



Appeal Decision

Site visit made on 13 October 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 28th November 2023

Appeal Ref: APP/U1430/W/22/3313251

Battle Great Barn, 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 Neil Mortimer against the decision of Rother District Council.
- The application Ref RR/2022/240/P, dated 31 January 2022, was refused by notice dated 28 June 2022.
- The development proposed is detached house.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The decision notice refers to the 'openness of the green gap', the green gap is defined within policy HD7 of the Battle Civil Parish Neighbourhood Plan¹ (BCPNP). All parties accept that references to the green gap and BCPNP policy HD7 were added in error as the appeal site is not sited within the green gap. I have therefore not considered this within my assessment of the appeal proposal.

Main Issues

3. The main issues are:
 - whether the appeal site is an appropriate location for a residential use, with regard to the development strategy and accessibility of facilities and services,
 - the effect of the proposed development on the character and appearance of the High Weald Area of Outstanding Natural Beauty (AONB)
 - the effect of the proposed development on the setting of the Grade II listed Battle Great Barn,
 - the effect of the proposed development on the living conditions of residents of Windy Ridge, with regard to privacy, and
 - the effect of the use of the proposed access on the safety of pedestrians, cyclist and drivers using Marley Lane.

Reasons

Appropriate location

4. Policy OSS2 of the Rother Local Plan, Core Strategy (CS), September 2014, and BCPNP policy HD1 explain that development boundaries differentiate between areas where most forms of new development would be acceptable and

¹ Battle Civil Parish, Neighbourhood Plan 2019-2028, Plan Proposal, Final Version, June 2021.

where they would not. It is not disputed that the site is outside of the development boundary and therefore within the countryside for the purposes of the development plan.

5. CS policy RA3 supports the creation of new dwellings in the countryside in extremely limited circumstances. Whilst the appellant wishes to stay close to the vineyard to act as a consultant, he has not sought to claim his presence would be permanently needed on site. Therefore, the proposal does not match any of the circumstances in which a new dwelling would be supported on site.
6. The appeal site is located on Marley Lane, which is characterised by loose ribbon development of several dwellings. It is a significant distance from the nearest settlement, Battle, which future residents would be reliant on for the nearest facilities and services to serve their everyday needs. Regardless of whether the area could be characterised as a hamlet or not, future residents would still be reliant on facilities and services in Battle as very few exist on this section of Marley Lane. There is no provision of public transport in proximity to the appeal site. Furthermore, this section of Marley Lane is subject to the national speed limit and does not benefit from a footpath or street lighting. Walking or cycling along this road would not be a pleasant experience in daylight during the summer. In the dark or inclement weather, at best it would be uncomfortable, at worst it would be unsafe. Therefore, future residents would be heavily reliant on the use of private motor vehicles to access facilities.
7. I acknowledge that the proposal includes photovoltaic panels which would generate electricity that would be stored in batteries, as well as electric vehicle charging points. Therefore, future residents may be able to charge electric vehicles free of charge. This would be an incentive for future residents to use electric vehicles. The appellant has also indicated that they would accept a condition which mandates the use of electric vehicles. Overall, the use of fossil fuels will decrease with the increasing prevalence of electric vehicles, nevertheless these changes are not justification for locating new housing in the countryside where access to facilities is limited.
8. I note that there is a footpath through the woods leading to Battle which is away from the road. The distance to Battle is significant and this route is longer than if you walked along Marley Lane. Therefore, whilst walking along the footpath may be more appealing than Marley Lane, it is not a practical alternative to the use of private motor vehicles.
9. The appellant has provided evidence of 8 similar developments permitted along Marley Lane in recent years. Several of these examples include either replacement dwellings or sites that could be defined as previously developed land and, as such, they are materially different to the appeal proposal. The prevailing circumstances of each of the applications has not provided. I therefore cannot conclude that any of the permitted developments on previously undeveloped sites set a precedent for the appeal proposal.
10. Foundations from what appears to be workers cottages remain on site. Nevertheless, this does not lead me to conclude that the site can be described as previously developed land as the foundations have blended into the landscape. Notwithstanding, the development plan does not support residential development on previously developed sites in the countryside.

11. Even if the Council's Overview and Scrutiny Committee has endorsed a recommendation to identify more small site development opportunities for custom and self-build housing, it does not justify allowing housing outside of the development boundaries. A lack of an objection to the proposal from the parish council, which was the author of the BCPNP, does not lead me to conclude that it supports residential development outside of the development boundaries in the plan.
12. The appeal site is not an appropriate location for a residential use, with regard to the development strategy and accessibility of facilities and services. It would be contrary to CS policies OSS2 and RA3 and BCPNP policy HD1 for the reasons given above. It would also be contrary to CS policies OSS3, BA1, SRM1 and TR3 and BCPNP policy HD2 which indicate development proposals should be considered in the context of the spatial strategy and maintain the physical form of Battle; should promote more sustainable travel patterns and minimise the need to travel. In addition, new housing development must provide safe pedestrian access to link up with existing footway networks. Furthermore, it would also be contrary to the guidance within the National Planning Policy Framework (the Framework) where it advises it should be ensured that appropriate opportunities to promote sustainable transport modes have been taken up.

Character and appearance

13. The appeal site is located within the High Weald AONB, an area designated for its landscape and scenic beauty. The surrounding area is characterised by tall, dense vegetation borders which link the road with areas of woodland and open fields beyond; interspersed by scattered residential and agricultural buildings. This section of Marley Lane is characterised by a loose pattern of ribbon development comprising several dwellings. This is at odds with the rural and verdant character of the wider area and is harmful to the landscape and scenic beauty of the AONB.
14. Battle Great Barn is separated from the appeal site by mature trees, although there are views between the appeal site and the Barn. The appeal site is a lawned area which is used to access holiday lodges and appears as a parcel of land associated with the Barn. Consequently, it is influenced by the residential activity associated with the site. As the site is undeveloped it acts as a verdant buffer between Battle Great Barn and the neighbouring property.
15. Houses along Marley Lane are of varying design, the proposed dwelling references traditional dwellings in and around Battle; it is proposed to be a 1.5 storey farmhouse style property that would sit lower than neighbouring properties. The proposal involves improving the borders including installing a post and rail fence, alongside additional planting between Battle Great Barn and the proposed development. The proposed dwelling would be sited within a large plot of land, as a significant area is required to incorporate all of the sustainability measures including ecological improvements.
16. The dwelling is proposed within an undeveloped field and would lead to the construction of a large dwelling. Moreover, the proposal would lead to increased residential activity and more domestic paraphernalia. This would have an urbanising effect on this section of Marley Lane, through increasing the density of residential development. This would be incongruous to the rural and verdant character of the AONB.

17. I note that the proposal includes additional planting to complement the existing dense vegetation which would largely screen the development from views in public areas. Also, the proposed driveway would be split to minimise the extent that it is visible. Nonetheless, the proposal would be out of character with the area and therefore a harmful intrusion into the countryside.
18. I note that the proposal is intended to be one of a limited number of carbon negative properties in the country. However, it has not been demonstrated that the proposal reflects the highest standards in architecture, and it would not enhance its immediate setting or be sensitive to the defining characteristics of the local area. For these reasons, I consider that the proposal would not meet the circumstance for allowing an isolated home in the countryside, due to its exceptional quality, as specified in paragraph 80 of the Framework.
19. The proposed development would have a harmful effect on the character and appearance of the High Weald AONB. It would be contrary to CS policies OSS4, BA1, RA2, RA3 and EN1, BCPNP policies HD5 and EN3 and policies DEN1 and DEN2 of the Development and Site Allocations Local Plan (DASA), December 2019. These policies indicate that development should not detract from, and conserve, the locally distinctive character and appearance of Battle and integrate sympathetically with its surroundings; and development in the countryside should not adversely impact on the landscape character and shall conserve and seek to enhance the landscape and scenic beauty of the AONB. Moreover, it would not be in accordance with the Framework where it advises that great weight should be given to conserving and enhancing the landscape and scenic beauty in the AONB.

Designated heritage asset

20. The appeal site is in proximity to the Grade II listed Battle Great Barn. 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. I find the setting of this building to be primarily associated with its adjoining land and surrounding pattern of development. The evidence indicates that the Barn has not always been sited alone within the parcel of land and other structures may have been present on site. Whilst the land associated with the Barn has been subdivided over the years and the building has been converted to a dwelling, it is situated within a uniquely sized and orientated plot which reflects the historic agricultural use of the building and associated land.
21. The further subdivision of land, including the removal of a significant amount of land associated with Battle Great Barn, will disrupt the legibility of the relationship between the Barn and the appeal site. Furthermore, the resultant parcel of land surrounding the Barn would resemble the rectangular parcels of land of neighbouring development and would not reflect the historic agricultural use of the building and land. Due to the scale of the proposal, it would undermine the landscape setting of Battle Great Barn. This would result in less than substantial harm to the significance of the listed building in this instance, but is nevertheless of considerable importance and weight.
22. I note that the current owners of the Barn have restored it from a state of dereliction. Nevertheless, the previously poor condition of the listed barn would not justify permitting a proposal which would harm its setting.

