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# Appeal Decision

Site visit made on 7 March 2024

by **L N Hughes BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 March 2024

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**Appeal Ref: APP/U2750/W/24/3337102**

**Greystones, Kettlesing Head to Kettlesing Bottom, Kettlesing HG3 2LR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Jason Clay against the decision of North Yorkshire Council.
  - The application Ref is ZC23/03347/DVCON.
  - The application sought planning permission for variation of condition 2 (approved drawings) of permission 21/02571/FUL, to allow extension of lower ground floor, without complying with a condition attached to planning permission Ref 22/01275/DVCON, dated 15 November 2022.
  - The condition in dispute is No. 2 which states that: *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.
  - 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 dismissed.

## Preliminary Matters

2. The plans before the Council at the time of its decision included a 'Lower Ground Floor Plan & North Elevation' (September 2023). A revised version dated December 2023 providing more clarity of the proposed external ground level change was submitted for the appeal, on which parties have had the chance to comment. In accordance with the Holborn Studios Ltd 2017 judgement, accepting this within the evidence would meet the substantive and procedural tests, with no parties prejudiced in the interests of natural justice.
3. The dwelling is under construction. For the avoidance of doubt, my determination only considers the effect of the new door and the additional exposure of the lower ground floor level.
4. The site lies within the designated Nidderdale Area of Outstanding Natural Beauty (AONB), which was rebranded in November 2023 to the Nidderdale National Landscape (NL). I have therefore used the NL description even where the AONB description is directly cited within the policies and guidance.

## Background and Main Issue

5. The erection of a replacement dwelling was approved in October 2021<sup>1</sup>, with its Condition 2 identifying the approved plans. A November 2022 appeal<sup>2</sup> allowed a subterranean extension of the lower ground floor. The proposal now seeks to amend the approved plans, to enable a new glazed door in the north elevation of this extended lower ground floor, and an associated lowering of the external ground level. This would result in more of the lower ground floor being visible.
6. The main issue is the effect of the proposed amendment to the condition on the character and appearance of the area, with particular regard to the effect on the Nidderdale NL.

## Reasons

7. Policy HS7 of the Harrogate District Local Plan (LP) (2020) sets out criteria for replacement dwellings in the Countryside. The parties disagree as to whether the proposed additional door and earth movements would comply with its criterion (B); *"the new dwelling is not materially larger than the existing dwelling"*. No specific guidance has been put before me as to what would be considered "materially larger" for the purposes of HS7. However, the 2022 appeal decision identified that the overall aim of Policy HS7 is to control the location, size and design of replacement dwellings in order to protect existing landscape character.
8. In this respect, that Inspector therefore considered that notwithstanding the proposed large lower ground floor volume increase, its visual effect was key to their determination. As it would be entirely subterranean, it would result in an unchanged design, scale, and mass in the context of the surrounding landscape.
9. The landscape setting is particularly important because of the site's location within the Nidderdale NL. The Framework paragraph 182 identifies that such designated sites have the highest status of protection in relation to conserving and enhancing landscape and scenic beauty, with great weight to be given to these issues. These areas should only have a limited scale and extent of development. The LP Policy GS6 similarly supports these principles, whereby proposals should not detract from the natural beauty and special qualities of the NL and its setting.
10. The proposal would not amend the overall architectural style, detailing, and materials, nor add any floorspace. The proposed door would in itself be relatively insignificant in the context of the overall fenestration on the dwelling. However, despite this, the extent of the changed external topography would reveal a significant amount of the lower ground floor in comparison to the approved elevation. This would therefore affect the dwelling's perceived scale and massing.
11. The permitted dwelling would be 2 storey viewed from the roadside, and appear single storey massing in diagonal and side on views. The proposed additional expanse of visible lower ground elevation would give the impression of a 2 storey dwelling in all views incorporating this elevation. This would change the design, and increase the cumulative scale and mass of the dwelling.

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<sup>1</sup> 21/02571/FUL

<sup>2</sup> Local Planning Authority ref 22/01275/DVCON, Planning Inspectorate ref APP/E2734/W/22/3303240.

Despite the existing trees along the site's frontage, this would be visible from along the road, from the elevated approach from the public right of way diagonally opposite the site, and from the properties to the north.

12. As such, and in following the previous Inspector's reasoning, this change is sufficiently substantive so as to create a dwelling which would appear materially larger, and thus harm the NL character.
13. Any additional landscape screening which could be created within the site would take several years before reaching maturity, with visual harm in the meantime. Even when mature this is unlikely to fully mitigate the dwelling's additional exposed height. Screening within the neighbouring garden cannot be relied upon, and this also appears to be newly planted and thus immature.
14. I also have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the impact of the proposal on the special architectural and historic interest of listed buildings and their settings. Opposite the site is Ivy House Farm, a Grade II Listed Building. However, and in following the previous appeal decisions, the proposed amendments would be sufficiently distanced such that I find there would be no direct harm to its setting.
15. Overall, the proposed development would cause harm to the character and appearance of the Nidderdale NL. It would conflict with the LP policies GS6 and HS7 as outlined above, and also with guidance in the Framework relating to protection for landscape character.

### **Conclusion**

16. The proposed development would conflict with the development plan as a whole. With no other material considerations outweighing this conflict, for the reasons given above I conclude that the appeal is dismissed.

*L N Hughes*

INSPECTOR