



Appeal Decision

Site visit made on 11 September 2020

by **T Gethin BA (Hons), MSc, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 December 2020

Appeal Ref: **APP/K1128/W/20/3248210**

Ashleigh House, Fore Street, Kingswear TQ6 0AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs S Merotra against the decision of South Hams District Council.
 - The application Ref 0842/17/FUL, dated 14 March 2017, was refused by notice dated 12 September 2019.
 - The development proposed is described as the construction of a new dwelling with associated landscaping within the curtilage of a grade II listed building.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a new dwelling with associated landscaping within the curtilage of a grade II listed building at Ashleigh House, Fore Street, Kingswear TQ6 0AD in accordance with the terms of the application, Ref 0842/17/FUL, dated 14 March 2017, and subject to the conditions set out in the schedule to this decision.

Preliminary Matters

2. The site boundary and land ownership have been the subject of much consideration by the main and interested parties, and the redline boundary was amended during the course of the Council's determination of the planning application. After the appeal was submitted, the appellants also corrected the inconsistency between ownership certificates on the appeal and the revised planning application forms, and undertook the relevant steps associated with completing Certificate D for the appeal submission, including advertising in the local press. From the evidence before me, I am satisfied that the latest redline boundary and corrected ownership certificate are acceptable and that any on-going or future disputes relating to land ownership are not a planning matter. I have determined the appeal on this basis and on the submitted evidence.
3. Since the Council's decision on the planning application, the Kingswear Parish Neighbourhood Plan 2019-2034 (KPNP) progressed through public consultation and the Submission version (April 2020) has been submitted to the Secretary of State for Examination. The main parties were offered the chance to comment on the relevance of the emerging KPNP to the appeal proposal and I have taken the comments received into account in my consideration of this appeal. However, on the basis that the emerging KPNP is yet to progress through examination and referendum, I give limited weight to its draft policies. Furthermore, the Council has not alleged that the proposed development would conflict with any of the emerging KPNP draft policies.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the surrounding area and the South Devon Area of Outstanding Natural Beauty (AONB).

Reasons

5. The appeal site is located in a built-up part of Kingswear which contains relatively closely-grouped properties. Amongst other aspects, the site includes the parking area of Ashleigh House and its large, steeply-sloping terraced garden containing various steps, decking, soft landscaping and a prominent section of near vertical bedrock in its lower section. It is surrounded by built form with various designs, styles and scales and which generally run in a number of horizontal rows across the hillside. The site and gardens of adjoining properties provide space between surrounding built form and create a break in the row of properties (the second row) situated above the terrace fronting Fore Street. However, although there are numerous gardens in the surrounding area, such gaps are not a particularly notable or characteristic feature in this part of Kingswear, which has a denser and more built-up form than the more spacious built environment elsewhere in the village.
6. Although the site is visible in the locality, including from various positions on the nearby public highway and in some longer distance views such as from the estuary, I observed on my site visit that existing built form serves to partly screen and limit views of the site. Due to topography and intervening buildings, the extent of the gap created by the site and adjoining gardens is also not particularly visible from the public realm. Furthermore, the row of buildings to the south and the properties in the second row surround and rise above the site and adjoining gardens and thus also visually limit their extent.
7. With the site being located within the South Devon AONB, the appeal proposal has the potential to affect the character of the surrounding landscape and the special qualities of the AONB. Local and national planning policy seek to protect and enhance valued landscapes, and attach great weight to conserving and enhancing the landscape and scenic beauty of AONBs. I am also mindful of my duties under Section 85 of The Countryside and Rights of Way Act 2000 which requires all relevant authorities to have regard to the purpose of conserving and enhancing the natural beauty of AONBs when performing their functions.
8. Set into the hillside, the proposed three-storey dwelling would be lower than the adjoining property and maintain the general building line of the second row of properties to which it would broadly align. It would therefore reflect and reinforce the prevailing development pattern, with its strong sense of horizontal built form running in rows along the hillside and which characterises the townscape and landscape in this part of Kingswear. It would also not appear out of proportion, cluttered, overbearing or particularly dominant, nor would it impact the skyline or significantly obscure views.
9. The proposed development would to some extent reduce the amount of green and undeveloped space on the site. However, the gap provided by the site and adjoining gardens is not particularly notable from the public realm, while parts of the existing garden currently contain decking, steps, railings and various domestic paraphernalia. I have also found that it is not an important or

distinctive feature of the locality and the submitted evidence does not indicate that it contains or contributes to the special qualities of the AONB.

