



Appeal Decision

Site Visit made on 16 February 2021

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 12th March 2021

Appeal Ref: APP/P2114/W/20/3261450

53 Gills Cliff Road, Ventnor, Isle of Wight PO38 1AD

- 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 Peter Champion against the decision of the Isle of Wight Council.
- The application Ref 20/01379/RVC, dated 21 August 2020, was approved on 16 October 2020 and planning permission was granted subject to conditions.
- The development permitted is the Variation of condition 2 on 20/00586/FUL to move houses forward by 1.0m, amend access step arrangement and amend parking arrangement.
- The conditions in dispute are Nos 3, 4 and 13 which state that:

Condition 3

No development shall take place until a comprehensive site investigation report and foundation design/method statement have been submitted to and agreed in writing by the local planning authority. The site investigation must include sufficient sub-surface investigations and the foundation design and method statement must take account of all relevant factors to ensure stability of the proposed dwellings and all existing structures, including retaining walls, at all stages of development. Development shall be carried out in accordance with the approved details.

Condition 4

No site preparation or clearance shall begin, and no equipment, machinery or materials shall be brought onto the site for the purposes of the development hereby permitted, until details of measures for the protection of existing trees to be retained have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall accord with the BS5837:2012 standard and include a plan showing the location of existing trees to be retained and the positions of any protective fencing. Development shall be carried out in accordance with the approved details and any protective fencing shall be erected prior to work commencing on site and will be maintained until all equipment, machinery and surplus materials related to the construction of the development have been removed from the site. Nothing shall be stored or placed in any fenced area in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, unless otherwise authorised by this permission or approved in writing by the Local Planning Authority.

Condition 13

Immediately following the implementation of this permission, notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modification) the following Classes of Schedule 2 of the Order as amended are withdrawn.

Part 1

Class A - enlargement, improvement or other alteration to the dwelling

Class B - enlargement consisting of an addition to the roof

Class C - alteration to the roof

Class D - erection or construction of a porch outside any external door

Class E - building, enclosure or swimming pool for purposes incidental to the enjoyment of the dwelling or a container for domestic heating purposes. No development of any of the above classes shall be constructed or placed on any part of the land subject of this permission.

- The reasons given for the conditions are:

Reason 3

To ensure that the development is constructed with regards to the known ground instability in the area accordance with Policies DM2 (Design Quality for New Development) and DM12 (Landscape, Seascape, Biodiversity and Geodiversity) of the Island Plan Core Strategy and guidance provided through the NPPF.

Reason 4

This condition is a pre-commencement condition to prevent damage to trees during construction and to ensure that the high amenity tree(s) to be retained is adequately protected from damage to health and stability throughout the construction period in the interests of the amenity in compliance with Policy DM12 (Landscape, Seascape, Biodiversity and Geodiversity) of the Island Plan Core Strategy.

Reason 13

To ensure adequate planning control over further development having regard to the limitations of the site including ground stability issues and the neighbouring properties and in the interests of the visual amenities of the site and the area in general, in accordance with Policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the conditions are reasonable and necessary in order to ensure ground stability, protect high amenity trees and to control future alterations or enlargement of the development proposed through the removal of permitted development rights.

Reasons

Background

3. The appellant highlights that an earlier approval of a chalet bungalow on the site carried only three condition and argues that the imposition of additional conditions on this revised application are unwarranted and unreasonable and that the pre-commencement conditions require particular justification.

Condition 3 - Ground stability

4. The site is steeply sloping with development proposed to be cut into the site. There is a difference of over 14 metres between the front and rear of the plot and the structure would be an unconventional cantilevered design with garden levels also excavated to provide level areas of amenity space. The groundworks will extend across the full width of the site and construction and levels changes will be much deeper into the site from the road than envisaged in earlier approvals on the site. In addition, a large amount of ground works between the proposed houses and the road will also be excavated to form car parking spaces.

5. The Council point to the ground conditions and stability report dating from August 2015 which supported earlier applications and which involved borehole testing in four locations around the footprint of the earlier submission. This report has not been updated nor expanded in connection with the appeal scheme. Neither is there any indication that the impacts of more extensive excavation have been considered. The appellant indicates that discussions took place on site with their engineer however I have no substantive evidence that any updated information was provided to the Council as to what the outcome of any additional assessment was; nor is there any indication that further borehole tests in the enlarged area has been undertaken.
6. Given that the groundworks are to be more extensive across and into the site it is reasonable to take a prudent approach, particularly on a site where such extensive excavation is proposed and where the difference in levels from the back to the front is so extensive. This approach reflects the National Planning Policy Framework (the Framework) which states at paragraph 170 that planning decisions should prevent new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by, amongst other things, land instability. The condition is intended to deal with these issues and it is a matter which should be dealt with pre commencement.
7. The appellant states that full design work will need to be undertaken to satisfy building control long before any work is undertaken and no developer would incur significant expenditure before all costs are clear as it might make the project unviable. This somewhat undermines the rationale for removing the condition. I am not persuaded, on the basis of the appellants evidence, that adequate justification for the removal of the condition has been demonstrated.
8. I note that the Council emphasise that the same condition was included on the earlier approval¹ which was not challenged and therefore the Council did not have any reason to suspect that the conditions would not be acceptable to the appellant though this does not my conclusion in relation to this issue.
9. Therefore, condition 3 should be retained in order to ensure compliance with Policies DM2 and DM12 of the Island Plan Core Strategy and the Framework.

