
Appeal Decision

Site visit made on 30 January 2017

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 23 February 2017

Appeal Ref: APP/B9506/C/16/3161231

Land at Far Corfe View, Lyndhurst Road, Ashurst, Southampton SO40 7AR

- 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 Paul Oldridge against an enforcement notice issued by New Forest National Park Authority.
 - The enforcement notice was issued on 30 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission the extension of the dwelling and outbuilding consisting of the erection of decking and a pergola structure shown in the approximate positions hatched blue on the plan attached to the notice.
 - The requirements of the notice are demolish/remove the pergola structures shown in the approximate positions hatched blue on the plan attached to the notice to the level of the decking.
 - The period for compliance with the requirements is 12 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of decking and a pergola structure shown in the approximate positions hatched blue on the plan attached to the notice on land at Far Corfe View, Lyndhurst Road, Ashurst, Southampton SO40 7AR referred to in the notice, subject to the following condition:
 - 1) The beams of the structure hereby permitted positioned between the eaves of the building and the cross members supported by the trident feature-topped posts shall not be covered by any material whatsoever so as to form an enclosing roof over the structure and the spaces between any of the trident feature-topped posts of the structure hereby permitted shall not be filled in by any material whatsoever so as to form a part or the whole of an enclosing wall to the structure.

Application for costs

2. An application for costs was made by the Authority against appellant. This application is the subject of a separate Decision.
-

The appeal on ground (a) and the deemed planning application

Preliminary matters and main issues

3. Following an application under s191 of the Act, the use of the land and curtilage as a dwelling house and uses incidental thereto was declared lawful at 30 August 2000 by New Forest District Council on 18 July 2001¹ (the 2000 LDC). This was both before the New Forest became a National Park on 1 March 2005 (although that would have had no bearing on the determination of the 2000 LDC application) and before the appellant purchased the property in 2012.
4. There has been a considerable history of failed planning applications and dismissed appeals since the determination of the 2000 LDC application. All of these have sought to replace or enlarge what was an agricultural storage building but which has since the 2000 LDC decision been a lawful dwelling. Three of those applications have been submitted since the appellant bought the property. The most recent was a retrospective planning application for the development that is now the subject of the notice. That application² was refused planning permission on 30 September 2016 with the notice being issued on the same date.
5. The appellant was not represented professionally until 23 January 2017. A planning consultant was then instructed to respond to the Authority's statement of case and the application for an award of costs. The initial grounds of appeal were therefore prepared by the appellant. His planning consultant has quite properly not sought to amend them or to add new grounds at 'final comments' stage.
6. He has however sought to expand the initial case made by the appellant to argue that policy DP11 of the Authority's Core Strategy and Development Management Policies DPD (DPD), adopted in December 2010, does not apply. This policy sets out the circumstances in which extensions to dwellings will and will not be permitted. It is supported by a Planning Information Leaflet³ (PIL) although the status of this is unclear. I shall return to this argument later as the Authority's view that the development conflicts with this policy appears to be the main reason for issuing the notice.
7. I consider the main issue in the determination of this appeal to be the effect that the development has had on the character and appearance of the area with particular regard to the two statutory purposes of the National Park Authority.

Reasons

8. The main A35 runs through Ashurst. Shortly before it crosses the railway on a bridge, there is a row of shops and commercial premises and a public house to one side of the highway separated from it by a service road. The appeal property lies to the rear of these premises. It is approached via a vehicular track which also gives access to the public house car park and other business premises including a telephone exchange building of modern and utilitarian appearance. A lengthy drive to the appeal property runs from the vehicular

¹ Ref: 70202

² Ref: 16/00691

³ Extensions to dwellings: January 2011

track parallel to the rear boundaries of the frontage properties. The gates to this drive are before the telephone exchange building.

9. At the telephone exchange the track proceeds through a gate giving access to authorised vehicles only. A pedestrian gate enables use of a public right of way which also runs along this track. To either side of it the land opens out into countryside.
10. The extent of the appellant's ownership of the land hereabouts is not clear from the evidence. The first field is adjacent to the appeal property. This was grazed by what appeared to be either alpacas or llamas and there was a timber stable-type building near to the track. Bordering the track at this point is a largely deciduous tree belt although there is a reasonable amount of space between each tree. Nevertheless, even during my winter site visit views across the fields to the dwelling were filtered; that screening would be more evident when the trees are in full leaf.
11. Leaving the settlement and walking along the track the dwelling is only visible if, as was the case during my visit, the solid entrance gates are open. If they are, it is the end elevation of the dwelling that can be seen, not the development that is the subject of the notice. Walking further along the track into the countryside beyond the vehicular and pedestrian gates the dwelling can be seen only if purposefully looking to the left through the trees.
12. Coming the other way, the dwelling is far more prominent in the view. It is however seen in the context of the settlement and against a backdrop of other buildings. In my judgement, it reads as part of the settlement rather than part of the countryside although it is at a transitional point between the two. I acknowledge that a previous Inspector considering a different scheme at the appeal property came to a slightly different view⁴. However, that appeal site visit took place in October 2013. I do not know the details of the site inspection, where the building was viewed from or the extent to which the physical circumstances of the area and the planting remain the same.
13. The development complained of comprises the decking and what is described as a pergola structure. This consists of a series of posts with a distinctive trident design at the top of each. Each supports part of a line of cross beams. These in turn support a series of beams which are attached to the dwelling at eaves level. There is a very shallow pitch to these beams falling from the eaves of the dwelling. Finally, between some, but not all, of the posts there are timber railings.
14. The entire structure is open with no sides or roof and it appears to be the same colour as the timber cladding on the buildings against which it stands and which it is subservient to. In my judgement that serves to mitigate its visual prominence when viewed from the only available point in the public domain which is, in any event, some distance away. Furthermore, the overhanging roof of the stable-type building that is far closer to the public right of way and thus more visually prominent is supported by posts with the same distinctive trident feature at the top. This is a building which is characteristic of a rural area and appears to serve a countryside function. The trident-topped posts are not therefore inherently urbanising in appearance.

⁴ APP/B9506/D/13/2204714 paragraph 4

15. A considerable amount of domestic paraphernalia is visible around the dwelling which includes a good number of plants in large pots and what appeared from a distance to be garden chairs on the appeal structure. Most of this stands on the decking. It is the domestic paraphernalia rather than the pergola structure itself that, in my judgement, gives the building and its surroundings what the Authority describes as '...an overtly domesticated appearance to these buildings'.
16. Furthermore, the notice does not require the decking to be removed. This is confirmed by the Authority at paragraph 5.12 of the appeal statement. It simply requires the structure to be removed to the level of the decking. As the appellant rightly points out, the lawful use of the building and the land immediately around it is as a dwelling. There is no reason therefore why the domestic paraphernalia should not remain once the requirements of the notice are complied with. Given the primary purpose of the notice is to address this concern the fact that removing the pergola element alone would not do so is a material consideration to which I give moderate weight.
17. I appreciate that the building was not a dwelling previously and the fact that it is now results from the period during which the local planning authority could have taken enforcement action ending before it made any attempt to do so. Nevertheless, it is a dwelling now and the development alleged must be viewed in that context when considering its effect on the character and appearance of the area.
18. Taking all these factors (the colour of the structure and the buildings, the subservient nature of the structure to the host dwelling, the distance over which the filtered view of the structure is available from the single public viewpoint and the likelihood of the domestic paraphernalia remaining after compliance with the notice in any event) into account, I do not consider that the development carried out conflicts with DPD policies DP1, DP6 and CP8. The development is of high quality design and construction and, in my judgement, enhances the local character and distinctiveness particularly when viewed in the context of the telephone exchange building which can be seen in the same views. The development is appropriate and sympathetic in terms of, among other things, scale, appearance and form when viewed for what it is, namely an addition to a dwelling. The development does not cause harm and thus conserves and, as set out previously, enhances, albeit to a limited and very localised extent, the natural beauty of the New Forest which is the element of the two statutory purposes relevant to the determination of this appeal.

Conditions

19. The Authority has not suggested any conditions which might be imposed in the event of planning permission being granted. The appellant suggests that a condition could be imposed to prevent enclosure of the structure. The Authority considers this neither appropriate nor reasonable and argues that this would not overcome the conflict with DPD policy DP11 in any event.
20. As set out above, the appellant does not consider that DPD policy DP11 should apply in this case. In summary, the case made is that the development that is the subject of the notice is not enclosed and does not therefore add to the habitable floorspace of the dwelling. That is the primary concern of DPD policy DP11 and the PIL confirms that '...substantial open sided areas which are

covered by a roof, such (as) verandas.....may also be included in calculating new additional floorspace.

21. It is for the court to determine the meaning of policy. However, in my view, the appellant's understanding of the wording is correct. The entire context of the policy wording and that of the supporting text is the enlargement of dwellings that results in additional habitable floorspace. In paragraph 5.4 of its statement, the Authority incorrectly references its own PIL (see above) in that it fails to mention the requirement to be covered by a roof. In this case, the structure is not covered by a roof. Nor are there any walls. The 'side' elevations are thus completely open to the elements too. The appeal development does not create any additional habitable floorspace as characterised in the DPD. In my view, DPD policy DP11 is not therefore a relevant policy for the determination of this appeal.
22. Nevertheless, in view of the planning history since the 2000 LDC was granted, the Authority's concern about additional floorspace being created by stealth is understandable. This is particularly so in view of the way in which the pergola structure has been erected to readily facilitate enclosure. A condition preventing that as suggested by the appellant is therefore appropriate and will enable the Authority to consider any future proposal to do so against the relevant development plan policy then prevailing and any other considerations brought to its attention. The appellant has not however suggested the wording.
23. I believe a simply worded condition will remove any need to debate whether or not works of enclosure materially affect the external appearance of the building and thus amount to development of land for the purposes of s55(2) of the Act. The permitted development rights generally given under Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015 are not available in most circumstances within the National Park.

Conclusion

24. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.

Brian Cook

Inspector