



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: 27th September 2023

Appeal Ref: APP/U2235/W/23/3317837

Cliff House, Cliff Hill, Boughton Monchelsea ME17 4NQ

- 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 Andrew Coombe against the decision of Maidstone Borough Council.
 - The application Ref 22/500119/FULL, dated 11 January 2022, was refused by notice dated 26 January 2023.
 - The development is described as 'Retrospective application for the change of use to garden land and the erection of 1no. outbuilding to house home gym with associated decking, patio and hot tub area'.
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Decision

1. The appeal is dismissed.

Application for costs

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

Preliminary Matters

3. In the banner heading above, I have used the description of the development as it appeared on the Council's decision notice. This was amended from the description given on the application form, to include change of use of the site to garden land. The appellant agreed to the Council's revised description prior to determination of the application and I am satisfied that that it accurately describes the development in question.
4. Amended plans were submitted before the Council determined the application, reducing the extent of the application site and therefore the area for which planning permission is sought for use as garden land. The amended application site is shown on plan BL/DRG/08092021/02.1 Rev B. I have considered the appeal on the basis of this amended plan.
5. The outbuilding has already been erected and land within the application site is being used and maintained as part of the garden. Therefore I am considering the development retrospectively. I established during my site visit that the location and appearance of the outbuilding corresponds with the details shown on the application drawings, although additional exercise equipment which has been erected next to the outbuilding is not shown on those drawings. For the avoidance of doubt, I have considered the appeal based on the details shown on the application drawings.

6. While I have noted that the appellant states the application site has been used and maintained as part of the grounds and garden of Cliff House for some time, it is not the function of this appeal to determine the lawfulness or otherwise of such use. I have considered the appeal on the basis that it includes change of use from agricultural to garden land, as per the revised description.
7. An examination in public into the Council's Local Plan Review is in progress. Hearing sessions have concluded, but I have not been provided with any further evidence as to the Inspector's initial findings or the extent to which the relevant emerging policies may be subject to further modification. In any case, the Council has confirmed that the substance of the relevant emerging policies remains largely unchanged from the adopted policies and no conflict with the emerging policies was highlighted in the reasons for refusal. Therefore, while I acknowledge that the Local Plan Review is at a relatively advanced stage, I have given its emerging policies limited weight when considering this appeal.

Main Issues

8. The main issues are:
 - the effect of the development on the character and appearance of the area, having regard to both the outbuilding and the associated change of use to garden land, and
 - the effect of the proposal on availability of best and most versatile agricultural land.

Reasons

Character and Appearance

9. The appeal site is located outside the settlement boundary of Boughton Monchelsea, in a location which is treated as countryside for purposes of the development plan. It includes a Grade II listed building in residential use, known as Cliff House, its established garden and an additional parcel of land to the west of the garden. Within this latter area, a single storey outbuilding has been erected, which houses a variety of exercise equipment, a hot tub and a covered patio area. The outbuilding is within the area where permission for change of use to garden land is sought.
10. While the outbuilding has a substantial footprint and accommodates a wide range of exercise equipment, the application is on the basis that the building is for domestic use by the appellant and his family. I have seen no convincing evidence to the contrary.
11. Outside settlement boundaries, Policy DM30 of the Maidstone Borough Local Plan 2017 (MBLP) requires that any new buildings are unobtrusively located and well screened by suitable vegetation and that no alternative building suitable for conversion is available. Policy DM32 allows for new domestic outbuildings in principle, provided they are subservient in scale, location and design to the host dwelling and remain visually acceptable in the countryside.
12. No building suitable for conversion has been brought to my attention. The outbuilding has a flat roof and is clad in black weatherboarding, with window openings limited to one elevation. Overall, its design and appearance are reasonably typical of an ancillary outbuilding serving a substantial dwelling in a

