



Appeal Decision

Site visit made on 26 February 2020

by **S Leonard BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 April 2020

Appeal Ref: APP/B9506/D/19/3238342

The Jays, Winsor Road, Winsor SO40 2HE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73a 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 and Mrs Wayne Loon against the decision of New Forest National Park Authority.
 - The application Ref 19/00331, dated 24 April 2019, was refused by notice dated 1 August 2019.
 - The application sought planning permission for first floor extension; solar panels; replacement rear conservatory; cladding; replacement outbuilding without complying with a condition attached to planning permission Ref 17/00249, dated 16 May 2017.
 - The condition in dispute is No.2 which states that: "*Development shall only be carried out in accordance with Drawing nos: CGS-PL 001, CGS-PL 002, CGS-PL 003, CGS-PL 004, CGS-PL 005, CGS-PL 006, CGS-PL 007, CGS-PL 008, CGS-PL 009. No alterations to the approved development shall be made unless otherwise agreed in writing by the New Forest National Park Authority*".
 - The reason given for the condition is: "*To ensure an acceptable appearance of the building in accordance with policies CP7, CP8, DP6 and DP1 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 first floor extension; solar panels; replacement rear conservatory; cladding; replacement outbuilding at The Jays, Winsor Road, Winsor SO40 2HE in accordance with the terms of the application, Ref 19/00331, dated 24 April 2019, without compliance with condition No.2 previously imposed on planning permission Ref 17/00249, dated 16 May 2017, but subject to the conditions set out in Annex A.

Procedural Matters and Background

2. The application subject to this appeal is made under Section 73a of the Planning Act for minor material amendments.¹ It seeks approval for a revised, but not substantially different design, in respect of extensions and alterations approved to the dwelling in May 2017. This type of application is possible, as a condition was imposed on the original permission specifying the approved

¹ See Greater flexibility for planning permission: Guidance, October 2010 (Department of Communities and Local Government)

plans. This appeal seeks removal of this condition and its replacement with a condition specifying the plans that reflect the amended design.

3. The changes include alterations to the garage/utility room at the side of the house. These comprise an increase in building footprint at the front, so that instead of being aligned with the front wall of the main house, the building projects about 1.3 metres further forward, together with an increase in the height and mass of the roof, replacing a shallow, fully hipped roof with a higher sloping roof extending up to the eaves of the main house, with front and rear gables.
4. There are also a number of other changes to the rear conservatory roof and rooflights, front porch and door, rear elevation ground floor window and first floor internal layout. The Council has raised no objection to these alterations and neither do I.
5. I note that the planning application was submitted retrospectively, and on my site inspection I observed that the appeal scheme has been implemented. I also saw that, although not shown on the planning application drawings, the area within the enlarged roof is in use as a walk-in wardrobe, accessed directly from bedroom one via a full height door. I have dealt with the appeal accordingly.
6. On 29 August 2019, since the refusal of the planning application and prior to the submission of this appeal, the Council adopted the New Forest National Park Local Plan 2016 – 2036 (Local Plan). The Council has confirmed that Policies DP1, DP6, DP11, CP7 and CP8 of the New Forest National Park Core Strategy and Development Management Policies DPD 2010 (CSDMPDPD) have been superseded by Local Plan Policies DP2, DP18, DP36, SP16 and SP17 respectively. These Policies are consistent with the approach of the replaced CSDMPDP policies. Accordingly, I have determined the appeal having regard to the recently adopted Local Plan policies.

Main Issues

7. The Council's reason for imposing the condition is to ensure an acceptable appearance of the building. The Council's refusal reasons include additional concerns arising from the increased size of the dwelling, having regard to the cumulative effect of significant enlargements to rural dwellings upon the countryside and upon the range and mix of housing stock within the National Park.
8. The main issues are therefore:
 - The effect of the proposal upon the range and mix of available housing stock; and
 - The effect of the proposal on the character and appearance of the host property, the National Park countryside, and the Forest North East Conservation Area (FNECA).

Reasons

Range and Mix of Housing

9. The appeal property is a detached, two-storey house, dating back to around the 1960s. It lies outside the designated settlement boundary, within open

- countryside in the New Forest National Park, and within the FNECA. It is surrounded by detached dwellings to both sides and a group of farm buildings to the rear.
10. Local Plan Policy DP36 places a restriction on the size of dwelling extensions. The preamble to the policy explains that incremental extensions can affect the locally distinctive character of the built environment of the New Forest and, over time, cause an imbalance in the range and mix of housing stock. I deal with the former matter as part of my consideration of the second main issue.
 11. In respect of dwellings that are not 'small dwellings', and are located outside the Defined Villages, such as the appeal property, extensions must not increase the floorspace of the existing dwelling by more than 30%. In the case of the appeal property, the Policy DP36 definition of "existing dwelling" is the dwelling as it existed on 1 July 1982.
 12. Policy DP36 confirms that the "existing dwelling" floorspace will be measured *"as the total internal habitable floorspace of the dwelling but will not include floorspace within conservatories, attached outbuildings and detached outbuildings, irrespective of whether the outbuilding's current use is as habitable floorspace"*. The Policy also states that the floorspace of proposed extensions *"will include conservatories and attached outbuildings and any habitable floorspace provided within a detached outbuilding"*.
 13. There have been several applications to extend the property since 2017. The planning application Officer Report states that following the withdrawal of the first application, Ref 16/01064, which exceeded the Council's maximum permissible floorspace increase, discussions took place between the Council and the Appellant in respect of how the 30% policy-compliant increase in floorspace could be achieved. Subsequently, the approved scheme, Ref 17/00249, incorporated a policy-compliant 30% increase in floorspace. As such, I find that any increase in habitable floorspace above that of the approved scheme, no matter how small, would conflict with the floorspace restriction of Policy DP36.
 14. The Council considers that the development that has been built has resulted in a 51% increase in floorspace. The Appellant disputes the Council's interpretation of "habitable floorspace", which includes the garage and the walk-in wardrobe area above the garage and utility room. It is the Appellant's view that these areas should not be included and therefore the resulting total internal habitable floorspace would not exceed the 30%.
 15. Policy DP36 does not specifically define "habitable". The Appellant argues that the space above the garage and utility room does not comprise habitable floorspace, since it does not receive natural light from windows or rooflights, is not accessed via a permanent staircase, and is not large enough, nor does it meet the Building Regulations requirements, for use as a bedroom. The former two factors stem from the Council's 'Planning Information Leaflet – Extensions to Dwellings' (the Guidance) which provides guidance on measuring existing and proposed floorspace for the purposes of Local Plan Policy DP36. The Guidance, also requires a headroom of at least 1.5 metres in respect of habitable floorspace.
 16. The area in question is accessed directly from a first-floor bedroom, through a full height door, and is used as a walk-in wardrobe. It is fully boarded out and

- decorated, has spotlights in the ceiling and a radiator. It is of sufficient size to accommodate storage furniture and clothing rails and provide space to walk in, as notwithstanding the sloping roof, a limited part of the space has a headroom greater than 1.5 metres.
17. The Guidance confirms that habitable floorspace is calculated as "*gross internal floorspace including all floors and stairwells*". The Council has confirmed that it measures floorspace on the basis of the internal perimeter, including not just areas with ceilings above 1.5 metres but includes features such as built-in wardrobes which could be removed without requiring planning permission.
 18. However, in this instance, the space in question is separated from the bedroom by a solid wall, which would not be easily removed. It is not large enough to provide an independent bedroom due to the limited floorspace; no window; its access off another bedroom and the lack of headroom. These factors, together with the failure to comply with the Building Regulations for use as a bedroom, persuade me that this area is simply storage space rather than habitable floorspace.
 19. I now turn to the garage. Notwithstanding that Local Plan Policy DP36 states that the floorspace of proposed extensions shall include attached outbuildings, the planning application Officer Report confirms that the garage was not included in the 30% floorspace calculation with respect to the approved scheme, as a planning condition prohibits its use as habitable accommodation. The Council now argues that, since the garage as-built is not capable of accommodating a car, and also includes additional habitable floorspace above, it should be now considered to be habitable floorspace.
 20. In taking this approach, the Council refers to the dismissed appeal at the property in January 2018, for a scheme which included a second storey side addition.² In this case, the Inspector agreed with the Council that the, then existing, garage, utility room and two smaller rooms to the rear of the garage constituted an 'attached outbuilding' rather than part of the existing floorspace of the dwelling itself for the purposes of calculating the existing floorspace. Factors contributing to this interpretation included that the roof above the area in question was not shared with the main dwellinghouse and there was no first floor above the garage and rooms. The Council asserts that this decision lends support to its current approach of including the as-built garage within the proposed internal floorspace calculation for the purpose of the Policy DP36, having regard to the existing first-floor accommodation above it.
 21. The appeal decision post-dates planning permission Ref 17/00249. However, it does not persuade me that the Council is justified to take a different approach in respect of the inclusion of the garage floorspace from that taken in respect of the extant permission, which includes a condition preventing the use of the garage as habitable living accommodation, since the space above the garage is accessed solely via the first floor bedroom and not via the ground floor garage.
 22. Furthermore, I am not persuaded by the Council's justification on the basis of the assertion that the garage as-built is not capable of accommodating a car, since the appeal scheme comprises a larger garage than that of the extant permission and the Appellant has confirmed that the garage is capable of

² APP/B9506/D/17/3186217

accommodating the Appellant's Audi TT, a standard-sized car. I conclude that the garage is not habitable floorspace.

23. I therefore find, on the basis of the evidence before me, that there has been no increase in habitable floorspace above that approved under planning permission Ref 17/00249. Furthermore, the Council has not provided any specific evidence in respect of the impact of the development upon the range and mix of housing in the area.
24. For the above reasons, I therefore conclude that the appeal scheme accords with Local Plan Policy DP36, in so far as it seeks to ensure that the cumulative impact of incremental extensions to rural dwellings does not harm the range and mix of available housing stock.

Character and Appearance

25. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that with respect to development affecting buildings or other land in a conservation area, "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area." In addition, Paragraph 193 of the National Planning Policy Framework (the Framework) sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
26. The appeal site is located within the Winsor character area of the Forest North East Conservation Area (FNECA). This part of the conservation area is characterised by linear built development along Winsor Road, surrounded by more open arable agricultural land. The Council's Conservation Area Character Appraisal notes that the settlement developed predominantly in the 19th and early 20th centuries, and that later 20th century and modern development is scattered throughout the character area, but its design and character, generally does not reflect the local distinctiveness of this area. The appeal property is of no significant architectural merit and falls into the latter category of development.
27. The property has already been significantly altered and extended, and has a more contemporary appearance than as originally built, including render and timber clad walls, slate roofs and dark grey window and door frames. The appeal development is of a very modest size in comparison to the main building, comprising small scale additions to the side of the house, which are subservient in scale to the main building and use matching materials. Whilst introducing different roof forms to those of the main dwelling, these do not appear incongruous within the overall context of the existing dwelling due to their modest size and matching slate finish. The appeal development therefore maintains the character of the building and preserves the character and appearance of the conservation area. I note the comments of the Council in respect of the aforementioned previous appeal, but that previous scheme was significantly different in design to the one before me and the effects upon character and appearance would not have been the same.
28. I am mindful of the statutory purposes of the National Park Designation, and advice within Paragraph 172 of the Framework to give great weight to the conservation and enhancement of landscape and scenic beauty. As the appeal scheme amounts to small additions to the single storey side garage/utility room

element of the dwelling, and is sited adjacent to the neighbouring two storey house, and comprises materials to match the main house, it would not materially harm the landscape or scenic beauty of the New Forest National Park.

29. For the above reasons, the appeal scheme does not harm the character or appearance of the host property, the National Park countryside, or the FNECA as a whole. As such, the development accords with Local Plan Policies DP2, DP18, DP36, SP16 and SP17. These policies, amongst other things, require new development to be of a high-quality design, respect the natural and built environment and the distinctive character of the National Park countryside, and protect the special interest, character or appearance of a conservation area. The development also accords with the objectives of Chapter 16 of the Framework to conserve and enhance the historic environment.

Conditions

30. In allowing the appeal and granting planning permission, I have considered the conditions imposed on the previous planning permission Ref 17/00249, together with those suggested by the Council in the appeal questionnaire, in the light of advice in Paragraph 55 of the Framework and the national Planning Practice Guidance (PPG).
31. Conditions relating to the commencement of development, the specified plans and the details of facing and roofing materials are not required, since the development has already been carried out. I have retained conditions prohibiting further first floor windows and preventing the outbuildings from being used as habitable accommodation in the interests of protecting the privacy of neighbouring residents and the range and mix of housing stock.

Conclusion

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

S Leonard

INSPECTOR

Annex A

Schedule of Conditions

- 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no further first floor windows shall be installed within the development hereby approved.
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the detached outbuilding and attached outbuilding (garage and roofspace above) hereby approved, shall not be used for habitable accommodation.

*****End of Conditions*****