

P/15/1085/FP

MR & MRS WILLIAMS

HILL HEAD

AGENT: P M G (BUILDING
DESIGN & CONS) LTD

RETENTION OF RAISED DECKING AND ALTERATIONS TO FENESTRATION TO
EXISTING DETACHED OUTBUILDING

89 HILL HEAD ROAD FAREHAM HAMPSHIRE PO14 3JP

Report By

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Introduction

This application was deferred at the Planning Committee meeting on 16th December 2015.

The application was deferred so that Officers could provide further advice and information to Members to assist with their determination of the planning application. The advice/information related to the following matters:

- the extent of the permitted development rights afforded to the building;
- how the occupancy of the building could be controlled; and
- what the enforcement options would be should the application be refused.

These aspects are addressed in the following report.

Site Description

The site is, for the purpose of planning policy, outside of the defined urban settlement boundary and is within the countryside. The site is located on the south side of Cliff Road just west of the junction of Cliff Road, Hill Head Road and Old Street. The site is part of the garden of 89 Hill Head Road and comprises a single storey building in an "L" shape footprint, permitted as incidental accommodation to the main house.

The land falls steeply to the south at the rear of the building such that the rear of the building opens out onto a decked area with views over the Solent. Areas of lawn lie to the west and east of the building. The eastern lawn links to the main dwelling. Between the boundary fence (north) and the building itself is a small gravel drive area.

Description of Proposal

This application seeks retrospective planning permission for two types of operational development only and not the use of the building.

Firstly the application seeks to regularise the different and additional openings added to the building at the time the building was constructed.

In terms of the changes to the elevations, the external differences are as follows:

North east elevation:

- Addition of a door
- Addition of a high level window

North west elevation:

-Addition of a window

South west elevation:

-Replacement of a window with a patio door.

Secondly planning permission is also sought for the retention of the decking at the rear (sea side) of the building.

Policies

The following policies apply to this application:

Approved Fareham Borough Core Strategy

CS11 - Development in Portchester, Stubbington and Hill Head

CS14 - Development Outside Settlements

CS17 - High Quality Design

Development Sites and Policies

DPS1 - Sustainable Development

Relevant Planning History

The following planning history is relevant:

P/07/0285/FP - Erection of garden room following demolition of existing structure - Permission 24/04/2007.

P/11/0624/FP - Erection of a single storey extension to detached garden room and realignment of existing stairway as it approached that garden room - Permission 21/12/2011.

Whilst not directly related to the site itself P/12/1038/FP proposed the erection of a beach hut with decking and stairway on the land west of the site. This application was refused on 29/04/2013 for the reasons:

The development would be contrary to Policy CS14 (Development Outside Settlements) of the Adopted Core Strategy 2011 and is unacceptable in that:

i) the proposal represents development in the countryside, outside a settlement boundary that is not essential for agricultural, forestry or horticultural purposes. Furthermore, by reason of the size, scale and position of the development, which is located in a highly sensitive coastal landscape the proposal would result in a visually intrusive form of development harmful to the character and appearance of this coastal location;

ii) insufficient information has been submitted in respect of the impact of the development on ecology, in particular how the development will impact on badger setts. In the absence of this information it is considered that the development would not adequately cater for these species and is therefore unacceptable.

P/15/0093/CU - change of use of garden room to a self-contained holiday let - withdrawn 28/07/2015.

Representations

Following publicity of the application, sixteen representations of objection have been received, one representation of support and one letter from the applicant.

These representations raising objection are from : 4, 14, 20 (x2 - but counted as one) Cliff Rd; 22, 36, 55, 65, 69, 83, 87 Hill Head Road; 4 Solent Road; 2, 2A Old Street; 6 Monks Way, 63 Old Farm Lane; and Hill Head Residents Association.

The main issues raised within the representations can be summarised as follows:

The application to all intents and purposes is yet another approach to gaining "back door" approval for an already "illegal development" from a garden room and spa to a two bedroom dwelling;

The Borough Planning Department has yet to resolve and announce any action against this illegal dwelling;

The badger survey refers to the building as a single storey residential unit;

The damage to badgers was achieved three years ago when the decking was constructed and the badger setts were destroyed and filled in;

Other applications in the locality have been rejected by the same planning process;

There is a great deal of anger in the community about this retrospective application and the underhand development and the Committee is urged to refuse the application;

does not conform to the needs and priorities of the Hill Head community contrary to para 1 of the NPPF;

The impacts of the proposal would significantly and demonstrably outweigh the benefits
The surrounding area is sub-urban and the site is countryside. It is in no way part of the rural economy;

CS14 advises that in coastal locations development should not have an adverse impact on the special character of the coast when viewed from the land or water. This building and its deck contravenes this policy;

The changes to the fenestration are only applicable if the garden room's conversion to a two bedroom dwelling is accepted. There is no case for encouraging the applicants to ignore planning law and we ask that this application be refused;

We would like to see the tarmac access restricted to just a pedestrian access.

Three Letters of support have been received from 7 Monks Way; 2 Bells Lane and 28 Cliff Road:

I cannot see any reason why this would be a hindrance to anyone living or walking past. It is very well hidden and as I understand would remain part of the main house.

As a Member of the Hill Head Residents Association I am concerned that only one side of the argument has been given to the residents.

I understand that the application has a professional badger survey and that there is clear evidence that no badger sets have ever existed. This information has been withheld from the residents. I can only assume that the committee is unwilling to look at the facts.

A letter has also been received from the applicant containing the following points:

- We have no intention to develop the building for any kind of let
- It will be for occasional family use only
- I do not need to do any development and have no intention of doing so
- I withdrew the application for a holiday let in order to appease local concerns

Consultations

INTERNAL CONSULTATION

Ecology: No objection

Planning Considerations - Key Issues

The Key Issues for consideration are:

- The principle of development
- Effect upon the character and appearance of the area
- Ecology Implications
- Other Matters

The reasons for the deferral of the application from the meeting of 16th December are considered further:

- The extent of permitted development rights afforded to the building:
- How the occupancy can be controlled:
- Enforcement options:

THE PRINCIPLE OF DEVELOPMENT:

Planning permission has previously been granted for an extended garden room of the same size, height and location as the building subject to this planning application. The principle of a building of this size and in this location has been already established.

It came to light during the consideration of the application P/15/0093/CU that the building had not been built strictly in accordance with the approved plans.

Some third party comments have expressed concern that this Council is considering a retrospective application and suggest that the issue of the building as a dwelling should be addressed first before this application for changes to the built form and the retention of the decking.

In the view of Planning Officers the use of the building as a separate dwelling has ceased- it is currently vacant. There is no breach of planning control therefore with regard to its use.

The 1990 Town and Country Planning Act (s.73A) allows for planning applications to be made seeking to regularise development already carried out.

Given that the scale, bulk and siting of the building is as previously granted planning permission, the current breach of planning control relates solely to the changes to the elevations and the construction of the decking.

The assessment is therefore a matter of detail in the design rather than a matter of principle and therefore this is a case where officer and Member judgement is necessary on the breach as to its acceptability. The consideration of the application pursuant to section 73A of the Act is acceptable.

EFFECT UPON THE CHARACTER AND APPEARANCE OF THE AREA:

Dealing first with the building itself, the overall footprint of the building has not changed and the height and scale of the building have not changed from that permitted previously; the amendments relate solely to the elevations.

The changes to the north east elevation are set behind the existing boundary fence.

The new window in the north west elevation looks out over the (east) garden area of 89 Hill Head Road. The alteration from window to a door on the south west side looks out towards the sea.

It is considered that the small changes to the elevations of this ancillary building do not materially affect the appearance of the building as previously permitted. Furthermore the changes to the elevations cause no material harm to the character or appearance of the area.

The second aspect for which planning permission is sought is the decking. It is clear that in 2011 when the permission was granted for the extension to the garden room there was some decking already to the rear of the building. This section of decking is immune from any planning enforcement action.

The now extended decking was not shown on the approved plans for the extended building. Given the topography and the steep fall down to the promenade, the decking is supported on a metal frame with footings into the steep slope down to the beach.

The decking is typical of that common in many domestic settings with boarding at ground level and a timber balustrade and spindles around the outer edge. The decking sits on a metal frame which appears to consist of RSJ beams inserted into the slope with the decking fixed to the frame.

The decking extension is read in association with the outbuilding (garden room) and has no identifiable demonstrable harm from the Hill Head Road or Cliff Road vantage points due to its location on the south side of the building. Even from the promenade and water (as far as can be assessed when the tide is out), given the steepness of the slope up from the beach and the growth of the scrub on the slope the decking is not clearly apparent even in the winter months. It is weathering to a light colour and even from views along the beach, the actual impact of the decking is limited and read against the back cloth of the outbuilding to which it serves. As such it is not considered that there is any material harm to the character and appearance of the building or area caused by the decking.

ECOLOGY IMPLICATIONS:

The current application is submitted with a Badger Survey prepared by EcoSupport in October 2015. This submitted report confirms that there are no badger setts on the site.

The issue raised in many third party letters, however, is that the construction of the decking did impact upon the badger sett and badger activity in the slope from the site down to the promenade.

Whilst these comments are noted, if an offence had been committed it is a matter for the police to pursue rather than the Local Planning Authority.

On the basis of the surveys undertaken at the site Officers do not believe the retention of the decking materially harms badgers or other ecological interests.

OTHER MATTERS:

The acceptance of this application does not provide a permission for a dwelling; it would solely regularise the breaches of planning control being the elevation changes and a section of decking.

The use of the building for purposes incidental to the enjoyment of 89 Hill Head Road accommodation does not require any further planning permission. The use of the building as a separate dwelling, should it reoccur, would constitute a material change of use which would require planning permission.

The access to the site off Cliff Road was installed by the County Council as Highway Authority to serve as a garden access. The County Council has recently undertaken some alterations to the layby due north of the site to provide improved off road parking provision. These works did not include the removal of the tarmac drive from the application site to Cliff Road. Some neighbouring letters have suggested that this tarmac be removed to prevent the use of the building as a dwelling. The tarmac area in question is outside of the application site and therefore the control of the applicant. In any event, as per the above, to use the building as a dwelling would require planning permission.

The reasons for the application being deferred from the meeting of 16th December are considered further below:

THE EXTENT OF PERMITTED DEVELOPMENT RIGHTS AFFORDED TO THE BUILDING:

It is clear from the planning history for the site that the building was the subject of a planning permission granted by this Council rather than built under Permitted Development Rights. The application seeks to regularise the differences in the fenestration from that on the approved drawings to that as built.

At the Committee Meeting on 16th December Members sought clarification as to the extent of permitted development rights afforded to the building should these changes be found unacceptable or the implications for any other development/alterations in the future.

Legal advice has been sought and it is confirmed that the intended use of the building as annexed accommodation for occasional use by the applicant's family would be a use that

does not require a planning permission.

The annexe use would, however, be a use "ancillary" to the main house rather than an "incidental" use as permitted by the planning history.

As such it is concluded that the alterations to the building different to the approved plans require planning permission and are not permitted development. Similarly, should this application fail and the applicant block up the openings to ensure compliance with the approved plans; to change it back again would require an express planning permission.

HOW THE OCCUPANCY CAN BE CONTROLLED:

During the Committee debate on 16th December it was suggested that the future occupancy of the building should be secured by planning obligation.

Firstly, it is noted that for the two planning permissions granted for the building and its extension, neither of them included any restrictive occupancy conditions linking the use of the building with the main house at 89 Hill Head Road.

The development is only for the regularisation of the fenestration and the retention of the decking; not for the use of the building itself.

An obligation to control the occupancy would not therefore, be necessary to make the development acceptable in planning terms, it would not be directly related to the development (given that the use of the building is not part of the proposal) and an obligation would not be fairly and reasonably related in scale and kind to the proposal.

Given that the application is seeking to regularise the fenestration from the approved plans to reflect the built form as constructed, the time for imposing conditions controlling the occupancy was when the building and its extension were permitted and found as acceptable. To impose occupancy restrictions at this stage would likely conflict with the six tests for when conditions should be imposed; namely that of necessary and reasonableness.

In the future, to change the use of the building to an independent dwelling, should it happen, would be a material change of use of the building and such a use would require an express planning permission.

ENFORCEMENT OPTIONS:

There are two identified breaches of planning control at the site namely:

- The changes in fenestration from the approved drawings; and
- The enlarged decking area to the south of the building.

In terms of the potential enforcement options to address the breaches of planning control, the first means of regularising the breaches is to grant a planning permission in accordance with the recommendation.

Should the application fail, the next step, is to consider the expediency for enforcement action against the breaches.

Paragraph 207 of the NPPF requires that when considering enforcement action Local

Planning Authorities should act proportionately to the breach of planning control. The assessment of expediency should have regard to the development plan and any other material considerations that are relevant. The Officer assessment of the breaches against the development plan is provided in the report to Committee for 16th December (and above). It is the Officer view that it is not expedient to take any further action, hence the favourable recommendation.

The planning permissions for the building require, by condition, that the development be carried out in accordance with its approved drawings. It is clear that the building is not built in accordance with the approved plans. One enforcement option to address this breach is to serve a Breach Of Condition Notice. This would identify the breach and the steps requires to secure compliance with the condition.

The decking extension is not associated with any planning permission and is therefore unauthorised development rather than a development not in accordance with approved plans. As such a Breach of Condition Notice is not appropriate for this breach of planning control.

Should Members identify that there is demonstrable harm from this decking extension that results in a conflict with the development plan policies then the next step would be the service of an enforcement notice (EN) on the basis that there are no conditions that could be imposed on this planning application to overcome an objectionable issue.

It is considered that a planning condition should be included as part of the recommendation to require the steel frame on which the decking is constructed to be treated in a dark colour and maintained as such, this would help mitigate the impact of the steel frame on close (from the promenade) and wider views (from the beach).

In the event that a condition to secure a dark colour on the steel frame is not acceptable to Members any EN must set out exactly what, in the local planning authority's view, constitutes the breach of planning control, how it is harmful and what steps the local planning authority require to be taken, or what activities are required to cease to remedy the breach.

So in conclusion, the enforcement options are:

- Grant a planning permission consistent with the application before the Committee including a condition to have the decking steel frame painted a dark colour;
- Refuse the application;
- Service of Breach of Condition Notice - against the building fenestration; and
- Service of Enforcement Notice - against the deck extension.

If the last option forms the resolution from the Committee, the LPA must set out exactly what, in the local planning authority's view, constitutes the breach of planning control, how it is harmful and what steps the local planning authority require to be taken to remedy the breach.

CONCLUSION:

It is considered that the application does not cause material harm to the appearance of the building or the character and appearance of the area. The proposal accords with the policies of the adopted Local Plan and continues to be recommended for permission.