10. The proposed external amenity and landscaped areas within the site and around the new dwelling would reflect the domestic garden areas in the vicinity and ensure acceptable, consistent spacing to surrounding built form. The extensive and inventive soft landscaping proposed – including creating planting pockets within the rock, providing space for climbing plants and significant planting throughout – would help to integrate the development into its hillside setting and mean that the site would have a green appearance overall. Its verdant, visual connection with the adjoining gardens would thus also be maintained and I have little substantive evidence which indicates that the proposed landscaping could not be achieved.
11. The proposed development would therefore neither significantly change nor be experienced as reducing the present extent of green space that is perceptible from the public realm and in the wider area. With its mix of traditional and contemporary design features and the use of high-quality, locally distinctive materials, the proposed development would also not appear out of character in relation the varied scales, design and appearance of surrounding built form.
12. Based on the plans determined by the Council, the Council’s landscape specialist did not object to the proposed development. The Officer Report sets out there would be sufficient room for soft landscaping in level areas and planting within the face of retaining features and that the landscape specialist concluded that appropriate opportunities for securing enhancements had been taken. On the basis of the submitted evidence, including the planting plans, proposed elevations and site and floor plans, I concur with that view and find that the well-designed dwelling and the high quality, extensive soft landscaping would enhance the site and surrounding area.
13. For these reasons, I am satisfied that the appeal proposal would preserve and enhance the locality’s characteristics and sense of place and the landscape character and scenic and visual quality of the surrounding area. Accordingly, the landscape and scenic and natural beauty of the AONB would be both conserved and enhanced by the proposed development.
14. For the above reasons, I conclude that the proposed development would not harm the character and appearance of the area and the South Devon AONB. I therefore find that it accords with Policies DEV23 and DEV25 of the Plymouth & South West Devon Joint Local Plan 2014-2034 (JLP). Amongst other aspects, these: set out that highest degree of protection will be given to the protected landscape of the South Devon AONB and that the Council will protect the AONB from potentially damaging or inappropriate development; give great weight to conserving landscape and scenic beauty in the protected landscapes; and require development to conserve and enhance the natural beauty of the protected landscape, be located and designed to respect scenic quality and maintain an area’s distinctive sense of place and reinforce local distinctiveness, and conserve and enhance the characteristics and views of the area along with valued attributes that contribute to the character and quality of the area. The proposal would also be consistent with the provisions in the Framework in relation to conserving and enhancing the natural environment.
15. It has been put to me that the development would not be consistent with draft Policy K7 (Design of Development in Kingswear Parish) of the emerging KPNP.

Although I only give limited weight to this policy due to the status of the emerging KPNP, for the above reasons I find that the development would also not be inconsistent with this draft policy.

