



Appeal Decision

Site visit made on 3 October 2023

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th October 2023

Appeal Ref: APP/D1265/W/22/3302350

Starmead House, 2 Umbers Hill, Shaftesbury SP7 8LB

- 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 Ms Jules Reynolds against the decision of Dorset Council.
- The application Ref P/FUL/2021/03492, dated 16 September 2021, was refused by notice dated 31 March 2022.
- The development proposed is erection of a free standing tree house to be used as a holiday let (Use Class C3) and associated works.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on:
 - protected trees;
 - the character and appearance of the area;
 - the setting of Shaftesbury Conservation Area; and
 - the living conditions of neighbouring residents, with particular regard to privacy and noise.

Reasons

Protected trees

3. The appeal site comprises Starmead House, a single-storey bungalow, and an open-fronted garage-annexe, situated in a generously-sized plot which contains a steep bank to its rear, composed of scrub and trees. The site contains numerous trees protected by a Tree Preservation Order¹ (TPO).
4. The proposed free-standing tree house would be situated on part of the sloping ground to the rear of Starmead House. According to the submitted Arboricultural Implications Assessment and Method Statement², only 4 trees would be removed. As these trees are small in size and are surrounded by other larger trees intended to be retained, their removal would be acceptably in proportion to the scale of the development proposed.
5. The rear wall of the proposed tree house would rest on natural ground level. The front and flanks of the tree house would be supported on timber posts at

¹ North Dorset (Shaftesbury No. 15) Tree Preservation Order 1993

² ecourban Ltd (September 2021)

vertical and raking angles. The timber posts would be bolted to flitch connection plates welded to galvanised steel 'shoes', which would transfer the building loads through shallow-depth concrete pile caps to galvanised steel screw piles.

6. The submitted Foundation Proposal Statement³, states that the use of screw piles would cause minimal disturbance to the ground during installation and use and therefore to any tree roots on site, and would ensure that no part of any tree bears the loads from the proposed structure. The Council have not provided substantive evidence to demonstrate that these assertions are not well-founded. I have also not been provided with substantive evidence which shows that the combined volume of the pads, excavation on site, or future growth of nearby trees, would undermine or cast doubt on the conclusions given in the Foundation Proposal Statement.
7. The stairs to the proposed tree house would sit on / at existing ground level, following the slope of the bank, rather than being cut into the bank. Again, substantive evidence has not been provided to demonstrate that this arrangement, or the installation of services to the tree house, would be likely to result in harm to any protected trees. The proposed tree house and staircase would reduce the area available for replanting but this, of itself, would not be harmful to the nearby protected trees.
8. Whilst the proposed tree house could potentially result in pressure for further trees to be removed, the trees surrounding the proposed tree house are protected by a TPO, meaning planning permission would be required in the event that any of these trees were proposed to be felled. Any such application would be considered on its own merits in light of the prevailing circumstances.
9. I therefore find that the proposed development could be located and constructed on site without causing harm to the protected trees. A suitably-worded planning condition could be imposed to ensure compliance with the details found in the Arboricultural Implications Assessment and Method Statement (including in relation to a pre-commencement site meeting and requiring suitable tree protection methods to be employed during the construction phase) in the event that the appeal was allowed.
10. In relation to this main issue, the proposed development would comply with Policy 4 of the North Dorset Local Plan Part 1: 2011-2031 (adopted 2016) (Local Plan) which provides that, amongst other things, developments are expected to respect the natural environment including the designated sites, valued landscapes and other features that make it special.

Character and appearance

11. Umbers Hill predominantly consists of bungalows arranged around a cul-de-sac, although Starmead House is positioned on the eastern side of the main part of the road, and is accessed via a driveway from that road. The garden at the rear of Starmead House mostly slopes steeply upwards and is heavily treed.
12. Whilst, on close inspection of the Local Green Spaces and Important Treed Areas⁴ map found within Policy SFGI1 in the Shaftesbury Neighbourhood Plan

³ The Relph Ross Partnership Ltd (January 2022)

⁴ Map Ref: SFGI1

2019-2031: Final Version (Neighbourhood Plan), the tree house would be sited outside of Important Treed Area No 18 identified on that map, it would nevertheless be situated very close to that area. As such, the proposed location for the tree house shares some of the characteristics of that Important Treed Area, in that it contains numerous mature trees which provide an important contribution to the verdant character of the wider slope and thereby to the rural feel that permeates Umbers Hill, including its verdant and tranquil character.

