



Appeal Decision

Site visit made on 2 December 2019 by S Watson BA(Hons) MSc

Decision by K Taylor BSc (Hons) PGDip MRTPI

An Inspector appointed by the Secretary of State

Decision date: 2nd March 2020

Appeal Ref: APP/A1910/W/19/3236036

Greymantle, Hempstead Road, Bovingdon HP3 0HF

- 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 Ben Sterling against the decision of Dacorum Borough Council.
- The application Ref 4/00525/19/FUL, dated 6 March 2019, was approved on 1 May 2019 and planning permission was granted subject to conditions.
- The development permitted is demolition of existing garage and side/rear extensions and construction of two-storey side extension and part single, part two-storey rear extension; conversion from single dwelling into pair of semi-detached properties (total 2 units).
- The conditions in dispute are Nos 4, 6, 8 and 9 which state that:
- *4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) (Order) 2015 as amended (or any Order amending or re-enacting that Order with or without modification) no development within Schedule 2, Part 1, Classes A and B shall take place to the new dwelling hereby approved or within its curtilage.*
- *6. All planting, seeding or turfing and soil preparation comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following first occupation of the building; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written approval to any variation. All landscape works shall be carried out in accordance with the guidance contained in British Standards unless otherwise agreed in writing by the Local Planning Authority.*
- *8. The first-floor flank windows facing Parkhurst and Ivydene, as annotated on drawing 'PE2 - Proposed Elevations', shall be permanently fitted with obscured glass up to 1.7m above floor level.*
- *9. Should any ground contamination be encountered during the construction of the development hereby approved (including groundworks), works shall be temporarily suspended, unless otherwise agreed in writing by the Local Planning Authority, and a Contamination Remediation Scheme shall be submitted to (as soon as practically possible) and approved in writing by, the Local Planning Authority. The Contamination Remediation Scheme shall detail all measures required to render this contamination harmless and all approved measures shall subsequently be fully implemented prior to the first occupation of the development hereby approved. Should no ground contamination be encountered or suspected upon the completion of the groundworks, a statement to that effect shall be submitted in writing to the Local Planning Authority prior to the first occupation of the development hereby approved.*
- The reasons given for the conditions are:
- *4. To enable the local planning authority to retain control over the development in the interests of safeguarding visual and residential amenity, in accordance with Policy CS12 of the Dacorum Borough Core Strategy 2013.*

- 6. To ensure proper implementation of the agreed landscape details in the interest of the amenity value of the development in accordance with Policies 99 and 100 of the *Dacorum Borough Local Plan 2004*.
 - 8. In the interests of the residential amenities of the occupants of the adjacent dwellings in accordance with Policy CS12 (c) of the *Dacorum Borough Core Strategy 2013* and Paragraph 127 (f) of the *National Planning Policy Framework 2019*.
 - 9. To ensure that the issue of contamination is adequately addressed and to ensure a satisfactory development, in accordance with *Core Strategy (2013) Policy CS32*. The safe and secure occupancy of the site, in respect of land contamination, lies with the developer.
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Decision

- 1) The appeal is allowed and the planning permission Ref 4/00525/19/FUL for demolition of existing garage and side/rear extensions and construction of two-storey side extension and part single, part two-storey rear extension; conversion from single dwelling into pair of semi-detached properties (total 2 units) at Greymantle, Hempstead Road, Bovingdon HP3 0HF granted on 1 May 2019 by Dacorum Borough Council is varied by deleting conditions 4, 6, 8 and 9 and substituting them with the following conditions:
 - 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) (Order) 2015 as amended (or any Order amending or re-enacting that Order with or without modification) no development within Schedule 2, Part 1, Class B shall take place on the new south-western (side) roof slope, of the south-western, dwelling hereby approved.
 - 2) Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All landscape works shall be carried out in accordance with the guidance contained in British Standards.
 - 3) The first- floor flank window facing Parkhurst, as annotated on drawing 'PE2 – Proposed Elevations', shall be permanently fitted with obscured glazing up to 1.7m above the finished floor level of the room it serves.

Application for Costs

1. An application for costs was made by Ben Sterling against Dacorum Borough Council. This application is the subject of a separate decision.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matter

3. Although Policies CS12 and CS32 of the *Core Strategy (CS)* and Policies 99 and 100 of the *Dacorum Borough Local Plan (DBLP)* have been referred to by the Council in their reasons for attaching conditions 4, 6, 8 and 9, I have not been provided with copies of Policies CS32 of the DBCS or 99 and 100 of the DBLP. I

have therefore reverted to the *National Planning Policy Framework* (the Framework) where necessary.

Main Issues

4. The main issues in this case are:

- whether disputed condition 4 is necessary and reasonable having regard to the effect of the development on the character and appearance of the area and the living conditions of the occupiers of neighbouring properties and future occupiers of the appeal site;
- whether disputed condition 6 is necessary and reasonable having regard to the effect of the development on the character and appearance of the area;
- whether disputed condition 8 is reasonable and necessary having regard to the effect of the development on the living conditions of the occupiers of the adjoining neighbouring properties; and
- whether disputed condition 9 is reasonable and necessary having regard to the ground conditions of the site and any risks arising from contamination.

Reasons for the Recommendation

5. The appeal site is set on the north-west side of Hempstead Road. The dwellings on the road are varied although are primarily semi-detached with side facing gables. Greymantle is a detached dwelling set back from the road which, due to its L-shaped form, has a hipped roof on the south-west side. To the north-east side of the house is an attached garage. At the rear of the site is a sizeable garden which extends behind Ivydene and Rose Cottage, the neighbours to the north-east of the site.
6. The development would subdivide the existing dwelling resulting in two semi-detached dwellings. A space would be maintained at the boundary with the existing neighbouring properties which are both semi-detached.

Condition 4

7. Regarding extensions which would be permitted under Class A of the GPDO¹ I note that the Council, in their determination of the planning application, were content with the size of the gardens proposed regarding the impact of the proposed development on the character and appearance of the area, and the living conditions of future and neighbouring occupiers. I have no reason to find differently in this regard.
8. Whilst an extension permitted under Class A would increase the built form of the dwellings, I observed that side and rear extensions are a feature of the area. Moreover, I am satisfied that sufficient garden area would remain in the event that the intended future occupiers of the new dwellings exercised their permitted rights in respect of Class A. Harm to the character and appearance of the host dwellings and the surrounding area would be unlikely to result if these PD rights were exercised.
9. It has not been put to me how development under Class A could affect the living conditions of neighbouring properties and I consider that this would be

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

- unlikely, due to the scope of development permitted under Class A and the relationship of the surrounding dwellings. In the event that one of the larger extensions permitted by Class A was proposed, the Council would have the opportunity, under the prior approval scheme, to assess the impact of the proposed development on the amenity of any adjoining neighbours.
10. Moreover, I note that permitted development rights under Class E of the GPDO have not been removed and I consider an outbuilding erected in the garden of one of the proposed dwellings would have as much potential to reduce the respective garden or affect neighbouring occupiers as an extension carried out under Class A.
 11. Class B of the GPDO permits the enlargement of a dwelling consisting of additions or alterations to its roof. The approved two-storey extension on the south-west side would create a side facing roof slope, this would allow for a side facing dormer to be erected under Class B, where one would not have previously been possible. Although Parkhurst, the neighbouring dwelling, has a number of forward-facing dormers, a side facing addition would introduce an uncharacteristic roof form which would not reflect the character and appearance of the area and would therefore result in harm. It has not been sufficiently justified for me to remove permitted development rights for Class B development on the north-east side of the property, as a side dormer could already be erected here.
 12. However, I find that by reason of their siting in relation to the neighbouring properties it would be unlikely for there to be harm to the living conditions of the occupiers at either of the new dwellings, or Parkhurst and Ivydene. Moreover, the outlook from, and light to, the upper-floor side window serving Parkhurst is likely to be already limited. In view of the approved extension to the south-west side of the appeal building it is unlikely that a side dormer would significantly increase any impact on Parkhurst to such an extent as to make the room the window serves a less pleasant place to use.
 13. As such I consider that a clear justification, on character and appearance or living condition grounds, for the removal of permitted development rights under Class A has not been provided in accordance with Paragraph 53 of the National Planning Policy Framework (the Framework). As such this part of condition 4 is not necessary. However, for the reasons set out above, the control of roof extensions and additions on the extended roof, as permitted under Class B, is necessary in the interests of the character and appearance of the area in accordance with Policy CS12 of the CS which requires development to integrate with the streetscape character.

Condition 6

14. Condition 6 primarily supports condition 5 which requires the submission, and carrying out, of a landscaping plan, while No 6 ensures that, for five years following the completion of the development, any plants or trees that die, are removed, or become seriously damaged or diseased shall be replaced. The appellant has not sought for the removal of No 5, to my mind this indicates that the appellant agrees that a landscaping scheme is required. Without No 6, the mitigation secured by the condition would be negated as it could not be guaranteed that the landscaping scheme would be retained for a reasonable period of time. As such, and subject to the changes suggested in the following paragraph, No 6 is necessary and should be retained.