Recommendation

PERMISSION subject to conditions:

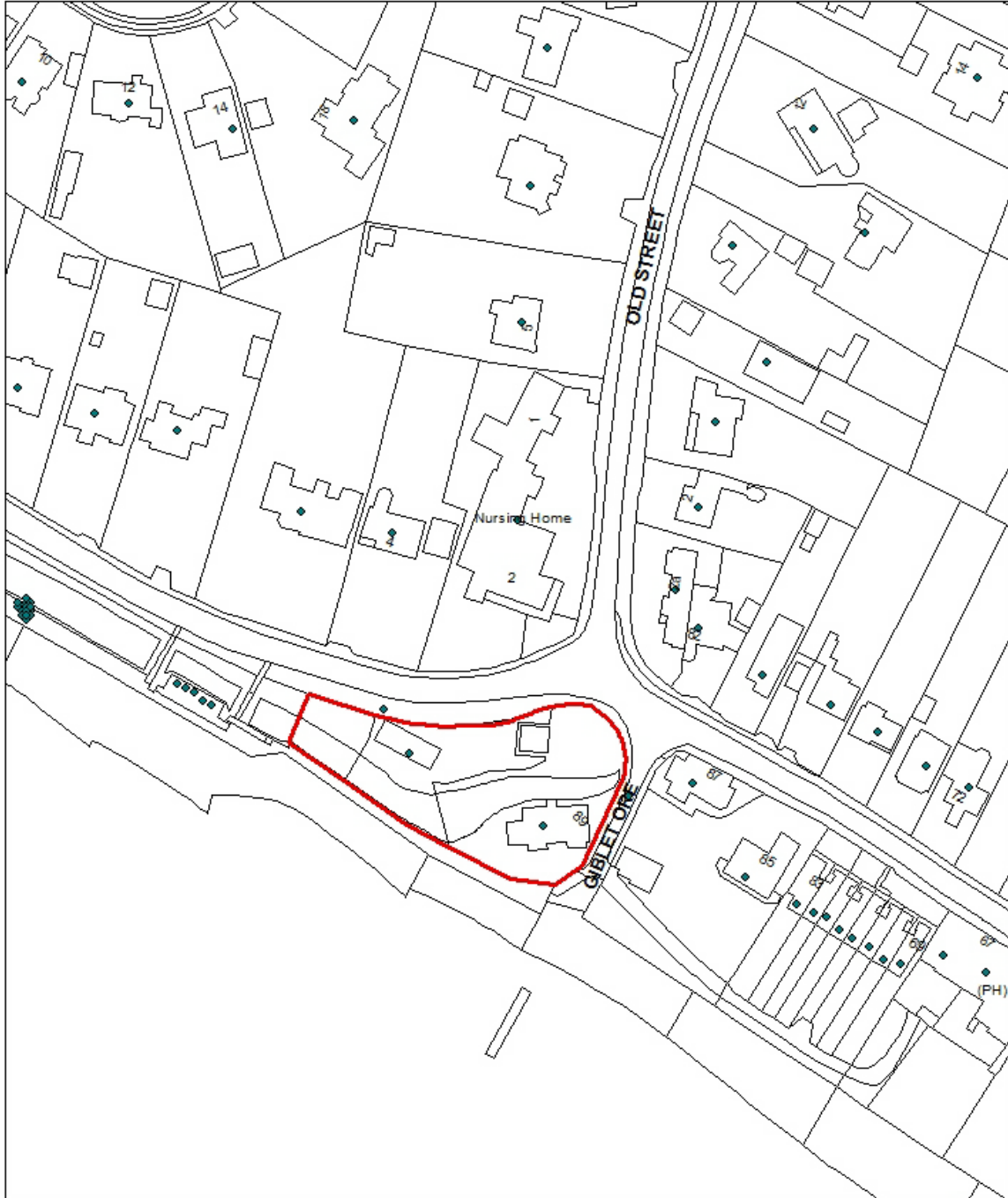
1) Within one month of the date of this decision details of the dark colour to be applied to the steel frame supporting the decking shall be submitted to and approved in writing by the Local Planning Authority. The steel frame shall be treated in accordance with the approved details within one month following the approval of the details.
Reason: To ensure a satisfactory appearance in the interest of the character of the area.

Background Papers

See "relevant Planning History" above

FAREHAM

BOROUGH COUNCIL



89 HILL HEAD ROAD
SCALE: 1:1,250

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