



Appeal Decision

Site visit made on 10 August 2023

by N Perrins BSc (hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23.10.2023

Appeal Ref: APP/P2114/W/23/3315222

Reservoir Villa & Land Adjoining, Old Reservoir Lane, Sandown, Isle of Wight PO36 9DL

- 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 K Ratcliffe against the decision of Isle of Wight Council.
 - The application Ref: 22/00208/FUL, dated 01 February 2022, was refused by notice dated 23 December 2022.
 - The development proposed is for the change of use of land to form additional garden area and siting of 2 metal containers, implement store, summer house and terrace, construction of extended patio area, gardens walls and landscaping.
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Decision

1. The appeal is dismissed insofar as those parts of the development which relate to the siting of two metal containers and implement store. The appeal is allowed for the change of use of land to form additional garden area and those parts of the development that relate to the summer house, terrace, construction of extended patio area and garden walls at Reservoir Villa & Land Adjoining, Old Reservoir Lane, Sandown, Isle of Wight PO36 9DL in accordance with the terms of the application, Ref: 22/00208/FUL, dated 01 February 2022, and the plans submitted with it so far as relevant to that part of the development hereby permitted and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans Site Survey: 2021-37-1, Location Plan: 2021-37.6, Part Site Layout Plan: 2021-37.3, Proposed Block Plan: 2021-37.4 and Proposed Floor Plans and Elevations 2021-37-5.
 - 1) Within three months of the date of this decision, full details of a hard and soft landscape scheme for the site shall be submitted to the Local Planning Authority for approval in writing. These details shall include a schedule of plants, noting species, plant sizes and proposed numbers/densities, and shall include a planting methodology and an implementation programme. Planting shall be carried out in accordance with the approved details, and shall be regularly maintained. Any trees or plants that die, are removed or become seriously damaged or diseased within 5 years of planting are to be replaced in the following planting season with specimens of a like size or species unless the Local Planning Authority gives written consent to any variation.
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-

enacting that Order with or without modification), no development within Class E of Part 1 or Class A of Part 2 of Schedule 2 to that Order shall be carried out [other than that expressly authorised by this permission].

Procedural Matters

2. The Council's decision notice has a different description of the appeal proposal than that used on the planning application form. I have not seen any correspondence to confirm there was agreement to change the description of development so have used the wording from the Council's decision notice as that more succinctly reflects the proposed development.
3. The Council issued a split decision with planning permission granted for the change of use of the land to additional garden area, summer house, terrace, and extended patio area, and the works related to the siting of metal containers and implement store refused. Section 79 (1) (b) of the Town and Country Planning Act 1990 allows that on appeal the Secretary of State may deal with the application as if it had been made to him in the first instance.
4. In this regard, I have assessed the parts of the development that the Council granted planning permission for in decision notice ref: 22/00208/FUL. I agree with the Council's assessment and that the change of use of the land to additional garden, the summer house, terrace and extended patio area are acceptable and, subject to conditions, accord with Policies DM2 and DM12 of the Island Plan 2012, which amongst other things require development to be of high quality and inclusive design to protect, conserve and protect the environment and complement the character of the area. I note that the low garden walls in the southern part of the site were not specifically referenced in the Council's grant of planning permission. Having assessed, I find that the low garden walls are acceptable in all respects and accord with Policy DM2; for the avoidance of doubt these are granted planning permission in this decision through the reference to garden walls being included in the works approved by this decision. I discuss relevant conditions for those parts of the development granted planning permission later in this decision.
5. The parts of the development that I focus on in this decision are the works that relate to the siting of the metal containers and implement store, which also include a wall and fence structure and an earth bund in the western part of the site.
6. In this regard, the appellant submitted a revised layout plan ref: 2021/37.7 and Photo Plan ref: 2021/37.8 after the application was determined seeking that they be considered as part of this appeal. I have considered these proposed new plans and information against the Wheatcroft principles, where it was held in *Bernard Wheatcroft Ltd v SSE* [1982] JPL 37 that amended plans can be accepted on appeal and approved through a grant of conditional permission. The key test for application of the Wheatcroft principles is whether the development is so changed that to grant it would be to deprive those who should have been consulted in the changed development of the opportunity of such consultation.
7. In this case, the amended plans are different from those originally submitted in that they include a log store, motorbike store, and a covered area in the area where the containers and implement store are located. The photos that have been submitted as part of the updated information, as well as what I observed

on my site visit, demonstrate that the amended plan 2021/37.7 more accurately shows what has been completed at the site. However, these additional works are not included in the description of development that was originally applied for or used in the Council's decision notice. In contrast to the originally submitted plans, nor do they include the height of the wall and fence structure that has been erected around where the containers and implement store are located. In view of this, it would not be appropriate to consider the amended plans and information in this appeal as it would prejudice those who were previously consulted with if I were to assess them in my decision. I have based my decision on the plans as originally submitted.

