



Appeal Decision

Site visit made on 18 October 2022

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2022

Appeal Ref: APP/A1910/W/22/3296561

Buttercup and Zighy Barns, Birch Lane, Flaunden HP3 0PT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Flaunden Construction Ltd against the decision of Dacorum Borough Council.
 - The application Ref 21/04454/ROC, dated 24 November 2021, was refused by notice dated 20 January 2022.
 - The application sought planning permission for raising of roof, change of roof pitch, conversion of barn to residential use and changes to fenestration, repositioning of tree planting screen without complying with a condition attached to planning permission Ref 21/00365/FUL, dated 6 August 2021.
 - The condition in dispute is No 3 which states that: *The development hereby permitted shall be constructed in accordance with the materials specified on the application form submitted with application 20/00089/FUL with the exception of those which describe boundary treatment and the materials between the windows - these are to be addressed via other conditions which require details of boundary treatment and materials.*
 - The reason given for the condition is: *To make sure that the appearance of the building is suitable and that it contributes to the character of the area in accordance with Policies CS12 and CS27 of the Dacorum Borough Core Strategy (2013).*
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Decision

1. The appeal is allowed and planning permission is granted for the raising of roof, change of roof pitch, conversion of barn to residential use, changes to fenestration, and repositioning of tree planting screen at Buttercup and Zighy Barns, Birch Lane, Flaunden HP3 0PT, without complying with conditions 1, 2 and 3 set out in planning permission Ref 21/00365/FUL granted on 6 August 2021 by Dacorum Borough Council, but otherwise subject to the following conditions detailed in the schedule to this decision below.

Applications for costs

2. An application for costs was made by Flaunden Construction Ltd against Dacorum Borough Council. This application is the subject of a separate decision.

Background and Main Issue

3. Planning permission¹ for the conversion and alteration of the barn into two dwellings included a condition (condition 3) that required the development to

¹ Planning Ref 21/00365/FUL

be constructed of materials that were specified in the application form submitted with an earlier planning approval². The application form specified that the exterior walls would be vertical timber cladding painted black. The development has been completed without complying with the requirements of condition 3 and instead has been constructed using horizontal timber cladding painted black.

4. The reason for condition 3 refers to Policies CS12 and CS27 of the Dacorum Borough Core Strategy 2006-2031, adopted 2013 (CS). Whilst the Council's decision notice³ refused the development against Policy CS27 of the Core Strategy, Saved Policy 120 of the Dacorum Borough Local Plan 1991-2011, adopted 2004 (LP), and paragraph 202 of the National Planning Policy Framework (NPPF). I have therefore considered the appeal against the policies referred to in the reason for refusal.
5. The Council indicates that the condition is necessary to ensure the appearance of the building is not harmful to the character of the countryside or the Flaunden Conservation Area (CA). They consider that as the building originally comprised a modern agricultural building, the external walls should be clad in vertical boarding to reflect the character of such buildings and to contrast with the traditional barns whose cladding is horizontal.
6. The appellant objects to the condition as they consider that the use of horizontal cladding does not have an adverse impact on the character or appearance of the CA; the building is viewed in the context of other buildings with similar external finishes; and the Council's opinion is not supported by any policy, Supplementary Design Guidance (SPD) or Historic England's Good Practice Guidance⁴.
7. Taking the above background into consideration, the main issue is whether the condition is reasonable or necessary in the interests of the character and appearance of the existing building and the surrounding area, including the CA.

Reasons

8. The appeal site is within the village of Flaunden. According to the map of the CA boundary submitted by the Council, the access road of the appeal proposal is located within the CA, however, the barn the subject of this appeal, is located outside the CA. Given the barn's proximity to, and relationship with other buildings within, the CA it is reasonable for me to conclude that the proposal is within the setting of the CA. Therefore, I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
9. The CA is concentrated around the crossroads of Birch Lane, Village Hill and an unnamed road that extends from The Green Dragon public house to Flaunden House. The CA encompasses almost all of the buildings that form the village. Dwellings are the predominant building type, but there is also a public house and a church. The materials of dwellings are varied and include timber-framed buildings, brick, flint and rendered walls, and red roof tiles and grey slates. Domestic outbuildings (both modern and traditional) and agricultural buildings

² Planning Ref: 20/00089/FUL

³ Planning Ref: 21/00365/FUL

⁴ Historic England's "Adapting Traditional Farm Buildings: Best Practice Guidelines for Adaptive Re-Use" (2017)

tend to be constructed of horizontal timber boarding to the walls painted black with a red tiled roof. The character, age and materials of the buildings within the CA contribute to its significance as a designated heritage asset.

