

**Application Number:** 20/11060 Variation / Removal of Condition

**Site:** 54 BELMORE LANE, LYMINGTON SO41 3NN

**Development:** Variation of condition 2 of Planning Permission 19/10958 to allow variations to materials, window positions and enlargement of front and rear dormers to P1 due to minor design changes

**Applicant:** Ms Stephan

**Agent:** Morgan Building Design

**Target Date:** 30/11/2020

**Case Officer:** Warren Simmonds

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## **1 SUMMARY OF THE MAIN ISSUES**

The key issues are:

- 1) The Principle of development
- 2) Scale, design & materials
- 3) Impact on the character of the surrounding area
- 4) Amenity considerations
- 5) Flooding/drainage
- 6) Ecology and habitats mitigation

This application is to be considered by Committee because the Town Council objects to a number of elements of the proposal and recommends refusal (see section 6 below).

## **2 SITE DESCRIPTION**

The application relates to the site at 54 Belmore Lane, Lyminster where previously planning permission was granted on 12th March 2020 under reference 19/10958 for '2 dwellings; car ports; replacement garage, new access'.

The application site previously formed the large rear garden of 54 Belmore Lane. The site drops in gradient towards its rear south-western boundary. The site is bounded on its rear south-western boundary by 2 modest single-storey bungalows at 1 and 2 Redvers Close.

On its north-western side, the site is bounded by 4 chalet style bungalows at 15-21 Old Farm Walk, as well as a small electricity substation. These chalet bungalows are set within generous sized garden plots. To its north side, the site is bounded by 48 Belmore Lane, which is a 2-storey dwelling that is also set within a generous sized garden plot, whilst to its south-eastern side the site is bounded by a more recently built development at Oakfield, which is comprised of 2-storey detached and semi-detached dwellings set within smaller garden plots than elsewhere in the immediate area.

Currently, the two new dwellings as approved under Planning Permission 19/10958 are under construction and are up to second floor wall height, with roofs yet to be constructed.

### 3 PROPOSED DEVELOPMENT

The application is made under Section 73 of the Town and Country Planning Act 1990. The application proposes the variation of Condition 2 (list of approved plans) of the previous planning permission 19/10958, '*to allow variations to materials, window positions and enlargement of rear dormer to P1 due to minor design changes*'.

### 4 PLANNING HISTORY

**20/10611** - Variation of condition 2 of Planning Permission 19/10958 to allow amended plans - Withdrawn by Applicant 23/9/20

**19/10958** - 2 dwellings; car ports; replacement garage, new access - Granted Subject to Conditions 12/3/20

**18/11182** - Variation of condition 3 of Planning Permission 17/10044 to allow window changes to first floor - Granted Subject to Conditions 21/11/18

**17/10044** - Raise ridge height (of existing dwelling at 54 Belmore Lane), front and rear dormers in association with second floor, rooflights, single storey rear extension, front porch, detached garage, fenestration alterations - Granted with conditions on the 21st March 2017

**17/11702** - Planning permission was refused to construct two detached 2 storey dwellings and car ports within the back garden of No 54 Belmore Lane. The application also proposed a car port for the existing dwelling at No 54.

An appeal was lodged and subsequently dismissed. In dismissing the appeal, the Inspector had two main concerns: one was the unacceptable impact on the character and appearance of the area and the second related to the unacceptable impact on the living conditions of No 19.

### 5 PLANNING POLICY AND GUIDANCE

#### Local Plan 2016-2036 Part One: Planning Strategy

Policy ENV1: Mitigating the impacts of development on International Nature Conservation sites

Policy ENV3: Design quality and local distinctiveness

Policy HOU1: Housing type, size, tenure and choice

Policy IMPL1: Developer Contributions

Policy IMPL2: Development standards

Policy STR1: Achieving Sustainable Development

#### Local Plan Part 2: Sites and Development Management

DM2: Nature conservation, biodiversity and geodiversity

#### Supplementary Planning Guidance

SPD - Lymington Local Distinctiveness

#### National Policy Guidance

NPPF 124 :The National Planning Policy Framework 2019 Chapter 12 "Achieving well designed places" acknowledges (in Para 124) that the creation of a high quality built environment is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development in creating better places to live and work. Being clear about design expectations is essential to achieving this goal.

NPPF 127 : The National Planning Policy Framework 2019 Chapter 12 "Achieving well designed places" requires in Para 127 requires development to be sympathetic to local character, respect surrounding built environment and maintain a strong sense of place in terms of building gaps, spaces and materials

## **6 PARISH / TOWN COUNCIL COMMENTS**

### **Lymington & Pennington Town Council**

#### **Consultation response received 27.10.2020:**

Recommend Refusal.

The Applicant states they are seeking "variations to materials, window positions and enlargement of rear dormer to P1 due to minor design changes'. They are, in fact, applying for considerably more and many of these do not arise from "minor design changes". A detailed study of the drawings submitted indicates that the actual changes requested comprise:

- a fundamental change to the facing materials on every elevation
- revised window positions
- a massively enlarged rear dormer to P1
- enlarged front dormer to P1
- pitched in place of flat roof to P1 garage
- additional rooflight to P1
- additional rooflight to P2
- additional window to P1
- replacement of car port with enlarged garage to P1
- enlarged bedrooms and dormer to P1

In addition, there are inaccuracies and errors in some of the drawings.

The Council recommends the refusal of the application on the grounds that the application is grossly misleading. Furthermore, the Council objects to the application on the following grounds:

- Poor design through the inappropriate change of cladding.
- Impact on amenity on Oakfield through the change to a pitched roof garage
- Potential damage to the protected oak tree through the need for more substantial foundations for the garage.
- Overdevelopment through extending the replacement P1 garage to close to the boundary.
- Poor design through the enlarged and cumbersome rear dormer to P1.
- Conflicts with the approved Design and Access Statement that states "the houses are of already extended form" and "the footprint of the house is finished".

The Council also objects strongly to what appears to be planning creep, which would be a cynical abuse of the planning system. This is a tactic that has been employed on other developments in the town.

## **Consultation response received 13.01.2021 (revised plans):**

Recommend Refusal.

The enlarged dormer to Plot 1 is poorly designed and unattractive.

This application does not list the enlargement to Plot 2's car port. A further increase in the footprint of the building conflicts with the approved Design and Access Statement.

Given the history of the applications for this site, the undertaking in the D&A Statement and this further proposed increase, NFDC should consider removing further Development Rights if they propose to approve this application.

## **7 COUNCILLOR COMMENTS**

Cllr Jacqui England raises an objection

## **8 CONSULTEE COMMENTS**

Comments have been received from the following consultees:

**Drainage:** no comment

**Ecology:** no concerns

**Historic England:** no comments

## **9 REPRESENTATIONS RECEIVED**

The following is a summary of the representations received.

13 Third party objections have been received on the following grounds:

- Overdevelopment
- Impact on trees
- Overlooking
- Planning 'creep'
- Inaccurate plans
- Increased flood risk
- Poor landscaping provision
- Concerns in respect of raised patio/terrace areas
- Concerns in respect of carports becoming garages

## **10 PLANNING ASSESSMENT**

### Principle of Development

The application is made under Section 73 of the Town and Country Planning Act 1990. The application proposes the variation of Condition 2 (list of approved plans) of previous planning permission 19/10958, *'to allow variations to materials, window positions and enlargement of rear dormer to P1 due to minor design changes'*.

Section 73 of the 1990 Act provides that an application may be made for planning permission without complying with conditions applied to a previous permission. It is stated that local authorities may decide whether to grant permission subject to

differing Conditions, removing the Conditions altogether or refusing to alter Conditions. The section makes it clear that in considering such an application a local planning authority may only consider the “question of the conditions” and cannot therefore revisit the fundamental principle(s) of the development itself. However, in terms of decision making, a Section 73 application should be treated just like any other application, and due regard paid to the development plan and other material considerations.

In respect of the development at 54 Belmore Lane, the previous permission granted under planning reference 19/10958 has been commenced and remains extant. The current application seeks to amend the approved plans to facilitate the following amendments:

Plot 1:

- Front dormer enlarged, but no new windows
- South-east Elevation: approved window slightly repositioned
- Rear dormer enlarged; Bathroom window within dormer to replace approved rooflight. No new windows to Bed 2.
- North-west Elevation: approved Ground Floor window enlarged.
- Changes to external materials
- No change to the approved carport

Plot 2:

- Additional high level rooflight (South-west elevation)
- Additional Ground Floor window (North-west elevation)
- Increase in footprint of the cycle store at the back of the carport
- Change to external materials

There are now no changes proposed in respect of the previously approved carports (amended plans removed proposed changes from the current S73 application).

