



Appeal Decision

Site visit made on 13 November 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th December 2023

Appeal Ref: APP/B9506/D/23/3316394

Mallards, Bucklers Hard, Beaulieu SO42 7XD

- 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 Clinton McCarthy against the decision of New Forest National Park Authority.
 - The application Ref 22/0905VAR, dated 8 November 2022, was refused by notice dated 1 February 2023.
 - The application sought '*planning permission for replacement main dwelling, staff cottage; pavilion; machine store and garden store; new walled garden with attached garden pavilion and glasshouse; new summer house; demolition of existing coach house, engine shed, 2no. outbuildings and band stand; replacement tennis court; associated landscaping without complying with conditions attached to planning permission Ref 20/00943, dated 18 June 2021*'.
 - The conditions in dispute are:
 - No.2 which states '*development shall only be carried out in accordance with Drwg Nos: 001 Rev B, 002 Rev A, 007, 009, 010, 011, 19248-4, Sheet 1 of 2, Sheet 2 of 2, PL01, PL02 Rev B, PL03 Rev A, PL04 Rev B, PL05 Rev B, PL06 Rev A, PL07 Rev A, PL08 Rev B, PL09 Rev A, PL10 Rev A, PL11 Rev B, PL12 Rev A, PL13 Rev A, PL14 Rev A, PL15 Rev A, PL16 Rev B, PL17 Rev B, PL18, PL19, PL20, PL21, PL22, PL23 Rev A, PL24 Rev A, PL25 Rev A, PL26 Rev B, PL37 Rev B, PL38 Rev B, PL39 Rev B, PL40 Rev B, PL41 Rev B, PL42 Rev B. No alterations to the approved development shall be made unless otherwise agreed in writing by the New Forest National Park Authority*'; and
 - No.13 which states that the covered walkway hereby approved shall not be in-filled or incorporated into the main dwellinghouse.
 - The reason given for condition No2 is '*to ensure an acceptable appearance of the building in accordance with Policies SP16, SP17, DP18 and DP2 of the adopted New Forest National Park Local Plan 2016- 2036 (August 2019)*'; and for No.13 is '*to comply with Policies DP35 and DP36 of the New Forest National Park Local Plan 2016-2036 (adopted August 2019)*'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Section 73 allows for a grant of planning permission for development without compliance with conditions to which a previous planning permission was granted. Section 73(2) requires only consideration of the question of what conditions a grant of planning permission should be subject to.
3. Policy DP36 of the New Forest National Park Local Plan August 2019 is about extensions to dwellings. It is the only policy cited in the Authority's decision

notice but is not the only relevant Local Plan policy in this appeal. Policy DP35 for replacement dwellings was also a reason for imposing condition No.13.

Background and Main Issue

4. Planning permission Ref 20/000943 is extant and the development is under construction. It includes a replacement main dwelling (the dwelling), a pavilion with garages and a covered walkway in extensive landscaped grounds. The site is in a rural location in the New Forest National Park (the National Park) which is a nationally designated protected landscape.
5. The appellants seek to complete the development with removal of condition No.13. It prevents the covered walkway being in-filled or incorporated into the dwelling. The variation of condition No.2 is to secure approval of amended plans to alter the covered walkway (the proposed structure).
6. The main issue in this appeal is whether condition No.13 is necessary having regard to the objectives of Policy DP35 for replacement dwellings and Policy DP36 for extension of dwellings in the National Park.

Reasons

Covered walkway

7. The covered walkway would be at ground level, connected to the dwelling at one end and to the pavilion at the other end. This low, mostly open-sided intervening structure would include a row of stone colonnades under a shallow pitched glazed roof. A single volume of space within its confines would be largely open to elements of the weather and to the environment near it.
8. These intrinsic attributes would ensure a satisfactory spatial and visual transition between the substantial scale, massing and proximity of built form in the dwelling and in the pavilion. Also, give a distinctly outside transit between the internal envelopes of both buildings through external doors, including to a garage on one side of the pavilion. There is no evidence that the covered walkway would be a habitable room, internal habitable floorspace or living accommodation. Nor physically or in use an integral part of the dwelling or the pavilion, or an extension of one or the other.
9. Its main purpose would be to conveniently move between residential use and occupation of the dwelling and incidental use of the pavilion (including a garage) which would not itself be attached to the dwelling. But for this link, and to all intents and purposes, the pavilion would be a detached outbuilding. There would, therefore, be clear separation in layout and unambiguous functional differentiation between residential use and occupation of the dwelling and incidental use of the pavilion.

