



Appeal Decision

Site visit made on 12 July 2023

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th August 2023

Appeal Ref: APP/J2210/W/22/3298173

**Oakside Lodge, London Road, Upper Harbledown, Canterbury, Kent
CT2 9AX**

- 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 Stuart Andrews against the decision of Canterbury City Council.
 - The application Ref CA/21/00808, dated 16 September 2021, was refused by notice dated 5 November 2021.
 - The development proposed is described as 'Retrospective Tree House – with one bed / living space and shower / wc'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I observed on site that the treehouse is in situ, I have therefore determined the appeal on the basis that the development has already occurred, having regard to the details shown on the application drawings.

Main Issues

3. The main issues are the effect of the proposed development on the character, appearance and beauty of the site and its surroundings, including upon the setting of the Upper Harbledown Conservation Area and the Area of High Landscape Value; the ecology of the Blean Woods, Harbledown to Dunkirk Local Wildlife Site; ancient woodland; and the integrity of the features of European nature conservation sites situated at Stodmarsh.

Reasons

Character, Appearance and Beauty of the Site and its Surroundings

4. The appeal site is situated within the countryside of the Area of High Landscape Value and adjacent to the Upper Harbledown Conservation Area (CA). The CA includes the two built-up parts of the settlement between the A2 and London and Roman Roads. There are also large areas of open and undeveloped land consisting of allotments and recreation ground between the two built-up areas; land at Oakside Lodge, The Limes, Harbledown Lodge and Willows Farm; and other land east of the settlement. These features make a significant contribution to the character and appearance of the CA and its understanding and significance as a heritage asset. Moreover, open areas of land to the north of the CA are adjacent to ancient and other woodland, the sylvan qualities of which provide a marked contrast to the open land within the CA and contribute

significantly to its setting. The appeal site is a clearing situated on higher ground north of London Road, close to existing buildings in the CA and adjacent ancient woodland, so it contributes positively as part of the setting of the CA. Given that the AHLV covers land north of the village, the countryside within shares many of these characteristics, which make strong contributions to its landscape character.

5. The treehouse is constructed in two parts, on different levels elevated above the ground. Stairs to the south link between them, while those to the north lead to and from the larger, higher structure. When the treehouse is viewed in close quarters, the conglomeration of its parts, including the arrangement of supporting elements associated with each structure, appears rather unwieldy and incongruous.
6. During my visit, I observed the dense nature of planting in the locality, including the sylvan backdrop of woodland behind the treehouse that reduced its visibility. While I am mindful it would likely have such an effect throughout spring and summer, houses in London Road to the west of the CA were visible from the treehouse. Hence, it is likely to be experienced in opposing views. The treehouse was also glimpsed through a gap in planting next to London Road, albeit a mature tree in the foreground of Oakside Lodge filtered that view. Nonetheless, planting in the locality is primarily deciduous in nature, so the treehouse is likely to be more prominent in autumn and winter months when it is not in leaf. It would therefore stand out as an incongruous feature within the open land in the countryside of the AHLV and would be of detriment to the setting of the CA and, thereby, its significance.
7. The treehouse is constructed of timber, a natural material that is likely to weather, but it is by no means certain its resultant appearance would mitigate sufficiently against the harm caused by its design, scale, and appearance within its context. It is also not comparable with the form and use of nearby farm buildings, which are considered against other development plan policies.
8. The proposal has fundamentally altered part of the setting of the CA, in views north out from it, in a manner that is harmful to the CA's significance as a designated heritage asset, and I consider equates to less than substantial harm. Consequently, paragraph 202 of National Planning Policy Framework (the Framework) and Policy HE1 of the Canterbury District Local Plan¹ (LP) identify this harm should be weighed against the public benefits of proposals.
9. I am mindful that biodiversity net gain is not yet a mandatory requirement of development, but the Framework is supportive of measurable attempts to secure such benefits. The measures detailed in the appellant's *Ecological Assessment* (EA) would benefit habitat of the ancient woodland, so reasonable gains can be achieved. Nonetheless, given the scheme's magnitude, I afford this environmental benefit moderate weight. Similarly, implementation of new management practices for natural regeneration of the site and supporting transition of trees to Veteran and Ancient status, and improved management of the ancient woodland, could be achieved without the proposal. Hence, I afford these environmental benefits limited weight.
10. The treehouse will make a small contribution to the rural economy, particularly in respect of tourism and the economic use of the ancient woodland. While this

¹ Adopted July 2017.

benefit may be more significant for the appellant, given its scale it is only likely to amount to public social and economic benefits of limited weight.