There are no changes proposed in respect of the size(s) or height(s) of previously approved patio/terrace areas.

**Consideration of the proposed amendments**

Changes to external materials for both plots:

The two new dwellings as approved under Planning Permission 19/10958 comprised brickwork (with limited areas of horizontal cladding) elevations under a tiled roof. The current application seeks to revise the external materials to a combination of vertical timber cladding and painted render, under slate roofs.

The proposed amendment to external materials is considered appropriate and would not have an undue impact on the existing character of the surrounding area.

Plot 1 proposed amendments:

Front dormer enlarged - the proposal is to increase the width of the front dormer whilst retaining the existing level of glazing. The proposed increase in the width of the dormer is modest and, it is considered, does not result in undue impacts in terms of design, appearance or the amenity of neighbours.

South-east elevation: approved window slightly repositioned - the proposed revision constitutes the enlargement of a ground floor window serving the proposed family room. The window is at ground floor level. Whilst this enlarged window is located close to the side boundary of the plot, taking into consideration the position of the window at ground floor level, where permitted development rights would allow the provision of a wall or fence up to 2 metres in height, it is considered this amendment would not result in undue impacts on the amenity of neighbours.

Rear dormer enlarged; bathroom window within dormer to replace approved rooflight. No new windows to Bed 2 – The proposal elongates the rear dormer, effectively across the width of the rear elevation of the house. The previously approved rooflight window serving the First Floor bathroom of plot 1 is omitted and obscure glazed casement windows are provided in the enlarged dormer to serve the bathroom. Whilst box dormer roof additions are not usually considered to have beneficial design attributes, the proposed dormer would be located at the rear of the property and would not be visible within the streetscene or wider surrounding area. Provided the bathroom windows were obscure glazed (by Condition) it is considered undue impacts on neighbour amenity via overlooking would be avoided. It is a material consideration that, once occupied, a rear dormer extension to the previously approved scheme would become permitted development under Class B, whereby the rear of the roof could be enlarged (albeit without additional glazing) by the addition of a dormer up to a volume allowance of 50 cubic metres additional roof space, which is greatly in excess of that currently proposed.

North-west Elevation: approved Ground Floor window enlarged – the enlargement of a Ground Floor window serving the kitchen. Taking into consideration the position of the window at ground floor level, where permitted development rights would allow the provision of a wall or fence up to 2 metres in height, it is considered this amendment would not result in undue impacts on the amenity of neighbours. As noted above, there would be no change to the approved carport.

#### Plot 2 proposed amendments:

Additional high level rooflight (South-west elevation) - this is a high-level rooflight serving a First Floor dressing room (off of bedroom 1). It is considered there are no design or amenity issues resulting from this additional rooflight window.

Additional Ground Floor window (North-west elevation) - The window is at ground floor level, serving the kitchen/dining/family room. Whilst this additional window is located close to the side boundary of the plot, the side boundary consists of a close boarded fence that is approximately 1.8 metres in height and an evergreen shrubbery hedge. Taking into consideration the position of the window at ground floor level, where permitted development rights would allow the provision of a wall or fence up to 2 metres in height, it is considered this amendment would not result in undue impacts on the amenity of neighbours.

Increase in footprint of the cycle store at the back of the carport – whilst the carport remains as previously approved, it is proposed to increase the single storey flat-roofed cycle store along the back of the carport, remaining as an enclosed outdoor store. By reason of the location of the extended store at the back of the carport, well screened by the existing boundary fence to the west, it is considered the proposed increase in the size of the cycle store would not result in adverse design issues or undue impacts on the amenity of neighbours.

#### Impact on the character of the surrounding area

The application site is in a backland location (being formerly the rear garden of 54 Belmore Lane), surrounded on all sides by the gardens of existing neighbouring

properties. Consequently, the site is not prominent in views within the streetscene or the wider local area.

By reason of the modest scale of the changes proposed, and the use of materials that are not considered discordant with the local area, it is considered the proposed amendments would not unduly affect the existing character of the surrounding area.

#### Residential amenity

Subject to a condition to ensure the new bathroom windows within the rear dormer of Plot 1 are fitted with obscured glazing, it is considered that none of the proposed amendments, individually or in combination, would result in undue impacts on the amenity of neighbouring occupiers.

#### Flooding/Drainage

Comments and concerns have been raised in third party representations in respect of surface water drainage at the site.

The application is made under Section 73 of the Town and Country Planning Act 1990. In considering such an application a local planning authority may only consider the “question of the conditions” and cannot therefore revisit the fundamental principle(s) of the development itself, which in this case would include matters pertaining to surface water drainage.

However, under Condition 9 of the previous planning permission 19/10958 details of a scheme to provide a surface water sustainable drainage system (SuDS) were required be submitted to and approved by the Local Planning Authority, and to be implemented prior to the occupation of the new dwellings. This condition and requirement would be carried forward as a requirement of any approval of the current S73 application.

#### Ecology / Habitat Mitigation Requirements

The applicant previously submitted appropriate details of biodiversity mitigation, compensation and enhancement for the development, including the final details and measures as outlined in the previously submitted Phil Smith Ecology Report dated September 2017. A condition can ensure that works proceed and measures are maintained in accordance with the details and recommendations as approved in the strategy (with any amendments agreed in writing).

The applicant, as part of the previous planning permission, submitted a Unilateral Undertaking (UU) to make provision/to mitigate the effects of the development in respect of habitats mitigation, in accordance with the policy requirements of the Local Plan (ENV1).

As the current Section 73 application to vary Conditions would result, in its effect, in the granting of a new planning permission, the requirements of the UU will need to be repeated in a new legal agreement. The applicant has confirmed their willingness to enter into a new legal agreement to meet these requirements.

#### Developer Contributions

As part of the development, the following will be secured via a Section 106 agreement (or unilateral undertaking):

- Habitats Mitigation

As part of the development, subject to any relief being granted, the following amount Community Infrastructure Levy will be payable:

Type	Proposed Floorspace (sq/m)	Existing Floorspace (sq/m)	Net Floorspace (sq/m)	Chargeable Floorspace (sq/m)	Rate	Total
Dwelling houses	448		448	448	£80/sqm	£46,040.62 *
Subtotal:	£46,040.62					
Relief:	£0.00					
Total Payable:	£46,040.62					

## 11 CONCLUSION

The proposed amendments are considered acceptable in terms of their scale, design and materials and would not have undue or adverse impacts on the character of the surrounding locality of upon the amenity of neighbours.

## 12 RECOMMENDATION

Delegated Authority be given to the Chief Planning Officer to **GRANT PERMISSION** subject to:

- i) the completion of a planning obligation entered into by way of a Section 106 Agreement or a Unilateral Undertaking to secure habitats mitigation
- ii) the imposition of the conditions set out below.

### Proposed Conditions:

1. The development permitted shall be carried out in accordance with the following approved plans:

SS.01 REV E	AMENDED SITE SECTIONS
LS.01 REV D	LANDSCAPING SCHEME
SL.01 REV G	SITE LAYOUT
FP.01 REV D	PLOT 1 PLANS
PE.01 REV E	PLOT 2 ELEVATIONS
FP.02 REV D	PLOT 2 PLANS
PE1.01 REV E	PLOT 1 ELEVATIONS

Reason: To ensure satisfactory provision of the development.



2. All external works (hard and soft landscape) shall be completed prior to first occupation in accordance with the approved plans and details (drawing reference LS.01 REV D) and maintained thereafter as built and subject to changes or additions only if and as agreed in writing with the Local Planning Authority.

Reason: To ensure the achievement and long term retention of an appropriate quality of development and to comply with policy ENV3 of the Local Plan Part One (Planning Strategy).

3. The first floor rooflight windows on the north-west elevation of the approved building identified as Plot 2 shall at all times be glazed with obscure glass.

Reason: To safeguard the privacy of the adjoining neighbouring properties in accordance with policy ENV3 of the Local Plan Part One (Planning Strategy).

4. The development permitted by this planning permission shall only be carried out in accordance with the submitted Flood Risk Assessment entitled 'proposed development at 54 Belmore Lane Lymington Flood Risk Assessment' compiled by Frank Tyhurst and dated June 2019 and the following mitigation measures:

- a) The finished floor levels shall be set no lower than 9.2 metres above Ordnance Datum (AOD).

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason: To minimise the risk of flooding to the proposed development and future occupants and to comply with policy CCC1 of the Local Plan Part One (Planning Strategy).

