



Appeal Decisions

Site visit made on 27 August 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 September 2019

Appeal A Ref: APP/A1910/W/19/3230122 32 Stocks Road, Aldbury, Tring HP23 5RU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Emmanuel Baumard against the decision of Dacorum Borough Council.
- The application Ref 4/03174/18/FHA, dated 17 December 2018, was approved on 9 May 2019 and planning permission was granted subject to conditions.
- The development permitted is a new sectional timber framed building to replace an existing garage and summer house.
- The conditions in dispute are Nos 2, 5, 6 and 7 which state that:

Condition 2: *'Notwithstanding the details specified by the submitted drawings and by the application form the roof of the building hereby permitted shall be finished in timber shingles and the walls of the building shall be finished in dark stained horizontal weatherboarding.'*

Condition 5: *'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending or re-enacting that Order with or without modification) there shall be no external changes to the building hereby permitted.'*

Condition 6: *'No demolition/development shall take place/commence until a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include assessment of significance and research questions; and: 1. The programme and methodology of site investigation and recording 2. The programme for post investigation assessment 3. Provision to be made for analysis of the site investigation and recording 4. Provision to be made for publication and dissemination of the analysis and records of the site investigation 5. Provision to be made for archive deposition of the analysis and records of the site investigation 6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.'*

Condition 7: *'No demolition/development shall take place/commence until a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include assessment of significance and research questions; and: 1. The programme and methodology of site investigation and recording 2. The programme for post investigation assessment 3. Provision to be made for analysis of the site investigation and recording 4. Provision to be made for publication and dissemination of the analysis and records of the site investigation 5. Provision to be made for archive deposition of the analysis and records of the site investigation 6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.'*

- The reasons given for the conditions are:

Condition 2: *'In the interests of the character and appearance of the Rural Area, Conservation Area and Chilterns Area of Outstanding Natural Beauty in accordance with Policies CS11, CS12, CS24, CS25 and CS27 of Dacorum Core Strategy.'*

Condition 5: *'To enable the local planning authority to retain control over the development in the interests of safeguarding the residential amenity of the locality and the appearance of the building in the locality in accordance with Policies CS11, CS12, CS24, CS25 and CS27 of Dacorum Core Strategy.'*

Condition 6: *'To ensure that reasonable facilities are made available to record archaeological evidence and to accord with adopted Core Strategy Policy CS27.'*

Condition 7: *'To ensure that reasonable facilities are made available to record archaeological evidence and to accord with adopted Core Strategy Policy CS27.'*

Appeal B Ref: APP/A1910/W/19/3230117
32 Stocks Road, Aldbury, Tring HP23 5RU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Emmanuel Baumard against the decision of Dacorum Borough Council.
- The application Ref 4/03165/18/FHA, dated 18 July 2018, was approved on 9 May 2019 and planning permission was granted subject to conditions.
- The development permitted is the replacement of the existing garage and summer house with an outbuilding to provide a non-habitable annex with garage and hobby room.
- The conditions in dispute are Nos 2, 4, 5 and 6 which state that:

Condition 2: *'Notwithstanding the details specified by the submitted drawings and the application form the walls of the building permitted shall be finished in dark stained horizontal weatherboarding.'*

Condition 4: *'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending or re-enacting that Order with or without modification) there shall be no external changes to the building hereby permitted.'*

Condition 5: *'No demolition/development shall take place/commence until a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include assessment of significance and research questions; and: 1. The programme and methodology of site investigation and recording 2. The programme for post investigation assessment 3. Provision to be made for analysis of the site investigation and recording 4. Provision to be made for publication and dissemination of the analysis and records of the site investigation 5. Provision to be made for archive deposition of the analysis and records of the site investigation 6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.'*

Condition 6: *'1. Any demolition/development shall take place in accordance with the Written Scheme of Investigation approved under Condition 7. 2. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition 10 and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.'*

- The reasons given for the conditions are:

Condition 2: *'In the interests of the character and appearance of the Rural Area, Conservation Area and Chilterns Area of Outstanding Natural Beauty in accordance with Policies CS11, CS12, CS24, CS25 and CS27 of Dacorum Core Strategy.'*

Condition 4: *'To enable the local planning authority to retain control over the development in the interests of safeguarding the residential amenity of the locality and the appearance of the building in the locality in accordance with Policies CS11, CS12, CS24, CS25 and CS27 of Dacorum Core Strategy.'*

Condition 5: *'To ensure that reasonable facilities are made available to record archaeological evidence and to accord with adopted Core Strategy Policy CS27.'*

Condition 6: *'To ensure that reasonable facilities are made available to record archaeological evidence and to accord with Policy CS27 of Dacorum Core Strategy.'*

Decision – Appeal A

1. The appeal is allowed and the planning permission Ref 4/03174/18/FHA for a new sectional timber framed building to replace an existing garage and summer house at 32 Stocks Road, Aldbury, Tring HP23 5RU granted on 9 May 2019 by Dacorum Borough Council, is varied by deleting conditions 2, 5, 6, 7 & 8 and substituting conditions 2 & 8 with the following conditions:

Condition 2: 'No development above slab level shall take place until details of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved details.'

Condition 8: 'Subject to the requirements of Condition 2 the development hereby permitted shall be carried out in accordance with the following plans: EB97(-) SP; EB97(-) 01; EB 97(-) 02; EB97(-) 03 and EB97(-) T.'

Decision – Appeal B

2. The appeal is allowed and the planning permission Ref 4/03165/18/FHA for the replacement of the existing garage and summer house with an outbuilding to provide a non-habitable annex with a garage and hobby room at 32 Stocks Road, Aldbury, Tring HP23 5RU granted on 9 May 2019 by Dacorum Borough Council, is varied by deleting conditions 2, 4, 5, and 6 and substituting condition 2 with the following condition:

Condition 2: 'No development above slab level shall take place until details of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved details.'

Procedural Matters and Background

3. In my heading above I have taken the site address from that given in the appeal form and decision notice.
4. As set out above there are two appeals on this site. They differ only in that the proposed outbuilding in appeal B would be a larger L shaped structure in comparison to the simpler and smaller structure proposed in appeal A. I have

considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

5. In both cases planning permission was granted for a replacement detached outbuilding resulting in the removal of the existing garage and summer house at the appeal site. Condition 2 of appeal A specifies the external materials to be used for the outbuilding, citing horizontal dark stained weatherboarding for the walls and timber shingles for the roof. Similarly, condition 2 of appeal B specifies the use of dark stained horizontal weatherboarding for the walls of the annex, however it does not refer to roof materials. In both cases it is stated that this is required to protect the character and appearance of the area within Aldbury Conservation Area and the Chilterns Area of Outstanding Natural Beauty.
6. In addition, condition 5 of appeal A, and condition 4 of appeal B are similar in that they both remove the permitted development rights normally given to householders in order to prevent any external changes to the buildings without first obtaining express permission from the Council. This is based on the impact to the character and appearance of the area, but in addition there is reference to safeguarding residential amenity in the reasons for the respective conditions.
7. Condition 7 of appeal A duplicates condition 6, and both are pre-commencement conditions that require a written scheme of investigation in relation to the archaeology at the appeal site. Condition 5 of appeal B is similarly worded with condition 6 requiring development to proceed in accordance with an approved written scheme of investigation and preventing occupation of the development until the agreed programme has been carried out. The reason given for all these conditions is similar and refers to the need to record archaeological evidence at the appeal site.
8. Conditions 6 and 7 of appeal A and condition 5 of appeal B meet the definition of pre-commencement conditions¹, and as such would need to have been agreed in writing with the appellant prior to their imposition in order to meet the requirements of section 100ZA(5) of the Town and Country Planning Act 1990 (as amended). As I have not seen evidence of the written agreement of the appellant to these conditions, I have taken this into account in my determination.
9. Condition 8 of appeal A and condition 7 of appeal B both list the approved plans. However, there were some discrepancies in relation to the plans submitted with the appeal with those listed on the original decision notices. I have subsequently been provided with EB97(-)01 Revision A, February 2019 in relation to appeal B, which only differs from the submitted plan EB97(-)01, May 2018 in relation to annotations regarding the boundary treatment. Correspondence also revealed an error in the plan list in condition 8 of appeal A. This is not a matter of dispute between the parties, and therefore, in my decision above I have amended the typographical error in relation to the plan list in condition 8 of appeal A.

Main Issues

10. The main issues are:

¹ Section 100ZA(8) Town and Country Planning Act 1990

- Whether conditions 2 and 5 of appeal proposal A, and conditions 2 and 4 of appeal proposal B are reasonable or necessary in relation to the impact of the proposals on the character and appearance of the area having particular regard to the Aldbury Conservation Area (CA) and the Chilterns Area of Outstanding Natural Beauty (AONB).
- Whether conditions 6 and 7 of appeal proposal A, and conditions 5 and 6 of appeal proposal B are reasonable or necessary in relation to the effect of the proposals on the historic environment.
- Whether condition 5 of appeal proposal A, and condition 4 of appeal proposal B are reasonable or necessary in relation to the impact of the proposals on the living conditions of neighbouring occupiers.

Reasons

Character and appearance

11. The CA covers a large part of the village, and its significance lies in part in the way the many vernacular buildings and spaces it contains reflect the evolution and growth of the settlement over many years. A further important aspect of its significance, given its position at the scarp foot of the Chilterns, is its relationship with the quality of the surrounding landscape which is designated as an AONB. The appeal site lies towards the northern end of the CA behind a terrace of locally listed cottages dating from approximately 1800 and forms part of the garden of 32 Stocks Road. The informal nature, and rural character of the grounds of the cottage positively contributes towards the rural character and appearance of the CA. However, the relatively poor condition and corrugated sheeting of the detached garage presently on site detracts from its appearance.
12. The submitted plans for appeal A indicate that the proposed replacement garage would be constructed from tongue and groove shiplap timber with mineral felt roofing². The annex in appeal B is shown as having stained vertical feather boarding with a slate roof³. The Aldbury Conservation Area, Character Appraisal and Management Proposals document published in 2008 states '*The character of Aldbury conservation area owes much to the use of local materials in the construction of its historic buildings and minor structures such as outhouses, stables and boundary walls. The palette of materials is typical of the Chilterns – timber and clay pre-dominate. Timber frames utilise oak, sometimes elm. Outbuildings are often clad with tarred weatherboarding.*'
13. Paragraph 55 of the National Planning Policy Framework (the Framework) advises that planning conditions should be kept to a minimum and only imposed, amongst other matters, when they are necessary and reasonable in all other respects. Planning Practice Guidance (PPG) suggests that the tests should be applied rigorously. As such, there should be a definite planning reason in order for a condition to meet the test of necessity.
14. Accordingly, mindful of the statutory duty in section 72 of the Planning (Listed Building and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA

² Drawing EB97(--)/03 December 2018

³ Drawing EB97(--)/03 May 2018

this would justify a degree of control over the nature and the quality of the materials to be used in the appeal proposals.

15. However, this should be proportionate thereby reflecting the ancillary nature of the outbuildings proposed. Although the appellant does not expressly object to the specified horizontal cladding, he indicates that he would prefer more choice regarding the nature and colour of the finish but does not specify this further. He further has concerns regarding the cost of timber roofing shingles in relation to appeal proposal A and indicates a desire to move away from the slate shown for proposal B.
16. In the context of a modern outbuilding, although I note the expressed preference from the Conservation and Design team for dark stained horizontal weatherboarding, I have not seen evidence as to why the materials specified in condition 2 of appeal proposal A, and condition 2 of appeal proposal B are the only materials capable of preserving or enhancing the character and appearance of the CA. Moreover, the conservation area appraisal document goes on to describe the variety of materials in evidence in the CA in greater detail, but no express mention is made of timber shingles for the roof form.
17. My observations of the area revealed that there are a variety of materials used for domestic outbuildings within the vicinity of the appeal site that reasonably preserved the rural character of the CA. In particular, I noted a conventional modern timber outbuilding with felt roofing at the rear of 36 Stocks Road close to the appeal site. I further observed the sage coloured shed at 28 Stocks Road to which I was referred⁴. Furthermore, this is in a more prominent location than the appeal site as it is nearer to Stocks Road towards the front of the terraced cottages.
18. Whilst some representations have highlighted the required materials for Stocks Golf Clubhouse as a notable example, no specific details were given. Even so, Stocks Golf Club is some distance from the appeal site outside of the settlement, and therefore within a different context and would have been unlikely to concern domestic outbuildings. As such, this is of limited weight to the specific cases before me.
19. Therefore, based on the evidence presented and my own observations, although I do not consider that it is shown that corrugated sheeting would be sympathetic, it is likely that there are a number of other materials that would be in keeping with the character of the area, CA and AONB, that may also range in cost.
20. Accordingly, the conditions are more prescriptive than they need to be in order to achieve the objective. A variation to the wording of the conditions requiring the detailed finishes to be agreed with the Council would strike a reasonable balance between allowing a greater choice for the appellant, whilst ensuring the impact to the character and appearance of the area was appropriate.
21. Condition 5 of appeal proposal A, and condition 4 of appeal proposal B effectively remove all permitted development rights relating to the respective outbuildings and would prevent any future changes to their external appearance. The PPG states that the blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application

⁴ Appellant statement refers to application 4/00391/19/RE

- for planning permission are unlikely to meet the tests of reasonableness and necessity. Furthermore, if used, the scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order), so that it is clear exactly which rights have been limited or withdrawn.
22. The Order makes specific provision in relation to conservation areas and Areas of Outstanding Natural Beauty and defines them as Article 2(3) land. In such areas, the permitted development rights for householders have additional restrictions in order to take account of the sensitivity and significance of the character and appearance of those areas. Accordingly, as the Order has already taken account of these factors it would only be in exceptional circumstances that further restrictions would be justified on the basis of a site being within a conservation area or AONB.
23. I have not seen evidence of exceptional circumstances in this case that would warrant additional controls to the permitted development rights normally given to householders. Moreover, the scope of the control is particularly wide as it would prevent any external changes to the outbuildings proposed. Therefore, the wording of condition 5 for appeal A and condition 4 for appeal B would fail the tests of necessity and reasonableness.
24. Accordingly, I find that the wording of conditions 2 and 5 of appeal proposal A, and conditions 2 and 4 of appeal proposal B go further than is necessary to protect the character and appearance of the area having particular regard to the CA and the AONB. Revisions to condition 2 of both appeals would provide sufficient safeguards to ensure the proposals comply with policies CS11, CS12, CS24, CS25 and CS27 of the Dacorum Borough Council, Core Strategy 2006-2031, September 2013 (CS). These policies contain objectives, amongst other matters, that combine to ensure a high quality of design that protects or enhances the character of the local area including the significance of conservation areas and the AONB.

Historic environment

25. The area is located within an identified Area of Archaeological Significance within the development plan where there has been a notable degree of archaeological interest and reference is made to a Late Iron Age Cemetery excavation in 1943 within 100 metres of the site⁵. Accordingly, it is appropriate to consider what the archaeological significance of the appeal site is likely to be, and whether the development proposals would be likely to result in harm to archaeological remains.
26. In this case each appeal proposal concerns a modest domestic outbuilding to be located within an established residential plot that would replace existing relatively modern outbuildings. A written scheme of investigation would require establishing a programme and methodology including a programme for post investigation assessment, provision for analysis and recording and the publication and dissemination of the analysis including appointing a competent person or organisation to undertake the works. This would require a degree of rigour, time and cost that would be considerably greater than would normally be involved for a householder erecting an outbuilding within their garden. It follows that in order to be proportionate and therefore, reasonable, it would

