



Appeal Decision

Site visit made on 24 April 2024

by S Rawle BA (Hons) Dip TP Solicitor

an Inspector appointed by the Secretary of State

Decision date: 15 May 2024

Appeal Ref: APP/B9506/D/23/3328308

Passford Farm Cottage, The Lodge Annexe, Southampton Road, Boldre, Hampshire SO41 8ND

- 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 Penelope Hill against the decision of New Forest National Park Authority.
 - The application Ref 23/00300VAR, dated 23 February 2023, was refused by notice dated 12 June 2023.
 - The application sought planning permission for roof alterations; recladding; alterations to doors and windows; new porch; relocating of 2 no.sheds; new 1 metre high fence with gate without complying with conditions attached to planning permission Ref 22/00566, dated 15 November 2022.
 - The conditions in dispute are Nos 2 and 4 which state that: 2. Development shall only be carried out in accordance with drawing numbers: Sheet 1 Rev B 01/07/2022, Sheet 2 Rev I 04/08/2022. No alterations to the approved development shall be made unless otherwise agreed in writing by the New Forest National Park Authority; and 4. Unless otherwise first agreed in writing by the New Forest National Park Authority the external facing and roofing materials shall be as stated on the application form hereby approved.
 - The reasons given for the conditions are: 2. To ensure an acceptable appearance of the building in accordance with Policies SP16, SP17, DP18 and DP2 of the adopted New Forest National Park Local Plan 2016-2036 (August 2019); and 4. To ensure an acceptable appearance of the building in accordance with Policy DP2 of the adopted New Forest National Park Local Plan 2016-2036 (August 2019).
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Decision

1. The appeal is allowed and planning permission is granted for roof alterations, re-cladding, alterations to doors and windows, new porch, relocating of 2no.sheds, new 1m high fence with gate at Passford Farm Cottage, The Lodge Annexe, Southampton Road, Boldre, Hampshire SO41 8ND in accordance with the application Ref 23/00300VAR, without compliance with condition numbers 2 and 4 previously imposed on planning permission Ref 22/00566, dated 15 November 2022 and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Sheet 1 Rev B 01/07/2022, Sheet 2 Rev K 23/02/2023.
 - 2) The outbuildings the subject of this permission shall only be used for purposes incidental to the dwelling on the site and shall not be used for habitable accommodation such as kitchens, living rooms and bedrooms.

- 3) The external facing and roofing materials shall be as shown on the approved plans.
- 4) No external lighting shall be installed on the site unless details of such proposals have been submitted to and approved in writing by the New Forest National Park Authority.
- 5) The open-sided porch shall at no point be in-filled or incorporated into the main dwellinghouse.

Applications for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. I observed at the site visit that the rear elevation has been constructed using brickwork. The Council have indicated that this was carried out at the time that they issued their decision. However there is no indication that it had been carried out at the time the planning application was made. Consequently, I have dealt with the appeal under s73 of the Town and Country Planning Act 1990 (the Act).
4. The proposal involves a number of elements including; replace the approved timber cladding on the rear elevation with brickwork; brick up sides of porch to 1m high; timber cladding to be vertical rather than horizontal; replace the 2 sheds with 1 shed slightly larger than the 2 – size as per drawing; replace bi-fold doors to rear elevation with window and bi fold door; replace the approved red ridge tile with grey and add roof light to flat roof over bedroom.
5. I note that the original permission itself has been amended following a subsequent application under s96A of the Act. The Council have accepted that except for replacing the timber cladding on the rear elevation with brick work and the proposed bricking up of the sides of the porch, all other elements included as part of this appeal proposal are non-material amendments to the original planning permission and can be implemented. It follows that the only elements at issue are the use of brickwork on the rear elevation and the proposed bricking up of the sides of the porch and I have determined the appeal on that basis.

Main Issue

6. The main issue is whether or not the retention of conditions 2 and 4 in their current form are necessary to ensure that the proposed and implemented changes to the dwelling do not conflict with development plan policies that deal with replacement dwellings or extensions to dwellings.

Reasons

7. The appeal site comprises a modest single storey dwelling which is part of a cluster of properties that are accessed from Southampton Road. The appeal property is an attractive modest single storey dwelling that fits harmoniously into this setting.
8. As outlined above, although the proposal involves several elements, the vast majority of these can be implemented. There are two outstanding elements for

me to consider. The first would involve the introduction of a 1 metre wall on either side of the existing open porch. The second element has already been undertaken and involves the replacement of timber cladding on part of the rear elevation with red stock bricks.

9. The Council has argued that the proposal falls outside the scope of a minor material amendment. However, caselaw¹ makes it clear that an application under s73 of the Act, is not limited to minor material amendments. Consequently, this is not a test that should be applied in the case of a s73 application. However, the Council in its Planning Report also consider that the scheme falls outside the scope of a s73 application because the changes to the porch would conflict with a planning condition and the works to the rear wall are not re-cladding but a matter that would require planning permission in its own right. These are matters which do require consideration and I examine them below.
10. The proposed introduction of a 1 metre wall on either side of the existing porch would involve a very modest change to the existing building. Such a change would not result in any unacceptable harm to the character and appearance of the area or to the host building or the setting of the nearby Grade II listed building. Moreover, although it would result in the introduction of a section of solid wall on either side of the porch, most of the side elevations and the entire front of the porch would remain open.
11. As a result, the proposal would not result in unacceptable infilling of the porch, nor would it result in the porch being incorporated into the main dwelling house. Policy DP36 of the New Forest National Park Local Plan 2016-2036 adopted August 2019 (NFNPLP) deals with extensions to dwellings and sets out that extensions will not be permitted where the existing dwelling is the result of an unauthorised use. However, given my findings above, I do not consider the proposal amounts to an extension to the existing dwelling. It follows that this element would not conflict with Policy DP36 of the NFNPLP.
12. Further, this element would not conflict with Condition 6 attached to planning permission Ref 22/00566, dated 15 November 2022, as the sides of the porch would remain open-sided above the 1 metre wall and therefore the porch would not be in-filled to such an extent that it should be considered to be incorporated into the main dwelling house as a living space. It follows that I am satisfied that I can deal with this matter under s73 of the Act.
13. The other element at issue is the replacement of timber cladding on part of the rear elevation with red stock bricks. That work has already been completed and I observed that the use of this material is entirely compatible with both the host building and the wider area. As a result, again this element does not harm the character and appearance of the host building, the wider area or the setting of the nearby Grade II listed building.
14. Policy DP35 of NFNPLP deals with replacement dwellings and among other things sets out that replacement of existing dwellings will be permitted except where the existing dwelling is the result of an unauthorised use. The Council acknowledge that the replacement of the elevation does not equate to the replacement of the dwelling as a whole. I agree.

¹ Armstrong v Secretary of State for Levelling Up, Housing and Communities [2023] EWHC 142 (KB)

15. Further, the change of material from the approved timber cladding to red stock bricks for part of the rear elevation does not amount to the appeal property being rebuilt, substantially altered or being tantamount to a replacement dwelling. Rather, it is a modest alteration to the dwelling house which causes no material harm. Consequently, the development does not conflict with Policy DP35 of the NFNPLP.
16. Furthermore, I consider that I can deal with this aspect of the proposal under s73 of the Act as the scheme would still involve re-cladding, but only in respect of three of the four elevations. The description of the development does not specify which elevations would be re-clad and, therefore, the change to provide the brick work to one elevation, and which would form part of the amended plans, would not be contrary to the description as a whole. I do not consider that every aspect of a scheme is required to be included in the description of the development to fall within the scope of works that can be considered and permitted if the case is justified. Consequently, while I understand the point that the Council makes, in this case, the details of the scheme and the wording of the description of the development are not incompatible with a proposal under s73 of the Act.
17. I therefore conclude that the scheme can be considered under s73 of the Act and that the retention of conditions 2 and 4 in their current form are not necessary as, for the reasons set out above, the proposed and implemented changes to the dwelling would not result in any material harm and would not conflict with Policies DP35 and DP36 of the NFNPLP.

Conditions

18. By allowing this appeal a new planning permission is created. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
19. As the development has already started it is unnecessary for me to attach the commencement of development condition. Although some conditions may have been discharged, I have limited information before me about the status of the conditions imposed on the original planning permission. Accordingly, I shall impose all those that I consider remain relevant. If some conditions have in fact been discharged, that is a matter which can be addressed by the parties.
20. On that basis, a condition is needed to secure compliance with the approved plans, for the avoidance of doubt and in the interests of proper planning. In the interests of the character and appearance of the area and proper planning it is necessary to impose conditions to ensure any outbuildings are used for purposes incidental to the dwelling, requiring the use of appropriate materials, that there is adequate control of lighting and that the open sided porch cannot be in-filled or incorporated into the main dwellinghouse.

Conclusion

21. For the reasons given above I conclude that overall, the proposed introduction of a 1 metre wall on either side of the existing open porch and the replacement of timber cladding on part of the rear elevation with red stock bricks does not conflict with the development plan and therefore the appeal should be allowed.

I will therefore grant a new planning permission with all the changes as shown on the revised plans and subject to the specified planning conditions.

S Rawle

INSPECTOR