the EIA Regulations<sup>1</sup> is not required.
4. An examination in public into the Council's Local Plan Review is in progress, with hearing sessions having concluded and the Inspector's initial findings having been provided. Main modifications are likely to be proposed, which have not yet been subject to consultation. On that basis there is limited evidence as to the extent to which the relevant emerging policies may be subject to further change. Therefore, while I acknowledge that the Local Plan Review is at a relatively advanced stage, based on the evidence before me I have given its emerging policies limited weight when considering this appeal.

## Main Issues

5. The main issues are:
  - the effect of the proposed development on the character and appearance of the area, including its effect on the setting of the Kent Downs Area of Outstanding Natural Beauty (AONB),

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<sup>1</sup> Town And Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 571/2017)

- its effect on the setting of nearby listed buildings The Old Mill and The Old Mill House,
- the effect on public access along Public Footpath KH19, and
- the effect on living conditions for the occupiers of neighbouring properties.

## **Reasons**

### *Character and Appearance*

6. The appeal site is located within an area of countryside and sporadic built development between the northern edge of Maidstone and the M20 motorway. It is outside the settlement boundary as defined in the Maidstone Borough Local Plan 2017 (MBLP) and treated as countryside for purposes of the development plan.
7. The site is undeveloped pasture land, on the edge of a cluster of dwellings. It slopes down towards a pond with small fields and woodland beyond. Boarley Lane is a narrow rural lane lined with hedgerows and pockets of woodland. The area around the site has an intimate, rural character despite the existing dwellings and its proximity to the town.
8. By virtue of its relationship with the settlement boundary and existing dwellings in the countryside, the site is not isolated. Nevertheless, outside settlement boundaries Policy SS1 of the MBLP prioritises protection of the rural character of the borough. Policy SP17 precludes development which would harm the character and appearance of the area and Policy DM30 sets out design principles for development in the countryside. These include that the mass and scale of development and the level of activity should maintain or where possible enhance local distinctiveness including landscape features.
9. The National Planning Policy Framework (the Framework) similarly requires in paragraph 130 that development should be sympathetic to local character, including landscape setting, while not precluding the provision of housing in rural areas as a matter of principle.
10. The site is outside the AONB, which lies beyond the M20 to the north. The landscape characteristics for which the AONB is designated include areas where a network of woodland, small fields and enclosed rural lanes create an intimate rural landscape. The setting of the AONB includes countryside south of the AONB boundary, around the urban fringe of Maidstone, which shares these characteristics and where the appeal site is situated. The supporting text to MBLP Policy SP17 highlights this area as being a sensitive landscape, under pressure from further urban development.
11. The proposed dwelling would be set into the slope, next to an existing dwelling. The design would take advantage of the topography and roadside vegetation to provide screening, particularly in approaches from the south. However, the site is more visually exposed from the north, where the existing vegetation is more patchy, the roadside environment is less enclosed by the topography and the site adjoins additional undeveloped land.
12. The two storey elevation of the dwelling would be visually prominent, as it would face into the more open part of the site. Although the patio would be in a more enclosed area at the rear, the land in front of the dwelling would be used

for formation of an access driveway and parking area. This would introduce parked vehicles and increased areas of hardstanding in front of the dwelling, giving the site a significantly more domesticated appearance. The extensive glazing and any outdoor illumination would make the dwelling even more conspicuous when ambient light levels are low.

13. Although the existing access would be used, and additional planting would be introduced, neither factor would adequately mitigate the increased presence of built development and associated activity, which would be a significant contrast from the current rural and undeveloped character of the site.
14. Some of the nearby dwellings are similarly conspicuous, notably Monksfield Bungalows, which are prominently located on higher land. Nevertheless, the proposed development would further consolidate and extend urban development along Boarley Lane. This would further erode the rural character of this area outside the settlement boundary, contrary to the policy objective of protecting the rural character of the borough.
15. The site has no direct visual relationship with the AONB, given the distance to the AONB boundary. However, it would erode the rural characteristics of land which the development plan specifically identifies as lying within the setting of the AONB and vulnerable to harmful urbanisation. While there are other significant urban features in this area, notably the M20, this does not justify further harm to the setting of the AONB as a result of incremental encroachment and consolidation of urban development into this sensitive area.
16. For the above reasons, I conclude that the proposal would be harmful to the character and appearance of the area and the setting of the AONB. As such, it would be contrary to Policies SS1, SP17, DM1 and DM30 of the MBLP. These policies, amongst other things, prioritise protection of the rural character of the borough, requiring that development avoids harm to the character and appearance of the area and conserves and enhances the setting of the AONB.
17. The proposal would also conflict with relevant paragraphs in the Framework notably paragraph 176 which requires that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, and that development within the setting of an AONB should be sensitively located and designed to avoid or minimise adverse impacts on the designated landscape.
18. The proposal would also be inconsistent with objectives in the Maidstone Landscape Character Assessment 2012 (amended 2013) and the Kent Downs AONB Management Plan 2014-2019, which amongst other things aim to conserve and enhance the setting of the AONB, including by limiting further urbanisation within the urban fringe.

