The Planning Inspectorate

Appeal Decisions

Site visit made on 25 February 2020

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 05 March 2020

Appeal A: Appeal Ref: APP/B9506/C/18/3214572
2 Rose Cottage, Canterton Lane, Brook, Lyndhurst SO43 7HF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Arthur Allison against an enforcement notice issued by New Forest National Park Authority.
- The enforcement notice was issued on 27 September 2018.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a building for habitable use as shown in the approximate position coloured blue on the plan attached to the notice.
- The requirements of the notice are:
    i) Demolish the building shown in the approximate position coloured blue on the plan attached to the notice.
    ii) Demolish the fencing shown in the approximate position coloured green on the plan attached to the notice to ground level.
    iii) Remove all materials and debris arising from compliance with requirements (i) and (ii) from the land affected.
    iv) Restore the land to surrounding ground levels with soils and re-seed with grass.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Appeal B: Appeal Ref: APP/B9506/W/18/3216083
2 Rose Cottage, Canterton Lane, Brook, Lyndhurst, Hampshire SO43 7HF

- 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 Arthur Allison against the decision of New Forest National Park Authority.
- The application Ref 18/00386, dated 10 May 2018, was refused by notice dated 21 August 2018.
- The development proposed is single-storey pitched roof side extension; new detached oak framed double car port; refurbish existing timber framed annexe building.

Decisions

1. I am obliged to use the wording in the formal decisions set out in the following two paragraphs. However, in simple and summary terms, planning permission for what the appellant terms the annexe building is refused and the notice is upheld although the requirements are now limited to the demolition of the building and the removal of the debris from the land. Planning permission is granted subject to conditions for the side extension and the car port.

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2. It is directed that the enforcement notice be varied by: the deletion without substitution of requirements 2) and 4); the deletion of the words "requirements 1) and 2)" and their replacement by "requirement 1)" in requirement 3); and the consequential renumbering of requirement 3) to requirement 2) in paragraph 5 of the enforcement notice "*WHAT YOU ARE REQUIRED TO DO*". Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: Appeal Ref: APP/B9506/W/18/3216083

3. The appeal is dismissed insofar as it relates to alterations to existing annexe outbuilding. The appeal is allowed insofar as it relates to single storey side extension; detached two bay carport and planning permission is granted for single storey side extension; detached two bay carport at 2 Rose Cottage, Canterton Lane, Brook, Lyndhurst, Hampshire SO43 7HF in accordance with the terms of the application, Ref 18/00386, dated 10 May 2018, and the plans submitted with it, so far as relevant to that part of the development hereby permitted and 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: SP2D (only insofar as it relates to the single-storey side extension and the two bay car port), 3 Rev A and 4 (only insofar as it relates to the two bay car port).

    3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on the application form.

    4) The car port 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.

Appeal A: an appeal on ground (b)

4. Where the recipient of a notice believes that the development alleged as the breach of planning control has not occurred as a matter of fact an appeal on ground (b) within s174 of the Act is the proper course to take. No appeal on that ground has been made in this case. However, fundamental to the case on other grounds of appeal is the appellant's assertion that the building that is the subject of the notice has been repaired and refurbished, not rebuilt. I shall therefore address this argument first as if an appeal on ground (b) had been made since it must be determined before the other grounds of appeal can be properly considered.

5. The courts have held that whether works amount to refurbishment and repair or demolition and rebuilding is a matter of fact and degree judgement on the particular facts. In this case, it is plain from the considerable evidence provided by the appellant that a new building was erected in 2018 to be let as self-contained residential accommodation.

6. The appellant's statutory declaration very fairly sets out the sequence of events up to and following the purchase of the property in July 2016. What is

described as an 'annexe' was being let at the time and it was the appellant's intention to continue this. Indeed, it is said that this made the property attractive and was the primary reason for the interest of the appellant and his wife.