- rural area. Although the outbuilding is outside the established garden, it is not far from the host dwelling and adjoins the boundary with neighbouring dwellings in The Quarries. Notwithstanding its substantial footprint, it does not compete visually with the host dwelling, due to its clearly subordinate height and design.
13. Public views into the site are restricted by the extensive boundary hedgerow, although the outbuilding can be seen through one particular gap in the hedge and also from a publicly accessible area of open space further along Cliff Hall Road. From either perspective, the building is located well back, against a backdrop of vegetation. By virtue of its single storey scale and low key appearance, it is neither visually prominent nor intrusive in the landscape. As such, the building is not in itself harmful to the character or appearance of the surrounding rural area.
 14. Policy DM33 of the MBLP allows in principle for change of use of agricultural land to domestic garden where there would be no harm to the character and appearance of the countryside and/or loss of the best and most versatile agricultural land. I return to the latter issue below.
 15. Based on the extent of the residential curtilage shown on plans dated 2012, the change of use would significantly increase the garden land around Cliff House. Although this area is also screened by the boundary hedgerows, retention of this vegetation in perpetuity, at the same height and depth, cannot be guaranteed. While the appellant may intend to continue maintaining the land as mown lawn, this could change over time. Future occupiers may wish to introduce a variety of features such as play equipment, garden furniture and other domestic paraphernalia, as well as formal garden landscaping. Such changes are not uncommon within extensive residential gardens and would give the site a more formal and domesticated appearance, at odds with the rural character of its surroundings.
 16. The site adjoins agricultural land to the north, which has an expansive and open character. This largely undeveloped area provides a clear sense of separation between Boughton Monchelsea and the larger urban area of Maidstone. It is specifically highlighted in the Boughton Monchelsea Neighbourhood Plan¹ (BMNP) as being worthy of protection. The Council has also highlighted its importance, based on evidence in the Maidstone Borough Landscape Assessment 2012.
 17. Given the extent of the appeal site and its location within a landscape area noted for its importance in maintaining separation between urban areas, further domestication and erosion of the site's open character would be harmful to the character and appearance of the area. While conditions could be imposed to limit the scope for further outbuildings, there is no effective planning mechanism to control the wider range of domestic paraphernalia and formal landscaping which could be introduced over time. Given the extent of the site, conditions requiring additional planting would not provide sufficient landscape mitigation.
 18. For the above reasons, while I have found that the outbuilding is not, in itself, harmful to the character and appearance of the area due to its siting, design and scale, the associated change of use would be unacceptably harmful to the

¹ Boughton Monchelsea Neighbourhood Development Plan, July 2021

surrounding rural landscape. Although the outbuilding is located on the periphery of the site, its erection and domestic use is closely associated with the change of use to garden land. On that basis, the element of the application relating to the outbuilding is not clearly separable from the change of use, based on the details presented in the application.

19. For the above reasons, I conclude that the development is harmful to the character and appearance of the area. As such, it would conflict with relevant requirements in Policies SP17, DM1, DM30 and DM33 of the MBLP, Policy PWP5 of the BMNP and relevant paragraphs in the National Planning Policy Framework (the Framework). These policies, amongst other things, require that development outside settlements, including change of use to garden land, avoids harm to the character and appearance of the area and to the open character of land between South Maidstone and Boughton Monchelsea.
20. The outbuilding does not in itself conflict with MBLP Policy DM32 or guidance in the Residential Extensions SPD² which, amongst other things, require that outbuildings are not excessively prominent, are subservient in scale and clearly ancillary to the dwelling, and that harm to the character and openness of the countryside is avoided. However, this does not outweigh the harm associated with the development as a whole, given the intimate association between the outbuilding and the associated change of use to garden land.
21. Policy RH7 of the BMNP relates to residential annexes including conversion of outbuildings to form an annexe. The outbuilding in this case is not used as an annexe to the main dwelling, but for private exercise facilities. Therefore while I have noted the contents of Policy RH7 I have given it limited weight.

