



Appeal Decisions

Hearing held on 20 August 2024

Site visit made on 3 October 2024

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 October 2024

Appeal A Ref: APP/C3105/W/23/3329604

The Unicorn, Market Place, Banbury OX16 5LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Mrs Maria Jackson against the decision of Cherwell District Council.
- The application Ref 19/02554/DISC sought approval of details pursuant to conditions Nos 3, 4, 5, 7, 8, 9 & 10 of a planning permission referenced 16/01661/F, granted on 24 January 2017.
- The application was refused by notice dated 15 March 2023.
- The development proposed is the conversion of Unicorn Inn and coach house to residential use (7 flats). Internal and external alterations.
- The details for which approval is sought are:
 - Condition 3 – A schedule of external materials and finishes, including samples of any new materials to be used in the development.*
 - Condition 4 – Full details of the doors, windows and rooflights (including any works of repair), at a scale of 1:20 including a cross section, cill, lintel and recess detail and colour/finish.*
 - Condition 5 – Full details of the works to repair the external staircase.*
 - Condition 7 – A hard landscaping scheme, including details of the layout, construction and materials of new pavements, external terracing, pedestrian areas, reduced-dig areas, crossing points, refuse areas and steps.*
 - Condition 8 – Archaeological Written Scheme of Investigation*
 - Condition 9 – Implementation of a staged programme of archaeological evaluation and mitigation in accordance with the Written Scheme of Investigation.*
 - Condition 10 – Requirement that rain water goods to be used shall be cast iron or profiled aluminium and painted or finished in matt black.*

Appeal B Ref: APP/C3105/W/23/3329605

The Unicorn, Market Place, Banbury OX16 5LJ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against the refusal of details of works required by a condition of a listed building consent.
- The appeal is made by Mrs Maria Jackson against the decision of Cherwell District Council.
- The application Ref 19/02553/DISC sought approval of details pursuant to conditions Nos 3, 4, 5, 7, 8, 9 & 10 of listed building consent Ref 16/01662/LB granted on 24 January 2017.
- The application was refused by notice dated 15 March 2023.
- The works proposed are the conversion of Unicorn Inn and coach house to residential use. Internal and external alterations.
- The details for which approval is sought are:

Condition 3 – A schedule of external materials and finishes, including samples of any new materials to be used in the development.

Condition 4 – Full details of the doors, windows and rooflights (including any works of repair), at a scale of 1:20 including a cross section, cill, lintel and recess detail and colour/finish.

Condition 5 – Full details of the works to repair the external staircase.

Condition 7 – Full details of the new staircase within the ancillary barn building, including construction materials and method of fixing to the existing fabric.

Condition 8 – Full details of the central atrium range within the ancillary barn building, including cross sections and elevations.

Condition 9 – Full details of any new floors to be installed, including construction materials and method of fixing to the existing fabric.

Condition 10 – Requirement that all works of making good shall be carried out in materials and detailed to match the adjoining existing fabric except where shown otherwise on the approved drawings.

Decisions

Appeal A

1. Appeal A is partly allowed in relation to the details submitted pursuant to conditions 4 and 5 attached to planning permission Ref 16/01661/F granted on 24 January 2017 in accordance with the application reference 19/02554/DISC dated 13 November 2019 and the plans submitted with it are approved. These are as follows:

Condition 4

Schedule of existing/proposed doors & windows

Drawing UNI/BAN/PRO.GFWINREF001/ – GF Floor Proposed Window & Door References

Drawing UNI/BAN/PRO.FFWINREF001/ – FF Proposed Window & Door References

Drawing UNI/BAN/PRO.SFWINREF001/ – SF Proposed Window & Door References

General method statement for Window Restoration

Existing survey floor plans for ground, first and second floor (Midland Survey Ltd)

Drawing UNI/BAN/PROWINDOOR/001 – Details of proposed windows, external doors and rooflights

Drawing UNI/BAN/PROWINDOOR2/001 – Details of proposed windows, external doors and rooflights

Drawing New internal door type A

Drawing New internal door type C

Drawing Schedule of all windows and doors

Condition 5

Notes/Method Statement for Works to External Staircase*

Drawing UNI/BAN/EXTSTR/001 Detail of External Staircase*

Tongue and Groove with V joint cladding specification from Vastern Timber

*Both documents expressly state that any replacement spindles will match the profile of the existing.

