



Appeal Decision

Site visit made on 17 July 2023

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 August 2023

Appeal Ref: APP/D1265/W/22/3310112

Land at Old Ox Inn, Blandford Road, Shillingstone, Dorset DT11 0TQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Montpellier Land and Development against Dorset Council.
 - The application Ref P/FUL/2022/02998, is dated 9 May 2022.
 - The development proposed is the erection of 7 dwellings with associated access, landscaping and parking. Form additional parking for Old Ox Inn.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The appeal is made against the failure of the Council to determine the application within the statutory period. The Council has confirmed, that had it determined the application, it would have been refused for three reasons. The three main issues below reflect the recommended reasons for refusal which the Council has set out in its statement.
3. At the final comments stage, the appellant has submitted a revised layout plan for consideration. This plan shows amendments to the position of Plots 3 and 4 and is in response to the concerns raised by the Council. Until the receipt of the Council's appeal statement, the appellant did not have the detailed written concerns of the Council. Nevertheless, this is a late stage in the appeal process to seek to introduce a revised layout, albeit for two of the seven plots. The Council has objected to the submission of the revised plan as it explains it has not had the opportunity to consult in-house tree and conservation experts, nor assess whether the plan would have any bearing upon its recommendation.
4. The 'Procedural Guide: Planning Appeals – England', in summary, advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially the same scheme that was considered by the local planning authority and interested parties at the application stage.
5. The revisions suggested by the appellant alter the layout of the proposal and, were they to be accepted, I am concerned that this could lead to possible prejudice to the Council and/or interested parties in their response to the scheme. I therefore conclude that the proposed amendments should not be considered and that the appeal should be decided on the basis of the proposal as set out in the application which was before the Council.

Main Issues

6. The main issues are:

- the effect of the development on the character and appearance of the area including the Old Ox Inn and having regard to whether or not the proposal would preserve or enhance the character or appearance of the Shillingstone Conservation Area,
- whether or not the development would create satisfactory living conditions for the occupants of Plots 3 and 4, having regard to the position of the proposed beer garden and the public house car park, and any overshadowing of the rear gardens from the ash tree (T12), and
- the effect of the development on trees, with regard to the ash tree (T14) within the proposed beer garden and the ash tree (T12) on adjoining land behind Plots 3 and 4.

Reasons

Character and appearance

7. The Shillingstone Conservation Area extends to a fairly sizeable part of the settlement and includes open land to the generally north east. The Shillingstone Neighbourhood Plan 2016 – 2031 (the Neighbourhood Plan) describes the Central Historic Core Character Zone which aligns with the Conservation Area. The Conservation Area in the general vicinity of the appeal site has heritage significance including it being characterised by attractive and vernacular buildings, some listed, fronting onto the main road. In addition, a feature of this part of the Conservation Area are some remnants of the original building plot pattern with long, reasonably narrow plots extending back from some properties on the main road to Hine Town Lane. I have had regard to the regression mapping submitted by the appellant in this respect. The legibility of some of these extended plots is still noticeable but they have been eroded by the development in this area.
8. The Neighbourhood Plan has identified the appeal building, the Old Ox, as a Landmark building. It is a building that contributes positively to the Conservation Area with its position, appearance and characteristic use. The building has a pleasantly proportioned front elevation and the spacing to the sides and the depth of the plot to the rear, which is appreciable from parts of the adjoining road frontage, help to provide a setting to the building that contributes to the significance of the Conservation Area.
9. The Council consider that the Old Ox Inn should be considered a non-designated heritage asset. The building has moderate architectural value as an example of an early 19th-century public house, but high communal value with the pub use and has been identified as a Landmark building in the Neighbourhood Plan. My attention has been drawn by the Parish Council at the appeal stage to the Shillingstone Neighbourhood Plan Heritage Assessment – January 2016. This document comments that, in addition (to listed buildings and other monuments), eight non-designated heritage assets, considered collectively as well as individually, have been identified by the neighbourhood plan group as landmark buildings, and this includes the Old Ox Inn.
10. The Planning Practice Guidance indicates that a substantial majority of buildings have little or no heritage significance and thus do not constitute

heritage assets. While there is no evidence that the building has been considered as a non-designated heritage asset in previous planning applications, I give substantial weight to the assessment of the significance of the building by the Council's Senior Conservation Officer, which is supported by the Heritage Assessment that led to the identification of the Old Ox Inn as a Landmark building in the Neighbourhood Plan.

