



Appeal Decision

Site visit made on 17 November 2022

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Appeal Ref: APP/C3620/W/21/3289076

The Observatory, Old Bury Hill, Westcott, Dorking, Surrey RH4 3JU

- 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 Ian Cameron against the decision of Mole Valley District Council.
 - The application Ref MO/2021/0424/PLA, dated 4 March 2021, was refused by notice dated 9 December 2021.
 - The development proposed is erection of a 'tree house' for holiday let.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Whilst the proposal is described as a 'tree house', it would be a free-standing structure supported on timber poles and not attached to any tree.

Main Issues

3. The main issues are:
 - (a) Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies,
 - (b) The effect of the proposal on the landscape character and appearance of the area and on the Surrey Hills Area of Outstanding Natural Beauty,
 - (c) The effect of the proposal on the setting of an adjacent listed building in relation to its sense of quiet isolation, and
 - (d) Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

4. The appeal relates to a woodland area within the curtilage of The Observatory. This is a residential property, originally an outbuilding within the grounds of Old Bury Hill House (OBHH), a former large country house, and now a listed building. The proposed structure would be erected within a level clearing in the woodland which appears to have been the site of a former tennis court.

5. Access to the clearing is indicated to be via woodland paths from The Observatory which is located on higher ground. The site is located within a rural area, not far from the settlements of Westcott and Dorking, and is within the Metropolitan Green Belt and a designated Area of Outstanding Natural Beauty (AONB).
6. The Council has not cited any of its own policies to support its first refusal reason relating to the Green Belt deferring, to the National Planning Policy Framework (the Framework). Paragraph 147 to the Framework states that *"Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances"*. Paragraph 149 to the Framework confirms that subject to stated exceptions the construction of new buildings should be regarded as inappropriate in the Green Belt.
7. Section 336 of the Town and Country Planning Act (1990) provides a definition of a *"building"* which includes *"any structure or erection, and any part of a building, as so defined"*. The 'tree house' would be an unusual structure but in my judgement would nonetheless constitute a *"new building"* which is a requirement to the exceptions listed at Paragraph 149.
8. The appellant contends that exception (b) is applicable. This states, *"the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it."*
9. Policy WNDP5 of the Westcott Neighbourhood Development Plan (2017) is similar to the requirements of Paragraph 149(b), setting the same tests and so is compatible with the Framework.
10. The Design & Access Statement (D&AS) states the purpose is to provide a *"wooden self-catering holiday treehouse for the recreational and commercial use of residents and visitors to The Observatory"*. The building's intended use therefore would be as a holiday let to support outdoor recreation. The accommodation provided would be suitable for a holiday let in relation to its internal layout and decking. It would also be possible to include a planning condition to require the building to be used for this purpose only rather than as a new dwellinghouse which would give rise to other Green Belt considerations.
11. However, the requirement of Paragraph 149(b) is the provision of *"appropriate facilities"* for outdoor recreation. So, it is necessary to examine if the proposal would be appropriate in all respects. There would be no vehicular access to the site. Potential occupiers would have to walk to the site along woodland paths and climb stairs to gain entry. Such constraints for access may be satisfactory for holiday occupiers choosing the location and prepared to carry their own luggage, but the proposal does not provide details on the access requirements to construct the development and thereafter to service it.
12. The D&AS states that access would be *"by way of designated pathways discussed and agreed upon by a certified ecologist and arboriculturalist before any construction can begin"*. Furthermore, that *"No ongoing vehicular access is associated with this development"*. The D&AS describes how Heras fencing would be used to protect trees closest to the construction site. Such fencing is heavy and bulky as would be the timber and poles necessary to build the 'tree house'. It would be awkward to carry these materials from The Observatory

without the use of vehicles along woodland paths some of which are narrow and on descending ground. If the driveway in front of OBHH were to be used for access, there would still be a climb along woodland trails to reach the site. The D&AS describes in general how protective matting can be laid along access paths to protect trees but does not clearly specify which paths would be used for construction and servicing or whether any protective material would be temporary or permanent.