Other matters

16. The site is located within the setting of a Grade II Listed Building, Ashleigh House. Part of it is also within the Kingswear Conservation Area. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) requires special regard to be had to the desirability of preserving the (listed) building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of that Act requires that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area in the exercise of planning powers.
17. The Council does not allege that the proposed development would harm the setting of the listed building or the character, appearance and setting of the conservation area. I note that the Council's Officer Report sets out that their heritage specialist also indicated that listed building consent is not required because no listed structures would be affected and raised no objection in relation to the effect of the proposal on the conservation area and the setting of the listed building. Having considered the development and visited the site, I concur with that view. Accordingly, I find that the development would preserve the significance of the designated heritage assets, including their character, appearance and settings.
18. Although the site lies within the sustenance zone for greater horseshoe bats associated with the Berry Head Special Area of Conservation, it is not within the designated flight corridor buffer zones. On this basis and the details provided within the Wildlife Survey, I am satisfied that the proposed development would not result in a likely significant effect on the designated area. The Wildlife Survey also indicates that the effect on other flora and fauna would be acceptable and could be sufficiently mitigated, while the proposed bat boxes would provide some enhancement.
19. Given the proximity of surrounding properties, the proposed development has the potential to affect the living conditions of adjoining occupiers. However, topography means that the development would be sufficiently set down below properties to the south while boundary treatment would also provide some screening. Soft landscaping, boundary treatment and the obscured privacy screen on the proposed balcony would prevent significant overlooking from the new dwelling to the west. With only a Juliet balcony on the eastern gable and no windows in the eastern elevation, there would be limited overlooking of gardens to the east/north-east. Although the new dwelling's main aspect would face north and would therefore look towards Waterview House, Ashleigh House and to some extent Wood Lane Cottage, the degree of separation and angles created by the steep hillside means that it would not result in a significant loss of privacy, outlook or light for the occupiers of those properties, which are themselves orientated to face the estuary. Furthermore, while the garden of Ashleigh House would be reduced, the lower terrace shown on the proposed site plan – which no longer includes a garage beneath the terrace – would be provided as accessible and sufficient amenity space for the occupiers of that

property. Like the Council, I am thus satisfied that the living conditions of adjoining occupiers would not be harmed.

20. Much of the highway network in the vicinity of the site is narrow and also heavily parked. Vehicular access to the existing parking spaces for Ashleigh House and Wood Lane Cottage is also tight and Wood Lane is one way. However, one additional dwelling would not lead to a significant increase in traffic, including in relation to deliveries once the dwelling was occupied. The submitted evidence does not lead me to conclude that access to the parking spaces for the new dwelling would be unacceptable compared to the existing situation nor that the retained existing single parking spaces for Ashleigh House and Wood Lane Cottage would be inaccessible.
21. Although the two parking spaces for the proposed three-bedroom dwelling would be less than that set out in the emerging KPNP, I give limited weight to its draft policy on parking standards given its emerging draft status. The Council and Highway Authority (HA) have also not raised any objections in relation to parking provision for the proposed dwelling nor have they alleged a conflict with adopted or emerging planning policies in relation to this matter.
22. Construction-related highway issues can be dealt with via the Council's proposed condition for a construction management plan. With regards to highway safety, the HA has also not objected to the development, while any changes to road signage could be progressed with the HA as necessary, under a separate process, to avoid highway-related infringements.
23. Concerns have been raised about land stability and subsidence issues arising from excavation and construction works. The evidence before me – including the Geotechnical Report and the reviews by Ballentine and Devon Building Control – indicates that land stability and subsidence is unlikely to be an issue that cannot be dealt with using appropriate methods and complying with relevant building regulations. I note that the Council also concluded that harmful impacts and health risks arising from land instability are unlikely to occur. However, as indicated by the appellant, a condition can secure the completion of an invasive ground investigation to inform an appropriate construction engineering solution, which in this instance would be reasonable and relevant given the extent of the excavation and construction works.
24. A number of other matters have been raised by interested parties, I have taken them all into account. Those related to planning include climate change, the type and mix of housing required in the area, the living conditions of future occupiers of the development, the stepped access, drainage, precedent setting, previous planning decisions on the site including the dismissed appeal in 1992, the relevance or otherwise of appeal decisions on other sites, noise and disturbance including from the heat pump, and construction works affecting neighbours, highways and the sub-station. However, whilst I take these representations seriously and acknowledge the level of objections and concerns raised, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters. Planning conditions would also cover some of these issues, as detailed below. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed.