11. In this case the Public House building, its setting and historic plot form, history and appearance, does have enough heritage significance to merit identification as a non-designated heritage asset. While towards the lower end of the scale of significance I consider that the Old Ox Inn is worthy of being considered as a non-designated heritage asset and meets the requirements of the Planning Practice Guidance in this respect.
12. I am also conscious of the planning policies in the Neighbourhood Plan which are of relevance to planning considerations on this site. Policy 3 of the Neighbourhood Plan sets out the approach to the character and design of development including that all development proposals should contribute positively to Shillingstone's local identity and distinctive character. Policy 4 concerns the retention of important community facilities where possible and identifies The Old Ox Inn as one such facility within the Neighbourhood Plan area.
13. Policy 11 of the Neighbourhood Plan sets out a site specific policy for the land at the Old Ox. This allows three houses as part of a comprehensive plan for the site to help secure the delivery of holiday accommodation (such as bed and breakfast) to be tied to the pub to secure its long term viability. The Policy explains some of the principles for the development including that the design and layout that would need to be sensitive to the character of the Conservation Area, including the preservation of a green corridor linking from the main road to Hine Town Lane, to provide both a visual link and public footpath through the site.
14. Planning permission has been granted for the three dwellings and the bed and breakfast accommodation. The three dwellings have been built and are positioned within the north east section of the land which stretched back from the Old Ox building itself. These dwellings are accessed off Hine Town Lane. I note the details and commentary of the timing of the construction of the dwellings in relation to the making of the Neighbourhood Plan. However, five dwellings on this land (and two to the rear of Squirrels Leap) are proposed and, therefore, I have not needed to consider this issue further.
15. There remains a reasonably sizeable, grassed open space between these new dwellings and the Public House. The bed and breakfast accommodation would be on land to the rear of the Public House within the present open space. This part of the development has not been undertaken and the appellant explains that it is not intended to do so because it would not now form an appropriate business model for the Public House to pursue.
16. Other policies in the Neighbourhood Plan include development of up to 12 new homes on adjoining land at Hine Town Lane – north of the Old Ox (Policy 10 - HTL-N) with an explanation that an appropriate vehicular access would be from the main Blandford Road (presumably through the Old Ox site) or through an adjoining plot. Three houses are also proposed under Policy 12 (Hine Town Lane South of the Old Ox – HTL-S) and these have been constructed.