Best and Most Versatile Agricultural Land

22. While Policy DM33 of the MBLP allows in principle for change of use to garden land, this is subject to avoiding loss of the best and most versatile agricultural land (BMVAL). The Framework defines BMVAL as land in grades 1, 2 and 3a of the Agricultural Land Classification and requires decision-makers to recognise the economic and other benefits of BMVAL (Framework paragraph 174).
23. The Council's evidence states that the site is Grade 2 agricultural land, based on the 2020 Agricultural Land Classification. This is described as 'highly graded' agricultural land in the supporting text to Policy DM33. While highlighting that this is contrary to an earlier statement in the Officer Report, the appellant has not disputed this updated evidence. Therefore, based on the evidence before me, the site comprises BMVAL for purposes of Policy DM33 and the Framework.
24. The supporting text to Policy DM33 says that the Council will take into account whether highly graded agricultural land is functionally well located for agricultural purposes, such that future agricultural use is feasible. In this case, the land in question is adjacent to a significant expanse of agricultural land in active use. Although land to the south of Cliff Hill Road is not being actively farmed, no technical evidence has been provided to demonstrate that its use for agricultural purposes in future is no longer feasible. Indeed, the Council's evidence refers to historic use of the land for grazing and arable purposes, albeit at some unspecified date in the past. While I appreciate that the appeal site is currently in private ownership, and not available for productive

² Maidstone Local Development Framework Residential Extensions Supplementary Planning Document 2009

agricultural use, the site could feasibly be owned and accessed separately, should these circumstances change.

25. Given its close relationship with agricultural land in active use, and the Council's evidence as to its Grade 2 status which has not been disputed, the evidence indicates that the land remains capable of productive use, at least in the long term. On that basis, the change of use to garden land would result in loss of BMVAL. Furthermore, such loss would be potentially irreversible, depending how the land in question was managed and maintained.
26. For the reasons given above, I conclude that the development would be harmful to the availability of best and most versatile agricultural land. As such, it would conflict with Policy DM33 of the MBLP which resists change of use of agricultural land to garden land where it would result in the loss of BMVAL. The development would also conflict with relevant provisions of the Framework which require that the economic and other benefits of BMVAL are taken into account.

Other Matters

27. I have noted that the outbuilding houses equipment which supports a family member with management of a health condition, on medical advice. With that in mind, when considering the appeal I have had appropriate regard to the aims of the Public Sector Equality Duty set out in s149 of the Equality Act 2010 (PSED).
28. I acknowledge that the availability of private facilities would be of benefit in these circumstances and that travel to alternative facilities may be difficult or impractical for a variety of reasons. However, the evidence does not clearly demonstrate that suitable home exercise facilities can only be provided on this scale, or that there is any clear need for the garden to be enlarged in support of this requirement. As such, there is little specific evidence that refusal of planning permission would result in a failure to advance equality of opportunity or otherwise conflict with the aims of the PSED. Therefore, while I have had appropriate regard to the family situation, it carries only modest weight.
29. The Council has not alleged any harm to the setting or significance of the Grade II listed building Cliff House, or the setting of the Boughton Monchelsea The Quarries Conservation Area. Having considered the development and visited the site, I have no reason to reach a different view. However, this is a neutral factor which weighs neither for nor against the proposal.
30. Likewise, even if I were to agree with the appellant that the development is not unacceptably harmful to living conditions for occupiers of neighbouring properties, this is a neutral factor which is not capable of overcoming the conflict with other aspects of the development plan.
31. The application was amended in response to advice from Council officers and was recommended for approval. However, local planning authorities are not bound to accept the recommendations of their officers and my consideration of the appeal has been based on the evidence before me.

Conclusion

32. I have found that the development would be harmful to the character and appearance of the area and would result in loss of best and most versatile

agricultural land. The harm arises primarily from the change of use to garden land. However, this cannot be clearly separated from the erection and domestic use of the outbuilding, which is within the same part of the site.

33. I have had due regard to the PSED, recognising that the availability of private gym facilities is beneficial for reasons relating to management of a health condition. However, the weight attributed to this benefit is moderated by the lack of clear evidence to justify the scale or location of the development. On that basis, this benefit of the development does not outweigh the harm I have identified.
34. Therefore, having had regard to the development plan as a whole, along with all other relevant material considerations, I conclude that it is proportionate and necessary to dismiss the appeal.

Jane Smith

INSPECTOR