

**Application Number:** 16/10022 Full Planning Permission

**Site:** 29 FAIRVIEW DRIVE, HYTHE SO45 5GX

**Development:** Single-storey rear extension; raised decking; fenestration alterations & handrail to side elevation; access alterations to No 29; two bungalows; access; parking

**Applicant:** Mr Royston-Airey

**Target Date:** 03/03/2016

**Target Date:** 31/08/16

---

## 1 REASON FOR COMMITTEE CONSIDERATION

To agree the waiving of the affordable housing contribution; previous Committee Consideration (Item 3i March 2016)

## 2 DEVELOPMENT PLAN AND OTHER CONSTRAINTS

Built-up area

## 3 DEVELOPMENT PLAN, OBJECTIVES AND POLICIES

### Core Strategy

#### Objectives

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

#### Policies

- CS2: Design quality
- CS15: Affordable housing contribution requirements from developments
- CS24: Transport considerations
- CS25: Developers contributions

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

DM3: Mitigation of impacts on European nature conservation sites

## 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

SPD - Housing Design, Density and Character  
SPD - Mitigation Strategy for European Sites

## **6 RELEVANT PLANNING HISTORY**

- 6.1 Erection of new dwelling with integral garage & form new access (93/52565) - refused 13/9/93
- 6.2 Single-storey rear extension; raised decking; fenestration alterations & handrail to side elevation; access alterations to No 29; two dwellings; new access; associated parking (15/11604) - withdrawn 23/12/15

## **7 PARISH / TOWN COUNCIL COMMENTS**

Hythe & Dibden Parish Council: recommend refusal - there is potential for the development to overlook properties of Whittington Close; overdevelopment of the site; concerns that the development could increase the possibility of flooding into Whittington Close

## **8 COUNCILLOR COMMENTS**

None

## **9 CONSULTEE COMMENTS**

- 9.1 Hampshire County Council Highway Engineer: No objection subject to conditions on car and cycle parking
- 9.2 Tree Officer: No objection subject to tree protection condition
- 9.3 Land Drainage: No objection subject to conditions

## **10 REPRESENTATIONS RECEIVED**

- 10.1 4 letters of objection from local residents/neighbouring properties:- overdevelopment of the site; development would be out of keeping with other properties in Fairview Drive; inadequate on-site parking; adverse impact on highway safety; concerns about adequacy of drainage arrangements and the potential for the development to cause flooding of downhill properties; adverse impact on trees; loss of trees and vegetation would result in overlooking of properties to rear to detriment of neighbours' privacy; overlooking of property to north side; concerns about eaves and guttering overhanging boundary

## **11 CRIME & DISORDER IMPLICATIONS**

No relevant considerations

## **12 LOCAL FINANCE CONSIDERATIONS**

If this development is granted permission and the dwellings built, the Council will receive £2304 in each of the following six years from the dwellings' completion, and as a result, a total of £13,824 in government grant under the New Homes Bonus will be received.

From the 6 April 2015 New Forest District Council began charging the Community Infrastructure Levy (CIL) on new residential developments.

Based on the information provided at the time of this report this development has a CIL liability of £10,632.00.

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

## 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, all the above apply and as the application was acceptable as submitted no specific further actions were required.

## 14 ASSESSMENT

### 14.1 Introduction

14.1.1 This application was initially considered at the March 2016 Development Control Committee. The original Committee report is set out in the following paragraphs 14.2.1 to 14.2.14

### 14.2 March 2016 Committee Report

14.2.1 Seen from the road to the front of the site, 29 Fairview Drive is a detached bungalow. The property does, however, have some accommodation within its roof space that is served by a rear dormer and a small gable-end window. Furthermore, the property occupies a sloping site, so that from the rear, the ground floor of the dwelling is elevated above a small basement and adjacent areas of rear garden. The property also has a rear conservatory and balconies that are both elevated above adjacent areas of rear garden. The property occupies

a much larger plot than is typical of the area. In places, the plot is very steeply sloping. Although the front parts of the site, closest to Fairview Drive are either flat or gently sloping, there is quite a dramatic downhill slope to the rear part of the site, meaning that properties to the rear in Whittington Close are set at a much lower level than the dwelling at 29 Fairview Drive. The site also slopes downwards from south to north, meaning that the adjacent chalet-style bungalow at 35 Fairview Drive is set at a lower level than the application site. The adjacent chalet bungalow at 27 Fairview Drive is set at a similar level to the existing dwelling on the application site. The steeply sloping rear parts of the site are thickly vegetated with shrubs and mature (mainly deciduous) trees.

- 14.2.2 The application seeks to remodel the existing dwelling. The northern end of the existing building would be demolished, as would the rear conservatory. A new flat-roofed rear extension is proposed across the full length of the retained rear elevation that would lead out onto a new raised decking / balcony area. To the north side of the remodelled dwelling, it is proposed to build 2 new detached bungalows of a similar design. 2 new vehicular crossovers are proposed onto Fairview Drive, one being for the existing dwelling and the other for one of the proposed new dwellings. 2 on-site car parking spaces would be provided for each dwelling. The application replicates an application that was withdrawn in December 2015 because of difficulties in agreeing Section 106 legal agreement requirements within the requisite 8-week timeframe.
- 14.2.3 It should be noted that an application for a single 2-storey dwelling was refused planning permission in 1993 as it was deemed to be intrusive and out of keeping with the site's surroundings. It was also considered that the dwelling would have an overbearing impact on the neighbouring property and furthermore, it was felt the proposal would adversely affect a group of trees.
- 14.2.4 The development now proposed is a very different proposal to the scheme refused planning permission 23 years ago, and policies have materially changed since that time. Seen from the street, the proposed dwellings would be set in plots that would be 10.5 metres to 12 metres in width. The plots would be slightly narrower than is typical of other properties in Fairview Drive, but not so much narrower as to appear out of keeping in the streetscene. For example, 27 Fairview Drive has a plot width of 11 metres and the recently approved dwellings at Cussens Day Centre would have plot widths of about 11-12 metres. The dwellings have been designed to have reasonable areas of lawned front gardens, and therefore the frontage of the plots would not be too dominated by hardstanding. The single-storey design of the 2 new dwellings would be sympathetic to the site's context, and the remodelled existing dwelling would also be visually appropriate. The dwellings would have acceptable areas of useable rear garden. Because of the site's steeply sloping nature, it is felt that the proposal would only be acceptable if permitted development rights are removed, given that normally 'permitted' development could have an unacceptably poor visual impact in this context. Overall, subject to such a condition, and conditions to secure appropriate materials, and landscaping details, the development is one that would have an acceptable impact on the character and appearance of the area.

- 14.2.5 The proposed single-story bungalow adjacent to 35 Fairview Drive would have some impact on the outlook of that neighbouring property, which does have windows on its side elevation facing the application site. However, given the proposed bungalow would be relatively modest in height with a fully hipped roof, and given the 7.5 metre gap between the 2 buildings, it is felt the development's impact on the light and outlook of 35 Fairview Drive would be within acceptable limits (even taking into account changes of levels). The remodelled existing dwelling would not have a significant additional impact on the neighbouring property at 27 Fairview Drive, and the development's impact on this property is considered to be acceptable. The properties in Whittington Close to the rear of the site would be set about 35 to 40 metres away from the proposed new bungalows and remodelled dwelling. Even taking into account the marked difference in levels, it is felt this degree of separation would be sufficient to ensure that the privacy of properties in Whittington Close is not undermined. Overall, it is considered that the proposed development would have an acceptable relationship to neighbouring dwellings. It should be noted that the submitted plans do not suggest that eaves and guttering would overhang the neighbouring property, but in any event this would be a civil matter.
- 14.2.6 Individually, the existing trees on the site have poor form, and therefore they are not worthy of protection with a Tree Preservation Order. The dwellings would be sufficiently close to trees that some cutting back and removal of trees will be necessary to accommodate the proposed development. It is felt that the likely tree loss arising from this proposal would be justified, given the trees' poor form, subject to securing appropriate replacement planting through a landscape condition.
- 14.2.7 The new access points and the level of on-site parking that would be secured would be acceptable from a highway safety perspective.
- 14.2.8 Concerns have been raised about the proposed drainage arrangements and the potential for increased surface water runoff to cause flooding of adjacent properties. These concerns are understood, but having regard to the comments of the Council's drainage team, it is felt that an acceptable drainage scheme could reasonably be provided for this development, and this is a matter that could be reasonably conditioned.
- 14.2.9 In accordance with the Habitat Regulations 2010 an assessment has been carried out of the likely significant effects associated with the recreational impacts of the residential development provided for in the Local Plan on both the New Forest and the Solent European Nature Conservation Sites. It has been concluded that likely significant adverse effects cannot be ruled out without appropriate mitigation projects being secured. In the event that planning permission is granted for the proposed development, a condition is recommended that would prevent the development from proceeding until the applicant has secured appropriate mitigation, either by agreeing to fund the Council's Mitigation Projects or otherwise providing mitigation to an equivalent standard. In this case, the full mitigation contribution that would be required would be £8500, which could potentially be met in part through CIL payments.

- 14.2.10 In line with Core Strategy Policy CS15, the proposed development is one that would be expected to secure a contribution to affordable housing. In this case, the target contribution would be £50,140. At the time of writing, a Section 106 legal agreement remains to be completed, although it is understood that the applicants are willing to enter the requisite agreement.
- 14.2.11 Overall, the proposed development would be consistent with Local Plan policies and objectives. The development would be appropriate to its context and could be implemented without causing harm to the character and appearance of the area and the amenities and privacy of neighbouring properties. The development would have an acceptable impact on trees and highway safety. Subject to conditions and subject to the prior completion of a Section 106 legal agreement to secure contributions to affordable housing, the development is one that can reasonably be recommended for permission.

### 14.3 Post March 2016 Committee update

- 14.3.1 At their March 2016 meeting, the Development Control Committee accepted the officers' recommendation and resolved that the Executive Head of Economy, Housing and Planning be authorised to grant planning permission subject to conditions and subject to the prior completion of a Section 106 legal agreement in respect of affordable housing provision.
- 14.3.2 Since March Committee, work has been undertaken in preparing and drawing up the Section 106 legal agreement that the Committee resolution requires to be completed. However, the requisite Section 106 legal agreement has never actually been completed. The need to complete the Section 106 legal agreement has now been overtaken by other events. Specifically:-
- 14.3.3 On 19<sup>th</sup> May 2016 the Government issued planning guidance setting out the specific circumstances in which contributions for affordable housing and tariff style planning obligations (section 106 agreements) should not be sought from small scale and self-build development. This guidance has been reissued following the order of the Court of Appeal dated 13<sup>th</sup> May 2016 (*West Berkshire District Council and Another v The Secretary of State for Communities and Local Government*). The planning guidance specifies the circumstances in which contributions should not be sought as follows:

*“Contributions should not be sought from developments of 10 units or less and which have a maximum combined gross floorspace of no more than 1,000 sqm; In designated rural areas, local planning authorities may choose to apply a lower threshold of 5 units or less...; Affordable housing and tariff style contributions should not be sought from any development consisting only of the construction of a residential annex or extension to an existing house”*

This national guidance is at odds with Policy CS15 of the Council's Core Strategy which requires many small scale housing developments including the current application proposals to make affordable housing provision.

- 14.3.4 The presumption in favour of the development plan remains, in that the decision should be taken in accordance with the plan unless material considerations indicate otherwise. The new guidance is a material consideration which post-dates the adoption of the Local Plan. It is for the Council to decide which should prevail in the determination of a planning application. However, the Secretary of State, through his Inspectors can be anticipated to give greater weight to the Government's national guidance unless there are reasons to make an exception.
- 14.3.5 While the need for affordable housing in this District is pressing, this in itself is unlikely to be considered by the Secretary of State as sufficient reason for the Council to apply its own development plan policy rather than applying national policy. Therefore, it is recommended that no affordable housing or tariff style contributions are sought from this development, in accordance with national Planning Practice Guidance, contrary to the provisions of Policy CS15 of the Core Strategy. Accordingly, planning permission should now be granted for this proposal.
- 14.3.6 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.

## **15. RECOMMENDATION**

### **Grant Subject to Conditions**

#### **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: ra sht 3 rev X, ra sht 5 rev X, ra sht 4 rev X, ra sht 2 rev X, ra sht 1 rev X, ra sht 6 rev X, ra sht 7 rev X.  
  
Reason: To ensure satisfactory provision of the development.

