



Appeal Decision

Site visit made on 9 March 2023

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 April 2023

Appeal Ref: APP/L1765/D/22/3313461

The Paddock, Legion Lane, Kings Worthy, Hampshire SO23 7RA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr J Lynch against the decision of Winchester City Council.
 - The application Ref. 22/00415/HOU, dated 23 February 2022, was refused by notice dated 19 October 2022.
 - The development proposed is extension of upper floor and office in garden.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development on the Council's decision notice referred to the proposal for an office building in the garden, albeit the Council's Delegated Report (CDR) suggested that the Appellant had agreed to delete this element given concerns raised by the Planning Case Officer (PCO). The Council, in response to a query I raised, accepted that the reference to the office in the decision was an error and the Appellant also confirmed that they had agreed to delete this element from the proposal. I have, therefore, determined the appeal on the basis that planning permission is only sought to extend the upper floor of the host property.
3. The CDR also stated that the Council had determined the proposal on the basis of the drawings that were originally submitted with the application, which for clarity included drawing No. Lynch 337.2 (original Plan). However, the Appellant drew attention to a revised plan (drawing No. Lynch 337.3 K) that had been submitted to the Council before the application was formally determined to address the PCO's concerns. The Appellant had expected the Council's decision to be based on this revised plan.
4. I invited the Council and the Appellant to comment on these events and received responses from both, which I have considered further. Whilst I have looked at the option of considering the revised plan, the Council's response confirmed that this plan was never formally substituted and that they determined the application on the basis of the original plan. The Council went on to say that where they are minded to refuse planning permission and the opportunity to submit revised (amended) plans is offered to the Applicant, if the revised design does not overcome the concerns identified then the application is determined on the basis of the original plans. The Council's rationale for this is that they consider there to be little merit in advertising

revised plans which have not overcome the PCO's concerns. As the revised plan did not address the PCO's concerns, it was not substituted, it was not advertised and no further consultations took place with neighbours or the Parish Council. For these reasons, the Council objected to the revised plan being considered as part of this appeal.

5. Whilst no objections were received from interested parties to the original plans, having had the opportunity to compare the original plan with the revised plan the latter shows, in my view, substantial differences to the original scheme. On balance, therefore, I agree with the Council that those changes would need to be advertised and interested parties given a further opportunity to comment. This view is reinforced by the fact that the appeal has been submitted through the Householder Appeals Service (HAS), which only requires interested parties to be notified that an appeal has been made. The HAS process does not provide interested parties with a further opportunity to comment or to be consulted on any revised plans.
6. Given the above and in applying the 'Wheatcroft Principles' (*Bernard Wheatcroft Ltd v SSE* [JPL 1082 P37]), the determination of this appeal on the basis of the revised plan would, in my view, prejudice the interests of interested parties as they have not been consulted on or had an opportunity to comment on the revised plan. It is essential that the appeal process is fair and open to all parties, including interested parties. In this respect, I find that my consideration of the appeal should relate to the plans that were considered by the Council and those on which interested parties and other consultees views were originally sought.
7. I have, therefore, proceeded to determine the appeal on the basis of the original plan. I appreciate that the Appellant will be disappointed and frustrated by this decision in that the evidence before me shows that through various emails and amendments they sought to address the concerns raised by the PCO and assumed that the Council would determine the application on the basis of the latest revised plan. The Council's response suggests that the approach they have taken was explained to the Appellant, but in none of the email exchanges that I have seen is there any indication that the Council would proceed on that basis. Even so, this is not a matter that I can comment on further in the context of an appeal that has been submitted under section 78 of the Town and Country Planning Act 1990 (T&CPA 1990). If the Appellant remains unhappy with the process and procedures that led to the refusal of planning permission then the only suggestion I can make is that they take this up directly with the Council.

Main Issue

8. The main issue is the effect of the proposed development on the character and appearance of the host property and surrounding area.

Reasons

9. The appeal site is located on the western side of Legion Lane and comprises a detached chalet style bungalow with a detached single storey garage situated within a spacious plot. The surrounding area includes similar detached properties that vary in terms of their age, style, scale, roof forms, materials and layout. Most of the properties front onto and are set back from the Lane. As you pass the appeal site, the Lane rises to the south east to end in a cull-

de-sac, resulting in the properties on that part of the Lane being at a higher level to the host and where the presence of existing landscaping gives the Lane a semi-rural feel.

