
Appeal Decision

Site visit made on 22 August 2017

by Rachael A Bust BSc (Hons) MA MSc LLM MEnvSci MInstLM MCMI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 September 2017

Appeal Ref: APP/Y2810/D/17/3172515

The Hedges, High Street, Draughton, Northampton NN6 9JQ

- 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 Martin Hedges against the decision of Daventry District Council.
 - The application Ref DA/2016/1067, dated 9 November 2016, was refused by notice dated 13 January 2017.
 - The development proposed is construction of tree house incorporating zip wire feature.
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Decision

1. The appeal is allowed and planning permission is granted for a tree house incorporating zip wire feature at 'The Hedges', High Street, Draughton, Northampton NN6 9JQ in accordance with the terms of the application, Ref DA/2016/1067, dated 9 November 2016, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: OS Plan dated 2 April 2007; Site Plan undated; view from north (undated); view from south (undated); view from west (undated); view from east (undated); perspective view from south and east (updated); plan view (undated).
 - 2) The tree house, including its means of support and balcony, hereby approved shall be painted green and maintained in that colour thereafter.
 - 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows or other openings windows other than those expressly authorised by this permission shall be constructed on the eastern and southern elevations of the tree house.

Preliminary and Procedural Matters

2. I have used the description of development from the Council's decision notice since it more concisely describes the development.
3. At the time of my site visit the tree house had been constructed, although the zip wire feature was not in place. Accordingly I have determined the appeal on this basis.
4. I note that a third party has commented upon the accuracy of the drawings submitted. They do indicate measurements and dimensions, these together

with my observations on site have provided sufficient information to enable me to make my decision.

5. The appellant has suggested that the zip wire feature should be disregarded from this appeal. In his view planning permission for this element is not required. It was part of the planning application and has been included as a matter before me as part of this appeal. Accordingly I have to reach a decision on the acceptability of the entire proposal.

Main Issue

6. The main issue is the effect of the tree house and the zip wire on the living conditions of the occupiers of the property known as 'Eddystone Gate,' with particular regard to outlook; privacy; and noise and disturbance.

Reasons

7. 'The Hedges' is a large modern property set back from the highway. It has a large private rear garden approximately 30 metres deep, which then transitions into a substantial paddock area. The single storey property, known as 'Eddystone Gate' is the closest property to the appeal development. Its western elevation is sited approximately one metre from the eastern boundary of 'The Hedges'.
8. A mature silver birch tree is the host for the tree house. It is located within a broadly central position in the rear portion of the garden. The timber structure is composed of a raised platform on stilts, around the tree, to provide a total floor space of less than 11 square metres. The platform is surrounded on the southern, western and northern sides by railings and a shed-like building is sited on the eastern side. The house itself has a simple appearance with smooth timber and a pitched felt roof. It takes up less than 2 square metres of floor space. The overall structure has a maximum height to ridge of less than 5 metres. It is a modest structure which is not out of place within a residential curtilage where you would expect to see children's play equipment, outbuildings and structures. The zip wire would be attached and removed as and when required and would link the northern side of the tree house platform with a willow tree further to the north.
9. It is not disputed that the tree house can be seen from within the habitable rooms at the lower ground floor level and part of the garden of 'Eddystone Gate.' The structure is not however visible from the public realm.
10. At the time of my site visit the silver birch was in full leaf. Consequently the large overhanging branches did provide some effective screening. I accept that it would be difficult to fully screen the view of the tree house from 'Eddystone Gate,' as during late autumn and winter there would be no leaves, or if the tree were to be significantly pruned, then the structure would be more visible than at present. The boundary fence between the two properties has existing vegetation on both sides which, could, if allowed by the owners on both sides to grow upwards provide more screening. The tree house itself has been painted with green wood stain. This, together with the overall timber construction, does result in a sympathetic structure that helps it blend in the surrounding trees and vegetation. It will also weather over time, thereby further softening its appearance.

