



Appeal Decision

Site visit made on 22 May 2025

by **B Pattison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4th August 2025

Appeal Ref: APP/U2235/W/24/3357164

Cherry Barn, Old Tree Lane, Boughton Monchelsea ME17 4NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Ms Christine Gibson against the decision of Maidstone Borough Council.
 - The application Ref is 23/501716/FULL.
 - The development proposed is Erection of 1 No. dwelling with associated parking and landscaping including part demolition of existing unauthorised structure (part retrospective) (resubmission of 22/504298/FULL)
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Decision

1. The appeal is allowed and planning permission is granted for Erection of 1 No. dwelling with associated parking and landscaping including part demolition of existing unauthorised structure (part retrospective) (resubmission of 22/504298/FULL) at Cherry Barn, Old Tree Lane, Boughton Monchelsea ME17 4NG in accordance with the terms of the application, Ref 23/501716/FULL, and the plans submitted with it subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Ms Christine Gibson against Maidstone Borough Council. This application is the subject of a separate decision.

Preliminary Matter

3. I have noted that the Council has adopted a different version of the description of the development in the Decision Notice. However, I see no reason to dispense with the appellant's description of the development from the planning application forms, which I consider to accurately describe the proposals.

Main Issues

4. The main issues are:
 - The effect of the proposal on the rural character and appearance of the area including the landscape character; and
 - Whether the proposed dwelling would be in a suitable location having regard to local policies concerned with housing in rural areas and the accessibility of the site to services, employment opportunities and facilities.

Reasons

Character and appearance

5. The appeal site adjoins a small cluster of buildings and is accessed via a private lane leading from Old Tree Lane. The cluster of buildings include Apple Barn and The Oast and Old Tree Oast and Brishing Court Farm which are in residential use and Brishing Court Barn which is in use as a children's nursery, as well as a small solar array.
6. The appeal site contains a partially constructed building. The main parties disagree whether the appeal site constitutes previously developed land. A previous application (Council Ref: 14/505197/PNBCM) provided prior approval for the change of use of the Apple Barn to form two separate dwellings. The parties agree that the adjoining property to the north, 'Apple Barn' was constructed under this prior approval. However, whilst construction works also commenced at the appeal site, they were paused for a period of time, and subsequently the walls of the building collapsed. The existing walls at the appeal site were constructed at a later period, and the main parties agree that these do not benefit from planning permission.
7. The Maidstone Landscape Character Assessment (2013) (MLCA) identifies the wider area as falling within the landscape type - Greensand Orchards and Mixed Farmlands which is described as an area of woodland, mixed farming and fruit growing. It is also within the Boughton Green Farmland – landscape character area (LCA) which is noted as containing small pockets of arable land, orchards and large poultry farms; as well as scattered farmsteads and large isolated houses. The key characteristics include orchards, native hedgerows and vernacular style buildings. Its condition is noted as being 'good', whilst its sensitivity is 'moderate'.
8. The appellant's Landscape Visual Impact Assessment (LVIA) takes a precautionary approach and assesses the landscape and visual effects of the proposal against an undeveloped area of land, rather than the existing structure on site. Using this baseline, the appeal site itself is identified as an arable field within an immediate area of generally flat landform, which provides a continuation of the grazing fields and meadows which border the site, along with the existing low hedge along the site's western boundary.
9. Elements of the LCA such as orchards, shelterbelts and irregular fields bounded by trees and hedgerows are present locally. As a result, the appeal site is well contained within many local views. Consequently, the LVIA outlines that the appeal site is far less visible in surrounding viewpoints than the Zone of Theoretical Visibility would suggest. Following my observations during the site visit I have no reason to disagree with this.
10. Given its context adjacent to the existing cluster of buildings the proposal would assimilate well, rather than appearing separated within the more open countryside which surrounds the appeal site. Whilst the proposal would result in an increase in built form, the building's footprint would be relatively small, particularly in comparison to neighbouring buildings within the group. Furthermore, significant areas of the appeal site would remain free from built form. The remaining open fields between the appeal site to the south and west, would retain a sense of

openness whilst the proposed tree and hedgerow planting would ensure that positive landscape elements would be reinforced.

