



Appeal Decision

Site visit made on 15 July 2025

by **G Roberts BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31 July 2025

Appeal Ref: APP/B1740/W/25/3364468

Land of Main Close, Yaldhurst Lane, Pennington, SO41 8HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant of 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 Mr J Kelly (Forest Carpentry Ltd) against the decision of New Forest District Council.
- The application Ref is 24/10845.
- The application sought planning permission for 2 detached houses using existing access on land to the south of Main Close without complying with conditions attached to planning permission 22/10631, dated 4 October 2022.
- The conditions in dispute are No's 2 and 8 which state, with the reasons given, that:

Condition 2 - The development permitted shall be carried out in accordance with the following approved plans and reports:

2019-07-10 rev A Existing elevations and floor plans

2019-07-11 rev A Location, block and site plans

2019-07-12 rev A Plot 1 Floor plans and elevations

2019-07-13 rev A Plot 2 Floor plans and elevations

Updated Ecology report 28 April 2022

Air Quality Statement September 2022

Reason – To ensure satisfactory provision for the development.

Condition 8 – The green roof areas shown on the west elevations of both plots shall be maintained as such in perpetuity and shall not be used or converted to a balcony facility.

Reason – In the interests of preserving reasonable privacy and amenity of the bungalow known as Bryns Dell directly to the west of the application site in accordance with Local Plan policy ENV3.

Decision

1. The appeal is allowed and planning permission is granted for 2 detached houses using existing access on land to the south of Main Close at land of Main Close, Yaldhurst Lane, Pennington, SO41 8HD, in accordance with application Ref 24/10845 without compliance with conditions 2 and 8 previously imposed on planning permission Ref 22/10631 and subject to the conditions listed in the Annex to this decision.

Preliminary Matters

2. Paragraphs 2.1 – 2.2 of the Appellants Statement of Case (ASOC) refer to revised plans submitted with the appeal. These differ from the plans considered by the Council in showing a reduction in the width and height of the proposed first floor

bedroom windows/doors to both new dwellings, and in turn a reduction in the width of the balconies compared to that originally approved. Other than this the revised plans show the removal of the green roofs and repositioning of the obscure glazed balustrades to the outer edge of the proposed first floor balconies. The changes to the width and height of the first floor bedroom windows/doors reflect those agreed by the Council on 3 April 2025 under an application for a Non-Material Amendment (NMA).

3. Paragraphs 16.1 – 16.2 of the ‘Procedural Guide: Planning Appeals – England’ (September 2024) state that it is important that what is considered by the Inspector is essentially the same as that considered by the Local Planning Authority, as well as interested parties, at the application stage. Paragraph 16.3 refers to the ‘tests’ that will be considered when amended plans or design changes are proposed, ‘tests’ which, since the *Wheatcroft Principles*, have evolved through the judgement of *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin).
4. The Council has raised no objection to the revised plans on the basis that these do not show any further changes to the approved scheme, which is my understanding. I also note that the Council confirmed to the Appellant in an email dated 9 April 2025 that the NMA did not change their position in objecting to the principle of the use of the balconies. The effect of the revised plans is to reduce the width and area of the proposed balconies compared to that shown on the refused plans.
5. As I confirmed, these revised plans were highlighted and accompanied the ASOC on which both the Council and interested parties have had an opportunity to comment. I note that the occupiers of Bryns Dell, to the west of the appeal site, have also responded to the ASOC and largely support the Appellants proposal for a 4 metre landscaping screen to the western boundary, a matter I deal with later.
6. In view of the above, I am satisfied that the substitution of the revised plans would be appropriate and acceptable at this stage and would not cause any unlawful procedural unfairness to either the Council or interested parties. I have, therefore, determined the appeal on the basis of the revised plans.
7. An Inspectors Request was circulated on 23 July 2025 seeking comments from both parties on whether, if I was minded to allow the appeal, condition 7 of planning permission ref. 22/10631 also needed to be modified to reflect the changes to the approved layout and use of the balconies. That Request confirmed that as section 73 of the Town and Country Planning Act 1990 was widely drafted it provided the power to attach new conditions, to not attach conditions that were previously imposed or to attach modified versions of them. This included looking beyond the disputed conditions if consequential changes were required to other conditions. In response, both parties agreed to this approach.

Main Issue.

8. The main issue is whether the conditions are necessary and reasonable in the interests of protecting the living conditions of neighbouring occupiers.

Reasons

9. The Council contend that the variation of the conditions to allow access to and use of the balcony areas at first floor level on the western elevation of the approved

- dwellings would result in an unacceptable level of overlooking of Bryns Dell and 33 and 35 Ramley Road (No's 33 & 35), to the south and south west of the appeal site. I note that the original 'Reason' for imposing condition 8, restricting the use of the balcony areas, only referred to the impact on the living conditions of Bryns Dell.
10. Paragraph 56 of the National Planning Policy Framework (NPPF) states that "*Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions.*" Paragraph 57 continues by stating that "*Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects.*"
 11. The above policy approach is repeated in the Planning Practice Guidance chapter on the 'Use of planning conditions'.
 12. The Council have referred to conflict with policy ENV3 of the New Forest Local Plan 2016 – 2036 Part 1: Planning Strategy (NFLP), which relates to design quality and local distinctiveness. This policy requires new development to, amongst other matters, avoid unacceptable adverse effects on residential amenity, including overlooking.
 13. The works on constructing the permitted dwellings are now well advanced. As such, on my site visit, I was able view adjoining properties from behind the patio doors to all four bedrooms to new Plots 1 and 2 and from all four of the balconies. In my judgement, there is little material difference between these views, which is due to the fact that the depth of the balconies, at some 0.77 metres, is very small (measured from the patio doors to the proposed obscure glazed balustrades). The balconies are also shorter (length wise) than originally approved. Consequently, views from the new balconies towards Bryns Dell would not be that materially different to those from the approved windows/patio doors, and the same would apply to the degree of overlooking.
 14. As I observed on site, due to the revised footprint of the balconies being small, the area available for sitting out or standing would be very limited. The new obscure glazed 1.1 metre high balustrades, sited on the outer edge of the balconies, would effectively screen any views from a person sitting on the balconies towards Bryns Dell, as well as towards No's 33 & 35. Indeed, views towards the latter are at an oblique angle and largely restricted by the projecting side wall of the main roof that overhangs the balconies.
 15. In addition, the Appellant indicates that the distance separating the balconies from the rear wall and patio area of Bryns Dell is in most cases some 20 metres or more. The common western boundary in between includes shrubs and trees as well as a timber fence of some 2.4 metres in height. I agree with the Appellant that these separating distances are material and that it is common within new developments for Council's to require back to back building distances of 20 – 22 metres, as a rule of thumb, to mitigate for any potential overlooking. In relation to No's 33 & 35 the separation distances are shown to be larger. None of these measurements have been challenged by the Council.
 16. For the above reasons, any increase in the level of overlooking of Bryns Dell, compared to the approved scheme, would, in my judgement, be limited. That finding is reinforced from viewing the appeal scheme from the rear garden of Bryns Dell. In relation, to No's 33 & 35, views are restricted by the fact the balconies are

set back under the roof overhang, are at an acute angle, with a separating distance that exceeds that normally considered acceptable within new developments.

17. Moreover, in both instances further mitigation is provided by the screening effect of existing trees and shrubs. On the southern and south western boundary of Plot 2 is a band of mature trees, some of which I understand are subject to a Tree Preservation Order. They effectively preclude any views towards No's 33 & 35. A similar screen of trees and shrubs exists on the western boundary with Bryns Dell. Whilst the latter is again effective in screening views from the proposed dwellings, as I observed from the garden of Bryns Dell it is still possible to catch glimpsed views of the proposed balconies.
18. The revised Site Plan shows the planting on the western boundary to Bryns Dell to be retained and the Appellant have invited a condition to secure this screen and to maintain it at a height of 4 metres. This would be in addition to condition 6 on the original permission which seeks to protect the trees and hedges during construction and condition 4, which requires the approval of a landscaping scheme. I am told that condition 4 has since been discharged. Condition 5 also secures the standard maintenance period, for the approved landscaping scheme, of 5 years.
19. The Council contend that a condition to retain the boundary planting would not be enforceable. I do not agree. Such a condition is reasonable and related to the development in that it seeks to provide added mitigation to address any outstanding concerns in relation to overlooking. The existing boundary planting already forms an integral part of the development and in the usual way it should be retained and enhanced to ensure the development remains of a high quality and makes best use of its natural features. I am also satisfied that it could be enforced as any breach of the requirement to retain a 4 metre high screen could be easily detected by and reported by neighbouring occupiers in the same way as the removal of restrictions on, for example, obscure/fixed glazing would be.
20. The condition would not be onerous or disproportionate, and any future occupiers would be fully aware of the obligations in purchasing the properties. The costs involved in terms of future maintenance and management would not be prohibitive or that materially different to those that an occupier would expect to incur in maintaining plots with established extensive planting and new landscaping.
21. For the above reasons, I find that condition 8 is not necessary or reasonable and should be deleted. I also find that condition 2 should be varied to refer to the revised plans. Due to the consequential changes, condition 7 must also be varied to ensure that the obscure glazed balustrades are installed and retained thereafter. I also find that a new condition is necessary and reasonable to ensure the retention, enhancement and future management of a boundary screen to Bryns Dell. I have, however, used a different wording to that suggested by the Appellant.
22. Accordingly, I find that the appeal proposal as varied and with the new condition would satisfy the relevant requirements of policy ENV3 of the NFLP.

Conclusion

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

G Roberts

INSPECTOR

Annex – Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans and reports: 2019-07-10 rev A (Existing elevations and floor plans); 2019-07-11 rev B (Location, block and site plans); 2019-07-12 rev D (Plot 1 Floor plans and elevations); 2019-07-13 rev E (Plot 2 Floor plans and elevations); Updated Ecology report 28 April 2022; Air Quality Statement September 2022.
- 2) All external works (hard and soft landscape) shall be carried out in accordance with the approved plans and details within one year of commencement of development and maintained thereafter as built and subject to changes or additions only if and as agreed in writing with the Local Planning Authority. All soft landscaping shall be maintained for a minimum period of 5 years from the date of planting, with any trees or planting which dies, become damaged or diseased within 5 years of planting being replaced with the same species or another species agreed in writing with the Local planning Authority, in the first available planting season.
- 3) The development hereby permitted shall not be first occupied until the balustrades to the outer edge of the first floor balconies on the west elevation of Plots 1 and 2, as shown on approved plans 2019-07-12 rev D and 2019-07-13 rev E, have been installed to a minimum height of 1.1 metres and fitted with obscure glass, and retained thereafter in conjunction with the use of the permitted dwellings.
- 4) Before first occupation of the dwellings hereby approved a scheme for the provision of infrastructure and facilities to enable the installation of charging points for electric vehicles to serve each new dwelling shall be submitted to the Local Planning Authority for its written approval. Thereafter, the development shall be implemented in full accordance with the approved details and thereafter retained.
- 5) The development hereby permitted shall not be occupied until the spaces shown on the approved plans for the parking and garaging of motor vehicles and cycles have been provided. The spaces shown on the approved plans for such purposes shall be retained and kept available for the parking and garaging of motor vehicles and cycles for the dwellings hereby approved at all times, with the garages not to be converted to future additional residential accommodation without a further grant of planning permission.
- 6) The development hereby permitted shall not be occupied until:
 - (a) A water efficiency calculation in accordance with the Government's National Calculation Methodology for assessing water efficiency in new dwellings has been undertaken which demonstrates that no more than 110 litres of water per person per day shall be consumed within the development, and this calculation has been submitted to, and approved in writing by the Local Planning Authority; all measures necessary to meet the agreed waste water efficiency calculation must be installed before first occupation and retained thereafter;
 - (b) A mitigation package addressing the additional nutrient input arising from the development has been submitted to and approved in writing by the Local Planning Authority. Such mitigation package shall address all of the additional nutrient load imposed on protected European Sites by the development when

fully occupied and shall allow the Local Planning Authority to ascertain on the basis of the best available scientific evidence that such additional nutrient loading will not have an adverse effect on the integrity of the protected European Sites, having regard to the conservation objectives for those Sites; and

The mitigation package shall include a timetable for implementation and measures for retention and maintenance of that mitigation package, which shall thereafter be implemented.

- 7) Prior to occupation of either dwelling, photographic confirmation of all the ecological biodiversity enhancement measures having been carried out and installed, as referred to in the Updated April 2022 Ecology report, shall be submitted to the Local Planning Authority. Such enhancements shall be maintained thereafter.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any re-enactment of that Order) no extension (or alterations) otherwise approved by classes AA, A, B or C of Part 1 of Schedule 2 to the Order, or means of enclosure otherwise approved by Class A of Part 2 of Schedule 2 to the Order shall be erected or carried out without express planning permission first having been granted.
- 9) The loft area/roofspace above the first floor level, as shown on the approved plans, shall not be used for residential accommodation (other than for general domestic storage) without a further grant of planning permission by the Local Planning Authority.
- 10) Prior to the first occupation of the development hereby permitted a landscaping plan to secure a landscaping screen on the western boundary of the application site with Bryns Dell, along the extent of the 'Boundary planting to be retained' annotation on approved plan 2019-07-11 rev B, shall be submitted to and approved in writing by the Local Planning Authority. The landscaping plan shall include:
 - a) A schedule detailing all existing trees and shrub species of 4 metres in height and above to be retained as part of the landscaping screen.
 - b) A schedule detailing all new trees and shrub species to be planted, where required, to secure a continuous 4 metre high landscaping screen along the extent of the 'Boundary planting to be retained' annotation.
 - c) An implementation programme and management plan for the landscaping screen.

The landscaping screen shall be retained and the new planting carried out in accordance with the approved details and agreed implementation programme before the dwellings hereby permitted are first occupied or within the first planting season, whichever is the sooner.

The landscaping screen shall be managed and maintained in accordance with the approved management plan to a height of 4 metres at all times, and retained thereafter in conjunction with the use of the permitted dwellings.

End of Annex