

Application Number: 15/10834 Variation / Removal of Condition

Site: SPRING LODGE, SPRING LANE, ASHLEY, NEW MILTON
BH25 5QB

Development: Removal of Condition 7 of Planning Permission 08/91825 to
remove requirement to retain car parking

Applicant: Mrs Eggington

Target Date: 21/08/2015

1 REASON FOR COMMITTEE CONSIDERATION

Contrary to Town Council view

2 DEVELOPMENT PLAN AND OTHER CONSTRAINTS

Historic Land Use

3 DEVELOPMENT PLAN, OBJECTIVES AND POLICIES

Core Strategy

Objectives

- 1. Special qualities, local distinctiveness and a high quality living environment
- 6. Towns, villages and built environment quality

Policies

- CS2: Design quality
- CS24: Transport considerations

Local Plan Part 2 Sites and Development Management Development Plan Document

None relevant

4 RELEVANT LEGISLATION AND GOVERNMENT ADVICE

Section 38 Development Plan
Planning and Compulsory Purchase Act 2004
National Planning Policy Framework

5 RELEVANT SUPPLEMENTARY PLANNING GUIDANCE AND DOCUMENTS

New Milton Local Distinctiveness

6 RELEVANT PLANNING HISTORY

14/10544 Removal of Condition 7 of Planning Permission 08/91825 to remove
requirement to retain car parking. Refused 26/08/2014

13/11374 Parking space to front of property. Withdrawn by applicant 18/02/2014

08/91825 House. Granted, subject to condition. 10/04/2008

The planning enforcement history is summarised in Para. 14.12 - 14.16.

7 PARISH / TOWN COUNCIL COMMENTS

New Milton Town Council: OBJECT

Spring Lodge would not have received planning permission to build had parking not been provided on-site, given the nature of this rural lane.

The Town Council cannot get involved in boundary disputes or other associated civil issues.

8 COUNCILLOR COMMENTS

None received

9 CONSULTEE COMMENTS

Hampshire County Council Highways Engineer - No objection (no conditions).

The records maintained by the highway authority indicate that Spring Lane is unclassified - unadopted, i.e. not a highway maintainable at public expense.

Furthermore, given that it has not been recorded as prospectively maintainable under the New Roads and Street Works Act 1991, the conclusion must be that there are no public rights over this road either by vehicle or foot.

On this basis the highway authority has neither direct jurisdiction nor control over the impact of the removal of Condition 7 upon the safety and convenience of users of this private road. So on this basis the highway authority consider that to raise an objection to the removal of the condition would not be sustainable and could open up the local planning authority to an award of costs on the grounds of unreasonable behaviour, should an appeal be lodged. It should also be noted that in this instance, having due regard to the above, should the local planning authority determine to refuse the current application the highway authority would decline to be party to the defence of any subsequent appeal.

Southern Gas Networks – No comment

Land Drainage – No comment

Environmental Health (Land Contamination) – No concern

10 REPRESENTATIONS RECEIVED

11 Letters of representation have been received, objecting to this application for the following reasons;

- This would lead to parking on the lane and obstructions and delays to emergency vehicles and Andrew Lane is not a suitable alternative access route.

- Owners of Sunshine Cottage will have nowhere to park and parking on Lower Ashley Road will cause a traffic hazard
- Residents have only right of access over the lane and the established situation is that residents do not park on the lane.
- The fact that this is a private road should not alter highways considerations
- Matters concerning parking on private land opposite the site.
- If no on-site parking were provided then this would set a precedent for other development along the lane, leading to parking on the lane endangering highway safety, wildlife and detrimental to the outlook of neighbouring residents.
- Other properties along Spring Lane have parking provided.
- There has been no change in circumstances and as such the condition should remain and NFDC should take enforcement action.
- Matters concerning boundaries associated with new development.
- Matters concerning the removal of the front boundary fence of Sunshine Cottage
- Sale of the property without parking provision breach of planning consent.
- Parking on the lane would result in accidents due to the absence of street lighting

11 CRIME & DISORDER IMPLICATIONS

None

12 LOCAL FINANCE CONSIDERATIONS

Local financial considerations are not material to the decision on this application

13 WORKING WITH THE APPLICANT/AGENT

In accordance with paragraphs 186 and 187 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 take 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.

This is achieved by

- Strongly encouraging those proposing development to use the very thorough pre application advice service the Council provides.
- Working together with applicants/agents to ensure planning applications are registered as expeditiously as possible.
- Advising agents/applicants early on in the processing of an application (through the release of a Parish Briefing Note) as to the key issues relevant to the application.
- Updating applicants/agents of issues that arise in the processing of their applications through the availability of comments received on the web or by direct contact when relevant.
- Working together with applicants/agents to closely manage the planning application process to allow an opportunity to negotiate and accept amendments on applications (particularly those that best support the Core Strategy Objectives) when this can be done without compromising government performance requirements.

- Advising applicants/agents as soon as possible as to concerns that cannot be dealt with during the processing of an application allowing for a timely withdrawal and re-submission or decision based on the scheme as originally submitted if this is what the applicant/agent requires.
- When necessary discussing with applicants/agents proposed conditions especially those that would restrict the use of commercial properties or land when this can be done without compromising government performance requirements.