5. Within one calendar month of the permission hereby approved, a surface water sustainable drainage system (SuDS) shall be submitted to the Local Planning Authority for its written approval. The drainage scheme shall be designed and 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. The approved surface water drainage system shall be installed and implemented prior to the first occupation of the dwellings hereby approved, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to ensure that the drainage arrangements are appropriate and in accordance with Policy CCC1 of the Local Plan Part One and New Forest National Park Authority Strategic Flood Risk Assessment for Local Development Frameworks.

6. The trees on the site which are shown to be retained on the approved plans shall be protected during site clearance, demolition and building works in accordance with the measures set out in the submitted Tree Report ref KJF Consultancy Tree Report (Ref - TR.54.BL.L.04.12.19, Arboricultural Method Statement and Tree Protection Plan (TPP.AMS.04.12.19) dated 04.12.19 while in accordance with the recommendations as set out in BS5837:2012.

Development shall only take place in accordance with these details.

Reason: To ensure the retention of existing trees and natural features and avoidance of damage during the construction phase in accordance with Policy ENV4 of the Local Plan Part One (Planning Strategy).

7. The development hereby permitted shall not be occupied until the parking spaces and car ports shown on the approved plans have been provided. The spaces shown on the approved plans for access, turning, parking, and garaging of motor vehicles shall be retained and kept available for the parking and garaging of motor vehicles for the dwellings hereby approved at all times.

Reason: To ensure adequate parking provision is made in the interest of highway safety and in accordance with Policy ENV3 and CCC2 of the Local Plan Part One (Planning Strategy).

8. 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

- c) All measures forming part of that mitigation package have been provided to the Local Planning Authority.

Reason: There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some European designated nature conservation sites in the Solent catchment. The PUSH Integrated Water Management Strategy has identified that there is uncertainty as to whether new housing development can be accommodated without having a detrimental impact on the designated sites within the Solent. Further detail regarding this can be found in the appropriate assessment that was carried out regarding this planning application. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to ensure that sufficient mitigation for is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council have had regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 or any subsequent re-enactment thereof, the existing access to the site shall be stopped up and abandoned. The footway crossing / verge shall be reinstated, in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority, prior to the first occupation of the dwelling(s) hereby approved.

Reason: In the interest of highway safety and in accordance with Policy ENV3 and CCC2 of the Local Plan Part One (Planning Strategy).

10. No other windows or rooflights other than those hereby approved shall be inserted into the roofspace of the dwellings hereby approved unless express planning permission has first been granted.

Reason: To safeguard the privacy of the adjoining neighbouring properties in accordance with policy ENV3 of the Local Plan Part One (Planning Strategy).

11. Prior to the first occupation of either new dwelling, the previously approved strategy of measures for biodiversity mitigation, compensation and enhancement (as previously agreed in writing by the Local Planning Authority in connection with Planning Permission 19/10958) shall be undertaken in accordance with the details and recommendations approved. Thereafter, unless otherwise agreed in writing by the Local Planning Authority, the mitigation measures shall be permanently maintained and retained in accordance with the approved details.

Reason: To safeguard protected species in accordance with Policy DM2 of the Local Plan for the New Forest District outside the National Park (Part 2 : Sites and Development Management).

12. The dwellings hereby approved shall not be first occupied until
- (a) details of the treatment of the boundaries of the site have been approved in writing by the Local Planning Authority, and
  - (b) these means of enclosure have been implemented in accordance with the details thus approved

Reason: To ensure that the development takes place in an appropriate way in accordance with Policy ENV3 of the Local Plan Part One (Planning Strategy).

13. The first floor bathroom window(s) on the rear (South West facing) elevation of Plot 1 shall be permanently glazed with obscured glass.

Reason: To safeguard the privacy of the adjoining neighbouring properties in accordance with Policy ENV3 of the Local Plan 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

14. The external facing materials of the walls and roofs of the approved dwellings shall accord with the materials details previously agreed by the local planning authority on 29th July 2020 (reference planning approval 19/10958), unless otherwise agreed in writing by the local planning authority.

Reason: To ensure an acceptable appearance of the building in accordance with policy ENV3 of the Local Plan Part One (Planning Strategy) for the New Forest District outside the National Park.

**Further Information:**

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# New Forest

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## PLANNING COMMITTEE

February 2021

### Item No:

54 Belmore Lane  
Lymington  
SO41 3NN  
20/11060

Scale 1:1250

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