Appeal A is dismissed in relation to the details submitted pursuant to condition 3 attached to planning permission Ref 16/01661/F granted on 24 January 2017.

Appeal B

2. Appeal B is partly allowed in relation to the details submitted pursuant to conditions 4 and 5 attached to listed building consent Ref 16/01662/LB granted on 24 January 2017 in accordance with the application reference 19/02553/DISC dated 13 November 2019 and the plans submitted with it are approved. These are as follows:

Condition 4

Schedule of existing/proposed doors & windows

Drawing UNI/BAN/PRO.GFWINREF001/ – GF Proposed Window & Door References

Drawing UNI/BAN/PRO.FFWINREF001/ – FF Proposed Window & Door References

Drawing UNI/BAN/PRO.SFWINREF001/ – SF Proposed Window & Door References

General method statement for Window Restoration

Existing survey floor plans for ground, first and second floor (Midland Survey Ltd)

Drawing UNI/BAN/PROWINDOOR/001 – Details of proposed windows, external doors and rooflights

Drawing UNI/BAN/PROWINDOOR2/001 – Details of proposed windows, external doors and rooflights

Drawing New internal door type A

Drawing New internal door type C

Drawing Schedule of all windows and doors

Condition 5

Notes/Method Statement for Works to External Staircase*

Drawing UNI/BAN/EXTSTR/001 Detail of External Staircase*

Tongue and Groove with V joint cladding specification from Vastern Timber

*Both documents expressly state that any replacement spindles will match the profile of the existing.

Appeal B is dismissed in relation to the details submitted pursuant to conditions 3 and 9 attached to listed building consent Ref 16/01662/LB granted on 24 January 2017.

Preliminary Matters

3. The appeals follow refusals by the Council to approve various details required by conditions on planning permission reference 16/01661/F (the planning permission) and listed building consent reference 16/01662/LB (the listed building consent). Appeal A relates to conditions on the planning permission and Appeal B to conditions on the listed building consent.
4. Both the planning permission and listed building consent relate to the conversion of a Grade II* listed building known as the Unicorn Hotel, 20 Market Place (the listed building) from a public house to 7 flats. The listed building lies within the Banbury Conservation Area (CA). Accordingly, I have borne in mind the statutory duties contained in sections 16, 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) as appropriate.
5. Notwithstanding the conditions referred to on the respective application forms, there was considerable discussion at the hearing as to the scope of my

determinations. In relation to Appeal A, it was clarified by the parties that condition 7 (landscaping) had been separately discharged under reference 23/00685/DISC. Conditions 8 and 9 (archaeological written scheme of investigation and implementation) had both been removed by a separate planning permission reference 19/02653/F, and so it was unnecessary for them to be considered further. Condition 10 relating to rainwater goods did not require matters to be discharged in writing by the local planning authority. Accordingly, as agreed by the parties at the hearing, conditions 7, 8, 9 and 10 of Appeal A need not form part of my determination.

