



Appeal Decision

Site visit made on 29 May 2019

by Mr Kim Bennett DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th June 2019

Appeal Ref: APP/B9506/D/19/3224156
Merrifield, Flexford Lane, Sway SO41 6DN

- 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 & Mrs Black against the decision of New Forest National Park Authority.
 - The application Ref 18/000980, dated 27 November 2018, was refused by notice dated 7 February 2019.
 - The development proposed is a single storey rear extension.
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Decision

1. The appeal is allowed and planning permission is granted for a single storey rear extension at Merrifield, Flexford Lane, Sway SO41 6DN in accordance with the terms of the application, Ref 18/000980, dated 27 November 2018, 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 plan: Drawing No 10 Rev F.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Main Issue

2. The main issue is whether the cumulative effect of proposed development in relation to other existing extensions, is acceptable having regard to adopted policy which seeks to safeguard the distinctive character of the New Forest National Park and maintain a balance in the range and mix in housing stock, whilst also taking other material considerations into account.

Reasons

3. The appeal site comprises a modest detached bungalow located in a semi-rural area on the edge of the village of Sway. It stands in a large plot and is set well back from the road frontage which has a number of large trees/ hedges along it. Beyond the immediate residential curtilage is open land comprising paddocks and agricultural land.

4. The Authority's approach towards extensions to dwellings, is set out in Policy DP11 of its Core Strategy 2010 (CS). Essentially, extensions should not increase the floorspace of the existing dwelling by more than 30% unless there are exceptional circumstances which neither party has indicated is the case here. The objectives behind the policy are to safeguard the distinctive character of the National Park and to maintain a balance in the housing stock. Although there was some discrepancy between the floorspace figures, I note that both parties have now accepted that the proposals would result in an increase of a further 18.8 sq. m. In addition to a garage addition on the northern side of the bungalow, the Authority advises that the cumulative total of increase in floorspace over the existing dwelling would amount to an 89% increase. On the face of it therefore, there would be conflict with Policy DP11.
5. There is previous planning history on the site which is relevant to this appeal. In 2017, a certificate of lawful development (CLD) was issued for a single storey extension to the rear of the property, together with a conversion of the garage to provide kitchen accommodation¹. Subsequently, an application for an extension which was similar in size and design to the current proposal was refused by the Authority in 2018 and then dismissed on appeal in May of that year (the 2018 appeal)², the Inspector finding conflict with Policy DP11.
6. In both the 2018 appeal and the current appeal, the appellant has argued that the fallback position of the CLD carried significant weight, whereas the Authority's position was and is, that it does not trade off what can be built as permitted development and development that requires planning permission, because such an argument could be replicated across almost the entire housing stock of the National Park.
7. Whilst I understand the Authority's position, there is nevertheless an anomaly which has to be acknowledged in terms of Development Policy restricting cumulative extensions and national legislation which allows permitted development, including within National Parks. Accordingly, it is important that site specific circumstances are looked at carefully in order to weigh up the pros and cons of the apparent competing issues. I am also mindful of the Courts general approach towards fallback arguments which in summary is that there must be a realistic likelihood that permitted development rights would be exercised if permission is refused. It is not enough just to simply present what could be a theoretical fallback position.
8. Having regard to the above, I consider that given the lengths the appellants have gone to in terms of obtaining the CLD and also submitting both the previous 2018 proposal and the current appeal proposal, they are clearly intent on increasing the size and functioning of the existing accommodation. The CLD scheme could easily be implemented without significant structural alterations to the existing bungalow and taken together I am satisfied that there would be every likelihood of that progressing should this appeal fail.
9. Comparing the CLD scheme and the current proposal, both schemes would be similar in additional floor area, but the former would not be of high design quality as the 2018 Inspector observed, with its somewhat strange pair of truncated crown roofs. The flat roof garage would also have been retained. The current proposal would replace the flat roof garage with a pitched roof

¹ Application Reference No 17/00796

² Appeal Reference APP/B9506/D/18/3198057

extension which would have a slightly lower ridge height and be more in keeping with the character of the existing bungalow including matching materials. Furthermore, although the existing bungalow is not at all prominent in the street scene, the CLD proposal would have resulted in glimpsed views from the road during winter months when leaves are not on the trees, whereas the proposed extension would be scarcely apparent being located on the northern side of the bungalow. In my view therefore, there would be some design benefit in the current proposal proceeding compared to the CLD scheme. In that respect it would be consistent with Policy DP1 And CP8 of the Core Strategy in that it would be sympathetic in scale, appearance and use of materials to the building and locality.

10. A key concern of the Inspector in deciding the 2018 appeal, was that although there was a proposed Unilateral Undertaking (UU), it was not signed at that time and therefore there was no mechanism in place preventing the implementation of both the CLD scheme and the appeal proposal, should the latter be allowed. Since this appeal was lodged, a signed UU has been submitted to the Council dated 25 April 2019. Essentially it prevents the implementation of the CLD scheme and indeed any other extensions permitted under Part 1 of Schedule 2 to the General Permitted Development Order 2015. The Authority has confirmed that it has received the UU and that it has been checked by its Solicitor from a legal point of view. Having reviewed the UU, I am satisfied that it would satisfactorily prevent the CLD scheme from being capable of implementation should I allow this appeal.
11. Aside from the above arguments, the proposal is very modest in nature, providing only an enhanced kitchen area together with re arrangement of existing internal accommodation. I am satisfied therefore that it would make no appreciable difference to the balance of the housing stock in the National Park, nor alter its distinctive character and appearance.
12. Drawing the above together, I find that the likelihood of the fallback position going ahead carries significant weight and that there are design advantages of the appeal proposal proceeding in its place. The signed UU effectively prevents both schemes being implemented and in that respect I am satisfied that it complies with the 3 tests set out in paragraph 56 of the National Planning Policy Framework (the Framework) namely that it is necessary to make the development acceptable, it is directly related to it, and fairly and reasonably related in scale and kind to it.
13. Having regard to all of the above, the development would be in compliance with Policies DP1 and CP8 of the CS and the Framework. Whilst there would be conflict with Policy DP11, other material considerations in this instance carry greater weight and would not undermine the Policy or its wider objectives. In that respect, I do not consider this decision sets an undesirable precedent, which is one of the Authority's concerns, since other cases advancing similar arguments would have to be considered on their individual merits and specific site circumstances and locations, as to whether any similar exceptions to policy could be justified.
14. Conditions for the development to be built in accordance with the approved plans and for matching materials, are necessary in the interests of certainty and visual amenity. Although the appellant has suggested an additional condition to preclude further extensions under part 1 of the Schedule 2 to the

GPDO, I note that the Authority has not suggested that and, in any case, it is covered by the signed UU which comes into effect upon the grant of planning permission. I therefore do not consider it is necessary.

15. Accordingly, the appeal is allowed and planning permission granted.

Kim Bennett

INSPECTOR