



The Planning Inspectorate

Room: 3/03
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Direct Line: 0117-372-6267
Switchboard: 0117-372-8000
Fax No: 0117-372-8443
GTN: 1371-6267

<http://www.planning-inspectorate.gov.uk>

SOUTH HAMS D.C

Mr S Munday
South Hams District Council
Follaton House
Plymouth Rd
Totnes
Devon
TQ9 5NE

06 AUG 2009

Your Ref: **56/0108/09/APP**
Our Ref: **APP/K1128/A/09/2102961/WF**
Date: **4 August 2009**

REC'D PLANNING

Dear Mr Munday

Town and Country Planning Act 1990
Appeal by Mr & Mrs C Mudge
Site at Ridgeside, Jubilee Road, Totnes, TQ9 5BW

I enclose a copy of our Inspector's decision on the above appeal.

Leaflets explaining the right of appeal to the High Court against the decision, our complaints procedures and how the documents can be inspected are on our website – www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm - and are also enclosed if you have chosen to communicate by post. If you would prefer hard copies of these leaflets, please contact our Customer Services team on 0117 3726372.

If you have any queries relating to the decision please send them to:

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

Phone No. 0117 372 8252

Fax No. 0117 372 8139

E-mail: complaints@pins.gsi.gov.uk

Yours sincerely

Attila Borsos



You can now use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -

<http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp>

You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button



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



The Planning Inspectorate

An Executive Agency in the Department for Communities
& Local Government and the Welsh Assembly Government

21 Century Appeals Service Proportionate, Customer Focused and Efficient

Background

The Planning Act 2008 received Royal Assent on 26 November 2008. One of the main aims of the Act is to improve the speed of the appeals process. The focus is on the principles of proportionality, customer focus and efficiency.

Guidance is being developed and will soon be available on our website. Look out for this at the links overleaf.

The following is a brief overview of the key changes coming into place on 6th April 2009.

• Nature and Content of Appeal Documents

Appellants and local planning authorities (LPA) must ensure that their reasons for refusal and grounds of appeal (GoA) are clear, precise, comprehensive, and that the GoA relate to the scheme as refused at application stage, without substantial changes which could lead to any party being prejudiced. Applicants should not normally proceed to appeal unless all efforts to negotiate a solution with the LPA, including through amending their proposals, have been exhausted. They should be confident at the time of appeal that they have a clear case and do not need to commission further evidence.

• Determining the Appeal Method

The Planning Inspectorate (on behalf of the Secretary of State for Communities and Local Government) will be able to decide whether planning or enforcement appeals under the 1990 Act should proceed by written representations, hearing or inquiry. The appellant and LPA will have the opportunity to put forward their views on their preferred procedure. Criteria for determining the procedure (indicative) can be found on our website.

• Householder Appeal Service

There will be a streamlined appeal process for householder planning appeals to be determined within 8 weeks. The appeal period for householder appeals will be 12 weeks.

• Meeting the timetables

Once an appeal is accepted and validated by the Planning Inspectorate, it is crucial that all parties adhere to the statutory deadlines at each stage. Parties should also maintain a regular and continuing dialogue to ensure that the issues can be clearly established between them, with no last minute surprises arising.



• Streamlined Appeal Procedures (Statement of Common Ground)

There is new guidance being issued to streamline the appeal process. An example of the new streamlined process is main parties will no longer be able to submit final comments for hearing or inquiries at the 9 week stage, and the statement of common ground will be required 6 weeks after the appeal has started.

• Correction of Errors

The appellant or landowner's written consent will no longer be required to correct an error in a Planning Inspectors decision under the "Slip Rule" (i.e. a minor error that does not materially affect the decision).

• Making Costs Applications

Parties to an appeal will be able to apply for Costs in written representation cases. A revised Circular on Costs is in preparation.

Key Websites

Key websites for information regarding the 21st Century Appeal Service.

21st Century Appeals Service

For a full explanation of all of the changes described overleaf and the latest information on making an appeal using the 21st Century appeals service visit the '21st Century Appeals Service' web page on the Planning Inspectorate web site:
http://www.planning-inspectorate.gov.uk/pins/21st_century/index.html

Householder Appeal Service

Information about the new Householder Appeals Service is on the Planning Inspectorate's website:
http://www.planning-inspectorate.gov.uk/pins/appeals/householder_appeals.htm

The Planning Act 2008

To view the actual Planning Act 2008 visit the Office of Public Sector Information (OPSI) website:
http://www.opsi.gov.uk/acts/acts2008/ukpga_20080029_en_1

Making an Appeal

For general Information on making an appeal, to follow the progress of an appeal and to submit an appeal online, visit the Planning Portal website:
<http://www.planningportal.gov.uk/pcsl>

