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## Appeal Decision

Site visit made on 7 December 2020 by L Wilson BA (Hons) MA MRTPI

**Decision by Chris Preston BA (Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 6 January 2021**

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**Appeal Ref: APP/F2415/D/20/3257115**

**5 Nether Hall, Church Street, North Kilworth LE17 6EZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by SG & EG (UK) Ltd against the decision of Harborough District Council.
  - The application Ref 20/00567/VAC, dated 21 April 2020, was refused by notice dated 22 July 2020.
  - The application sought planning permission for the erection of a single storey side extension including installation of lift shaft (to serve basement area) and installation of bay window, underground engineering works to provide an extension to the existing basement area to create ancillary accommodation and to create a sunken courtyard with stepped water feature without complying with a condition attached to planning permission Ref 19/01679/FUL, dated 27 February 2020.
  - The condition in dispute is No 3 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 2219/100, Proposed site plan 2219/102 B, Proposed ground floor plan 2219/116 B, Proposed Basement Plan 2219/115 A, Proposed section 2219/502.
  - The reason given for the condition is: For the avoidance of doubt and to ensure that the proposed development is carried out as approved.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of a single storey side extension including installation of lift shaft (to serve basement area) and installation of bay window, underground engineering works to provide an extension to the existing basement area to create ancillary accommodation and to create a sunken courtyard with stepped water feature at 5 Nether Hall, Church Street, North Kilworth LE17 6EZ in accordance with the application Ref 20/00567/VAC, dated 21 April 2020, without compliance with condition number 3 previously imposed on planning permission Ref 19/01679/FUL, dated 27 February 2020, and subject to the conditions set out in the schedule attached to this 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.

### Preliminary Matters

3. The 'natural pool' shown on the plans does not form part of the application submission. It is understood that the appellant is intending to construct this under permitted development rights. For the avoidance of doubt, this decision does not relate to the 'natural pool'.

### **Main Issue**

4. Whether the amended drawings would have an unacceptable effect upon potential archaeological remains.

### **Reasons for the Recommendation**

5. The application seeks to vary condition 3 to amend the approved plans to make the approved basement area larger. The broad position of the basement would remain similar to that approved but it would extend slightly further to the west, under the driveway, and marginally deeper to the south. The most notable change would see the extension of the sunken garden and the adjacent bedrooms which would push the basement further to the north, under the garden immediately to the east of the existing house.
6. The Leicestershire and Rutland Historic Environment Record indicates the application area has a potential to include heritage assets with an archaeological interest. The site is within the historic medieval core of the village and in proximity to the Grade II\* Listed Parish Church of St Andrew. Therefore, it is possible that archaeological remains may have survived within the area.
7. The National Planning Policy Framework (the 'Framework') sets out that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. Local planning authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible.
8. Policy HC1 of the Harborough Local Plan 2011 to 2031 (2019) (LP) relates to developments affecting heritage assets and their settings. It sets out that development affecting the significance of a non-designated heritage asset and/or its setting will have regard to the scale of any harm or loss and the significance of the non-designated heritage asset.
9. Condition 4 of the approved scheme related to an archaeology condition and an Archaeological Evaluation (AE) has been carried out. No archaeological features were found with the exception of a shallow undated gully which measured 0.45m wide and 0.3m deep with steep sloping sides and a flat base. The gully fill consisted of mid grey brown silty sand with occasional angular pebble inclusions. The fill was sterile and contained no dateable material.
10. The AE concluded that it did not add anything to the regional research agenda and that although the ground had been heavily disturbed in recent times, the depth of overburden suggested a build-up of material with features cut into the natural substrata surviving. The Archaeology Officer considered that the archaeology work carried out was satisfactory, albeit with a smaller trench, and

