



Appeal Decision

Site visit made on 29 September 2020

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 10 November 2020

Appeal Ref: APP/X1735/W/20/3254164

35 Blackthorn Drive, Hayling Island PO11 9PA

- 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 S Edney against the decision of Havant Borough Council.
 - The application Ref APP/19/01235, dated 13 December 2019, was refused by notice dated 14 February 2020.
 - The application sought planning permission for the 'erection of 1No.1bed detached bungalow with associated parking and access. New parking layout for 35 Blackthorn Drive. (Renewal of planning permission APP/15/01365)' without complying with conditions attached to planning permission Ref APP/18/01276, dated 24 January 2019.
 - The conditions in dispute are Nos 7 and 10 which state that:
(7) No above ground construction shall commence until samples and details of all external facing and roofing materials shall be submitted to and approved by the Local Planning Authority. Thereafter only such approved materials and finishes shall be used in carrying out the development.
(10) Notwithstanding the provisions of any Town and Country Planning General Permitted Development Order, no extension, building, structure or roof alteration permitted by Part 1, Classes A, B, C or E of the 2015 Order, as amended, shall be erected within the curtilage of the site without the prior written approval of the Local Planning Authority.
 - The reasons given for the conditions are:
(7) To ensure the appearance of the development is satisfactory and having due regard to policies CS16 and DM9 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
(10) To avoid an overdevelopment of the site in the interests of the character of the area and amenities of the occupiers of nearby properties and having due regard to policy CS16 and DM13 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2018.
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 16 October 2020.

Decision

1. The appeal is allowed and planning permission is granted for the erection of 1No.1bed detached bungalow with associated parking and access. New parking layout for 35 Blackthorn Drive. (Renewal of planning permission APP/15/01365) at 35 Blackthorn Drive, Hayling Island PO11 9PA in accordance with the application Ref APP/19/01235, dated 13 December 2019, without compliance with conditions 7 and 10 previously imposed on planning

permission Ref APP/18/01276, dated 24 January 2019 and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr S Edney against Havant Borough Council. This application is the subject of a separate Decision.

Background

3. Planning permission¹ was approved on 24 January 2019 for the erection of a one-bedroom detached bungalow with associated parking and access and new parking layout for No 35 Blackthorn Drive. The Council has provided me with copies of the approved plans for this development.
4. In order to ensure the satisfactory appearance of the development, condition 7 of the planning permission required the submission and approval by the Local Planning Authority of samples and details of all external facing and roofing materials before any above ground construction commenced. The application seeks to vary the wording of condition 7 to state that the development must accord with the schedule of materials submitted. I have no reason to disagree with the Council that such a variation would be acceptable. Indeed, taking into account that the development is small in scale and single storey and so would not represent a prominent feature, the proposed 'sky' colour render for the walls and grey concrete roof tiles would not have an adverse impact on the character and appearance of the area. I shall replace condition 7 with an amended condition to state that the development must accord with the submitted schedule of materials.
5. Condition 10 of the planning permission withdraws permitted development rights for an extension, building, structure or roof alteration falling within Classes A, B, C or E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The Council, in its reason for refusal of planning permission² the subject of this appeal, consider that having regard to the limited size of the plot and its relationship to adjoining development, the extension and alteration of the approved one-bedroom dwelling under permitted development rights could be detrimental to the amenities of the occupiers of neighbouring properties. The Council refers to the requirements of Policy CS16 of the Havant Borough Core Strategy 2011 (HBCS) which, amongst other things, aims to ensure all development does not cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking. Moreover, the Council refers to the National Planning Policy Framework (the Framework) which seeks to ensure developments create places with a high standard of amenity for existing and future users.
6. The Council, in its reason for refusal of planning permission, no longer refers (as it did in the reason for condition 10 as set out in the banner heading above) to the avoidance of the overdevelopment of the site in the interests of the character of the area or the amenities of the occupiers of nearby properties having due regard to Policy DM13 (Car and Cycle Parking on Residential Development) of the HBCS.

¹ Reference: APP/18/01276

² Reference: APP/19/01235

7. My consideration of the appeal is based on the present circumstances, namely the Council's reason for refusal of planning permission the subject of this appeal.
8. The appellant seeks removal of condition 10 arguing that it does not meet the six tests for conditions as set out in Paragraph 55 of the Framework. He contends that having regard to the guidance about the use of conditions to restrict the future use of permitted development rights, as set out in the Planning Practice Guidance³ (PPG), condition 10 of the planning permission is unnecessary and unreasonable.

Main Issue

9. In light of the above, the main issue is whether condition 10 of the planning permission is necessary and reasonable to protect the living conditions of the occupiers of neighbouring property.

Reasons

10. The PPG states that the scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the GPDO, so that it is clear exactly which rights have been limited or withdrawn. It goes on to say that area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. Consequently, it is necessary to assess each of the Classes to consider if it is reasonable and necessary to restrict all the permitted development rights which the Council has included in planning condition 10 taking into account the reason for refusal of planning permission.
11. The approved development would leave No 35 Blackthorn Drive, a two-storey semi-detached dwelling, with a rear garden of approximately 10 metres in length. In this regard, the Council refers to its SPD⁴ which, amongst other things, sets out the general principles for new residential development. It states that it is important that proposals consider the impact of the development on existing residents and (in paragraph 5.05) the garden length should normally allow 10 metres between the dwelling and the boundary in order to maintain a reasonable relationship between new dwellings and neighbouring properties. By virtue of its orientation within the sub-divided plot, the front (principal) elevation of the approved bungalow would face east, towards a terraced row of bungalows on the opposite side of Blackthorn Drive and hence the garden area of the approved bungalow would be to the side of the property. Owing to the size of the plot the garden would be small, measuring approximately 8 metres in length, beyond which there would be a single vehicle parking space and cycle/bin store (which would be retained thereafter by the imposition of condition 4 of the planning permission). Given that the approved bungalow is a one-bedroom property and therefore not suitable for family occupation, the Council considered a small garden to be acceptable in this case. I see no reason to disagree.
12. Class A relates to the enlargement, improvement or other alteration of a dwellinghouse. By virtue of its orientation and proximity to the common boundaries with Nos 35 and 36 Blackthorn Drive, which would be delineated by

³ Paragraph: 017 Reference ID: 21a-017-20190723

⁴ Havant Borough Council, Borough Design Guide Supplementary Planning Document, 2011

tall wooden fencing, an enlargement of the approved bungalow under Class A could only extend beyond the wall forming the side (south) elevation of the building. Such an extension would result in a reduction in the size of the approved small garden.

13. The appellant points out that the GPDO provides clear restrictions to ensure that the overdevelopment of the site does not occur. However, in this regard, I have not been presented with any substantive evidence to indicate that it would not be possible to extend the property into the garden area such that it would reduce the separation distance between the resultant dwelling and its southern boundary with No 19 Kingfisher Close to less than 10 metres; the length that should normally be allowed between a dwelling and its boundary in order to maintain a reasonable relationship in the interest of reducing the impact of new development on the living conditions of existing residents.
14. Moreover, I have no evidence before me to indicate that an extension of the approved dwelling could not incorporate an additional bedroom, which would result in a property suitable for family occupation. Although the small garden is acceptable for the approved one-bedroom bungalow, the appellant has not presented me with any compelling evidence to demonstrate that such a small garden would be acceptable for a family sized dwelling. Thus, an enlargement of the dwellinghouse under Class A could place greater demands on the small garden area from the increased occupation of the property. It could concentrate noisy outdoor activities often associated with family occupation to a very restricted area which could infringe upon the occupiers' enjoyment of immediate neighbouring properties.
15. I consider, therefore, that an enlargement of the property under Class A could have a harmful effect on the living conditions of the occupiers of neighbouring properties in terms of potential noise nuisance and by virtue of reducing the separation distance to the southern boundary to less than 10 metres. Hence, I consider that this element of the disputed condition should remain.
16. Class B relates to the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Although it contains restrictions on the extent of development permitted it would be possible to introduce windows and increase the floorspace by virtue of first floor accommodation that could include an additional bedroom. The enlargement of the property by virtue of the introduction of an additional bedroom would result in a dwelling suitable for family occupation.
17. Whilst the enlargement would not in itself result in a reduction in the size of the approved small garden, it could place greater demands on the small garden area from the increased occupation of the property. Thus, for the same reasons as described above in regard to an enlargement of the property under Class A, I consider that an enlargement of the property under Class B could have a harmful effect on the living conditions of the occupiers of neighbouring properties in terms of potential noise nuisance. Moreover, by virtue of the proximity of the approved bungalow to neighbouring properties and their gardens, the introduction of windows could be detrimental to the living conditions of the occupiers of neighbouring properties in terms of a loss of privacy due to overlooking. This element of the disputed condition should therefore be retained.

18. Class C relates to any other alteration to the roof of a dwellinghouse. Although it contains restrictions, it would be possible to insert windows within a roof slope as part of an alteration to the roof of the property. For the same reasons as described above in terms of the possible introduction of windows under Class B, the insertion of windows within a roof slope could be detrimental to the living conditions of the occupiers of neighbouring properties in terms of a loss of privacy due to overlooking. Therefore, this element of the disputed condition should also be retained.
19. The appellant contends that there is no requirement to remove Class B and Class C provisions because the approved bungalow does not have sufficient head room for a roof conversion. However, I have not been presented with any substantive evidence to demonstrate that the approved bungalow is designed with such a low height that it would not be possible to provide for roof accommodation. Hence, this point does not alter my conclusion that these elements of the disputed condition should be retained.
20. The appellant also says that once the bungalow is constructed the internal living space could be re-worked to incorporate an additional bedroom if desired and so the removal of permitted development rights does not in itself prevent the provision of a second bedroom. However, as set out above, I have found that it is not solely as a result of an additional bedroom that removal of certain permitted development rights is both necessary and reasonable to protect the living conditions of the occupiers of neighbouring property.
21. Finally, Class E relates to buildings etc incidental to the enjoyment of a dwellinghouse, such as a free-standing outbuilding. In order to be permitted development under Class E an outbuilding is subject to defined restrictions in the GPDO including size, siting and the area of ground covered by buildings. I recognise that the garden area of the approved one-bedroom bungalow would be small. However, taking into account the restrictions under Class E, the layout of the site and the likely position of an outbuilding, although the Council has expressed concern, I have not been presented with any substantive evidence to demonstrate that an outbuilding incidental to the enjoyment of the one-bedroom bungalow could adversely affect the living conditions of the occupiers of neighbouring properties. On the evidence before me, in this regard, there would be no conflict with the amenity aims of HBCS Policy CS16 or the Framework. Consequently, I find that this element of the disputed condition is unnecessary and would be unreasonable and so should be omitted.
22. To conclude on this main issue, the deletion of condition 10 in full would conflict with the requirements of Policy CS16 of the HBCS. In light of the importance placed on the living conditions of the occupiers of neighbouring property by Policy CS16 of the HBCS and the Framework, I find that an element of restriction of permitted development rights in respect of Classes A, B and C is both necessary and reasonable to protect the living conditions of the occupiers of neighbouring property. I shall replace condition 10 with an amended condition omitting the restriction of Class E rights.
23. I acknowledge the appellant's point that permitted development rights were not removed for the same development previously granted planning permission⁵ at the site; furthermore, the appellant's point that there has been

⁵ Reference: APP/15/01365

no policy change or material planning change. However, in this case, I find that it is necessary and reasonable to withdraw certain permitted development rights in the interests of the living conditions of the occupiers of neighbouring properties. The fact that certain permitted development rights were not previously removed is not a matter that, in this case, alters or outweighs my conclusion on the main issue.

Other Matters

24. I have had regard to the comments from interested parties. However, these comments relate to the principle of development, which has already been established through the previous planning permission. Therefore, they are not decisive in my consideration of the appeal.

Conditions

25. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 (the Act) should also restate the conditions imposed on earlier permissions, unless they have already been discharged. I have not been presented with any information regarding the status of the other conditions imposed on the original planning permission. Therefore, for the avoidance of doubt I shall impose all the conditions from the original permission (apart from the replaced conditions 7 and 10). If some have in fact been discharged, that is a matter which can be addressed by the parties.

26. I have amended condition 1 so that the three year time limit period runs from the date of the original planning permission in order to accord with section 73(5) of the Act.

Conclusion

27. I have found that the variation of condition 7 would be acceptable. In regard to condition 10, I have found that it does not, in part, satisfy the relevant tests of the Framework and should therefore be amended.

28. Accordingly, having regard to all other matters raised, the appeal is therefore allowed. In accordance with section 73(2)(a) of the Act I have granted a new planning permission without the disputed conditions 7 and 10 but substituting them for new ones referring to the schedule of materials submitted and reflecting the amended restrictions to permitted development rights.

Andrew Bremford

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 24 January 2022.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
Site Location and Block Plan drwg.no 234/10/01 received 12 December 2018
Proposed Ground Floor drwg.no 234/10/02 received 12 December 2018
Proposed Roof Plan drwg.no 234/10/03 received 12 December 2018
Proposed Elevations drwg.no 234/10/04 received 12 December 2018
Proposed Site Layout Plan drwg.no 234/10/05 received 12 December 2018
Proposed Cycle and Refuse Plans drwg.no 234/10/06 received 12 December 2018
- 3) The finished ground floor level shall not exceed 150mm above existing ground level of the site.
- 4) The car parking, servicing and other vehicular access arrangements shown on the approved plans to serve the development hereby permitted shall be made fully available for use prior to the development being first brought into use and shall be retained thereafter for their intended purpose.
- 5) The premises shall not be occupied before the proposed access and the crossing of the highway verge and/or footway is constructed and laid out in accordance with the approved details.
- 6) The hawthorn hedge to the southern boundary of the site shall be retained. Measures shall be undertaken to prevent damage to existing hawthorn hedge throughout implementation of the development hereby approved. Any such tree which is nevertheless seriously damaged during that implementation shall be replaced within 6 months of the occurrence of such damage by another of the same species in the same position.
- 7) The external surfaces of the development hereby permitted shall be constructed in the materials shown on the submitted 'Schedule of Materials – Application APP/18/01276 (Condition 7)'.
- 8) The development shall be constructed in accordance with the hard and soft landscaping specifications as detailed within the submitted plans. The development hereby permitted shall not be brought into use until the implementation of all such hardsurfacing and soft landscaping has been completed in full accordance with that specification.
- 9) The development hereby permitted shall not be brought into use until the means of enclosure of the site has been installed and completed in full accordance with the specifications as detailed within the submitted plans.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extension or enlargement including additions or alterations to the roof of the dwellinghouse falling within Classes A, B or C of Part 1 of Schedule 2 of the Order shall be undertaken without the prior written permission of the Local Planning Authority.