



The Planning  
Inspectorate

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Mr Patrick Whymer  
South Hams District Council  
Follaton House  
Plymouth Rd  
Totnes  
Devon  
TQ9 5NE

Your Ref: 3686/22/HHO  
Our Ref: APP/K1128/D/23/3318479

26 June 2023

Dear Mr Whymer,

**Town and Country Planning Act 1990**  
**Appeal by Mr Gordon Bryan**  
**Site Address: 41 Brook Road, IVYBRIDGE, PL21 0AX**

I enclose a copy of our Inspector's decision on the above appeal(s), together with a copy of the decision on an application for an award of costs.

If you wish to learn more about how an appeal decision or related cost decision may be challenged, or to give feedback or raise complaint about the way we handled the appeal(s), you may wish to visit our "Feedback & Complaints" webpage at <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>.

If you do not have internet access you may write to the Customer Quality Unit at the address above. Alternatively, if you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

The Planning Inspectorate is not the administering body for High Court challenges and cannot change or revoke the outcome of an appeal decision. If you feel there are grounds for challenging the decision you may consider obtaining legal advice as only the High Court can quash the decision. If you would like more information on the strictly enforced deadlines and grounds for challenge, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Guidance on Awards of costs, including how the amount of costs can be settled, can be located following the Planning Practice Guidance.

<http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/>

We are continually seeking ways to improve the quality of service we provide to our customers. As part of this commitment we are seeking feedback from those who use our

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Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,



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*Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through GOV.UK. The address of the search page is - <https://www.gov.uk/appeal-planning-inspectorate>*



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## Appeal Decision

Site visit made on 30 May 2023

**by Lynne Evans BA MA MRTPI MRICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 June 2023**

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### **Appeal Ref: APP/K1128/D/23/3318479 41, Brook Road, Ivybridge PL21 0AX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Gordon Bryan against the decision of South Hams District Council.
  - The application Ref: 3686/22/HHO dated 22 October 2022, was refused by notice dated 6 March 2023.
  - The development proposed is single storey rear extension with associated external works, including new / replacement boundary fence.
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### **Decision**

1. The appeal is allowed and planning permission is granted for single storey rear extension with associated external works, including new / replacement boundary fence at 41, Brook Road, Ivybridge PL21 0AX in accordance with the terms of the application, Ref: 3686/22/HHO dated 22 October 2022, subject to the conditions set out at the end of this decision.

### **Application for Costs**

2. An application for a partial award of costs was made by Mr Gordon Bryan against South Hams District Council. This application is the subject of a separate Decision.

### **Preliminary Matters**

3. It would appear from the information before me that permitted development rights were removed when the overall estate development was permitted.

### **Main Issue**

4. The main issue in this appeal is the effect of the proposal on the living conditions of the neighbours, with particular regard to loss of outlook and overshadowing in respect of the neighbours at No 43 Brook Road.

### **Reasons**

5. The appeal property is a two storey detached dwelling within a residential development of detached dwellings and towards the cul de sac end of Brook Road. As a result of its siting, there is a staggered spacing to the houses, with the appeal property being set behind the property to the north-west at no 43, but forward of the property to the south-east at No 39.

6. The proposal seeks to construct a single storey extension across most of the back elevation extending out for a depth of 4m. It would be set in slightly from the neighbouring boundary at No 43 with an eaves height of 2.95m, rising to a ridge height of just under 4m. It would include for the replacement of an existing single storey extension at the rear along the boundary with No 43.
7. The proposed extension would increase the extent of development by a further 4 m over the existing position. I have taken into account that the adjoining property at No 43 sits forward of the appeal property and has a glazed conservatory at the rear which appears to wrap around the rear and side of the property. The inset from the boundary with No 43 would be modest at 0.4m but I consider that this offset would be beneficial, particularly in terms of the outlook from the rear windows at No 43, beyond the two storey gable wall as existing at the appeal property.
8. Given the modest eaves height closest to the boundary with No 43 and the slight inset, and taking account of the existing and proposed replacement fencing along the common boundary, I do not consider that this modest increase in height over the height of the existing fence would result in a harmful impact on the outlook from the rear windows and rear garden of No 43. For these reasons, I do not consider that the proposal would be overbearing or oppressive in terms of the outlook for the neighbours at No 43.
9. There is no technical evidence before me in respect of loss of light or overshadowing. However, from my site visit and my site visit, I agree with the Council that the proposed extension would not lead to any material impact on the rear facing rooms of the property at No 43, once account is taken of the relationship of the properties as existing. Furthermore, give the dimensions and in particular the proposed height of the extension, I am not persuaded that any resultant over shadowing of part of the rear garden area of No 43 would result in material harm to the living conditions of the neighbours.
10. There would be no overlooking of neighbouring properties and gardens, given that the main glazing would face to the rear and the height of the roof lights. The Council has raised no concerns in this regard.
11. The submitted plans do not provide details of the replacement boundary fence, although the notes on the proposed plan make clear that the indicative replacement fence would not exceed two metres in height (from ground level) or the height of the existing fence. Further correspondence by the Appellant to the Council at the application stage confirmed some of the details with the indication that the existing arrangement would be replicated. I agree with the Council that the details were not precise, and no specific plans were included to show the fence proposals. However, I take the view that it would be possible to secure the outstanding details through the imposition of a condition, given that the key consideration of height has been indicated.
12. I am therefore satisfied that the living conditions of the neighbours at No 43 Brook Road would not be materially harmed by the proposed development, with particular regard to loss of outlook and overshadowing. There would be no conflict with Policies DEV1 and DEV20 of the Plymouth & South West Devon Joint Local Plan 2014 - 2034 and the Plymouth and South West Devon Supplementary Planning Document (SPD) 2020 as well as the National Planning Policy Framework and in particular Paragraph 130, all of which amongst other

matters seek a high quality of design which respects the amenities of existing and future occupiers.

