



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2025

Appeal Ref: APP/B9506/X/24/3347277

Shirley, Bartley Road, Woodlands, Southampton, Hants, SO40 7GQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Nick Lake against the decision of New Forest National Park Authority.
 - The application ref 23/01489LDCP, dated 1 November 2023, was refused by notice dated 17 May 2024.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is proposed porch and rear extension.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I consider that this appeal can be determined without a site visit without causing injustice to any party. This is because I have been able to reach a decision based on the documentary evidence submitted.
3. In an LDC appeal, the planning merits are not relevant. My decision rests on the application of relevant planning law and judicial authority to the facts of the case.

Planning History

4. Planning permission was granted on 22 October 1991 (Ref: NFDC/91/47834) for "Erect house with integral garage (demolish extg bungalow)" subject to conditions. Condition one states, "Notwithstanding the provisions of the Town and Country Planning General Development Order 1988 no extension shall be erected onto the approved house without the prior express permission of the Local Planning Authority" (hereafter referred to as the 1991 permission). The reason for this condition was "further additions are likely to unacceptably increase the impact the dwelling has on its rural surroundings in comparison with the modest bungalow which presently exists on the site."
5. On 23 January 1992, the Council wrote (Ref: DRS/JT/MMP/47834) indicating it had no objection to the repositioning of a bedroom wall and the insertion of a window, saying "these minor amendments may be construed as complying with the planning consent."
6. Planning permission (Ref: NFDC/90/40688) was refused and later dismissed on appeal in March 1991 for the erection of a house and attached double garage.

Main Issue

7. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well founded.

Reasons

8. The appeal relates to a detached dwelling. The Council contends that the proposed LDC development would not be permitted development (PD) because of condition one imposed on the 1991 permission.
9. There is no dispute that the appeal dwelling was not built entirely in accordance with the 1991 permission. A condition removing permitted development rights would only take effect once the permission is implemented. Accordingly, it is argued that the 1991 permission has not been implemented, and its conditions therefore do not apply to the appeal dwelling.
10. In relation to size, there is no dispute that the overall ridge height of the dwelling is increased from 8 metres to 8.8 metres, the width is increased from 10.8 metres to 11.1 metres, the depth is increased from 7.9 metres to 9.15 metres, the rear projection extends approximately 90cm further, the ridge height of the rear projection is increased from 7.45 metres to 8.2 metres, the height of the front porch is increased from 3.4 metres to 3.8 metres and its width is increased from 1.9 metres to 2.5 metres. The chimney height has been increased from 8.6 metres to 10.4 metres. In addition, other alterations include insertion of two roof lights and the removal of one door on the east elevation, the insertion of a hexagonal window on the southern gable end, two small windows and one door on the south elevation, and one small window inserted to the ground floor north elevation. Also, a loft conversion has been carried out. Furthermore, albeit mentioned in the description of development, no integral garage has been built and did not form part of the original drawings.
11. The appellant has drawn my attention to two appeal decisions, the first appeal decision, reference APP/B9506/X/13/2203144 relates to a site in Fordingbridge. This was an LDC appeal concerning a bungalow that was not built entirely in accordance with the approved plans. In their decision the Inspector refers to case law, Sage v Secretary of State for Environment, Transport & Regions, and Maidstone BC [2003] UKHL 22, & Copeland BC v Secretary of State for the Environment [1976] JPL 304. The case of Sage primarily relates to whether a building is 'substantially complete'. The Inspector using a quote from Sage concluded that this was "an unusual case" and the works carried out were unauthorised development which had become lawful over the passage of time because what was built was a "material departure" from the approved planning permission. The Inspector concluded therefore that the conditions imposed on the original planning permission were of no effect. The second appeal decision, reference APP/F2605/X/15/3132833 was also an LDC appeal concerning a dwelling house not built in accordance with the approved plans. The Inspector concluded that what was built, although different, was not materially different to the planning permission. Whilst I do not have the full details of these appeals before me, these cases are for different developments which were assessed on the particular facts and site-specific circumstances; thus, they are not directly comparable with the appeal before me.

12. The courts have determined that when considering discrepancies in implementing planning permissions, the decision maker must be satisfied that the differences are not material. The question of materiality is a matter of fact and degree. In this particular case, the Council considered whether the differences were material and reached the planning judgement that they were not. There is no breach where differences between the approved and 'as built' development fall within the normal tolerances and minor variations inherent in their layout and construction.
13. I have considered the submissions from both parties regarding Section 73 and Section 96 of the 1990 Act both of which are ways to amend planning permissions, but they differ in scope of the changes they allow. Section 73 allows for amending or removing conditions attached to a planning permission, resulting in a new planning permission that is separate from the original. Although the 1991 permission refers to the development being carried out in accordance with the plans submitted with the application there is no specific plan condition attached to the decision notice. Section 96A allows for non-material amendments to a planning permission, meaning minor changes that do not alter the fundamental nature of the development and does not create a new planning permission. The changes must not be material.
14. I note the argument that having refused planning permission for a dwelling of 230m² (reference: NFDC/90/40688), the Council would likely have refused the resultant increase of 61.92m² floorspace for the appeal dwelling. Whilst I do not have the full details of this planning refusal before me, the increase of 61.92m² includes a loft conversion and thus is not directly comparable with the overall size of the previously refused application.
15. Notwithstanding, the differences between the approved plans and the operations carried out, I consider as a matter of fact and degree and on the balance of probability, that what has been built is not substantially different from what was permitted. The house as constructed is readily recognisable as that permitted and any reasonable person looking at the plans and building that was constructed would conclude that the building is that approved. Thus, I conclude that the 1991 permission has been implemented. Consequently, the conditions imposed on the 1991 permission continue to have effect. The proposed porch and rear extension would not be PD because of condition one imposed on the 1991 permission.

Conclusion

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a proposed porch and rear extension in respect of Shirley, Bartley Road, Woodlands, Southampton, Hants, SO40 7GQ was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Elizabeth Jones

INSPECTOR