Proposed structure

10. The proposed structure has some commonality with the covered walkway, such as position, external dimensions and glazed roof. In these terms it would not add bulk or actually diminish space between the dwelling and the pavilion. Nor increase visual impact on the surrounding area, also due to its central location within the site in a contained part of the curtilage next to the dwelling and pavilion. The Authority did not object to these aspects of the appearance of the

proposed structure, including with regard to the design orientated Local Plan policies set out in the reason for condition No.2.

11. However, the open parts of the covered walkway would be significantly altered. The elevations would be fully enclosed; on one side with additional solid wall and windows replacing apertures, in the other side by continuous glazed screens replacing the individual colonnades and intermittent sequence of wide gaps. The screens would have metal frames with vertical and horizontal glazing bars set above a continuous raised stone threshold. The surface and volume of the covered walkway would be subdivided into a more intense internal arrangement of domestic activity as a corridor and three rooms. Partition walls would be visible externally, so too artificial lighting necessary for this configuration of space and use in hours of darkness. The most important attributes of the covered walkway would, therefore, be permanently lost.

Floorspace

12. To comply with Policy DP35 the dwelling had to be no greater habitable floorspace than the existing dwelling it would replace¹. But the existing dwelling could have been extended up to 30% under Policy DP36. It was 1,093.5 sqm and the dwelling is 1,412 sqm giving a policy compliant nearly 30% increase. In order not to breach this limitation of Policy DP36, achieve the benefit of this enlargement at the outset and secure a planning permission, the appellants agreed to change the Ref 20/000943 development to the covered walkway (omitting, in essence, what they now seek to reinstate). On this basis the Authority granted planning permission Ref 20/000943 and condition No.13 safeguards the integrity of that decision.
13. The main parties agree that the proposed structure would have 59 sqm floorspace and with the dwelling be a 34.5% increase over the existing dwelling as was; or excluding the corridor, 37 sqm in the three rooms would be a 32.6% increase. Albeit by a small numeric variance and either way, not comply with Policy 36 and distort the rationale for the development permitted by Ref 20/000943 in relation to Policy DP35.
14. The 30% limitation in Policy DP36 already accounts for enlargement of dwellings post 1 July 1982 and provides for further appropriate enlargement consistent with the aims of this policy and, in this case, in consort with Policy DP35, so is necessarily absolute. On the extract provided, and albeit a similar previous development plan policy and a smaller dwelling already extended, the notion of numeric precision of this sort in the National Park is consistent with a previous appeal decision near the current appeal site².
15. The proposed structure would be incidental to valuation of the dwelling with its grounds and the totality of the Ref 20/000943 development. However, because of proportionate percentage change, Policy DP36 already contemplates large expensive dwellings in desirable rural locations, in this appeal a dwelling at the very top of the National Park property market; and associated commensurate reduction of landscape in the National Park by virtue of extension. These factors have already been reflected in the Ref 20/000943 permission. The definitions and construction of Policy DP36 therefore purposefully make no provision for further increase beyond 30% for already

¹ As it stood on 1 July 1982, now demolished

² APP/B9506/D/15/30004446

large dwellings. There is no apparent reason why large dwellings should be de facto exempt from the provisions of this policy.

16. The appellants suggest a net reduction in habitable floorspace at the site overall. But a comparison between the total floorspace that originally existed on the site and that permitted by Ref 20/000943 (including the existing dwelling post 1 July 1982, other outbuildings and staff accommodation) is not the matter in hand; such additional habitable floorspace is excluded from Policies DP35 and DP36³. It was previously a straightforward comparison between the existing dwelling on 1 July 1982 and the dwelling; condition No.13 concerns the relationship of the covered walkway to the dwelling, so the primary comparison now is between the dwelling and the proposed structure.

Use

17. The appellants' definition of habitable rooms (not habitable floorspace) as typically the living accommodation of a dwelling, and the uses listed in this regard, is relevant to planning but for land measurement, such as density of development by number of people per habitable room⁴. The included rooms and the excluded rooms and spaces are to avoid spurious land measurement and anyway not closed lists.
18. Condition No.8 of Ref 20/000943 gives some uses that the Authority considers to be habitable accommodation⁵. These can be described as 'main' habitable accommodation but it is not a closed list or necessarily the same as habitable floorspace. The Authority referred to some uses in the pavilion as non-habitable floorspace⁶. This was to distinguish residential use and occupation of the dwelling (and amount of floorspace within it) from incidental use of the pavilion as an outbuilding (and amount of floorspace within it). There is no apparent justification to dispense with this practical categorisation or assignment of uses between each building. Nor any suggestion that the purpose or use of the pavilion would be equivalent to the dwelling, including with the covered walkway in situ.
19. It is also consistent with how the development plan approaches replacement dwellings as distinct from extensions to dwellings. In Policies DP35 and DP36 floorspace of an existing dwelling (in this appeal, the dwelling) is its total internal habitable floorspace not including attached or detached outbuildings irrespective of whether the outbuilding's current use is as habitable floorspace – so this excludes the pavilion. But in Policy DP36 floorspace of a proposed extension will include habitable floorspace within an attached outbuilding⁷. The scope of habitable floorspace in both policies is therefore also about physical and functional relationships. Consequently, while habitable rooms are part of the living accommodation of a dwelling, and contain habitable floorspace, habitable floorspace is not, in my view, confined to habitable rooms or to main habitable accommodation.
20. Internal movement into the proposed structure from the dwelling would flow seamlessly, initially into the corridor as an extrusion of a hall within and

³ Local Plan paragraph 7.82

⁴ Royal Institute of Chartered Surveyors 'Land measurement for planning and development purposes' Global 1st edition, May 2021

⁵ '...such as kitchens, living rooms and bedrooms'

⁶ Sauna, gym, treatment rooms, plant, garaging

⁷ Local Plan paragraph 7.82

already part of the internal confines of the dwelling. It would give internal transit to the pavilion and garage (and vice versa) but also be a means of access to more sustained use of the new rooms, rather than transient use as a corridor, so in essence an addition to the hall. As well as in function and use, by similar design and appearance the proposed structure would physically enlarge this nub of the dwelling, so the dwelling overall. In contrast, access from the pavilion into the proposed structure or onwards into the dwelling, albeit internal, would be compartmentalised by the intervening lobby and two internal doors, or from the garage through an internal door (and vice versa). The proposed structure would also be distinctly different in design and appearance to the pavilion or garage.

21. In the absence of evidence to the contrary, incidental use of the pavilion could be daily or many times a week with commensurate use of the interconnecting lobby and corridor. The amended plans appear to show a work surface or similar in the lobby, perhaps with storage under. Also considering floor area size and shape, it suggests a purpose other than movement through this room. A cloakroom next to the main front entrance into the dwelling could also be used as a repository for footwear in daily use. As such, the boot room more likely in use on individual days or perhaps weekly for suitable footwear or clothing such as for outdoor leisure or recreation activity at the property or away from it. The flower room would be used to pot flowers and could be a daily, weekly or more intermittent use including depending on the season.
22. The proposed structure would not therefore be used as habitable rooms of the sort suggested by the appellants, nor as main living accommodation of the sort suggested by the Council. Nevertheless, even if there was a different pattern in intensity of activity, the proposed structure would not be physically separate from the dwelling; and, moreover, be used for purposes as a consequence and part and parcel of requirements for domestic living in residential use and occupation of the dwelling. It would not be as a necessity or result of incidental use of the pavilion or garage, which though linked by the proposed structure would remain functionally discrete buildings in separate incidental use.
23. This would be, for instance, in much the same way as the design of the dwelling contains within its internal confines similar types of rooms and uses, such as a laundry room and a wine room. These are not habitable rooms or main living accommodation but in location and function are, in my view, part of the habitable floorspace of the dwelling. This would apply to the design of the proposed structure, its location and its use as an internal corridor (hall) and rooms incorporated into, and as part of, the dwelling.

Other appeal decisions

24. Some other appeal decisions concern extension of dwellings elsewhere in the Authority's area in a rural location in the National Park. In one a modest extension of around 12 sqm was allowed⁸. Although not a small dwelling even on 1 July 1982, it was significantly extended after this date so already exceeded the 30% 'extension tolerance' of Policy DP36. In the current appeal the original dwelling was extended before this date, to result in the existing dwelling on this date, then subsequently extended. However, it has not been suggested the existing dwelling had already exceeded the 30% limitation.

