

Application Number

P/2013/0041

Site Address

Firsleigh
Higher Warberry Road
Torquay
Devon
TQ1 1RY

Case Officer

Mrs Ruth Robinson

Ward

Wellswood

Description

Erection of a dwelling with vehicular and pedestrian access to Sutherland Road on land adjacent to Firsleigh

Executive Summary/Key Outcomes

The development of garden plots within the setting of Listed buildings and within Conservation Areas is normally resisted and the development of this plot has been defended successfully at appeal 3 times over the last 25 years. Reaching an alternative conclusion on the site arises for a number of reasons.

- The design is subtle, discrete and conceived to sit within the landscape character of the plot. This is in contrast to previous proposals on the site.
- It has been demonstrated through a comprehensive Heritage Statement that the heritage assets, ie the setting of the listed building and the character of the conservation area are not harmed by the proposed development.
- There is now a presumption in favour of sustainable development in the NPPF and this small dwelling is conceived along Passivhaus principles.
- The NPPF recognises a role for enabling development whereby 'costs' of a scheme on heritage assets can be mitigated by wider benefits. A key feature of the conservation area in this location, the stone boundary wall, is compromised by structural problems that will worsen in time. The site has been in 'speculative' hands since 1989 and no care has been taken of the plot or its boundaries or trees. This is an opportunity to secure long term maintenance of the site and the 'cost' is a discrete opening in this characteristic wall. This is achievable as design standards in relation to such matters are now more relaxed. The garden rooms are also an historic feature which have been long neglected and there is a value in achieving their restoration and future use.

The site has been in separate, speculative ownership for 25 years and this neglect will only continue in the event that a viable future use is not found. The quality of the scheme, coupled with the comprehensive assessment of its impact

and its conclusion that it would be 'neutral' suggests that on balance planning permission should be granted. This should not act as a precedent for other similar sites to come forward as it is considered there are particular reasons why permission should be granted in the circumstances of this particular site.

Recommendation

- A. Site Visit.
- B. Approval; subject to conclusion of a S106 agreement to secure the contributions listed below and to the itemised conditions.

Site Details

The site forms part of the former garden area to Firsleigh, Higher Warberry Road. It is a Grade II listed building.

The Villa was subject to extensive works to level the main part of the garden at some point between 1904 and 1933 according to historical maps. These works required the construction of a substantial stone retaining wall which runs across the width of the garden some 25m. distant from the main villa.

This retaining wall forms the northern boundary of the application site which sits 4m below the level of the villa's retained garden. The site is bounded to the south, east and west by substantial stone boundary walls around 2m in height. Sutherland Road runs along the southern boundary and a pedestrian thoroughfare runs up the western boundary. To the immediate south west of the site sits 'Tenerife' a multi storey residential block constructed in the 1960s. To the east, constructed within the plots of adjacent villas is more recent bungalow development.

The site is level, contains several TPO trees adjacent to the western boundary of the site with the balance neglected and overgrown. Stone steps and paths link this with main villa garden.

The site was sold off into separate ownership in 1989 some 5 years prior to being listed.

Its position just below Warberry Copse means that it is not widely overlooked and the high walls and hedging largely obscure views into the site.

The applicant is an architect with Kay Elliot Architects who works closely with Council officers, is handling schemes that involve Council owned land and is a member of the Councils Design Review Panel. In the interests of transparency it is thought appropriate that the decision is made by DMC following a site visit.

Detailed Proposals

The scheme proposes the construction of a single storey dwelling with garage to 'passiv haus' principles, refurbishment and inclusion of 'garden rooms' in the retaining wall separating the application site from the main villa. The proposal also includes the creation of a vehicular access from the site to Sutherland Road by demolishing a section of stone boundary wall to the south west of the plot. It involves felling of 2 trees; a Turkey Oak which has been damaged by past topping and a poor quality Pendunculate Oak. Management proposals for the remaining Trees are included.

Summary Of Consultation Responses

Conservation Officer: Considers that the benefits of the scheme, on balance outweigh the disbenefits that would normally accompany the construction of a dwelling within garden areas of listed buildings or within Conservation areas.

Highways: Obs awaited

Tree Officer: Obs awaited.

Summary Of Representations

At the time of writing one letter of support has been received and one letter of objection concerned at traffic impacts. 2 letters raise concerns if the matter were to be determined under delegated powers given the history of the site. These letter are re-produced at Page T.201.

Relevant Planning History

Firsleigh was listed in 1994. The lower garden plot was sold off for development in 1989.

There is a long history of attempts to obtain permission for development on this site and associated appeals have all been dismissed.

83/0A/1426: Erection of 2 single storey dwellings: Refused as contrary to Town map and would have led to loss of trees and length of stone boundary wall. Subsequent appeal dismissed due to impact on spacious character of Conservation Area.

P/1987/0457: Erection of detached 2 storey dwelling: Refused. Subsequent appeal dismissed due to loss of open character, crowding this attractively landscaped corner and loss of 5 m of stone wall to create vehicular opening and reduction to half height along 20 m length of stone wall.

P/1989/0208: Erection of single storey bungalow with vehicular access: Refused as contrary to Town Map and loss of length of stone wall and trees.

P/1997/0454: Erection of single storey dwelling and vehicular access. Refused, due to adverse impact on character and appearance of the Conservation Area and on setting of Grade II listed building, loss of boundary wall and possible future loss of trees. Subsequent appeal dismissed on the grounds of 'significantly adverse effect' on the character and setting of Firsleigh and on the Warberries Conservation Area

Key Issues/Material Considerations

The key issues are the effect of the development on the setting of the Listed building and its grounds and on the character of the Warberries Conservation Area.

In March 2012, planning policy changed with the introduction of the NPPF. This includes a presumption in favour of sustainable development and in relation to development concerning 'Heritage Assets' requires an application to demonstrate, through a 'Heritage Statement' an understanding of the historic development and significance of a site and its setting. The aim of the Heritage Statement is to help the LPA assess the potential impact of the proposed scheme on the significance of the heritage asset. In this case, the heritage assets are the setting of the listed building and the Conservation Area.

A comprehensive overview has been provided, based on desk top and field evaluation, of the appearance and character of these heritage assets, the historic development of the site and the impact of the proposed scheme on its significance. This document concludes that the impact of the development will be neutral. This is due to the careful contextual design with regard to the positioning of the building on the plot, its scale and mass and that it will sit comfortably in its landscape setting and not impose on views of the listed villa.

Firsleigh was built in the 1870's on the Palk Estate and was one of a group of 6 Villas built on land between Higher Warberry Road and Sutherland Road. Access was from Higher Warberry Road and these properties had extensive gardens running down to Sutherland Road with the lower gardens retained as natural woodland providing an appropriate 'picturesque' landscape for the Italianate Villas.

Firsleigh's gardens were remodelled at some time between 1904 and 1933 by the construction of a substantial retaining wall to create 2 level lawned areas. The lower area, the application site, was sold off in 1989, 5 years prior to the

listing of the property. A barbed wire fence was erected to define the new 'plot' and remnants of this are still visible today. Since this time several attempts have been made to develop this plot but all have been refused planning permission and 3 appeals have been dismissed.

It is necessary to consider the existing character of the site and what it contributes to the value of the area, whether this is compromised by the proposed development and whether there are new material considerations to take into account in reaching a determination.

Sutherland Road is quite unique in that it is the only road in the tiered drives of the Warberries designed not to give access to any main entrance only to the service courtyards of Middle Warberry Road Villas. As a consequence, it would have been strongly defined by characteristic stone boundary walls with only limited and subservient openings. Whilst this has been eroded over the years, particularly by the row of bungalows to the east of the application site, this plot retains these key features and is bounded on all its public sides by high natural stone boundary walls.