11. Taking the above together, the stated public benefits would not justify allowing development that is harmful to the setting of the CA. In accordance with Framework paragraphs 199 and 202 and LP Policy HE1, considered together, I am therefore not persuaded that there would be wider public benefits of sufficient magnitude to outweigh the great weight to be given to the asset's conservation and considerable importance and weight to the less than substantial harm identified to its significance as a heritage asset.
12. I therefore conclude that the treehouse is significantly harmful to the character, appearance and beauty of the site and its surroundings, including the setting of the CA, and the Area of High Landscape Value. Hence, it is contrary to the design, landscape and heritage aims of LP Policies DBE3, HE1, HE6 and LB2 and Framework paragraphs 130, 174, 197, 199, 200 and 202.

Blean Woods, Harbledown to Dunkirk Local Wildlife Site

13. The treehouse and land surrounding it are situated within the Blean Woods, Harbledown to Dunkirk Local Wildlife Site (LWS). The appellant's EA seeks to address the Council's concern it is harmful to its ecology, but the Council has maintained its concerns. Having considered the content of the EA, I find it to be well reasoned and there is no substantive evidence before me that would lead me to dispute its conclusions, and requirements for mitigation, compensation, and enhancement measures to benefit biodiversity. This includes implications on any protected or other species such as bats, breeding birds and invertebrates. These could be secured, by planning conditions, to ensure they are delivered in a timely manner having regard to the development already being in situ. I therefore conclude that the proposed development would not adversely affect the ecology of the LWS. Hence, it would accord with LP Policies LB7 and LB9 and paragraphs 174 and 180 of the Framework.

Ancient Woodland

14. The clearing within which the treehouse is situated contains several trees and is formally designated as ancient woodland. The appellant states the treehouse is constructed off a storm damaged tree that was beyond preservation, which does not appear to be disputed by the Council. The appellant's *Ancient and Veteran Tree Assessment* also confirms the tree and the others in the clearing are neither of Ancient nor Veteran status, but they are to be retained, including two trees that have potential to transition to Veteran trees.
15. There would be a very limited loss of habitat within the ancient woodland and appellant proposes to manage the impact of the proposed use on it and the LWS through existing access management procedures for Oakside Lodge, which could be incorporated into a Woodland Management Plan. The EA also sets out how the transitional Veteran trees would be managed to maximise their potential to reach Veteran and Ancient tree status; and the clearing land, which primary comprises of species poor amenity grassland, could be enhanced. Together, these measures would ensure there is potential for the clearing around the treehouse to form an integral part of the woodland habitat.
16. For these reasons, I conclude that the proposed development would not have a harmful effect on ancient woodland. Hence, it would accord with the aims in

respect of the preservation and enhancement of ancient woodland and its protection from damaging development and land uses, as set out in LP Policies HE13 and LB10; and Framework paragraph 180.

European Nature Conservation Sites

17. The site is within the catchment area of the Stodmarsh Special Protection Area, Special Area of Conservation, and Ramsar site. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 states the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposed development. Given my overall conclusion on the first main issue and the absence of any other material planning considerations that suggest permission should be granted, the logical outcome for this main issue is therefore to take no further action regarding the effect of the proposed development on the European Sites at Stodmarsh.

Planning Balance

18. The development plan for the area comprises the LP, which predates the current Framework, but it makes it clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to its publication. Due weight should be given to them according to their consistency with the Framework. I am satisfied LP policies DBE3, HE1, HE6 and LB2 are generally consistent with the aims of the Framework to achieve well-designed places, and conserve and enhance natural and historic environments. As such, I afford considerable weight to the conflict of the proposal with those policies.
19. The main parties agree the proposal accords with development plan policies regarding its effect on the living conditions of neighbouring occupiers and the support offered to existing businesses. None of the evidence before me leads me to a different conclusion. The proposal also accords with policies pertaining to the LWS and ancient woodland, but these equate to absences of harm that neither weigh for nor against the appeal scheme.
20. I have already identified the benefits of the scheme as part of the assessment of public benefits in the balancing exercise for the heritage asset. In terms of harm, the proposal does not comply with the development plan in respect of harm to the character, appearance and beauty of the site and its surroundings, including the setting of the CA, and the Area of High Landscape Value.
21. This leads me to an overall conclusion that the appeal scheme does not accord with the development plan, when considered as a whole, and I find that the adverse impacts of the proposal are matters of great weight against the grant of planning permission that outweigh the stated benefits.

Conclusion

22. The proposed development is contrary to the development plan and there are no other considerations which outweigh this finding, including the Framework. Accordingly, for the reasons given, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR