

NEW FOREST NATIONAL PARK AUTHORITY

PLANNING DEVELOPMENT CONTROL COMMITTEE – 19 JULY 2016

LIMITING EXTENSIONS TO SMALL DWELLINGS AND OTHER DWELLINGS OUTSIDE THE DEFINED VILLAGES (POLICY DP11) PROPOSED AMENDMENT TO THE STANDARD 3-YEAR TIME LIMIT CONDITION

Report by: Steve Avery, Executive Director

1. Introduction

1.1 This report seeks to address a local planning 'loophole' that is becoming more common whereby applicants, having obtained planning permission to extend a property up to the maximum 30% floorspace limit under Policy DP11, then exercise permitted development rights to extend the property further before implementing the earlier consented planning permission, resulting in a much larger development in excess of the 30% limit.

2. The 'loophole' explained

2.1 Under section 91 of the Town and Country Planning Act 1990, Members will be aware that the grant of planning permission is subject to a condition that specifies the time limit within which the development must begin, i.e. not later than the expiration of:

- three years beginning with the date on which the permission is granted, or;
- such other period (whether longer or shorter) as the local planning authority may impose.

2.2 When granting planning permission for an extension where the 30% policy applies, Members will also be aware that it is standard practice to limit further 'permitted development rights' for extensions through the imposition of a suitably worded planning condition. However, this condition only 'bites' once the planning permission is implemented. Therefore, until such time as the permission is implemented, the property still benefits from 'permitted development rights' for certain extensions.

2.3 There have been several instances where applicants, on the advice of their agents, have 'banked' a planning permission whilst further extension works are undertaken using permitted development rights. The planning permission (commonly for a side extension) is then implemented once the 'permitted development' (usually a single storey rear extension) has been completed.

2.4 The effect of this practice, whilst not unlawful, has resulted in a number of properties being extended by considerably more than the earlier permitted 30%, to the consternation of neighbouring residents and parish councils. This can lead to poor design solutions as well as undermining local confidence in how the policy is applied. It also seems unfair on less well informed applicants who implement their planning

consents in good faith, triggering the restrictive planning condition on their permitted development rights.

3. The proposed remedy

3.1 In such cases where an extension would utilise all or almost all of the 30% extension potential on a dwelling, and where there would be scope to implement an extension under 'permitted development' during the subsequent three years, it is proposed to limit the life of the planning consent, so that it lasts for the full three years, unless a further extension under 'permitted development' is implemented – in which case the planning permission would expire at that point. The same consideration would apply to proposals to extend 'small dwellings'.

3.2 The suggested condition would read as follows:

The development hereby permitted shall be begun before:

- *the expiration of three years from the date of this permission; or*
- *the carrying out of any further extension or enlargement to the dwelling otherwise permitted under Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 or any Act subsequently revoking or re-enacting that Order;*

whichever is the sooner.

3.3 The National Planning Practice Guidance (NPPG) supports the use of appropriate planning conditions. Section 70(1)(a) of the Town and Country Planning Act 1990 enables the local planning authority in granting planning permission to impose "*such conditions as they think fit*". Some notable quotes from the NPPG section on planning conditions include:

- "*When used properly, conditions can enhance the quality of development...*" – this condition is being proposed to enhance development and avoid the contrived situation where permitted development extensions are 'shoe-horned' around development already granted planning permission;
- "*The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable...*" – the proposed condition is being brought to the Planning Development Control Committee for approval so the condition can be implemented in a fair and reasonable way. If agreed, this new approach would be clearly signposted on our website and made known to applicants at the relevant pre-application stage.
- "*It is important to ensure that conditions are tailored to tackle specific problems.*" – this is a specific problem in the National Park that is becoming more widespread, and is directly linked to one of the key planning policies of the adopted Core Strategy (Policy DP11) which was endorsed by the Government's Planning Inspectorate following the examination of the plan.

- 3.4 The NPPG notes that *“conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances”.* However it should be highlighted that (a) the NPPG recognises that such conditions can be used in exceptional circumstances; and (ii) the proposed condition does not in itself remove permitted development rights, nor does it reduce the time limit available for implementation of a planning consent. It would only provide a restriction in those cases whereby an extension in excess of the 30% is intended, and it would ensure that development accords with Policy DP11 in that no more than a 30% increase in floorspace is achieved.
- 3.5 The wording of the condition has been checked with the Authority’s Solicitor and it is considered that the condition would be sound and would adhere to the six tests of the NPPG. If Members agree the two recommendations below, officers will write to those agents who regularly submit planning applications in the Forest to alert them to the future use of this condition. The planning pages on the Authority’s website will also be updated with immediate effect.

Recommendations:

- 1. Members approve the use of the amended three year planning condition in such cases where an extension in excess of the tolerances permitted by Policy DP11 could clearly be achieved; and**
- 2. Members agree that this condition should be used forthwith in the determination of all planning applications received following this committee meeting (i.e. on and after 20 July 2016).**