



Appeal Decision

Site visit made on 26 March 2024

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 08 April 2024

Appeal Ref: APP/K1128/W/23/3328907

Higher Gabberwell House, road from Kingston Plain Cross To Langston Cross, Kingston TQ7 4PS

- 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 carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms Susan Foy against the decision of South Hams District Council.
 - The application Ref 3780/22/VAR, dated 9 January 2023, was refused by notice dated 6 March 2023.
 - The application sought planning permission for change of use of land to residential garden land, erection of detached garage and erection of associated boundary fencing without complying with a condition attached to planning permission Ref 2435/20/VAR, dated 9th October 2020.
 - The condition in dispute is No 3 which states that: *The landscaping scheme shall be implemented and maintained in accordance with drawing No.'s P(0)-004 Rev C – Proposed Hedgerow Management ; P(0)-005 Rev C – Proposed Landscape Plan; The Ten Year maintenance plan and specification for new hedgerow planting boundary definition, prepared by Dart Tree Consultancy, and dated 26 July 2020; Quotation for tree works (including plant schedule), Dart Tree Consultancy, 7 Mach 2018 unless otherwise agreed in writing by the local planning authority. All work shall be completed in accordance with the agreed timetable and maintenance schedule.*
 - The reason given for the condition is: *In the interests of impact upon local landscape character.*
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Decision

1. The appeal is allowed and planning permission is granted for change of use of land to residential garden land, erection of detached garage and erection of associated boundary fencing at Higher Gabberwell House, road from Kingston Plain Cross To Langston Cross, Kingston TQ7 4PS in accordance with the application Ref 3780/22/VAR, without compliance with condition number 3 previously imposed on planning permission Ref 2435/20/VAR dated 9th October 2020 and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: P(0)-001 Rev B; P(0)-002 Rev C; P (0)-003, P(0)-004; P(0)-005 Rev C; and Hedge Location Plan MAINT-GAB-20 received by the local planning authority on 31 October 2022.
 - 2) The garage hereby permitted shall only be used for the storage of motor vehicles and associated storage and remain ancillary to the main dwelling and shall not be occupied as a separate dwelling house.

- 3) The recommendations, mitigation and enhancement measures of the Ecological Report, by Tor Ecology dated 13 April 2018, shall be adhered to at all times.

Preliminary Matters and Background

2. Planning permission was granted under ref:1703/18/FUL for the change of use of land to residential garden land, erection of detached garage and erection of associated boundary fencing. This was granted retrospectively and included the requirement for a soft landscaping scheme. The reason being, that the Council wished to mitigate against the migration of a Devon hedgebank by seeking additional planting along the original hedge line.
3. As the landscaping condition was not discharged within its stipulated timeframe, a further application was submitted under ref:2435/20/VAR to vary it. Planning permission was granted, amongst other things, subject to additional plans and a landscaping scheme that included a timetable and maintenance schedule (condition 3). It is not clear from the evidence at what point the landscaping scheme should have been implemented.
4. Within this appeal, the appellant seeks to alter condition 3 of 2435/20/VAR to change a strip of agricultural land to residential. However, this land is outside the appeal site area. As such, it would not be within the scope of this appeal to allow such a change of use. Alternatively, they suggest varying the condition to ensure this boundary could be marked with an agricultural fence or apple trees.
5. In a similar vein to its original position, the Council is concerned that by removing the requirement for additional planting along the original line of the former field boundary, insufficient mitigation would be delivered in respect of the migrated hedgebank. Furthermore, the Council considers that the additional planting would restore local distinctiveness by defining the line of the original agricultural field boundary. This is within the context of the site being located in the South Devon National Landscape (NL).
6. The appellant did not specifically seek to vary the plans condition. However, section 73 allows me to modify versions of those conditions previously imposed. I shall return to this matter later.

Main Issue

7. The main issue is the effect that varying condition 3 would have on the character and appearance of the area.

Reasons

8. The appeal site comprises a residential property on the rural periphery of a small settlement. It is in the countryside and lies adjacent to expansive agricultural fields and a public footpath, which is a highly sensitive receptor. It is within the NL where paragraph 182 of the National Planning Policy Framework (the Framework), Policy DEV25 of the Plymouth and South West Devon Joint Local Plan 2014-2034, March 2019 (JLP) and Policy KNP7 of the Kingston (in the South Hams of Devon) Neighbourhood Plan 2019-34, May 2021 (NDP) attach great weight to conserving and enhancing landscape and scenic beauty.