13. The plans indicate that the accommodation would include a kitchen, toilet and shower. These facilities could use a considerable quantity of water during a holiday let but the proposal does not include details on how water would be brought to the site or how waste water and sewerage would be taken from it. It would be awkward to service the site in these respects without ongoing vehicular access or excavations to connect with existing networks, both of which could have implications for the health of trees within the woodland.
14. Power would be necessary for amenities within the accommodation and to provide light. Given the accommodation's location amidst higher shading trees, it is not unreasonable that occupiers would require power for lighting during gloomy days and in hours of darkness. The appellant comments that a cable may be laid to provide electricity, but the proposal does not clearly indicate where this would be and whether buried or laid on the surface.
15. The Preliminary Ecological Assessment (PEA) makes recommendations on lighting installations to ameliorate any potential impact that artificial light could have on the foraging activity of bats within the immediate area. However, there are objections to the proposal from the Surrey Bat Group and Surrey Wildlife Trust in relation to the effect of artificial lighting on wildlife and particularly on the many species of bats in the area. I am not satisfied from the information before me that it would be possible to provide a level of artificial lighting that would satisfy the reasonable expectations of holiday occupiers but not be harmful to wildlife, particularly bats.
16. The Construction Method Statement states "*As much as is practical, the proposed service routes follow the line of the existing paths and rides within the woodland at The Observatory*". The proposal does not detail which routes would be used for each servicing arrangement. It would be possible to attach conditions to a planning permission requiring subsequent approval of construction and servicing details and associated access requirements. However, in my judgement too many uncertainties remain in relation to the effect of the development on the woodland and the wildlife within it to leave these matters to the approval of planning conditions. The site is remote from locations where access can be gained to bring in construction materials and to subsequently service the site. Greater clarity is needed on these issues.
17. Paragraph 84 to the Framework requires planning decisions to support a prosperous rural economy including "*the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings*", and "*sustainable rural tourism and leisure developments which respect the character of the countryside*". The proposal would be a new building designed to reflect its setting and would promote rural tourism. But from the information before me I am not satisfied that it would be a sustainable form of development and that it would respect the character of the countryside.

18. Having regards to all relevant considerations, the proposal would not provide “*appropriate facilities*” for outdoor recreation, as required by the exception at Paragraph 149(b). It would therefore amount to “*inappropriate development*”. As such, it is not necessary for me to examine the tests in the exception relating to whether the facilities would preserve the openness of the Green Belt or conflict with the purposes of including land within it.
19. The appellant has drawn comparisons between the proposal and permission for 6 yurts in a Green Belt field not far from the site at Mad Horse Copse (ref. MO/2013/0311). Whilst the yurts development also provides holiday accommodation linked to rural tourism and outdoor recreation, the construction appears to have been more straight-forward involving light-weight materials. Associated servicing arrangements, including toilets, were also covered in the submitted details.
20. Reference has also been made to other development similar to the proposed tree house in other parts of the country. The settings for these developments differ from the setting deep within a woodland for the appeal proposal. The comparators do not set a precedent for acceptance of the current proposal in relation to the Green Belt.

Landscape character

21. The Council acknowledges that efforts have been made in terms of design and use of natural materials to integrate the proposed structure into the surrounding woodland landscape but have concerns about its size and overall impact on the AONB. The D&AS indicates that the structure would have an internal floor area of approximately 45m², additional open deck floor space raised above ground level and that the peak of the roof would extend to 6.7m above ground level. The ‘tree house’ would be a bulky structure for relatively modest accommodation.
22. However, the context of the site is a clearing within an extensive area of woodland and the structure would be surrounded by higher trees to all sides. The trees are a mixture of deciduous and evergreen. Even in winter, with associated leaf fall, the structure would not be readily visible from outside the appeal site. It would be absorbed into its woodland setting and not visually intrusive in views around the site.
23. There would not be conflict with Policy ENV22 of the Mole Valley Local Plan (2000) (MVLP) in that the structure’s design and layout would be appropriate to the site in terms of its scale, form and appearance and would respect the appearance of the locality.
24. Policy REC19 of the MVLP and Policy CS13 of the Mole Valley Core Strategy (2009) (MVCS) requires that new visitor facilities are appropriate to the scale, nature, character, appearance and landscape of the area in which they are sited. There would be partial compliance with these policies in that the structure would be a relatively small scale development for the reasonable needs of the rural economy and outdoor recreation. However, in view of uncertainties on how construction and servicing of the development could affect the woodland, there remain doubts that the proposal would respect the landscape character of the area in which it is proposed. As such, there would be conflict with these policy requirements.