Conditions

25. I have had regard to the various planning conditions listed in the Council's Officer Report and considered them against the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents, for clarity and consistency and to ensure that details are submitted to and considered by the Council where relevant.
26. In addition to the standard time limit, I have imposed a condition requiring that the development is carried out in accordance with the approved plans in the interests of certainty. Conditions covering the details of external materials are required in order to maintain the character and appearance of the area. A condition ensuring that the development is carried out in accordance with the measures detailed in the appellant's Wildlife Survey is also necessary to safeguard protected species and secure some biodiversity enhancement.
27. A condition relating to the provision of energy efficiency measures is required in the interests of reducing emissions and achieving a low carbon future. Conditions relating to the heat pump, the balcony screen and informing neighbours prior to any piling works that are found to be required are necessary with regards to maintaining the living conditions of adjoining occupiers. A condition securing the provision and retention of the Lower Terrace is necessary to ensure that Ashleigh House retains a garden area.
28. Due to the constrained nature of the site and the surrounding area and highway network, a condition requiring a construction management plan is necessary in order to maintain highway safety and the living conditions of adjoining occupiers. A condition is necessary to ensure that the parking and servicing areas are provided prior to occupation and thereafter maintained in the interests of highway safety. A condition requiring the submission of full details of the surface water management scheme is necessary in order to ensure sufficient sustainable drainage is provided and to avoid an increase in surface water runoff.
29. Given the extent of the excavation and construction works required, a condition relating to the identification of unexpected contamination is necessary to ensure that any contamination issues arising from the development can be sufficiently dealt with. With the potential structural, land stability and subsidence issues associated with excavation and construction on the site, I consider that it is necessary, reasonable and relevant in this case to also include a condition, as suggested by the appellant and third parties, relating to ground investigations and details of the subsequently proposed construction engineering solution.
30. The submitted evidence does not indicate that a condition restricting occupancy of the proposed development is necessary to make the development acceptable and I attach only limited weight to the related draft policy in the emerging KPNP for the reasons I have set out above. I also note that the Council's conditions listed in the Officer Report does not include such a condition. Accordingly, I have declined to impose it.

Conclusion

31. For the above reasons, the appeal is allowed.

T Gethin

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No 502/01 Rev D (Planting Plan 01, dated 10.05.19); Drawing No 502/02 Rev C (Planting Plan 02 (Details), dated 15.11.18); Drawing No 03 Rev O (Proposed Site Plan, dated 09.05.19); Drawing No 04 Rev J (Proposed Ground & First Floor Plans, dated 30.08.18); Drawing No 05 Rev K (Proposed Elevations/Sections, dated 09.05.19); and Drawing No 20 Rev D (Site Boundary - Location Plan, dated 30.08.18).
- 3) No development shall commence until an invasive ground investigation of the site and details of the proposed construction engineering solution and methodology have been submitted to and approved in writing by the Local Planning Authority. The invasive ground investigation shall be carried out in accordance with the recommendations in the submitted Phase 1: Preliminary Geotechnical and Contamination Assessment Report (by Ruddlesden geotechnical, dated 22 March 2016) and its findings shall be used to inform the proposed construction engineering solution and methodology at the site. The development shall then be carried out in accordance with the approved details.
- 4) No development shall commence until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. The CMP shall include:
 - (a) the timetable of works;
 - (b) daily hours of construction;
 - (c) any road closure(s);
 - (d) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 0800 and 1800 hours Monday to Friday and 0900 and 1300 hours Saturday. No such vehicular movements shall take place on Sunday and Bank/Public Holidays unless agreed by the Local Planning Authority in advance;
 - (e) the number and size of vehicles visiting the site in connection with the development and the frequency of their visits;
 - (f) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
 - (g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County highway for loading or unloading

purposes, unless prior written agreement has been given by the Local Planning Authority;

(h) hours during which no construction traffic will be present at the site;

(i) means of enclosure of the site during construction works;

(j) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site;

(k) details of wheel washing facilities and obligations;

(l) the proposed route of all construction traffic exceeding 7.5 tonnes;

(m) details of the amount and location of construction worker parking;

(n) photographic evidence of the condition of adjacent public highway; and

(o) site management arrangements, including the site office and developer contact number in the event of any construction/demolition related problems, and site security information.

The CMP shall be strictly adhered to during the construction of the development hereby permitted, unless variation is approved in writing by the Local Planning Authority.