Condition 4 - High amenity trees

10. The appellant argues that there is no disturbance planned within 7 metres of the rear boundary and the retaining wall indicated on the plans 'may or may not be constructed'. He points to the fact that only 'gardening' will take place in the area at the rear of the site including the clearance of several years scrub growth. The appellant has undertaken a general assessment in his grounds of appeal of what he considers to be the required area of protection; this is argued to be less than the distance to the retaining wall indicated on the application plans. Even so the fact that there is to be a retaining wall indicates to me that ground disturbance works in this area are likely to be needed to implement the consent and that this could impact on the root systems of trees which are to be retained.
11. The purpose of the condition is to ensure that trees on the site are protected during construction in accordance with British Standards. The sloping nature of

¹ LPA reference 20/00568/FUL 13 July

the site and the proposals for excavation heighten the importance of ensuring that appropriate measures are taken to ensure that root systems important for the stability of the trees are dealt with appropriately. It is also important for these measures to be assessed prior to site preparation or clearance in order to ensure adequate protection is in place prior to construction work. To proceed without identifying the appropriate measures of protection would introduce an unacceptable level of risk which the condition seeks to protect against.

12. The appellant argues that the condition is unenforceable and that ground clearance is in the process of being undertaken. I saw no evidence of groundworks only recent shrub clearance but garden maintenance alone would not undermine the condition.
13. On the basis of the evidence before me a case has not been robustly made for the removal of this condition nor does it demonstrate that it should not be a pre-commencement condition.
14. Therefore, condition 4 should be retained in order to ensure compliance with Policies DM12 of the Island Plan Core Strategy.

Condition 13 - Permitted development rights

15. The Council has indicated the necessity to restrict the range of future alterations which might be undertaken to the dwellings under classes A to E of The Town and Country Planning (General Permitted Development) (England) Order 2015. The PPG advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances.
16. The appellant argues that the removal of such rights was not part of the permission for a single dwelling and questions why they are now necessary for two dwellings. Moreover, the appellant has provided sections to indicate that the level of the garden at 114 metres, is lower than that approved in the proposal for the replacement single dwelling at 115 metres.
17. The extent of development on the site is significantly greater than that proposed by the earlier approval for the single dwelling. The extent of the proposal for two dwellings coupled with the proximity of proposed development to the site boundaries together with the extent of excavation associated with levels changes across the site, in my view, warrants the exercise of careful controls for any future additions. The retention of the condition does not mean that any application for permission would be withheld by the Council but they would remain under their future control.
18. The appellant has highlighted a recent local appeal decision² where the Inspector rejected proposed restriction of PD rights. However, I do not have sufficient information before me to know whether the circumstances are similar and as such do not attach weight to the comparison.
19. I also note the appellants' suggestion that adjacent properties should have their permitted development rights removed since steeply sloping sites are the norm in Ventnor. However, such a suggestion would far exceed the remit of the appeal process.

² APP/P2114/W/18/3209772

20. Therefore, condition 13 should be retained in order to ensure compliance with Policies DM2 of the Island Plan Core Strategy.

Other Matters

21. I have had regard to the fact that earlier permissions on this site for a single dwelling did not carry the requirement for conditions relating to foundation design however those consents were for single dwellings which did not involve the extent of excavation envisaged by this application. In any event those approvals relate to development ostensibly on the same footprint as the original dwelling which stood on the site and were for significantly different proposals to those before me in this appeal. For these reasons their relevance to my consideration of this appeal are limited.

Conclusion

22. For the above reasons I conclude that conditions 3, 4 and 13 are reasonable and necessary to appropriately deal with ground instability concerns; to ensure that appropriate measures are taken to prevent damage to trees and to ensure that adequate planning control is exercised in the future to protect ground stability and the amenity of neighbouring properties.
23. Therefore, for the reasons given, and having regard to all other matters raised, the appeal is dismissed.

Janet Wilson

INSPECTOR