25. Policy CS13 also requires protection of the AONB with particular focus on the impact of development on ridgelines, significant views, peace, tranquillity and levels of artificial light. It is unlikely that there would be a significant adverse impact on views from and into the AONB due to the presence of higher trees around the site. But ground levels fall sharply to the west of the clearing, and it is possible that the structure could be glimpsed in some views. As the proposal is for just one holiday let in a relatively isolated position, there should not be an adverse impact in relation to tranquillity. Whilst it would be possible to constrain the extent of artificial lighting by a planning condition, it has not been demonstrated that the reasonable requirements of occupiers for artificial light would not adversely affect wildlife in the locality, particularly in relation to bats.
26. Policy P1 to the Surrey Hills Management Plan (2019), affirms that great weight will be attached to any adverse impact that a development proposal would have on the amenity, landscape, and scenic beauty of the AONB. Similarly, Paragraph 176 to the Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs. Great weight should therefore be given to concerns raised above about the impact of the construction, servicing and lighting associated with the proposal on the trees and wildlife and therefore the landscape of this AONB. Whilst there would not be conflict with Policy P2 in relation to impacts on ridgelines, public views and tranquillity and to avoid buildings being incongruous, or with Policy P3 in relation to the design being complementary in form, setting and scale with the surroundings, the proposal would nonetheless conflict with Policy P1. The proposal would thereby also be in conflict with Policy CS13 as a whole.

Listed building

27. Old Bury Hill House (OBHH) is a Grade II Listed Building, which now forms a row of buildings used as separate apartments, set on elevated ground overlooking a lake and landscaped grounds to the south. To the west, north and east are areas of woodland with a network of tracks and rides mainly on higher ground. The proposed structure would be on rising ground to the east of the listed building within parts of the woodland now forming the curtilage to The Observatory. It would be located to the eastern side of the level clearing, farthest from OBHH, with extensive tree cover in-between such that it would not be readily visible from residences at OBHH. There is no evidence before me to suggest the likelihood of tree clearance to both sides of the common boundary so that the structure would become visible.
28. As a single holiday let of modest size in terms of the number of people who may stay there at any one time, it is unlikely that noise or activity levels would be so great as to erode any sense of quiet isolation so as to not preserve the setting of OBHH as a listed building. Residents at OBHH would be more likely to be aware of day to day activity within the curtilages of adjacent apartments at OBHH. The development would be a new activity within a nearby woodland setting but even if there were to be some incremental increase in the intensity of the use, any disturbance would be unlikely to affect the setting of the listed building or to result in conflict with Policy CS14 of the MVCS in relation to heritage matters.
29. The Framework requires that any harm to the significance of a designated heritage asset or from development within its setting, should require clear and convincing justification, and where this harm is "*less than substantial*" this

should be weighed against the proposal's public benefits. In my judgement, there would be no harm, but even if there would be less than substantial harm, as the Council contends, there would be public benefits in providing a holiday let to support rural recreation and tourism.

Other considerations

30. The appellant's contention is that the proposal does not amount to inappropriate development, but, in the event that this contention is not agreed, suggests two considerations to clearly outweigh the harm by reason of inappropriateness, and any other harm identified. The first is the "*bespoke high quality design of the tree house will serve to widen the tourism offer in the area*". The design of the tree house would be apt for its setting and the proposal would widen the tourism offer in the area. But these considerations would not outweigh the harm to the Green Belt and to the landscape character of the woodland that I have identified and therefore attract only moderate weight. The second suggestion is that the proposal would be "*Sustainable Rural Development*". My findings on the lack of detail on construction and servicing for the proposal cast doubt on its sustainability credentials.

Other Matters

31. I have noted the representations made on the proposal at application and appeal stages. Many of the objections raised have been addressed above. There are no representations that lead me to a different conclusion.

Conclusion

32. Points in favour of the proposal are that it would have an interesting design suited to its woodland setting and would add to the local offer in relation to rural tourism. These points attract moderate weight.
33. I have found the proposal to amount to inappropriate development. Furthermore, there are uncertainties about the impact on the landscape character of the AONB in relation to construction of the development, its servicing thereafter and the impact of artificial lighting on wildlife in the woodland. The Framework requires substantial weight to be given to any harm to the Green Belt and great weight to any harm to the AONB.
34. Accordingly, the harm resulting from the proposal is not clearly outweighed by other considerations and very special circumstances therefore do not exist. The proposal is at odds with policies in the Framework as a whole. It would also conflict with Council Policy CS13 and with the Neighbourhood Plan Policy WNDP5 which mirrors the requirements of Paragraph 149(b) to the Framework. For the reasons given above I conclude that the appeal should be dismissed.

Rory MacLeod

INSPECTOR