11. In coming to this view, I have taken into account the potential for domestic paraphernalia associated with the dwelling. There is no substantive evidence before me to indicate that the proposed trees would be removed in the future, or that future occupiers would seek to extend the area of the appeal site used as residential garden.
12. Even if I were to conclude that the site is not previously developed land, the views of the proposed dwelling from public vantage points would be restricted by its backland location and existing nearby buildings. Therefore, the proposal's degree of containment means that the overall effect on the landscape would be limited. The glazed features on the building have been restricted to limit urbanising effects within the proposal's most visible western elevation. The proposed Kent peg tiles are identified within the MLCA as a building material in the local area, and the building would have a simple catslide roof design and ragstone elevations, thereby reinforcing the character of the area.
13. The LVIA confirms that the level of landscape effect to the site at year 1 would be 'major adverse'. However, a development of a single dwelling in this location would clearly change the immediate character of this area. The appellant sets out that the visual impact would be managed by the retention of the existing hedging to the east and west of the site. Also, the boundaries to the west and south of the site would be reinforced, with new tree planting, including new fruit trees, such that the landscape effect would reduce to 'moderate adverse' at year 10.
14. There would be views of the proposal from Old Tree Lane in viewpoints 10 and 11 which are assessed in the LVIA. These views are experienced by road users and are assessed in the LVIA as medium sensitivity. I agree that in general terms this appears reasonable given their transient nature for road users.
15. From viewpoint 10, the roof of the proposal would be viewed against the backdrop of the taller Apple Barn. Intermittent hedgerows along much of the stretch of Old Tree Lane, combined with vegetation in between would significantly filter views so the proposal would not be a significant visual addition. In terms of the magnitude of change to viewpoint 11, the presence of built form on what is currently open land would be apparent. However, the proposal would again be viewed in the context of the adjoining built form and would be screened by the proposed tree planting between the new building and viewpoint.
16. Neither view would be significantly altered. It follows that, on the basis of sensitivity and magnitude of change, the visual effect would be moderate at year 1. Whilst the area available for planting along the site's western boundary would be limited, the reinforcement of the landscape boundary would have the effect of reducing the visual effect to neutral (viewpoint 10) and negligible adverse (viewpoint 11) by year 10.
17. The Council indicates concerns in relation to views through the entrance to the adjacent nursery from Brishing Lane, and from the nursery car park. Whilst the proposal's roof form would be clearly visible within these views, much of the building would be screened by an existing boundary hedge, and the proposed building would form one of a series of buildings in combination with the nursery, Old Tree Oast and The Apple Barn which are visible from this part of Brishing

Lane. Whilst the development would be glimpsed in views travelling west along Brishing Lane, this would not in itself represent a prominent intrusion into the countryside.

18. To conclude on this issue, the proposed development would have some moderate adverse impacts on local landscape. However, as the visual envelope of the site is small, the visual effects would be well contained. Whilst the effect on some visual receptors would be harmful initially, this would reduce longer term as a result of landscape mitigation measures.
19. With regard to Policy LPRSP9 of the Maidstone Local Plan Review (2024) (MLPR), whilst some harm has been identified, when assessed against the policy provisions, the development would not result in significant harm to the rural character and appearance of the area. In the context of the requirements of Policies LPRQD4 and LPRPSP15 of the MLPR, the proposed building would be located adjacent to existing buildings, unobtrusively located and well screened by vegetation which reflect the landscape character of the area. I therefore find that the proposal complies with policies LPRSP9, LPRQD4 and LPRPSP15 insofar as they seek high quality design which respects the character, setting and context of the site.
20. Similarly, the proposal would in overall terms comply with the National Planning Policy Framework (2024) (Framework) paragraph 135c) which requires development to be sympathetic to local character and history, including landscape setting, while not preventing or discouraging appropriate innovation or change.

Suitable location

21. The main parties agree that the appeal site is in a rural location and is located outside any settlement boundary as defined within Policy LPRSS1 of the MLPR. Whilst not included in the Council's decision notice, an interested party and the Council refer to policy RH1 of the Boughton Monchelsea Neighbourhood Development Plan (2021) (BMNP). The appeal site is not within the village development boundary outlined by policy RH1.
22. The Council suggests that the site would be isolated in that occupiers of the proposal would have a reliance on the private car as a means of accessing local services.
23. The appellants indicate that the local supermarket is 1.75km from the appeal site utilising the Public Right of Way (PROW) network, albeit the Council indicate that this distance is 2.9km when accessed via road. There is disagreement between the parties as to the distance from the closest doctors surgery (between 1.5km and 2.6km), and there is a petrol station store within 1km from the appeal site. Whilst local primary and secondary schools are further away, it seems to me, unlikely that school age children would live in a one bed dwelling.
24. The Council considers that the distances to the shops and services, the lack of pavements and the unsuitability of PROW during inclement weather means that the shops and services are only readily accessible by private motor vehicle. However, that is disputed by the appellant and, it is reasonable to suppose that the PROW would be a reasonable option for future occupiers during periods of the year with good weather. I also note that the relative spread of Boughton

Monchelsea and nearby settlements creates some expectation that future occupiers would walk along local lanes.

25. The appellants indicate that the nearest bus stop is approximately 650m from the appeal site. The proposal would also include bicycle parking. The bus service and cycle parking provide sustainable travel choices for future occupants. The facilities, such as the nearest supermarket would be within a reasonable cycling distance. Accessing these would often involve narrow and largely unlit roads. Consequently, I consider this is not likely to be an attractive option for the majority of people, particularly outside daylight hours and in inclement weather. For this reason, there could still be, to some degree, a level of reliance upon a private motor vehicle to access other shops, services and larger settlements given the routes and distances involved.
26. The proposal consists of one bedroom and consequently is unlikely to provide family accommodation. Therefore, it follows that it is likely that the development would not generate significant vehicle trips. It seems to me, the site's lawful use for agricultural purposes, without on-site residential accommodation, could attract a similar number of vehicular movements. Consequently, it is unlikely that there would be a significant increase of vehicular movements as a result of the proposal.
27. My attention has been drawn to a previous appeal decision¹ (previous appeal) whereby the main issue was also whether the appeal site would be a suitable location for housing with regard to local and national policies. Even so, the site-specific circumstances between that previous appeal and the appeal scheme before me appear to be materially different. As such, the previous appeal has limited weight, and I have come to my own judgement based on the specific context of this appeal site, my own observations, and the evidence before me.
28. Due to the site's location outside of an existing settlement there would be a tension with Policy LPRSS1 of the MLPR and policy RH1 of the MBNP. However, as the proposal would be acceptable in all other respects the development would accord with policy LPRSP9 which states that development proposals in the countryside will not be permitted unless they accord with other policies in the plan and will not result in significant harm to the rural character and appearance of the area.
29. Furthermore, policy LPRSS1 of the MLPR and policy RH1 of the MBNP do not require proposals to demonstrate ease of access to local services with sustainable transport options. Whilst the Framework is clear that sustainable transport should be promoted, it does recognise at paragraph 105 that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and this should be taken into account in decision making.
30. I am also mindful of the guidance contained in paragraph 83 of the Framework which sets out that, to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities and where there are groups of smaller settlements, development in one village may support services in a village nearby. Therefore, in the particular circumstances of this case, I conclude that the site is a suitable location for residential development and the proposal would accord with the development plan when taken as a whole.

¹ Ref: APP/U2235/W/24/3347118

Other Matters

31. I accept the Council has demonstrated a 5-year supply of deliverable housing sites and the Council has historically delivered at levels above their housing targets. However, this is not a matter that would in principle weigh against the proposal.
32. Interested parties representations were made to the effect that the proposal would have on neighbouring residents' human rights under Article 1 of the First Protocol, as set out in the Human Rights Act 1998. Reference was made to land ownership and the effect on water quality as a result of limited information about foul and surface water discharge. Issues related to land ownership are not planning matters and so are not for my consideration.
33. Article 1 concerns the peaceful enjoyment of possessions. No-one shall be deprived of this except in the public interest and subject to the conditions provided for by law and the general principles of international law. The appellant indicates that drainage will be installed on site. In regard to this I have imposed a planning condition which would require the submission of further details in relation to foul and surface water drainage prior to commencement of the development. I also note that Kent County Council Waste and Water Management were consulted and did not raise any objection to the proposal.
34. Dealing with qualified rights under Article 1 of the First Protocol involves balancing the fundamental rights of the individuals against the legitimate interests of other individuals and the wider community or public interest. Subject to the imposition of a suitable planning condition, I have little evidence before me to suggest that the proposal would have a harmful effect as a result of foul and surface water discharge. I am therefore satisfied that the grant of planning permission would not interfere with the neighbours peaceful enjoyment of possessions. In the context of Article 1 as set out in the Human Rights Act 1998, it is proportionate in the circumstances to allow the appeal.