Main Issues

8. The main issues in this appeal are the effect of those parts of the proposal which the Council found unacceptable on:
 - a) The living conditions of the occupiers of the adjacent dwelling to the north with particular regard to noise, activity and visual intrusion; and
 - b) The character and appearance of the area.

Reasons

Living Conditions

9. The appeal site is a large plot of land that comprises the main dwelling, associated outbuildings and land that was formally used as a reservoir adjacent to public open space at Los Altos Park. The appellant has undertaken filling and re-grading works to the former reservoir land to establish it as an extended garden to the main dwelling, which is now substantially complete. The site is accessed off Old Reservoir Lane, which also serves a number of bungalows on land to the north of the appeal site. The closest bungalow to the appeal site is 'Apperley' that is positioned directly adjacent to the appeal site's northern boundary and in close proximity to the works subject of this appeal.
10. The works include two large metal containers and an implement store set behind a wall and fence structure. There is an earth bund along part of the northern boundary with Apperley that is understood to have been reduced in height as part of the works to re-purpose the former reservoir. As previously identified in this decision, there is also a log store, motorbike store and covered area on the site but not shown on the plans as originally submitted and not before me to consider as part of this appeal.
11. The appellant contends that the containers and implement store do not need planning permission as they fall outside the definition of development within the Act given they are temporary structures. I agree that they could be considered as temporary structures in isolation but there is nothing in the information before me that states they will be removed at any point, which indicates that the intention is for them to remain in situ permanently along with the other structures and fencing that they are located behind. Based on the information available and the fact that they were included in the planning application description of development, I consider that the works subject of this appeal require planning permission and are not temporary structures.

12. The appellant has acknowledged that there has been some noise and dust arising from the works that have taken place to fill and re-grade the reservoir. I am satisfied that the works to create the extended garden are now substantially complete and are unlikely to be an ongoing issue with respect to living conditions to neighbours.
13. At the time of the site visit there was no activity in or around the part of the site with the containers and implement store. However, I did observe that the site and immediately surrounding area has a peaceful and tranquil setting within which the residential properties reside. In this context, the containers and implement store are being used to house heavy machinery such as a digger, a mower and other tools. The appellant states that this equipment is needed to service the large and extended domestic garden, particularly when the final hard and soft landscaping has been completed. I agree that the large extended garden will require ongoing maintenance that will likely require some equipment to be kept at the site.
14. However, it is not clear from the information provided whether all of the equipment being stored will be used solely for on-site domestic purposes and how frequently. The size, scale and extent of the containers and structures in my view exceed what would normally be present at a residential property. When the size and scale of the works are considered together with their proximity to the northern boundary, I consider that there is potential for adverse impacts in terms of noise and activity on Apperley. I also consider it likely that this issue could be addressed by removing some of the structures but that is not before me in this appeal.
15. Furthermore, one of the containers is clearly visible from Apperley due to its height not being screened by either fencing, landscaping or the earth bund. Whilst only the top of the container is visible it is not a feature normally seen in a residential context and has an adverse impact on the outlook and visual amenity of Apperley. I note that the appellant would accept a condition for additional boundary treatment along the northern boundary behind the containers, which I agree would address the visual outlook concern if the scheme was acceptable in all other respects.
16. Concern has, however, been raised regarding the stability of the earth bund and soil slipping into the adjoining garden that is potentially causing damage and affecting drainage. I note that the appellant has stated that the bund has always been in place albeit reduced in height with the soil from it used to fill in the reservoir. I agree with the appellant that it would be unreasonable to require the bund to be removed but it does need to be a stable structure so as to not cause an ongoing nuisance to neighbouring amenity. From the information provided, I am not satisfied that the earth bund is yet sufficiently stable for it to not cause ongoing harm to living conditions, and further remedial work on this aspect will likely be required in my view.
17. In conclusion, I conclude that the appeal proposal will result in harm to the living conditions of Apperley, which conflicts with Policy DM2 of the Isle of Wight Core Strategy (including Waste and Minerals) and Development Management Development Plan Document 2012 (The Local Plan), which expects development to be high quality and of inclusive design to protect, conserve and enhance the existing environment, have regard to adjacent buildings and integrate development with its surroundings.

