
APPLICATION NO.	21/01542/VARS
APPLICATION TYPE	VARIATION OF CONDITIONS - SOUTH
REGISTERED	20.05.2021
APPLICANT	Mr D Spiteri
SITE	1 Upton Crescent, Nursling, SO16 8AA, NURSLING AND ROWNHAMS
PROPOSAL	Vary condition 9 of 19/02582/FULLS (Demolition of existing detached double garage and erection of 2 bed dwelling) - substitute drawings to allow for changes to windows and entryway
AMENDMENTS	31 st July 2021 – amended plans received 2 nd August 2022 – amended plans received
CASE OFFICER	Kate Levey

Background paper (Local Government Act 1972 Section 100D)

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1.0 INTRODUCTION

1.1 The application has been called to Southern Area Planning Committee at the request of a member.

2.0 SITE LOCATION AND DESCRIPTION

2.1 The site is within the settlement area of Nursling and situated to the northern side of Upton Crescent. The site is to the rear of No.1 Upton Crescent and was formerly occupied by a garage/store building which was subject to the previous permission for demolition and erection of a 2 bed dwelling.

3.0 PROPOSAL

3.1 This proposal is to vary condition 9 of 19/02582/FULLS (Demolition of existing detached double garage and erection of 2 bed dwelling) - substitute drawings to allow for changes to windows and entryway

3.2 The changes relate to the external areas of the dwelling and seek planning permission for the following changes:

- Provision of a porch
- Provision of a bay window on the front elevation (serving the family room)
- Provision of a dormer window serving a third bedroom within the roof slope
- Increase of ridge height by 40cm
- Removal of wood burning stove and flue on the north east elevation
- Change in positioning of the obscure glazed window on the south west elevation, which has moved 1 metre towards the front of the dwelling
- Provision of a double door on the north east elevation (previously a single door)

4.0 **HISTORY**

- 4.1 19/02582/FULLS Demolition of existing detached double garage and erection of 2 bed dwelling. Permission subject to conditions and notes 06.05.2021
- 4.2 18/03066/FULLS - Conversion of double garage into a two bedroom dwelling. Permission 19.06.2019.
- 4.3 18/02253/FULLS - Erection of single garage. Withdrawn 10.10.2018.
- 4.4 18/01794/FULLS - Convert and raise roof of double garage to create dwelling. Refused 27.09.2018.
- 4.5 16/01321/TPOS - T1 Ash – Re-pollard to existing points. Consent 28.06.2016.
- 4.6 15/01709/TPOS - Fell 1 Ash. Refused 08.09.2015.

5.0 **CONSULTATIONS**

- 5.1 None

6.0 **REPRESENTATIONS** Expired 16.08.2021

- 6.1 X3 letters of objection from Nursling and Rownhams Parish Council:
(summarised)

- The construction has progressed without the appropriate permission and the approved plans haven't been complied with, hence this VARS application.
- The changes include the installation of a dormer window instead of a velux. The velux was approved with the following comment: the velux has 'oblique angles so any views are restricted' thus negating any adverse overlooking.
- Also this application proposes a bay window and a porch which increases the footprint.
- The installation of a dormer window does not restrict views therefore creates adverse overlooking, particularly for the bungalow opposite and 12 Romsey Road.
- The apparent increase in footprint and height are also issues as this construction was replacing a garage and designed to have a minimal impact on neighbouring properties and the street scene.
- The ridge height has been raised compared to the original application and a third bedroom is now included.
- If the full extent of the work had been included in the original application it is likely the plans would have been seen as over development, and refused.

- 6.2 X4 letters of objection, from 11 and 12 Romsey Road, Nursling (summarised)

- The new plans show a dormer window in the roof rather than a velux.
- The original plans show a single storey dwelling only.
- The dormer window has already been constructed without permission.
- Dormer window will look directly into back garden (of 12 Romsey Road).
- The height on the drawings is incorrect, the current height exceeds the original building.