7. The appellant's evidence is that the building was in a poor state of repair. When a common wall with another outbuilding was removed it was revealed that the timbers, ceilings and roof of the annexe were rotten and rodent infested. The roof cracked open across the structure and the appellant '…had no choice but to carry out repairs from the foundation upwards.' How this was done was pointed out to me at the site visit.

8. This is corroborated by letters from people with a knowledge of the annexe. Mr Griffin states that the annexe was totally rotten and water-logged which meant that the structure had to be 'replaced' using the existing foundations and footprint.

9. Mr and Mrs Beeson confirm that the structure was mouldy and damp with water coming through the walls and roof. The structure was unsound and needed 'major repair works' which were carried out.

10. Mr Hopwood, who lives locally, states that the annexe was completely unfit for habitable accommodation and '…needed to be repaired from the foundations upwards.' He confirms that it 'appears' to be in exactly the same position as before.

11. The appellant has also provided photographs of the building as it was in 2016 and as it was in March 2018 which is as it is today. March may not be correct since elsewhere in the appellant's evidence the completion date is given as May 2018. Be that as it may, while the appellant states that the existing building is on the same footprint, that is not how it appears from the photographs. Both the new door and the new window in the only elevation that allows a 'before and after' comparison are considerably wider than those in the original building and the building itself appears to cover ground previously containing another structure. The photographs of the internal arrangement of the former building do not assist with this interpretation.

12. However, setting that aside, it seems quite clear to me from the evidence referred to above and the nature of the materials used in the previous and current buildings that the former structure was taken down to the foundations and rebuilt. That is a far more extensive operation than one of repair and refurbishment and amounts, in my judgement, to the erection of a new dwelling which is, in effect, what is alleged as the breach of planning control.

13. That was also the view of the officer of the Authority carrying out a site visit in connection with an earlier planning application (ref: 18/00050). The officer observed that '…the works were not considered to be a 'repair' as the footprint of the building had been made larger; the brick plinth was new; all elevations were replaced and a new roof was put on the building. It does not appear that any part of the original structure is intact.'

14. The appeal on ground (b) which I deem to have been made therefore fails. The remaining grounds of appeal are therefore considered on the basis of the breach of planning control alleged in the notice.

Appeal A: The appeal on ground (c)

15. The appellant's case on this ground is a little confusing as it appears to combine elements of the case also made on ground (f). However, the gist appears to be that the building is permitted by Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

16. Even on those terms, the appeal on this ground must fail. The evidence shows the building to have a floorspace of well in excess of 10sqm. It was agreed at the site visit that the building was well over 20m from any wall of the dwellinghouse. In those circumstances, Class E development in a National Park is not permitted by Schedule 2, Part 1, Class E.2 of the GPDO. Additionally, the Authority argues that the building also stands forward of a wall forming the principal elevation of the dwellinghouse and beyond a wall forming a side elevation of same. The building would not be permitted in those circumstances by Schedule 2, Part 1, Class E.1 (c) and E.3 respectively.

17. Even if that is wrong, the building cannot be considered as a GPDO Class E building. While the appellant consistently refers to it as an annexe, it is, in fact, a separate planning unit comprising a self-contained dwelling. It stands on a part of the land that has been separated from the main dwelling by a substantial fence. It is not now within the curtilage of the main dwelling, a prerequisite for Schedule 2, Part 1, Class E of the GPDO to apply, although it is not clear when in 2018 the fence was erected.

18. Irrespective of that, the court has held that something which is 'incidental' (a further prerequisite for Class E to apply) cannot itself be a dwellinghouse. The appeal building is a dwellinghouse.

19. For these multiple reasons, the appeal on ground (c) must fail.

Appeal A: the appeal on ground (d)

20. An appeal on this ground is that when the notice was issued, the period during which the Authority could have taken enforcement action had ended. Where the breach alleged is the erection of a building, the Authority has a period of four years from the date of substantial completion of the building to issue the notice. In this case, the building must have been substantially complete not later than 27 September 2014 (the material date) for the appeal on this ground to succeed.

21. From several sources within the appellant's own evidence it is confirmed that the building was not completed until sometime in May 2018. That is considerably later than the material date.

22. The appeal on this ground of appeal must also fail.

Appeal A: The appeal on ground (a) and the deemed planning application and Appeal B: the s78 appeal

Introduction

23. The terms of the application deemed to be made in Appeal A are defined by the breach of planning control alleged. The application therefore is for the erection of a building for habitable use.

24. There are three separate elements to the Appeal B proposal, each of which is severable from the other two. While two of the elements have yet to be built, retrospective planning permission is sought for the third, which is also the subject of the notice.

25. Although the appellant says on the Appeal B appeal form that the details of the proposed development have not changed from that given on the application form (set out in the summary details above), the details given (Single storey side extension; detached two bay carport; retention of alterations to existing annexe outbuilding) are different and are taken from the Authority's decision notice.

26. Neither 'refurbish' as originally applied for or 'retention' as substituted by the Authority are development within the meaning of s55 of the Act. I shall therefore disregard 'retention of' in the description used by the Authority and apparently adopted by the appellant.

27. However, 'alterations to the existing annexe outbuilding' does not accurately describe the development that has taken place and for which retrospective permission is sought. As set out in the consideration of Appeal A, ground (b), the former 'outbuilding' (which was in fact a self-contained dwelling) was demolished and a new self-contained dwelling built.

28. That is the basis on which I shall deal with that element of Appeal B. As that is also the development for which the deemed application is made under Appeal A, I shall deal with the two together.

Appeal A and Appeal B: the self-contained dwelling

29. By way of further background, in both the reasons for issuing the notice and the reasons for refusing the planning application the Authority cites policies CP12 and DP12 of the New Forest National Park Core Strategy and Development Management Policies (DPD) adopted in December 2010. In August 2019 the New Forest National Park Local Plan 2016-2036 (LP) was adopted. DPD policies CP12 and DP12 were superseded by LP policies SP19 and DP37 respectively.

30. 2 Rose Cottage is the larger half of what is now a semi-detached pair of dwellings. It lies within what is the very extensive Forest Central (North) Conservation Area (CA). In design and materials it is typical of other buildings in this part of the CA and contributes to the character and appearance of the CA as a whole which is one of dispersed dwellings and small settlements set within a forest landscape.

31. The appeal building is within the area of garden between the dwelling itself and the vehicular access to the property from the highway. It stands quite hard against the property boundary and generally below the level of the hedgerows and trees that line the highway hereabouts. The gates across the vehicular access are of full height and, together with the boundary planting, almost wholly obscure the appeal building from public view. The effect of the building on the character and appearance of the CA as a whole is neutral in my view. Having regard to s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 it preserves the character and appearance of the CA as a whole.

32. The main issue for the determination of this aspect of Appeals A and B therefore is whether the provision of a new dwelling in this part of the New Forest is compliant with relevant development plan policy.

33. LP policy SP19 sets out the additional dwellings that will be provided over the Plan period and lists the five criteria against which proposals for new dwellings will be judged and approved. The appeal site is not an allocated housing site in the LP; does not involve the implementation of an extant permission; is not within the Defined Villages identified in the LP; is not an appropriate rural exception site; and does not specifically provide housing for New Forest Commoners, Estate Workers or a tied agricultural dwelling. The dwelling therefore conflicts with LP policy SP19 which is a recently adopted policy.

34. The appellant makes two points that this is not the relevant LP policy beginning with reference to a number of appeal decisions.

35. In Waterton House (ref: APP/F1610/A/09/2101500) the Inspector makes clear that he is dealing with the application before him which is for an outbuilding within the curtilage of Waterton House, not a separate self-contained residential unit within a separate planning unit. That is sufficient to distinguish that appeal from the appeals before me.

36. The Far End Cottage appeal (ref: APP/B3438/A/12/2188171) is explicitly not a proposal for an independent residential unit. It was to provide accommodation for a dependent relative and would have an ancillary relationship to the main dwelling. Although the appellant has not included the Schedule of Conditions, it is clear from the decision that the model condition to ensure the ancillary relationship remains was imposed. The appeals before me do not provide ancillary accommodation.

37. The Coronation Cottage appeals (lead ref: APP/B9506/C/14/2211902) were allowed because the Inspector considered, on the evidence, that the unauthorised material change of use from an ancillary residential outbuilding to an independent dwelling was immune from enforcement action by passage of time. That is not relevant to the planning merits at play in these appeals.

38. In Marshwood Avenue (ref: APP/Q1255/D/15/3006713) the Inspector specifically found that the development for which planning permission was sought would not provide a separate unit of accommodation but rather something akin to a 'granny annexe'. Condition 2 of the permission prevents occupation of the extension permitted other than for purposes ancillary to the residential use of the main dwelling. Again, that is not the type of proposal before me.

39. Finally, Horton Heath Farm (ref: APP/U1240/W/18/3198569) is on all fours with the development before me in that it involved the demolition of a building used for purposes confirmed as lawfully incidental to the residential occupation of the main property and its replacement by a building with no functional link to the main dwelling and providing accommodation (holiday let) which could not be described as incidental to the residential use of the farmhouse. That the appeal was allowed on the planning merits.

40. In most cases therefore the development being dealt with was not the same as in these appeals. Where it was (Horton Heath Farm) the appeal was

determined on the planning merits, not as a matter of principle. Planning merits are a matter of planning judgement for the Inspector in each case.

41. The appellant also argues that Appeal B is made without reference to the existing user of the building. Permission is simply sought for an annexe, the residential use of which could be for various family-related reasons or as a holiday let. In that latter respect an analogy with the Horton Heath Farm appeal is drawn.

42. That is not consistent with the provisions of s75(3) of the Act which states that if no purpose is specified for the use of the building for which planning permission is sought the permission will be construed as including permission to use the building for the purpose for which it is designed. The courts have held that 'designed' in this context means 'intended'. In this case, the appeal building has always been intended to provide, and indeed has always provided, separate self-contained residential accommodation for letting purposes. Notwithstanding the appellant's argument, it would be inconsistent with s75(3) of the Act to regard the development carried out as anything other than the provision of a new dwelling.

43. I have taken into account the two letters of support that draw my attention to the contribution that the appeal property makes to the availability of residential accommodation in the New Forest for those who find general rent levels high in relation to their earnings. However, this does not outweigh the conflict that I have found with recently adopted LP policy.

44. The self-contained dwelling therefore conflicts with LP policy SP19 which is the relevant policy. Therefore, the Appeal A ground (a) appeal fails, the Appeal A deemed application does not succeed and Appeal B is dismissed in this respect.

Appeal B: the single storey side extension and the detached two bay carport

45. The main issues for my determination of both proposals are whether the development would preserve of enhance the character or appearance of the CA and whether there would be any effect on the living conditions of neighbouring occupiers.

46. The single storey side extension would be approximately 3m in width, 5m in depth, 2.2m in height to the eaves and 4.8m in height to the ridge of the pitched roof. All materials would match those upon the main dwellinghouse. There would be a 'cut-out' within the rear of the roof, so as not to obscure a first-floor window and maintain a pitch to match that of the main roof.

47. The Authority considers the proposed extension would be complaint with regard the DPD policy DP11 which limits additional floorspace provision to 30%. With regard to the design of the extension, it is considered that the scale would be sufficiently subservient given the non-designated heritage status of the building. All materials would match those existing. By virtue of the location of the extension upon the northern elevation, there would be no adverse impact upon neighbouring amenity and overall, the proposed extension is considered by the Authority to be acceptable.

48. From my inspection of the appeal site and the surrounding area I see no reason to disagree. Having regard to s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 it would preserve the character and appearance

of the CA as a whole. The Authority has not advised which, if any, LP policy has superseded DPD policy DP11 but it would appear to be LP policy DP36. In my view this element of the appeal proposal would not conflict with this LP policy or LP policy DP18 which sets out general design principles to be followed in all cases.

49. The detached two-bay carport would be located adjacent to the vehicular access to the north west of the site measuring approximately 5.4m in width, 5.4m in depth and 4.3m in height to the ridge of the pitched roof. The car port would be open to its front (north west) elevation and enclosed on 3 sides by horizontal stained timber cladding. The roof would be of clay tiles to match the main dwellinghouse.

50. The Authority considers the proposed carport would be subservient in scale to the main dwellinghouse and would be located within the existing driveway area served by the existing high solid gates. There would be no impact upon neighbouring amenity and it is not considered that it would have any significant adverse impact upon the setting of the non-designated heritage asset or upon the character or appearance of the CA.

51. Again, I see no reason to disagree with the Authority's assessment. Having regard to s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 it would preserve the character and appearance of the CA as a whole and comply with LP policies DP18 and DP37 which sets out the criteria to be met by proposals for outbuildings.

Appeal B: overall conclusion

52. While I have concluded that the new dwelling that has been provided is contrary to LP policy and that planning permission should be refused, I agree with the Authority that there is no objection to either the side extension or the car port proposed. There is a power under s79(1)(b) of the Act to issue a split decision in such circumstances. While neither party has requested that I do so, there can be no injustice to either if I do.

53. The Authority has suggested some conditions which I have considered in the light of the advice in the Planning Practice Guidance. In addition to the standard commencement condition and one to ensure the development is carried out in accordance with the submitted plans and drawings, conditions are required to control the materials used in both elements of the proposal being allowed and to ensure the car port is not used to provide habitable accommodation. The other suggested conditions relate to the dwelling which is not being permitted.

54. For the reasons given above I conclude that Appeal B should be allowed in part and dismissed in part.

Appeal A: the appeal on ground (f)

55. There are three elements to the appellant's case on this ground.

56. The primary case is that the requirement to demolish the building is excessive. The gist of the case made is that there is an absolute fall back position of the building being permitted development and therefore available for uses incidental to the enjoyment of the dwellinghouse as such.

57. For the reasons set out in the consideration of the appeal on ground (c), that argument is fatally flawed since the building as constructed could not be permitted by Schedule 2, Part 1, Class E of the GPDO, irrespective of the use made of it. There is therefore no fall back position of the type claimed and requirement (i) of the notice is therefore reasonably required to achieve the Authority's purpose in issuing the notice, namely to remedy the breach of planning control.

58. The second relates to requirement (ii), the removal of the fence. The fence that has been erected makes the boundary between the two planning units that have been created clear. However, its removal is not necessary to remedy the breach of planning control. That is achieved by requirement (i). Whether or not the appellant wishes to retain a fence across his garden seems to me a matter for him. In fact, his evidence is that it was erected in the first place for an entirely different reason. Although that reason no longer pertains, my view is that this requirement exceeds what is necessary to achieve the Authority's purpose in issuing the notice.

59. The third relates to the requirement to restore the land to surrounding ground levels with soils and re-seed with grass. That is not the condition of the land before the breach of planning control took place. This area of the garden was occupied by what the evidence shows was a dilapidated outbuilding. It would certainly be excessive to require the appellant to put a building in that condition back on the site and that is not suggested by either party. It seems to me that once the unauthorised dwelling has been removed in accordance with the first requirement of the notice, how the appellant then restores this part of the garden is a matter properly for him.

60. The appeal on this ground therefore succeeds to a limited extent. I shall delete requirements (ii) and (iv) and make consequential variations to requirement (iii).

Appeal A: overall conclusion

61. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Brian Cook

Inspector