15. I note that there is some duplication between conditions 5 and 6, with both having a requirement for when the landscaping scheme should be carried out. Given that condition 5 already sets a timeframe for carrying out the landscaping it would be unnecessary for condition 6 to also include a similar requirement.
16. In light of the above, although there is some duplication between conditions 5 and 6, for the reasons identified above the maintenance of the landscaping area would be necessary. This would be in the interest of the character and appearance of the site and surroundings, in accordance with Paragraph 127(b) of The Framework which seeks effective landscaping.

Condition 8

17. From my site visit, and the evidence before me, I note that the first-floor side window facing Ivydene is, as existing, clear glazed and openable. Mutual overlooking would, therefore, already exist. The room would remain a bathroom and the size and position of the window would not be altered. The proposal would therefore not affect the existing situation. Nevertheless, the window serves a bathroom where mutual privacy would likely be desirable for all parties, I find it would be unlikely for the half-height obscured glazing shown on the submitted plans, to not therefore be installed, irrespective of this condition being attached. Moreover, for these reasons I find it would not be necessary for the level of obscuration to be controlled, or for the window's opening to be restricted by condition.
18. I acknowledge that the Inspector dealing with a previous appeal² at the site, for a similar scheme, found that the change of the first-floor bathroom to a bedroom would cause a loss of privacy for the occupiers of Ivydene. However, the current proposal does not propose changes to the use of the bathroom and therefore this is a materially different situation.
19. I consider that it would be desirable that the proposed window facing Parkhurst would provide privacy for future occupiers, and that as such the obscured glazing would be unlikely to be insufficient to prevent a suitable level of privacy. Moreover, as the window would be located opposite a blank wall and roof, it is unlikely that being able to open the window would unacceptably affect the privacy of either the neighbouring or future occupiers.
20. The installation of new windows on residential properties is controlled by the GPDO under condition A.3b of Class A. No clear justification has been provided to demonstrate why this would not be sufficient to protect the living conditions of neighbouring occupiers. I therefore find it would not be necessary to attach a condition restricting windows on the first-floor side walls of the proposed dwellings.
21. As such I consider that, given that no changes are proposed to the location of the bathroom or the size and position of the window facing Ivydene, it is unnecessary for condition 8 to include restrictions regarding this window. However, it would be necessary and reasonable for the condition to be replaced with one restricting the proposed bathroom window facing Parkhurst, given this would be a new window in this location, in order to protect the living conditions

² APP/A1910/W/18/3211726

of the neighbouring occupiers in accordance with Policy CS12 of the CS and Paragraph 127(f) of the Framework.

Condition 9

22. Although the Council's evidence states that they have received comments from their environmental team, neither these nor the location of the possible contaminated sites have been submitted with their appeal statement. I understand from the appellant's statement that the Council consider a, now redeveloped, petrol station set some distance away to be a possible source of contamination for the site.
23. I have not been provided with, or directed to, any substantive evidence as to the source of possible contamination, and as such I consider that the likelihood of such contamination is very low. I therefore find that any additional risk as a result of the proposal would be limited, especially as the existing use is already residential.
24. Concerns regarding asbestos within some parts of the building to be demolished have been raised, with a request to add a requirement to condition 9, for this to be assessed and appropriate action to be taken. However, such matters are dealt with by other legislation, outside of the planning system, and it would not therefore be necessary for this to be included within condition 9.
25. Therefore, although the condition is not overly onerous on the appellant, it would be unnecessary in order for the development to comply with Paragraph 178(a) of the Framework which seeks development to take account of ground conditions and where necessary undertake remedial action.

Other Matters

26. I have had regard to the various other concerns raised by interested parties, including the accuracy of the plans, quality of the development including future development, health and safety, disturbances and highway safety. However, I am satisfied that these are principally issues concerned with the grant of planning permission for the development and they have not, therefore had a significant bearing on my decision-making in this instance.
27. A condition requiring a construction management plan has been requested. However, given the limited scale of the development, access to the site, and controls to building works outside of the planning system, I find that this would be unnecessary in this instance.

Recommendation

28. For the reasons given above, and having regard to all other matters raised, I recommend that the appeal should be allowed in so far as the removal of condition 9, which I consider to not be reasonable and necessary, the replacement of conditions 4 and 6 with conditions better suited to protecting the character and appearance of the site and its surroundings, and the replacement of condition 8 with one which is more reasonable in its protection of neighbouring living conditions.

S Watson

APPEAL PLANNING OFFICER

Inspector's Decision

29. I have considered all the submitted evidence and the Appeal Planning Officer's report and concur that the appeal should be allowed

K Taylor

INSPECTOR