9. Views into the appeal site's large property are available from the public footpath, though its gardens are mostly screened by the presence of a hedgebank and its planting atop. It is noted that this hedgebank is not within the appeal site.
10. The evidence, which includes historic mapping, shows that this hedgebank replaced an original feature that was approximately 4m closer to the appeal property. Nevertheless, at my visit, I observed that the lengthy hedgebank contained a good variety of healthy looking plants and small trees. Furthermore, it was of a similar height and appearance to the adjoining, historic hedgebank. Notwithstanding the adjustment to the shape of the field boundary, its orientation facing towards the footpath, and the sloping topography means the eye is not drawn to the newer hedgebank. For the above reasons, it appears as a well-established boundary feature wholly in keeping with its sensitive landscape setting. Additionally, the variety of plants and trees within it represent positive enhancements to the landscape.
11. An additional boundary feature would help define the notably thin agricultural strip of land from the residential garden. However, this would have a negligible effect on the wider landscape setting of the appeal property or its grounds. In fact, the presence of two boundary features side by side would not appear typical of other single hedge boundaries found nearby. Whilst I note 3rd party comments in respect of the transition between residential and agricultural land, local distinctiveness would not be harmfully compromised without the presence of an additional boundary feature.
12. The Council's Landscape Officer comments are noted. However, whilst additional planting or hedging along the historic boundary line would provide further biodiversity gains, I am satisfied that the adjacent migrated hedgebank is sufficiently established. It includes a rich variety of planting that would be likely to be suitable as a wildlife corridor. As such, there is no compelling evidence before me to demonstrate that owls or swallows would be harmfully affected, or that additional mitigation would be necessary.
13. Drawing these matters together, although hedge planting, a line of apple trees or post and wire fencing would not be objectionable, condition 3 is not required.
14. For the above reasons, the variation of condition 3 would not harmfully affect the character and appearance of the area. As such, there would be no conflict with policies DEV20, DEV23, DEV25, DEV26 and DEV28 of the JLP; or policies KNP1, KNP2 or KNP7 of the NDP. Collectively in this respect, these policies promote appropriately landscaped schemes that have proper regard to the pattern of local development, that restore, retain and enhance the landscape character of hedgerows, protect biodiversity and locally important views. There would also be no conflict with paragraph 182 of the Framework.

Other Matters

15. I have paid regard to representations in respect of the planning history. However, these have no bearing on my decision which is based on the planning merits of the proposal, my own observations and the evidence before me.
16. Comments made in respect of the living conditions of neighbours are noted, including noise and light, though the appeal site is already in a residential use.

Furthermore, there is little evidence that the removal of the landscaping condition would have any bearing on neighbouring living conditions.

17. Personal comments directed at the appellant are not material or relevant to the determination of the appeal.

Conditions

18. By allowing this appeal a new planning permission is created. The Planning Practice Guidance advises that, for clarity, decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect, unless they have already been discharged.
19. As the development has already started it is unnecessary for me to attach the commencement of development condition. In that context, a condition restricting the use of the garage is necessary to prevent other uses that may not be appropriate in a countryside location. Additionally, a compliance condition in respect of biodiversity mitigation is necessary in the interests of protected species. As the development has already been completed, it is however not necessary to include 'prior to commencement' references.
20. The previously imposed plans condition included references to other documents. However, it would not be appropriate to re-impose these elements as they would not be sufficiently enforceable or precise. Additionally, within its list of suggested conditions, the Council has not included these documents. As such, no one would be prejudiced by me re-imposing an amended plans condition.
21. I have made some amendments to the Council's original conditions in the interests of clarity and to ensure compliance with the Framework.

Conclusion

22. For the reasons given I conclude the appeal should be allowed for the grant of a new planning permission with varied conditions as set out in the formal decision.

J Hills

INSPECTOR