17. The appeal scheme proposes the construction of seven dwellings, five within the grassed open space, including part of the present garden to one of the new houses, and two dwellings within the rear, overgrown garden of Squirrels Leap, an adjoining property. A new road would be provided to the side of the Public House building to access the rear of the site.
18. This rear section of land behind the Public House would, with the access road, car parking area and buildings, despite the landscaping that could be provided, become quite an intense form of backland development. The open views to the south of the public house, through the car park to the open space beyond, would be significantly undermined by the presence and bulk of Plot 3. There would be limited landscaping at the end of the car park next to Plot 3 and the car parking would extend under part of the canopy of the large ash tree giving the appearance of an overly tight and constrained arrangement of buildings and parking in this part of the site.
19. The pub garden would be reduced from its present and previous areas. Within this proposed beer garden space, the surrounding presence of the proposed adjoining car port and cycle store building, and Plots 3 and 4, would give patrons of the pub garden a feeling of the built surroundings being immediate and imposing, especially compared with the more open and verdant surroundings to the present rear area.
20. The spaciousness of the area to the rear of the public house, which contributes to the significance of this part of the Conservation Area and forms part of the setting to the Old Ox Inn, would be unacceptably diminished by the scheme, in particular by the fairly dominant presence of Plots 3 and 4 and the associated car port and cycle store. This undue closeness of development would harm the surroundings in which the rear of the public house was experienced and would detract from and diminish its significance and contribution as a non-designated heritage asset and to the Conservation Area.
21. The two plots in the rear of Squirrels Leap would be experienced somewhat detached from the Public House, would fill this space behind this existing dwelling and not adversely affect the Conservation Area, or the setting to the Public House. Plots 5, 6 and 7 would erode space behind the Public House but on their own would be spaced sufficiently from the rear of the Public House and would not cramp the site in the same way as Plots 3 and 4. Their design is acceptable and, in isolation, Plots 5, 6, and 7 would preserve the character and appearance of the Conservation Area and not detract from the setting of the Old Ox Inn as a non-designated heritage asset.
22. The external boundaries of this rear strip of land, stretching back to the new housing, would be maintained although the development would hamper some of the remaining legibility of the present linear plot. However, this would be in a similar way to other developments that have taken place and agreed as part of planning policies in the Neighbourhood Plan.
23. The Parish Council and local residents, in particular, raise concerns with the loss of the rear open area with its use in conjunction with the Public House. There is reference to community activities in this area in association with the Public House, such as with the stationing of a marquee for local events. There is concern that the development of the rear area would have an adverse effect on this community facility and ultimately the viability of the Public House. The appellant makes the opposite argument, that the scheme would make the

Public House more viable and the existing activities in this area, including a marquee for events, for instance, could still be sited within the proposed beer garden area. The submissions explain the enhancements that would take place within the proposed beer garden to make it an attractive feature and enhance the experience for patrons.

24. The papers before me are limited in terms of the detailed financial evidence to clearly demonstrate that the loss of the larger area to the rear of the public house would be neutral or beneficial to the long term future of the use of the site¹. There may be other locations within the village that could host outside events, however, the smaller external space may restrict or limit some activities that could take place on this site.
25. The appellant explains that a marquee could be erected within the revised beer garden, however, at best this would appear to be a tight fit without the surrounding grassed areas, would be partly under the canopy of the tree and this more restricted area would seem to me to provide a less attractive and practical proposition than what has taken place previously. Indeed, from the photographs of marquees that have been submitted as part of the representations, it appears that the marquee at times has been quite large. Without plans which show whether or not such a covered structure could be accommodated within the proposed beer garden, I have doubts there would be sufficient space.
26. The use of the building as a public house, and its related community function, contributes to the character of the Conservation Area with a building continuing in its long standing use. The open space to the rear of the Public House forms part of the grounds that have supported the Public House. Policy 4 of the Neighbourhood Plan places policy tests to ensure that such community facilities are not lost or reduced unless it has been demonstrated that their loss or reduction if, after involving the local community in assessing potential solutions to retain the facility, it is clear that their retention would be unreasonable on the grounds of viability, or the change proposed has the community's backing.
27. In this case, the reduction of the space as proposed with the provision of a fairly modest beer garden, when compared with the extent presently fenced area available and its past size, would, in my view, potentially diminish this part of the community facility. The evidence does not satisfactorily demonstrate that the policy requirements have been clearly shown to have been met. The effect of the loss of a substantive and useable part of this rear space could have a potential longer term or consequential effect of adversely affecting the ability of the public house to function as before, and in turn ultimately may affect the benefits that a pub use provides to the character of the Conservation Area.
28. I accept that the proposal for the bed and breakfast building would also have reduced the open space available. However, that was a proposal that, at that time, was promoted because it was considered it would enhance the viability of the Public House. The related Policy 11 of the Neighbourhood Plan was adopted to facilitate this purpose. I do not therefore consider that the bed and breakfast building and its impact on the business and the Conservation Area from the loss of the open space would be the same as with the present proposal. More

¹ I have taken into account all the submissions on this issue, including the letter from Mr & Mrs G Pickering dated 16 November 2022 and that the land to the rear is in separate ownership and has been used under licence.

open space around the bed and breakfast building, which could be used in conjunction with the Public House, would appear to be retained than with the present housing scheme.