⁸ APP/B9506/D/21/3288303

25. Maintaining a varied housing stock is a purpose of Policy DP36 (and Policy DP35) but not just to keep small dwellings after enlargement still small or not substantially larger. It is also achieved, as in the current appeal (and in the Ref 20/000943 permission), by limiting increase in the size of already large dwellings. Additionally, in this other appeal the extension had a function not already fulfilled by the existing dwelling, which was to be retained. There is no evidence that the proposed structure is the only way to achieve these rooms or uses, so otherwise leave the covered walkway intact.
26. In one of two linked appeals dismissed for other reasons⁹, a replacement extension to a large house as it existed on 1 July 1982 did not breach a 30% increase. The other appeal¹⁰ concerned a proposed detached residential annex for ancillary accommodation to this house¹¹. As an enlargement of the house there would have been a substantial increase in habitable floorspace. But it was to replace an existing detached outbuilding containing habitable floorspace. While there was a small overall net reduction in floorspace at that site, this part of that proposal was considered against Policy DP37 not Policy DP36, consistent with how the Authority separately considered the pavilion to the dwelling in the Ref 20/000943 permission.
27. These other appeal decisions are not, therefore, directly comparable.

Conclusions on Policies DP35 and DP36

28. Although mostly glazed, the modest but significant design changes in the proposed structure would result in greater physical substance, visual presence and degree of permanence to this built form compared to the covered walkway. It would also insulate or protect activity within from outside influences and internally join the dwelling to the pavilion, including the garage, as well as to new rooms within it.
29. This would unduly diminish the perception or impression of space between the dwelling and the pavilion and significantly change how a structure in this position would function, be used and experienced. The point at which the dwelling physically and functionally ended would shift towards and be next to the pavilion and garage, in marked contrast to the neutral effect of the covered walkway. Notwithstanding condition No.8, there would be a tangible blurring in the distinction between residential use and occupation of the dwelling and physical or functional separate incidental use of the pavilion and garage.
30. While described as to 'enclose a covered walkway' there would be no actual enclosure of the covered walkway because it does not exist, nor would it. Instead, the proposed structure would result in something fundamentally different and demonstrably more than the covered walkway. Infilling the design of the covered walkway and incorporating it into the dwelling as outlined above would be at odds with both of the reasons for imposing condition No.13.
31. As a matter of fact and degree, I consider that the proposed structure would be an extension of the dwelling and as such increase its habitable floorspace beyond 30% in conflict with Policy DP36 (and even if an extension as an attached outbuilding). This inappropriate enlargement of the dwelling would also subvert the Policy DP35 basis on which the Ref 20/000943 development

⁹ APP/B9506/D/19/3224452

¹⁰ APP/B9506/D/19/3224457

¹¹ Including utility room, laundry room and wine store

was granted planning permission. Consequently, the reason for condition No.13 remains aligned with Policies DP35 and DP36 and related objectives of the Authority. These include that replacement of dwellings in rural locations which are not small dwellings should not individually or incrementally cause long-term urbanisation and erosion of local distinctiveness within the National Park¹² nor have increased impact on its protected landscape¹³. Additionally, incremental extensions to dwellings in rural locations which are not small dwellings should not affect the locally distinctive character of the built environment of the National Park or have a greater impact on its protected landscape¹⁴.

32. Alone, or in combination with similar unjustified potential development elsewhere in the National Park, the proposed structure would significantly undermine these important policies of the development plan and objectives of the Authority. The absence of greater public visibility than those who would occupy the property or visit it does not mitigate or justify actual or innate harm to the National Park. The National Planning Policy Framework (the Framework) sets out that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks which, with other designations, have the highest status of protection in relation to these issues. While the scale and extent of development within National Parks should be limited, the limited absolute size increase in this case must be considered in the context of the significant already permitted increased size of the dwelling.

Other Matters

33. I appreciate that the appellants would like to build the proposed structure rather than the covered walkway for evident reasons. However, this personal preference would endure for the duration of their occupation of the property, whereas the adverse impacts of the proposed structure would be permanent and must be reconciled in the wider public, not private, interest. I have determined the appeal on its individual planning merits.

Conclusion

34. I find that condition No.13 (consequently, condition No.2) serves a useful planning purpose so is necessary having regard to the objectives of Policy DP35 for replacement dwellings and Policy DP36 for extension of dwellings in the National Park. I am also satisfied that both conditions are precise, relevant to planning and to the development permitted by the Authority, enforceable and reasonable in the context of these local and national planning policies and in the interests of the National Park.
35. For the reasons set out above planning permission should be granted subject to the same conditions as those subject to which the previous planning permission Ref 20/000943 was granted. The appeal is therefore unsuccessful.

Robin Buchanan

INSPECTOR

¹² Local Plan paragraph 7.76

¹³ Local Plan paragraph 7.77

¹⁴ Local Plan paragraph 7.79