10. The appeal site comprises a former modern agricultural/equestrian building that has since been converted and altered to form two dwellings. It is constructed of horizontal timber cladding painted black above a dwarf brick wall with a tiled roof. Vertical timber boarding painted black is positioned between the ground and first floor openings as a feature. The appeal site forms part of a wider site that comprises a recently converted traditional barn known as Honeysuckle Barn (constructed of similar walling materials to the appeal building with a red tiled roof), a dwelling known as The Coach House (constructed of brick with a red tiled roof), two sets of detached stables (one constructed of horizontal timber boarding stained brown and the other constructed of brick), a manege and associated fields/paddocks. There are no buildings constructed of vertical boarding within the wider site except for wooden doors/gates and small feature areas on existing buildings.
11. The appeal site is located adjacent to the horizontal timber boarded stables (which sit within the CA boundary) and is viewed in the context of this building. The appeal building is not viewed in the context of the converted traditional barn (barn 2 on the Site Location Plan) due to the separation distance and the intervening manege and brick built stables. The converted modern building is not visible from Birch Lane or the unnamed road that extends from The Green Dragon public house to Flaunden House due to its remoteness from these roads and due to the presence of existing buildings, trees and roadside hedges.
12. The Council's Conservation Officer considers that modern agricultural/equestrian buildings were not treated with horizontal timber cladding and the use of vertical cladding would delineate the modern buildings from the more traditional buildings on the wider site. I have not been directed to any policy or guidance that specifically advocates this approach. Furthermore, the scale, form and design of the appeal building clearly indicates that it is was not a traditional barn, even with the application of the horizontal cladding.
13. From my site visit, I did not see any examples of buildings constructed of vertical timber boarding within the CA and therefore vertical timber boarding is not a feature of the CA. The appellant has directed me to a planning approval for four dwellings at Sharlowes Farm, Flaunden⁵, which is also within the CA. The Council has discharged⁶ the materials for this development, which includes horizontal feather edged treated weatherboarding in a dark stained finish. The new dwellings at Sharlowes Farm are close to a traditional barn constructed of horizontal timber cladding and sited within the former farmstead. I have been provided evidence that, in that instance, the Conservation Officer concluded that the materials were acceptable and would preserve the character and appearance of the CA. Furthermore, the appellant has directed me to an earlier approval for the conversion of the appeal building in which horizontal timber cladding was approved to be used on the exterior walls⁷.
14. Appendix 1 to the appellant's Statement of Case includes a schedule of materials that was included with that application and for which permission was

⁵ Planning Ref: 20/00974/FUL

⁶ Planning Ref: 21/02859/DRC

⁷ Planning Ref: 4/02298/16/DRC

granted. This includes reference to horizontal boarding. The Council make a number of assertions in the Officer report and Statement of Case that the decision to discharge the materials condition stated the walls would be vertical timber cladding painted black but I have not been provided with any evidence to demonstrate this is indeed correct. On the basis of the information before me, the appellant's evidence is stronger and the Council had the opportunity to directly challenge this, which they did not.

15. The use of horizontal boarding does not result in harm to the character, appearance of the area. The material would not harm the setting of the CA or therefore by extension the significance of the CA itself. Therefore, I conclude that the condition is not reasonable or necessary in the interests of the character and appearance of the existing building and the surrounding area, including the CA. The development without the condition is acceptable and as such complies with Policy CS27 of the CS and Saved Policy 120 of the LP, which together seek to ensure that developments preserve and enhance the appearance and character of conservation areas. As I have found no harm to the significance of the CA, the development is not required to comply with paragraph 202 of the NPPF.

Other Matters

16. The Council has provided limited information in respect of previous applications⁸ where the use of horizontal timber cladding to the external walls of the appeal building was rejected, or evidence to support their assertion that the original building was constructed of vertical cladding to the exterior walls. However, even if such information was provided, it would not alter my findings in respect of the main issue.