13. Additionally, the location for the proposed tree house falls within the 'steep slopes' designation, identified on the Slopes Policy Map⁵ found within Policy SFGI2 of the Neighbourhood Plan, which the Neighbourhood Plan describes as being visually prominent and very sensitive to development.
14. I observed that Starmead House is clearly visible from several viewpoints on Umbers Hill, including (amongst others) near 1A Umbers Hill, 3 Umbers Hill, and 4 Umbers Hill. The proposed tree house would be situated in an elevated position, above Starmead House. Hence, the proposed tree house would also be visible from numerous viewpoints along Umbers Hill.
15. Considering its elevated position, situated forward from the slope, its overall height and width, and that it would be the only free-standing aspect of built form within this area of tree belt, it would stand out as a prominent and noticeably incongruous feature amongst the tree belt when viewed from Umbers Hill, even taking account of the trees which would remain around it.
16. Although a proposed sensitive lighting plan has been suggested in the Preliminary Ecological Appraisal⁶ (including the use of motion sensors, a short timer, and recessed internal lighting where near to windows), few details have been provided to show what the effect of such a strategy would be when set against baseline levels of illumination around the site at night-time. In particular, it has not been demonstrated that, due to the inclusion of windows facing outwards from the slope towards Umbers Hill, any light likely emitted during the night-time would not unduly contrast with the undeveloped nature of nearby areas of the tree slope when viewed from Umbers Hill.
17. Overall, the introduction of such a large and imposing structure into the unspoilt treed slope would serve to undermine the character and appearance of the area. Although due to the distance and the presence of intervening vegetation, the proposed tree house would not be prominent in views from the nearby footpath to the north-west of the site, with no views available from Breach Lane due to the presence of mature hedgerow, this would not mitigate the harms identified above.
18. I have had regard to all the appeal decisions referred to by the appellant. Appeal decision Refs APP/R0660/A/14/2220021, APP/D3125/W/15/3002288, and APP/E2734/W/15/3134791, each involved proposals which the Inspectors found would not be clearly seen from public viewpoints, which as explained above, would not be the case with respect to the appeal proposal. Thus, those appeal decisions do not change my findings.
19. I therefore find that the proposed development would have an unacceptable and harmful effect on the character and appearance of the area. In relation to

⁵ Map Ref: SFGI2

⁶ EcoLogic Consultant Ecologists LLP (September 2021)

this main issue, it would conflict with Policy 4 of the Local Plan which provides that, amongst other things, the landscape character of the District will be protected through retention of the features that characterise the area.

20. The proposed development would conflict with Policy SFGI2 of the Neighbourhood Plan which provides that, amongst other things, on the steep slopes (as shown on map SFGI2 of the Neighbourhood Plan) any development that does not preserve the remaining open or wooded areas and their distinct rural character, will generally be resisted.
21. The proposed development would also conflict with paragraph 130 c) of the National Planning Policy Framework (the Framework) which provides that, amongst other things, planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).

Setting of the conservation area

22. The proposed development would be situated immediately adjacent to the Shaftesbury Conservation Area (conservation area). Indeed, the tree belt within which the proposed tree house would be sited extends into the conservation area to the south of the appeal site.
23. I have taken account of the key characteristics of the St James and Bimport character areas identified in the Dorset Historic Towns Survey: Shaftesbury (Towns Survey), in coming to the view that the conservation area's significance as a designated heritage asset, as a whole, includes its numerous historic buildings (including cottages), often constructed using local building materials, and its notably verdant character, including (as noted in the Neighbourhood Plan) mature trees and wooded slopes.
24. The Framework advises that significance derives not only from a heritage asset's physical presence, but also from its setting. The setting, including the appeal site which is identified in the Towns Survey as being located within a modern housing estate, contributes to the significance of the conservation area by the presence of the tree belt to the rear of Starmead House which seamlessly integrates with the remainder of the tree belt within the conservation area to the south. Umbers Hill also assists in better revealing the significance of the conservation area by way of the low-rise and unobtrusive nature of the dwellings within it, which provide a soft transition from the nearby areas of countryside to the generally denser form of development found within the conservation area.
25. The Planning Practice Guidance advises that heritage assets may be affected by change in their setting⁷. In this regard, as described in the second main issue above, the proposed tree house would stand out as an incongruous feature amongst the presently undeveloped tree belt in views from Umbers Hill.
26. As the proposed development would be visible from within the setting of the conservation area, even if the proposed development would not be visible from within the conservation area itself, as a prominent and incongruous development situated within the tree belt the proposed development would undermine the contribution that the setting makes to the wider part of the tree

⁷ Paragraph 18a-007-20190723

belt within the conservation area. Through the introduction of a visually harmful structure in a prominent location, the proposed development would undermine the soft transition towards the conservation area composed of low-rise and unobtrusive structures, referred to above, thereby reducing the positive contribution that the setting currently makes in better revealing the significance of the conservation area.