- The new property appears dominant in comparison to 11 Romsey Road.
- The building is now set forward of the neighbouring garage and the external wall is 40cm closer to the boundary.
- (Occupiers of 11 Romsey Road) have not been approached about a party wall agreement.
- The footprint is larger than the original garage and the bay window and porch could reduce the outdoor space and bring the building closer to the protected tree.
- The builders have no consideration for residents.
- The planning department have been notified of the failures to comply with the submitted plans and no action has been taken.
- The tiles used on the building are concrete tiles and not reproduction slate as stipulated in the original permission.
- The previous application to raise the roof and create a 2 bedroom dwelling was refused on the basis of it's scale, location, garden size and potential loss of the ash tree.

7.0 **POLICY**

7.1 Government Guidance

National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

7.2 Test Valley Borough Revised Local Plan (2016)(TVBRLP)

COM2 (Settlement Hierarchy), E1 (High Quality Development in the Borough), E2 (Protect, Conserve and Enhance the Landscape Character of the Borough), E5 (Biodiversity), E7 (Water Management), E8 (Pollution), LHW4 (Amenity), T1 (Managing Movement), T2 (Parking Standard).

8.0 **PLANNING CONSIDERATIONS**

8.1 The original planning permission of 19/02582/FULLS assessed the principle of development, ecology, impact to character and appearance of the area, pollution, highways, amenity and parking provision. This Section 73 application seeks minor changes to that planning permission. The changes relate to the external areas of the dwelling to allow a porch, a bay window on the front elevation (serving the family room) and provision of a dormer window serving a third bedroom within the roof slope. Additionally, the ridge height has increased by 40cm, the wood burning stove flue has been removed from the north east elevation, the positioning of the obscure glazed window on the south west elevation has moved one metre towards the front of the dwelling, and finally a double door has been installed on the north east elevation, as opposed to a single door shown on the original plans. This application is retrospective. The impact on character and appearance of the area, ecology and neighbouring amenity are the main planning considerations in the determination of this s73 application, and these are assessed and discussed below. Additionally, permitted development regulations and a previous allowed appeal decision at 21 Upton Crescent are relevant. These matters are discussed below.

8.2 **Character and appearance of the area**

The existing form of estate development gives a defined character to the immediate area and therefore for a scheme to accord with policy E1 the proposed development must reflect the character of the area.

8.3 The character of this part of Nursling consists of a variety of different property types principally fronting Romsey Road and Upton Crescent. However Upton Crescent is more consistent with predominantly detached dwellings which were once of a uniform bungalow design, although many have been altered and extended to accommodate living areas in the roof spaces. Many of the properties are now chalet bungalows and they display a linear form of development in that they are set back from the road. Many of the detached properties in this area have been altered and extended and as such there are now no particular characterful features prevalent within the immediate area.

8.4 The proposed changes are not considered to result in a detriment to the character of the area. The proposed alterations to the front (south east) elevation would be visible from Upton Crescent and views of the proposal are seen in context with the existing dwelling and neighbouring sites. As mentioned above, there is no particular consistency in the design of the dwellings in this development area and dormer windows similar to the proposal are present elsewhere in the street – for example numbers 1, 8, 10 and 12 Upon Crescent and 12 Romsey Road, which are all visible from public vantage points. The proposal for the dormer window is therefore very similar to an established part of the character and appearance of the area and in this regard would not look out of place.

8.5 The proposal also involves the provision of a porch and bay window on the front elevation, which are small in scale. The roof of the porch is pitched, which matches the roof form of the front projection containing bedroom 1. The porch and the bay window are rendered which matches the external material on the dwelling.

