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## Appeal Decision

Site visit made on 18 May 2020

by **Helen O'Connor LLB MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 May 2020

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### Appeal Ref: **APP/B9506/W/20/3245038**

### **Pine Lake, Crawley Hill, West Wellow, Romsey, Hampshire SO51 6AP**

- 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 and Mrs Christopher and Sonia Emslie against the decision of New Forest National Park Authority.
  - The application Ref 19/00417, dated 17 May 2019, was refused by notice dated 16 July 2019.
  - The application sought planning permission for the retention of replacement dwelling and outbuilding as built (revised scheme to 07/91709 and 08/92800) without complying with a condition attached to planning permission Ref 17/00360, dated 8 June 2017.
  - The condition in dispute is No 1 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, C or D of Part 1 of Schedule 2 to the Order, garage or other outbuilding (or any alterations to outbuildings) otherwise approved by Class E of Part 1 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, DP12 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 the retention of replacement dwelling and outbuilding as built (revised scheme to 07/91709 and 08/92800) at Pine Lake, Crawley Hill, West Wellow, Romsey, Hampshire SO51 6AP in accordance with the application Ref 19/00417 dated 17 May 2019, without compliance with condition number 1 previously imposed on planning permission Ref 17/00360 dated 8 June 2017 and subject to the following condition:
  - 1) The outbuilding the subject of the permission reference 17/00360 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.

## **Procedural Matters**

2. Notwithstanding that retention of a building is not an act of development, in my heading above I have replicated the description of development that appears in decision reference 17/00360 which granted permission for the dwelling that is the subject of this appeal.
3. Since the Authority made its decision the New Forest National Park Local Plan 2016-2036 (LP) was 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). Policy DP36 (Extensions to dwellings) of the LP replaces the equivalent policy DP11 of the CS but does not fundamentally change the Authority's policy on this matter. Moreover, given the advanced stage of the LP at the time of the Authority's decision, reference was made to the emerging policies in the LP at the time of the decision and 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 Issue**

4. The main issue is whether the condition is necessary, relevant to the development permitted, and reasonable having particular regard to local distinctiveness and the mix of housing stock with reference to local and national planning policies.

## **Background**

5. There is a notable planning history relating to the appeal site. However, the principal events so far as this appeal is concerned are that planning permission was granted at appeal<sup>1</sup> for a replacement dwelling at the appeal site. The information submitted<sup>2</sup> indicates that this was a substantial dwelling with a swimming pool and detached garage. Notwithstanding that it represented an increase in volume of over 50%, the Inspector found it would not be harmful to the character and appearance of the area and having expressly considered the issue of permitted development rights, found no exceptional reason to curtail them by condition.
6. Although a replacement dwelling was constructed at the site, it differed from the scheme allowed at appeal, but the evidence does not suggest its scale was significantly different at approximately 500 square metres in floorspace<sup>3</sup>. Retrospective permission was sought and granted for the dwelling under reference 17/00360 dated 8 June 2017. Condition 1 removed or restricted the permitted development rights normally afforded to householders under Schedule 2, Part 1, Classes A (enlargement, improvement or other alteration of a dwelling house), C (other alterations to the roof of a dwellinghouse), D (porches) and E (buildings etc incidental to the enjoyment of a dwellinghouse) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)(hereafter referred to as the Order).

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<sup>1</sup> Reference APP/B9506/A/08/2066468 29 July 2008

<sup>2</sup> Appendix 1, Appellant's Appeal Statement

<sup>3</sup> Paragraph 11.7 Authority delegated report.

7. The reason given on the decision notice for the restriction was to ensure that the dwelling remained of a size appropriate to its location within the countryside in order to accord with policies DP10, DP11 and DP12 of the CS. These policies related to replacement dwellings, extensions to dwellings and outbuildings. The explanatory text behind them set out the two main underlying concerns of the Authority relating to the incremental effect that pressure for replacement dwellings and/or their extension might have unless steps were taken to guard against that impact. Namely, firstly, the overall impact on the local distinctiveness of the New Forest National Park from creeping urbanisation and secondly, the reduction in smaller housing stock across the Authority thereby resulting in an imbalance. The term 'small dwelling' is consistently defined in the CS and LP. It means '*a dwelling with a floor area of 80 sq. metres or less as it existed on 1 July 1982, or as the dwelling was originally built or legally established, if the residential use post-dates 1 July 1982*'.
8. The appellant seeks to remove the restriction on permitted development rights imposed by condition 1 on the basis that it fails to meet all 6 tests referred to in paragraph 55 of the National Planning Policy Framework (the Framework). The Council disagree and consider that the condition continues to serve a useful planning purpose that meets the requisite tests. This is essentially the central issue for my consideration. In deciding an application under section 73<sup>4</sup>, the decision maker must only consider the question of the conditions subject to which planning permission should be granted.

### **Reasons**

9. The explanatory text behind policy DP36 of the LP reiterates the two main concerns of the Authority that may, unless steps are taken to safeguard against incremental harm, otherwise damage the countryside in the New Forest National Park. As already outlined, these refer to the impact on the local distinctiveness of the New Forest National Park from creeping urbanisation and the potential imbalance to the overall housing stock from the loss of smaller dwellings. 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. The justification in relation to the size of housing stock is reinforced by the comments in the Local Plan Inspectors report<sup>5</sup> which have been brought to my attention.
10. Policy DP36 states that extensions to existing dwellings will be permitted provided that they are appropriate to the existing dwelling and its curtilage but sets a broad 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%. The baseline is the floorspace of 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. Policy DP36 would only be relevant where an extension to a dwelling required planning permission and therefore, extensions that could be carried out under permitted development would not normally be assessed against such a policy unless there was a condition restricting permitted development already in place. The proposal before me effectively seeks to remove the condition, it does not of itself propose a specific extension to the dwelling.

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<sup>4</sup> Section 73(2) Town and Country Planning Act 1990 (as amended)

<sup>5</sup> Paragraphs 80 and 89 Local Plan Inspectors Report, Appendix 1, Authority's Written Statement

11. Advice in the Planning Practice Guidance (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 necessity<sup>6</sup>. It reminds local planning authorities that there are alternative powers to use for blanket removal of permitted development rights where justified. Policy DP36 of the LP does not advocate the blanket removal of permitted development rights for all dwellings. Moreover, the approach set out in the LP does not dispense with the need to ensure that a condition to restrict permitted development rights meets the six tests for conditions set out in paragraph 55 of the Framework in each individual case.
12. The substantial size of the existing dwelling at the site disqualifies it from being classed as a small dwelling for the purposes of the LP and condition 1 is exclusive to the appeal building. It follows that any further extensions otherwise permitted under the Order would not affect the balance of housing stock in the vicinity insofar as maintaining a stock of smaller sized houses is concerned, as any extension would be to an already large dwelling. Consequently, it is not shown that harm would result to the countryside in this regard and therefore, the proposal would not conflict with this underlying aim of policy DP36 as referred to in the Inspectors Local Plan report. Accordingly, this issue would not justify the continued imposition of such a condition.
13. Therefore, it is appropriate to consider what impact on the locally distinctive character of the area might arise from extensions and alterations that are currently prevented by condition 1. The general nature of development permitted within the curtilage of a dwellinghouse under Schedule 2, Part 1 of the Order is relatively minor. Furthermore, these are restricted to a greater extent in National Parks as these are classed as Article 2(3) land under Schedule 1, Part 1 of the Order. Therefore, the more restrictive nature of the provisions in the Order already take account of the sensitive context of National Parks but do not rule out extensions or alterations altogether.
14. The appeal site has substantial grounds<sup>7</sup>, with the modern dwelling set back considerably from the road and centrally positioned with established tree cover within and around the site. As such, it is difficult to see built form within the site from the road or surrounding area. This was referred to by the Inspector in the appeal decision in 2008<sup>8</sup>. The limitations imposed on the permitted development would generally prevent extensions forward of the principal elevation towards the road or increases in the overall height. Class D which would allow a front porch, is restricted to a ground area of 3 square metres, which by comparison with the existing dwelling would be inconsequential in terms of its visual impact on the wider area.
15. Hence, taking into account the likely extensions, alterations and outbuildings permitted under Classes A, C, D and E of Part 1, Schedule 2 of the Order it seems unlikely that the present spacious and leafy appearance of the site would materially change as a result of such development.