- the condition was subsequently discharged. Consequently, the established position is that the extension to the dwelling has approval and a substantial amount of excavation and ground clearance will be required to construct the approved basement. In discharging condition 4 the Council was seemingly content for that work to continue having regard to the findings of the AE.
11. In terms of the amended proposal the Archaeology Officer initially stated that the proposed scheme was acceptable. However, in their revised comments they stated that the undated archaeological feature implies some truncation of deposits, but that the preservation of archaeological remains, sealed below a built-up overburden, is likely as evidenced by the ditch/gully. They considered that the single undated feature constitutes a non-designated heritage asset of limited local interest and a follow-up programme of archaeological attendance should therefore be undertaken.
  12. It is understood that an Iron Age feature containing pottery has recently been found at the Church, approximately 45 metres to the south of the appeal site. The Archaeology Officer believes that the undated feature found at the appeal site could relate to the previously unrecorded Iron Age located at the Church. Consequently, they recommended a condition to ensure that an archaeologically controlled strip of the development area is undertaken and where archaeology remains are identified they should be fully investigated and recorded prior to the development. Whilst I note those comments, the gully found at the site was undated and the AE found it to be of no real significance. No other archaeological remains were found and evidence to link the gully to finds within the churchyard (or to suggest that there are likely to be other associated remains) is limited on the basis of the information before me.
  13. The appellant did not agree to the condition suggested by the Archaeology Officer because they considered it to be unreasonable and disproportionate to the changes sought from the originally approved scheme. They emphasise that the area subject to the increase in footprint is towards the house, which would have been disturbed ground.
  14. I give significant weight to the approved scheme, which is a substantial fall-back position, and the discharge of condition number 4, relating to archaeology. Whilst the new basement would be larger than that approved, it would occupy broadly the same position to the south of the house and the extension to the west over the driveway would be marginal. Therefore, the majority of the basement would be in the location where the existing trial trenching has already been undertaken. The additional basement area to the east of the house is also closely adjacent to the existing structure within an area that is likely to be disturbed ground as demonstrated by the AE.
  15. Although features containing pottery and loom weights were found nearby, this was known when condition number 4 was discharged. Had the Council considered that the undated gully was potentially significant in the context of those findings, it could have requested further investigative work before discharging condition 4. It did not do so and was seemingly satisfied that the information submitted, including the written scheme of investigation and the subsequent AE was sufficient to discharge the condition. Therefore, the excavation required to construct the approved basement can go ahead without any further investigation. Having reached that conclusion and discharged the condition it is unclear why, in contrast, the amended application was refused

given that they were considered at the same planning committee meeting and were for extremely similar developments.

16. Planning conditions should only be used where they satisfy the six tests<sup>1</sup>. Having regard to the clear fall-back position of the approved development, the fact that the main addition to the basement would be further away from the churchyard on ground that is likely to have been disturbed and due to the limited evidence linking the undated gulley to any wider features, I consider that attaching a further archaeology condition would not be necessary or reasonable. Hence, the condition recommended by the Archaeology Officer would not satisfy all of the six tests.
17. For these reasons, and based on the evidence submitted, the amended drawings would not have an unacceptable effect upon potential archaeological remains. Accordingly, the scheme would accord with Policy HC1 and the Framework which seek to ensure, amongst other matters, that development affecting the significance of a non-designated heritage asset will have regard to the scale of any harm or loss and the significance of the heritage asset.

#### *Other Considerations*

18. The appeal site is situated within the North Kilworth Conservation Area (CA). The Parish Church of St Andrew, a Grade II\* Listed Building (LB), is to the south of the appeal site. The Council did not find that the revised proposal would affect these heritage assets. I am also satisfied that, having regard to the approved scheme and due to the nature of the proposal forming underground works, the proposed development would have a neutral impact on the character and appearance of the CA and the setting of the LB. The development would not cause harm to the significance of these designated heritage assets.
19. I note that the North Kilworth Neighbourhood Plan 2015-2031 identifies Nether Hall as a non-nationally designated Locally Listed Buildings. The Planning Practice Guidance provides advice on the process that should be followed when identifying a non-designated heritage assets and that it should be based on sound evidence<sup>2</sup>. The Committee Report states that there is no robust evidence to support its designation and the Plan does not contain any policies relating to such designations. Even if Nether Hall was a locally listed building, I am satisfied that the amended scheme would have a neutral impact upon it due to the approved development and nature of the scheme forming underground works.
20. I have had regard to the concerns raised by local residents and North Kilworth Parish Council. These concerns relate to: loss of or damage to trees, highway safety, increased traffic, noise and disruption, impact upon the boundary wall, impact upon a badger sett and reference to a High Court Judicial Review<sup>3</sup>. I note that the Council did not refuse the planning application on these matters and I see no reason to disagree.
21. The Committee Report acknowledges that the site has been subject to several separate Notifications of Works to Trees in a Conservation Area and consent has been given for these works under separate legislation.