29. I am mindful of the duty to pay special attention to the desirability of preserving or enhancing the character or appearance of any land or buildings in a Conservation Area².
30. Drawing these matters together, I have had regard that the bed and breakfast building could be built, that the three houses have already been constructed and also that the Neighbourhood Plan envisages a possible road through this site to access the proposed 12 houses in an adjoining field. Nevertheless, the development in this case with, in particular, the positioning and impact of Plots 3 and 4 and the car port and cycle store, would unacceptably crowd the rear of the Public House, would diminish the space and setting around this building, a non-designated heritage asset, and would unacceptably detract from the character and appearance of this part of the Conservation Area. The smaller beer garden and the loss of the large parts of the rear grassed area has not been adequately demonstrated that it would not potentially harm this community facility, and which therefore could ultimately diminish the contribution the present use of this building makes to the character of this part of the Conservation Area.
31. The pub building is prominent within this part of the Conservation Area and the effect of the development would be visible from the road and within this publicly accessible site. The adverse impact would be to result in moderate to significant harm to the character and appearance of this part of the Conservation Area and, therefore, detract from the significance of this designated heritage asset. The harm to the Conservation Area as a whole would be less than substantial within the meaning of paragraph 202 of the National Planning Policy Framework (the Framework). In accordance with the Framework, this harm should be weighed against the public benefits of the proposal.
32. Additionally, paragraph 203 of the Framework advises that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application and that a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. I will undertake the balanced judgement with regard to the effect of the proposal on the Old Ox Inn, a non-designated heritage asset, in the final conclusion section of this decision.
33. In terms of the public benefits to be weighed against the harm to the Conservation Area, the construction of the proposed dwellings would provide a boost to the supply of housing within the settlement area. Indeed, Policy 2 of the North Dorset Local Plan Part 1 2016 (the Local Plan) designates Shillingstone as a larger village identified as the focus for growth to meet the local needs outside of the four main towns. Consequently, this location for housing would accord with the development plan strategy for the delivery of housing and with Framework policies that seek to locate new development where it would promote the opportunities for walking, cycling and public transport use. The site would be in an accessible location for occupants to access local services and facilities and there would be economic and social

² Section 72(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990.

benefits to the area during construction of the dwellings and in their subsequent occupation.

34. The site could be developed to provide dwellings with a high degree of sustainability and energy efficiency, and details could be agreed to ensure that there was a biodiversity net gain from the development. The scheme may assist with providing access to the site at the rear for up to 12 dwellings. However, as only seven additional dwellings as part of this proposal would be provided, even in a Council area that cannot demonstrate a Framework compliant supply of housing land, I attribute the cumulative benefits of the proposal limited to moderate weight.
35. The Framework advises that any harm to the significance of a designated heritage asset should require clear and convincing justification and that great weight should be given to the asset's conservation, irrespective of the potential harm to the significance. I have found that the public benefits of the proposal afford limited to moderate weight and, therefore, would not outweigh the moderate to significant harm to the Conservation Area and its significance, which in accordance with the Framework is required to be attributed great weight.
36. In the light of the above analysis, I conclude that the proposal would harm the character and appearance of the area, would not preserve or enhance the character or appearance of the Conservation Area and would harm the setting of the Old Ox Inn, a non-designated heritage asset and an important community facility. Accordingly, the proposal would conflict with Policies 3, 4 and 11 of the Neighbourhood Plan, Policy 5³ of the Local Plan and the Framework which seeks, amongst other things, to protect heritage assets.

