



The Planning Inspectorate

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Your Ref: 18/03084/VAR
Our Ref: APP/Y3940/D/18/3207299

Wiltshire Council
Planning Appeals
Monkton Park Office
Chippenham
Wiltshire
SN5 1ER

17 January 2019

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal by Mr G Mundy
Site Address: Caddens, Lower Road, Homington, Wiltshire, SP5 4NG

I enclose a copy of our Inspector's decision on the above appeal(s).

If you have queries or feedback about the decision or the way we handled the appeal(s), you should submit them using our "Feedback" webpage at <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>.

If you do not have internet access please write to the Customer Quality Unit at the address above.

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Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

The Planning Inspectorate cannot change or revoke the outcome in the attached decision. If you want to alter the outcome you should consider obtaining legal advice as only the High Court can quash this decision.

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Thank you in advance for taking the time to provide us with valuable feedback.

Yours faithfully,

Max Board

Max Board

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Appeal Decision

Site visit made on 20 November 2018

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 17th January 2019

Appeal Ref: APP/Y3940/D/18/3207299

Caddens, Lower Road, Homington SP5 4NG

- 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 Mr G Mundy against the decision of Wiltshire Council.
 - The application Ref 18/03084/VAR, dated 29 March 2018, was refused by notice dated 4 June 2018.
 - The submitted application sought planning permission for, extensions and alterations and construction of replacement garage, without complying with a condition attached to planning permission Ref 17/07475/FUL, dated 20 October 2017.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans:
DWG No: 216083/01 Rev B Site Location Plan and Proposed Block Plan
Date Received 01.08.17; DWG No: 216083/04 Rev B Proposed Floor Plans
Date Received 01.08.17; DWG 216083/05 Rev B Proposed Front and Rear Elevation and Side Garage Elevations Date Received 01.08.17; DWG No: 216083/06 Rev B Proposed Side (East and West) Elevations and South Section Date Received 01.08.17; and
DWG No: 216083/07 Rev B Proposed Street Scene Elevation date Received 01.08.17.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is allowed and planning permission is granted for extensions and alterations and construction of replacement garage at Caddens, Lower Road, Homington SP5 4NG in accordance with the application Ref 18/03084/VAR made on the 29 March 2018 without complying with condition No 2 set out in planning permission Ref 18/00525/VAR granted on 21 March 2018 by the Wiltshire Council, but otherwise subject to the conditions set out in the schedule attached at the end of this decision.

Procedural Matters

2. Planning permission was granted under file reference 17/07475/FUL on 20 October 2017 for extensions and alterations, including the construction of a replacement garage at Caddens. Condition 2 of permission 17/07475/FUL required the development to be implemented in accordance with the submitted application drawings (the plans condition). Thereafter a further planning application, reference 18/00525/VAR, was submitted to amend some aspects of the originally approved development, by means of the variation of the plans condition imposed on permission 17/07475/FUL. That variation (the variation

permission) was granted permission by the Council on 21 March 2018. The variation permission is in effect a standalone planning permission.

3. The application subject to this appeal refers to planning permission being sought for a further variation of condition 2 imposed on permission 17/07475/FUL. However, works have been commenced on site, and from what I observed I consider that the works that have been undertaken are not severable from those subject to the variation permission, with the walls of the garage having been constructed so that it would be an attached rather than detached structure. Other works relating to the main house have also been undertaken and those works are clearly associated with the development subject to the variation permission. Additionally works benefitting from the variation permission are shown on the drawings accompanying the appealed application. Accordingly I am of the opinion that it is condition 2 of planning permission 18/00525/VAR that should be treated as being the starting point for the determination of this appeal, and that is how I have approached the appeal's determination. I consider that in practice this approach is consistent with the way the Council approached its consideration of the appealed application, having taken into account the cumulative effects of the changes to the development. Given those circumstances I consider that I can determine the appeal on the basis of it relating to the variation of permission 18/00525/VAR without there being prejudice to the appellant, the Council or other interested parties. Accordingly for the purposes of my formal decision above I have referred to the permission 18/00525/VAR as opposed to permission 17/07475/FUL.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the area, with specific regard to whether the development would preserve or enhance the character or appearance of Homington Conservation Area (the conservation area), and the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty (the AONB).

Reasons

5. The site is located within the conservation area, which is a designated heritage asset. There is therefore a requirement for special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
6. The conservation area is characterised by a linear arrangement of often substantial, street-facing historic buildings, which use a range of vernacular materials. There has been limited infilling by modern housing, which includes Caddens. The significance of the conservation area therefore arises from the historic layout of development, and the architectural character of the historic buildings.
7. The original appearance of Caddens has been altered by the remodelling works currently under way. The plans relating to the variation permission show that the alterations to Caddens will result in a property whose appearance is more harmonious with that of other properties in the conservation area.
8. The alterations subject to the appealed application would lead to a change in form and a moderate increase in the mass of the garage roof by comparison

with the development subject to the variation permission. By linking the garage roof with the main house, the overall mass of the dwelling as a whole would also be increased. The change in appearance would, however, be modest, and would not be at odds with either the appearance of Caddens, as extended, or the scale and appearance of the other dwellings in the conservation area. I therefore consider that the proposed change to the garage roof would preserve the appearance of the conservation area.

9. As Caddens is also located within the AONB I have had regard to the statutory purposes of the AONB's designation, most particularly to conserve and enhance the natural beauty of the area. In that regard paragraph 172 of the revised National Planning Policy Framework (the Framework), states that great weight should be given to conserving and enhancing landscape and scenic beauty within ANOBs. Whilst the proposed development would be visible from an area of rising open land to the north, it would be viewed firmly within the context of forming a part of the ribbon of residential development that characterises this part of Homington. As such and having regard to the comparatively modest differences between the development subject to the extant permissions and what is now proposed I consider that the appeal development would not amount to an overdevelopment of Caddens and would continue to conserve the natural beauty of the AONB.
10. As I have considered the proposed development on its own design merits, within its own specific context, I see no reason why a decision to allow this appeal would create a precedent for other development in the AONB.
11. For the reasons outlined above I conclude that the development would not be harmful to the character and appearance of the area because the conservation area's appearance would be preserved, while the AONB's natural beauty would be conserved. The development would therefore accord with Policies 51, 57 and 58 of the Wiltshire Core Strategy of 2015 and paragraph 172 and section 16 (conserving and enhancing the historic environment) of the revised Framework. This is because the design of the development would be respectful of its surroundings, and conserve the AONB's natural beauty, while the appearance of the conservation area, as part of the historic environment within the Council's area, would be conserved.

Other Matters

12. A similarity between the proposed development and a scheme previously refused has been referred to. However, very few details relating to that earlier application have been made available to me. Notwithstanding that, I have considered the appeal development on its own merits.

Conditions

13. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission unless they have already been discharged. Accordingly the conditions imposed on the extant variation permission are the starting for my consideration of the conditions that are necessary. The Council has confirmed that none of the conditions has been cleared. I have therefore re-imposed these conditions with some modification, with the reasons for any changes being given below. As the development has already started there is no need for a condition setting a time

