



## Appeal Decision

Site visit made on 16 October 2017

**by Mrs J Wilson BA BTP MRTPI DMS**

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

**Decision date: 13<sup>th</sup> November 2017**

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**Appeal Ref: APP/B9506/D/17/3178611**

**Salindine, Partridge Road, Brockenhurst SO42 7RZ**

- 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 Batten against the decision of New Forest National Park Authority.
  - The application Ref 17/00129, dated 13 February 2017, was refused by notice dated 16 May 2017.
  - The application sought planning permission for a proposed porch and bay window addition; and an outbuilding (demolish existing outbuilding) without complying with a condition attached to planning permission Ref 14/00965, dated 6 February 2015.
  - The condition in dispute is No 4 which states that: The outbuilding the subject of this permission shall only be used for purposes incidental to the dwelling on the site and shall not be used for habitable accommodation such as kitchens, living rooms and bedrooms.
  - The reason given for the condition is: To protect the character and appearance of the countryside in accordance with Policies DP11 and DP12 of the adopted 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 a porch and bay window addition; and an outbuilding at Salindine, Partridge Road, Brockenhurst SO42 7RZ in accordance with the application Ref 17/00129 dated 13 February 2017 without compliance with condition No 4 previously imposed on planning permission Ref 14/00965 dated 6 February 2015 and subject to the following conditions:
  - 1) The outbuilding shall not be occupied at any time other than as a kitchen, living room and bedroom ancillary to the residential use of the dwelling known as Salindine and by a dependant relative of the occupiers of that property.
  - 2) Any use of the building hereby permitted as habitable accommodation shall permanently cease within three years of the date of this permission. All materials, fixtures and equipment which enable the provision of a kitchen, living room or bedroom in connection with the temporary use as habitable accommodation shall be removed within two months of the cessation of the temporary use.

## **Procedural and Preliminary matters**

2. The outbuilding subject of this appeal has been built. Materials used match those in the existing building and conditions 1 and 2 imposed on permission Ref 14/00965 have therefore been complied with. On my visit I saw that surfaces around the building were permeable and I have not been provided with any evidence which would lead me to conclude that surface drainage has not been completed in accordance with the terms of condition 3.
3. Paragraph 206 of the National Planning Policy Framework indicates that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

## **Main Issues**

4. The main issues are whether the condition is necessary and reasonable in order to safeguard:
  - the character and appearance of the site, the locality and the National Park;
  - the living conditions of neighbouring occupiers; and
  - whether any harm arising from the development is outweighed by the personal circumstances of the appellant.

## **Reasons**

### *Local and National policy*

5. Policy DP12 of the New Forest National Park Core Strategy and Development Management Policies DPD (2010) (CS&DMP) tightly defines criteria for domestic outbuildings, including a restriction on their use to that incidental to the use of the main dwelling and their preclusion as additional habitable accommodation. Policy DP11 applies to the extension of dwellings and provides, in exceptional circumstances, for allowing larger accommodation to meet the genuine family needs of an occupier working in the immediate locality. However, this policy, whilst discussed in the delegated report, is not cited in the reasons for refusal and I do not find it relevant to my assessment of the proposal.
6. On this basis the condition fulfils the requirements of the aforementioned policies and the proposal to vary it to enable habitable accommodation would be in conflict with Policy DP12 of the CS&DMP.

### *Character and appearance*

7. The authorised use of the building is a home office and gym. No external changes to the building are proposed and internal changes would be confined to the installation of a kitchen. The National Park Authority (NPA) say that a living room, bedroom and bathroom have been installed however at the time of my visit the building was in use as an office and sitting room with a shower room and WC installed.
8. The property lies in the National Park where one of the main statutory purposes is to conserve and enhance its natural beauty; it is also within Brockenhurst and is surrounded by other residential properties. It is well screened from the

footpath at the rear and is perceived as an ancillary structure within the curtilage of the host dwelling. As the building is already in place and no external alterations are involved, I do not find that the proposal would affect the character of the site, the wider area or the National Park or the fundamental principles of the National Park designation. I find no conflict with Policy CP8 of the CS&DMP which seeks to protect the character of the National Park from built development or changes of use which would erode its local character.

#### *Impact on living conditions*

9. There is no independent means of access to the outbuilding other than that serving the main house. The garden would be shared and there would be no opportunity for a separate frontage to be created to serve the subject building. Moreover, the footpath at the rear is too narrow for vehicular access. The building can legitimately function as a home office and gym which would inevitably generate activity and so have some impact on neighbouring properties.
10. Whilst conflicting with the policies relating to the use of outbuilding for family members, in my judgement, and taking into account: the proximity to and relationship with the main dwelling; the shared access and garden; and the scope of the authorised use, the use of the building in the manner proposed would have a limited impact on the neighbouring dwellings and would not cause the adverse impacts by reason of activity light and noise that the Authority fears. It would not in the context described cause harm to the living conditions of the occupants and would not therefore conflict with Policy DP1 of the CS&DMP.

#### *Personal Circumstances*

11. The appellant seeks permission on a temporary basis to use the outbuilding as living accommodation to care for his elderly mother. Temporary permission would allow the appellant to provide care within a familiar family setting. Medical information detailing the circumstances has been provided directly to the Authority and is not in dispute, I have taken this in to account.
12. Whilst I can understand the concerns of the Authority regarding the creation of a self-contained unit it is clear from the evidence that, in these particular circumstances, a level of dependency would exist between the family use of the main house and the residential activity in the outbuilding. Even though it would provide facilities for independent day-to-day living it would not become a separate planning unit due to that level of dependency. Moreover the accommodation would be required only on a temporary basis.

#### **Other Matters**

13. The appellant outlines that the only genuine alternative to make provision for his mother would be to bring a caravan or mobile home onto the site to provide the required accommodation. This, it is submitted, would not create a separate planning unit, and would overcome the concern of the Authority regarding the residential use of the outbuilding. Arguably, this option would have a much greater visual impact on the site and the living conditions of neighbours as it would introduce a further structure into the garden and I consider there is a

high likelihood that the appellant would progress this option in the event that the appeal was unsuccessful.

14. The NPA expresses concern that the proposal would set a precedent especially as letters written in support of the proposal are based on similar grounds. In this case the circumstances are very specific and personal to the appellant and it would be unlikely that these particular would repeatedly occur.

### **Planning Balance**

15. I have had careful regard to the conflict with the Policies in the CS&DMP. However, taking into account the personal circumstances outlined; the fact that the appeal seeks permission on a temporary basis; that it would be restricted to a dependant of the applicant; that it would revert back to an office/gym once the personal circumstances no longer apply or at the end of the three year period; and the fact that a further structure in the garden would, in all likelihood, have a greater and more harmful effect on the character and appearance of the site and neighbour's living conditions, I conclude that the personal circumstances outweigh the policy conflict cited by the Authority.

### **Conditions**

16. Two conditions have been suggested by the appellant and one by the NPA, though essentially they serve the same purpose. Whilst the Authority has not made any comment on the appellants drafting, the conditions would serve to secure the temporary variation of the disputed condition and ensure that the occupancy of the outbuilding is restricted to a family member of the occupants of the main dwelling. I have, however, amended the wording of the first condition to ensure precision and enforceability.
17. Similarly the requirement to revert back to the same restrictive condition as currently exist at the end of the three year period also requires adjustment from the suggested wording. These conditions are needed on the basis that the appeal is being allowed due to the special, particular, personal and time limited circumstances outlined by the appellant and it is not therefore unreasonable for the facilities to be removed at the end of the temporary period. Other conditions on the original permission are not re-imposed given that the outbuilding has been constructed.

### **Conclusion**

18. For the above reasons and having regard to all other matters raised the appeal is allowed in the terms set out above.

*Janet Wilson*

INSPECTOR