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## Appeal Decisions

Hearing held on 31 March 2015

Site visit made on 31 March 2015

**by Frances Mahoney DipTP MRTPI IHBC**

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

**Decision date: 25 June 2015**

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### **Appeal A: APP/X2220/A/14/2227066**

#### **Updown Park, Betteshanger, Northbourne, Deal, Kent CT14 0EF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr T Montgomery against the decision of Dover District Council.
  - The application Ref DOV/13/01084, dated 18 December 2013, was refused by notice dated 6 June 2014.
  - The development proposed is an outline application for the erection of two tree houses and owner's dwelling for use in connection with the existing holiday let business.
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### **Appeal B: APP/X2220/E/14/2227069**

#### **Updown Park, Betteshanger, Northbourne, Deal, Kent CT14 0EF**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Mr T Montgomery against the decision of Dover District Council.
  - The application Ref DOV/13/01087, dated 18 December 2013, was refused by notice dated 9 June 2014.
  - The works proposed are the removal of 1.2m wide x 2.7m high section of eastern wall and installation of timber gate to match existing gate in western wall.
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## **Decisions**

1. The appeals are dismissed.

## **Preliminary matters**

2. Appeal A has been made in outline with all matters reserved for later determination. However, a series of sketch visualisations, including floor plans, have been submitted of the proposed new house, along with illustrative exterior/interior images of the tree-houses<sup>1</sup>. Whilst these are for illustrative purposes only they do inform the appeal proposal and I have considered them accordingly.
3. The appellant's case initially mentioned that in the circumstances that the Council were unable to show a five year housing land supply, the new dwelling would assist in the provision of much needed housing in the local area and District in general. However, it was accepted by the parties at the hearing that the Council was now able to present a positive position in respect of its five

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<sup>1</sup> Appellant's appendix B10.

year housing land supply. On this basis the appellant made it clear he did not wish to pursue this aspect of justification for his initially proffered case.

## **Background**

4. Updown Park comprises 22 hectares of parkland which includes the cricket pitch and pavilion, Garden Cottage (a Grade II listed building), The Old Dairy (now converted for holiday lets) and the garden walls of the late 18<sup>th</sup> century walled garden with several outbuildings and greenhouses built into the walls (Grade II listed building). Updown House, an early 18<sup>th</sup> century house (Grade II listed building), stands close to the walled garden and cricket pitch, and whilst it is set within the parkland it is no longer within the same ownership. The ownership of Updown Park itself lies within the Montgomery family<sup>2</sup>.
5. The self catering holiday let business was established some twenty years ago by the appellant's mother. She still owns and runs The Old Dairy which is converted into two mobility friendly self catering units. The current business model is one of a comparative low-key, non-interventionist approach where guests tend to look after themselves during their stay. The appellant admitted that, in essence, the present day holiday-let business was set up and run to supplement an alternative income stream from his mother's vegetable growing business. However, she wishes to retire and the appellant and his wife want to develop the business further, creating dedicated mobility accommodation<sup>3</sup> in the context of a business plan/model ahead of its time, securing operational viability into the future.
6. The proposed scheme (Appeal A) seeks to take advantage of the wider parkland setting to introduce two tree-houses and the erection of an associated detached dwelling for the owner/manager. One element of the proposed business expansion has already been granted planning permission that being the change of use of the existing garden room within the walled garden to holiday accommodation<sup>4</sup>.
7. Boundaries are blurring between the hotel offer and that of self catering accommodation where guests are seeking the benefits of the service levels and facilities of a hotel. The business would entail luxury accommodation with high and personal levels of service focusing on market demand for short breaks, mobility friendly and alternative accommodation. Guests are likely to be those prepared to pay for personal and high levels of service, including bespoke catering and tailored activities.
8. To provide this level of service the appellant contends that it is essential there is a permanent residential presence in a location close to the holiday accommodation. This would allow the immediate service of guests whenever they require it, day or night, along with providing for their security and that of the wider parkland. The proposed dwelling would include a sitting room for guests. The scheme is promoted on the basis that the relationship between the proposed dwelling and the tree-houses is fundamental to the effective and viable functioning of the expanding business.

