



Appeal Decision

Site visit made on 11 May 2021

by **J Ayres BA Hons, Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 11 June 2021

Appeal Ref: APP/L2250/W/20/3262025

Hillcroft, School Road, Hythe CT21 4PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Aldo Sassone-Corsi against Shepway District Council.
 - The application Ref 20/0073/FH is dated 20 January 2020.
 - The application sought planning permission for erection of a detached two-storey dwelling without complying with conditions attached to planning permission Ref Y19/0272/FH, dated 30 July 2019.
 - The conditions in dispute are Nos 1, 7 and 10 which state that:
Condition 1: The development hereby permitted shall not be carried out except in accordance with the details shown on the submitted plans, numbers 18.18-01, 18.18-08A, 19.16-01, 18.27-01A, 18.18.04B, 18.18.05A and 18.18-11B, received 07.03.2019 together with 18.18-06A and 18.18-07B, received 29.04.2019.
Condition 7: Prior to first occupation of the dwelling, the first floor bathroom and shower room windows as shown on the approved plans in the dwelling hereby permitted shall be fitted with obscure glass of a type that is impenetrable to sight and shall be retained as such at all times.
Condition 10: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) (with or without modification) no development falling within Classes A, B, C and E of Part 1 of Schedule 2 to the said Order shall be carried out without the prior consent in writing of the Local Planning Authority.
 - The reasons given for the conditions are:
Condition 1: For the avoidance of doubt and in order to ensure the satisfactory implementation of the development in accordance with the aims of saved policy SD1 of the Shepway District Local Plan Review.
Condition 7: To minimise overlooking onto adjoining properties and maintain privacy in accordance with saved policy SD1 of the Shepway Local Plan Review.
Condition 10: To enable the Local Planning Authority to retain control over future development given.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a detached two-storey dwelling at Hillcroft, School Road, Hythe CT21 4PP in accordance with the application Ref 20/0073/FH made on the 20 January 2020 without complying with condition Nos 1, 7 and 10 set out in planning permission Ref Y19/0272/FH granted on 30 July 2019 by Shepway District Council, but otherwise subject to the conditions in the attached schedule.

Preliminary Matter

2. The Folkestone and Hythe District Places and Policies Local Plan (the Local Plan) was adopted in September 2020. Policy BE8 of the Shepway District Local Plan Review, which was applied in determining the application, has been superseded by Policy HB8 of the Local Plan. I have applied the policies in the Local Plan to ensure that the decision is made using the current Local Plan.

Background and Main Issue

3. Planning permission was granted in 2016 (the original permission) for the erection of a detached dwelling. In 2019 the original permission was varied by a S73 application (the S73 permission) to allow for a variation in layout and some material external changes. Works were carried out and the building has been completed. However, changes were made during the construction process that were not permitted by the S73 application in 2019. These include the relocation of the first-floor bedroom to the front elevation with a clear glazed dormer window, and the bathroom to the rear of the first floor. Solar panels were also installed on the rear roof elevation of the property. The appellant applied to vary the conditions set out in the S73 permission to reflect these changes.
4. The Council has confirmed and based on the evidence I agree with their position, that the solar panels are not harmful to the character. I shall return to this matter in due course.
5. Having regard to the history of the site and the matters before me I consider the main issue to be whether the variation of the conditions would result in harm to the living conditions of neighbouring occupiers with particular regard to privacy.

Reasons

6. The area is predominantly residential in character but with no uniform design or scale of property. Plot sizes vary along the road, as does the location of the properties with their plots, which due to the topography of the area allows for a degree of mutual overlooking amongst the dwellings.
7. The front elevation includes a dormer window, which is on the front elevation of the property. Whilst the window appears to project forward, it is not particularly large, and the main element of the habitable space is within the room itself, set back from the dormer. Views of the neighbouring garden are possible should one stand immediately next to the window. However, natural use of the room would not result in readily accessible views of the neighbouring garden or windows due to the physical constraints of the dormer and the oblique angle of the property. Having regard to the close-knit residential nature of the area I find that the level of overlooking possible due to the use of clear glazing would not result in harm to the privacy of neighbouring occupiers.
8. The windows in the rear elevation, three of which serve bathrooms, are set within the roof slope. External views are extremely limited due to the height and positioning of the windows, and any possible views look to the rear of the property. As such the rear windows have no material effect on any neighbouring occupiers and I am satisfied that it is not necessary for the rear roof windows to be obscurely glazed.

9. Accordingly, I find that the amended layout and the use of clear glazing would comply with Policies HB1 and HB8 of the Local Plan and the removal of condition 7 would not be harmful to the living conditions of neighbouring occupiers. These policies require development to make a positive contribution to its location and does not lead to an adverse impact on neighbours, with Policy HB8 requiring development to not cause undue overshadowing of neighbouring properties.

Provision of solar panels

10. Condition 10 of the s73 permission identifies that the reason for the condition is to allow control over future development. The solar panels are on the rear of the property and are not visible to surrounding occupiers. Due to their location and screening around the rear of the site they are not harmful to the character of the host dwelling or the wider area. As such they comply with Policy HB1 of the Local plan which requires development to make a positive contribution to its location.

Conclusion

11. For the reasons set out above I conclude that the appeal should be allowed. I will grant a new planning permission that will vary condition 1 and without the disputed condition 7 but retaining those non-disputed conditions from the previous permission that appear to still be relevant.

J Ayres

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan; Proposed new bedroom and bathroom layout 18.18.05 B; Section 18.18.04 B; Revised Site Plan 18.18.11 B; Site Sections 18.27.01 A; Roof Plan showing Solar Panels 18.18.05 A; 18.18.06 B; 18.18.07 A; 18.18.07 B; 18.18.06 A; GF and Foundations 19.16-01; 18.18.07 C; Solar Panels Datasheet; Solar panels.
- 2) The development hereby approved shall be carried out in accordance with the details of materials (including hard landscaping and driveway) as specified in the application.
- 3) The area shown on the approved plan as car parking space for the dwelling hereby approved and the existing dwelling known as Hillgay shall be adequately surfaced before the dwelling hereby permitted is first occupied and two parking spaces for each dwelling shall be kept available for parking purposes in association with the residential use of each dwelling.
- 4) The vehicle turning facilities shown on the approved plans shall be provided prior to the first occupation of the dwelling hereby approved and shall thereafter be permanently retained.
- 5) Visibility splays measuring 25 metres either side of the access to the highway and protecting visibility from a point at the centre of the access 2 metres from the back edge of the carriageway shall be provided either side of the proposed access before the dwelling is occupied and

maintained so there is no obstruction in excess of 0.6 metres in height above the carriageway within the splay area.

- 6) The scheme for screening the rear boundary of the site shall be retained and maintained in accordance with the details submitted under Y19/1444/FH (Application for discharge of condition 6 (screening) for planning application Y19/0272/FH. (Section 73 application for variation of conditions 2 and 9 of planning permission Y15/0514/SH (Erection of a detached two storey dwelling) to enable an increase in ridge height, additional fenestration, revisions to the ground floor layout and finished materials), condition details for which were approved on 19.02.2020.
- 7) Construction shall be in accordance with the written documentary evidence from breglobal (received 15.11.2018 and approved under conditions monitoring reference Y18/1469/FH) which proves that the development will achieve a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended). Such evidence shall be in the form of a design stage water efficiency calculator.

The development hereby permitted shall not be occupied until written documentary evidence has been submitted to, and approved by, the local planning authority, proving that the development has achieved a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended). Such evidence shall be in the form of a post-construction stage water efficiency calculator.

- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (and any Order revoking and re-enacting this Order) (with or without modification), no windows/dormer windows other than those expressly authorised by this permission shall be constructed.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) (with or without modification) no development falling within Classes A, B, C and E of Part 1 of Schedule 2 to the said Order shall be carried out without the prior consent in writing of the Local Planning Authority.
- 10) The development shall be carried out in accordance with the Ecological Walkover Study by Kent Wildlife Trust (submitted with application Y15/0514/SH) and the dwelling shall not be occupied until measures for ecological enhancements in accordance with the Ecological Walkover Study have been implemented (such measures to have first been approved in writing by the local 6 planning authority). The measures shall thereafter be maintained in a functional condition.
- 11) The dwelling hereby permitted shall not be occupied until space has been provided for secure and covered parking for 2 bicycles, with such space as provided, retained thereafter in association with the approved dwelling.
- 12) Development shall be carried out in accordance with the Construction Management Plan submitted and approved under condition monitoring

application reference Y18/1469/FH. The construction of the development shall be carried out in accordance with those details.

- 13) The proposed surface water drainage arrangements, including drainage of hard surfaced areas, shall be carried out in accordance with the details produced by 'Considine' Civil and Structural Engineers, submitted and approved under condition monitoring application reference Y18/1469/FH. The approved details shall be maintained in a functional condition.

END OF SCHEDULE