27. The harm that would be caused to the significance of the conservation area as a designated heritage asset would be localised, and for this reason would be less than substantial. This harm must be weighed against the public benefits of the proposal.
28. In this regard, the proposal would provide new tourist accommodation within the settlement boundary of Shaftesbury, which is encouraged in principle by both Policy 11 of the Local Plan and Policy SFCL2 of the Neighbourhood Plan. Due to the location of the appeal site, visitors to the proposed tree house would be well-placed to use local services and facilities. Consequently, the proposal would provide support to the local economy.
29. Even so, whilst it is noted that tourism is important to Shaftesbury's economy, very few details have been provided to quantify the contribution which the proposal would likely make in this regard. Considering that the proposed holiday let would not be occupied by large groups of people, in the absence of quantifiable information to demonstrate otherwise, it appears from the limited substantive evidence before me that the proposal's contribution to the local economy would not be significant over the long-term. The proposal would also provide work for construction professionals, but this would be confined to the construction phase of the development. Limited weight has therefore been given to the totality of the public benefits of the proposal.
30. I recognise the considerable importance of the conservation area as a designated heritage asset, and in accordance with the Framework, in considering the impact of the proposal on the significance of the conservation area as a designated heritage asset, I have given great weight to its conservation. Due to the limited weight accorded to the public benefits identified, it is clear that these benefits do not, either individually or cumulatively, amount to public benefits which outweigh the harm that would be caused to the significance of the conservation area.
31. I therefore find that the proposed development would have an unacceptable and harmful effect on the setting of the conservation area. It would conflict with Policy 5 of the Local Plan which provides that, amongst other things, any development proposal affecting a heritage asset (including its setting) will be assessed having regard to the desirability of sustaining and enhancing the significance of that asset and securing a viable use for it that is most consistent with its conservation, and with Policy 18 of the Local Plan which provides that, amongst other things, Shaftesbury's distinctive historic character will be retained and enhanced.
32. The proposed development would also conflict with section 16 of the Framework, which seeks to conserve and enhance the historic environment.

Living conditions

33. I have had regard to the concerns of local residents, with respect to privacy. The primary outlook from the balcony and the windows on the front elevation of the proposed tree house would be towards the rear of Starmead House. Outlook towards the north and south of the proposed tree house would be heavily restricted by the presence of tall trees either side of the proposed tree house, albeit this effect would be reduced somewhat during the winter months. There would therefore be only limited opportunities for direct overlooking towards the properties to the north and south of the proposed tree house.
34. However, given that, as discussed above, the proposed tree house would be visible from several points on Umbers Hill, it would likely introduce a perception of being overlooked for the occupiers of those properties to the west. Nevertheless, whilst this would constitute a change, considering the distance of the proposed tree house from all other properties and their rear gardens on Umbers Hill, and that a degree of overlooking is commonplace in residential areas, on balance I find that the proposed development would not have a harmful effect on the living conditions of neighbouring residents, with particular regard to privacy.
35. Due to its size, the proposed tree house would not be suitable for use by large groups. Nevertheless, the proposed tree house would be situated in an elevated position, above Starmead House, and given that it is intended to be occupied by tourists who would at times be using the associated balcony and outside hot tub, the proposed development has the potential to generate noise which could dissipate over the residential area below. Residential gardens are commonly situated at similar ground levels as neighbouring properties and therefore even if the noise arising from the proposed tree house were similar to a residential garden use by a single family, account needs to be taken of the elevated position of the proposed tree house in assessing its noise impact.
36. However, I have not been provided with any technical evidence (such as a Noise Impact Assessment, for example) which might detail the baseline noise level in the local area and the impact of the noise likely to be generated by the proposed introduction of a tree house (to be used as a holiday let) relation to that baseline.
37. Local residents have described Umbers Hill as being a quiet and peaceful residential area, and this is consistent with my observations. In these circumstances, and taking account of local residents' reasonable expectations not to be subject to undue noise disturbance, I must take a precautionary approach. This means that in the absence of substantive evidence to demonstrate otherwise, and taking account of the circumstances (including the distance of the proposed tree house from nearby dwellings and that trees and vegetation would be present around the proposed tree house), I find that it has not been shown that the proposed development would not result in harm to the living conditions of nearby residential occupiers.
38. Due to the absence of technical information regarding the noise impact of the proposed development, it has not been demonstrated that a planning condition requiring the proposed tree house to remain ancillary to the host dwelling would be effective in limiting noise to an acceptable level. Similarly, with the noise impact of the proposed development on its surroundings not being accurately quantified at this stage, it is unclear if the intention that the