Heritage Assets

35. The site lies adjacent to two heritage assets, namely:
 - Grade II listed Brishing Court Barn;
 - Grade II* listed Brishing Court Farm.
36. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses when dealing with planning applications.
37. The significance of the two listed buildings is derived from their architectural detailing, well-preserved appearance and their contribution to the rural character as buildings formerly forming part of a historic farmstead.
38. As detailed within the appellant's heritage impact assessment, the proposed dwelling has been designed to complement the agricultural vernacular within the cluster of buildings and would appear as subservient to the adjoining buildings. As such, while resulting in a change on the site, the proposal is found to preserve the significance of the identified designated heritage assets. These findings are consistent with the Council's own heritage advisor.

Conditions

39. I have had regard to the planning conditions that have been suggested by the Council. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance (PPG). I have made such amendments as necessary to comply with those documents and for clarity and consistency.
40. In addition to the standard time limit, I have imposed an approved plans condition in the interests of certainty. To maintain and enhance local character, I have included conditions related to external materials, boundary treatment, external lighting and requiring the submission of a landscaping scheme. However, I have modified the timing for the provision of details of landscaping, external lighting and boundary treatments as these are not required prior to the construction above slab level.
41. A condition requiring details and evidence of the measures for on-site renewable or low carbon energy production is necessary in the interests of reducing energy consumption. I have imposed the suggested condition requiring details of ecological enhancements to promote biodiversity gain. A condition requiring the provision of an accessible and adaptable dwelling is necessary to promote accessibility.
42. I have not imposed the suggested condition requiring the restriction of water usage as the PPG sets out that compliance with other regulatory requirements, such as the Building Regulations, will not meet the test of necessity and may not be relevant to planning.

Conclusion

43. For the above reasons, and having had regard to all other matters raised, I conclude that the proposed development would accord with the development plan and the Framework. The appeal is therefore allowed.

B Pattison

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: MA300-001 RevA (Site Location Plan); M3-300-001 RevB (Proposed Block Plan); MA300-003 RevA (Proposed Floor Plans and Elevations); and MA300-004 RevA (Proposed Access and Landscape Plan).
- 3) No development shall take place until details have been submitted to and approved in writing by the local planning authority of the foul and surface water drainage for the site. The foul and surface water drainage scheme shall then be installed in accordance with the approved details prior to first occupation and maintained as such thereafter.
- 4) No development above slab level shall take place until written details and samples of the materials to be used in the construction of the external surfaces of the building have been submitted to and approved in writing by the local planning authority. The external materials shall be Kentish ragstone, timber weatherboarding, and clay Kent peg roof tiles as shown on the approved plans. The development shall be constructed using the approved materials.
- 5) No development above slab level shall take place until photographs of at least a 1.5m x 1.5m sample panel of the Kentish ragstone to be used in the construction of the building (which has been constructed on site), and written details of the mortar mix, have been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved sample panel.
- 6) No development above floor slab level shall take place until details of ecological enhancements, to include measures incorporated into the fabric of the building, native tree and shrub planting, wildflower grasses and habitats for insects and invertebrates, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details before the first occupation of the dwelling and maintained thereafter.
- 7) No development above slab level shall take place until details and evidence of the measures necessary to incorporate at least 10% on-site renewable or low carbon energy production measured as a percentage of overall consumption of the dwelling have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details before the first occupation of the dwelling and maintained thereafter.
- 8) The development shall not be occupied until details of all fencing, walling and other boundary treatments have been submitted to and approved in writing by the local planning authority. The details shall show timber post and rail fencing along the west and south boundaries of the site. The development shall be carried out in accordance with the approved details before the first occupation of the dwelling and maintained thereafter.

- 9) The development shall not be occupied until a landscaping scheme designed in accordance with the principles of the Council's landscape character guidance has been submitted to and approved in writing by the local planning authority. The scheme shall include native tree and hedge planting along the west and south boundaries of the site, a planting specification, and a 5 year management plan.
- 10) The development shall not be occupied until details of all external lighting, which shall be the minimum necessary and designed to minimise light pollution, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details before the first occupation of the dwelling and maintained thereafter.
- 11) All planting, seeding and turfing specified in the approved landscape details shall be carried out either before or in the first planting season (October to February) following the occupation of the building or the completion of the development, whichever is the sooner; and any seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of the dwelling, die or become so seriously damaged or diseased that their long term amenity value has been adversely affected shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme unless the local planning authority gives written consent to any variation.
- 12) The dwelling hereby approved shall meet the accessible and adaptable dwellings building regulations Part M4(2) standard or any superseding standard. The dwelling shall not be occupied until this standard has been met and the dwelling shall be thereafter retained as such.

END OF SCHEDULE