



Appeal Decision

Site visit made on [Event Date]

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2023

Appeal Ref: APP/K1128/W/22/3303726

Appleford, Bowcombe Road, Kingsbridge TQ7 2DJ

- 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 Julian and Mrs Fiona Perry against the decision of South Hams District Council.
 - The application Ref 4088/21/FUL, dated 1 November 2021, was approved on 28 April 2022 and planning permission was granted subject to conditions.
 - The development permitted is Erection of replacement dwelling and garage, relocation of access and associated works (Resubmission of 3943/20/FUL).
 - The condition in dispute is No 3 which states that: *Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (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:*
 - (a) Part 1, Class A (extensions and alterations)
 - (b) Part 1, Classes B and C (roof addition or alteration)
 - (c) Part 1, Class D (porch)
 - (d) 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)
 - (e) Part 1, Class F (hard surfaces).
 - 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.*
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Decision

1. The appeal is allowed and the planning permission Ref 4088/21/FUL for the erection of replacement dwelling and garage, relocation of access and associated works at Appleford, Bowcombe Road, Kingsbridge TQ7 2DJ granted on 28 April 2022 by South Hams District Council is varied by deleting condition No 3.

Background and Main Issue

2. Planning permission was granted on appeal for the erection of a replacement dwelling¹ at the appeal site. A subsequent application², now the subject of this appeal, was submitted for a revised scheme which the appellants say is identical in size and footprint to the scheme allowed on appeal but involved external changes which include a reduction in the overall height of the proposed dwelling. Planning permission was granted subject to conditions

¹ Ref: APP/K1128/W/21/3276041

² LPA ref: 4088/21/FUL

including the one the subject of this appeal, which removes permitted development (PD) rights.

3. I saw at my site visit that the original dwelling has been demolished and works such as the creation of the new approved access were underway.
4. The Council's statement indicates that the condition is reasonable and necessary to protect the character and appearance of the area and in particular the South Devon Area of Outstanding Natural Beauty (AONB). The appellants object to the condition as they say no such condition was imposed on the previous consent and exceptional circumstances have not been demonstrated to justify the condition.
5. Against that background and having regard to the reason for the disputed condition and the Council's submissions, the main issue is whether condition No 3 is reasonable and necessary in the interests of protecting the character and appearance of the development and the wider area, including the AONB.

Reasons

6. Policy TTV29 of the Plymouth and South West Devon Joint Local Plan 2014-2034 adopted March 2019 (JLP) permits replacement dwellings in the countryside subject to meeting five specified criteria to help protect the character of the countryside. In granting planning permission for the appeal proposal, the Council were satisfied that the proposal would adhere with the requirements of the policy and that the character of the countryside would be protected. The supporting text refers to further design guidance on the implementation of Policy TTV29 being provided within a Supplementary Planning Document.
7. The Plymouth and South West Devon Joint Local Plan 2014-2034 Supplementary Planning Document adopted July 2020 (SPD) refers to the need to remove permitted development rights for replacement dwellings to ensure that the size of the dwelling does not materially alter once it has been completed. Removing condition No 3 would therefore be at odds with the requirements of the SPD which has been prepared to inform the implementation of Policy TTV29 of the JLP.
8. However, the National Planning Policy Framework (the Framework) is also a material planning consideration and Paragraph 54 of the Framework states that planning conditions should not be used to restrict national PD rights unless there is clear justification for doing so. The Planning Practice Guidance (PPG) also advises that conditions of this nature may not pass the test of reasonableness or necessity and that article 4 powers³ are available to Councils seeking to withdraw PD rights over a defined area.
9. The appeal site is in a high quality landscape setting, set on sloping ground which overlooks Bowcombe Creek surrounded by well-wooded slopes. In this respect it displays many of the characteristics of the '3G River Valley and Slopes' Landscape Character Area in the South Hams and West Devon Landscape Character Assessment.
10. The Council refer to Policies DEV23, DEV24 and DEV25 of the JLP which refer to the need to conserve and protect designated areas such as the AONB and

³ Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015

Undeveloped Coast from development that would have a detrimental effect. This, they say, amounts to clear justification for restricting future development at the appeal site.

11. The need to protect the AONB from inappropriate or harmful development is already acknowledged in the GPDO⁴. In granting planning permission for various works within the curtilage of a dwelling, it prescribes a more limited range of PD rights for dwellings located on Article 2(3) land⁵. As such, even without condition No 3, the extent to which the dwelling could be extended and altered would be limited.
12. I accept that the appeal site is relatively large and that the GPDO would permit the construction of outbuildings and hard surfaces within the curtilage. However, there is nothing before me to indicate that the original dwelling had its PD rights removed restricting the construction of outbuildings or hard surfaces beyond those set out in the GPDO. In addition, there is an extant planning permission on the appeal site for a dwelling which would be 1.6 metres higher and would have its PD rights intact. There is no evidence before me to demonstrate that the effect of implementing PD rights in relation to the current proposal would be inherently more harmful than in either of these circumstances.
13. I have had regard to the statutory duty⁶ on me to have regard to the purpose of conserving and enhancing the natural beauty of the AONB and Paragraph 176 of the Framework which requires that I give great weight to conserving and enhancing landscape and scenic beauty in the AONB. However, there is nothing before me to suggest that the appellants intend to carry out permitted development at the appeal site nor that any such works would be inherently harmful to the AONB.
14. Taken together, I conclude that the appeal proposal would comply with Policy TTV29 of the JLP even without the imposition of condition No 3. I am not persuaded that clear justification for the condition as required by the Framework has been provided.
15. Accordingly, I conclude that condition No 3 is not reasonable or necessary in the interests of protecting the character and appearance of the development and the wider area, including the AONB.

Other Matters

16. The New Bridge and High House are listed buildings located close to the appeal site. The previous Inspector⁷ found that the replacement dwelling, being separated from the listed buildings and given the presence of other adjoining dwellings would not affect the setting or significance of the heritage assets. Given that PD rights were not removed on that permission, I am satisfied that the removal of condition No 3 would not affect the setting or significance of these heritage assets.

⁴ *Town and Country Planning (General Permitted Development) (England) Order 2015*

⁵ This is defined in the GPDO as, inter alia, land within an Area of Outstanding Natural Beauty

⁶ Section 85 of the Countryside and Rights of Way Act 2000

⁷ Ref: APP/K1128/W/21/3276041

17. The Town Council refer to the loss public parking spaces and the impact of the new access but I see no reason to depart from the Council's view that the proposal is acceptable in both these respects.

Conclusion

18. For the reasons given, I find that the relevant tests in the Framework and the PPG have not been met in this case. I therefore conclude that the disputed condition is not reasonable or necessary in the interests of protecting the character and appearance of the development and the wider area including the AONB. I therefore allow the appeal and vary the original permission by deleting the disputed condition.

Alison Fish

INSPECTOR