8.6 Third party comments about the ridge height on the submitted drawings being incorrect are acknowledged. However, an updated drawing (reference PL-311 Rev F) was received on 2nd August which reflect measurements taken on site. The ridge height of the dwelling is 5.5 metres from ground level to the ridge. The height of the garage, demolished to make way for the dwelling, was 5.1 metres to ridge. Therefore the height of the dwelling has marginally exceeded the ridge height of the former garage. However, due to the modest increase in the ridge height and the fact that there is no particular consistency of ridge heights within the street scene, it is not considered that a reason for refusal based on the scale or the location in relation to those properties fronting Upton Crescent or Romsey Road could be substantiated. The other alterations being the removal of the wood burning stove, moving the obscure glazed window on the south west elevation, and provision of a double door on the north east elevation are not considered to give rise to harm to the character and appearance of the area. These minor changes would be seen in context with the existing dwelling and are not prominent features within the street scene.

8.7 The resultant dwelling is modest, reflects the surrounding development and is considered to have no significant adverse impact on the character of the area. The application is therefore considered to comply with policy E1.

8.8 **Ecology**

On site biodiversity

The site contains a substantially completed dwelling of modern construction and the previous structure has been removed. Therefore it is considered that there is little potential for the site to support protected species. The proposal is not considered to give rise to any adverse impacts on existing habitat or on-site ecology, and the proposal is in accordance with Policy E5.

8.9 New Forest SPA

The original application 19/02582/FULLS considered the requirement for New Forest SPA contribution, because that development resulted in a net increase in residential dwellings within 13.8km of the New Forest SPA. This distance defines the zone identified by recent research where new residents would be considered likely to visit these sites. The SPA supports a range of species that are vulnerable to impacts arising from increases in recreational use of the site that result from new housing development. While clearly one new house on its own would not result in any significant effects, it has been demonstrated through research, and agreed by Natural England that any net increase (even single dwellings) would have a likely significant effect on the SPA when considered in combination with other plans and projects.

8.10 To address this issue, Test Valley Borough Council has adopted an interim mitigation strategy has been agreed that would fund the delivery of a new strategic area of alternative recreational open space that would offer the same sort of recreational opportunities as those offered by the New Forest. Therefore it is considered necessary and reasonable to secure the appropriate contributions. The required contributions were secured by s106 legal agreement under the original application. However, the legal agreement does not include a clause which would allow the granting of a s73 application without the need for a deed of variation, as such one is required. The Officer recommendation reflects the need for this legal agreement to be completed prior to any permission being granted.

8.11 Subject to the required deed of variation, the development will not result in adverse effects on the New Forest SPA arising from recreational use.

8.12 Solent and Southampton Water SPA – Solent Neutrality

There is existing evidence of high levels of nitrogen and phosphorus in the water environment across the Solent, with evidence of eutrophication at some designated sites. An Integrated Water Management Study for South Hampshire was commissioned by the Partnership for Urban South Hampshire (PUSH) Authorities to examine the delivery of development growth in relation to legislative and government policy requirements for designated sites and wider biodiversity. This work has identified that there is uncertainty regarding whether any new housing development does not contribute to net increases in nutrients entering these designated sites.

- 8.13 As such, the advice from Natural England is that applicants for development proposals resulting in a net increase in dwellings are required to submit the nitrogen budget for the development to demonstrate no likely significant effect on the European designated sites due to the increase in waste water from the new housing.
- 8.14 The original application 19/02582/FULLS considered the requirement for nitrate neutrality. The applicant submitted information that quantifies the nutrient budget for the proposal, and a proposed mitigation strategy. To secure the future use of the land in perpetuity the recommendation includes provision for a deed of variation to be completed, which would relate to the S106 agreement secured under the original permission.
- 8.15 Subject to the required deed of variation, the development will therefore not result in adverse effects on the Solent designated site through water quality impacts arising from nitrate generation.
- 8.16 **Impact to neighbouring amenity**
Third party representations relating to overlooking to neighbouring sites are noted. Following a site visit to the application site by the case officer it is considered that, on balance, given the scale of the development and the positioning of the application site relative to neighbouring sites, the proposal would not give rise to any material adverse impact on the living conditions of any neighbouring sites. The reasons for this are discussed below.
- 8.17 Overlooking
This application proposes the addition of a dormer window to the front elevation within the roof slope. The measurement between the base of the dormer window to ground level is 3.2 metres, and the window contains two side hung casements. This window serves a bedroom which is accommodation where occupants are unlikely to spend significant periods of time during the day. In any event the dwelling is orientated with its front elevation facing south east towards Upton Crescent and as a result, views towards the garden areas of No.1 Upton Crescent to the northeast and No.11 Romsey Road to the southwest would be at an oblique angle.
- 8.18 In terms of any potential overlooking impact to neighbouring sites opposite the application site. The separation distance between the proposed dormer window and the front elevation of 133 Upton Crescent is 24 metres, the distance to the principal garden area of 133 is a further 2m due to the existence of a large shed. Furthermore, the separation distance between the proposed dormer window and the rear garden of 12 Romsey Road is also 24m. Taking into consideration the site circumstances and separation distances above it is considered that the development will not result in significant adverse harm to the residential amenities of these properties.

- 8.19 It is also important to note that the principal garden serving number 133 is already overlooked to a degree by existing roof lights serving a bedroom at 12 Romsey Road (as shown on the approved plans for extensions and alteration at 12 Romsey Road- 14/02377/FULLS). There are also a number of other dormer windows within the street scene, including numbers 1, 8, 10 and 12 Upton Crescent, which are all visible from the front of the application site. Therefore mutual overlooking of gardens is not uncommon. For these reasons, it is not considered that a reason for refusal based on any overlooking impact in relation to the properties opposite the application site could be substantiated.
- 8.20 However it is likely that openings in any other first floor or roof elevation would result in adverse overlooking impact and it is considered appropriate to remove permitted development rights. This condition was imposed on the original application and it is carried forward to this recommendation.
- 8.21 Overshadowing
The maximum ridge height of the dwelling as constructed is 5.5 metres. There would be some minimal additional increased shadow over and above the shadow cast by the former garage (which had a ridge height of 5.1 metres). However, this additional overshadowing is marginal and is limited to the rear garden of the host property No.1 Upton Crescent during the late afternoon, and to the rear of 1 and 3 Upton Crescent during the middle of the day. However, there is an outbuilding within the rear garden of 3 Upton Crescent and the majority of additional overshadowing would fall on the roof of this building. Furthermore, for the majority of the day the additional shadow would be contained within the application site. As such the proposals are not considered to have any adverse impact by way of overshadowing.
- 8.22 Overbearing
The ridge height of the dwelling has increased by 40cm compared to the original permission. However, due to the separation distances between the dwelling and neighbouring properties the increased ridge height does not result in an overbearing impact. Other modifications including the provision of porch, bay window and dormer window are to the front elevation and face onto the parking area and garden within the plot, and given the separation distances away from neighbouring sites, it is not considered that there would be any additional adverse impact in terms of overbearing impact.
- 8.23 Following a site visit to the application site by the case officer it is considered that, on balance, given the scale of the development and the positioning of the application site relative to neighbouring properties, the proposal would not give rise to any material adverse impact on the living conditions of any neighbouring sites by reason of overlooking, overbearing impact or loss of daylight or sunlight. The proposal is in accordance with policy LHW4.

8.24 **Arboriculture**

A mature ash tree, subject to TPO, stands in the eastern corner of site adjacent the highway. The Ash tree is a conspicuous element of the street scene, visible to all those entering or leaving Upton Crescent. Under the previous application 19/02582/FULLS, the Arboricultural Officer confirmed that the construction works will and have remained outside the tree's required root protection area and that adequate space is available to protect the tree and to undertake the conversion subject to appropriate care, precautions and working practices. Having regard to the final page of the submitted arboricultural report for the previous application, it is clear that the porch and bay window have remained outside of the construction exclusion zones due to the presence of hard standing. Subject to a condition to require protection in accordance with the submitted arboricultural method statement to ensure the tree is protected during construction works the proposal is considered to comply with Policy E2.

8.25 **Parking provision**

The number of bedrooms at the dwelling would increase to three as a result of the development and as such the site requires two off street parking spaces in line with the adopted parking standards. The level of parking provision required is the same as that provided under the previous application 19/02582/FULLS. This previous application included provision for two parking spaces and there is no change to the amount of parking required for the third bedroom to comply with the parking standards.

8.26 The porch and bay window proposed under this application do not impinge on the available space for parking. The proposed two parking spaces would meet the required standard and the proposal accords with policy T2 and annex G.

8.27 **Water management**

The 2016 Local Plan includes a requirement in policy E7 to achieve a water consumption standard of no more than 100 litres per person today. This reflects the requirements of part G2 of the 2015 Building Regulations. In the event that planning permission was to be recommended a condition would be applied in order to address this. Subject to such a condition the proposal would comply with policy E7.

8.28 **Permitted development**

It is acknowledged that a condition on the original permission removed permitted development rights for various additions and alterations to the property. For the reasons set out above and the constrained garden and preserved tree within it, it is deemed necessary to remove permitted development rights again. This will ensure that harm does not occur to the preserved tree and residential amenities of existing and future residents of adjoin properties and the property, which is the subject of this application.

8.29 **Allowed appeal decision**

The principle of extending and permitting first floor accommodation was examined in a recent allowed appeal (APP/C1760/D/21/3280916 – 21 Upton Crescent, Nursling). A copy of the allowed appeal decision is attached at appendix A. This appeal dealt with the development of front, rear and side extensions and also raising the roof to allow first floor accommodation. The appeal scheme at 21 Upton Crescent included provision of two dormer windows on the front elevation – one serving a bedroom and the other serving the void area above and adjacent to the staircase. An additional large apex window on this same elevation was proposed, serving a bedroom. This development can be compared to this current proposal under consideration, because both proposals seek to allow accommodation at first floor level and include provision of dormer windows serving bedrooms at first floor level.

8.30 In the decision report, the Inspector recognises that *‘within the surrounding area there are numerous examples of properties that have been extended at roof level or remodelled to provide habitable accommodation at first floor level’*. It is commented in paragraph 13 that the proposal would not appear out of keeping given the varied character of Upton Crescent. The decision concludes that no conflict with policy E1 was identified and the appeal was allowed on this basis.

8.31 In terms of neighbouring amenity, as mentioned above the proposal included provision for two dormer windows and a large apex window on the front elevation. The separation distance from the proposed dormer window at the appeal site and the neighbour opposite, 28 Upton Crescent, is 26 metres. This is a similar separation distance to the pending application under consideration at 1 Upton Crescent, as the separation distance between the dormer window on the front elevation at the application site and the front elevation of 33 Upton Crescent is 24 metres.

8.32 Paragraphs 8.11 and 8.12 of the Officer report for the appeal scheme at 21 Upton Crescent concluded that there was no adverse impact to neighbouring amenity, and the Inspector agreed with this. Paragraph 15 of the Inspector’s decision states that overlooking ‘is not an issue that has been raised by the Council in objecting to the appeal proposal. Moreover, I am satisfied, based on the proposed design... that this is not a matter that would give rise to any material harm’.

8.33 The Inspector concluded that the appeal at 21 Upton Crescent should be allowed.

8.34 **Other matters – third party comments**

Party wall agreement

Third party comments from the occupiers of 11 Romsey Road about not being approached regarding a party wall agreement are acknowledged, however this is something which falls outside of the scope of planning control. It is not the Local Planning Authority’s role to arbitrate between the parties involved and not a reason to withhold any planning permission.

8.35 Hours of construction work

Third party comments about the hours of which construction work should take place on the site are acknowledged. Condition 7 of the original permission stipulated that work shall not be undertaken outside of 08.00-18.00 hours Monday to Friday and 08.00-13.00hours on Saturdays or at any time on Sundays, Public and Bank Holidays. This condition has been carried forward to this recommendation.

8.36 Material of roof tiles

Third party comments that concrete roof tiles have been used on the building and not reproduction slate as stipulated in the original permission are acknowledged. This is a matter which is being dealt with under a separate application, 21/03218/VARS and does not form part of the consideration of this application.

9.0 **CONCLUSION**

9.1 The proposal is not considered to give rise to adverse impacts to the character and appearance of the area, or result in a loss of amenity or privacy to neighbouring residents. Mitigation has been provided with regard to potential impacts to protected species and trees. The proposal therefore accords with the Test Valley Borough Revised Local Plan (2016) and the National Planning Policy Framework (2021) and is acceptable.

10.0 **RECOMMENDATION**

Delegate to Head of Planning & Building for completion of satisfactory legal agreement (Deed of Variation) relating to the completed S106 agreement of the original permission 19/02582/FULLS to secure:

- **Removal of nitrate mitigation land from agricultural production**
- **Future management of the nitrate mitigation land; and**
- **New Forest SPA contribution**

Then PERMISSION subject to:

1. **The external materials to be used in the construction of external surfaces of the development hereby permitted shall be in complete accordance with the details specified on the approved plans.
Reason: To ensure a satisfactory visual relationship of the new development with the existing in accordance with Test Valley Borough Revised Local Plan (2016) Policy E1.**
2. **The development shall not be occupied until space has been laid out and provided for the parking and manoeuvring of vehicles to enable them to enter and leave the site in a forward gear in accordance with the approved plan and this space shall thereafter be reserved for such purposes at all times.
Reason: In the interests of highway safety in accordance with Test Valley Borough Revised Local Plan (2016) Policy T1.**
3. **Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking or re-enacting that Order), no building, structure, walls or fences of any kind shall be erected without the prior written consent of the Local Planning Authority.**

Reason: In order that the Local Planning Authority can exercise control in the locality in the interest of the local amenities in accordance with Test Valley Borough Revised Local Plan (2016) Policy E1.

- 4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows in the proposal hereby permitted [other than those expressly authorised by this permission] shall be constructed.**

Reason: In order that the Local Planning Authority can exercise control in the locality in the interest of the local amenities in accordance with Test Valley Borough Revised Local Plan (2016) Policy LHW4.

- 5. The development hereby approved shall be designed and built to meet Regulation 36 2 (b) requirement of 110 litres/person/day water efficiency set out in part G2 of Building Regulations 2015.**

Reason: In the interests of improving water usage efficiency in accordance with policy E7 of the Test Valley Borough Revised Local Plan 2016.

- 6. No works pursuant to the development hereby permitted shall be undertaken outside of 08.00-18.00 hours Monday to Friday and 08.00-13.00hours on Saturdays or at any time on Sundays, Public and Bank Holidays.**

Reason: To maintain the character and amenities of the surrounding local area in accordance with Test Valley Borough Local Plan 2016 policies LHW4 and E8.

- 7. The development hereby approved shall be undertaken in full accordance with the provisions set out within the KJF Consultancy Ltd Tree Report to BS 5837: 2012 Trees in relation to design, demolition and construction – Recommendations reference TR.1.UC.N.S dated 01.09.19. Tree protection shall be installed on site prior to the commencement of development and retained for the duration of construction works.**

Reason: To prevent the loss during development of trees and natural features and to ensure, so far as is practical, that development progresses in accordance with current Arboriculture best practice, in accordance with Policy E2 of the Test Valley Borough Revised Local Plan 2016.

- 8. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plan, number 311 F.**

Reason: For the avoidance of doubt and in the interests of proper planning.

Note to applicant:

- 1. In reaching this decision Test Valley Borough Council (TVBC) has had regard to the National Planning Policy Framework and takes a positive and proactive approach to development proposals focused on solutions. TVBC work with applicants and their agents in a positive and proactive manner offering a pre-application advice service and updating applicants/agents of issues that may arise in dealing with the application and where possible suggesting solutions.**
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