

Application Number: 19/10437 Variation / Removal of Condition

Site: ARRACHAR, FOX POND LANE, PENNINGTON, LYMINGTON
SO41 8FW

Development: Variation of condition 2 of 17/10532 to allow revised plans PE.02
Rev H, PL.01 Rev E & PP.01 Rev D to allow first-floor side
extension; timber cladding; fenestration alterations; window
alterations to ancillary building

Applicant: Mrs Ashworth

Target Date: 21/06/2019

Link to case file: [view online here](#)

1 SUMMARY OF THE MAIN ISSUES

The following matters are considered to be the main issues to be taken into account when determining this application. These, and all other relevant considerations, are set out and considered in Section 11 of this report after which a conclusion on the planning balance is reached.

- 1) the acceptability of the proposed amendments to the design of the dwelling
- 2) the impact of the proposed amendments to the amenities of neighbouring residents residential amenity

This matter is to be determined by Committee due to the contrary view of the Town Council.

2 THE SITE

The site lies within the built up area of Pennington. The street scene of Fox Pond Lane comprises a variety of dwelling types and styles including cottages, modern terraces and 2-storey dwellings. The site contains a large detached 2-storey dwelling with parking to the frontage and outbuildings to the rear. There is a recessed hot tub within the patio area with the rest of the back garden laid to lawn.

3 THE PROPOSED DEVELOPMENT

The current proposal seeks a variation of condition 2 of the previous permission (17/10532) to allow revised plan numbers that include a first floor side extension, timber cladding and fenestration alterations to both the dwelling and outbuilding. Timber cladding is proposed to all elevations of the dwelling except to the south and to the front elevation and the west gable of the outbuilding. The fenestration alterations relate to 3 ensuite and 2 bedroom rooflights to the southern elevation, the rear dormer window and their replacement with a high level window and standard windows. The plans also include an increase in height of 0.2m of the highest ridge. Planning application 17/10532 was approved in June 2017 for a replacement dwelling and outbuilding together with a 1.8m high gate and 1m high front boundary wall. Since the grant of planning permission a dwelling has been constructed on the site, there have been several changes to the original permission. There have been enforcement investigations relating to works that

have been carried out without planning permission, however this is a separate matter to this application.

An earlier application 18/10774 was submitted in June 2018, this application sought permission to vary the condition imposed on the original permission specifying the approved plans. The application sought to remove the condition and replace it with one specifying the approved plans. The application sought permission of a house, detached outbuildings; 1.8m high boundary fence and gate; demolition of the existing house.

Planning permission was refused in September 2018. The applicant appealed against the refusal, the appeal was dismissed in February 2019. In dismissing the appeal the Inspector concluded that the principle of the dwelling was already accepted, it was considered that the main issues were:

- The living conditions of the occupiers of Bay Tree Cottage, with particular regard to overlooking and outlook: and
- The character and appearance of the area

In considering the issues the Inspector concluded the following:

Living conditions

- The proposal included an additional first floor with a large clear glazed rooflight serving bedroom 4 which the Inspector considered would result in material harm to Bay Tree Cottage
- The rear elevation window in Bedroom 4 would be close to the boundary with Bay Tree Cottage and would result in overlooking, a fin or louvre over much of the window would substantially reduce the size of the window and this could be achieved by way of condition.
- The views from the front window in the additional first floor would result in limited overlooking and would not cause significant overlooking.
- Other rooflights and windows proposed in the side elevations and would not cause harm
- Whilst the rear first floor windows were larger than the approved scheme the Inspector concluded that they would not cause any additional overlooking.

Character and Appearance

The Inspector concluded the following;

- The proposed use of cladding was considered to be an acceptable material
- The proposed front wall and fence were not considered to appear incongruous in the street scene.
- The proposal would not harm the character and appearance of the area. .

The current application proposes variations including :

- a first floor side extension,
- timber cladding to the front and rear elevations of the dwelling and the rear dormer and the front and part sides of the outbuilding,
- fenestration alterations to the dwelling and outbuilding.
- an increase in height of 0.2m to the highest ridge.

This application is partly retrospective. The works which have not yet been implemented are the timber cladding and the fenestration alterations to the dwelling which include the provision of a timber fin or louvre over part of the window serving bedroom 4 to protect residential amenity.

4 PLANNING HISTORY

17/10532 – house, detached outbuilding, 1.8m high boundary fence and gate, demolition of existing. Granted 6.6.17

17/11503 – outbuilding. Refused 10.1.18. *This structure was proposed as an alternative to that approved under 17/10532.*

18/10327 – house, detached outbuilding, demolition of existing (retrospective). Withdrawn by applicant 19.4.18

18/10774 – variation of condition of 17/10532 to allow revised plan numbers to allow first floor side extension, revised front boundary details, timber cladding, fenestration alterations change to rear windows, side roof lights provision of oriel window provision flue . Refused 12.9.18, appeal dismissed.

The following applications all relate to the smaller outbuilding which does not form part of the considerations for the current scheme.

18/10773 – outbuilding (Lawful Development Certificate Proposed). Not lawful 20.8.18.

18/11171 – outbuilding (Lawful Development Certificate Existing). Was not lawful 5.11.18.

18/11476 – outbuilding. Refused 3.1.19, appeal allowed.

5 THE DEVELOPMENT PLAN AND OTHER NFDC GUIDANCE

The Core Strategy

CS1: Sustainable development principles

CS2: Design quality

Local Plan Part 2 Sites and Development Management Development Plan Document

None relevant

The Emerging Local Plan

Policy 13: Design quality and local distinctiveness

Supplementary Planning Guidance and other Documents

SPD - Lymington Local Distinctiveness

6 RELEVANT LEGISLATION AND GOVERNMENT ADVICE

Relevant Legislation

NPPF Ch.2 - Achieving sustainable development

NPPF Ch. 4 - Decision-making

NPPF Ch.12 - Achieving well-designed places

7 PARISH / TOWN COUNCIL COMMENTS

Lymington & Pennington Town Council: recommend REFUSAL: This development continues to push the boundaries, affecting the amenity value to the neighbours. We are concerned about the neighbour comment referring to a kitchen area with sink, not shown in the plans for the outbuilding. We believe there are overlooking issues affecting amenity of the neighbours and the fins are not a sustainable solution.

8 COUNCILLOR COMMENTS

None received

9 CONSULTEE COMMENTS

None

10 REPRESENTATIONS RECEIVED

The following is a summary of the representations received from 5 local residents; they can be read in full via the link set out at the head of this report.

- it is misleading to use comments from the Planning Inspector on a different set of plans;
- cladding will not address the overbearing impact of the rear dormer;
- loss of privacy due to outbuilding gable window;
- increased noise due to use of ancillary outbuilding;
- timber cladding would not be in keeping with the street scene, weatherboarding would be preferable;
- discrepancies within the plans;
- bedroom roof light should be replaced rather than altered;
- unable to assess whether or not fin would protect amenity;
- other roof lights would result in overlooking and should be fixed shut and non-opening;
- no detail of the proposed colour of cladding;
- cladding to rear dormer could easily be removed;
- building is far too large;
- additional black fencing has been provided to the northern boundary;
- dwelling is higher than approved.

A letter of support has been received on behalf of the applicant clarifying the conclusions of the appeal Inspector, the finish to the cladding, that the outbuilding is lawful for ancillary purposes and that the applicant has made every attempt to resolve the outstanding issues.

11 OFFICER COMMENTS

The principle of the development has already been accepted and whilst the appeal to vary the condition was refused the Inspector concluded that a number of the changes to the approved plans were acceptable. The Inspector's decision is a material consideration and should be given significant weight.

Introduction

- 11.1 The current application follows the appeal decision in February 2019. It proposes changes to the existing built form on site in order to address issues identified at the appeal and to regularise other changes which are different to the approved scheme, 17/10532 and formed part of the previous application that was refused at appeal. It is important at the outset to set out the background to this case due to its complicated recent planning history which is material to determination of the current planning application.
- 11.2 Permission was initially granted for a replacement dwelling and outbuilding in June 2017 (17/10532). Works were subsequently commenced however there were some significant differences in what was being built compared to the approved plans.
- 11.3 A variation of condition application was submitted in September 2018 (18/10774) which sought to secure these changes along with some further modifications. This scheme was refused in September 2018 and was subject of an appeal which was dismissed in February 2019. In dismissing this appeal the Inspector made it clear what was and what was not considered to be acceptable.
- 11.4 In addition to the principle of the redevelopment being considered acceptable, the Inspector concluded in his determination that the following changes were not reasons for dismissing the appeal:
- the provision of a flue
 - the increased size of roof light to the front elevation
 - the bulk and massing of the first floor side addition
 - the high level side roof lights relating to en-suites or storage areas
 - the oriel window
 - the timber cladding
 - the rear dormer
 - the ground floor fenestration changes to the rear elevation
 - the changes to the front boundary treatment

On this basis, it is considered that the above changes are not harmful to either the character and appearance of the area or the residential amenities of neighbouring properties. The outstanding matters which are relevant to the consideration of this application therefore are as follows:

- the roof light to bedroom 4
 - the rear window to bedroom 4
- 11.5 A second outbuilding has also been constructed at the site this structure now benefits from planning permission which was allowed on appeal (18/11476) and it is not part of the consideration of the current application.

- 11.6 Within the context of this relevant appeal history, the main issue for consideration in this case is the impact of the window and rooflight to serve bedroom 4.

Character and Appearance

- 11.7 The Inspector confirmed that the proposed timber cladding was acceptable, Concern has been expressed in relation to the proposed finish to the cladding given the provision of a black stained timber fence within the site. It has been confirmed that this will remain cedar coloured, and this can be secured by condition.
- 11.8 To the rear of the building, the proposed cladding to the lower part of the dormer would reflect the cladding to the rear elevation of the dwelling and would have a limited impact.
- 11.9 The proposed plans show a modest increase in height of the building is 0.2m. This increase relates to both the front/rear gable ridge and the ridge running parallel to the road. The approved scheme measured 7.0m and 6.8m and the drawings now indicate 7.2m and 7.0m respectively. Whilst the Inspector did not specifically discuss the increase in the ridge height he comments that there is no consistent scale and mass to the properties in the street. It is considered that this slight increase would have a minimal impact such that within its context it would not adversely affect the character of the area or street scene.

Living conditions

- 11.10 The reason for the appeal being dismissed was in respect to the unacceptable impact on the living condition of Bay Tree Cottage resulting from the size of the rooflight and window serving Bedroom 4 which the Inspector concluded would result in unacceptable overlooking. The Inspector's concern was that being clear glazed and opening, the rooflight caused material harm to the occupiers of the adjacent property, Bay Tree House. In order to address this concern, the current proposal indicates that this roof light would be fixed shut and obscure glazed. A planning condition could be imposed requiring this. The imposition of such a condition would address this concern and make this element of the proposal acceptable. Given that this element is retrospective the condition would be worded to require these changes to be made within a given time period.
- 11.11 This application proposes to reduce the size of the rear (west) bedroom window (bedroom 4) but enable it to be opened in order to provide both ventilation and a means of escape from this room. The plans indicate a rectangular casement window, reduced in width such that it is further away from the neighbouring property. In order to minimise the potential for overlooking from this window, the drawings also indicate the provision of a fin to the south of this window which would allow views over the applicant's own garden but which would restrict views towards the immediate neighbours'.
- 11.12 In considering the appeal, the Inspector noted that *'the fins/louvres proposed over much of the window would in effect substantially reduce the size of the window and set it further in from the boundary. This would significantly restrict views. Were the appeal to succeed conditions could*

be imposed in relation to the provision and retention of these features.' It is therefore considered that the proposed amendments to the rear window and provision of a fin would satisfactorily address the overlooking concerns, subject to a suitably worded condition to provide and retain this as suggested by the Inspector.

- 11.13 With regard to the changes to the fenestration in the outbuilding, those at ground floor level do not impact on residential amenity. The approved scheme included a full length window to the northern side elevation. This was not implemented and a small square window in the gable was provided instead. Internally, a mezzanine storage area has been provided and the window in the gable end is indicated as being obscure glazed to minimise any loss of privacy. This window is 6.2m from the boundary with Greenways with a flat roofed outbuilding between. It is therefore considered that the obscure glazing would address any concerns relating to overlooking. The obscure glazing of the window is a matter that can be controlled by a suitably worded condition.

Response to comments received:

- 11.14 Objections have been received from local residents in respect of residential amenity. One comment refers to the bedroom roof light suggesting it should be replaced. Whilst this is an option for the applicant, the proposal is to alter the existing window in order to achieve the same result which would address the concern highlighted by the Inspector.
- 11.15 Reference to the other roof lights in the south elevation resulting in overlooking has been made this matter was considered by the Inspector in the appeal decision, it was concluded that no harm was caused by these rooflights. Significant weight must be given to the conclusions of the Inspector in the recent appeal. It should also be noted that three of the larger roof lights were originally approved and there were no restrictive conditions relating to the provision of mezzanines/storage areas above first floor level within the dwelling.
- 11.16 The concern raised in respect of the proposed fin can be addressed through the imposition of a suitably worded condition to require further details of this to be submitted to ensure it will maintain privacy levels for the adjacent property, Bay Tree House.
- 11.17 Objections have been raised with regard to the outbuilding in terms of both overlooking and noise and disturbance. The changes to the outbuilding are not considered to give rise to any further noise and disturbance over and above the original scheme which allowed ancillary use of this structure.
- 11.18 The slight increase in height of the building (0.2m) is not considered to give rise to unacceptable impacts on residential amenity.

12 CONCLUSION ON THE PLANNING BALANCE

- 12.1 Overall, it is considered that the remaining changes and proposed alterations subject of this application fully address the outstanding concerns raised in the Inspector's appeal decision on the previous application. Subject to suitably worded conditions, the proposal would remove the current level of harm to residential properties whilst having a limited impact on the visual amenities of the area.

As such, a variation of condition on the basis of the current proposals is recommended for approval.

13 OTHER CONSIDERATIONS

Proactive Working Statement

In accordance with paragraph 38 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council takes a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome by giving clear advice to applicants.

The application follows a dismissed appeal and whilst some clarification regarding proposed changes to a window opening were required, all the above apply and as the application was acceptable no specific further actions were required.

Crime and Disorder

None

Local Finance

Regulation 42 of the CIL Regulations 2010 (as amended) states that CIL will be applicable to all applications over 100sqm GIA and those that create a new dwelling. The original application was CIL exempt and although the floor space in this case is slightly larger, the exemption carries over from the previous scheme. Based on the information provided at the time of this report this development has a CIL liability of £0.00.

Human Rights

In coming to this recommendation, consideration has been given to the rights set out in Article 8 (Right to respect for private and family life) and Article 1 of the First Protocol (Right to peaceful enjoyment of possessions) of the European Convention on Human Rights. Whilst it is recognised that there may be an interference with these rights and the rights of other third parties, such interference has to be balanced with the like rights of the applicant to develop the land in the way proposed. In this case it is considered that the protection of the rights and freedoms of the applicant outweigh any possible interference that may result to any third party.

Equality

The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers. The Committee must be mindful of this duty *inter alia* when determining all planning applications. In particular the Committee must pay due regard to the need to:

- (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

CIL Summary Table

Type	Proposed Floorspace (sq/m)	Existing Floorspace (sq/m)	Net Floorspace (sq/m)	Chargeable Floorspace (sq/m)	Rate	Total
Self Build (CIL Exempt)	259	134	125	125	£80/sqm	£12,230.77 *
Subtotal:	£12,230.77					
Relief:	£12,230.77					
Total Payable:	£0.00					

* The formula used to calculate the amount of CIL payable allows for changes in building costs over time and is Index Linked using the All-in Tender Index Price published by the Build Cost Information Service (BICS) and is:

$Net\ additional\ new\ build\ floor\ space\ (A) \times CIL\ Rate\ (R) \times Inflation\ Index\ (I)$

Where:

A = the net area of floor space chargeable in square metres after deducting any existing floor space and any demolitions, where appropriate.

R = the levy rate as set in the Charging Schedule

I = All-in tender price index of construction costs in the year planning permission was granted, divided by the All-in tender price index for the year the Charging Schedule took effect. For 2019 this value is 1.22

14. RECOMMENDATION

GRANT the VARIATION of CONDITION

Proposed Conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of the original permission (6 June 2017).

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development permitted shall be carried out in accordance with the

following approved plans: LP.01C, PP.01D, PL.01E, PE.02H, PE.01E, EP.01, EE.01A.

Reason: To ensure satisfactory provision of the development.

3. The following details shall be as agreed by the Council's discharge of condition decision notice dated 20 July 2018 under 17/10532 unless alternatives are previously submitted to, and approved in writing by, the Local Planning Authority:

- (a) the proposed colour of the render;
- (b) a specification for new planting along the front boundary (species, size and spacing);
- (c) a method and programme for its implementation and the means to provide for its future maintenance.

Reason: To ensure that the development takes place in an appropriate way and to comply with Policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

4. The slab levels in relationship to the existing ground levels shall be as agreed by the Council's discharge of condition decision notice dated 20 July 2018 under 17/10532.

Reason: To ensure that the development takes place in an appropriate way in accordance with policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

5. Within 2 months of the date of this permission, details of the proposed fin or louvre shall be submitted to, for approval in writing by, the Local Planning Authority. The details shall include size, materials, location and method of fixing the fin or louvre to the window or wall. Within 2 months from the approval of these details the fin or louvre shall be installed in accordance with the approved details. The development shall be fully implemented in accordance with the approved details and permanently maintained as such.

Reason: In the interest of residential amenity and in accordance with policy CS2 of the New Forest District Council Core Strategy.

6. Within 2 months from the date of this permission the roof light serving bedroom 4 should be fitted with obscure glass with a minimum obscurity of level 3 glazing and shall be fixed in a way that prevents opening. The first floor roof light to bedroom 4 on the south elevation of the approved dwelling shall at all times be glazed with obscure glass and fixed shut.

Reason: To safeguard the privacy of the adjoining neighbouring properties in accordance with policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

7. The outbuilding the subject of this permission shall only be used for ancillary

purposes in conjunction with the main dwelling on the site and not part of its main accommodation.

Reason: To protect the character and appearance of the countryside in accordance with Policy CS2 of the Local Plan for the New Forest District outside of the National Park (Core Strategy).

8. Within 3 months from the date of this permission the side window in the ancillary building shall be fitted with obscure glass with a minimum obscurity of level 3 and shall thereafter remain at all times with obscure glazing and fixed shut.

Reason: To safeguard the privacy of the adjoining neighbouring properties in accordance with policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

9. The cladding hereby approved shall not be treated or stained but left to weather naturally.

Reason: In the interests of the visual amenities of the area and in accordance with policy CS2 of the New Forest District Council Core Strategy.

10. The window serving bedroom 4 hereby approved shall be installed within 6 months from the date of this permission

Reason: To safeguard the privacy of the adjoining neighbouring properties in accordance with policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

Notes for inclusion on certificate:

1. In accordance with paragraph 38 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council takes a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome by giving clear advice to applicants.

The application follows a dismissed appeal and whilst some clarification regarding proposed changes to a window opening were required, all the above apply and as the application was acceptable no specific further actions were required.

2. This decision relates to amended / additional plans received by the Local Planning Authority on 18 June 2019.

Further Information:

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PLANNING COMMITTEE

August 2019

Item No: 3f
Site of Arracher
Fox Pond Lane
Pennington Lymington
19/10437

Scale 1:1250

N.B. If printing this plan from the internet, it will not be to scale.

