



Appeal Decision

Site visit made on 15 September 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2020

Appeal Ref: APP/B9506/W/19/3237595

Kingfishers, Coombe Lane, Sway, Lymington SO41 6BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs James Willis against the decision of New Forest National Park Authority.
 - The application Ref 19/00306, dated 12 April 2019, was refused by notice dated 28 June 2019.
 - The development proposed is for single storey extensions, roof alterations, porch and alterations to fenestration.
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Decision

1. The appeal is allowed and planning permission is granted for single storey extensions, roof alterations, porch and alterations to fenestration at Kingfishers, Coombe Lane, Sway, Lymington SO41 6BP in accordance with the terms of the application, Ref 19/00306 dated 12 April 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan 1822 PP-001; Site Block Plan 1822 PP-002; Proposed Site Plan 1822 PP-004; Proposed Ground Floor Plan 1822 PP-010; Proposed First Floor Plan 1822 PP-011; Proposed Roof Plan 1822 PP-012; North Elevation 1822 PP-015; South Elevation 1822 PP-016; East Elevation 1822 PP-017; West Elevation 1822 PP-018.
 - 3) 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.
 - 4) Notwithstanding the provisions of Part 1 (Development within the curtilage of a dwellinghouse), Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(or any order revoking and re-enacting that Order with or without modification), no further enlargement of the dwelling under classes A , B or C shall take place other than that expressly authorised by this permission.

Procedural Matters

2. In my heading above I have taken the description of development from that used on the decision notice and appeal form as it is more specific than that on the planning application form.
3. Since the Authority made its decision the New Forest National Park Local Plan 2016-2036 (LP) has been adopted in August 2019. This is now the development plan for the Authority and supersedes the policies in the New Forest National Park, Local Development Framework, Core Strategy and Development Management Policies, Development Plan Document, December 2010 (CS). Policies DP2 (General development principles), DP18 (Design principles), DP36 (Extensions to dwellings), SP15 (Tranquillity) and SP17 (Local distinctiveness) of the LP replace the equivalent policies DP1, DP6, DP11, CP6 and CP8 of the CS respectively. They do not make fundamental changes to the Authority's policies on these matters. Both parties have had the opportunity to refer to the LP as part of the appeal process. Therefore, I am satisfied that no party will be prejudiced by my consideration of the appeal against the LP policies due to this change in circumstances.

Main Issues

4. The main issues in this case are the effect of the proposal on (i) the character and appearance of the area with regard to the special qualities of the New Forest National Park, and (ii) the long term future of the countryside from incremental change having regard to development plan policies relating to the scale of the proposal and the balance of housing stock.

Background

5. The planning history of the appeal site is of relevance to the consideration of the proposal. Both parties agree that the site has a longstanding residential use dating from the 1950's, which the Authority suggest was a two bedroom bungalow having approximately 82sqm in floorspace¹. There is also no dispute that the present detached dwelling at the site, known as Kingfishers, is considerably larger than the original bungalow and is deemed lawful by a certificate of lawfulness².
6. Nevertheless, the matter is complicated by the existence of planning permission reference 91/48274, granted on 18 September 1991 to rebuild and extend the original dwelling and provide rooms in the roof. There is disagreement as to whether this lawfully covered the wholesale demolition of the original dwelling and its rebuilding in its present form in the early 1990's. The appellants assert that this planning permission was not implemented as it did not permit the construction of a replacement dwelling and therefore, Kingfishers was built without permission, only becoming lawful by the issue of the certificate of lawfulness, as the passage of time made it immune from enforcement action.
7. This is consistent with the plans approved³ for planning permission 91/48274 which indicates parts of the original bungalow structure as retained, the

¹ Paragraph 7.1 Authority's written statement

² Reference 17/00842 dated 21.11.2017

³ Appendix 2, Plans for reference 48274, Authority's written statement

evidence⁴ submitted in relation to the certificate of lawfulness application which refers to the bungalow as being demolished, as well as the reason given for the grant of the certificate dated 21 November 2017.

8. On the balance of the information submitted I find that Kingfishers is a replacement dwelling following the demolition of the original dwelling in the early 1990's. It is, therefore, a distinct entity from the original former bungalow rather than an extended version of it. I have determined the appeal on this basis.

Reasons

Character and appearance

9. The appeal site lies within the outer areas of Sway Parish, which are generally characterised by a mosaic of agricultural land, heath and woodland with limited clusters of development that form part of the distinctive special qualities of the New Forest National Park (NFNP). This is referred to in the Sway Village Design Statement, Supplementary Planning Document 2013 (SVDS). I am mindful of paragraph 172 of the National Planning Policy Framework (the Framework) which requires great weight to be given to conserving and enhancing landscape and scenic beauty in National Parks.
10. Kingfishers is a detached chalet bungalow set within substantial grounds and is set well back from, and at a lower level to, Coombe Lane. Mature planting along the boundaries means it is well screened from the more open land to the north. The dwelling has little architectural merit having an overly complex roof form and a standardised conservatory typical of a suburban dwelling. Accordingly, it is the spacious grounds and planting within the site layout rather than the dwelling's intrinsic form that positively contributes towards the character and appearance of the NFNP.
11. The proposal would remodel and extend the dwelling to provide improved and enlarged residential accommodation. The comparative elevations illustrate that notwithstanding a moderately higher roof ridge, the roof form would achieve fewer changes in level, a reduced number of dormers and rooflights and a more consistent eaves level. This would result in cleaner lines and a simpler more coherent appearance to the dwelling. The addition and detailing of the porch would improve focus to the principal elevation.
12. Moreover, the timber framed glazed gable on the rear elevation, echoed in the adjacent dormer window would add interest to an otherwise mundane building. Furthermore, the single storey rear extension would replace the existing conservatory with a structure that would have simple lines and a green roof. Overall, these measures would rationalise the external appearance of the building and convey greater distinctiveness. The design approach would also improve the arrangement of the accommodation internally particularly with respect to accessibility for the occupants.
13. Although the dwelling would be enlarged, the clean lines and simplified detailing would prevent it from appearing bulky. Furthermore, the degree of enlargement would not be so significant that the present spacious character of the grounds would be undermined. Consequently, the substantial nature of the grounds would counter the additional built form and prevent it from appearing

⁴ Appendix 2, Appellants Final Comments dated 4.5.20

disproportionate. Moreover, as most enlargement would be located to the rear of the building, when this is combined with the discrete siting of the dwelling and established planting, its relationship with the wider landscape would remain largely unchanged. As such, the special qualities of the NFNP would be conserved. For the reasons outlined, any glimpses of the building itself would be enhanced by the proposal.

14. The Authority have concerns that the proposal would introduce additional glazing that would increase the degree of light pollution on the dark skies of the NFNP and erode its rural character. I have had regard to Planning Practice Guidance⁵ (PPG) which identifies what factors should be considered when assessing whether a development proposal might have implications for light pollution. In this case, a dwelling already exists at the site. As such, the proposal would not introduce a new light source. Nevertheless, the glazing in the structure overall would increase by approximately 24%⁶, with most addition taking place on the rear elevation.
15. The elevational drawings indicate that the first floor gable of the rear elevation would be shielded to a degree as the roof would project forward of the glazing line. Moreover, the areas of light at first floor on this elevation would be consolidated into two areas rather than dispersed across 4 glazed areas as at present. Two of these are rooflights that face upwards and therefore, are likely to be more harmful in terms of light emission to the sky. Additionally, the existing translucent tinted polycarbonate conservatory roof that is also likely to emit some light upwards, would be replaced with a structure that has a green roof that would not. Consequently, even though additional glazing would be introduced, its arrangement and orientation means that the proposal is unlikely to materially alter light levels by comparison to the existing situation.
16. Guidelines in the SVDS acknowledge that extensions to existing buildings come in many shapes and sizes and should be dealt with on an individual basis. I have also considered the advice in relation to extensions in the Design Guide, Supplementary Planning Document, December 2011. This mentions that large areas of glazing can stand out but also states that the use of plastic windows, metal conservatories, bronze tinted glass and the like are not sympathetic to rural character and generally seeks to avoid suburbanisation. For the reasons outlined, the proposal would give the building a more distinctive appearance and reduce some of the suburban characteristics in evidence. Therefore, it would not conflict with the general guidance in these documents.
17. Accordingly, I find that the proposal would improve the appearance and functioning of the dwelling and would not result in harm to the character and appearance of the area. It follows that it is not shown that there would be an adverse impact to the special qualities of the NFNP. Therefore, in relation to this main issue there would be no conflict with policies DP2, DP18, DP36, SP15 and SP17 of the LP. Policies DP2 and DP18 seek to ensure, amongst other things, that development is of a high quality design that is contextually appropriate. DP36 stipulates, amongst other matters, that extensions to existing dwellings will be permitted provided that they are appropriate to the existing dwelling and its curtilage. Policy SP15 amongst other matters, seeks to reduce the impacts of light pollution on the 'dark skies' of the NFNP and policy

⁵ Paragraph: 002 Reference ID: 31-002-20140306, Appendix 5 Appellants' Statement of Case

⁶ Appendix 7, Appellants' Statement of Case

SP17 seeks to prevent development that would erode the NFNP's local character, or result in a gradual suburbanising effect.

Long term future of the countryside

18. Policy DP36 of the LP states that extensions to existing dwellings will be permitted provided that they are appropriate to the existing dwelling and its curtilage but sets a cumulative limit in the case of dwellings (not small dwellings) outside the Defined Villages such that extensions must not increase the floorspace of the existing dwelling by more than 30%. There is no dispute that the appeal site lies outside of the defined villages in the LP. Neither does either party suggest that the dwelling is a small dwelling as defined in the LP.
19. The parties disagree on whether the proposal would increase the floorspace of the existing dwelling by more than 30%. This depends on whether the baseline for the measurement of floorspace increase is the former bungalow or the replacement dwelling that is presently at the site. If the former, the cumulative increase in floorspace would be significantly larger than 30%, if the latter, then it would represent approximately a 25% increase⁷ in floorspace. Essentially, this depends on how the term 'existing dwelling' in policy DP36 is interpreted. Therefore, I am required to consider in detail the meaning of the policy as written and how it applies to the specific circumstances before me.
20. The term is defined in the supporting text of the LP for the purposes of policies DP35 and DP36. It states that *'existing dwelling means the dwelling as it existed on 1 July 1982, or as the dwelling was originally built or legally established, if the residential use postdates 1 July 1982'*.
21. The Authority highlights two appeal decisions⁸ which concerned extensions to replacement dwellings whereby the baseline used to calculate the increase in floorspace was the size of the former dwelling as it existed on 1 July 1982. Although these decisions considered policy DP11 of the previous local plan, the policy wording and definition was similar. The Authority asserts that this approach to interpretation has been established over successive development plans and seeks to guard against harm from cumulative extensions. These appeal decisions are material and reflect a convention which carries some weight. Moreover, policy DP36 was considered during the examination of the LP at a hearing session in November 2018 and remained unchanged.
22. Nevertheless, whilst the definition in the supporting text is certainly relevant, it does not form part of the policy wording for DP36. The term 'the existing dwelling' or 'existing dwellings' appears four times in the wording of policy DP36. It is reasonable to suppose that there is consistency in the meaning of the same term within the same policy. To do otherwise would be illogical and inconsistent.
23. That being the case, applying the definition given in the supporting text throughout is problematic. For example, policy DP36 states at the outset that *'extensions to existing dwellings will be permitted provided that they are appropriate to the existing dwelling and its curtilage'*. Logic dictates that the dwelling to be extended must be a structure that presently exists rather than a former one that may have existed on 1 July 1982 but is no longer there having

⁷ Paragraph 11.11, Authority's delegated report

⁸ Authority delegated report: Home Farm, Canada Road, West Wellow, November 2018 reference APP/B9506/D/18/3208703; Glen Cairn, Canada Road, West Wellow, February 2019 ref APP/B9506/18/3197277

since been replaced. It further follows that the test of appropriateness must be in relation to the dwelling to be extended and its curtilage, rather than one that no longer exists. This is reinforced by paragraph 7.80 of the LP which confirms that regard will be had to the scale and character of the core element of the original dwelling (the dwelling as first built) in determining whether or not an extension is sympathetic to it.

24. In this case, the dwelling to be extended is Kingfishers, built in the early 1990s which replaced the former bungalow. This must be the existing dwelling for the purposes of policy DP36. If the term existing dwelling is consistently interpreted throughout the policy, it follows that it is also the existing dwelling for the purposes of calculating the cumulative floorspace limit. Consequently, the extension would be within the 30% cap.
25. My approach to this interpretation is reinforced by the legal advice provided⁹ and an appeal decision that is brought to my attention at Oak House, Milford Road, Everton¹⁰. This case also concerned a replacement dwelling. The Inspector found in relation to calculating the floorspace increase that the size of the previous dwelling is not a material factor when assessing the increase in habitable floorspace, finding that the definition in the supporting text referred to the dwelling as it was originally built. This decision attracts significant weight given that it was the subject of a High Court challenge whereby the Authority's claim to challenge the decision was refused permission on 24 January 2019. Moreover, I have had regard to the submission of the Secretary of State in defending the claim¹¹ and my reasoning is broadly consistent with his.
26. Even if I were wrong to use a consistent meaning to the term 'existing dwelling' throughout policy DP36 and the former dwelling as it existed on 1 July 1982 applied to the floorspace calculation element of the policy wording, such that the 30% cap had been exceeded, in my view the proposal would not conflict with the underlying objectives of policy DP36. Paragraph 7.79 of the explanatory text supporting policy DP36 of the LP refers to two main concerns of the Authority with regard to incremental extensions, namely the potential harmful impact on the local distinctiveness of the NFNP and imbalance to the overall housing stock from the loss of smaller dwellings.
27. It will be seen from my reasoning in relation to the first main issue that I found the proposal would not be harmful to the local distinctiveness of the NFNP but would rather enhance it. Secondly, the substantial size of Kingfishers as it currently exists already disqualifies it from being classed as a small dwelling for the purposes of the LP. Notwithstanding the information provided in relation to average house prices within the NFNP, the Authority does not suggest that Kingfishers represents a dwelling at the lower end of the market. The dwelling would remain a detached four bedroom house as a result of the development and I have seen little evidence to substantiate that the increase in floorspace proposed would make a significant difference to the house price. It follows that the proposal would not affect the balance of housing stock in the vicinity insofar as maintaining a stock of smaller sized houses is concerned. Consequently, it is not shown that harm would result to the countryside in either of these regards.

⁹ Stephen Morgan dated 11.4.19

¹⁰ Reference APP/B9506/C/18/3196503 dated 16.10.18, Appendix 8, Appellants' Statement of Case

¹¹ Appendix 2, Appellants' Statement of Case, Summary response by George Mackenzie

28. The Authority indicate that it is not the intention of the development plan policies to allow a fresh 30% floorspace allowance each time a dwelling is replaced and point out the sustained pressure for larger replacement dwellings in the NFNP. However, policy DP35 of the LP which outlines the circumstances whereby replacement dwellings will be permitted, states that in the case of dwellings outside the Defined Villages, replacement dwelling should be of no greater floorspace than the existing dwelling and it is only in exceptional circumstances that a larger dwelling will be permitted.
29. Moreover, paragraph 7.80 of the LP states that the 30% floorspace limit set out in Policy DP36 is not an allowance or entitlement and that although an extension may comply with the criterion on size, there could be other harmful impacts which would make the proposal unacceptable. The supporting text goes on to state that where necessary, planning conditions will be used to ensure that permitted extensions are not used in conjunction with national Permitted Development Rights to undermine the aims of policy DP36. Therefore, these policies retain safeguards against harmful incremental development such that my application of the policy to the specific circumstances and planning history of this case would not undermine the wider underlying planning objectives.
30. Accordingly, I find that the proposal would not be harmful to the long term future of the countryside as a result of incremental change having particular regard to the scale of the proposal and the balance of housing stock. Consequently, I find no conflict with policy DP36 of the LP which sets out the circumstances whereby extensions to dwellings are permitted.

Conditions

31. The Authority have suggested 5 conditions. The three year period in which the planning permission may be implemented is a statutory requirement and it is necessary to specify the plans that are approved and that the development shall be undertaken in accordance with these, as this provides certainty. Furthermore, given the generic references on the plans, I agree that to ensure the quality of the finish, the external materials used should match those on the existing dwelling unless otherwise agreed with the Authority.
32. Two further conditions are suggested to prevent external lighting and in relation to the location of storage for materials, machinery, waste materials or spoil, presumably during the construction period. Given that the dwelling and grounds already exists, I am not persuaded that seeking to prevent external lighting is directly relevant to the development to be permitted as this only relates to an extension of it. Furthermore, given the generous grounds and relatively modest nature of the proposal, the likelihood is that there would be space within the site to accommodate materials, machinery and waste storage. Construction of the modest domestic project is also likely to have a limited duration. Accordingly, it would be unnecessary and disproportionate. It follows that these suggested conditions would not meet the tests set out in paragraph 55 of the Framework and therefore, I have not imposed them.
33. Nevertheless, I am mindful that policy DP36 seeks to guard against the harmful impact of incremental change upon local distinctiveness and specifically refers to potential harm arising from the conjunction of permitted extensions together with the use of permitted development rights. The use of conditions to remove permitted development rights to otherwise extend a dwelling without reference

to the Authority is noted as one method that may assist in maintaining this approach.

34. Given the planning history of this case, it is not shown that there are any planning conditions that would prevent further additional enlargement of the property under permitted development rights. PPG states that blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity¹². Nevertheless, given the particular planning history of this site, together with the objectives of policy DP36 there is a reasonable basis to justify the curtailment of some of the permitted development rights normally afforded to householders such that any further enlargements to the main dwelling or alterations to the roof would require the consent of the Authority. I have imposed a condition accordingly.

Conclusion

35. For the reasons given above I conclude that the appeal should be allowed.

Helen O'Connor

Inspector

¹² Paragraph 017 reference ID 21a-017-20190723