

Application Number: 19/11288 Variation / Removal of Condition

Site: Land rear of 9 UPLANDS AVENUE, BARTON-ON-SEA,
NEW MILTON BH25 7BJ

Development: Variation of conditions 2,4 &10, of planning permission 19/10258
to lose oak tree and update landscaping plan

Applicant: Harbourwood Homes

Target Date: 13/02/2020

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

1 SUMMARY OF THE MAIN ISSUES

The following are 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 impact of the removal of the existing oak tree on the appearance of the area;
- 2) The impact of the removal of the tree on the Ecological of the area: The Conservation of Habitats and Species Regulations 2017 ('the Habitat Regulations')

This matter is before Committee due to previous committee involvement and that the condition relating to the oak tree was imposed by the Planning Committee.

2 THE SITE

The site lies within the built up area of New Milton. It comprises of the original bungalow (no. 9) fronting onto Uplands Avenue, the access drive positioned between No. 11 and 15 Uplands Avenue and a new bungalow constructed on what was previously the rear garden of no. 9.

3 THE PROPOSED DEVELOPMENT

This application seeks to vary conditions 2, 4 and 10 attached to the extant planning permission, to facilitate the removal of the existing oak tree and its replacement with a new tree. Other aspects of the development of a new bungalow and garage remain the same as previously approved.

4 RELEVANT PLANNING HISTORY

Proposal	Decision Date	Decision Description	Status	Appeal Description
19/10258 Variation/removal of Condition 2 on planning permission 18/11592 to allow amended plans 9105/200A & 9105/201A, and 9105/100C to allow detached garage	09/09/2019	Granted Subject to Conditions	Decided	

18/11592 House; access, parking & landscaping; single-storey side extension to existing dwelling	14/02/2019	Granted Subject to Conditions	Decided	
16/11527 2 bungalows; parking; access; associated works	11/01/2017	Refused	Appeal Decided	Appeal Allowed with Conditions

5 THE DEVELOPMENT PLAN AND OTHER CONSTRAINTS

Core Strategy

CS1: Sustainable development principles

Local Plan Part 2 Sites and Development Management Development Plan Document

DM3: Mitigation of impacts on European nature conservation sites

The Emerging Local Plan

Policy 1 Achieving sustainable development
Policy 10 Mitigating the impact of development on International Nature Conservation sites

Supplementary Planning Guidance and Documents

SPD - Housing Design, Density and Character

6 RELEVANT LEGISLATION AND GOVERNMENT ADVICE

Relevant Legislation

Town & Country Planning Act 1990
Planning and Compulsory Purchase Act 2004
The Conservation of Habitats and Species Regulations 2017

Relevant Advice

National Planning Policy Framework
NPPF Ch.2 - Achieving sustainable development
NPPF Ch.15 - Conserving and enhancing the natural environment

National Planning Policy Guidance
NPPG - Determining a Planning Application
NPPG - Natural Environment

National Design Guide

7 PARISH / TOWN COUNCIL COMMENTS

New Milton Town Council

ACCEPTABLE (Delegated) subject to appropriate replanting to be agreed with the New Forest District Arboriculturist.

8 COUNCILLOR COMMENTS

No comments received

9 CONSULTEE COMMENTS

The following is a summary of the representations received which can be read in full via the link set out at the head of this report.

Tree Officer - no objection, suggested alternative replacement tree
Building Control - no comment

10 REPRESENTATIONS RECEIVED

The following is a summary of a representation received from the neighbouring resident to the rear of the site:

No fundamental objection to the removal of the tree but concerned about the effect of the removal of the tree on the neighbouring property and request a dilapidations survey be carried out on that property.

11 OFFICER COMMENTS

Introduction

The original planning permission for a new bungalow to the rear of 9 Uplands Avenue (18/11592) was granted by Planning Committee. The Committee specifically imposed a condition (no. 11) regarding the protection of an existing oak tree at the site:

Before development commences in relation to the dwelling hereby approved (including site clearance, demolition and any other preparatory works) a scheme for the protection of the oak tree to the eastern boundary and off-site beech tree to the north shall be submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include a method statement detailing timing of events, all changes of existing surfaces and plans showing the protective fencing or other measures required for the avoidance of damage to retained trees all in accordance with BS 5837 (2012) "Trees in Relation to Construction Recommendations". Such fencing shall be erected prior to any other site operation and at least 24 hours' notice shall be given to the Local Planning Authority that it has been erected. The tree protection measures installed shall be maintained and retained for the full duration of the works or until agreed in writing with the Local Planning Authority. No activities, nor material storage, nor placement of site huts or other equipment whatsoever shall take place within the fencing without the prior written agreement with the Local Planning Authority.

Reason: *To ensure the retention of existing trees and natural features and avoidance of damage during the construction phase in accordance with Policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).*

A subsequent planning permission (19/10258) was granted for a bungalow and garage. The condition regarding the oak tree was attached to the new planning permission as condition 10.

The applicant now wishes to remove the oak tree and plant a replacement tree closer to the rear boundary. Therefore, this current application seeks to vary condition 10 relating to the oak tree. It is also necessary to vary conditions 2 and 4 of planning permission 19/10258 both of which refer to plans that include the oak tree. All other matters relating to the scheme remain unchanged and therefore the report does not consider these matters.

Relevant Considerations

1) Impact of the removal of the existing oak tree

The oak tree in question is not protected and is not considered to be of sufficient amenity value to justify the serving of a Tree Preservation Order. It was lopped prior to any planning application being submitted for new residential development on this site.

The Tree Officer has been consulted on the current application and has advised that these works have had a detrimental impact on the health and amenity of the tree and for this reason it cannot be considered a constraint to development. The removal and replacement of this tree is considered the most reasonable option. Given the small size of the new garden it is recommended that a small tree species is planted. This will avoid any replacement tree dominating the garden area of the new bungalow or those of neighbouring dwellings. This can be secured by planning condition.

2)Ecological Matters: The Conservation of Habitats and Species Regulations 2017 ('the Habitat Regulations')

Whilst the removal of the tree will have some impact on the ecological system within the area it is not considered that its removal is harmful and replacement planting will ensure that the impact is mitigated.

As a procedural matter in this instance, there is a requirement to amend the existing s106 agreement to secure the recreational mitigation that is secured previously in relation to the extant planning permission. Legal Services have been requested to prepare a deed of variation to the existing s106 agreement prior to the determination of the application.

As there are 2 extant planning permissions relating to new residential development at this site, it is considered that the current application would not result in any additional harm to the integrity of the New Forest and Solent Coast European sites, with regard to water quality and the requirements of The Conservation of Habitats and Species Regulations 2017. There is no requirement for an Appropriate Assessment to be undertaken and no objections are therefore raised in this respect

Other Case Specific Factors

A request has been made by the neighbour for a dilapidations survey to be carried out on their property in case the removal of the tree results in any damage. The condition regarding the oak tree was to ensure its retention and prevent damage to it during construction work. The tree could otherwise have been removed by the owner at any time as other trees have been. It is not considered that a requirement for a dilapidations survey to be undertaken would

meet the tests for a planning condition. Any damage which may occur to the neighbours' property would be a civil matter.

12 CONCLUSION ON THE PLANNING BALANCE

The proposal is considered acceptable with regard to adopted and emerging local planning policy, NPPF, supplementary planning guidance and other material planning considerations.

13 OTHER CONSIDERATIONS

Crime and Disorder

None.

Local Finance

If this development is granted permission, the Council will receive New Homes Bonus (net increase in dwellings) £1224 in each of the following four years, subject to the following conditions being met:

- a) The dwellings the subject of this permission are completed, and
- b) The total number of dwellings completed in the relevant year exceeds 0.4% of the total number of existing dwellings in the District.

Based on the information provided at the time of this report this development has a CIL liability.

Tables setting out all contributions are at the end of this report.

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

- (2) conduct that is prohibited by or under the Act;
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
------	----------------------------------	----------------------------------	-----------------------------	------------------------------------	------	-------

Dwelling houses	86.13		86.13	86.13	£80/sqm	£8,427.49 *
Dwelling houses	18		18	18	£80/sqm	£1,761.23 *

Subtotal:	£10,188.72
Relief:	£0.00
Total Payable:	£10,188.72

* 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) x CIL Rate (R) x 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 2020 this value is 1.28 (rounded)

14. RECOMMENDATION

Delegated authority to Chief Planning Officer to be **AUTHORISED TO GRANT PERMISSION** subject to:

- i. completion of a deed of variation to the s106 Obligation;
- ii. the imposition of the conditions set out below:

Proposed Conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

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:

Site Block & Location Plans 9105/300

Revised landscaping plan by Sarah Abbott Gardens Revision 2

Planting schedule by Sarah Abbott Gardens Revision 1

Arboricultural Impact Assessment & Arboricultural Method Statement by Gwydions Tree Consultancy ref GH1914.4 dated 25/09/2019

Reason: To ensure satisfactory provision of the development.

3. The development shall only be implemented in accordance with the approved facing and roofing details: Ibstock Rutland Red Brick; Terreal rustique plain tile new forest mix; white upvc windows; Amber pre-cast stone cills in bath stone colour; Weber render in chalk white.

Reason: To ensure an acceptable appearance of the development in accordance with policy CS2 of the Core Strategy for the New Forest District outside the National Park.

4. The scheme shall be implemented in accordance with the details set out in the Arboricultural Impact Assessment & Arboricultural Method Statement ref:GH1914.4 dated 25/09/2019 including the erection of protective fencing which shall be erected prior to any other site operation and at least 24 hours' notice shall be given to the Local Planning Authority that it has been erected. The tree protection measures installed shall be maintained and retained for the full duration of the works or until such time as agreed in writing with the Local Planning Authority. No activities, nor material storage, nor placement of site huts or other equipment whatsoever shall take place within the fencing without the prior written agreement with the Local Planning Authority.

Reason: To ensure the retention of existing trees and natural features and avoidance of damage during the construction phase in accordance with Policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

5. Before first occupation of the dwelling, details of the proposed cycle storage / parking facilities shall be submitted to and approved by the Local Planning Authority. The dwellings shall not be occupied until the approved cycle parking areas have been provided, and these cycle parking areas shall be permanently retained thereafter.

Reason: To ensure adequate cycle parking is provided and to comply with policies CS2 and CS24 of the Core Strategy for New Forest District outside of the National Park.

6. 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 A, B, C or outbuilding otherwise approved by Class E of Part 1 of Schedule 2 to the Order shall be erected or carried out without express planning permission first having been granted.

Reason: In view of the physical characteristics of the plot, the Local

Planning Authority would wish to ensure that any future development proposals do not adversely affect the visual amenities of the area and the amenities of neighbouring properties, contrary to Policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

7. The development hereby permitted shall not be occupied until the spaces and garage shown on the approved plans for the parking of motor vehicles have been provided. These spaces shall thereafter be retained and kept available for their intended purposes at all times.

Reason: To ensure adequate parking provision is made in the interest of highway safety and in accordance with Policy CS2 and CS24 of the Local Plan for the New Forest outside of the National Park (Core Strategy).

8. Before first occupation of the development hereby approved, a surface water sustainable drainage system (SuDS) shall be installed to accommodate the run-off from all impermeable surfaces including roofs, driveways and patio areas on the approved development such that no additional or increased rate of flow of surface water will drain to any water body or adjacent land and that there is capacity in the installed drainage system to contain below ground level the run-off from a 1 in 100 year rainfall event plus 30% on stored volumes as an allowance for climate change as set out in the Technical Guidance on Flood Risk to the National Planning Policy Framework. Infiltration rates for soakaways are to be based on percolation tests in accordance with BRE 365, CIRIA SuDS manual C753, or a similar approved method. In the event that a SuDS compliant design is not reasonably practical, then the design of the drainage system shall follow the hierarchy of preference for different types of surface water drainage system as set out at paragraph 3(3) of Approved Document H of the Building Regulations.

The drainage system shall be designed to remain safe and accessible for the lifetime of the development, taking into account future amenity and maintenance requirements.

Reason: In order to ensure that the drainage arrangements are appropriate and in accordance with Policy CS6 of the Core Strategy for the New Forest District outside the National Park and the New Forest District Council and New Forest National Park Authority Strategic Flood Risk Assessment for Local Development Frameworks.

9. The development shall be implemented in accordance with the slab levels shown on plan 9105/100C. Development shall only take place in accordance with those details which have been approved.

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).

10. The development shall be implemented in accordance with the revised landscape scheme Revision 2 by Sarah Abbott Gardens and the associated planting schedule Rev 1 by Sarah Abbott Gardens.

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).

Further Information:

Jo Chambers

Telephone: 023 8028 5345 (Option1)



New Forest DISTRICT COUNCIL

Tel: 023 8028 5000
www.newforest.gov.uk

Claire Upton-Brown
Chief Planning Officer
Planning
New Forest District Council
Appletree Court
Lyndhurst
SO43 7PA

PLANNING COMMITTEE

January 2020

Item No:

Land rear of 9 Uplands Avenue
Barton on Sea
New Milton BH25 7BJ
19/11288

Scale 1:1250

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

