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# Appeal Decision

Site visit made on 5 July 2022

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

an Inspector appointed by the Secretary of State

Decision date: 14 July 2022

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**Appeal Ref: APP/B9506/W/22/3290708**

**Little Gordleton Farm, Silver Street, Sway SO41 6DJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr and Mrs Brownen against the decision of New Forest National Park Authority.
  - The application Ref 21/00846, dated 14 September 2021, was approved on 11 November 2021 and planning permission was granted subject to conditions.
  - The development permitted is alterations to existing dormers.
  - The conditions in dispute are Nos 1 and 4 which state that: "The development hereby permitted shall be begun before: The expiration of three years from the date of this permission; or, the carrying out of any further extension to the dwelling otherwise permitted under Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 or any Order subsequently revoking or re-enacting that Order; whichever is the sooner"; and "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 or B of Part 1 of Schedule 2 to the Order, shall be erected or carried out without express planning permission first having been granted".
  - The reasons given for the conditions are: "To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 and to ensure the dwelling remains of an appropriate size in accordance with Policies DP35 and DP36 of the adopted New Forest National Park Local Plan 2016-2036 (August 2019)"; and "To ensure the dwelling remains of a size which is appropriate to its location within the countryside and to comply with Policy DP36 of the adopted New Forest National Park Local Plan 2016-2036 (August 2019)".
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## Decision

1. The appeal is allowed and the planning permission, Ref 21/00846, for alterations to existing dormers at Little Gordleton Farm, Silver Street, Sway SO41 6DJ, granted on 11 November 2021 by New Forest National Park Authority, is varied by deleting Condition 4 in its entirety and substituting Condition 1 for the following condition:
  1. The development hereby permitted shall begin not later than three years from the date of this decision.

## Main Issue

2. Having regard to the Council's reasons for imposing Conditions 1 and 4, the main issue is the effect of modifying or removing these conditions on the range and mix of available housing stock within the National Park and the locally distinctive character of the built environment of the National Park.

## Reasons

3. The appeal property comprises a detached chalet bungalow located on the east side of Silver Street near the junction with Sway Road and South Sway Lane. It lies outside the designated settlement policy boundary, within open countryside between New Milton and Lymington, and within the New Forest National Park (the National Park).
4. The property has a steeply hipped roof, which includes a single room of first floor living accommodation, served by a flat-roofed dormer on the front (west elevation).
5. Planning permission Ref 21/00846 allows a replacement, larger, timber-clad front dormer incorporating a false pitch roof. The dormer dimensions would be increased from 4.8m wide by 1.5m high to 6m wide by 2.1m high. Both parties are agreed that this would increase the full height headroom floor space within the roof by 3 sqm, including providing more space for the existing stairwell, and that the development would result in an increase of 3% of the existing overall property floorspace.
6. The Council has imposed the second part of Condition 1 and the entirety of Condition 4, which the appellants seek to remove, in the interests of ensuring that the dwelling remains of an appropriate size, having regard to its countryside location within the National Park. In this respect, the Council has cited Policies DP35 and DP36 of the *New Forest National Park Local Plan 2016-2036* (2019) (the Local Plan) in its reasons for imposing these conditions.
7. As Policy DP35 relates to replacement dwellings, I do not consider it to comprise a relevant justification for the imposition of the second part of Condition 1, notwithstanding the Council's reason for this condition. As such, I do not find this policy to be a determining factor in this appeal, and I have dealt with the appeal accordingly.
8. Local Plan Policy DP36 states that extensions to existing dwellings will be permitted provided they are appropriate to the existing dwelling and its curtilage. Extensions to dwellings (not small dwellings) outside the Defined Villages, must not increase the floorspace of the existing dwelling by more than 30%. For the purposes of the Policy, 'small dwellings' are those with a floor area of 80sqm or less as existed on 1 July 1982 or as the dwelling was originally built or legally established if after this date. The 'existing dwelling' is the dwelling 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.
9. There is no dispute between the main parties that the appeal site lies outside of the Defined Villages and that the property is not a 'small dwelling' in terms of its existing floorspace and that it existed on 1 July 1982.
10. Policy DP36 relates to concerns that, within a context of high demand for residential development and steep property prices within the National Park, proposals to incrementally extend dwellings in this nationally designated landscape can over time, cause an imbalance in the range and mix of housing stock available, which can in turn affect the locally distinctive character of the built environment of the New Forest. In particular, this can result in a shortage of smaller, more affordable dwellings in a sensitive landscape where new housebuilding opportunities are limited.

