

Application Number: 16/10282 Full Planning Permission

Site: 12 HIGH STREET, LYMINGTON SO41 9AA

Development: Application for the Modification or Discharge of a Section 106
Obligation in respect of Planning Permission 16/10282 for
Creation of 1 flat; partial demolition; extend shop; one & two
storey rear extension; 1 pair semi-detached houses; landscaping

Applicant: Mr Day

Target Date: 06/05/2016

1 REASON FOR COMMITTEE CONSIDERATION

Contrary to policy CS15 (Affordable housing contribution requirements from developments)

2 DEVELOPMENT PLAN AND OTHER CONSTRAINTS

Built up area
Conservation Area
Town Centre

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

- CS1: Sustainable development principles
CS2: Design quality
CS3: Protecting and enhancing our special environment (Heritage and Nature Conservation)
CS10: The spatial strategy
CS15: Affordable housing contribution requirements from developments
CS20: Town, district, village and local centres
CS25: Developers contributions

Local Plan Part 2 Sites and Development Management Development Plan Document

- NPPF1: National Planning Policy Framework – Presumption in favour of sustainable development
DM1: Heritage and Conservation
DM3: Mitigation of impacts on European nature conservation sites
DM14: Primary shopping frontages
LYM9: Bungalow plots

4 RELEVANT LEGISLATION AND GOVERNMENT ADVICE

Section 38 Development Plan
Planning and Compulsory Purchase Act 2004
National Planning Policy Framework
Achieving Sustainable Development
NPPF Ch.2 - Ensuring the vitality of town centres
NPPF Ch. 7 - Requiring good design
NPPF Ch. 12 - Conserving and enhancing the historic environment
Section 72 General duty as respects conservation areas in exercise of planning functions
Planning (Listed Buildings and Conservation Areas) Act 1990

5 RELEVANT SUPPLEMENTARY PLANNING GUIDANCE AND DOCUMENTS

SPD - Housing Design, Density and Character
SPG - Lymington - A Conservation Area Appraisal
SPD - Lymington Local Distinctiveness
SPD - Mitigation Strategy for European Sites

6 RELEVANT PLANNING HISTORY

14/10773 - create 2 flats through the partial demolition and change of use to existing rear extension and the addition of a first floor rear extension. Refused 1.8.14

7 PARISH / TOWN COUNCIL COMMENTS

Lymington and Pennington Town Council - recommend permission and would not accept a delegated refusal

8 COUNCILLOR COMMENTS

None received

9 CONSULTEE COMMENTS

None

10 REPRESENTATIONS RECEIVED

None

11 CRIME & DISORDER IMPLICATIONS

None

12 LOCAL FINANCE CONSIDERATIONS

Local finance considerations are not material to 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 all the above apply and as the application was acceptable as submitted, no specific further actions were required.

14 ASSESSMENT

14.1 An application for the provision of three dwellings was approved by the Local Planning Authority in June 2016. The permission is subject to a Section 106 Agreement dated May 4th 2016 requiring the development to make a contribution of £81,037.50 towards affordable housing.

14.2 An application has now been submitted to the Local Planning Authority that seeks to modify/discharge the S.106 Agreement so that no affordable housing will be payable. The application has been submitted in the light of recent changes to national planning guidance. Specifically:

On 28th November 2014 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 13th 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”

- 14.3 The only matter that needs to be considered is whether the previously secured affordable housing obligation should be discharged in light of this recent change to national guidance which is at odds with Policy CS15 of the Council's Core Strategy. In these circumstances, the law gives no priority to either the Council's Core Strategy or to the Government's national guidance. It is for the decision maker to assess both policies as “material considerations” and to decide which should have greater weight 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 exceptional circumstances which indicate otherwise. While the need for affordable housing in this District is pressing, this in itself does not give rise to the sort of circumstances that can be considered exceptional.
- 14.4 Accordingly, it is felt that the new national guidance should carry greater weight than the Council's own Core Strategy Policy CS15 and therefore, it is recommended that the affordable housing contribution secured within the existing S.106 Agreement is an obligation that should be discharged. In essence, it is felt that the development should be allowed to proceed without any requirement to make a contribution towards the provision of affordable housing.
- 14.5 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.

CIL Summary Table

| Description of Class | GIA New | GIA Existing | GIA Net Increase | CIL Liability |
|----------------------|---------|--------------|------------------|---------------|
| Dwelling houses | 207 | 50 | 157 | £12,560.00 |

15. RECOMMENDATION

That the Section 106 Affordable Housing Obligation be discharged in full and that the Service Manager Planning and Building Control be authorised to vary the Section 106 legal agreement accordingly.

Further Information:

Major Team

Telephone: 023 8028 5345 (Option1)



New Forest
DISTRICT COUNCIL

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**Planning Development
Control Committee
October 2016**

Item No: 3a

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High Street
Lymington
16/10282
SZ3295

Scale 1:1250

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

