



Appeal Decision

Site visit made on 12 October 2020

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2020

Appeal Ref: APP/Y9507/W/20/3249097

Danesfield, The Street, Upper Farringdon, Alton GU34 3DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr M Burnett against the decision of South Downs National Park Authority.
 - The application Ref SDNP/19/05956/FUL, dated 11 December 2019, was approved on 12 February 2020 and planning permission was granted subject to conditions.
 - The development permitted is 'Demolition of Danesfield and attached garage and the erection of a replacement four bed detached dwelling, with attached garage and carport'.
 - The conditions in dispute are Nos 3, 6, 8, 9, 10, 11 and 12 which are set out in Annex A.
 - The reasons given for the conditions are set out in Annex A.
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Decision

1. The appeal is allowed and the planning permission Ref SDNP/19/05956/FUL for 'demolition of Danesfield and attached garage and the erection of a replacement four bed detached dwelling, with attached garage and carport' at Danesfield, The Street, Upper Farringdon, Alton GU34 3DT, granted on 12 February 2020 by the South Downs National Park Authority, is **varied** by deleting conditions 3, 6, 8, 9, 10, 11, 12, and substituting for them the conditions set out at Schedule 1 of this Decision.

Application for costs

2. An application for costs was made by Mr M Burnett against South Downs National Park Authority. This application is the subject of a separate Decision.

Background and Main Issue

3. Following an allowed appeal¹ to extend the existing property, the Authority granted planning permission for the demolition of the appellant's property and the construction of a replacement dwelling, subject to various conditions. The appellant is contesting the imposition of seven of these conditions on the grounds that they do not meet the six tests detailed in paragraph 55 of the National Planning Policy Framework (the Framework).
4. The main issue is therefore whether the conditions in dispute are necessary, relevant to planning and the development, enforceable, precise and reasonable in all respects, with specific reference to the character and appearance of the

¹ APP/Y9507/W/19/3225234.

area, trees protected by a Tree Preservation Order, the living conditions of neighbouring residents, highway safety and climate change.

Reasons

5. The appeal site currently comprises a two-storey dwelling, with an attached garage, set within a spacious and verdant plot which contributes to the landscape character of the Upper Farringdon Conservation Area and the South Downs National Park. The property is to some extent screened by mature landscaping along the road frontage.

Condition 3 – Removal of permitted development rights

6. Paragraph 53 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Furthermore, the national Planning Practice Guidance [Paragraph: 017 Reference ID: 21a-017-20190723] adds that such conditions may not pass the test of reasonableness and necessity, and their scope therefore needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order).
7. The wording of condition 3 restricts the future use of permitted development rights in respect of Classes A (enlargement, improvement or other alteration of a dwellinghouse), B (additions etc to the roof of a dwellinghouse), C (other alterations to the roof of a dwellinghouse) and E (buildings etc incidental to the enjoyment of a dwellinghouse) and I am therefore satisfied that the condition would not constitute a blanket removal of freedoms to carry out all types of householder extensions and alterations. Notwithstanding this, Class B does not apply to dwellinghouses on article 2(3) land, which includes conservation areas and National Parks. Consequently, this part of the condition is unnecessary and shall therefore be removed.
8. The Authority's justification in respect of this particular condition relies firstly on the objective to reduce the loss of small homes in the National Park, as notably detailed within Policy SD30 of the South Downs National Park Local Plan² (LP), which deals specifically with replacement dwellings. The term 'small home' is not clearly explained within the supporting text or the wording of Policy SD30. However it is defined, within the supporting text to LP Policy SD31 as a property having a total Gross Internal Area of 120 square metres or less. The appellant's submissions indicate that the existing property is 216 square metres and the new house would be approximately 261 square metres. The replacement dwelling would not therefore constitute a small home, and the restriction of permitted development rights is not in this instance justified by the aim to protect the stock of small dwellings.
9. However, it is of note that by removing some permitted development rights, the Authority also seeks to protect the rural character and landscape of the Upper Farringdon Conservation Area. Whilst Class A of the Order restricts the erection of side extensions within conservation areas for example, a large single storey addition could be built to the rear of the newly constructed dwelling using permitted development rights. In the same manner, outbuildings could be constructed under Class E. Whilst there are restrictions in respect of

² Adopted 2 July 2019.

the erection of buildings on article 2(3) land, there is however no control over external materials for example.

