



Appeal Decision

Site visit made on 18 January 2023

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2023

Appeal Ref: APP/B9506/W/22/3303500

Dene Lodge, Vaggs Lane, Hordle, Lymington SO41 0FP

- 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 J Fletcher against the decision of New Forest National Park Authority.
 - The application Ref 22/00146, dated 21 February 2022, was approved on 20 May 2022 and planning permission was granted subject to conditions.
 - The development permitted is replacement conservatory (alternative design to that approved under 78756).
 - The condition in dispute is No 3 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) England Order 2015 (or any re-enactment of that Order) no extension (or alterations) otherwise approved by Classes A, B or C of Part 1 of Schedule 2 to the Order shall be erected or carried out without express planning permission first having been granted.
 - The reason given for the condition is: To ensure the dwelling remains of a size which is appropriate to its location within the countryside and to comply with Policies DP35 and DP36 of the adopted New Forest National Park Local Plan 2016- 2036 (August 2019).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether condition No 3 is necessary and reasonable having particular regard to planning policies relating to extensions to dwellings in a National Park.

Reasons

3. Dene Lodge comprises a 2-storey detached dwelling situated on Vaggs Lane within the New Forest National Park. The planning permission which is the subject of this appeal granted permission for a replacement conservatory for Dene Lodge. Condition No 3 removed certain permitted development rights otherwise available via the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) relating to the extension and alteration of Dene Lodge.
4. The permitted development rights referred to in condition No 3 are not restricted by the GPDO in National Parks or in any other areas where restrictive floorspace policies apply. Rather, Article 3(4) of the GPDO allows such rights to be withdrawn by way of a condition imposed on a planning permission.
5. With the exception of Appendix A (model conditions) of Circular 11/95, Circular 11/95 was cancelled upon publication of the Planning Practice Guidance (PPG).

Therefore, I have had regard to the PPG which provides that, amongst other things, conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity, and 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 necessity¹.

6. Policy DP36 of the New Forest National Park Local Plan 2016-2036 (adopted 2019) (Local Plan), provides that, amongst other things, in the case of other dwellings (not small dwellings) outside the defined villages an extension must not increase the floorspace of the existing dwelling by more than 30%.
7. Policy DP36 refers to extensions to existing dwellings being permitted provided that they are appropriate to the existing dwelling and its curtilage. The supporting text to Policy DP36 elaborates (at paragraph 7.80 of the Local Plan) that, in applying Policy DP36, in all cases, the Authority will have regard to the scale and character of the core element of the original dwelling (rather than subsequent additions) in determining whether or not an extension is sympathetic to the dwelling. Similarly, paragraph 7.79 of the Local Plan indicates that the aims of this policy are to protect the locally distinctive character of the built environment of the New Forest, and to avoid an imbalance in the range and mix of housing stock available.
8. As such, considering the aims of Policy DP36 and the text of the policy, it is the effect of any proposed extension on the character of the original dwelling which is the primary consideration, rather than the effect of any further extensions on the character and appearance of the area or the living conditions of neighbouring occupiers, even taking account of the consideration that other dwellings in the locality may have retained their permitted development rights.
9. In this regard, it is common ground between the main parties that prior to 2003, Dene Lodge had already been extended up to its maximum floorspace limit then permitted by local planning policy. Specifically, a rear 2-storey extension and a rear porch had already been built. In addition to this, the replacement conservatory which has been granted planning permission has considerably augmented the size of the original dwelling. As such, any further extension of Dene Lodge resulting in an increase of floorspace would likely be at odds with the aims of Policy DP36. Given this finding, no further analysis of the potential degree of floorspace uplift that could occur at Dene Lodge is necessary.
10. Considering this, and taking account of paragraph 7.81 of the Local Plan which provides that, where necessary the Authority will use appropriate planning conditions to ensure that permitted extensions are not used in conjunction with national permitted development rights to undermine the aims of Policy DP36, and considering the requirements of paragraph 56 of the National Planning Policy Framework (the Framework), condition No 3 is necessary and reasonable to prevent Dene Lodge being further extended via permitted development rights which would in all likelihood conflict with the aims of Policy DP36.
11. Considering the need, stemming from the aims of Policy DP36, to prevent these permitted development rights from being exercised in the future,

¹ Paragraph 21a-017-20190723

condition No 3 acts to make an otherwise unacceptable development acceptable. For these reasons, although the restriction imposed by condition No 3 was not previously applied to earlier grants of planning permission, with respect to paragraph 54 of the Framework I consider that there is clear justification for condition No 3 restricting permitted development rights in the present case.

12. As condition No 3 has been imposed with regard to the specific floorspace present at Dene Lodge, in the context of a specific adopted planning policy, its imposition does not constitute an area-wide or blanket removal of freedoms, which the PPG advises are unlikely to meet the tests of reasonableness and necessity². The control given by condition No 3 is related to the existing dwelling of which the replacement conservatory (which is the same size as that previously permitted) forms a part, with Policy DP36 relating to extensions to dwellings, and therefore the control given by condition No 3 is related to the conservatory. Hence, none of these matters changes my findings.
13. I therefore find that condition No 3 is necessary and reasonable having particular regard to planning policies relating to extensions to dwellings in a National Park. The proposed removal of condition No 3 would undermine the aims of Policy DP36 of the Local Plan which provides that, amongst other things, extensions to existing dwellings will be permitted provided that they are appropriate to the existing dwelling and its curtilage.

Conclusion

14. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR

² Paragraph 21a-017-20190723