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<sup>6</sup> Paragraph 017 reference ID 21a-017-20190723

<sup>7</sup> Site Location Plan reference 01-01 Rev A

<sup>8</sup> Paragraph 4, APP/B9506/A/082066468 29 July 2008

16. The Authority refers<sup>9</sup> to the feasibility for two single storey extensions to the rear of the dwelling and the potential use of the existing roof space for accommodation, both of which could increase floorspace for living accommodation at the property unless condition 1 remains in place. Be that as it may, this falls short of explaining why such alterations would cause harm to the locally distinctive character of the built environment of the New Forest or the overall balance of housing stock which, in part, underpin policy DP36 of the LP. Particularly given that, in the case of the latter, it is acknowledged that it would not be necessary to change the roof shape<sup>10</sup>. Therefore, based on the information presented, I am not persuaded that condition 1 is necessary in order to protect the locally distinctive character of the area.
17. I am mindful of paragraph 172 of the Framework which requires great weight to be given to conserving and enhancing landscape and scenic beauty in National Parks. The special qualities of the New Forest National Park are derived, amongst other things, from the mosaic of woodland, heath, rivers and picturesque villages. It is not shown that there would be any adverse impact to the special qualities of the New Forest National Park arising from minor domestic extensions and alterations within the existing curtilage of the dwelling that would otherwise normally be permitted under the Order.
18. The Authority point out that the Inspector in the 2008 appeal decision was considering the proposal against the Test Valley Borough Local Plan and that there have been subsequent changes to local policy that are more restrictive in certain circumstances. I have considered the proposal on its own merits against those local policies. I have also considered the changes that have taken place in terms of national policy in relation to the use of planning conditions, as well as the Order in the intervening period.
19. My attention is drawn to three appeal decisions whereby Inspectors allowing appeals for residential development elsewhere in the Authority imposed a condition restricting permitted development rights<sup>11</sup>. However, none of the examples concerned an application to remove a condition that had been previously imposed nor do they have a similar planning history to the case before me. Therefore, each case appears to be significantly different to the appeal proposal and as such, are only of general relevance. Hence, they are of limited weight to the application of the six tests for conditions in this case.
20. I acknowledge that condition 1 is generally relevant to planning, worded precisely and would be capable of enforcement. However, all six of the tests in paragraph 55 of the Framework should be met. Therefore, this would not justify the imposition of the condition.
21. The explanation for policy DP36 of the LP refers to the need to strike an appropriate balance between meeting changes in householder requirements and maintaining a stock of smaller sized dwellings as well as the need to protect the nationally designated landscape of the national park. Given the planning history, size of the curtilage and nature of the existing dwelling, I find that Condition 1 does not strike an appropriate balance in these circumstances and is unjustified when considered against policy DP36 of the LP. It follows that imposing such an unnecessary restriction is unreasonable and therefore, the

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<sup>9</sup>Paragraph 11.8 Authority's delegated report

<sup>10</sup> Paragraph 11.8 Authority's delegated report

<sup>11</sup> Referenced APP/B9506/D/17/3181867, APP/B9506/W/17/3182917 and APP/B9506/W/17/3171773

condition fails the tests of reasonableness and necessity. Moreover, it is not relevant to the specific circumstances of this case.

22. In allowing the appeal, a fresh decision is made. The PPG indicates that decision notices for the grant of planning permission in these circumstances should repeat the relevant conditions from the original planning permission, unless they have already been discharged. Condition 2 of planning reference 17/00360 prevents the outbuilding permitted from being used other than incidentally to the dwelling in order to protect the character and appearance of the area. I have seen no evidence to suggest that this is no longer required and therefore, have little basis to dispute its continued need.

### **Conclusion**

23. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition and restating the undisputed condition that is still subsisting and capable of taking effect.

*Helen O'Connor*

Inspector