



Appeal Decision

Site visit made on 9 January 2023

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 February 2023

Appeal Ref: APP/P2114/W/21/3287236

D Andrea, Thornton Close, Ryde PO33 1PF

- 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 Mrs H Williams against the decision of Isle of Wight Council.
 - The application Ref 21/01376/RVC, dated 1 July 2021, was refused by notice dated 28 September 2021.
 - The application sought planning permission for variation of condition 2 on P/01165/17 to allow alterations to design and layout without complying with a condition attached to planning permission Ref P/00337/19, dated 22 May 2019.
 - The condition in dispute is No 2 which states that: *The outbuilding hereby permitted shall be used only for purposes incidental to the enjoyment of the dwelling house as such and shall not be sold off separately or sublet or otherwise disposed of on a long-term basis unless the express written consent of the Local Planning Authority is obtained.*
 - The reason given for the condition is: *In the interests of the amenities of the area and to comply with Policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy.*
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Decision

1. The appeal is allowed and planning permission is granted for variation of condition 2 on P/01165/17 to allow alterations to design and layout at D Andrea, Thornton Close, Ryde PO33 1PF in accordance with the application Ref 21/01376/RVC, dated 1 July 2021, without compliance with condition number 2 previously imposed on planning permission Ref P/00337/19, dated 22 May 2019 and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plan: 21-659-100.
 - 2) The building shall not be occupied until the windows within the north facing dormer have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority prior to installation and once installed the obscured glazing shall be retained thereafter.
 - 3) 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 development within

Classes A to E of Part 1 of Schedule 2 to that Order shall be carried out other than that expressly authorised by this permission.

Application for costs

2. An application for an award of costs was made by Mrs H Williams against the Isle of Wight Council. This is the subject of a separate decision.

Preliminary Matter

3. The appellant has submitted three separate unilateral undertakings (UU) under section 106 of the Town and Country Planning Act 1990 (as amended). These are signed and dated. The UU dated 17 August 2021 deals with financial contributions towards mitigation in respect of recreational pressures on the Solent and Southampton Waters Special Protection Area (SPA). A further UU, dated 21 May 2022, covers the additional annual increase in financial contributions towards the SPA mitigation. The third UU, dated 30 June 2022, deals with contributions to affordable housing. The Council has confirmed that these collectively secure the required contributions from the proposed development. I return to this later in my decision.

Background and Main Issue

4. Planning permission¹ was granted in November 2017 for the demolition of an existing garage and its replacement incorporating a hobby room (the 2017 scheme). Condition 2 of the original permission related to approved drawings. Planning permission was subsequently sought and granted² for alterations to the approved design and layout of the 2017 scheme through the variation of condition 2. A condition restricting the use of the permitted outbuilding was imposed on that permission to restrict the use of the outbuilding to purposes incidental to the enjoyment of the dwellinghouse. It explicitly stated that the building should not be sold off separately or sublet. The appeal proposal seeks the removal of that condition to allow for the independent residential occupation of the detached outbuilding.
5. The main issue is whether the condition is reasonable and necessary, having regard to the effect of the proposal on the character and appearance of the area.

Reasons

6. The appeal site is located on a small cul-de-sac, Thornton Close, which lies off Appley Road. It comprises two distinct sections, a short section of road with a small circular turning head and a further short stretch of road running parallel to Appley Road. Three bungalows of varied designs are positioned around the turning head within sizeable triangular plots. The appeal site and the property on the opposite corner of Thornton Close both occupy rectangular plots which extend rearwards towards the turning head but also have a frontage facing towards Appley Road. Development along Appley Road is characterised by rectangular plots arranged in a linear pattern.
7. The appeal site is occupied by a large, detached chalet bungalow and a detached single-storey outbuilding with useable space in the roofspace. The height of both these buildings with roof level accommodation and a front facing

¹ Council Ref: P/01165/17

² Council Ref: P/00337/19

gable give them a two-storey appearance. The host property has an additional separate front driveway. The appeal scheme proposes no external alterations to the outbuilding with the only alteration being the construction of a small length of boundary fence to divide the plot. This had already been implemented at the time of my site visit.

8. The outbuilding is positioned off the turning head within the cul-de-sac, set back from Appley Road. It has the appearance of a domestic dwelling, with a front door, ground floor windows, a first floor window with Juliette balcony and a dormer window within the roof. It also has its own front driveway.
9. The subdivision of the site to create a separate dwelling results in both the appeal building and the host property occupying a much smaller plot than nearby development. It would be neither rectangular nor triangular and would not therefore reflect the established pattern of development in the locality. However, because the appeal site has a frontage to both Appley Road and Thornton Close, this variation in plot size is not immediately apparent nor does it disrupt a particularly pronounced pattern of development. It is also only viewed in the context of a small number of properties which are not strongly uniform.
10. I recognise that the domestic paraphernalia could make the appeal property and the changes more conspicuous, but there is nothing to prevent cars parking on the driveway now and I do not consider it would so significantly greater in terms of visual impact.
11. Furthermore, it seems to me that the size and residential appearance of the appeal building gives rise to a more incongruous form of development when viewed as being in the grounds of another house than arises from separating this building into its own plot.
12. I therefore conclude that the condition is neither reasonable nor necessary, having regard to the effect of the proposal on the character and appearance of the area. It would therefore accord with Policy DM2 of the Island Plan Isle of Wight Core Strategy 2012 which seeks a high quality of design and expects development to provide a built environment with a sense of place and to complement the character of the surrounding area.