10. Whilst the Lane includes bungalows and chalet style bungalows there are also properties that are essentially one and a half storeys in scale, as well as a large two storey property, Holly House, immediately opposite the appeal site (to the north). The appeal site is also located close to the entrance to the Lane from the main road and on a corner where the Lane is quite narrow. As a consequence, the host building is very visible in public views. Also, the host property sits essentially at right angles to the Lane resulting in the north eastern element of the main building lying close to the Lane itself.
11. Policy CP13 of the Winchester District Local Plan Part 1 – Joint Core Strategy (March 2013) (LPP1), referred to in the reason for refusal, seeks, amongst other requirements, to ensure that new development is of a high quality of design and responds positively to its neighbours and local context. Reference has also been made to policy DM16 of the Winchester District Local Plan Part 2 – Development Management & Site Allocations (April 2017) (LPP2), which seeks, amongst other requirements, to ensure that new development responds positively to the character, appearance and the variety of local environments in terms of design, scale and layout, and that extensions have regard to the existing building's character and do not over dominate. A broadly similar approach is set out in paragraph 130 of the National Planning Policy Framework (July 2021) (Framework), albeit this paragraph also states that being sympathetic to local character should not prevent or discourage appropriate innovation or change.
12. The Council have also referred to its High Quality Places Supplementary Planning Document (March 2015) (High Quality Places SPD). Whilst neither its reason for refusal nor the CDR include specific references within this document, the most relevant guidance appears to be that in paragraph 8.32 on 'Roof extensions'. This advises that whole roof extensions should successfully relate to the retained part of the building, should not over dominate the host or be excessively prominent within the streetscene.
13. The High Quality Places SPD provides, of course, local guidance and whilst it has been adopted it predates the Framework and the National Design Guide (NDG) (January 2021). The latter reinforces the Framework, for example, at paragraph 44 by emphasising that well designed places do not need to copy their surroundings and that it is appropriate for new development to include innovation and change to reflect how we live today.
14. Within this context, I can see no objection to the principle of extending the upper floor of the host property and consider that the plot is of sufficient size to accommodate, in part, a two storey building, based on the existing footprint. As I confirmed earlier, the Lane includes large detached properties and whilst a number of these are one and a half storeys that consideration alone should not, in my view, preclude extending the host to two storeys, particularly given the spaciousness of the plot and the immediate context provided by Holly House.
15. However, I agree with the Council that the scale, bulk and design of the new extension, where it abuts the Lane, would be excessive and results in a development that would be overly prominent within the streetscene. It would visually dominate this part of the Lane resulting in harm to the character and

appearance of the host property and streetscene. In comparison, the scale and bulk of the existing property, on this boundary, deriving from its chalet style roof, provides a much softer and more comfortable relationship with the Lane.

16. As I confirmed earlier, both the Framework and NDG support change and the appeal site is capable of accommodating, in part, two storeys. The NDG also states that a proposal does not need to copy its surroundings and that advice takes on more relevance given, in this case, that the area has no uniform character or design. Even so, the proposed design would benefit, in my view, from being more innovative and of a higher quality, as presently the lack of detailing and design features results in poor design that accentuates the impact the proposal would have on the character and appearance of the Lane.
17. The Appellant has referred to the ability to construct an extension under permitted development rights and that this represents a fallback option. I accept that a fallback option can be a material consideration where there is a more than theoretical possibility of that development taking place. However, I have not been provided with details of any prior approval consent or the grant of a certificate of lawfulness which establishes that a scheme similar to that proposed would constitute permitted development. Moreover, whether a permitted development fallback option exists or not is not a matter that I can determine within the context of an appeal that has been submitted under section 78 of the T&CPA 1990. I can only consider the proposal that is before me which simply seeks planning permission for an extension to the upper floor.
18. Accordingly, for the above reasons, I find that the appeal proposal would be contrary to policy CP13 of LPP1, policy DM16 of LPP2 and paragraph 8.32 of the High Quality Places SPD.

Conclusion

19. For the reasons given above and having taken all the matters raised into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR