



Appeal Decision

Site visit made on 8 March 2022

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 16 March 2022

Appeal Ref: APP/X1165/W/21/3282951

16 Stone Park, Churston with Galmpton, Paignton TQ4 6HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Adrian Merritt against the decision of Torbay Council.
 - The application Ref P/2021/0227, dated 23 February 2021, was refused by notice dated 6 May 2021.
 - The application sought planning permission for extend time limit - demolition of existing dwelling and erection of new dwelling - application P/2010/0039 without complying with a condition attached to planning permission Ref: P/2012/1152/PA, dated 3 January 2013.
 - The condition in dispute is No 2 which states that: *Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (Amendment), (No.2) (England) Order 2008 (or any order revoking and re-enacting that order) no development of the types described in Schedule 2, Part 1 Classes A,B, C, E shall be carried out without the prior written consent of the Local Planning Authority.*
 - The reason given for the condition is: *The site is small and in close proximity to neighbouring properties, and so the Local Planning Authority will need to maintain control over all of the cited developments in the interests of the amenities of the surrounding properties and the area in general.*
-

Decision

1. The appeal is allowed and planning permission is granted for extend time limit - demolition of existing dwelling and erection of new dwelling - application P/2010/0039 at 16 Stone Park, Churston with Galmpton, Paignton, TQ4 6HT in accordance with the application Ref: P/2021/0227 dated 23 February 2021 without complying with condition 2 previously imposed on the planning permission Ref: P/2012/1152/PA dated 3 January 2013 and subject to the conditions on the schedule attached to this decision letter.

Background and Main Issue

2. The appeal site comprises a bungalow and associated external amenity area, located within a residential area. The surrounding residential area predominately comprises detached bungalows which are uniform in terms of scale, character and appearance, with examples of more substantial two storey dwellings which exhibit some variety in terms of styles and designs. The host building is positioned elevated above the level of the adjacent highway, with the ground to the rear of the bungalow rising steeply uphill from northeast to southwest.

3. Planning permission was granted for the demolition of the existing bungalow and the erection of a new three storey detached dwelling at the site in 2010, and which was renewed in 2013. The evidence before me indicates that development of the replacement dwelling has commenced. The disputed condition would prevent enlargement of the proposed replacement dwelling as well as restricting erection of outbuildings, whilst also preventing additions and alterations to the roof. The appeal seeks to remove this condition so that the full range of permitted development rights are available to the proposed detached replacement dwelling.
4. The main issue in this appeal is whether the disputed condition is reasonable and necessary in order to preserve the character and appearance of the surrounding area and in the interests of protecting residential amenity.

Reasons

5. The Planning Practice Guidance (the PPG) states¹ that 'conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development)(England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn'. The National Planning Policy Framework (July 2021) provides that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to the development, enforceable, precise and reasonable in all other respects, and that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.
6. Policy DE1 of the Torbay Local Plan (December 2015) (the Local Plan) concerns design and provides that development should be well-designed, respecting and enhancing Torbay's special qualities and further specifies the design considerations proposed development should comply with in respect of function, visual appeal and quality of public space. Policy DE3 of the Local Plan seeks to ensure that development provides a good level of amenity for occupants and that proposals do not unduly impact on the amenity for neighbouring properties. Policy DE5 of the Local Plan specifically concerns domestic extensions and provides that such extensions must not result in adverse effects on the character and appearance of the host dwelling or on the street scene, nor cause harm to the amenity of nearby properties.
7. Policy BH5 of the Brixham Peninsula Neighbourhood Plan (June 2019) (the NP) provides that new development should demonstrate good quality design and respect the character and appearance of the surrounding area.
8. Class A relates to enlargement, improvement, or other alteration of a dwellinghouse. Whilst there are some restrictions, a significant extension could nevertheless be built at the appeal site, and I acknowledge that Class A allows alterations such as new windows in elevations. Class B concerns roof extensions and contains restrictions on the extent of permitted development. In terms of the likely effect of such alterations on the character and appearance of the area and on the host building, I do not find that the alterations such as new windows would be harmful. However, given the