6. In relation to Appeal B, conditions 7 (staircase within ancillary barn building) and 8 (central atrium) had been separately discharged under reference 23/00686/DISC. Condition 10 is a generic requirement relating to making good works, which does not require matters to be discharged in writing. Again, as agreed by the parties at the hearing, conditions 7, 8 and 10 of Appeal B need not form part of my determination.
7. At the hearing the appellant contended that condition 6 on the planning permission and listed building consent should also be considered. In both cases, condition 6 requires a method statement for the demolition works concerning the single storey timber range between the public house building and ancillary barn building to be agreed in writing prior to the commencement of any demolition. The appellant explained that although condition 6 was not included on the respective application forms, an amendment to include it had been requested following the submission of the applications. Nevertheless, there was no confirmation that the Council has acceded to the request to expand the scope of the applications. At the hearing the Council confirmed that they had not done so, and so had not proceeded to make determinations in relation to condition 6. Based on the balance of evidence, I am not persuaded that an application to discharge condition 6 forms part of either Appeal A or Appeal B. Consequently, I have not considered this matter as part of my determinations.
8. Following the submission of both applications to the Council, the appellant submitted further information on 22 November 2019¹. It became apparent at the hearing that whilst the Council had some of this information, it was not in possession of all of it, and so had not taken some of it into account when making their determinations. Therefore, during the hearing a list of documents pertaining to each condition was agreed and subsequently discussed. I have made my determinations on that basis.
9. It is not within my remit to reconsider the merits of the planning permission or listed building consent. Neither is it within the scope of the appeals to question the imposition of the conditions themselves. Case law has established that there is nothing to prevent a decision being made on an application for the discharge of a condition if the permission expires during the decision-making process, so long as the application has been validly made before the expiry date of the permission.
10. Both the planning application and listed building consent had time commencement conditions which required the approved development/works to commence by 24 January 2020. Hence, I am satisfied that both applications to discharge conditions were validly made. Wider matters of lawfulness do not fall

¹ Email from Samuel Harper dated 22 November 2019

within the scope of my determinations, and I make no comment on it. Consequently, I have confined my deliberations to whether the respective conditions should be discharged based on whether their terms are met, and the merits of the information submitted.

Main Issues

11. There are broadly similar reasons given for conditions 3, 4 & 5 on the planning permission and conditions 3, 4, 5 & 9 on the listed building consent. Moreover, conditions 3, 4 and 5 have similar wording for both the planning permission and listed building consent, and so where appropriate these have been considered together.
12. The main issues are:
 - Whether the details submitted address the requirements of conditions 3, 4 & 5 of the planning permission (Appeal A) and conditions 3, 4, 5 & 9 of the listed building consent (Appeal B), and;
 - If so, what the effect of the proposed details would be on the character and appearance of the area paying particular attention to the special interest and significance of the Unicorn Hotel, a Grade II* listed building, and whether the CA would be preserved or enhanced.

Reasons

Whether the details submitted address the requirements of the conditions

Condition 3 – Appeals A & B

13. Condition 3 requires a schedule of external materials and finishes, including samples of any new materials to be used, to be agreed prior to the commencement of the approved proposal.
14. Whilst a series of product specifications have been provided, including limewash details, three paint colours, various lime plaster and render products, timber tongue and groove cladding and slate tiling, it is not systematically set out where each would be used in the proposals. To an extent, the covering letter describes how materials are intended to be used for the main public house building, coach house and timber range building. However, such references are often generic, and where specific reference is made to render suppliers, these do not correspond with the product specifications provided. The covering letter is not definitive as it invites suggestions from Council officers.
15. My attention was also drawn to annotations on the elevational drawing, which formed part of the approved plans for the scheme. Nevertheless, there is limited reference to external materials and finishes, which does not equate to a comprehensive schedule.
16. Cumulatively, it is not sufficiently clear where the respective external materials and finishes would be used, nor the extent of new material. As such, I do not consider that the information provided is sufficiently precise to amount to a schedule. On that basis, it falls short of this requirement of condition 3.
17. Moreover, condition 3 also requires samples of any new materials to be used to be approved. The appellant asserted that a previous agent had provided

samples to the Council but was unable to provide a specific date of when this occurred or confirm how they had been delivered to substantiate the assertion. The Council stated that they had not seen, and did not have, any physical samples pertaining to the appeal site. Both parties agreed that samples had not been seen by the Council on site. Overall, I am not satisfied that this requirement of the condition has been met.

