Appeal Decision

Site visit made on 6 July 2009

by Jessica Graham BA(Hons) PgDipL

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date: 4 August 2009

Appeal Ref: APP/K1128/A/09/2102961
Ridgeside, Jubilee Road, Bridgetown, Totnes, Devon TQ9 5BW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr & Mrs C & C Mudge against the decision of South Hams District Council.
- The application Ref 56/0108/09/F, dated 23 January 2009, was approved on 19 March 2009 and planning permission was granted subject to conditions.
- The development permitted is demolition of existing house and garage and erection of replacement dwelling and detached garage/store.
- The condition in dispute is No. 8 which states that: *Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development)(Amendment)(No.2)Order, 2008 (and any Order revoking and re-enacting this Order), no development of the types described in the following Classes of Schedule 2 shall be undertaken without the express consent in writing of the Local Planning Authority other than those expressly authorised by this permission:-*
  Part 1, Class A (extensions and alterations)
  Part 1, Classes B and C (roof addition or alteration)
  Part 1, Class D (porch)
  Part 1, Class E(a) swimming pools and buildings incidental to the enjoyment of the dwelling house and (b) container used for domestic heating purposes (oil or liquid petroleum gas);
  Part 1, Class F (hardsurfaces)
  Part 1, Class G (chimney, flue or soil and vent pipe)
  Part 1, Class H (microwave antenna)
  Including those classes described in Schedule 2 Part 2 of the Town and Country Planning (General Permitted Development) Order 1995 (and any Order revoking and re-enacting this Order)
  Part 2, Class A (means of enclosure).
- The reason given for the condition is: *To enable the Local Planning Authority to exercise control over development which could materially harm the character and visual amenities of the development and locality.*

Summary of Decision: The appeal is allowed, and the planning permission varied in the terms set out in the Formal Decision below.

Background

1. Condition 8 removes a range of permitted development rights granted by the Town and Country Planning (General Permitted Development) Order 1995 (as amended) ("the GPDO"). Circular 11/95 *The Use of Conditions in Planning Permissions* sets out the tests that conditions must satisfy and advises, at paragraph 87, that conditions restricting permitted development rights should only be imposed in exceptional circumstances. The appellants seek variation of the permission by the removal of condition 8 in its entirety.

Main issue

2. I consider the main issue to be whether the disputed condition is reasonable and necessary, having regard to the provisions of Circular 11/95.

Reasons

3. Bridgetown is described in the adopted South Hams Local Plan 1989-2001 as having a distinct character with a low density of housing and mature gardens. I saw at my site visit that the spacious, informal development pattern of mainly detached dwellings set in generous grounds is a key feature of this attractive residential area. I note that while Policy TP7 of the Local Plan seeks to prevent development that would alter the low-density character of northern Bridgetown, the area is not subject to any other national or local protective designation, such as Area of Outstanding Natural Beauty or Conservation Area.

4. I share the Council's view that the high-quality modern design of the replacement dwelling permitted at Ridgeside would make a positive contribution to the character and appearance of the area. However, I am not persuaded that the quality of this design would necessarily be 'watered down', as the Council says, by any of the development permitted by Part 1, or Part 2 Class A, of Schedule 2 of the GPDO. Circular 11/95 makes the point that the provisions of the GPDO are intended to provide a freedom from detailed control which will be acceptable in the great majority of cases, and in my view there is no reason why this freedom should not extend to dwellings of striking contemporary design. Similarly, I see no reason why such dwellings should be required to do without the domestic convenience of flues, microwave antennae and outbuildings available to more traditional houses.

5. With this in mind, and in the absence of any exceptional circumstances, I consider that the terms under which development would be permitted by Classes A, D, E, G and H of Part 1 would suffice to ensure that any such development would have no significant adverse impact upon the living conditions of neighbouring occupiers, or the character and appearance of the area.

6. Classes B and C of Part 1 would not permit any addition or alteration to the roof that would exceed its highest existing part. This effectively means that any addition or alteration could only take place on the rear-facing slope of the mono-pitch roof, where it would be screened from public views and constrained by the shallowness of the slope. I am satisfied that any such alteration or addition would not undermine the existing character or appearance of the area and, given the separation distance and intervening boundary, would do no significant harm to living conditions at the dwelling to the south of Ridgeside.

7. Condition 6 of the planning permission requires the Council's prior written approval of a Landscape Plan that includes, among other things, details of hard landscaping and boundary treatments. This condition also specifies that all elements of the Landscape Plan shall be maintained in accordance with the approved details, unless otherwise agreed by the Council. I note the Council's concern that any additional hardsurfacing permitted by Class F of Part 1 could have a detrimental impact upon the health of the Corsican Pine, but that tree is protected by a Tree Preservation Order (TPO). This means that permitted development rights are subordinate to the tree's needs, and any wilful damage

of the tree without the consent of the Council would be an offence. Given the level of control provided by the TPO and the Landscape Plan under condition 6, I consider the additional restriction of permitted development rights unnecessary.

8. The Council has also expressed concern that while there are other timber fences in the locality, any further fencing of this kind would undermine the predominance of stone and hedge frontage boundaries. In my opinion, attempting to control the character of frontages on Jubilee Road through the removal of permitted development rights from this particular dwelling would be inequitable: if the Council considers such control necessary, it could make a Direction under Article 4 of the GPDO that would apply equally to other properties in the area. The terms of Class A of Part 2 would restrict any replacement frontage boundary to a height of 1m. In my view this control, together with that provided by the Landscape Plan under condition 6, would be sufficient to prevent any significant visual harm to the streetscape.

Conclusion

9. For the reasons given above, I find that the small scale extension and ancillary domestic development of the type permitted under the GPDO would not damage the low-density character of Bridgetown, and would not significantly detract from the appearance of the new dwelling or the wider area. Neither do I find any realistic potential for such development to adversely affect the living conditions of neighbouring occupiers. On that basis, the imposition of a condition removing any of those permitted development rights is unnecessary and unreasonable. I conclude that condition 8 fails to meet the requirements of Circular 11/95, and the appeal should succeed. I will vary the planning permission by deleting the disputed condition.

Formal Decision

10. I allow the appeal, and vary the planning permission Ref 56/0108/09/F for demolition of existing house and garage and erection of replacement dwelling and detached garage/store at Ridgeside, Jubilee Road, Bridgetown, Totnes, Devon TQ9 5BW granted on 19 March 2009 by South Hams District Council, deleting condition 8.

Jessica Graham

INSPECTOR