¹ Planning Practice Guidance Paragraph: 017 Reference ID: 21a-017-20190723

- distinctive design of the replacement dwelling, I find that extensions of significant scale that are not sympathetic to the appearance of the host building and which would result in a building that would be incongruous with its neighbours in terms of scale, width and mass, could have a significant harmful effect on the character and appearance of the area.
9. Furthermore, in terms of Class A, given the steeply sloping nature of the external amenity area to the rear of the appeal property and its neighbour at 17 Stone Park and by reason of the close positioning of the relevant buildings, the increased mass, volume and bulk of an extension and the inclusion of new windows in elevations, could have significant adverse impacts in terms of light, outlook and unacceptable loss of privacy for existing and future residents at that neighbouring dwelling. I, therefore, consider that these elements of the disputed condition should remain.
 10. Class C relates to the carrying out of relatively minor alterations such as the insertion of roof lights. Given the minor nature of such alterations, I consider that permitted development which could be carried out within the scope of Class C would only have a very limited effect on the character and appearance of the area, and would not be harmful to the living conditions of occupants of the adjacent buildings. I therefore consider that this element of the disputed condition is neither reasonable or necessary and conclude that it should be omitted.
 11. Class E permits building incidental to the enjoyment of a dwellinghouse. It has been put to me by the Council that such structures would be very visible and would impact the appearance and character of the street, would have the potential to be overbearing, and would result in overlooking and loss of privacy for neighbouring residents.
 12. However, as I observed on my visit there were a number of such outbuildings within rear gardens close to the site and, whilst I acknowledge there is no control over the external materials used, I do not find that such structures would be detrimental to the established residential character or appearance of the surrounding area or to the street scene. Furthermore, whilst there would be potential for overlooking from such structures, it would have been equally the case in the event that they were constructed in relation to the existing bungalow and given the nearby examples of such structures, there are no compelling reasons that planning permission granted for the replacement dwelling means that such a restriction is now justified or necessary.
 13. To conclude on this main issue, the deletion of the condition in full would conflict with the requirements of Policies DE1, DE3 and DE5 of the Local Plan and would be contrary to Policy BH5 of the NP as set out above. However, this is only the case insofar as it relates to development which could be carried out under Schedule 2, Part 1, Classes A and B. For the above reasons, development carried out under Schedule 2, Part 1 Classes C and E would not affect the character or appearance of the area, and the living conditions of neighbouring residents would not be prejudiced by the retention of these rights. These restrictions are not therefore necessary or reasonable, and I shall replace the disputed condition No 2 with an amended condition omitting the restriction of Class C and E rights.
 14. My findings in relation to the above do not necessarily mean that should any future householder development proposals at the site arise they would be

considered unacceptable in planning terms. Instead, it merely means that the Council would retain control to assess the impact of such development. This would also ensure that any such development could be measured by the Council against the relevant local planning policies. The fact that other neighbouring properties might still enjoy permitted development rights with regards to the above, does not mean that controls should not be exercised in instances such as this, where planning permission has been granted for a replacement dwelling. Whilst I note references to other developments and planning appeals, I do not have full details of those matters and I have therefore determined this appeal on its own merits.

Conditions

15. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. The evidence before me confirms that the development has commenced, and I have therefore omitted the standard time limit condition as this is no longer necessary. Conditions were previously imposed relating to flood risk, boundary treatments, parking and obscured glazing. I acknowledge the need for such planning conditions to ensure a good standard of development and in order to protect the living conditions of future and existing residents. In the event that some of the conditions imposed on earlier permissions have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

16. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition but with a new planning condition reflecting the amended restrictions to permitted development rights.

Mr A Spencer-Peet

INSPECTOR

Schedule of Conditions

1. The development hereby approved shall in all respects accord strictly with drawing numbers: 2008 119.3 Plans and Elevations, 2008 119.4 Proposed Site Section and 2008 119.5 Longitudinal Site Section received by the Local Planning Authority on 15 October 2012.
2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no development of the types described in Schedule 2, Part 1 Classes A or B shall be carried out without the prior written consent of the Local Planning Authority.
3. The development hereby approved shall be implemented in accordance with the Sustainable Urban Drainage System (SUDS) approved under application reference CN/2015/0089 referenced as CN2015-0089-5A and CN2015-0089-6 (FRA). The approved drainage system shall be retained and maintained in working order thereafter.
4. The development hereby approved shall be implemented in accordance with the details of boundary treatments approved under application reference CN/2015/0089 referenced as CN2015-0089-1 (materials), CN2015-0089-2 (fence), 14004-001 (Proposed Layout) and CN2015-0089-3 (boundary wall). The approved boundary treatments shall be retained thereafter.
5. The development hereby approved shall be implemented in accordance with the details of external materials approved under application reference CN/2015/0089 referenced as CN2015-0089-1 (materials). The approved external materials shall be retained thereafter.
6. The development hereby approved shall be implemented in accordance with the details of datum levels approved under application reference CN/2015/0089 referenced as CN2015-0089-4 (Datum Levels).
7. The development hereby approved shall not be used or occupied until the garage and car parking area and access thereto shown on the approved plans have been provided and made available for use, or to a stage previously agreed in writing with the Local Planning Authority. The car parking areas shall be kept permanently available for parking purposes to serve the development at all times thereafter.
8. No additional windows shall be installed in the flank elevations of the development hereby permitted over and above those shown on the approved drawings unless they are obscure glazed to Pilkington Level 4 to a height 1.7m above the internal floor level and fixed. The windows shall thereafter be permanently retained in that condition.