18. Therefore, I find that the requirements of condition 3 have not been addressed for both Appeal A and Appeal B.

Condition 4 - Appeals A & B

19. Condition 4 requires full details of doors, windows and rooflights, including any works of repair, at a scale of 1:20, including a cross section, cill, lintel and recess detail and colour/finish to be agreed in writing prior to the commencement of the scheme.
20. The appellant's covering letter confirms that the historic existing windows serving the main building and coach house will be retained and refurbished. In addition, a schedule of existing and proposed doors and windows, with corresponding floor plans identifying their location is provided. The schedule includes a description of each door or window, its size, any associated furniture, its condition, and an assessment of how significant the feature is to the building. Proposed action is then briefly described for each window or door.
21. Larger scale drawings at scales of 1:5 or 1:20 are also provided which show elevations of individual windows and doors, and include various vertical sections, jamb details, mullion details as well as a typical section and cill details of proposed conservation rooflights. Annotations on the drawings indicate where lintels are to be retained and the colour/finish of the windows/doors. Furthermore, a general method statement for the restoration of windows is provided setting out the process that will be followed in making window repairs.
22. The Council considers that the method statement is too general as it refers to a range of repair methods and is not bespoke to each window. However, taking the information and drawings provided together, I consider that they do fulfil the requirements of condition 4 for both appeals. I shall consider the merits of the substance of the details provided later in my determination.

Condition 5 - Appeals A & B

23. Condition 5 requires full details of repair works to the external staircase to be agreed in writing prior to the commencement of the scheme. Drawing UNI/BAN/EXTSTR/001 shows the front and side elevations of the staircase with annotations. Larger scale drawings of the handrail and spindle profile are also included. This is accompanied by a method statement and notes outlining the repair works proposed. In addition, a specification for the tongue and groove timber cladding is provided. The covering letter states that the staircase is a later addition constructed in softwood and that the handrail and spindles will be replaced with like for like replacements.
24. The extent and nature of the repair works are reasonably clear from this information and as such, I find that the information provided meets the requirements of condition 5 for both appeals.

Condition 9 – Appeal B

25. Condition 9 requires full details of any new floors to be installed, including construction materials and method of fixing to the existing fabric to be agreed in writing prior to the commencement of works. The information provided in this respect amounts to two drawings². They include annotated cross sections of the building and various sections of new or upgraded flooring with materials labelled. However, floor plans identifying the area of new and upgraded flooring are not provided as part of the submission. Therefore, the extent of new and upgraded flooring is unclear.
26. The appellant explained at the hearing that there would be only one new floor, at second floor level in the barn building. It was asserted that this could be derived from a comparison of the existing and approved proposed floorplans, cross checked with the annotations on the cross-section drawings provided. However, this would involve considerable scrutiny to deduce this, and having done so, I cannot agree that the collective documents would clearly lead to the conclusion that this is the entirety of the works relating to new floors. For example, the proposed floor details drawing also refers to upgrading of the first floor of the main pub and barn buildings, and annotations on drawing UNI/BAN/PRO.SFWINREF001/ refer to floorboards being removed as an alternative approach to works, pointing to first and second floor levels of the main pub building.
27. The covering letter provides no further assistance in this respect. Hence, doubt remains as to the full extent of new flooring sought and therefore, the information provided is not sufficiently clear or precise. On that basis, I find that it would not fully address the requirements of condition 9 of Appeal B.

Effect on character and appearance, listed building and CA

28. In broad terms, the reasons given for imposing conditions 3, 4 and 5 of the planning permission, and conditions 3, 4, 5 and 9 of the listed building consent refer to the historic nature of the listed building and character and appearance of the CA. Policy ESD15 of the Cherwell Local Plan 2011-2031, Part 1, July 2015 (LP) seeks to protect the character of the built and historic environment by, amongst other things, expecting proposals to complement and enhance the character of its context through sensitive siting, layout and high quality design.
29. In addition, saved policy C28 of the Cherwell Local Plan, November 1996 (1996 LP) requires sympathetic development and refers to the choice of external-finish materials, and that in a conservation area, traditional local building materials will normally be required. Saved policy C18 of the 1996 LP relates to applications for listed building consent and confirms that alterations or extensions should be sympathetic to the architectural and historic character of the building.
30. Both the listed building and CA are designated heritage assets for the purposes of the National Planning Policy Framework (the Framework). Paragraph 205 of the Framework stipulates that when considering the impacts of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. It follows that it is appropriate in the first instance to summarise what the significance of each is.

² Drawings UNI/BAN/PRO.SFWINREF001/ Section to show connection of floors to fabric & UNI/BAN/FLOOR DETAILS/001

31. The listed building is accessed via a timber gate and passageway from Market Place. This leads to a series of traditional buildings arranged around a courtyard. The oldest section is on the northern side which is thought to date from the mid-17th century having been built after the civil wars, but with later extensions and alterations subsequently added.
32. The significance of the listed building derives from a combination of factors. These include its considerable architectural and aesthetic significance as an example of a traditional Inn with many notable external and internal features. Some of the later alterations and adaptations have value as they reflect how the building evolved over time. The surviving historic fabric of the building is a tangible link to the past and holds evidential value showing traditional building materials and construction methods. As a longstanding inn in the centre of Banbury, the building has communal value. Furthermore, its association with brewing and printing businesses in the 18th and 19th centuries, gives some insight into earlier economic and manufacturing practices in the town.
33. The CA designation includes the older and notable parts of the historic market town of Banbury. Banbury had a medieval market which can still be appreciated from the layout of the streets, public spaces and probable former burgrave plots close to the appeal site. The built development of the town over many centuries is reflected in the historic core of the CA around the marketplace. Hence, part of the significance of the CA is derived from the historic townscape and rich architectural heritage found in the vernacular development lining the tightly packed streets around the marketplace, which includes the appeal site. Owing to its architectural, historic and communal value, the listed building makes a positive contribution to the distinctive character and appearance of the CA as a whole.

Condition 3 - Appeals A & B

34. A judgement on the merits of the external materials and finishes, including samples of any new materials, pursuant to condition 3 is contingent upon the information provided first meeting the requirements of the condition. Such an assessment relies upon having sufficient clarity in relation to the finer details to properly consider their effects on the architectural and aesthetic qualities of the listed building, and its contribution to the CA. As identified above, this is an important element of the significance of the listed building and is likely to affect the contribution it makes to the character and appearance of the CA.
35. I have found that the submitted information fails to address the requirements of condition 3. Hence, this inhibits the proper consideration of the likely effects upon the significance of the designated heritage assets and the character and appearance of the area. It follows that the information provided would be contrary to the expectations of the Act, the Framework and policy ESD15 of the LP and saved policies C28 (in relation to Appeal A) and C18 (in relation to Appeal B) of the 1996 LP.

Condition 4 - Appeals A & B

36. From the information submitted it is reasonably clear what is intended with respect to each window and door, and that the existing windows are to be retained and refurbished. The relative significance of each window and door is identified and no substantive evidence before me undermines those findings.

37. The general method statement for windows supplements the schedule and detailed drawings provided. It sets out a combination of techniques for repair rather than specifying the exact repair work for each individual window, which retains an element of flexibility. Nevertheless, I am satisfied that this is proportionate in these circumstances where the building incorporates a range of window types and materials. When drawn together, I judge that the details provided for this condition sufficiently show that the fenestration would be sympathetic to the architectural and aesthetic qualities of the listed building and CA, and in many instances enhanced.
38. This would align with the expectations of the Act and policies in the Framework that seek to protect the historic environment. It follows that the details submitted would accord with policy ESD15 of the LP and saved policies C28 (for Appeal A) and C18 (for Appeal B) of the 1996 LP. Accordingly, condition 4 should be discharged for both appeals.

Condition 5 - Appeals A & B

39. At the hearing the Council conceded that the combination of the statement and annotated external staircase drawing was broadly acceptable and would not be harmful to the aesthetic qualities or historic fabric of the listed building. There was a consensus that replacing rotten spindles with like for like replacements was an appropriate approach. However, they were not convinced that the profile of the replacement spindle provided was an accurate depiction of existing spindles.
40. The appellant confirmed at the hearing that replacement spindles would match the existing ones, and this is explicitly stated in the drawing annotation, method statement and covering letter. This gives sufficient assurance in the event of any minor discrepancies in the drawn profile and can be further reinforced as part of any favourable discharge.
41. The external staircase is a later addition to the listed building, and although sympathetic in appearance does not represent valuable historic fabric. The details provided demonstrate that the appearance of the listed building would be suitably conserved in accordance with the statutory duties and requirements of the Framework. Hence, there would be no conflict with policy ESD15 of the LP and saved policies C28 (for Appeal A) and C18 (for Appeal B) of the 1996 LP in discharging condition 5 for each appeal.

Condition 9 – Appeal B

42. An assessment of the merits of the details of any new floors to be installed pursuant to condition 9 depends upon the information provided meeting the requirements of the condition. The submitted details fail to fully address the requirements of condition 9 and so fall at the first hurdle. Consequently, further consideration of the likely effects upon designated heritage assets is rendered unnecessary.
43. In any event, the inadequacy of the details provided prevent the proper consideration of the effects upon surviving historic fabric in the listed building, which is an important component of its significance.
44. On that basis, the proposed discharge would run counter to the Act, heritage policies in the Framework and the requirements of policy ESD15 of the LP and saved policy C18 of the 1996 LP.

Other matters

45. The appellant raised concerns regarding the way the Council handled both applications to discharge conditions. This related to the length of time it took for them to make their decisions, their inadequate administration of information and poor communication. Nevertheless, these matters do not directly relate to the merits of the details that are the subject of the appeals before me, rather they relate to the behaviour of the Council. Hence, they are matters that lie outside of the scope of my determinations.
46. Both parties agreed that it would be beneficial for the listed building to be occupied and serve the approved residential use. The appellant pointed out that further delay in doing so could risk it falling into disrepair. I acknowledge that both points were soundly made and are laudable. Inevitably some repercussions will flow from my decisions, but the broad objectives described are likely subject to many variable factors. It does not follow that insufficient details should be deemed acceptable. Neither does it alter the relatively constrained remit of my determinations as outlined in the preliminary matters.
47. The appellant contends that they are being held to a higher standard than other applicants seeking to discharge conditions. General reference was made to residential conversions of listed buildings at the Woolpack Inn and 16 Market Place where details like those provided in this case had been found to be acceptable by the Council. However, little specific evidence was advanced to substantiate the assertion that the circumstances were directly comparable. Even if there were some similarities, by their nature, listed buildings will be unique, and the respective significance of each will differ. Accordingly, it does not automatically follow that what may be an acceptable level of detail in relation to one listed building will be equally applicable to others. Hence, this is not a matter that carries sufficient weight to lead me to a different view overall.

Conclusions

48. For the reasons given above, both appeals should be allowed in part and dismissed in part.
49. Appeal A is partly allowed in relation to the details submitted pursuant to conditions 4 and 5 but dismissed in relation to the details submitted pursuant to condition 3.
50. Appeal B is partly allowed in relation to the details submitted pursuant to conditions 4 and 5 but dismissed in relation to the details submitted pursuant to conditions 3 and 9.

Helen O'Connor

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Steven White, LSE Planning Consultants

Mustafa Ibrahim

FOR THE LOCAL PLANNING AUTHORITY

Nathanael Stock, Development Management Team Leader

Michael Sackey, Senior Planning Officer

Emma Harrison, Senior Conservation Officer