proposed holiday let would be run and managed by the occupiers of Starmead House would be adequate in limiting noise to acceptable levels. I note that hot tubs are commonly found within residential gardens, but I have not been referred to any nearby examples which are situated in such an elevated position as the hot tub relating to the appeal proposal would be. Therefore, none of these matters change my findings.

39. Whilst I note the Inspector's findings in appeal decision Ref APP/J3720/W/20/3248347, considering the elevated position of the proposed tree house, as no plans have been provided in relation to that proposal, it has not been demonstrated that appeal decision Ref APP/J3720/W/20/3248347 is a directly comparable example in relation to the appeal proposal. Hence, that appeal decision does not change my findings.
40. I therefore find that it has not been demonstrated that the proposed development would have an acceptable effect on the living conditions of neighbouring residents, with particular regard to noise. The proposed development would conflict with Policy 24 of the Local Plan which provides that, amongst other things, development proposals where the enjoyment of the existing properties is significantly diminished will be refused, and with Policy 25 of the Local Plan which provides that, amongst other things, in the case of noise-generating development, development will be permitted provided that the levels of noise would not cause an unacceptable level of disturbance to the occupants of nearby properties.
41. The proposed development would also conflict with paragraph 130 f) of the Framework which provides that, amongst other things, planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Other Matters and Planning Balance

42. The finding on the first main issue above, with respect to protected trees, is a neutral matter, which does not weigh in favour of the proposal.
43. Reference has been made to the potential exercise of permitted development rights under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), which relates to buildings (etc.) incidental to the enjoyment of a dwellinghouse. I have no reason to doubt the appellant's intention to erect an outbuilding under Class E in the event that this appeal is dismissed.
44. However, paragraph E.1(h) of Class E provides that development is not permitted by Class E if it would include the construction or provision of a verandah, balcony or raised platform. As such, any outbuilding erected under Class E would not feature a balcony, thereby potentially, depending on the detailed design of the outbuilding, reducing its visual impact when compared with the appeal proposal. Moreover, a separate planning permission would be required for the felling of any TPO trees, meaning that at this stage it is unclear if any outbuilding would be sited in such a prominent position as the proposed tree house. Considering these matters, as it has not been demonstrated that any outbuilding erected under Class E would be as harmful as the appeal proposal with respect to its visual impact, the Class E fall-back position has been given limited weight in favour of the proposal.

45. I have summarised on the third main issue above, the benefits that the proposal would offer to the public, with limited weight given to these public benefits in support of the proposal. In addition to these benefits, the Preliminary Ecological Appraisal also recommends a number of ecology mitigation, compensation and enhancement measures, although as few details have been provided to quantify the likely extent of biodiversity gains that would accrue, limited weight has been given to these benefits in support of the proposal. Considering all of the above, I give moderate weight to the cumulative benefits of the proposal.
46. The proposed development would give rise to adverse impacts in relation to the character and appearance of the area, and the setting of the conservation area, in the terms I have described above. It has also not been demonstrated that the proposed development would have an acceptable effect on the living conditions of neighbouring residents. Considering that paragraph 126 of the Framework provides that, amongst other things, the creation of high quality places is fundamental to what the planning and development process should achieve, I give very significant weight to these adverse impacts.
47. Balancing the very significant weight of these adverse impacts against the moderate weight I have given to the benefits of the proposal, I find that the benefits of the proposal do not, either individually or cumulatively, outweigh the adverse impacts identified. It follows that the proposal would conflict with the development plan when considered as a whole.
48. Taking all of the above into account, as a matter of planning judgement, I find that none of the other considerations, which include the Framework, indicate that this appeal decision should be taken otherwise than in accordance with the development plan.
49. Had my findings in relation to the main issues been more favourable, it would have been necessary to address the representations on the other issues raised by local residents in more detail, including in relation to disabled access for the proposed tree house (taking account of the requirements of the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010 (as amended)). However, as I am dismissing the appeal for other reasons, with the overall outcome of the appeal having been conclusively determined, I make no further comments on these matters.

Conclusion

50. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR