

COMMITTEE REPORT

Case Officer:	Liz Payne		
Parish:	Kingsbridge	Ward:	Kingsbridge
Application No:	0932/24/VAR		
Applicant:	G.I. Devon 11 Longdown Road Epsom KT17 3PT	Agent:	Dan Lethbridge 102 Fore Street Kingsbridge TQ7 1AW
Site Address:	Development Site Tumbly Hill Kingsbridge		
Development:	Application for variation of condition 2 (approved plans) & condition 4 (surface water drainage) of planning consent 2876/21/FUL		



Reason item is before Committee:

Cllr O'Callaghan has called the item to committee due to concerns on drainage.

Recommendation: Conditional Approval

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Conditions:

1. Approved Plans – *amended*
2. Implementation of Sustainability Measures
3. Surface water drainage scheme – *amended to secure compliance with submitted details including monitoring schedule*
4. CMP
5. External materials – *amended to reflect approval 4006/23/ARC*
6. Stone walls – *amended to reflect approval 4006/23/ARC*
7. Unsuspected land contamination
8. Parking
9. Landscaping – *amended to reflect details approved by 0717/23/ARC*
10. Trees – *amended to reflect details approved by 1426/23/ARC*

The standard three-year time commencement condition implemented on the previous consent has been removed as the works have already commenced.

Key issues for consideration: Design, Drainage.

Site Description:

The application site is on the western edge of, and abutting the Quay public car park, on a parcel of land situated between that car park, Tumbly Hill, and Kingsbridge Leisure Centre.

The main site frontage is east facing, with views of the head of the Kingsbridge Estuary and the town to the east and north beyond.

The site is within the South Devon National Landscape, a SSSI Impact Zone and Critical Drainage Area. A public right of way lies adjacent to the east of the site.

The Proposal:

Planning permission was granted in 2022 for the construction of 3 town houses (ref 2876/21/FUL). Works have commenced and the permission is extant.

This is an application made under Section 73 of the Town and Country Planning Act 1990 to vary conditions associated with the planning permission, as set out above. Where an application under Section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended.

In deciding an application under Section 73, the Local Planning Authority must only consider the condition/s that are the subject of the application - it is not a complete re-consideration of the application.

The application seeks to amend the configuration of the proposed flats to reduce the amount of excavation work needed. The internal alterations would omit the internal stairwell between the flats and the car park and reconfigure the parking layout in the car park. External alterations would include the reduction of stone on the external walls and minor alterations to fenestration.

The footprint of the building would remain the same however the retaining wall around the northern side of the site is shown differently on the plans and shows a larger gap between the proposed building and the adjacent highway.

The proposal would also amend the drainage layout for the scheme.

Consultations:

- Kingsbridge Town Clerk: objection
Recommend Refusal due to ongoing concerns regarding the methodology for surface water drainage, historic objections raised by the Local Planning Authority for the same and in the absence (at the time of the Planning Committee's consideration of this application on 7 May 2024) of a revised drainage consultation response from the LPA
- Devon County Council Public Rights of Way Team: no comments received.
- Drainage (Internal): no objection.
Subject to conditions securing installation and on-going maintenance and that drainage details are made approved plans.
- DCC Highways: no highways implications.

Representations:

Comments have been received and cover the following points:

- The covering letter is not available to view online.
- Condition 4 cannot be amended as it has not been discharged yet.
- The attenuation tanks are below the tidal level and will not be covered by a suitable fill of soil to avoid the risk of floatation.
- The proposed drawings show a decrease in the width of the adjacent road.

Relevant Planning History

- 28/0403/06/F Withdrawn 08/04/2006
Re-development to provide 6 no. apartments
- 28/1571/06/F Conditional Approval 10/03/2008
Resubmission of 28/0403/06/F for a redevelopment to provide 6 no.dwellings
- 28/0171/11/F Withdrawn 16/03/2011
Renewal of planning approval 28/1571/06/F for development to provide 6(No) dwellings
- 28/0660/11/DIS Discharge of Condition Approved 16/12/2011
Discharge of conditions 1 - 11 for planning approval reference 28/1571/06/F (for a redevelopment to provide 6 no.dwellings)
- 0764/16/NMM Conditional Approval 15/04/2016
Non-material amendment for fenestration materials, windows, wall cladding and facias, soffits etc of approval 28/1571/06/F
- 0256/17/FUL Conditional Approval 04/05/2018
Construction of 5no.apartments
- 1652/21/ARC Discharge of Condition Refused 15/10/2021
Application for approval of details reserved by condition 9 of Planning Permission 0256/17/FUL
- 0490/21/ARC Discharge of Condition Approved 15/10/2021
Application for approval of details reserved by conditions 4 and 7 of Planning Permission 0256/17/FUL
- 2876/21/FUL Conditional Approval 01/04/2022
Construction of 3 townhouses
- 2719/22/ARC Discharge of Condition Refused 28/09/2022

Application for approval of details reserved by condition 4 (Surface Water Drainage) of planning consent 2876/21/FUL

- 0717/23/ARC Discharge of Condition Approved 06/04/2023
Application for approval of details reserved by conditions 10 (Landscaping) and 11 (Tree Protection) of planning consent 2876/21/FUL
- 1426/23/ARC Discharge of Condition Approved 23/05/2023
Application for approval of details reserved by condition 11 (Trees) of planning consent 2876/21/FUL
- 3263/23/ARC Discharge of Condition Refused 14/11/2023
Application for approval of details reserved by condition 4 (Surface Water Drainage Scheme) of planning consent 2876/21/FUL
- 4006/23/ARC Discharge of Condition Approved 24/01/2024
Application for approval of details reserved by conditions 6 (Materials) and 7 (Natural Stone) of planning consent 2876/21/FUL
- 3893/23/ARC Discharge of Condition Refused 01/02/2024
Application for approval of details reserved by condition 4 ((Surface Water Drainage Scheme) of planning consent 2876/21/FUL
- 0656/24/ARC Withdrawn 08/03/2024
Application for approval of details reserved by condition 4 (Surface Water Drainage Scheme) of planning consent 2876/21/FUL
- 3318/23/VAR Withdrawn 11/03/2024
Application for variation of condition 2 (approved drawings) of planning consent 2876/21/FUL

ANALYSIS

1. Design/Landscape:

- 1.1. The proposal would result in internal alterations to the layout of the houses, but these would not change the number of bedrooms or impact upon whether the properties meet the Nationally Described Space Standards. In addition, there would be no loss in parking provision.
- 1.2. The external alterations are minimal and do not change the character or the overall appearance of the final scheme.
- 1.3. The design of the proposal is acceptable and accords with DEV20 and DEV25 of the JLP and BE3 of the Kingsbridge, West Alvington and Churchstow Neighbourhood Plan.

2. Neighbour Amenity:

- 2.1. Due to the degree of separation involved between the proposed development and nearby occupiers the proposal would not result in impacts on neighbour amenity.

3. Drainage:

- 3.1. The proposal seeks to alter the approved plans under 2876/21/FUL, including the approved drainage plan. Drainage Officers have confirmed that the proposed scheme, which proposes three separate attenuation tanks for each property is acceptable. An objection from the Parish Council is raised as (at the time the comment was made) there was no public comment from Drainage Officers confirming support for the proposal. Confirmation from Drainage Officers that they are satisfied with the submitted surface water drainage scheme overcomes this objection.

3.2. A letter of representation has stated that the proposed drainage scheme needs to accord with the details approved under the previous application (2876/21/FUL). However as the proposal is for the variation of the approved plans and the variation of condition 4 which specified the drainage details there is no requirement for the proposed drainage strategy to comply with the previous design.

3.3. In addition, the letter of representation states that the attenuation tanks have been sited within the tidal level and will not have a suitable depth of soil over the top to ensure the tanks do not float and are not subject to uplift during high spring tides. They have also raised that the tanks would not be available for maintenance if they are positioned under the building. Drainage have submitted comments confirming that they are satisfied with the details as submitted, including potential uplift and maintenance schedule. The designer of the drainage strategy has responsibility for the design and calculations to ensure the proposal is not at risk of uplift and Officers do not have contrary evidence to suggest the calculations of the designer are inaccurate or wrong. Siting the attenuation tanks under the building has been accepted by previous planning permissions and the principle of this is not part of the current assessment. The applicant has proposed a monitoring schedule which will be conditioned as part of this permission.

3.4. The proposed drainage strategy accords with DEV35 of the JLP and Env6 of the Kingsbridge, West Alvington and Churchstow Neighbourhood Plan.

4. Climate Emergency:

4.1. The proposal retains the Air Source Heat Pumps and increases the number of solar panels to the roof. The implementation of these features was secured by condition on the original application and this condition will be placed on the new permission.

5. Other Matters:

5.1. The proposal extends beyond the development limit as shown on the approved site plan. The applicant has submitted a topographical plan of the site which shows the previous building and kerb line which defined the boundary of the site prior to works starting on site. This plan was also submitted in 2006 for application 28/1571/06/FUL and Officers are content it is an accurate record of the site at that time. The applicant proposes that the approved plan inaccurately showed the extent of the site and that the proposed amended site plan corrects this. A drawing showing an overlay of the approved development limit, the topographical survey and the proposed site plan has been submitted and clearly identifies the areas where the approved plan diverges from the extent of the original site. Officers have compared the width of Tumbly Hill road at key points of the kerb, annotated as point B and point C on the overlaid drawing, on both the topographical survey plan and the proposed site plan and are satisfied that where the proposal diverges from the approved plan it does not extend beyond the site as shown on the 2006 topographical survey.

5.2. A letter of representation has raised concerns that the width of Tumbly Hill would be reduced and have undertaken a similar measuring task, however in this instance they have taken a measurement from the previous building on the site, not the kerbside and compared that distance with widths of the road at various points on the proposed site plan. Officers do not agree that comparing the edge of the previous building is an accurate reflection of the site. In addition, it is not clear if the same location has been accurately identified and compared on both plans. As such, the measurements do not demonstrate that the width of the road, or by proxy, the extent of the development site has changed and Officers are satisfied that the proposed site plan is acceptable.

This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004.

Planning Policy

Relevant policy framework

Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of decision making, as of March 26th 2019, the Plymouth & South West Devon Joint Local Plan 2014 - 2034 is now part of the development plan for Plymouth City Council, South Hams District Council and West Devon Borough Council (other than parts of South Hams and West Devon within Dartmoor National Park).

On 26 March 2019 of the Plymouth & South West Devon Joint Local Plan was adopted by all three of the component authorities. Following adoption, the three authorities jointly notified the Ministry of Housing, Communities and Local Government (MHCLG)* of their choice to monitor the Housing Requirement at the whole plan level. This is for the purposes of the Housing Delivery Test (HDT) and the 5 Year Housing Land Supply assessment. A letter from MHCLG to the Authorities was received on 13 May 2019 confirming the change.

On 19th December 2023 the Department for Levelling Up, Housing and Communities published the HDT 2022 measurement. This confirmed the Plymouth, South Hams and West Devon's joint measurement as 121% and the policy consequences are "None".

Therefore no buffer is required to be applied for the purposes of calculating a 5 year housing land supply at the whole plan level. The combined authorities can demonstrate a 5-year housing land supply of 5.84 years at end of March 2023 (the 2023 Monitoring Point). This is set out in the Plymouth, South Hams & West Devon Local Planning Authorities' Housing Position Statement 2023 (published 26th February 2024).

[*now known as Department for Levelling Up, Housing and Communities]

The relevant development plan policies are set out below:

The Plymouth & South West Devon Joint Local Plan was adopted by South Hams District Council on March 21st 2019 and West Devon Borough Council on March 26th 2019.

SPT1 Delivering sustainable development
SPT2 Sustainable linked neighbourhoods and sustainable rural communities
TTV1 Prioritising growth through a hierarchy of sustainable settlements
TTV2 Delivering sustainable development in the Thriving Towns and Villages Policy Area
DEV1 Protecting health and amenity
DEV2 Air, water, soil, noise, land and light
DEV8 Meeting local housing need in the Thriving Towns and Villages Policy Area
DEV10 Delivering high quality housing
DEV20 Place shaping and the quality of the built environment
DEV23 Landscape character
DEV24 Undeveloped coast and Heritage Coast
DEV25 Nationally protected landscapes
DEV26 Protecting and enhancing biodiversity and geological conservation
DEV29 Specific provisions relating to transport
DEV32 Delivering low carbon development
DEV35 Managing flood risk and Water Quality Impacts

Kingsbridge, West Alvington and Churchstow Neighbourhood Plan

Following a successful referendum, the Kingsbridge, West Alvington & Churchstow Neighbourhood Plan was adopted at South Hams District Council Committee on 15th December 2022. It now

forms part of the Development Plan for South Hams and should be used in deciding planning applications within the Kingsbridge, West Alvington & Churchstow Neighbourhood Area.

The relevant policies are:

Policy KWAC Env1 Settlement Boundaries and the avoidance of coalescence
Policy KWAC Env3 Impact on the Natural Environment, South Devon Area of Outstanding Natural Beauty (AONB), green corridors and green infrastructure.
Policy KWAC Env4 Locally Important Views
Policy KWAC Env6 Prevention of Flooding and the impact on water quality
Policy KWAC Env7 Carbon Reduction
Policy KWAC Env8 Encouraging renewable energy
Policy KWAC BE2 Kingsbridge Quayside and town square
Policy KWAC BE3 Design Quality
Policy KWAC T3 Car Parking

Other material considerations include the policies of the National Planning Policy Framework (NPPF) and guidance in Planning Practice Guidance (PPG). Additionally, the following planning documents are also material considerations in the determination of the application:

South Devon Area of Outstanding Natural Beauty Management Plan (2019-2024)
Plymouth and South West Devon Joint Local Plan Supplementary Planning Document (2020)
Plymouth and South West Devon Climate Emergency Planning Statement (2022)

Considerations under Human Rights Act 1998 and Equalities Act 2010

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.

Conditions

1. The development hereby approved shall in all respects accord strictly with drawing numbers and documents

- Site Location Plan ACL.1260.001 Rev.A received 02/08/2021
- Existing Site Survey ACL.1260.219 received 27/07/2021
- Proposed Site/ Lower GF Plan ACL.1260.211 Rev. E received 20/03/2024
- Proposed Site/GF Plan ACL.1260.212 Rev. E received 20/03/2024
- Proposed Floor Plans ACL.1260.209 Rev. G received 20/03/2024
- Car Parking Plan ACL.1260.220 Rev. D received 20/03/2024
- Proposed Elevations 1260.210 Rev. F received 20/03/2024
- Proposed Hard & Soft Landscaping Plan ACL.1260.214 Rev. B received 11/03/22
- Site Layout ACL.1260.301 Rev. B received 27/02/2023
- Landscape Plan CD/ ALA/ 671.01 received 27/02/2023
- Policy DEV32 Checklist / Sustainability Measures received 05/08/2021
- Proposed Drainage Layout 13581-510 Rev R received 20/03/2024
- Drainage Standard Details 13581-501 Rev. C received 20/03/2024
- Drainage Statement 13581 Rev. C received 20/03/2024.
- Tree Protection Plan DTS22.443.1.TPP received 24/04/2023.

Reason: To ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates.

2. No dwelling shall be occupied until the sustainability measures identified within the policy 'DEV32 Checklist/Sustainability Measures' document including solar/thermal PV

panels and air source heat pump to serve that dwelling have been fully implemented and installed.

Reason: To ensure that the proposed development is carried out in accordance with the details and DEV32 checklist forming part of the application to which this approval relates. This condition is required to meet the requirements of policy DEV32.

3. Prior to occupation of any dwelling hereby approved, 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.

Reason: To ensure surface water runoff does not increase to the detriment of the public highway or other local properties as a result of the development in accordance with policy DEV35 of the Plymouth and South West Devon Joint Local Plan.

4. The development shall be carried out at all times in accordance with the submitted Construction Management Plan (Rev B – April 2022). There shall be no deviation from the measures/controls within the Construction Management Plan unless previously agreed in writing by the Local Planning Authority.

Reason: To ensure an orderly development in the interests of safeguarding amenity, highway safety and access to meet the requirements of policies DEV1, DEV2, and DEV29.

5. The external finish of the dwellings hereby approved shall be implemented and maintained in accordance with 'External Finishes, ACL.1260.354' received by the Local Planning Authority on 5 December 2023.

Reason: In the interests of visual amenity and the character and appearance of the area to meet the requirements of policies DEV10, DEV20, DEV23, and DEV25.

6. All stonework shall be implemented in accordance with 'External Finishes, ACL.1260.354 and Covering letter received by the Local Planning Authority on 5 December 2023. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting this Order), all new stone walls, constructed in accordance with the approved drawings and the terms of this condition, and all existing stone boundary walls shall be retained in their natural stone finish and shall not be rendered, colourwashed or otherwise treated in a manner which would obscure the natural stone finish, nor shall they be demolished either in whole or in part.

Reason: To enable the Local Planning Authority to consider the details of all stonework to be constructed as part of the development hereby permitted in order to ensure that the development displays good design and is of a locally distinctive style, and to ensure that all stonework is retained in its natural stone finish to meet the requirements of policies DEV10, DEV20, DEV23, and DEV25.

7. 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 for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this 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 permitted development, 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.

Reason: No site investigation can completely characterise a site. This condition is required to ensure that any unexpected contamination that is uncovered during remediation or other site works is dealt with appropriately in accordance with DEV2 of the Joint Local Plan.

8. No dwelling shall be occupied until the vehicle parking provision for that dwelling as shown on the approved drawings has been laid out and made available for use, thereafter not being used or precluded from being used for any purpose other than the parking of vehicles.

Reason: In the interests of highway safety and in order to provide sufficient parking to meet the needs of the development to avoid on-street parking, or prejudice to the wider public operation of the car park adjacent to meet the requirements of policy DEV29.

9. Landscaping shall be implemented in accordance with ACL.1260.301 Rev. B and CD/ ALA/ 671.01 and the Ecological comment received by the Local Planning Authority on 27/02/2023. The landscaping shall be carried out in the first planting season after occupation of the development unless agreed otherwise in writing by the Local Planning Authority, and shall be maintained for a period of 5 years. Such maintenance shall include the replacement of any trees and shrubs that die.

Reason: To ensure the provision and maintenance of trees, hedges, other plants and grassed areas in the interests of visual amenity, to ensure that the proposed development will deliver measurable biodiversity enhancements in addition to mitigation, to ensure compliance with Joint Local Plan policy DEV26 criteria 5 and 6 and paragraph 180 of the NPPF.

10. The development shall be implemented in strict accordance with DTS22.443.1.AA Arboricultural Appraisal, DTS22.443.2.AMS, DTS22.443.1.TAP Tree Appraisal Plan 1 of 1 and DTS22.443.1.TPP received by the Local Planning Authority on 24 April 2023. The approved method statements shall be adhered to in full unless otherwise agreed in writing by the Local Planning Authority.

Prior to occupation of the development an arboricultural compliance statement by the pre-appointed tree specialist shall be submitted to and approved by the Local Planning Authority.

Reason: To ensure the retention of trees on the site in the interests of visual amenity and biodiversity, in accordance with Joint Local Plan policies SPT2, DEV20, DEV26 and DEV28 and the NPPF.

Informatives:

1. This authority has a pro-active approach to the delivery of development. Early pre-application engagement is always encouraged. In accordance with Article 35(2) of the Town and Country Planning Development Management Procedure (England) Order 2015 (as amended) in determining this application, the Local Planning Authority has endeavoured to work proactively and positively with the applicant, in line with National Planning Policy Framework, to ensure that all relevant planning considerations have been appropriately addressed.

2. The responsibility for ensuring compliance with the terms of the approval rests with the person(s) responsible for carrying out the development. The Local Planning Authority uses various means to monitor implementation to ensure that the scheme is built or carried out in strict accordance with the terms of the permission. Failure to adhere to the approved details can render the development unauthorised and vulnerable to enforcement action.

3. If your decision requires the discharge of conditions then you must submit an application for each request to discharge these conditions. Please see the Council website for the current fee payable (fee payable per application, not per condition) and application forms.