- limit for commencement. An approved plans condition referring to the drawings included with the appealed application is necessary for the sake of certainty.
14. The purpose of condition 2 is to require the appellant to deal with matters of detailed design which need to be addressed in order to make the development acceptable. In drafting this condition I have had regard to the condition as originally imposed on permission 17/07475/FUL, which the Council confirms has only been partially cleared. In doing so I have reincorporated reference to wall finishes and roofing materials given that the appealed plans lack annotation, and the appealed scheme itself involves additional roofing.
 15. Condition 2 is drafted in this form because, unlike an application for development yet to be commenced, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already in part taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition and approved (either by the local planning authority or by the Secretary of State on appeal). Should the requirements of the condition not be met then the planning permission falls away.
 16. With respect to the installation of obscure glazing in relation to some of the first floor windows and the rooflights (conditions 4 and 5 of the extant variation permission), I consider that the wording used by the Council lacks precision and see no reason why two separate conditions are necessary. I have therefore re-imposed one condition (condition 3). Given the height and size of the rooflights I consider there is no need for those windows to be non-openable and I have therefore not included a requirement for the rooflights to be 'fixed shut'. The wording used by the Council refers to the obscurity level to be 'no less than level 5'. However, no definition for level 5 has been defined within the conditions. As determining whether the glazing of a window has or has not been fitted with obscured glazing that is capable of deterring a loss of privacy for the occupiers of a neighbouring property is a matter that can be readily enforced, I consider there is no need for a minimum level of obscuring to be specified in condition 3.
 17. The Council has suggested a condition requiring the rooflights in the garage roof to be fixed shut and obscure glazed. However the supporting assessment within the Committee report indicates that the limited overlooking would be possible via those windows and that that overlooking would not be harmful to the living conditions of the occupiers of Etrick House. As I see no reason to disagree with that assessment I am not persuaded of the need for the garage rooflights to be fitted with obscured glazing.
 18. I have imposed conditions 4 (surfacing of access), 5 (parking and turning), 6 (use of the garage) and 7 (construction hours), which are equivalent to the conditions previously numbered conditions 6 to 9 inclusive, albeit with some modification to the wording of conditions 4 and 5 to take account of the fact that the development has in part been implemented.

Conclusion

19. For the reasons set out above I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 216083/01 Rev. C, 216083/04 Rev. E, 216083/05 Rev. E, 216083/06 Rev. E.
- 2) The development hereby permitted shall be demolished and all materials resulting from the demolition shall be removed within 56 days of the date of failure to meet any one of the requirements set out in i) – iii) below:
 - i) Within 2 months of the date of this decision the following details relating to the construction of the development hereby permitted shall have been submitted for the written approval of the Local Planning Authority:
 - a. specification of the roofing materials;
 - b. construction of a sample panel of the proposed brick, mortar colour and pointing finish (in Flemish Bond), which is to be left on site throughout the works as a reference panel;
 - c. a section drawing of the brick string course to be added to the front elevation of the dwelling;
 - d. a section drawing at a scale of 1:5 showing the profile and means of fitting of the rainwater goods;
 - e. details of lintels, which shall be pre-fabricated gauged bricks 4 course deep;
 - f. details of window cills on the front elevation which shall be constructed from Bath stone and stooled; and
 - g. details of the render to be used on the external elevations, which shall be a soft render, and will not feature a bell mouth detail.
 - (ii) If within 5 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - (iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

The development shall be carried out in accordance with the details to be approved in accordance with the requirements of this condition.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) Prior to the first use of the rooms served by: the rooflight in the eastern elevation; the rearmost of the rooflights in the western elevation; and the first floor windows in the western elevation, as shown on drawings 216083/04E and 216083/06E, the previously mentioned windows shall be fitted with obscure glazing and thereafter the obscure glazing shall be retained.
- 4) The garage hereby permitted shall not be used until the first five metres of the access, measured from the back edge of the carriageway, has been laid with a consolidated surfaced. The access shall be retained as such thereafter.
- 5) The garage hereby permitted shall not be used until the access, turning area and parking spaces have been completed in accordance with the details shown on the approved plans. The access, turning area and parking spaces shall be retained for the purposes of parking and vehicle manoeuvring at all times thereafter.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), the garage hereby permitted shall not be converted to habitable accommodation.
- 7) Works associated with the construction of the development hereby permitted shall only take place between the hours of 08:00 to 17:00 from Mondays to Fridays and between the hours of 08:00 to 13:00 on Saturdays. No construction works associated with the development hereby permitted shall take place at any time on Sundays and on Bank or Public Holidays.