10. Class C allows for any other alteration to the roof of a dwellinghouse not covered by Class B, provided that it would not protrude more than 0.15 metres beyond the plane of the slope of the original roof. This applies largely to rooflights, and although these may constitute fairly minor alterations, they can have an important impact on the character and appearance of buildings. The rooflights to the front elevation will be heritage style, whilst others to the rear of the property will be of a more modern design.
11. Any further rooflights erected under Class C could adversely affect the overall design approach of the development. I consider that it is necessary to withdraw permitted development rights for other alterations to the roof of the property to ensure that the effect of any future development upon the host building, the Conservation Area and the National Park can be assessed by the Authority.
12. By reason of the site's sensitive context and nature of the scheme, there is clear justification to restrict permitted development rights under Schedule 2, Part 1, Classes A, C and E of the Order, to ensure that the Authority can assess the effect of subsequent proposals upon the Conservation Area, but also the National Park, against the requirements of LP Policies SD04, SD05 and SD15. These policies seek to ensure that development proposals adopt a landscape-led approach, whilst preserving or enhancing the character or appearance of the conservation area.

Condition 6 – Tree protection measures

13. Condition 6 seeks to make sure that the development is implemented in accordance with the approved Arboricultural Method Statement (AMS) and Tree Protection Plan. Additionally, it emphasises the need to route all services outside of the Root Protection Areas of the Beech and Cypress trees situated to the front of the site, to ensure that no harm is caused to these specimens. This is considered necessary, particularly by reason of the provisions of the AMS in that particular regard.
14. The condition also requires evidence of the supervision and monitoring of the tree protection measures throughout the construction phase to be submitted to and approved by the Local Planning Authority prior to occupation of the development. I am however concerned that the wording of this part of the condition is not sufficiently precise.
15. Provided that the protection, supervision and monitoring measures, as detailed within the approved AMS, are duly followed throughout the development works, I am satisfied that the trees would be adequately protected. The wording of the condition shall therefore be amended to ensure that it meets the statutory tests and the requirements of LP Policies SD4, SD5 and SD11, which notably seek to protect trees and the wider landscape character of the area.

Condition 8 – Parking provision

16. Condition 8 refers to the plan approved for the previous scheme which was allowed on appeal, and the Authority accept that this was a drafting error. The wording of the condition also requires parking spaces to be marked out. However, like the previous Inspector, I find that such a requirement would be

unnecessary, particularly as the scheme subject to this appeal is for a single dwelling.

17. Condition 8 should be amended, using a similar wording to the previous Inspector, which is agreeable to the main parties. The condition shall also require the spaces to be kept available at all times for the parking of vehicles to ensure that it remains enforceable. With these amendments, I am satisfied that the condition meets the six tests set out in paragraph 55 of the Framework, and that the scheme as a whole would comply with LP Policy SD22, which notably requires an appropriate level of vehicle parking to be provided as part of new developments.

Condition 9 – Rooflights

18. Condition 9 requires the rooflights on the eastern elevation to be positioned so that the cill would be set at least 1.7 metres above internal floor level, to preserve the living conditions of the occupiers of the neighbouring property. However, the approved plans (MB-00-XX-DR-K-104 Rev A) include a section, which clearly shows that the position of these rooflights would accord with this requirement.
19. Condition 9 is therefore not considered necessary to protect the privacy of neighbouring residents, and shall therefore be removed. Despite this, the development would meet the aims of LP Policy SD05, which, amongst other things, requires development proposals to have regard to avoiding harmful impact upon surrounding amenities.

Condition 10 – Hard and soft landscaping scheme

20. The appellant has drawn my attention to the previous appeal decision, where the Inspector considered that the imposition of landscaping conditions was not necessary, given the maturity of boundary planting and the provisions of the tree protection plan. However, this was in respect of a proposal for extensions to the existing dwelling. The scheme subject to this appeal relates to the redevelopment of the site and would require some form of landscaping following the construction of the new dwelling, to preserve the verdant character and appearance of the area.
21. The condition serves a clear planning purpose and is therefore relevant to the development, setting out a mechanism to assess whether it has been complied with, notably regarding timescales, something that would not be secured by condition 2. For these reasons, condition 10 should be retained in the interests of the character and appearance of the area, and to ensure compliance with LP Policies SD4, SD5 and SD11. I am satisfied that condition 10 meets the six tests set out in paragraph 55 of the Framework.

Conditions 11 and 12 – Energy and water consumption

22. Conditions 11 and 12 require measures to be incorporated in the construction of the replacement dwelling, to ensure that at least 19% of the energy demand comes from decentralised and renewable or low carbon energy sources, and that the water consumption per person per day does not exceed 110 litres. The appellant argues that conditions requiring compliance with other regulatory regimes fail to meet the test of necessity and may not be relevant to planning.

23. However, as notably detailed within the national Planning Practice Guidance³, the Framework's policies expect Local Planning Authorities to adopt proactive strategies to adapt to climate change. LP Policy SD48 sets out clear requirements to incorporate sustainable design features as part of new development and achieve the minimum standards set out in conditions 11 and 12.
24. These conditions do not require compliance with other regulatory regimes, as they are more onerous than current mandatory Building Regulations (of 125 litres/person/day), and are incorporated within the development plan. Policy SD48 applies to all development proposals, and there is no exemption in respect of replacement dwellings.
25. In the absence of substantive evidence to demonstrate that it would not be technically feasible to meet these standards or that it would render the scheme unviable, I conclude that these conditions are necessary to ensure that the development accords with LP Policy SD48, and meet the statutory tests.

Conclusion

26. For the reasons detailed above, I conclude that the appeal should be allowed, subject to the conditions set out in Schedule 1.

S Edwards

INSPECTOR

³ Paragraph: 013 Reference ID: 56-013-20150327.

ANNEX A

- Condition 3: *'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order, 2015 (or any Order revoking, re-enacting or modifying that Order) no extensions or outbuildings otherwise permitted under Schedule 2, Part 1, Classes A, B, C, or E of said Order shall be carried out on the dwellinghouse or within its curtilage without the prior written consent of the Local Planning Authority'.*

The reason given for Condition 3 is: *'The Local Planning Authority seeks to retain a range of dwellings, and therefore wishes to control any further alterations or extensions'.*

- Condition 6: *'All work to be carried out in accordance with the approved Arboricultural Method Statement AIA/AMS-KC/DANESFIELD/001 dated November 2019 (excluding sections 100 to 105), and Tree Protection Plan TPP-KC/DANESFIELD/001 Rev A, unless otherwise agreed in writing by the Local Planning Authority.
Prior to occupation of the development satisfactory written and photographic evidence of contemporaneous supervision and monitoring of the tree protection measures stipulated in the above documents, throughout construction, by a suitably qualified and pre-appointed tree specialist shall be submitted to and approved in writing by the Local Planning Authority.
All services must be routed outside of the Root Protection Areas of the Beech and Cypress at the front of the site (T1 and T2 on the Tree Protection Plan). If any services are required to be routed through the Root Protection Areas of these trees a separate Arboricultural Method Statement and Tree Protection Plan shall be submitted to and approved in writing by the Local Planning Authority. The works shall then be strictly carried out in accordance with the approved details'.*

The reason given for Condition 6 is: *'To ensure that the trees on and around the site are adequately protected from damage to their health and/or amenity value'.*

- Condition 8: *'The development hereby permitted shall not be brought into use until the areas shown on the approved site plan (MB-00-XX-DR-K-005 Rev A) for the parking of vehicles (including the garage and car port) and turning area shall have been made available, surfaced and marked out. The parking areas shall then be permanently retained and reserved for that purpose at all times'.*

The reason given for Condition 8 is: *'To make provision for off street parking for the purpose of highway safety'.*

- Condition 9: *'Notwithstanding any indication shown on the approved plans and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order) prior to the first occupation of the development hereby approved the rooflight windows hereby permitted on the eastern elevation shall be constructed, in accordance with the submitted plans, with a sill height of not less than 1.7 metres above internal floor height, and shall be subsequently be retained in that condition'.*

The reason given for Condition 9 is: *'To protect the privacy of the occupants of the adjoining residential property'.*

- Condition 10: *'The development hereby approved shall not be first brought into use until a fully detailed hard and soft landscape and planting scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details and in accordance with the recommendations of the appropriate British Standards or other recognised codes of good practice. These works shall be carried out in the first planting season after practical completion or first occupation of the development, whichever is earlier, unless otherwise first agreed in writing by the Local Planning Authority. Any trees or plants which, within a period of 5 years after planting, are removed, die or become seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others or species, size and number as originally approved unless a suitable alternative species are otherwise agreed in writing by the Local Planning Authority. The planting scheme shall include details the new hedge planting on the western boundary and secure additional planting as per the approved ecosystems statement'.*

The reason given for condition 10 is: *'In the interests of the visual amenities of the locality and to enable proper consideration to be given to the impact of the proposed development on existing trees'.*

- Condition 11: *'No development above slab level shall commence on site until a scheme has been submitted to, and agreed in writing by, the Local Planning Authority to demonstrate that the built development hereby permitted incorporates measures that provides at least 19% of energy demand from decentralised and renewable or low carbon energy sources. Before any part of the development is first occupied a verification report and completion certificate shall be submitted in writing to the Local Planning Authority confirming that the built development hereby permitted has been constructed in accordance with the approved scheme. The developer shall nominate a competent person for the purpose of assessing and providing the above required report and certificate to confirm that the completed works incorporate such measures as to provide these requirements. The measures shall thereafter be retained and maintained to the agreed specification for the lifetime of the development'.*

The reason given for Condition 11 is: *'To ensure that the development incorporates necessary mitigation and adaptation measures with regard to climate change'.*

- Condition 12: *'The dwelling hereby permitted shall be constructed and fitted out to comply with the Building Regulations 2010 (as amended) requirement G2(36)(2)(b) '110 litres water consumption per person per day' and shall not be exceeded thereafter'.*

The reason given for Condition 12 is: *'To ensure that the development incorporates necessary mitigation and adaptation measures with regard to climate change'.*

SCHEDULE 1

- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order, 2015 (or any Order revoking, re-enacting or modifying that Order) no extensions or outbuildings otherwise permitted under Schedule 2, Part 1, Classes A, C, or E of said Order shall be carried out on the dwellinghouse or within its curtilage without the prior written consent of the Local Planning Authority.
- 6) All work shall be carried out in accordance with the approved Arboricultural Method Statement (AMS) AIA/AMS-KC/DANESFIELD/001 dated November 2019 (excluding sections 100 to 105), and Tree Protection Plan TPP-KC/DANESFIELD/001 Rev A, and subject to the pre-arranged tree protection monitoring and site supervision, detailed in sections 45 to 52 of the AMS, by a suitably qualified tree specialist, unless otherwise agreed in writing by the Local Planning Authority.
All services must be routed outside of the Root Protection Areas of the Beech and Cypress at the front of the site (T1 and T2 on the Tree Protection Plan). If any services are required to be routed through the Root Protection Areas of these trees a separate Arboricultural Method Statement and Tree Protection Plan shall be submitted to and approved in writing by the Local Planning Authority. The works shall then be strictly carried out in accordance with the approved details.
- 8) The development hereby permitted shall not be brought into use until the areas shown on the proposed site plan (MB-00-XX-DR-K-104 Rev A) for the parking of vehicles (including the garage and car port) and turning area shall have been made available and surfaced. The parking areas shall then be permanently retained and reserved for that purpose at all times.

N.B Condition 9 is deleted.

- 10) The development hereby approved shall not be first brought into use until a fully detailed hard and soft landscape and planting scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details and in accordance with the recommendations of the appropriate British Standards or other recognised codes of good practice. These works shall be carried out in the first planting season after practical completion or first occupation of the development, whichever is earlier, unless otherwise first agreed in writing by the Local Planning Authority.
Any trees or plants which, within a period of 5 years after planting, are removed, die or become seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others or species, size and number as originally approved unless a suitable alternative species are otherwise agreed in writing by the Local Planning Authority.
The planting scheme shall include details the new hedge planting on the western boundary and secure additional planting as per the approved ecosystems statement.
- 11) No development above slab level shall commence on site until a scheme has been submitted to, and agreed in writing by, the Local Planning Authority to demonstrate that the built development hereby permitted incorporates

measures that provides at least 19% of energy demand from decentralised and renewable or low carbon energy sources.

Before any part of the development is first occupied a verification report and completion certificate shall be submitted in writing to the Local Planning Authority confirming that the built development hereby permitted has been constructed in accordance with the approved scheme.

The developer shall nominate a competent person for the purpose of assessing and providing the above required report and certificate to confirm that the completed works incorporate such measures as to provide these requirements. The measures shall thereafter be retained and maintained to the agreed specification for the lifetime of the development.

- 12) The dwelling hereby permitted shall be constructed and fitted out to comply with the Building Regulations 2010 (as amended) requirement G2(36)(2)(b) '110 litres water consumption per person per day' and shall not be exceeded thereafter.

END OF SCHEDULE