11. The extensive glazing within 'Eddystone Gate' provides a generous wide outlook for the occupiers across 3 aspects including the rear garden of 'The Hedges.' The tree house structure is seen against the context of the large mature host tree which is part of this overall outlook. The presence of the tree house structure is diminished to a degree by the scale of the host tree. The tree house does not reduce the outlook any more than the presence of the existing tree does at present. Given the size of the tree, its canopy spread throughout most of the year, I do not find tree house structure to be an over-dominant or incongruous feature when read against this mature, spacious and non-public setting.
12. The nature of the zip wire would not be visually harmful. It is proposed to be attached and used only when the tree house is in use according to the appellant. I have no cogent evidence to lead me to think otherwise. This would mean that it would only be seen by the occupiers of 'Eddystone Gate' when in use. However, I find that the intervening distance to the zip wire means that no harm to outlook arises to the occupiers of this neighbouring property.
13. It has been determined by case law that a private view from a window is not in itself a planning matter. As this development is not within the public realm or visible from it, accordingly I afford limited weight to the concerns about the loss of a private view in my decision.
14. In respect of outlook, I find that there would be no unacceptable harm to the living conditions of the occupiers of 'Eddystone Gate.'
15. The eastern elevation of the tree house facing 'Eddystone Gate' is blank with no windows. Consequently there will be no direct overlooking. There is a small fixed Perspex window on the southern elevation. It is positioned off centre such that it is on the westernmost side of the southern elevation. The views from this window are directly towards 'The Hedges.' Oblique views towards 'Eddystone Gate' are possible when leaning over the railings, but less so from behind the Perspex of the small window.
16. The level of usage of the tree house structure and zip wire feature would vary throughout the year subject to the weather conditions. It is more likely to be used during the warmer times of the year which would correspond with the times that the tree was in full leaf. Consequently any potential of overlooking from these oblique viewing opportunities would be diminished by the overhanging branches.
17. Accordingly, in respect of privacy, I find that there would be no harm to the living conditions of the occupiers of 'Eddystone Gate.'
18. The use of the tree house and zip wire is essentially a piece of children's play equipment. Consequently some noise and disturbance is to be expected. I have no detailed evidence before me to demonstrate that it would be any more than as would arise from children within the wider garden area. Although the height of the structure could allow some noise to travel. The orientation and siting of the tree house would provide a barrier to any noise flowing towards 'Eddystone Gate.'
19. A concern has been raised regarding the visual impact of the tree house. The host tree is some 6 metres away from the boundary fence according to third

parties. Although elevated the tree house structure is not close or large enough to significantly change the levels of sunlight and daylight reaching 'Eddystone Gate.' It does not therefore result in overshadowing or adverse impacts that would contribute to a sense of enclosure for the occupiers of this neighbouring property. I do not find the tree house to be an obtrusive or incongruous feature within the context of a residential garden and the host tree.

20. The treehouse and zip wire is not designed for public or commercial use. It is for the use of the occupiers of the host property and their friends. Consequently in respect of noise and disturbance, I find that there would be no unacceptable harm to the living conditions of the occupiers of 'Eddystone Gate.'
21. Taking all matters into consideration, with respect to living conditions, I find that there would be no conflict with saved Policy GN2 of the Daventry District Local Plan, adopted 1997, which seeks, amongst other things, that development does not detract from the amenities of the locality.

Other matters

22. The opportunities for residential outbuildings with pitched roofs under permitted development rights have been raised. These rights would not allow the balcony or platform element of the current structure. However, they would still allow a structure to be built, which could be significantly larger and potentially harmful. I have no substantive evidence to indicate that there is a significant possibility that any alternative building or structure would be constructed should this appeal be dismissed. This limits the weight that I can attach to this possibility.
23. I note the dispute regarding the nature of the discussions between the appellant and neighbours prior to the construction of the tree house. However, I have no cogent evidence regarding this matter. I have to determine each case on its own merits and based upon the evidence before me. Accordingly, I can afford this matter little weight in my decision.
24. Submissions were made relating to Article 8 of the Human Rights Act and I recognise that if the appeal is allowed it would interfere with the neighbours' home and family life. This consideration must be balanced against the rights and freedoms of others, however, and in the light of my findings above I am satisfied that the effects on the occupiers of 'Eddystone Gate' would not be disproportionate. For the same reasons given in respect of Article 8, I consider the interference with the neighbours' peaceful enjoyment of their property is proportionate and strikes a fair balance in compliance with the requirements of Article 1 of the First Protocol.

Conditions

25. The Council has not suggested any conditions; therefore I have provided both the appellant and the Council the opportunity to comment on the conditions. As the development has commenced it is not necessary to impose the standard time limit for implementation. However, it is necessary to list the relevant plans (condition 1) as it provides certainty. In order to help make the development acceptable it also necessary to require the tree house to be painted green and maintained thereafter (condition 2).

26. The National Planning Policy Framework (the Framework) advises that conditions restricting future alterations and changes using permitted development rights should only be used where there is a clear justification. I am satisfied that such a condition is necessary in this case to prevent harm to the living conditions of the occupiers of 'Eddystone Gate' that could otherwise arise through the insertion of additional windows (condition 3).

Conclusion

27. Taking all matters into consideration, I conclude that the development is acceptable when assessed against national and local policies when taken as a whole. Consequently it is sustainable development for which the Framework and Policy SA of the West Northamptonshire Joint Core Strategy Local Plan (part 1), adopted 2014, carry a presumption in favour. For the reasons given in my decision, planning permission should be granted subject to conditions.

Rachael A Bust

INSPECTOR