



Appeal Decision

Site visit made on 5 October 2022

by **C Megginson BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15th November 2022

Appeal Ref: APP/E2734/W/22/3303240

Greystones, Kettlesing Head to Kettlesing Bottom, Kettlesing, North Yorkshire HG3 2LR

- 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 Jason Clay against the decision of Harrogate Borough Council.
 - The application Ref 22/01275/DVCON, dated 25 March 2022, was refused by notice dated 16 June 2022.
 - The application sought planning permission for the erection of replacement dwelling with associated tree works and landscaping and demolition of existing dwelling and garage without complying with a condition attached to planning permission Ref 21/02571/FUL, dated 12 October 2021.
 - The condition in dispute is No 2 which states that: The development shall not be carried out otherwise than in strict accordance with the submitted details.
 - The reason given for the condition is: in order to ensure compliance with the approved drawings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of replacement dwelling with associated tree works and landscaping and demolition of existing dwelling and garage at Greystones, Kettlesing Head to Kettlesing Bottom, Kettlesing, North Yorkshire HG3 2LR in accordance with the terms of the application, Ref 22/01275/DVCON, dated 25 March 2022, subject to the conditions set out in the attached schedule.

Background and Main Issue

2. The appellant wishes to vary condition 2 to reflect an updated lower ground floor plan. The main issue is the effect that varying the condition would have on the character and appearance of the area.

Reasons

3. The appeal site lies within the Nidderdale Area of Outstanding Natural Beauty (AONB). The approved dwelling would sit against the contours of the land, this would result in the east elevation having a single storey appearance and the west elevation appearing as two storeys, with the lower ground floor rear elevation sitting against earth. The proposed enlargement of the lower ground floor level would create space for a gym/games and cinema room and a store. This would be wholly subterranean and would utilise space partly created as a result of the approved dwellings foundations.

4. Policy HS7 of the Harrogate District Local Plan (2020) (LP) sets out criteria for replacement dwellings in the Countryside. It is agreed by both parties that all of the criteria are met with the exception of Criteria HS7(B) '*the new dwelling is not materially larger than the existing dwelling.*'
5. In this case, the existing dwelling comprises the original bungalow, detached garage and single storey rear extensions that benefitted from subsequent planning permissions. The bungalow also had a first floor approved under separate planning permission. The council indicates that the proposed enlargement of the lower ground floor would result in the development being materially larger than the existing dwelling. In line with the previous appeal decision cited by the council, below ground elements would still contribute to the overall volume of the building.
6. Be that as it may, the overall aim of Policy HS7 is to control the location, size and design of replacement dwellings in order to protect existing landscape character. This policy aim is set out at paragraph 5.48 in the supporting text of the policy. I appreciate the policy aim to avoid the replacement of modest dwellings with overly large houses, however, there is no substantive evidence to support this aim beyond the visual effects of such development. In this particular case, the visual effect is the same as there are no changes to the external elevations. The design, scale and mass of the dwelling would be unchanged in the context of the surrounding landscape and as a result would protect existing landscape character.
7. Whilst there may be some technical conflict with criteria B, the overall aim of the policy is to protect the landscape character and therefore the proposal would not conflict with the overall aim of Policy HS7 of the LP, the Harrogate Landscape Character Assessment, Residential Design Guide or the National Planning Policy Framework, which seek to ensure that developments will add to the overall quality of the area and are sympathetic to local character.

Conditions

8. The guidance in the Planning Practice Guidance 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. As I have limited information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

9. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by amending the disputed condition to include details of the approved plans.

C Megginson

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun on or before 12.10.24
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
GA_10 LOWER GROUND FLOOR PLAN_AS PROPOSED 1:200 @A3

Replacement House at Greystones, Kettlesing Drawing Package Mr Craig Seed May 2021 2324/REV D:
SITE PLAN_AS PROPOSED 1:500 @A3
GROUND FLOOR PLAN_AS PROPOSED 1:200 @A3
ELEVATIONS_AS PROPOSED 1:200 @ A3
EAST ELEVATION_AS PROPOSED 1:200 A3
3. Prior to their first use, samples of the materials to be used for the external walls and roof of the replacement dwelling shall be made available on site for the inspection and written approval of the Local Planning Authority. The development shall then be carried out in strict accordance with the approved details.
4. Prior to the first occupation of the dwelling hereby permitted, an electric vehicle infrastructure strategy and implementation plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall contain details of the number and location of all electric vehicle charging points which shall be of Mode 3 type (specific socket on a dedicated circuit with a minimum current rating of 16 Amp). Buildings and parking spaces that are to be provided with charging points shall not be brought into use until associated charging points are installed in strict accordance with approved details and are operational. The charging point installed shall be retained thereafter.
5. No development shall commence on site before the approved tree report detail (Smeeden Foreman Tree Report Reb B dated October 2019) including root protection area (RPA) fencing in line with the requirements of British Standard BS 5837: 2012 (section 6.2.2 figure 2) Trees in Relation to Construction - Recommendations, or any subsequent amendments to that document, around the trees or shrubs or planting to be retained, as indicated on the approved plan. The developer shall maintain such fences until all development subject of this permission is completed.
6. No operations shall commence on site in connection with the development hereby approved (including any demolition work, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until the root protection area (RPA) works required by the approved tree protection scheme. The level of the land within the fenced areas shall not be altered.
7. A detailed scheme for landscaping, including the planting of trees and or shrubs and the use of surface materials shall be submitted to the Local Planning Authority (LPA) and no development shall take place until the LPA have approved such a scheme: such a scheme shall specify materials,

species, tree and plant sizes, number and planting densities and the timing of the implementation of the scheme, including any earthworks required.

8. In the event that contamination not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all groundworks in the affected area (save for site investigation works) shall cease immediately and the local planning authority shall be notified in writing within 2 working days. Groundworks in the affected area shall not recommence until either (a) a Remediation Strategy has been submitted to and approved in writing by the local planning authority or (b) the local planning authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy. Following completion of any measures identified in the approved Remediation Strategy a Validation Report shall be submitted to the local planning authority. No part of the site shall be brought into use until such time as the site has been remediated in accordance with the approved Remediation Strategy and a Validation Report in respect of those works has been approved in writing by the local planning authority.
9. Works must be undertaken strictly in accordance with the recommendations of the 'Implications/Recommendations' section of the Ecological Appraisal (Section 5, Smeeden Foreman, February 2021). Prior to the first occupation of the dwelling hereby permitted, three new integrated bat boxes must be incorporated at height within the walls of the dwelling and these shall be retained at all times in perpetuity.
10. 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 extensions, garages, outbuildings, roof or dormer windows or external alterations other than any expressly authorised by this permission shall be erected without the grant of further specific planning permission from the Local Planning Authority.
11. The rooflight(s) hereby permitted shall be of the conservation type with a black steel frame and central glazing bar, have recessed installation so that the rooflight sits flush with the roof covering and does not project above this line, be top opening unless a side hung escape rooflight is required and the flashing of the opening shall be carried out in traditional leadwork.
12. Notwithstanding the provision of any Town and Country Planning General Permitted or Special Development Order for the time being in force, the areas shown on 'Site Plan As Proposed' within the Drawing Package (received 13 June 2021) for access and turning shall be kept available for their intended purposes at all times.