
Appeal Decision

Site visit made on 21 June 2016

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 July 2016

Appeal Ref: APP/B9506/D/16/3147286

Little Mead, Balmer Lawn Road, Brockenhurst, Hampshire SO42 7TT

- 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 R Bambach against the decision of the New Forest National Park Authority.
 - The application Ref 16/00020, dated 11 January 2016, was refused by notice dated 8 March 2016.
 - The application sought planning permission for two-storey side and rear extensions; external alterations, without complying with a condition attached to planning permission Ref 15/00430, dated 31 July 2015.
 - The condition in dispute is No 3 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) England Order 2015 (or any re-enactment of that Order) no extension (or alterations) otherwise approved by Classes A, B or C of Part 1 of Schedule 2 to the Order, garage or other outbuilding otherwise approved by Class E of Part 1 of Schedule 2 to the Order, or means of enclosure otherwise approved by Class A of Part 2 of Schedule 2 to the Order shall be erected or carried out without express planning permission first having been granted.
 - The reason given for the condition is: To ensure the dwelling remains of a size which is appropriate to its location within the countryside and to comply with Policies DP10 and DP11 of the New Forest National Park Core Strategy and Development Management Policies (DPD) (December 2010).
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Decision

1. The appeal is allowed and planning permission is granted for two-storey side and rear extensions; external alterations, at Little Mead, Balmer Lawn Road, Brockenhurst, Hampshire SO42 7TT, in accordance with the application Ref 16/00020 dated 11 January 2016, without compliance with condition number 3 previously imposed on planning permission Ref 15/00430 dated 31 July 2015, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject to the conditions on the attached schedule.

Background and Main Issue

2. Planning permission has been granted for side and rear extensions. The application the subject of this appeal sought permission to carry out the development without complying with the part of condition 3 which removes the permitted development rights of means of enclosure under Class A of Schedule 2, Part 2 of the Town and Country Planning (General Permitted Development)
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- (England) Order 2015 (GPDO). Since the application was refused, the appellant challenges the entire condition.
3. The Council's report on the application concluded that further means of enclosure could have a suburbanising effect and erode the character and distinctiveness of the rural setting opposite the open forest. The Council considers that the edge of forest setting is sensitive and vulnerable to the cumulative impact of relatively small changes to the enclosures of the houses opposite it.
 4. Though the Council offers no comments on the appellant's submission to remove the entire condition, its reason for applying the condition was to ensure that the dwelling remains of a size which is appropriate to its countryside location, and to comply with Policies DP10 and DP11 of the Core Strategy and Development Management Policies DPD 2010 (CSDMP). While I have not been provided with these policies, they appear to concern floor space limitations.
 5. Therefore, the main issue is whether condition 3 is necessary and reasonable having particular regard to the character and appearance of the area.

Reasons

6. The Classes of development removed under the condition are:
 - Part 1, Class A for the enlargement, improvement or other alteration of a dwelling house;
 - Part 1, Class B for the enlargement of a dwelling house consisting of an addition or alteration to its roof;
 - Part 1, Class C for other alterations to the roof of a dwelling house;
 - Part 1, Class E for buildings etc. incidental to the enjoyment of a dwelling house; and,
 - Part 2, Class A gates, fences, walls etc.
7. The site contains a detached house, set deep within a spacious plot. It is part of a long run of houses of varying style and size, set well apart, and facing onto open forest across Balmer Lawn Road, lying outside the village of Brockenhurst, and in the New Forest National Park.
8. The permitted development rights for extending the dwelling are qualified by limitations. It is unnecessary to set out all of those limitations in this decision because they are set down clearly within the GPDO and within Technical Guidance¹. However, I will refer to some of the key points that I feel help to explain my reasoning.
9. The house is isolated in the centre of the spacious plot, and the consented development extends it into the space to the west. There is a large gap between the house and the east boundary, and to the rear of the plot is a single-storey form extending almost to the back boundary. The original walls of the house not being extended under the consent are short; and further extensions may compromise the light reaching the rest of the house in the

¹ Department for Communities and Local Government, Permitted development rights for householders, Technical Guidance, April 2016.