Character and appearance

18. The character of the area is residential with dwellings set within generous and mostly landscaped plots. The works subject of this appeal are generally screened from most public vantage points by existing mature vegetation and the wall and fence that has been erected around the containers and implement store area. The only prominent view of the works are from the access point off Old Reservoir Lane; this is however only a glimpsed view in practice as users turn the corner into the residential properties beyond at which point the appeal proposal, other than the top of one of the containers, is not visible.
19. In terms of the wall and fence that has been erected, I consider that its design is complementary to the works that have been constructed elsewhere within the site and do not appear as an incongruous feature when viewed from Old Reservoir Lane and is acceptable in planning terms. Whilst there are concerns over the stability of the earth bund, it has a neutral impact in terms of its impact on the character and appearance of the area.
20. In terms of the containers and implement store, I understand that when the application was submitted not all of the wall and fence that now exists had been completed. The wall and fence along with the mature vegetation has the effect of reducing the visual impact of the containers and implement store when viewed from Old Reservoir Lane to a level that in my opinion is not harmful to the character and appearance of the area. As discussed earlier in this decision, views of the appeal proposal from the adjacent properties to the north could be addressed by the proposed condition for further boundary treatment if I had found the appeal acceptable in all other respects.
21. For the reasons given above, I conclude that the proposed development for the works that relate to the containers, implement store, wall and fence and earth bund would not cause unacceptable harm to the character and appearance of the area. Consequently, the proposal accords with Policy DM2 and DM12 of the Local Plan, which expects development to complement the character of the surrounding area and conserve the landscape. It would also be consistent with Section 12 of the National Planning Policy Framework (the Framework), which seeks to ensure that developments are sympathetic to local character.
22. As I have found the wall and fence that has been erected in the northern part of the site to be acceptable in all respects, I grant these planning permission in this decision by adding the reference to the garden walls to those parts of the proposal that have been approved.

Other Matters

23. Objections to the application raised concerns relating to loss of biodiversity, absence of up to date ecological surveys, loss of trees, waste disposal arising from the works, the scale of the summer house and the development being in breach of a covenant on the land. These issues were assessed by the Council in determining the original application with some, such as trees and landscaping, addressed through a condition on the part of the development granted planning permission.
24. Biodiversity was considered by the Council's ecology officer who concluded surveys were no longer required as the remaining ecological value of the site following clearance is limited. There is no new information as part of this

appeal that would lead me to come to a different conclusion with regard to biodiversity.

25. The concerns raised regarding the restrictive covenant are not a planning issue and I cannot give it any weight in this decision.
26. In summary, I have reviewed the other matters raised but they do not change my conclusions as set out above and are therefore neutral considerations in this decision.

Conditions

27. I have considered which planning conditions are required having regard to the tests contained in the Planning Practice Guidance (PPG). It is not necessary to include a time limit for the parts of the development that I have allowed given that the works have been completed. It is, however, necessary to attach a condition to specify the approved plans to provide clarity on what has been approved.
28. I also consider it necessary to include the landscaping condition that the Council attached to its decision in order to ensure that appropriate landscaping is provided for the development to maintain visual amenity and for the development to accord with Policy DM12 of the Local Plan.
29. I agree with the Council it is necessary to restrict permitted development rights for further outbuildings and minor operations (gates, fences, walls etc.) without first applying for planning permission in order to maintain the character of the area in accordance with Policy DM2 of the Local Plan. I therefore include a condition to remove provisions set out in Class E of Part 1 or Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted) Development Order 2015 as amended.
30. The appellant has offered to accept a condition to require boundary treatment to screen the containers and implement store from neighbouring properties. I agree that this would be necessary if that part of the proposal were granted planning permission to ensure the visual amenity of neighbouring properties is preserved. However, there is not enough information before me to confirm whether it is possible to erect fencing to the height that would be required, particularly in view of the issues raised around the stability of the earth bank where some of the fence might need to be erected. This information is not before me and would need to be assessed before a condition could be attached that met the tests for planning conditions set out in the National Planning Policy Guidance.

Conclusion

31. For the reasons given above, and taking account of all material planning considerations, I conclude that a split decision is necessary and the parts of the appeal that relate to the change of use of the land, summer house, terrace, extended patio and garden walls accord with the development plan and is allowed and granted planning permission subject to conditions. The appeal for the parts of the development that relates to the containers and implement store including the earth bund is dismissed as they result in harm to the living conditions to the neighbouring property to the north and conflict with the development plan when considered as a whole and the Framework with regard

to achieving well-designed places. There are no material considerations that outweigh the harm I have identified.

N Perrins

INSPECTOR