Other Matters

Protected Habitats Sites

13. The appeal site lies within the Solent Region where there are a number of internationally designated sites, it is also located within the 5.6 kilometre buffer zone around the Solent and Southampton Water SPA. These sites are European Sites of Nature Conservation Importance and are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Regulations). Regulation 63 prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of the protected sites. I am the competent authority for the purposes of this appeal.
14. The Solent coast, particularly its mudflats, shingle and saltmarshes, provide essential winter feeding and roosting grounds for birds that spend the winter here. The wide range of recreational activities which take place on this coast can result in disturbance to the birds. In addition, the water environment within

the Solent region is internationally important for its wildlife. The conservation objectives for the protected sites within this area are to ensure that the integrity of the sites are maintained or restored as appropriate.

15. Any new residential development within this area is likely to have a significant effect on the designated sites as a result of increased recreational pressure from future occupants. To avoid such harmful impacts, mitigation would be required. The Solent Recreation Mitigation Strategy 2017 sets out the mitigation measures required in association with new dwellings and a sliding scale of developer contributions based on property sizes.
16. The two submitted UUs, dated 17 August 2021 and 21 May 2022, in combination, make provision for mitigation in the form of a financial contribution which the Council has indicated would address its concerns in respect of mitigation from recreational impacts.
17. I am satisfied that the planning obligation is necessary to make the development acceptable and the contribution would be fairly and reasonably related in scale and kind to the development. Moreover, there is no reason to doubt that the Solent Recreation Mitigation Partnership, which comprises relevant local authorities and public bodies operating within the area, as a responsible public body, will spend the money in the way it is intended.
18. As such, I have been able to complete my appropriate assessment and to conclude that the proposal would not adversely affect the integrity of the habitats sites through increased recreational pressures. The scheme would therefore comply with the Regulations in this regard.
19. Additionally, recent advice issued by Natural England has identified that The Solent is in an unfavourable condition due to excessive nitrogen inputs into the water environment causing eutrophication of the designated sites, and adversely impacting on the protected habitats. Natural England has advised that the wastewater arising from additional housing that, once treated, discharges into the SPA is likely to contribute further to these adverse effects and therefore avoidance measures are required.
20. The Council has issued a position statement in respect of nitrogen neutral housing development (April 2022). This states that, if a proposed development will connect to the public sewer, then the applicant should gain written confirmation from Southern Water that it would drain to either Sandown, Brightstone, Shorwell or St Lawrence Wastewater Treatment Works (WwTW). This is because treated effluent from these WwTWs outfall into the English Channel rather than The Solent and would not therefore contribute to the adverse effects on the SPA. In these circumstances the Council will impose a planning condition to secure this in perpetuity.
21. Southern Water has confirmed that the appeal site is served by Sandown WwTW, thus the proposal would not affect nitrogen inputs into the Solent. Subject to the imposition of a condition to ensure the ongoing connection to Southern Water mains services, I can conclude that the scheme would not adversely affect the SPA in this respect.

Affordable Housing

22. Policy DM4 of the Island Plan sets out that the Council will seek to deliver around 1,790 affordable homes over the plan period. For small scale schemes

such as this, the policy requires a financial contribution towards affordable housing. The Affordable Housing Contributions Supplementary Planning Document 2017 (the SPD) sets out the details of the financial contribution based on property values.

23. The UU dated 30 June 2022 would provide a contribution calculated on the basis of the approach set out within the SPD. This would appear to meet the requirements of Policy DM4.
24. Given the policy context, I find this planning obligation for affordable housing is necessary; directly related to the development; and fairly and reasonably related in scale and kind to the development. It would therefore comply with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.

Other Considerations

25. The dormer window in the appeal building faces towards both the host property and beyond towards the adjacent property at Boldre Rings. Due to its position and proximity, it could cause a loss of privacy to these neighbouring occupants. Although not specifically suggested in the appeal submissions, the planning officer's report referred to requiring this window to be obscurely glazed in the event permission were to be granted. Given my findings, I consider it would be reasonable to impose a condition to secure this.
26. The Council has found that sufficient amenity space would be provided for a one-bedroom unit as proposed. The amount of garden space for the host property would be reduced although I note that there would be garden space both around the property and to its northern side where a large, enclosed rectangular area of outdoor space would be retained. There is no substantive evidence before me to indicate that this outdoor space would be inadequate for the property it serves.
27. Both the existing and proposed dwellings would have their own off-street parking. I have no substantive evidence to indicate that the off-street parking is either inadequate or poorly designed and constructed. The Council's highway officer has also not objected to the amount or quality of the parking, nor raised any highway safety concerns. I have no reason to reach a different view to this.
28. The appeal proposal is for the removal of a condition to enable the independent occupation of the outbuilding. The submitted drawings indicate that the scheme would provide a one-bedroom unit with storage at ground floor and living space on the upper floor. I have based my decision on that. A concern has been raised that since the building has two front doors it is likely to be split into two studio apartments. However, any alternative use of the building, including the formation of an additional separate residential unit, would require a separate application which would be considered on its own merits. This is not a matter before me as part of this appeal.
29. It is evident from the planning history of the site that there has been incremental change, from a predominantly garage / storage use, to some ancillary sleeping accommodation to what is now proposed, as an independent dwelling. However, I have to assess the appeal on the planning merits of the

proposal before me, which does not relate to the manner by which this development has come about.

Conditions

30. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect. The original permission included a plans condition and the condition restricting the use of the outbuilding, to which this appeal relates.
31. Although not suggested by the Council, a revised plans condition reflecting the proposed development is necessary in the interests of certainty.
32. The Council has suggested the imposition of a condition restricting permitted development rights. I consider this condition is both necessary and reasonable given the site constraints and proximity to neighbours, to protect the character of the area and the living conditions of nearby occupiers. I have additionally imposed a condition requiring obscured glazing, as already referred to above.

Conclusion

33. For the reasons set out above, I conclude that the appeal should be allowed.

Rachael Pipkin

INSPECTOR