3. No development shall be carried out until proposals for the mitigation of the impact of the development on the New Forest and Solent Coast European Nature Conservation Sites have been submitted to and approved in writing by the local planning authority, and the local planning authority has confirmed in writing that the provision of the proposed mitigation has been secured. Such proposals must:
- (a) Provide for mitigation in accordance with the New Forest District Council Mitigation Strategy for European Sites SPD, adopted in June 2014 (or any amendment to or replacement for this document in force at the time), or for mitigation to at least an equivalent effect;
  - (b) Provide details of the manner in which the proposed mitigation is to be secured. Details to be submitted shall include arrangements for the ongoing maintenance and monitoring of any Suitable Alternative Natural Green Spaces which form part of the proposed mitigation measures together with arrangements for permanent public access thereto.
  - (c) The development shall be carried out in accordance with and subject to the approved proposals.

Reason: The impacts of the proposed development must be mitigated before any development is carried out in order to ensure that there will be no adverse impacts on the New Forest and Solent Coast Nature Conservation Sites in accordance with Policy DM3 of the Local Plan Part 2 and the New Forest District Council Mitigation Strategy for European Sites Supplementary Planning Document.

4. Before first occupation of the development hereby approved the applicant must design and install a surface water sustainable system to cater for the new impermeable areas (i.e. roofs) on the proposed development such that no additional or increased rate of flow of surface water will drain to any water body or adjacent land for storms up to 1 in 100 years including climate change.

Reason: In order to ensure that the drainage arrangements are appropriate and in accordance with Policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy) and the New Forest District Council and New Forest National Park Authority Strategic Flood Risk Assessment for Local Development Frameworks.

5. Before the development is first occupied, details of the future maintenance of the approved drainage system shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage scheme shall thereafter be maintained in accordance with the approved details at all times.

Reason: In order to ensure that the drainage arrangements are appropriate and in accordance with Policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy) and the New Forest District Council and New Forest National Park Authority Strategic Flood Risk Assessment for Local Development Frameworks.



6. Before development commences, samples or exact details of the facing and roofing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall only be implemented in accordance with the approved details.

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.

7. Before development commences a scheme of landscaping of the site shall be submitted for approval in writing by the Local Planning Authority. This scheme shall include :

- (a) the existing trees and shrubs which have been agreed to be retained;
- (b) a specification for new planting including replacement tree planting (species, size, spacing and location);
- (c) areas for hard surfacing and the materials to be used;
- (d) the treatment of the boundaries of the site and other means of enclosure;
- (e) a method and programme for its implementation and the means to provide for its future maintenance.

No development shall take place unless these details have been approved and then only in accordance with those details.

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

8. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size or species, unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure the appearance and setting of the development is satisfactory and to comply with Policy CS2 of the Local Plan for New Forest District outside the National Park (Core Strategy).

9. Before development commences the following levels details shall be submitted to and approved in writing by the Local Planning Authority:-

- a) the proposed slab levels of the dwellings in relationship to the existing ground levels set to an agreed datum;
- b) the proposed finished garden levels relative to existing levels (supported by cross-sections).

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. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any re-enactment of that Order) no extension otherwise approved by Classes A, B or C of Part 1 of Schedule 2 to the Order, or garage or other 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 site, 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).

11. The development hereby permitted shall not be occupied until the spaces shown on approved plans for the parking of motor vehicles and cycles have been provided. These areas shall subsequently be kept available for the parking of motor vehicles and cycles for the dwellings hereby approved at all times.

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

**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, all the above apply and as the application was acceptable as submitted no specific further actions were required.

2. In discharging condition No. 3 above the Applicant is advised that appropriate mitigation is required before the development is commenced, either by agreeing to fund the Council's Mitigation Projects or otherwise providing mitigation to an equivalent standard. Further information about how this can be achieved can be found here <http://www.newforest.gov.uk/article/16478/>

**Further Information:**

Major Team  
Telephone: 023 8028 5345 (Option 1)



**New Forest**  
DISTRICT COUNCIL

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

David Groom  
Service Manager  
Planning and Building Control  
New Forest District Council  
Appletree Court  
Lyndhurst  
SO43 7PA

**Planning Development  
Control Committee  
August 2016**

**Item No: 3k**

29  
Fairview Drive  
Hythe  
16/10022  
SU4106

Scale 1:1250

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