Living conditions

37. An ash tree (identified as T12 on the plans) lies in the garden of the adjoining property. It is close to the appeal site and the canopy of this quite tall and mature tree overhangs the existing boundary near the rear of proposed Plots 3 and 4. These plots have reasonably short and modest sized gardens. The height and position of this ash tree would provide a dominant and imposing presence when occupants were using their rear gardens. It would overshadow and overhang parts of the external space, especially sections of the rear garden of Plot 3.
38. I appreciate that those buying these properties would be aware of the presence of the tree. However, the ash tree would so adversely affect the usability and enjoyment of the rear gardens, especially Plot 3, and would reduce natural light to the rear living and dining rooms, that the situation would not provide a high standard of amenity for future users as required by the Framework. I am not satisfied that the use of the front gardens for recreational purposes for the residents of these plots would compensate for the poor quality, rear private garden space that would be provided.
39. Plots 3 and 4 are both two bedroom units and could be occupied by a family. Both units have a first floor bedroom window in the front of the house. The pub garden would be fairly modest in size and, therefore, potentially be reasonably intensely used. The beer garden would be in the vicinity of these plots. An

³ The indicative reason for refusal states Policy ENV5 of the Local Plan rather than Policy 5. I am satisfied that there is no prejudice caused by this typographical error as the correct policy is clear from other papers.

acoustic fence and some landscaping would be provided along the boundary between Plot 3 and the beer garden and car park. However, this would not prevent some direct lines of sight and sound between parts of the beer garden and the front, first floor bedroom windows of Plots 3 and 4. During summer evenings, when patrons could be using the beer garden until closing time, this could coincide when some occupants of the Plots 3 and 4, potentially children, may be trying to sleep.

40. Public houses are a feature of villages and often have residential uses nearby. However, in this case, Plots 3 and 4 would be unacceptably close to the beer garden and the reasonable use of this outside facility would likely cause noise disturbance to future occupants. In this way, the position of the dwellings would not meet with the Framework requirement that new development should be integrated effectively with existing businesses and community facilities, including pubs. Indeed, if permission was to be granted for dwellings on Plots 3 and 4, and with the likely effect on the living conditions of the occupants, it could lead to noise complaints that may then place unreasonable restrictions on the operation of the beer garden.
41. The Council is also concerned with the effect from the use of the car parking area on the living conditions of the occupants of Plots 3 and 4. The overflow parking area would be predominantly to the side of Plot 3 and the activity and noise associated with vehicles would be intermittent. The noise from vehicles leaving the end spaces of some of the extended parking area adjoining the beer garden would be quite close to the front elevation of Plot 3 and the use of these spaces in the late evening could be potentially disturbing. In combination with the position and effect of the use of the beer garden, the effects of car movements would add to the potential adverse noise impacts upon the living conditions of the residents of Plots 3 and 4.
42. I am not satisfied that the adverse effects from the position of the ash tree (T12) for the occupants of Plots 3 and 4, or the relationship to the beer garden or parking area to these same plots, could be addressed by any mitigation or planning conditions in any approval.
43. Accordingly, I conclude that the development would not create satisfactory living conditions for the occupants of Plots 3 and 4 and this would be contrary to Policy 25 of the Local Plan and the Framework which, notably, seeks that development provide a high standard of amenity for future users.

Trees

44. There are a number of mature and attractive trees within and around the boundaries of the site. The ash tree (T14) within the proposed beer garden area is an especially large and attractive tree and it helps to frame the rear of the Public House. The copper beech and the ash (T12), within the neighbouring garden, are other visually important trees.
45. The beer garden space would be likely to be more intensely used than before because it is a smaller space. Much of the beer garden would be under the canopy of the ash (T14) and this area could potentially be used for the stationing and use of a marquee from time to time, if the previous type of use was to continue. Furthermore, two areas of car parking (using a cellular confinement system) would be partly accommodated within the root protection

area and additionally part of the car port and cycle store would also be constructed within a section of the root protection area of this ash tree.