- reconfigured layout. Under Part 1, Class A of the GPDO, side extensions are limited to being single storey and to being no wider than half the width of the original house. Furthermore, the overall height of any extensions and the heights of their eaves close to the boundaries would also be restricted to the degree where their scale would not undermine the open character of the plot or the setting of the forest edge.
10. Together with the substantial set-back of the house within the plot, these factors would ensure that sufficient space would be retained around it to sustain the spacious character of the plot and its contribution to the character of the area. The withdrawal of permitted development rights under this Class is therefore unnecessary.
 11. Rights to enlarge the roof under Part 1, Class B would not apply in any event as houses on article 2(3) land are excluded under the Order. Restriction under this Class is not relevant to the development. Given the scale of the house and its set-back within its plot from the road, alterations under Part 1, Class C to the roof of the dwelling would not affect the character or appearance of the forest edge. There are buildings to the south and west of the site, which include clay and concrete roofing materials as well as roof lights. Alterations in this Class would not result in the dwelling being at odds with the appearance of the surrounding roofscapes or out of character with the distinctive setting of the forest edge. The restriction is therefore unnecessary.
 12. I appreciate the concern of the Council in seeking to conserve the spacious character of this plot, however development under Part 1, Class E cannot be further forward of the principal elevation of the original house, and in National Parks development is further restricted beyond the side elevations of the original house. These measures restrict the location of any outbuilding. In addition, the height of any out building that could be built would be limited to an eaves height of 2.5m. Given the substantial set-back of the house within the plot, a restriction under Class E would be unnecessary to safeguard the area from any suburbanising effect.
 13. Part 2 Class A, while limiting its height, permits the erection of a fence adjacent to a highway. It also restricts other fences to 2m in height. The Council has two reasons for restricting development in this class. First, it is concerned that the present boundary, which I noted on my visit to be a hedge around 1.8m high of mixed deciduous and evergreen species obscuring a post and wire fence, makes a significant contribution to the distinctiveness of the area and the setting of the forest edge. It considers that replacing the front hedge with fencing would harm the character of the area and the forest edge setting.
 14. The houses at this end of the road are characterised by their thick and tall hedges which soften the edge of the housing opposite the forest, and I understand why the Council wish to safeguard their condition. However, the consent to which the condition was applied is for extensions to the house. I appreciate that extensions could change the spatial relationship between the plot and the forest edge but the scale and nature of the consented development does not suggest that the removal of this class of permitted development is necessary to make the development acceptable in planning terms. Nor is it fairly and reasonably related to that development.
 15. The Council fears that the appellant may erect high fencing in the area between the house and the road to increase privacy to the garden area which would be

reduced following the construction of the extensions under the consent. However, the existing hedge already provides a good degree of privacy along most of its length. The appellant has planted saplings and supporting structure in the parts where the hedge is thin to bolster its screening. I consider the realisation of the Council's fear an unlikely prospect, and the restriction of development under this class, unreasonable.

16. The Council states that the appellant has not justified the reinstatement of permitted development rights. However, the Planning Practice Guidance (PPG) states that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. I would therefore expect the Council to demonstrate what the exceptional circumstances are in this case.
17. In summary, having regard to the character and appearance of the area, condition 3 is neither necessary nor reasonable. There would be no conflict from development under the classes of permitted development described above with CSDMP Policies CP8 and DP1, which seek development of high quality design that enhances local character and distinctiveness, and which resist development which would individually or cumulatively erode the Park's character or result in a gradual suburbanising effect. Neither would there be any conflict with Section 11 of the National Planning Policy Framework 2012 which requires great weight to be given to conserving landscape and scenic beauty in National Parks, nor with Section 7, which requires good design and development which responds to local character.

Conclusion

18. For the reasons given above I conclude that the appeal should succeed. In accordance with Section 73(2)(a) of the Act I have granted a new planning permission without the disputed condition 3, while retaining the non-disputed conditions from the original permission. The guidance in the PPG 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. 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.
19. It should be noted that in accordance with Section 73(5) the time limit for the commencement of the development specified in condition No 1 of the original planning permission still applies. Therefore, the development permitted by my decision on this appeal must be commenced within three years of the date of the original planning permission Ref 15/00430, which was granted on 31 July 2015.

Patrick Whelan

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun within three years of 31 July 2015.
- 2) The external facing materials to be used in the development shall match those used on the existing building, unless otherwise agreed in writing by the New Forest National Park Authority.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any subsequent re-enactment thereof, the kitchen roof shall remain vaulted as planned and no additional floor space by way of the use of the roof space above the kitchen hereby approved (adjacent to bedroom 3 and bathroom at first floor level) shall be formed.
- 4) All materials and machinery to be used in the carrying out of the development hereby approved shall be stored within the red line application site unless otherwise agreed in writing by the local planning authority.
- 5) No development shall take place until details of the means of disposal of surface water from the site have been submitted to and approved in writing by the New Forest National Park Authority. Development shall only take place in accordance with the approved details.

End of Schedule of Conditions