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<sup>2</sup> Specifically the appellant owns the garden/walls, his brother owns Garden Cottage and his mother owns the parkland. The cricket club is the responsibility of a family trust.

<sup>3</sup> Having identified a chronic shortage of mobility accommodation.

<sup>4</sup> Planning permission DOV/13/00641 – Hearing Doc 5.

9. The expanded business model also promotes the existing parkland and, in particular, the walled garden, as being important and fundamental assets to the success of the overall business operation. It is intended that the business would fund the restoration, maintenance and management works to the walled garden.
10. In addition, it is suggested that the success of the business would also safeguard the cricket facilities as a community use to Eastry with future maintenance and improvements being secured. Community access to the parkland<sup>5</sup> would also be integral to the appellant's plans.

### **Main Issue**

11. The main issues are the effects of the proposals/works;
  - on the character and appearance of the countryside having regard to the aims of planning policies and guidance which seeks to restrict new development in the countryside;
  - whether the proposal would preserve the special architectural or historic interest of the listed walls and its setting, along with that of the neighbouring listed buildings; and
  - whether any harm identified would be outweighed by other considerations so as to justify the development.

### **Reasons**

#### *Character and appearance*

12. Updown Park is characterised by an open parkland landscape, set at a high point above the coastal plain and framed by surrounding mature tree plantations. It is peppered, in the main, by distinct groups of mature trees of varying species, which have considerable visual prominence in the wider landscape. The appeal site is made up of three pockets of land within the wider Updown Park to accommodate the two tree-houses and the owner/manger's dwelling<sup>6</sup>.
13. The proposed locations of the tree-houses are precise, set within the wider parkland, away from the main group of buildings. From the details submitted, albeit of an indicative nature, the tree-houses, providing holiday accommodation, would be constructed in natural materials reflecting the banks of trees which would serve as their backdrop. They would be sympathetically located so as not to visually intrude into the wider vistas across the parkland or from more distant coastal viewpoints. A scale and design of development in association with rural tourism<sup>7</sup> which would respect the character of the countryside<sup>8</sup> could be achieved by condition<sup>9</sup>.
14. The location for the owner/manger's house would be immediately adjacent to the eastern section of listed wall and enclosed garden. Whilst it would be

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<sup>5</sup> Such as open gardens and visits by other community societies.

<sup>6</sup> Planning application site plan.

<sup>7</sup> Occupation safeguarded by condition.

<sup>8</sup> National Planning Policy Framework Paragraph 28.

<sup>9</sup> The Council confirmed it did not have an in principle objection to the scale, siting and design of the proposed tree-house holiday lets.

peripheral to the grouping of buildings, centred on Updown House, it would nonetheless be new development in part of the immediate grounds of the house where once there had been none.

15. The illustrative scheme submitted shows a modernist, cantilevered two storey house linked through the listed wall to a garden room, within the walled garden, designed in the style of a pavilion set against the garden wall with a glazed roof. This property would include an office space and guest lounge connected to the proposed business use. The overall design is of merit and the potential use of glass, natural wood cladding and green living walls would all serve to soften the impact of the building in its immediate surroundings. However, the illustrative scheme is for a dwelling of considerable size even taking into account the business spaces required. I appreciate the appellant's desire to build a comfortable family home but the size of the dwelling should be dictated by the needs of the business not the requirements of the owners. In addition, the illustrative design sets up a visual conflict with the simple lines of the garden wall interrupting its continuous nature and changing the character and appearance of the immediate environs of the gardens of Updown House.
16. The appeal site, in respect of the location of the new dwelling, does offer alternatives within the confines of the red lined application site. This part of the appeal site is well screened by banks of mature trees from wider landscape/parkland and distant views. Sympathetic design and laying out of the associated areas with the house, such as the parking and private garden, could maintain the informality and green open nature of the present character and appearance of its immediate location<sup>10</sup>.
17. However, the introduction of a new dwelling without unusual and compelling justification into this countryside location would fail to acknowledge the intrinsic character of the countryside, contrary to the aims of Core Strategy Policies DM 1 and CP 1, both of which accord with the spirit of the National Planning Policy Framework (The Framework)<sup>11</sup>. As a result there would be some harm to the character of the countryside.