### **Other Considerations**

13. The proposal led to a large number of representations at the application stage both to object to as well as to support the proposal. I have considered the comments made in so far as they relate to planning matters, but there are no matters raised which lead me to a different conclusion.
14. The immediate neighbour at No 43 has set out details of previous planning issues but my decision is necessarily based on the planning merits of the proposal before me. I agree with the Council that each proposal must be considered on its individual merits, and that a permission for this scheme would not therefore set a precedent.

### **Conditions**

15. In terms of conditions, I agree with the Council that the materials should match the existing to respect the character and appearance of the existing property and of the local area, and the approved plans should be listed for the avoidance of doubt and in the interests of good planning.
16. A condition should also be imposed to require further details of the replacement fence as they were not submitted with the proposal, in order to protect the amenities of the immediate neighbours. The Council has indicated that the condition can stipulate the requirement for a closeboard wooden fence, but in the circumstances of the case and the lack of precise details submitted, I consider it would be more appropriate to require the submission of precise details prior to construction; this approach would also accord with the suggestion made by the Appellant at the appeal stage.
17. The Council has also indicated that a condition should be imposed regarding existing and proposed ground levels. The submitted plans indicate a modest lowering of ground levels on either side from which the dimensions have been set out, and I agree that this detail, which is not shown precisely on the submitted plans, should be approved prior to construction to protect the amenities of the immediate neighbours. Although the Council has suggested that these details can be submitted prior to construction above slab level, in the particular circumstances of this case, I consider that such details require to be submitted and approved prior to the development commencing.
18. For the reasons set out above and in order to be effective, it is my view that the conditions relating to both levels and the boundary fence require to be pre-commencement conditions. In accordance with Section 100ZA (5) of the Town and Country Planning Act 1990 and The Town and Country Planning (Pre-Commencement Conditions) Regulations 2018, I have therefore requested and received the Appellant's written agreement to the imposition of these conditions.

## **Conclusion**

19. For the reasons given above and having regard to all other matters raised, I conclude that this appeal should be allowed.

*L J Evans*

INSPECTOR

## **Schedule of Conditions (Nos 1- 5 inclusive)**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: PL.01; PL.02; PL.03; PL.04 and PL.05.
- 4) Notwithstanding the details shown on the approved plans, no development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the position, height, design, and materials for the boundary fence to be erected along the boundary with No 43 Brook Road. The boundary fence shall be completed in accordance with the approved details, before the rear extension hereby approved is first occupied and thereafter retained.
- 5) Notwithstanding the details shown on the approved plans, no development shall take place until there has been submitted to and approved in writing by the local planning authority details of the existing and finished ground levels of the proposed extension hereby permitted and surrounding rear garden. The development shall thereafter be completed in accordance with the approved details.



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## Costs Decision

Site visit made on 30 May 2023

**by Lynne Evans BA MA MRTPI MRICS**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 26 June 2023**

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### **Costs application in relation to Appeal Ref: APP/K1128/D/23/3318479 41, Brook Road, Ivybridge PL21 0AX**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Gordon Bryan for a partial award of costs against South Hams District Council.
  - The appeal was against the refusal of planning permission for single storey rear extension with associated external works, including new / replacement boundary fence.
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### **Decision**

1. The application for a partial award of costs is refused.

### **Reasons**

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Appellant is seeking a partial award of costs against the Council, specifically in respect of the second reason for refusal of the application, namely regarding the nature of the new/ replacement boundary fence, which formed part of the application proposal and was included in the application description of development.
4. The Applicant has referred to the Planning Practice Guidance and paragraph 55 of the National Planning Policy Framework also states that '*Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations*'. However, in this case, the imposition of a condition in respect of the fence was not open to the Council as it found the single storey extension to be unacceptable as set out in the first reason for refusal.
5. As the fence was specifically referenced in the description of development, but limited details had been submitted, I consider it was reasonable for the Council to raise this matter as a specific reason for refusal to make clear to the Applicant the basis of its concerns.
6. I have reached a different conclusion and found that there would not be material harm to the living conditions of adjoining neighbours and have therefore granted planning permission. As a result I have found it appropriate to impose a condition to ensure that further details of the fence are submitted and approved, and then erected in accordance with the approved details.

7. I have taken the other arguments into consideration as raised by both the Applicant and the Council in respect of the costs claim and response, but they do not persuade me to a different view.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*L J Evans*

INSPECTOR