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<sup>1</sup> Paragraph 55 of the Framework

<sup>2</sup> Paragraph: 040 Reference ID: 18a-040-20190723

<sup>3</sup> Eatherley v Camden LBC [2016] EWHC 3108 (Admin)

22. The Highway Authority did not object to the varied drawings. They were satisfied that the construction traffic would not cause severe harm to highway safety and the development would not have an unacceptable impact on the highway. The application relates to a householder development and therefore the associated noise and disruption would be for a limited time. I note that the extant permission included a pre-commencement condition for a construction environmental management plan, which included hours of construction work, hours of deliveries and on-site parking provision for construction contractors and construction vehicles. I understand that satisfactory details were provided and condition 6 was discharged. To ensure that the development is carried out in accordance with the approved construction environmental management plan, a condition could be attached.
23. The proposed plantroom would not have an unacceptable effect upon the users of the Parish Church, churchyard nor occupiers of neighbouring properties. This is due to the distance between the site, church and neighbouring properties. The scheme would not have an unacceptable impact upon the churchyard given the context of the appeal site, which includes a highway and other residential properties which would generate some noise. I am also not convinced that the proposal would have a detrimental impact upon the boundary wall shared with the Parish Church because of the distance between the underground works and the boundary wall.
24. The Ecology Officer did not object to the proposal, subject to the application of conditions 5 and 6. An Ecology Survey was submitted to discharge condition 5 of the extant permission and this was considered acceptable. Thus, I am satisfied that the proposal will not affect badgers. To ensure that the development is carried out in line with the survey a condition could be attached.
25. The High Court decision is not relevant to this decision as it relates to the assessment of whether engineering works required for a basement extension would constitute permitted development whereas the appeal before me relates to a planning application.

### **Conditions**

26. I have had regard to the suggested conditions put forward by the parties in the event that the appeal is allowed. Where an appeal to vary a condition is approved a new planning permission is granted and it is necessary to attach any conditions previously attached to the original permission that remain necessary to make the development acceptable in planning terms.
27. In addition to the statutory commencement condition a condition is necessary in the interests of certainty to ensure that the development is carried out in accordance with the approved plans. For clarity I have not included the 'comparison' plans which were submitted simply to show the difference between the previously approved scheme and the current scheme. The proposed plans are sufficient to clarify the nature of the approved scheme.
28. A condition is necessary to ensure that the development is carried out in accordance with the approved Ecology Survey to safeguard the locally designated wildlife site, sites of ecological value or protected species. In addition, a condition is necessary to ensure that the development is carried out in accordance with the approved Construction Management Plan to ensure that

it does not have an unacceptable effect upon the occupiers of nearby properties nor have an adverse impact on highway safety.

29. The Council has not suggested that a condition to specify that materials should match those used on the main house should be attached, notwithstanding that such a condition was attached to the previous approval. However, the development will largely be concealed under ground and the main external façade would be the glazed access to the sunken courtyard. Details of the glazing and other are adequately depicted on the submitted drawings and a separate materials condition is unnecessary.

### **Conclusion and Recommendation**

30. For the reasons given above I recommend that the appeal should be allowed.

*L M Wilson*

APPEALS PLANNING OFFICER

### **Inspector's Decision**

31. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree and conclude that the appeal should be allowed subject to the conditions attached.

*Chris Preston*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin within 3 years from the date of the permission which it varies (reference 19/01679/FUL, approved 27 February 2020).
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Site Plan 2219/102 C, Proposed Basement Plan 2219/115 B, Proposed Ground Floor Plan 2219/116 C, Typical Cross Section 2219/503. Notwithstanding the details shown on the submitted drawings, this permission does not relate to the natural pool shown on the approved plans which did not form part of the development for which permission was sought.
- 3) The development hereby permitted shall be carried out in accordance with the Update Preliminary Ecological Appraisal (PEA) Report (Pearce Environmental Ltd, March 2020, ref 190320.PEA), approved under planning condition discharge application reference 20/00632/PCD.
- 4) The development shall be carried out in accordance with the Construction Management Plan Rev A (5 June 2020) approved under planning condition discharge application reference 20/00754/PCD.