#### *Setting of Listed Buildings*

19. The Old Mill and The Old Mill House are situated near the site, on the opposite side of Boarley Lane. The Old Mill House faces directly on to Boarley Lane towards the site, while The Old Mill is set slightly further back. Both are Grade II listed buildings.
20. The significance of the listed buildings includes the historic use of The Old Mill as a water mill. As such, their relationship with the series of water bodies at this low point along Boarley Lane is a key aspect of their setting. The appeal site slopes down towards this lower-lying land, immediately in front of The Old

Mill House. In its current open and undeveloped state it makes a positive contribution to the setting of the listed buildings, enabling their historic role within the rural landscape to be understood and appreciated.

21. The introduction of a prominent and substantial new dwelling, including the associated residential curtilage and domestic paraphernalia, would erode this rural context around the listed buildings. Therefore the proposal would fail to preserve the setting of the listed buildings and would in consequence be harmful to appreciation of their significance.
22. There are other modern dwellings near the listed buildings, including Monksfield Bungalows, where alterations have been undertaken with a contemporary design and materials. However, these existing dwellings have a different orientation in relation to the listed buildings and are not so directly intrusive into the lower-lying area around the ponds. In any case, the presence of other modern residential development nearby does not neutralise the additional harm which would arise to the setting of the listed buildings. Furthermore, the harm to the setting of the listed buildings would not be adequately mitigated by soft landscaping or use of a neutral palette of external materials.
23. The harm to the setting of the listed buildings would be focussed within the area in front of The Old Mill House, which is listed for its group value with The Old Mill. Due to the intervening woodland, there would be a less direct effect on the area around The Old Mill itself, further along Boarley Lane. Taking that into account, the harm to the significance of the heritage assets would be less than substantial. Nevertheless, I have attached considerable importance and weight to the desirability of preserving the setting of the listed buildings, in accordance with the statutory duty set out in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
24. Paragraph 202 of the Framework states that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. The proposal would contribute to the supply of housing and choice of homes in the wider area and release a family home elsewhere. There would be economic benefits associated with the construction process and future occupiers' contribution to the local economy. Since the application indicates that energy efficiency standards would exceed current requirements under the Building Regulations, there would also be some public benefit in terms of managing energy consumption and carbon emissions.
25. However, given that the proposal is for a single additional dwelling, all of the above public benefits would be inherently modest in scale. On that basis, I have given them modest weight. Therefore, the public benefits of the proposal would not outweigh the considerable weight I have given to the harm to the setting and significance of the listed buildings.
26. Taking the above matters into consideration, the proposed development would fail to preserve the setting of The Old Mill and The Old Mill House and would not meet the requirements of section 66(1) of the Act. For the same reasons, it would not accord with Policies SP18, DM1, DM4 and DM30 of the MBLP. These policies, amongst other things, protect heritage assets and their setting from harm as a result of new development, including by applying the relevant tests set out in the Framework, as outlined above.

27. Policy SP17 of the MBLP was also highlighted in the first reason for refusal. This policy relates to the effect of development on the countryside and designated landscapes, but not specifically to the effect on heritage assets in the countryside. Therefore, while I have found that the proposal conflicts with Policy SP17 for other reasons, I have given this policy limited weight when considering the effect of the proposal on the setting of listed buildings.

#### *Public Footpath*

28. Public footpath KH19 lies alongside the southern boundary of the appeal site. During my site visit, I established that the public footpath is clearly signposted from Boarley Lane and follows a narrow, fenced off route between Timbers and the fenced boundary of the appeal site. This corresponds with the details shown on the survey drawing submitted with the application.
29. Although the appellant has stated that the public footpath would be retained and protected by close boarded fencing, this is not consistently shown on the application drawings. Whereas the site layout on drawing no 04902\_NBD06 Rev B does show that the patio would stop short of the public footpath, the elevations on drawings 04902\_NBD03 Rev G and 04902\_NBD04 Rev C show that the patio and surrounding boundary screening would abut the single storey garage within Timbers, which is on the opposite side of the footpath. Ground levels would also be raised in this area to form the level patio area.
30. On the basis of the details on the proposed elevations, the public footpath would be obstructed by the raised patio and associated boundary screening. While I appreciate that this may be as a result of an inaccuracy on the elevation drawings, it has nevertheless not been clearly and consistently demonstrated that access along the public right of way would be maintained.
31. Based on the evidence before me, therefore, I conclude that public access along public footpath KH19 would not be adequately safeguarded. This would be contrary to Policy DM1 which requires amongst other things that the layout of development maintains linkages to the surrounding area and paragraph 100 in the Framework which says that planning decisions should protect public rights of way.

