



Appeal Decision

Site visit made on 7 January 2025

by **B Astley-Serougi BA(Hons) LLM MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 March 2025

Appeal Ref: APP/X3540/W/24/3345482

32 The Thoroughfare, Woodbridge IP12 1AQ

- 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 Mr and Mrs Groen against the decision of East Suffolk Council.
- The application Ref DC/23/4469/VOC, dated 21 November 2023, was refused by notice dated 25 April 2024.
- The application sought planning permission for demolition of existing dwelling and associated garage structure and erection of replacement dwelling. without complying with conditions 2,8 and 12 attached to planning permission Ref DC/20/2417/FUL, dated 25 August 2020.
The conditions in dispute are Nos 2, 8 and 12 which state that:

Condition 2

"The development hereby permitted shall not be carried out other than in complete accordance with the following drawings: Location plan (Drawing number: 01-382) - received 01 July 2020; Proposed roof block plan (Drawing number: 16-382 Rev. F) - received 01 July 2020; Proposed site plan (Drawing number: 17 Rev. I) - received 01 July 2020; Proposed plans (Drawing number: 13-382 Rev. O) - received 01 July 2020; Proposed plans detailed (Drawing number: 14-382 Rev. J) - received 01 July 2020; Proposed elevations (Drawing number: 15-382 Rev. R) - received 01 July 2020; Proposed shading/sun paths (Drawing number: 19-382 Rev. A) - received 01 July 2020; and Proposed sight lines (Drawing number: 20-382 Rev. B) - received 01 July 2020"

Condition 8

"Notwithstanding the provisions of Article 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting the said Order), the sedum/green roofs of the hereby approved development, shall not be used as a recreational area, unless otherwise agreed in writing with the local planning authority"

Condition 12

"The approved landscaping scheme under Condition 11 shall be implemented not later than the first planting season following commencement of the development (or within such extended period as the local planning authority may allow) and shall thereafter be retained and maintained for a period of 5 years. Any plant material removed, dying or becoming seriously damaged or diseased within five years of planting shall be replaced within the first available planting season and shall be retained and maintained."

- The reasons given for the conditions are:

Condition 2

"For avoidance of doubt as to what has been considered and approved"

Condition 8

"To enable the local planning authority to retain control, in the interest of preserving a reasonable level of amenity and prevent possible loss of privacy to the neighbouring properties"

Condition 12

"To ensure the submission and implementation of a well-laid out scheme of landscaping in the interest of visual amenity."

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling and associated garage structure and the erection of replacement dwelling

at 32 The Thoroughfare, Woodbridge, IP12 1AQ in accordance with the application Ref DC/23/4469/VOC without compliance with condition numbers 1, 2, 8, 9, 10, 11 and 12 previously imposed on planning permission Ref DC/20/2417/FUL dated 25 August 2020 and subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr and Mrs Groen against East Suffolk Council. This application is subject to a separate decision.

Preliminary Matters

3. Both the application and appeal forms state that the description of development as *'Variation of condition 2 of application reference DC/20/2417/FUL to amend the approved plans (Demolition of existing dwelling & associated garage structure. Erection of replacement dwelling) - Doors on south east elevation to be four sections instead of two with solid triangle above instead of glass; raise sedum roof beyond openings and glass barrier; non opening window on southwest elevation to be in two sections instead of one; and south west elevation rear garden wall to be straight instead of slight step.'* However, the description of development used by the Council on the decision notice is more precise, given that the variation the appellant seeks would also require the variation of conditions 8 and 12. I have therefore used this in the banner heading.
4. A subsequent variation of condition application has been granted by the Council regarding condition 2¹. Consequently, this is a material consideration for the appeal before me.
5. The application form states that the development was completed in October 2023. I have therefore considered the appeal on the basis that the development has been constructed, as did the Council.
6. A revised National Planning Policy Framework (the Framework) was issued on 12 December 2024. Whilst some paragraph numbers have changed, the relevant paragraphs and parts of paragraphs identified as directly affecting this case have not been amended. Therefore, in this case it has not been necessary to consult the parties on the revised Framework.

Background and Main Issues

7. The Council in its statement of case states that it does not wish to contend condition 12 which pertains to landscaping. It has already been varied in the aforementioned variation of condition permission². Therefore, if I am minded to allow the appeal I would vary this condition accordingly.
8. Consequently, the disputed conditions relate to the removal of permitted development rights to use the roof as a leisure space (condition 8) and consequentially condition 2 which relates to the approved plans.
9. Therefore, the main issues in this appeal are the effect that removing condition 8 would have upon the living conditions of both the neighbouring residents and occupants of 32 The Thoroughfare and whether the condition is reasonable and

¹ Planning Application Ref: DC/24/2623/VOC

² Planning Application Ref: DC/24/2623/VOC

necessary in order to preserve or enhance the character or appearance of the Woodbridge Conservation Area (the CA), within which the site lies.

Reasons

Living Conditions

10. The appeal property, 32 The Thoroughfare (No 32) is a two-storey detached dwelling close to the centre of Woodbridge. The main living areas of No 32 are situated on the first floor of the dwelling and given the urban location of the dwelling the garden is compact. There are other residential properties near to no 32 which can be accessed via Doric Place and Brook Street.
11. The neighbouring property, 6 Doric Place (No 6) has a rear projection that is the length of the rear garden of No 32. The relationship between the dwellings is close given the relatively compact garden and existing built form. There are a number of windows located on the first-floor side elevation of No 6 which do not serve habitable rooms.
12. One of the first-floor side elevation windows is a bathroom window located opposite the living room and flat roof of No 32. Whilst it is technically a non-habitable room, it is a room in which privacy is important. However, whilst the occupants of No 6 may be able to see the occupants of No 32 from the window and have a perception of overlooking, the film covering the window prevents any reality of overlooking from No 32.
13. The occupiers of no 6 highlight that at night, when the lights are on in the bathroom, it is possible for the occupiers of No 32 to see into the room. However, there is limited evidence before me to suggest that the level of visibility that occurs at night is unacceptable. Therefore, considering the existing relationship between the living area and the bathroom window this already creates a perception of overlooking both during the day and at night. Accordingly, the use of the flat roof for leisure would not result in further significant harm to this relationship.
14. A ground floor dining room window at No 6 is visible from the flat roof. However, the window is at a high level and would not afford the occupants of No 32 significant views into the dining room.
15. Given the existing relationship between the properties and the nature of the film, the living room of No 32 is already overlooked by the occupants of No 6 through the bathroom window. Consequently, this relationship also results in a level of overlooking of the roof terrace. However, it is not unreasonable to have a level of mutual overlooking given the proximity of the dwellings and the town centre location.
16. Furthermore, given the rear projection of No 6, views from the flat roof to the garden of No 6 are limited. The planting scheme (conditions 11 and 12) has now taken place and provides an effective barrier. Consequently, any limited views are further obscured and as a result, the occupants of No 6 can enjoy an adequate level of privacy in their garden including the rear seating area.
17. The Council have referred to a previous appeal³ at the site which was for a construction of a dwelling with roof terrace. This was dismissed by the Inspector

³ Planning Appeal Ref: APP/X3540/W/20/3256680

on the grounds that it would harm the living conditions of the occupants of No 6 with reference to privacy. I do not have the full details of that appeal before me and accordingly cannot be certain that the roof terrace had a similar relationship as the flat roof which is the subject of this appeal. Nevertheless, each application is determined on its own merit. The previous appeal decision was reached prior to the approved dwelling at No 32 having been constructed. Therefore, now it has been constructed and the planting scheme implemented, I have been able to assess the relationship between the flat roof and No 6 upon my visit.

18. In conclusion, the removal of condition 8 would not result in unacceptable living conditions with particular regard to privacy for the occupants of Nos 6 or 32. Consequently, I do not find condition 8 to be reasonable or necessary to comply with Policy SCLP11.2 of the East Suffolk Council – Suffolk Coastal Local Plan 2020 which seeks to ensure adequate living conditions for future occupiers and existing/future occupiers of neighbouring properties.

The significance of the CA

19. The appeal site is located within the CA. I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
20. The CA covers most of the centre of Woodbridge. Its significance derives, in part, from the many historic buildings from the immediate post-medieval years as well as numerous red brick classical facades of buildings from the 18th Century. The appeal site is located within Character Area 4 in the Woodbridge Conservation Area Appraisal SPD 2011 which is characterised by tightly packed houses and shops dating from the 16th Century.

The effect of the development on the significance of the CA

21. The flat roof is located to the rear of the dwelling and is adjacent to a car park. The shopping streets within the CA are compact and therefore have a busy character. Consequently, there is a level of noise associated with its busy character. Considering this, in conjunction with the nearby busy car park, the use of the flat roof and any noise which it emits when used as a leisure space by the occupants is minimal and does not result in harm to the CA.
22. I therefore conclude that, given the above, the removal of condition 8 would preserve the significance of the CA. Its removal would therefore accord with the requirements of the Act and the aims of the National Planning Policy Framework with regard to conserving and enhancing the historic environment.

Other Matters

23. Considering the town centre location and the proximity of the car park to the appeal site and No 6, the leisure use of the roof would not result in an unacceptable level of noise and disturbance. Furthermore, the Environmental Protection team and Council have not raised concerns regarding noise and disturbance as a consequence of the removal of condition 8. I find no reason to disagree with their conclusions on this matter.

24. Interested parties have referred to previous applications at the appeal site DC/23/0763/AME and DC/23/4469/VOC. I do not have the full details of these applications before me. However, each application is determined on its own merit and consequently the refusal of previous applications does not necessarily result in a precedent. Nevertheless, the Council has not raised concerns regarding the minor changes to fenestration and I find no reason to disagree with their conclusions on this matter.
25. Additionally, the safety of the glass balustrade has not been raised as a concern by the Council. Nonetheless, the safety regarding the height of the balustrade would be a matter for the appellant. It is not a matter covered by planning legislation. Moreover, I can only assess the plans before me and therefore the suggestion of a Juliet balcony is not something I can consider.
26. Reference to a loss of privacy for a bedroom window located on the north elevation of No 6 as a consequence of the kitchen/dining room windows of No 32 has been raised. This related to the previously approved plans for the construction of the dwelling and is not before me as part of this appeal.
27. Matters regarding the loss of property value are not a material planning consideration and therefore are not assessed in my determination of this appeal.
28. Finally, an interested party refers to an alleged breach of condition 11 of the original application. This is not a disputed condition in the appeal before me, however an approved landscaping scheme has now been implemented.

Conditions

29. Planning Practice Guidance outlines that decision notices for the granting of planning permission under Section 73 should restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. I have therefore re-imposed all conditions that remain relevant.

Conclusion

30. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions and restating those undisputed conditions that are still subsisting and capable of taking effect.

B Astley-Serougi

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be retained in accordance with drawing nos:
 - 01-382 (Location Plan) and 15-REV S (Proposed Elevations)

Drawings previously approved under DC/20/2417/FUL

 - 13-382 Rev. O (Proposed Plans) and 14-382 Rev. J (Proposed Detailed Plans), 16-382 Rev F (Proposed Roof Block Plan) and 17-382 Rev I (Proposed Site Plan).

Drawings previously approved under DC/20/4119/DRC

Cycle storage 1 and 2 received 15.10.2020 and Landscape works received 15.10.2020.
- 2) The materials and finishes shall be as indicated within the submitted application and thereafter retained as such, unless otherwise agreed by the local planning authority.
- 3) No development shall commence until a detailed method of construction statement has been submitted to and approved by the local planning authority. This statement shall set out hours of construction/activity on site, the location of parking areas for construction vehicles and delivery hours for materials and equipment to the site before and during construction. Thereafter, the approved construction statement shall be adhered to throughout the construction of the development.
- 4) The use shall not commence until the area(s) within the site shown on drawing number 17-382- Rev I for the purposes of manoeuvring and parking of vehicles has been provided and thereafter that area(s) shall be retained and used for no other purposes.
- 5) In the event that contamination which has not already been identified to the local planning authority is found or suspected on the site it must be reported in writing immediately to the local planning authority. Unless agreed in writing by the local planning authority no further development (including any construction, demolition, site clearance, removal of underground tanks and relic structures) shall take place until this condition has been complied with in its entirety. An investigation and risk assessment must be completed in accordance with a scheme which is subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and conform with prevailing guidance (including BS 10175:2011+A1:2013 and CLR11) and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. Where remediation is necessary a detailed remediation method statement must be prepared and is subject to the approval in writing of the local planning authority. The remediation method statement must include detailed methodologies for all works to be undertaken, site management procedures, proposed remediation objectives and remediation criteria. The approved remediation method statement must be carried out in its entirety and the local planning authority must be given two weeks written notification prior to the commencement of the remedial works. Following completion of the approved remediation scheme a

validation report that demonstrates the effectiveness of the remediation must be submitted to and approved in writing by the local planning authority.

- 6) The first floor WC window on the south eastern elevation shall be fitted and remain fitted with obscured glass, which shall have an obscurity of level three on the Pilkington obscured glazing range (or equivalent by an alternative manufacturer) and have brackets fitted to prevent the windows from opening more than 45 degrees except in the case of an emergency. These items shall thereafter be retained in their approved form.
- 7) The details of measures to enhance the biodiversity value of the site, as detailed in the submitted Design and Access Statement, and approved under application DC/20/3336/DRC shall be carried out in their entirety within one year of the date of this consent.
- 8) The secure cycle storage details approved under DC/20/4119/DRC shall be carried out in its entirety before the development is brought into use and shall be retained thereafter and used for no other purpose.
- 9) The approved landscaping scheme under DC/20/4119/DRC shall be retained and maintained for a period of 5 years. Any plant material removed, dying or becoming seriously damaged or diseased within five years of planting shall be replaced within the first available planting season and shall be retained and maintained.

=====End of Schedule=====