#### *Listed building issue*

18. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require that special regard shall be had to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess. Case law has established that the duties described should be given considerable importance and weight. I have considered these appeals in light of these duties placed upon me as the decision-maker.
19. A considerable part of the significance of the identified listed buildings<sup>12</sup> is their grouping, reflecting their functional inter-relationship as part of an historic estate. The main house juxtaposed with the walled garden, potting shed and Garden Cottage maintains the by-gone linkage of the grand house with produce sourced from the walled garden and green-houses and serviced by staff housed on the estate.

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<sup>10</sup> These details could be dealt with by condition.

<sup>11</sup> The Framework paragraphs 17, 55 & 109.

<sup>12</sup> Updown House, Garden Cottage and the garden walls.

20. The specific significance of the garden wall lies not only with its age, historic purpose and integrated buildings, but also its scale and strong, largely unbroken elevations, particularly along the eastern boundary. The indicative design of dwelling, which effectively straddles the listed wall, would disrupt and erode the simple line of the garden wall and its enclosing nature.
21. Appeal B specifically proposes the introduction of a new opening into the east listed wall, including a new gate identical to that within the west wall. This gated opening would complete the central criss-cross of gated openings across the garden, reflecting the distinct cruciform line of the main garden path. However, there is no evidence that there was ever a gate in the location now proposed. Its insertion would require the loss of a significant section of original brickwork<sup>13</sup>. To my mind the proposed opening is inextricably linked with the intended design of the new dwelling where this gate would link the elements of the house either side of the garden wall<sup>14</sup>. The appellant did indicate that the new gateway would be required in any case to give ready access to the green space to the east beyond the wall. However, the gate to the south would equally provide such direct access, thereby making the appeal proposal unnecessary in this regard.
22. The significance of a heritage asset also derives not only from its physical presence and historic fabric, but also from its setting. Considering setting is a matter of informed judgement. In essence, setting can be defined as the surroundings in which the asset is experienced<sup>15</sup>. Ownership of land does not limit the setting of designated heritage assets, historic and functionality factors often transcending ownership boundaries. In this case the parkland of Updown House has been severed from the house in ownership terms. However, visually and physically such a legal severance is not obvious.
23. The overall settings of the listed buildings are interdependent. In my view, they are one in the same, that being their physical and functional linkage, one to another, in the context of the wider parkland spreading out in front of the house, across the cricket field and into the tree scattered, woodland bounded, green expanse of surrounding countryside.
24. Statute and Government policy may allow for change in the setting of heritage assets, where change does not harm the significance of the listed building.
25. In this instance the proposed tree-houses<sup>16</sup>, as two parts of the overall proposal, would be set some distance from the listed buildings and their distinct grouping. They would hug the tree line and be absorbed by the scale and massing of the mature banks of trees into which they would nestle. As a result, they would not interrupt the appreciation of the parkland setting as experienced by those enjoying the parkland. In the proposed locations the introduction of suitably designed tree-houses<sup>17</sup> would preserve the listed buildings and their settings.
26. However, taking into account the sensitivity of these individual listed buildings, their overall grouping and wider setting, and in the absence of details of a

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<sup>13</sup> Historic fabric.

<sup>14</sup> This comment is made in the context of the knowledge that this design concept is indicative, but the appellant did speak to it and I am satisfied it would be his preferred option.

<sup>15</sup> The Framework, Annex 2: Glossary – The Setting of Heritage Assets – English Heritage Oct 2012.

<sup>16</sup> Even as outline proposals.

<sup>17</sup> Would be controlled as a reserved matter.

scheme sympathetic to the special architectural and historic interest of the heritage assets, I find the proposed erection of a new dwelling would not preserve the listed buildings or their setting, unacceptably harming their significance.

