



Appeal Decision

Site visit made on 23 February 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2021

Appeal Ref: APP/B1740/W/20/3263219

6 Baytree Gardens, Marchwood SO40 4SB

- 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 P Dunning against the decision of New Forest District Council.
 - The application Ref 20/10551, dated 11 May 2020, was approved on 10 September 2020 and planning permission was granted subject to conditions.
 - The development permitted is single-storey side extension; new boundary wall and landscaping; use of the land as residential garden.
 - The condition in dispute is No 4 which states that: *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any re-enactment of that Order) no new chimney or flue pipe is to be inserted into the extension hereby approved without express planning permission first having been granted by the Local Planning Authority"*.
 - The reason given for the condition is: *"In the interest of the amenities of neighbouring properties, in accordance with Policy ENV3 of the Local Plan Review 2016-2036 Part One: Planning Strategy for the New Forest District outside the National Park"*.
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Decision

1. The appeal is allowed and the planning permission Ref 20/10551 for single-storey side extension; new boundary wall and landscaping; use of the land as residential garden at 6 Baytree Gardens, Marchwood SO40 4SB granted on 10 September 2020 by New Forest District Council, is varied by deleting condition No 4.

Background and main Issue

2. The description of development on the application form did not include reference to the use of land as residential garden. Having regard to the evidence before me, including information contained in the Council's committee report under the heading "site description", and the approved planning application drawings, I have taken the description of development in the heading above from the decision notice.
3. The information before me is that the application as originally submitted included a chimney incorporating a flue pipe to serve a solid fuel heating appliance. The application was presented to the Council's Planning Committee on 8 July 2020 with an officer recommendation of approval, subject to conditions which did not include the disputed condition No 4. The Planning Committee minutes confirm that the application was deferred following concerns from members about the height of the chimney with a new flue pipe from a solid fuel heating appliance and its possible impact on the amenity of

neighbouring properties, having regard to smoke emission. The reason for the deferral was stated to be in order to enable discussions with the applicants as to whether the chimney could be removed from the proposal.

4. Following amendment of the scheme by the appellants to remove the chimney and flue pipe, the application was again considered by the Planning Committee on 9 September 2020. The committee report recommended approval, subject to conditions which did not include the disputed condition, which was subsequently added by the Planning Committee.
5. Taking the above into account, together with the Council's reason for condition No 4, the main issue is whether the condition is necessary or reasonable in the interests of the living conditions of the occupiers of neighbouring properties, with particular reference to smoke emission.

Reasons

6. The appeal property is a detached two-storey house situated in a cul-de-sac within a modern suburban residential area. There are dwellings to the northwest side and rear of the site and on the opposite side of the road, together with school playing fields across the road in front of the site.
7. The extension to which the disputed condition relates, comprises a single-storey hipped roof addition to the side of the house. The development includes the enclosure of an open area of soft landscaped land at the side of the house to incorporate it into the private garden of the property.
8. The appeal site lies in a corner position adjacent to a sharp bend in the road. The siting of the approved extension to the side of the house is such that its front and side walls would face the street, and the garden of the appeal property would wrap around its side and rear walls. The separation distance between the extension and the closest residential properties in Main Road and Baytree Gardens, in addition to including the road, would be further increased by the existing parking/garage court and rear-accessed parking/garaging behind 7 to 17 Main Road and a double garage to the side of 1 Baytree Gardens.
9. There would also be a generous separation distance between the extension and the property to the rear at 3 Aaron Court due to the intervening rear garden of the appeal site and rear garden of that neighbouring property. Dwellings to the northwest side of the appeal site would be separated from the extension by the existing two-storey dwelling at No 6.
10. Having regard to the above juxtaposition of the extension in relation to neighbouring residential properties, the enlarged property would retain a spacious layout of development in relation to its neighbours, and any chimney or flue erected on the extension would not be located within an unusually close position in relation to the neighbouring dwellings. I therefore find that such an installation would not be materially harmful to the living conditions of neighbouring occupiers.
11. Furthermore, chimneys and flues are common features of single storey dwellings within residential environments, and, in the case of the appeal property, they would, in the absence of condition No 4, comprise permitted development provided the height does not exceed the height of the main roof of the dwelling by 1 metre or more.

12. The Council has not identified any site-specific circumstances that justify the removal of these permitted development rights in this instance, having regard to the space that would surround the extension. Moreover, in restricting all chimney and flue pipe additions to the extension, the disputed condition unreasonably goes beyond the Council's identified concern relating to smoke emission from such structures, as they are not always necessarily erected in connection with smoke emitting installations.
13. Standards that apply to Environmental Health, Building Control and Planning are the subject of separate regulations, and the remit of the Planning system allows the Council to seek higher standards than the minimum contained within the Building Regulations. Notwithstanding this, I find that other measures, including Building Regulations requirements, Environmental Health controls in respect of statutory nuisance and Defra's Clean Air Strategy, serve to provide protection against harm to neighbouring living conditions arising from smoke emissions within residential environments such as the appeal site and its surroundings. Taking this into account, together with the space that will remain around the extension, and householder permitted development rights in respect of chimneys and flues, I find that planning permission ought not to have been refused without the condition, and the condition is therefore unnecessary.
14. For the above reasons, I conclude that condition No 4 is not necessary or reasonable in the interests of the living conditions of the occupiers of neighbouring properties, with particular reference to smoke emission, taking into account the advice within the *National Planning Policy Framework 2019* (the Framework) and the Planning Practice Guidance on the use of planning conditions. The development without the condition would not be contrary to Policy ENV3 of the *Local Plan 2016 – 2036 Part One: Planning Strategy for the New Forest District Outside the New Forest National Park* (2020) in so far as this policy aims to ensure that new development avoids unacceptable adverse impacts on residential amenity.
15. The Framework requires planning conditions to meet all of the 6 listed tests within Paragraph 55. As such, since I have found Condition 4 to be unnecessary and unreasonable, there is no need for me to consider it against the remaining tests.

Conclusion

16. For the above reasons, I conclude that the appeal should succeed and that the planning permission should be varied by deleting the disputed condition.

S Leonard

INSPECTOR