



# Appeal Decision

Site visit made on 1 February 2022

**by David Jones BSc (Hons) MPlan MRTPI**

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

**Decision date: 11 April 2022**

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**Appeal Ref: APP/B3410/W/21/3275529**

**20 Church Lane, Rocester ST14 5JZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr Paul Whitworth against the decision of East Staffordshire Borough Council.
  - The application Ref P/2021/00366, dated 15 March 2021, was approved on 13 May 2021 and planning permission granted subject to conditions.
  - The development permitted is the demolition of existing conservatory to facilitate a single storey rear extension, conversion of existing garage to form additional living accommodation and alterations to existing garage roof to form a pitched roof.
  - The condition in dispute is No 4 which states that: a) Prior to the commencement of the development hereby permitted, a written scheme of archaeological investigation ('the Scheme') shall be submitted for the written approval of the Local Planning Authority. The scheme shall provide details of the programme of archaeological works to be carried out within the site, including post-excavation reporting and appropriate publication. b) The archaeological site work shall thereafter be implemented in full accordance with the written scheme of archaeological investigation approved under paragraph (a) above. c) Unless otherwise first agreed in writing by the Local Planning Authority the development shall not be first brought into use until the site investigation and post-excavation assessment has been completed in accordance with the written scheme of archaeological investigation approved under paragraph (a) above and the provision made for analysis, publication and dissemination of the results and archive deposition has been secured.
  - The reason given for the condition is: To ensure that any development scheme provides for adequate archaeological investigation and recording in accordance with East Staffordshire Local Plan Policies SP1, SP25 and DP5 and the National Planning Policy Framework.
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## Decision

1. The appeal is allowed and planning permission Ref P/2021/00366 for the demolition of an existing conservatory to facilitate a single storey rear extension, conversion of existing garage to form additional living accommodation and alterations to existing garage roof to form a pitched roof at 20 Church Lane, Rocester, ST14 5JZ approved on 13 May 2021 is varied by deleting condition 4 and substituting for it the following condition:
  - a) Prior to the commencement of any development related to the single storey rear extension hereby permitted, a written scheme of archaeological investigation shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of the programme of archaeological works to be carried out, including post-excavation reporting and appropriate publication, dissemination and archive deposition thereof. The archaeological site work shall thereafter be implemented in accordance with the

approved scheme. The development hereby permitted shall not be first brought into use until the site investigation and post-excavation reporting has been completed, and appropriate provision made for publication, dissemination and archive deposition of reporting.

### **Background and Main Issue**

2. Planning permission Ref P/2021/00366 (the 'original permission') was granted subject to disputed condition 4. In summary that required that the development proceeded in line with an agreed scheme of archaeological investigation. The appellant argues that condition is inappropriate for two reasons. The first is that the agent acting for the appellant in respect of the original permission agreed to the inclusion of that condition 'without any consultation' with them, and therefore acted 'beyond his remit'.
3. That is, however, a private contractual matter to be resolved between the appellants and their former agent as necessary, rather than one that with a bearing on whether disputed condition 4 serves a valid planning purpose. There is nothing in the evidence before me indicating other than that the Council sought, and obtained, agreement from an individual acting on behalf of the appellant to the terms of that condition in imposing it originally.<sup>1</sup>
4. The appellant's second contention is that No 20 Church Lane lies 'neither within a Conservation Area nor a Designated Heritage Area' and thus imposing condition 4 was unnecessary and unreasonable. I note the advice of paragraph 56 of the National Planning Policy Framework (Framework) along with relevant guidance contained in the Planning Practice Guidance (PPG) in that context.
5. In support of that point the appellant highlights that three other proposals for extensions to two existing properties, which they explain are 'within similar proximity to the site of the Roman Fort where the new cemetery is now', were permitted by the Council without the requirement for a scheme of archaeological investigation.<sup>2</sup> The main issue is therefore whether condition 4 is necessary and reasonable in that context.
6. I will turn to the appellants' further point regarding the 'balanced judgement' referred to in Framework paragraph 203 subsequently. My decision does not, however, address the appellant's contention that the imposition of condition 4 'could have a negative impact on house prices'. That is a matter essentially outside of the remit of this decision.<sup>3</sup>

### **Reasons**

7. Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Detailed policy 5 (DP5) of the East Staffordshire Local Plan (adopted 2015, the LP) sets out how development proposals should take account of undesignated archaeological sites and sites of potential archaeological interest. It sets out how this should be informed by the Historic Environment Record (HER) and Extensive Urban Survey (EUS) if relevant. LP policy SP1 also asks for 'archaeological investigation where this is appropriate'.

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<sup>1</sup> Noting the provisions of section 100ZA of the Town and Country Planning Act 1990 as amended.