46. With the space available across the wider site, which would allow alternative layouts away from the ash tree (T14), I am not satisfied that there is an overriding need or justification for the construction or such level of intensification of activities within the root protection area of this tree. I consider that the effect of the scheme would be to place undue pressure on this ash tree (T14) which could adversely affect its health and appearance in the medium to longer term. In coming to this conclusion, I have taken into account the position of existing parking to the north of the Public House building and the position and size of the approved bed and breakfast building. However, I consider that the scheme as proposed would add additional pressures over and above this situation and would be unacceptable for the reasons I have identified.
47. Plot 3, and to a lesser extent Plot 4, would be in proximity to the ash trees (T12 and T14). Occupants would be aware of the trees if they bought these plots, but the presence of these trees, with quite wide and tall crowns, would be an ever present feature of occupation. The relationship of habitable buildings to large trees can cause apprehension to occupants resulting in pressure for the removal of trees in the future. This would likely to be the case with this development, and Plots 3 and 4 would be too close to these trees and, ultimately to secure improved living conditions for occupants, there would likely be requests for their cutting back or removal. These trees make a significant contribution to the character and appearance of this site and such cutting back or removal would cause undue detriment to the character and appearance of the area.
48. The submission is accompanied by a tree survey and an Arboricultural Impact Assessment and Method Statement report that includes an explanation of the impacts and protection that these trees would be afforded. I have taken all this information into account, however, for the reasons explained, I give greater weight to the Council's Tree & Landscape Officer in respect of the concerns with the effect of the development on the trees.
49. It follows that I conclude that the development would be likely to have an unacceptably harmful effect on the two ash trees (T12 and T14) and thereby fail Policy 24 of the Local Plan and the Framework which seek, amongst other things, that appropriate measures are taken to retain existing trees wherever possible.

Other Matters

50. I have regard to all the representations including from local residents, the Parish Council and the Shillingstone Old Ox Community Group. I have examined the substantive issues which have been raised above. There are also objections based on the highway access. I looked at this at my site visit and found no reason to disagree with the views of the Highway Department which raised no objection on highway safety or parking grounds.
51. The Old Ox Inn was registered as an Asset of Community Value in 2022. The building is also identified in the Neighbourhood Plan as an important community facility, and I have considered the implications of this in the main issues above.

Planning Balance and Conclusion

52. The Council has confirmed that the North Dorset Local Plan area does not currently benefit from a five year housing land supply, the most recent figure being a supply of 4.27 years (as published March 2023). This is a fairly significant shortfall. Furthermore, the Neighbourhood Plan has been made more than two years ago. Consequently, the requirements of paragraph 11d of the Framework need to be considered.
53. However, I have concluded that the harm to the Conservation Area would not be outweighed by the public benefits of the proposal and therefore the harm to this designated heritage asset provides a clear reason for refusing the development proposed. On the basis of the requirements of paragraph 11d(i) of the Framework, this clear reason for refusal disengages the presumption in favour of sustainable development.
54. The scheme should therefore be determined in accordance with a normal planning balance, namely that the proposal should be determined in accordance with the development plan, unless material considerations indicate otherwise⁴.
55. The scheme would harm the character and appearance of the Conservation Area to a moderate to significant extent. In accordance with the Framework this harm to a designated heritage asset should be attributed great weight. There would be harm to the setting and therefore the significance of the Old Ox Inn, which should be considered to be a non-designated heritage asset. However, as the significance of this asset is to the lower end of the scale, I attribute the level of harm should be afforded low to moderate weight against the scheme. The harm to the living conditions of the future occupants of Plots 3 and 4 should afford substantial weight and the potential harm to the two ash trees substantial weight as well. Taken together these harms and related policy conflicts should merit substantial weight against the development. It is such that the scheme would conflict with the development plan when considered as a whole.
56. In terms of the benefits of the proposal, I have outlined these above, and they include the delivery of new housing in an area with a fairly significant shortfall of housing land supply. However, as only seven dwellings would be provided, I consider that the cumulative benefits merit limited to moderate weight in favour of approval.
57. It follows that the harm and policy conflict, which merits substantial weight, would not be outweighed by the benefits of the scheme which should be afforded limited to moderate weight in favour of approval. Consequently, the proposal would not accord with the development plan and material considerations do not indicate that a decision should be made otherwise than in accordance with the development plan.
58. Taking all matters into account, I conclude that the appeal should be dismissed and planning permission refused.

David Wyborn INSPECTOR

⁴ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.