23. The proposed development would have a harmful effect on the setting of the Grade II listed Battle Great Barn. It would be contrary to CS policy EN2 and BCPNP policy EN4 which indicate that designated heritage assets will be preserved and enhanced for their historic significance. It would also not be in accordance with the Framework where it states that in determining applications local planning authorities should take account of the desirability of new development making a positive contribution to local character and distinctiveness and great weight should be given to an asset's conservation.

Living conditions

24. The proposed dwelling is located close to the boundary with Windy Ridge, but it would be set back further from the road than the neighbouring property. The border between the properties is defined by dense vegetation. However, the extent of this vegetation cannot be guaranteed in perpetuity as it may be subject to thinning or pruning, also some of the vegetation may become diseased or damaged.
25. There would be one first storey window overlooking the garden area of Windy Ridge. This is a secondary window within a bedroom. A much larger window, directed towards the proposed rear garden area, is also proposed within that room. The garden of Windy Ridge is very large, the bedroom window would only directly overlook a small section of the garden. It could also be required to be obscure glazed by imposing a suitable condition on any planning application. The privacy of residents of Windy Ridge would not, therefore, be materially affected by the proposed development.
26. I conclude that the proposed development would not have a harmful effect on the living conditions of residents of Windy Ridge, with regard to privacy. The proposal would comply with CS Policy OSS4(ii) as it would not unreasonably harm the amenities of adjoining properties.

Highway Safety

27. Following the removal of a diseased ash tree and some of the self-seeded bushes there would be sufficient visibility to the south to allow vehicles to exit the site safely. Moreover, the Council accept this position.
28. Therefore, the use of the proposed access would not have a harmful effect on the safety of pedestrians, cyclist and drivers using Marley Lane. As such, the proposal would comply with CS Policy CO6(ii) which indicates that all development should avoid prejudice to road and pedestrian safety.

Other Matters

29. The conduct of the Council and the support of two council members during the determination of the application does not alter my assessment on the acceptability of the appeal proposal.

Planning Balance

30. The Framework states that great weight should be given to a heritage 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 the asset, that harm should be weighed against the public benefits.

31. The public benefits include the provision of a dwelling, economic benefits associated with construction and additional tax receipts. The inclusion of sustainability measures, potentially leading to the dwelling being carbon negative is a clear benefit of the scheme. I also appreciate that the costs of the sustainability measures may make the development undeliverable for a commercially minded developer. Notwithstanding this, given the modest scale of the development, I only ascribe moderate weight to these benefits.
32. As 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; great weight must be given to the conservation of the listed building.
33. The CS dates from 2014 but the weight to be attached to this document does not hinge on its age. However, paragraph 219 of the Framework advises that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the latest iteration of the Framework. Rather, due weight should be given to them, according to their degree of consistency with the Framework.
34. The Framework gives great weight to conserving and enhancing the landscape and scenic beauty of the AONB. Similarly, the Framework gives great weight to the conservation of heritage assets. It only supports the creation of isolated rural dwellings in specific circumstances, which does not apply in this instance. The Framework also expects development to prioritise pedestrian and cycle movements as well as promoting public transport options. Therefore, the conflict between the proposal and CS policies OSS3, OSS4, BA1, RA2, RA3, EN1, EN2, SRM1 and TR3 should be given significant weight in this appeal.
35. As the DASA and BCPNP date from 2019 and 2021, respectively, the policies are therefore not considered to be out-of-date. Significant weight should therefore also be given to the conflict with DASA policies DEN1 and DEN2 and BCPNP policies HD1, HD2, HD5, IN4 and EN3.
36. As there are no policies in the CS, DASA or BCPNP which positively favour development of this kind in this location and as the proposal would be contrary to the policies referred to above, there would be conflict with the development plan as a whole.
37. The Council can only demonstrate 2.79 years supply of deliverable housing land. However, the harm to the AONB and Grade II listed Battle Great Barn provides a clear reason for refusing the development. There is therefore no need to refer to the test in paragraph 11 d) ii) of the Framework. The presumption in favour of sustainable development, reflected within CS policy PC1, does not apply.
38. Given the shortage of housing supply, the provision of a new dwelling would be a benefit. However, its location in the countryside would not only harm the AONB and the setting of the Grade II listed Battle Great Barn but would also be contrary to the strategic locational objectives of the development plan. The benefits of the proposal would not outweigh these collective harms.

Conclusion

39. The proposal conflicts with the development plan and there are no other considerations, including the shortfall in housing land supply, which indicate that the appeal should be determined other than in accordance with the development plan.

40. Therefore, for this reason, I conclude that the appeal should be dismissed.

J Hobbs

INSPECTOR