Despite the remodelling of the gardens in the early part of the 20th century, the site has always had a role as a landscape feature and has been a foil for views up to the listed building. It is currently overgrown rather than the 'picturesque woodland' described in the Heritage Statement.

It was the loss of these defining features, ie stone boundary walls and landscape character that largely formed the basis of previous reasons for refusals of planning permission. It is important to consider to what extent this proposal allows this function of 'enclosure' and 'landscape' to continue.

The Design and Access statement describes an intention to 'create a building which reinforces the historic landscape and causes no harm to the setting of the adjacent villa and wider conservation area'.

The design is conceived as a single storey, green roofed 'garden pavilion' to a contemporary design which, through its form and use of materials; natural stone walls, timber and with large expanses of glazing set in a render framework, sits unobtrusively within the landscape character of the plot.

The building is to be positioned to the rear of the site and away from the boundaries to the plot allowing the existing somewhat degraded tree growth that defines the western boundary of the plot to be retained and properly managed. This comprises Scots Pine, Holm Oak and Beech which are typical of the Victorian landscape and reflects the original wooded character of the lower part of the site.

The dwelling is set well below the garden level of Firsleigh and is backed by the

retaining stone wall constructed in the early part of the 20th century. This is in itself an attractive structure, and interestingly, when constructed contained 2 'garden rooms' which extend beneath the garden of Firsleigh and which have long fallen into disrepair. These are featured on the retaining wall by small timber doorways and windows which are as originally built. The scheme, comprising a small dwelling and garage is arranged around a courtyard which centres on these long forgotten garden rooms which will be restored for domestic use and provide a focal point for the scheme and courtyard.

Bounded by high stone walls and with dense hedging there are only limited public views of the site. Due to its elevated position high on the hill and overlooking the surrounding valley, the site is not widely overlooked and so does not in itself contribute to the spacious character of the Conservation Area as it is not prominent in public views.

The ground levels within the site are higher than the street level and these are to be reduced by about 0.5 of a meter to achieve optimum screening. It is important that the hedging and soft landscape to the boundaries of the site is retained so the levelling will be restricted along critical areas.

The Heritage Statement evaluates impact of the development on the setting of the listed building and this concludes that the impact is not harmful. This, it is argued, is based on the design intention of the villa and the historic views in and out of the site. As originally constructed, the villa would have had its lower slopes covered in woodland and this would have enabled only glimpses of the building through the trees when viewed from the Sutherland Road. The discrete design and positioning of the building coupled with the opportunity to retain and manage its woodland setting will enable this character to continue.

In terms of wider views, the villa has its main outlook due south, and does not directly overlook its gardens thus there will be no impact on primary views of the villa from areas to the south of the site.

This proposal does include loss of a section of stone wall to facilitate vehicular access and this formed a key reason for refusal in previous schemes. In all previous applications the loss of the stone wall was substantial in order to comply with what was then considered necessary to achieve adequate visibility. This involved demolition of a substantial area of wall, a set-back to achieve a splay and a reduction in height to allow full visibility. Highway standards in urban areas are not now so prescriptive and flexibility is allowed to reflect differing traffic conditions and the need to retain historic character. This application has sought to minimise loss of historic fabric, there is no splay and no reduction in height and it is to include historically appropriate gates to ensure that the sense of enclosure is retained notwithstanding the loss of a small section of wall. Highways are happy with this as the road is very quiet and not heavily trafficked.

There is some question over whether the boundary wall is in fact part of the curtilage of the listed building. The applicant's consultant argues that as the garden plot was in separate ownership at the time of listing, and visibly such due to the barbed wire fence, then the lower garden area cannot be regarded as formally comprising part of the listed curtilage. If not technically a curtilage structure, then the small stretch of wall could be demolished without the need for Conservation Area Consent since it is not sufficient in extent for it to qualify as 'substantial demolition'.

Legal opinion on this matter is that as the Inspector, in the 1997 appeal decision, argued that the lower garden area should be regarded as forming part of the listed curtilage due to the linkages between the two, then the wall should be regarded as being protected by the listed status of the property as a whole. This is an area of legal complexity and there is much case law on what technically constitutes curtilage structures and the extent of protection.

However, the walls in question have deteriorated in condition since the site was sold off in 1989 and a Structural Engineers report highlights that stone work is loose and needs reinstatement before it falls onto the public highway, towards the eastern end of the wall the condition deteriorates and needs to be rebuilt as there is movement and in order to overcome this, ground levels need to be reduced inside the plot and the wall possibly taken down and rebuilt. The engineer suggests this will worsen with time.

In view of this, it seems reasonable to suggest that a small reduction in historic fabric, providing it is sensitively handled is more than compensated for by certainty over the long term maintenance of this stretch of wall and conditions can be imposed to ensure that a good quality repair and reinstatement is carried out.

Of the schemes that have previously been considered, all suffered obvious failings in terms of the scale and prominence of the development and consequent impact on stone wall and trees. The argument, put simply was that an extension of the bungalow development to the east of the site should be acceptable given the context of the site.

This application differs in that it has taken the constraints of the site to heart and sought to develop a low impact scheme that allows its key functions in terms of landscape and enclosure to continue.

There has also been a recent and material change in planning policy which needs to be considered. The NPPF indicates that sustainable economic growth is at the heart of good planning and it includes a presumption in favour of sustainable development. This scheme is designed to deliver a low energy home through adopting a fabric first approach based on Passivhaus principles. The orientation of the building allows it to maximise solar gain and the insulation

levels are such that heat loss is minimised. Other efficiency measures in relation to water disposal etc are also to be included.

The NPPF also recognises a role for 'enabling development' whereby the 'costs' of a scheme on heritage assets can be mitigated by wider benefits. In this case, the future maintenance of the boundary walls can be assured, trees will be looked after and the garden rooms, which are key historic features and neglected will be restored and form a focal point for this discrete garden pavilion scheme. The site has been in separate, speculative ownership for 25 years and this neglect will only continue in the event that a viable future use is not found. The quality of the scheme, coupled with the comprehensive assessment of its impact and its conclusion that it would be 'neutral' suggests that on balance planning permission should be granted.

S106/CIL -

S106 contributions in line with the adopted SPD are required and will be as follows:

Waste:	£ 50
Sustainable Transport	£2710
Education	£1240
Life long learning	£ 410
Greenspace	£2370

Conclusions

The development of garden plots within the setting of Listed buildings and the Conservation Areas are normally resisted and the development of this plot has been defended successfully at appeal 3 times over the last 25 years. Reaching an alternative conclusion on the site arises for a number of reasons and providing they are clear and justified should not act as a precedent for other similar sites to come forward.

- The design is subtle, discrete and conceived to sit within the landscape character of the plot. This is in contrast to previous proposals on the site.
- It has been demonstrated through a comprehensive Heritage Statement that the heritage assets, ie the setting of the listed building and the character of the conservation area are not harmed by the proposed development.
- A key feature of the conservation area in this location, the stone boundary wall is compromised by structural problems that will worsen in time. The site has been in 'speculative' hands since 1989 and no care has been taken of the plot or its boundaries or trees. This is an opportunity to secure long term maintenance of the site and the 'cost' is a discrete opening in

- this characteristic wall as design standards in relation to such matters are now more relaxed.
- The garden rooms are an historic feature which have also been long neglected and there is a value in achieving their restoration and future use.

For these reasons it is thought that permission should be granted.

It is important to secure the following by condition:

1. the reconstruction/reinstatement of the boundary wall,
2. retention of boundary planting,
3. details of restoration of garden rooms,
4. management of trees,
5. samples of materials,
6. 1: 20 details of key features,
7. sustainability audit,
8. no p.d.,
9. tree protection measures to be in place prior to commencement.

Relevant Policies

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