⁵ Hertfordshire County Council, Historic Environment Comments

- need to be based on a significant likelihood of the archaeological potential of the site.
27. The respective application forms indicate that the outbuilding in appeal A would have a footprint of approximately 28 sqm, whereas this would be 35 sqm in relation to appeal B. Both proposals concern relatively lightweight timber framed buildings that would be placed on a concrete pad in a location that would partly lie over the position of current outbuildings. It follows that the extent of works necessary to erect the proposed outbuildings are unlikely to cause significant additional ground disturbance.
28. Although the imposition of similar conditions on development in the area may be relatively commonplace, the tests referred to in the Framework should be applied to the specific circumstances of the case. Based on the limited evidence before me, I am not assured that it is shown that the limited area of the appeal site is significantly likely to have archaeological potential, nor that the nature of the works is likely to be harmful to archaeological remains. As such, the burden upon the appellant to prepare, agree and carry out a written scheme of archaeological investigation would be disproportionate to the nature and scale of development in each instance.
29. Therefore, the duplicate conditions 6 and 7 for appeal A and condition 5 of appeal B that require such a written scheme of investigation would fail the test of reasonableness. It further follows that condition 6 of appeal B that broadly requires the implementation of the scheme of investigation would also be unreasonable.
30. Furthermore, condition 6 of appeal B expressly refers to the occupancy of the approved building being dependent upon compliance with the details "approved under condition 7" as well as the programme of works "approved under condition 10" of the same consent. However, condition 7 does not pertain to a written scheme of investigation and condition 10 does not exist. Given that there are 2 references to details approved under other conditions which are either not relevant or do not exist and no reference to condition 5, which does require the written scheme of investigation, it is not sufficiently clear what must be done in order to comply with condition 6. On this basis, condition 6 fails the test of precision.
31. In addition, duplicate conditions 6 and 7 for appeal A and condition 5 of appeal B are pre-commencement conditions that require a written scheme of investigation to be agreed in writing prior to development taking place. The PPG advises that such pre-commencement conditions should only be used where they are so fundamental to the development permitted it would have been otherwise necessary to refuse the whole permission. This is a particularly high threshold, reinforced by the need to agree such conditions in writing with an applicant prior to imposing them.
32. In view of the modest nature of the works, I am not assured that the written scheme of investigation is so fundamental in either case that it would have been otherwise necessary to refuse the permission. Therefore, the imposition of the respective conditions, would conflict with the advice in the PPG.
33. Accordingly, I find that conditions 6 and 7 of appeal proposal A, and conditions 5 and 6 of appeal proposal B do not pass the requisite tests for conditions set out in paragraph 55 of the Framework. Therefore, omitting the conditions

would not conflict with policy CS27 of the CS which, amongst other matters, requires that features of known or potential archaeological interest will be surveyed, recorded and wherever possible retained.

Living conditions

34. The reasons given for condition 5 of appeal proposal A, and condition 4 of appeal proposal B also refer to safeguarding the residential amenity of the locality. As previously highlighted, national guidance suggests that the blanket removal of freedoms to carry out small scale domestic alterations that would not normally require planning permission is unlikely to meet the tests of necessity or reasonableness. This reflects that in the drafting of permitted development rights, account has been taken of the likely impact to the living conditions of those living nearby.
35. The single storey proposed outbuilding in each case would be located separately, and some distance from, the nearest occupiers at Hope Cottage and Foxwood. As such there is little basis to suppose that minor permitted changes to the external appearance of either appeal proposal would be likely to be harmful to the privacy or outlook of the occupants of the nearest dwellings or any other residential occupiers close by.
36. Accordingly, the evidence does not indicate that condition 5 of appeal proposal A or condition 4 of appeal proposal B are necessary in order to safeguard the effect of the proposals on the living conditions of neighbouring occupiers. As such, they are not required in order for either proposal to comply with policy CS12 of the CS, which amongst other matters, requires development to avoid visual intrusion and loss of privacy to the surrounding properties.

Other Matters

37. I have had regard to the representations received from some local residents raising additional concerns regarding the possible future intended use of the developments and extent of the ownership of the appeal site. Ownership issues are a private matter between the relevant parties and not within my jurisdiction. In any event, the grant of planning permission would not override private rights of access or ownership.
38. Furthermore, condition 3 on both permissions restricts the use of the respective development to being used for purposes incidental to the enjoyment of the main dwelling at 32 Stocks Road. In the event of a breach of the authorised use of either development proposal, it would be open to the Council to take enforcement measures. As such, general concerns regarding the potential for future breaches of planning control would not justify conditions that would not meet the tests in the Framework.
39. Some concerns are raised regarding the accuracy and clarity of the submitted plans. However, they were sufficiently informative, in addition to my own observations on site, for me to determine the merits of the proposals.

Conclusion

40. For the reasons given above I conclude that both appeals should succeed. I will vary the respective planning permissions by deleting the disputed conditions and in the case of condition 2 in both cases, substitute them with revised wording. In addition, due to the discrepancy in the plans listed I will delete condition 8 of proposal A and replace it a condition which reflects the plans submitted.

Helen O'Connor

Inspector