<sup>2</sup> At Nos 6 Swinson Close and 14 Dove Lane.

<sup>3</sup> PPG Reference ID: 21b-008-20140306.

8. Similarly, Framework paragraph 194 sets out that where a site on which development is proposed includes, or has the potential to include heritage assets with archaeological interest, a suitable assessment or evaluation thereof should be undertaken by the applicant. That is a specific application of the general onus being on the applicant to substantiate their proposal.<sup>4</sup> The Framework clarifies how heritage interest, or significance, may derive from archaeological interest. Archaeology is rarely neatly confined to a specific area.
9. In that context the boundary of the 'Site of Rocester Abbey and part of Roman Town', a scheduled ancient monument, extends very close to the rear boundary of the plot of No 20 Church Lane.<sup>5</sup> A representation from the County Archaeologist in respect of the original permission, dated 6 April 2021, puts the intervening distance as approximately 15 metres.
10. I would pause at that point. Although archaeological remains may be extensively scattered about, the scheduled ancient monument is to the south and south-east of No 20. St. Michael's Churchyard, or the cemetery as referred to by the appellant, falls instead to the north-east. The extensions at Nos 6 Swinson Close and 14 Dove Lane referred to above are therefore significantly further away from the scheduled ancient monument than the appeal site. There is, moreover, no substantive information before me in respect of existing site conditions in those locations or of any site investigations undertaken elsewhere.
11. Turning to the HER and EUS insofar as relevant to this appeal, I have the representation from the County Archaeologist of 6 April 2021 and also at appeal (the latter dated 25 August 2021). The appellant does not specifically challenge the content of those representations. In terms of the EUS, No 20 falls within 'Historic Urban Character Area 9' ('HUCA9'), which is identified as having a 'high potential for below ground archaeological deposits... relating to Roman and medieval activity.'
12. The County Archaeologists' representation of 6 April 2021 refers to the HER and to the identification of a likely third century rampart some 17 metres to the south of the site, and also to Anglo Saxon pottery some 32 metres to the south also. Consequently, on the basis of the evidence before me, there is a high potential for the site to contain heritage assets with archaeological interest (which may, additionally, contribute to an understanding of the historic ecology and significance of the area, including that of the scheduled ancient monument).
13. The development proposed would create greater floorspace, and, in all likelihood necessitate additional earthworks, foundations or footings.<sup>6</sup> There is no indication that the original application was submitted with supporting information in that regard or any assessment conducted pursuant to LP policy DP5 or Framework paragraph 194. Thus some form of condition, to ensure the appropriate identification and recording of any archaeological remains present, is necessary to make the development acceptable in planning terms.

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<sup>4</sup> Section 62(3) of the Town and Country Planning Act 1990 as amended.

<sup>5</sup> List entry 1006106.

<sup>6</sup> Noting that there is partial, undated, correspondence before me from the Council to the appellant seeking information as to the type of foundations proposed (as also referred to in the County Archaeologists' representation of 25 August 2021).

14. A 'watching brief', in my view would be proportionate to the limited extent of disturbance likely to arise. That is given that the scheme relates, in part, to the replacement of existing development associated with an early twentieth century domestic property. Returning to my reasoning earlier, a 'balanced judgement' on the scale of any harm or loss and the significance of the heritage asset cannot be undertaken in the absence of relevant information.
15. Whilst disputed condition 4 is therefore necessary, as phrased in respect of the original permission it is unreasonable in applying to the entirety of the development proposed; certain elements of the scheme would convert existing floorspace rather than necessitate groundworks. I have accordingly imposed an amended version of condition 4, also modified to accord with the advice in the Framework and PPG in respect of the use of conditions. I therefore conclude that an amended version of condition 4 is necessary and reasonable, and that, subject to that condition, the proposal would accord with the relevant provisions of policies SP1 and DP5 of the LP and relevant elements of the Framework.

### **Other Matters**

16. I saw during my site visit that the existing conservatory had been demolished and a new brick built single storey rear extension had been created. I understand that was undertaken with the intention of complying with the relevant provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended, as opposed to implementing the original permission. Be that as it may, and notwithstanding that there is no certificate of lawfulness before me in respect of it, the original permission remains extant until May 2024. Thus there remains a realistic prospect, albeit relatively unlikely, that the original permission could be effected. As such that does not alter the foregoing reasoning. Similarly, whilst I appreciate that the need to comply with condition 4 may not have been foreseen by the appellant, and may be frustrating, it is nevertheless necessary to achieve acceptable development.

### **Conclusion**

17. For the reasons given above, having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be allowed in the terms set out above.

*David Jones*

INSPECTOR