- 5) Notwithstanding the submitted details, prior to the installation of any part of the surface water management scheme or before development continues above slab level, whichever is the sooner, full details of the most sustainable drainage option shall be submitted to and approved in writing by the Local Planning Authority. Design steps include:
1. Attenuation should be designed for a 1:100 year return period plus an allowance for Climate change (currently 40%).
 2. The offsite discharge will need to be limited to the Greenfield runoff rate. This must be calculated in accordance with CIRIA C753. The discharge must meet each of the critical return periods. Full details of the flow control device will be required.
 3. The drainage details of the car park and access will be required. If it is proposed to be permeable then it should be designed in accordance with CIRIA C753. Full design details and sectional drawing showing the specification and make up will be required.
 4. A scaled plan showing the full drainage scheme, including design dimensions and invert/cover levels of the attenuation features, within the private ownership, will be required.
 5. The drainage scheme shall be installed in strict accordance with the approved plans, maintained and retained in accordance with the agreed details for the life of the development.
- 6) Prior to their installation, details and samples of externally facing materials including stone, render, mortar and roofing materials and details of the rainwater goods, doors, window reveals and eaves detailing to be used in the construction of the proposed development shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.
- 7) The material to be used above the doors to the covered terrace on the western gable shall not be glass or any other reflective or transparent material.
- 8) The Lower Terrace shown on Drawing No 03 Rev O (Proposed Site Plan) shall be provided prior to occupation of the dwelling hereby approved and thereafter retained for the use of Ashleigh House.

- 9) The 1.8 metre high screen on the western edge of the first floor terrace, shown on Drawing No 05 Rev K (Proposed Elevations/Sections) shall be solid or opaque so as to prevent views to the west, provided prior to occupation of the dwelling hereby permitted and thereafter retained.
- 10) Prior to occupation of the dwelling hereby approved, the design features, equipment and construction measures described in the email from Adam Bennis of BBH Architects dated 4th June 2019, including low energy lighting, heating via an air source heat pump (shown on the approved plans), thermal performance above Building Regulations requirements and a whole house ventilation system with heat exchanger, shall be installed and fully functioning. These measures shall be retained and maintained in operational condition while the dwelling is occupied. No alternative heating system shall be installed without prior written agreement from the Local Planning Authority.
- 11) Prior to installation of the air source heat pump, details of the proposed system which demonstrate it accords with the Microgeneration Certification Standards (MCS) Planning Standards shall be submitted to and approved by the Local Planning Authority in writing. Details shall include any attenuation that is required to meet the MCS Planning Standards. Once approved, the system shall be installed and maintained in accordance with the approved details.
- 12) The dwelling hereby approved shall not be occupied until the parking and servicing areas relating to it and shown on the approved drawings have been properly consolidated, surfaced, laid out and constructed. The parking and servicing areas shall be kept permanently available for their intended purposes in connection with the development hereby permitted.
- 13) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted and obtained written approval from the Local Planning Authority of an investigation and risk assessment and where necessary a remediation strategy and verification plan detailing how the unsuspected contamination shall be dealt with. Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the development hereby permitted, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority.
- 14) The recommendations, mitigation and enhancement measures set out in Section 7 of the submitted Wildlife Survey (by Butler Ecology, dated 20th May 2016) shall be fully implemented as follows:
 - * 2 x Schwegler 1WI Summer and winter Bat Boxes should be built into the west and east elevations as indicated in the annotated plans within the Wildlife Survey, provided prior to occupation of the dwelling hereby approved and thereafter retained.
 - * Clearance of any potential nesting habitat shall be carried out outside the nesting season – i.e. between September and February inclusive. Potentially disturbing works shall not be carried out during the bird nesting season

(March to August inclusive), unless a nesting bird survey has been carried out confirming that there are no nesting birds present, that report having been submitted to the Local Planning Authority for review and agreement to the works immediately preceding them being undertaken.

* The protocol set out in Section 7 of the Butler Ecology Report shall be followed if it is deemed necessary for work within or close to the bird nesting season.

- 15) Notwithstanding the information provided in the submitted Phase 1: Preliminary Geotechnical and Contamination Assessment Report (by Ruddlesden geotechnical, dated 22 March 2016) and the submitted Ballentine Arnold letter (dated April 2016), if areas of softer ground are found and require piling as a construction method, the developer shall write to the occupiers of neighbouring properties, at least a week before piling works are commenced, to advise them of the dates and hours within which that work will be undertaken.

END OF SCHEDULE