### **Balance and conclusion**

27. The proposed tree-houses are integral to the business and it has already been established that their impact would be negligible in respect of considerations of acknowledged importance. I have considered whether it would be appropriate to issue a split decision in relation to the tree-houses which are un-contentious. However, the appellant was clear that the proposed development had been formulated as a package, reflecting his business model and each element was essential to the viability of the business. Consequently, I have considered the proposed development as a whole.
28. It is the provision of the new dwelling<sup>18</sup> which is the contentious aspect of this case. The provision of a dwelling for those who work on the parkland is not unique in the context of this estate location. The appellant seeks to justify the proposed house on the basis of it being functionally linked with the business sufficient enough to outweigh any identified harms.
29. The proposed business concept is well considered and thought through. Taking into account Government aim's for growth in this sector of the economy<sup>19</sup> it has considerable merit. The appellant's desire and commitment to take the holiday accommodation business forward is apparent. He has sold his house, given up his job to concentrate on this proposal and is financially investing heavily in the business.
30. The proposed dwelling is promoted on the basis of a functional need integral to the business model. It would accommodate a full-time manager<sup>20</sup>. The appellant suggested without the proposed house the business would not be viable. The existing established business is run on a low-key level, serviced at a distance. However, I appreciate the business model the appellant wishes to adopt is much more hands on, providing service for guests at all hours. The proposed business model has been thoroughly researched and a market within Kent identified. From the evidence before me I am persuaded that there would be a necessity for staff to live close by to the tree-houses, garden studio, Garden Cottage and Old Dairy to provide the level of service intended in this business model.
31. Nonetheless the business model remains untested in this location. Whilst the business plan shows profit slowly building year on year, considerable investment in the first two years of the plan is required, including at a best estimate £400,000 for the owner/manager's house, some £225,000 restoration costs of the walled garden, £65,000 on the garden studio, £150,000 for the first tree house and some £100,000 for primary infrastructure costs. The second tree-house would not be built until year 4/5. This places a heavy

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<sup>18</sup> Owner/manager's house.

<sup>19</sup> Tourism is an important sector of the national economy. Government's aim is to grow the sector, making it more productive, competitive and profitable. The growth in the 'staycation' holiday market is a particular area which offers good growth potential (Government Tourism Policy March 2011 – Appellant's appendix C2). For the tourism sector to flourish it does need to adapt and change fulfilling the needs of all aspects of the community and provide a variety of standard of accommodation and holiday experience. + The Framework paragraph 28.

<sup>20</sup> In this instance the appellant and his family.

burden on the business to support the initial investment, even taking into account some funds would be directly sourced from the appellant and through family investment<sup>21</sup>. At the time of the hearing there was no firm commitment for additional funding from external sources.

32. Whilst the business plan shows future profit, there is no surety of financial soundness with a clear prospect of remaining so. Any failure of the business would not affect the permanency of the house itself and any harms identified above would continue long after the business was no more, or had morphed into a differing model not requiring such an intense service relationship with guests thorough a change in business ownership or trends within the tourist accommodation market.
33. In addition, whilst the appellant has a clear concept in his mind as to how the occupation of the new dwelling would relate to the business use this is not translated into any mechanism which would give me surety that the proposed relationship/occupation of the dwelling with the business use would be established and then maintained in the long term.
34. Further, the appellant has effectively asked me to take a holistic approach to the consideration of this scheme to secure the proffered economic<sup>22</sup>, heritage and community benefits. He promotes the proposed business and its dwelling as enabling development, in particular, in relation to the restoration of the walled garden. These works are clearly part of the intended development of the business and confirm the heritage asset as an important part of the business concept<sup>23</sup>.
35. However, the inter-relationship of the ownership of the parklands, cricket club, walled garden and other buildings is complex. It is clear to me that there is a strong family bond which in practical terms places a joint responsibility on family members to support the long term future of the parkland and cricket club. However, this is an arrangement of benevolence underpinned by family commitment and duty, but without identified legal foundation linked to the emerging business. Were the business to be successful I have no doubt that the appellant would take forward the improvements he has outlined.
36. Nonetheless, once again no surety has been provided that this would remain an integral part of the overall scheme into the future. Plans may change depending on the success of the business, the availability of finance and any change in the ownership of the business which can not be discounted as a possibility.
37. I have considered whether the imposition of conditions would be appropriate to secure the business model relationship between the owner/manager's house, the proposed and existing elements of guest accommodation, and the beneficiaries of the enabling development. Due to the complexities of ownership of the elements, albeit within the same wider family, and their inter-relationship within the business model a condition would not present a secure and robust method of securing all of these matters.

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<sup>21</sup> Some of which may be outside of a business loan arrangement.

<sup>22</sup> Including significant local job creation.

<sup>23</sup> Although, whilst I appreciate the restoration of the walled garden would be a labour of love for the appellant and his wife and their intention is to do much of the work themselves, I do not consider such works of restoration and the long term maintenance of the garden to be factors in justifying a permanent residential presence on the appeal site. It would be possible for such works to be carried out by the appellant/workers visiting the appeal site in such frequency as may be required.

38. Therefore, without such a legal mechanism the benefits of the development proffered by the appellant would remain unsecured and I can give them little weight in the balance of these decisions.
39. Within the weighing of these decisions I am also mindful of the terms of paragraph 134 of the Framework which sets out that where a view is taken that the harm to the designated heritage asset would be less than substantial, this harm should be weighed against the public benefits of the proposal. In this instance the degree of harm is less than substantial in the context of paragraph 134<sup>24</sup>. Such a conclusion of the degree of harm to the heritage asset itself and to the setting of the listed buildings does not equate to a less than substantial objection to the grant of planning permission. In the circumstances set out above the identified harm would still be significant and irreversible. There is nothing contradictory in such a stance. As proposed the identified benefits to the scheme, particularly in terms of public interest, would not clearly outweigh the harmful impact on the form, character and special interest of the listed wall that would be a consequence of the proposals.
40. Furthermore, the proposals would cause unacceptable material harm to the setting of the listed wall and the other listed buildings. Accordingly, I find that the development/works would be contrary to the terms of the Framework which seeks to conserve and enhance heritage assets and the section 16(2)/66(1) statutory duty in a policy context, safeguarding the significance of heritage assets for future generations.
41. Taking into account this identified harm to heritage assets weighed alongside that to the character of the countryside, the appeal proposals amount to unjustified, unacceptable new development. These adverse harms identified within the environmental dimension of sustainable development, are so weighty as to clearly outweigh the limited environmental, social and economic advantages of the scheme. Consequently, the appeal proposals would not constitute sustainable development as prescribed by the Framework and accordingly the appeals should fail.

*Frances Mahoney*

Inspector

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<sup>24</sup> A matter agreed between the parties.

## **APPEARANCES**

### **FOR THE APPELLANT:**

John Elvidge BA(Hons) MRTPI

Tom Montgomery BSc MA ACA MRICS - Appellant

Louisa Montgomery BA (Hons)

Stephen Gray MSc Dip Arch APMP IHBC RIAS RIBA

Alan Spong Chairman of the Cricket Club

Richard Crang - Father of Louisa Montgomery

Cllr Manion – Member for Eastry Ward & County Councillor for Dover North

### **FOR THE LOCAL PLANNING AUTHORITY:**

Michael Goddard BA Dip TP DMS MRTPI

Clive Alexander BA Dip UD MRTPI IHBC - Principal Conservation Officer

### **INTERESTED PERSONS:**

Fernand Huts - Local Resident

Linda Van Petegem - Assistant to Mr Huts

## **DOCUMENTS**

Doc 1 – Garden Cottage listing description.

Doc 2 – Updown House listing description.

Doc 3 – Dover District Land Allocations Local Plan adopted Jan 2015 paragraph 3.1.

Doc 4 – List of suggested conditions.

Doc 5 – Planning permission DOV/13/00641 – Change of Use to holiday let.

Doc 6 – Maps 1 – 4 + Tithe award schedule – 7 February 1843.

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