11. The aims of this policy are consistent with the *National Planning Policy Framework 2021* (the Framework), which seeks to conserve and enhance the natural environment. In particular, Paragraph 176 states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks. It also accords with the objectives of Chapter 5 of the Framework of ensuring that a sufficient supply of homes is provided in accordance with the needs of different groups within the community.
12. The evidence before me is that the appeal property has the potential for future extensions under Permitted Development, since there is no planning history of previous additions to the property, and I saw no obvious evidence of such during my site visit.
13. Paragraph 54 of the Framework advises that planning conditions should not be used to restrict national Permitted Development rights unless there is clear justification to do so. Paragraph 56 states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
14. The Council has confirmed that the sections of the planning conditions that the appellants seek to remove, are intended to work together to restrict further extensions being added to the property without the scrutiny of a full planning permission. In this respect my attention has been drawn to the supporting text to Policy DP36, which states that, where necessary, the NPA will use appropriate planning conditions to ensure that permitted extensions are not used in conjunction with national Permitted Development Rights to undermine the aims of Policy DP36.
15. Section 91 of the Town and Country Planning Act 1990 allows the National Park Authority to impose a time period for commencement of development other than within three years from the date of permission. The Council has attached the second part of Condition 1 in order to close a 'loop hole' whereby the appellants could potentially extend the floor area of the property beyond the limitations allowed by Policy DP36 by carrying out Permitted Development works within the 3 years within which the development could be implemented, since any restrictions on Permitted Development rights attached through another condition, in this case Condition 4, would not 'bite' until the approved development had commenced.
16. The Council's view is that the Permitted Development restrictions imposed by Conditions 1 and 4 are required in the particular case of the appeal scheme, since Class A of Part 1 of Schedule 2 of the GPDO would allow for a single storey extension to be built along the rear of the dwelling, which, together with the appeal scheme would result in an increase in floor area of 49%, thereby exceeding the limitations of Policy DP36 and resulting in a substantially larger dwelling. As such, the Policy DP36 floorspace allowance could potentially be exceeded in the manner suggested by the NPA.
17. However, this reasoning does not attribute weight to the fact that the Permitted Development single storey extension alone would significantly exceed the Policy DP36 allowance, and that the appeal scheme on its own would only contribute a small, 3% increase in floor area, falling significantly below the size which would be allowed under Policy DP36, and involving only minor scale development comprising a replacement dormer window.

18. Whilst I acknowledge the NPA's concerns in respect of the potential impact of cumulative additions to dwellings, the Council's Planning Committee report dated 19 July 2016, to which the NPA has referred me, acknowledges that this approach to dealing with the identified Policy DP36 'loop hole' primarily relates to cases where an extension granted under a planning permission would utilise all, or almost all of the 30% extension potential on a dwelling.
19. Moreover, Policy DP36 does not promote a blanket removal of Permitted Development rights for dwellings within the NPA area, and does not negate the requirement for the NPA to ensure that planning conditions meet the tests as set out in Paragraph 56 of the Framework.
20. Furthermore, there is no evidence before me, such as previous planning applications or pre-application discussions, to reasonably suggest that the appellant is intending to undertake other extensions to the property at this time, in accordance with a longer term strategic approach to avoid the limitations of Policy DP36.
21. With the above in mind, I find that the NPA has not satisfactorily shown that the appeal proposal justifies the blanket removal of Permitted Development rights put into place via Conditions 1 and 4, since no demonstrative connection has been shown between the appeal scheme, which involves minimal alterations to the roof of the property, and a potential separate rear extension exceeding the Policy DP36 allowance but comprising Permitted Development in its own right.
22. I am not persuaded by the Council's suggestion that the location of the appeal site within the National Park constitutes exceptional circumstances which justifies removal of householder Permitted Development rights as advocated by Conditions 1 and 4, since the GPDO has already taken account of the special landscape quality of National Parks by restricting Permitted Development rights to a greater extent within these areas than elsewhere outside, through the limitations imposed on article 2(3) land.
23. In addition, I find that the part of Condition 4 which restricts Class B development is not necessary, given that the property does not benefit from Permitted Development under Class B, given its location within National Park article 2(3) land. I do not concur with the Council's suggestion that this element of the condition is reasonable on the basis that the GPDO may at some later date be amended to allow such alterations, prior to the end date of the Local Plan, since there is no cogent evidence before me to reasonably assume that this will be the case.
24. I also find that the inclusion of a restriction on future alterations to the property within Condition 4 to be unnecessary and unreasonable, since this would preclude minor alteration works to the dwelling which do not involve the enlargement of the building, and as such, would not potentially contravene the aforementioned objectives of Policy DP36 and the Council's stated reasons for attaching Conditions 1 and 4.
25. By way of support for its approach, the NPA has drawn my attention to a number of properties within its area where the Policy DP36 'loop hole' has been exploited, with Lawful Development Certificates having been granted after the planning permissions, thereby enabling extensions to take place which undermine the aims of Policy DP36.

26. On the basis of the evidence before me, these examples, do not appear to be directly comparable with the appeal scheme in that they relate to significantly larger developments and were assessed under a previous Development Plan and an earlier version of the GPDO. As such, they do not alter my conclusions on this matter.
27. For the above reasons, I find that the Council's removal of Permitted Development by means of Conditions 1 and 4 to be unjustified in this instance, and to fail to meet all the tests of Paragraph 56 of the Framework. Accordingly, the proposed replacement of Condition 1 with the condition as set out in the first paragraph of this decision letter, and the removal of Condition 4, would not prejudice the objectives of Local Plan Policy DP36, in so much as this Policy, amongst other things, seeks to resist the cumulative effect of enlargements to dwellings in order to protect the locally distinctive character of the built environment of the New Forest and maintain a balanced range and mix of available housing stock.
28. For similar reasons the proposal would accord with policies of the Framework which require the conservation and enhancement of the natural environment, including National Parks, as set out in Chapter 15 and the provision of a sufficient supply of homes in accordance with the needs of different community groups as set out in Chapter 5.

### **Conclusion**

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

*S Leonard*

INSPECTOR