#### *Living Conditions for Neighbouring Occupiers*

32. The adjacent dwelling, known as Timbers, is set perpendicular to the proposed dwelling, with its principal outlook to the front and rear. Therefore, there would be limited effect on the outlook from within the bungalow itself. In relation to the rear garden of Timbers, the proposed dwelling would be set at a slightly lower ground level and not directly adjacent to the boundary. Therefore, while it would limit the view over open land currently enjoyed by the occupiers of Timbers, it would not be unacceptably overbearing or dominant in their outlook. Given the degree of separation and the position of the proposed dwelling to the north, it would also not obstruct direct sunlight to this adjacent bungalow.
33. The proposed patio would be elevated to a level which would potentially provide views into the rear garden of Timbers, which has only a low boundary fence. One of the two rear gable windows on the proposed dwelling would also face directly into the adjacent garden, at a similar elevation. However, since ground levels on either side of the boundary would be similar, and this rear

part of the proposed dwelling would be on a single storey, it would be possible to maintain adequate privacy through introduction of boundary screening. This could have been secured by means of conditions, had I been otherwise minded to allow the appeal.

34. The Council's Officer Report also raised concerns about the effect of noise and disturbance on the occupiers of Timbers, due to the position of the patio, although this was not specifically highlighted in the third reason for refusal. The patio could be a focus for noisy social activity. However, it is not unusual for rear gardens to adjoin across boundaries within a residential area and any intervening boundary screening would provide some additional protection. On that basis, the relationship between the proposed patio and the adjacent garden would not be unacceptably harmful to the occupiers of Timbers, in terms of noise and disturbance.
35. The dwellings at Monksfield Bungalows are elevated well above the level of Boarley Lane, providing an outlook over the appeal site from their rear elevation and patio. However, these areas are already exposed to view from Boarley Lane and therefore have a limited amount of privacy at present. The outlook from the proposed dwelling would not materially undermine the privacy of the occupiers compared to the existing situation. While the proposed dwelling would be visible from Monksfield Bungalows, it would be at a lower level and on the other side of the lane, and therefore would not be unacceptably overbearing or intrusive.
36. For the reasons given above, I conclude that the proposed development would not be unacceptably harmful to living conditions for the occupiers of neighbouring properties. Therefore this aspect of the proposal would not conflict with relevant requirements in Policy DM1 of the MBLP, which requires amongst other things that development does not result in an unacceptable loss of privacy, visual intrusion, noise or disturbance for occupiers of neighbouring properties.

### **Other Matters**

37. While a screening opinion concluded that no Environmental Impact Assessment (EIA) was required, this does not mean that there would be no impact on the surrounding area. In fact, the screening opinion highlighted that there may be some impact as a result of the development, but not of a scale and nature likely to trigger a requirement for an EIA under the EIA Regulations. As such, the conclusions I have reached above are not inconsistent with the findings set out in the EIA screening opinion.
38. The proposed dwelling would have access to businesses and services in Maidstone and nearby. There are options for travelling other than by means of the private car. The Council concluded that, on balance, the site is a suitable location for a single dwelling. Based on the evidence before me, I have no reason to disagree. However, the suitability of the location in principle does not justify introduction of development which is harmful for other reasons. Similarly, the Framework's support for more efficient use of land is not at the expense of maintaining an area's prevailing character and setting.
39. The proposal would allow for continued equestrian activities. Depending on its nature, this use could be of some benefit to the local rural economy. However, the land already has an equestrian use and there is little clear evidence that

this is dependent on the provision of a dwelling on site. Based on the evidence before me I am not persuaded that introduction of a dwelling is necessary to address any ongoing security issues related to the established equestrian use. Should conversion of the stables be proposed at a later date, that would be a matter for the Council's consideration, based on the relevant development plan and any other material considerations at that time.

40. The proposal would enable the appellant to sustain a family connection to the area and create an asset for future generations. However, these are primarily private benefits, which do not outweigh the harm I have identified above.
41. Vehicular access to the site already exists and the Council did not allege any harm in relation to highway safety, parking or traffic generation. Had I been minded to allow the appeal, suitable conditions could have been imposed to ensure that any surface water drainage or ground stability issues were properly addressed during implementation of the development. However, these are neutral factors which weigh neither for nor against the proposal.
42. The appellant states that the Council lacked a five year supply of housing land at the time of seeking pre-application advice. However, the Council's Officer Report sets out a more recent housing land supply position, which exceeded five years at the time of determining the application. I have been provided with no updated evidence to the contrary.
43. In any event, I have found that there is a clear reason for refusing the proposed development based on the application of policies in the Framework relating to designated heritage assets. As such, even if the Council did lack a five year supply of housing, the proposal would not benefit from the presumption in favour of sustainable development, for reasons set out in paragraph 11 d) i. of the Framework.

## **Conclusion**

44. The proposed development would not preserve the setting of nearby listed buildings. It would result in less than substantial harm to the significance of these heritage assets, which is not outweighed by public benefits. There would also be harm to the character and appearance of the area, including the setting of the AONB and inadequate safeguarding of access along a public right of way.
45. The harm I have identified is not outweighed by other material considerations, including the provisions in paragraph 11 of the Framework. Therefore, having had regard to the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

*Jane Smith*

INSPECTOR