In this case the application was acceptable as submitted no specific further actions were required.

14 ASSESSMENT

- 14.1 The application site is located within the built up area and is one of a row of mixed detached residential properties accessed along Spring Lane, an unadopted, unmade road. The application site consists of a two storey detached house known as Spring Lodge which was constructed in the grounds of Sunshine Cottage (granted consent under planning approval 08/91825).
- 14.2 When planning permission was granted for Spring Lodge in 2008 a condition (No 7) was attached relating to parking on the site. This condition states:
- "The development hereby permitted shall not be occupied until the arrangements for parking within its curtilage have been implemented. These areas shall be kept available for their intended purposes at all times."*
- The reason for this condition was : *"To ensure adequate parking provision is made in the interests of highway safety and to comply with policies DW-T8 and DW-T9 of the adopted New Forest Local Plan First Alteration"*
- 14.3 The application detailed on the approved plans show the provision of two parking spaces specifically for Sunshine Cottage to the rear of Sunshine Cottage with access gained from the access to the east side of Spring Lodge
- 14.4 The Council understands that further to its construction, Spring Lodge and Sunshine Cottage remained within the same ownership. However, subsequently Sunshine Cottage was sold off separately and the land parcel for Sunshine Cottage did not include the parking spaces subject to condition 7. There has been a long enforcement history largely relating to this planning condition.
- 14.5 Subsequent to the sale of Sunshine Cottage, applications have been submitted seeking to remedy this situation. In 2013 under PA 13/11374 an application to create parking in the front garden area of Sunshine Cottage was submitted. This was however subsequently withdrawn as the works detailed, in the laying of hardstanding would have constituted permitted development. Furthermore, in the event that alternative parking was provided condition 7 of PA 08/91825 would still apply.

- 14.6 On this basis an application was then made for the removal of Condition 7 from PA 08/9182. This application was refused due to concerns over highway safety raised by the Highway Authority, more specifically that in the absence of on-site parking provision this would encourage parking on Spring Lane which would interrupt the free flow of traffic.
- 14.7 The current application was submitted by the applicant, again seeking to remove condition 7 from PA 08/91825. There was an informal lay-by on the opposite side of the road staggered to the south-east of the site. This lay-by has recently been closed off, with a fence delineating a land ownership boundary. This has resulted in a narrowing of the track which forms Spring Lane at this point with the remainder of the lane remaining unaffected.
- 14.8 As highway safety is the key consideration the Highway Authority have been consulted. They have reviewed their position and advise that as this is an unclassified unadopted road that they have neither direct jurisdiction nor control over its use. On this basis they cannot sustain an objection to the removal of the condition and would be unable to support the Council at appeal should the application be refused on highway safety grounds.
- 14.9 The new fence reduces the width of Spring Lane but the parking of vehicles on the lane cannot be controlled by the Highway Authority. Indeed, this is normal practice in most residential areas where on street parking is not restricted. The width of the road outside of Sunshine Cottage is now approximately 4.6m. Given that a 1.8 metre width for on street parking would be ample for most cars, a minimum of 2.8 metres would remain for vehicles to pass. Sunshine Cottage is a modest two bedroom property and so the likely parking generation will be limited. Therefore any parking of cars could restrict but not block the lane
- 14.10 In response to other matters raised through representation any matters relating to land ownership, the sale of land and boundary disputes are private civil issues. These are outside of the scope of planning control. Furthermore in respect of comments relating to the consequences of parking on the lay-by opposite as this has now been fenced it is no longer possible to park a vehicle in this area
- 14.11 Given the above and on the basis of the Highway Authority's comments, it is not considered that the Council can resist the removal of the condition on highway safety grounds and as such, approval of this application is recommended.
- 14.12 Enforcement History
An enforcement case relating to non-compliance with condition 7 was first opened in 2009. There were numerous site visits and extensive correspondence and in 2011 it was concluded that the parking spaces for Sunshine Cottage were, in fact, available. A new case was opened in 2011 following further complaints and it was subsequently concluded that it would not be expedient to take enforcement action.
- 14.13 A further case was opened in 2014 and, after a review, it was concluded that there was a breach of condition. There was consultation with the interested parties and a corporate decision was

made that the Council would not take enforcement action. It was at this time that the owner of Spring Lodge was invited to make a new application for removal of the condition.

14.14 Conclusion

On the basis of the above it is not considered that the Council can resist the removal of the planning condition on highway safety grounds, it is recommended that this application is approved.

- 14.15 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, on balance, outweigh the interference that may result to the owners of Sunshine Cottage and any other third party by their inability to park in the area previously designated.

15. RECOMMENDATION

GRANT the VARIATION of CONDITION

Notes for inclusion on certificate:

1. In accordance with paragraphs 186 and 187 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.

In this case the application was acceptable as submitted no specific further actions were required.

Further Information:

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**Planning Development
Control Committee
October 2015**

Item No: 3d
Spring Lodge
Spring Lane
Ashley New Milton
15/10834
SZ2594

Scale 1:1250

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