Conditions

17. The appellant suggested that the wording of condition 3 be varied to read: *The dark-stained timber cladding applied to the barn shall be retained as such and shall not be altered other than with the written permission of the local planning authority*. However, the Council suggest that the revised wording be amended to read: *The dark stained timber cladding applied to the barn shall be retained as such and shall not be altered*.
18. Disputed condition 3 did not require the approved materials to be retained. However, the variation to the condition suggested by both parties is reasonable to ensure that the exterior walls of the barn are of a colour and material that would not harm the character, appearance or significance of the CA. The condition does not need to include "and shall not be altered other than with the written permission of the local planning authority", as this could be considered under a separate variation of condition application should the need arise.
19. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also reinstate the conditions imposed on earlier permissions that continue to have effect. The Council has stated that none of the conditions attached to planning approval 21/00365/FUL have been discharged and therefore they

⁸ Planning Ref: 20/03219/DRC, 4/03481/15/MFA, 4/02327/19/DRC, 20/00089/FUL

have requested they are reinstated with the exception of the standard time limit condition 1, due to the development having been implemented.

20. The appellant agrees with the Council's suggested conditions but requests that condition 2 is amended to reflect the works that have already been undertaken. Condition 2 required the detailing between the windows to be vertical timber cladding painted black. This had been completed at the time of my site visit and therefore this condition is no longer necessary. I will therefore delete condition 2.
21. The appellant has questioned the acceptability of condition 6 that removed permitted development rights⁹ for certain forms of development. The appellant has not applied to remove or vary this condition as part of the appeal scheme. The Council, nor any other interested party, has had the opportunity to comment on such a proposal and they would be unfairly prejudiced if it formed part of this appeal decision. I therefore consider that condition 6 should be reimposed.

Conclusion

22. For the reasons detailed above, I conclude that the appeal should be allowed. I vary the planning permission by deleting the disputed condition and substituting it with a new condition. I have included all the remaining relevant conditions in full from the original permission, with the exception of conditions 1 and 2, for the reasons detailed above.

A Berry

INSPECTOR

Schedule of Conditions

- 1) As shown on the approved plans the full size windows at ground floor on the eastern elevation must be non - opening to ensure that no permanent access is allowed to this side of the dwelling and thus further enlargement of the curtilage of the dwelling.
- 2) All remediation or protection measures identified in the Remediation Statement referred to in Condition (4) of planning application 4/01658/16/FUL shall be fully implemented within the timescales and by the deadlines as set out in the Remediation Statement and a Site Completion Report shall be submitted to and approved in writing by the local planning authority prior to the first occupation of any part of the development hereby permitted.

For the purposes of this condition a Site Completion Report shall record all the investigation and remedial or protection actions carried out. It shall detail all conclusions and actions taken at each stage of the works including validation work. It shall contain quality assurance and validation results providing evidence that the site has been remediated to a standard suitable for the approved use.

⁹ The Town and Country Planning (General Permitted Development) (England) Order 2015

- 3) The dark stained timber cladding applied to the barn shall be retained as such and shall not be altered.
- 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) no development falling within the following classes of the Order shall be carried out without the prior written approval of the Local Planning Authority: Schedule 2, Part 1, Classes A, AA, B, C, D, E, F and G, and Part 2, Classes A, B and C.
- 5) Prior to occupation full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. These details shall include:
 - Hard surfacing materials;
 - Means of enclosure: no fencing will be permitted along the western side of the Barn.
 - An elevation plan showing the siting, height (to be between 5-6 metres high) and coverage of replacement vegetation – a screen of Hornbeam trees; and
 - A floor plan showing the replacement vegetation and the distance between each tree.

The planting of the mature trees must be carried out prior to the removal of the row of vegetation (tree planning screen) shown immediately adjacent to Barn A on the proposed site plan.

The approved landscape works shall be carried out prior to the first occupation of the development hereby permitted.

Any tree or shrub which forms part of the approved landscaping scheme which within a period of 5 years from planting fails to become established, becomes seriously damaged or diseased, dies or for any reason is removed shall be replaced in the next planting season by a tree or shrub of a species, size and maturity.

The replacement vegetation must be retained in perpetuity as shown on the approved soft landscaping details.

- 6) The design and materials to be used for the garage doors must comply with those details (a drawing and text) submitted to discharge condition 9 of 20/00089/FUL under 20/01452/DRC.
- 7) The curtilage will be restricted to the approved site plan as per the previous application 20/00089/FUL.
- 8) The development hereby permitted shall be carried out in accordance with the following approved plans/documents:
 - Site Location Plan
 - 47499. 04J Proposed Floor Plans and Elevations
 - Existing and Proposed Site Plan 02E
 - Addendum containing information relating to discharged conditions.

*****End of Conditions*****