



Appeal Decision

Site visit made on 19 June 2017

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 July 2017

Appeal Ref: APP/D0840/W/17/3167079

Land adjacent to 21 Carnyorth Hill, Carnyorth, Penzance, TR19 7QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr Richard Holdcroft against the decision of Cornwall Council.
 - The application Ref PA16/00908, dated 26 January 2016, was refused by notice dated 15 July 2016.
 - The development proposed is described in the application form as 'to erect two new semi detached dwellings on plot 'D' adjacent 21 Carnyorth Hill'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Richard Holdcroft against Cornwall Council which is the subject of a separate decision.

Procedural matters

3. The decision notice cited only paragraph 17 of the National Planning Policy Framework (the 'Framework'). However policies of the Cornwall Local Plan Strategic Policies 2010-2030 (adopted 22 November 2016, the 'Local Plan') are referred to in the Council's officer report and appeal statement, policy 12 'Design' in particular. As such all parties have had the opportunity to comment upon the Local Plan and I have determined the appeal in accordance with development plan unless material considerations indicate otherwise.
4. The appellant has submitted extensive documentation at appeal. I appreciate that the appellant has done so in order to attempt to overcome the Council's reasons for refusing application Ref PA16/00908. However the appeal process should not be used to evolve a proposal, and there are material differences between the development now proposed and the original scheme.
5. In particular plan 'Drg 5B' shows dwellings of different design and proximity to neighbouring No 21 Carnyorth Hill as was originally proposed in plan 'Drg 5'.¹ Drg 5B was submitted on 13 January 2017, after the public notice period for

¹ There is reference in the information before me to earlier iterations of Drg 5B. However none are dated or have unique reference numbers. The appellant explains that these were submitted on 25 March 2016 and represented 'varying methods' of altering the development proposed. It is therefore not clear which, if any, previous iteration was intended to replace Drg 5. The Council have confirmed that Drg 5B was not subject to public consultation.

application Ref PA16/00908 expired. No representations from interested parties in relation to the original application or at appeal refer specifically to either Drg 5B or to other amended plans.

6. Although the revised scheme seeks to ameliorate the effects of development on the occupants of No 21 Carynorth Hill, the dwellings proposed in Drg 5B would be located in a different position in the appeal site closer to the vehicular access to the appeal. In particular given the designations that apply to the area as explained subsequently, the proposal as shown on Drg 5B may result in different effects to those considered by all relevant parties to date.
7. Consequently were I to take account of the revised proposal this would deprive those who should have been consulted the opportunity of such consultation. Accordingly I have disregarded Drg 5B in determining this appeal. The Planning Practice Guidance (the 'Guidance') explains that a condition which 'modifies the development in such a way as to make it substantially different from that set out in the application should not be used'.² I therefore cannot secure compliance with Drg 5B via condition.
8. The appellant makes a number of claims about the conduct of the Council in determining the application. I must, however, confine my decision to the planning merits of the development proposed. I would also note that I deal with certain procedural matters in the associated costs decision.
9. The appellant also alleges that No 21 has '[stolen] rights from my property'. This may relate to a boundary dispute, which is a private legal matter.³ It may relate to the consequences of No 21 being set close to the common boundary with the appeal site. However there is no robust evidence before me indicating that No 21 in its present form is unlawful. Whilst individuals are entitled to seek to make use of their land and property as they see fit, this is a qualified right, and it is the purpose of planning to consider the appropriateness of development proposed. It is therefore entirely legitimate to consider whether the proposal is acceptable with reference to its surrounding context.
10. The appellant has further asked for a public enquiry, which may relate to the claims about the conduct of the Council as set out above or to the appeal procedure sought. In the event that it is the former, this is not within the remit of this decision. In the event that it is the latter, I am satisfied pursuant to Section 319A of the Town and Country Planning Act 1990 as amended and with reference to the Planning Inspectorate's Planning appeals: procedural guide, that the written representations procedure is appropriate here.

Main issue

11. The main issue is the effect of the development proposed on the living conditions of the occupants of No 21 Carynorth Hill, with particular regard to matters of overbearing and overshadowing.

² Reference ID: 21a-012-20140306.

³ Whilst there are copies of legal documentation before me, establishing the precise extent of land ownership is not a matter for this decision.

Reasons

12. Carnyorth is an historic settlement set within the rolling open countryside. It is covered by the Carnyorth Conservation Area and falls within both the Cornwall Area of Outstanding Natural Beauty and the St Just Mining District of the Cornwall and West Devon Mining Landscape World Heritage Site.⁴
13. The appeal site is an irregular parcel of overgrown land falling centrally within Carnyorth. The topography here slopes slightly downwards broadly from north-east to south-west. The appeal site abuts Carnyorth Hill, the B3306. A track access runs to the rear of the dwellings proposed, beyond which is a hedgerow and field.
14. The site shares a boundary with the plot of No 21 Carnyorth Hill. No 21 is a two storey end-of-terrace property facing Carnyorth Hill with a modest rear garden. Its south-west side elevation faces the appeal site directly. There are two windows at ground floor level and three at first floor level in this elevation, several of which appear to relate to habitable rooms.
15. As the side elevation of No 21 faces south-west, given the sloping topography in this direction, and the otherwise more enclosed outlook from the property, the principal outlook from, and natural light to, No 21 is likely through windows facing the appeal site.
16. Criterion 2.b. of policy 12 'Design' of the Local Plan sets out that development should protect individuals and property from 'overshadowing and overbearing impacts'. Similarly paragraph 17 of the National Planning Policy Framework (the 'Framework') explains that planning should always seek to ensure a 'good standard of amenity' for all existing and future occupants of buildings.
17. There is extensive correspondence before me related to discussions between the appellant and Council as to what the separation distance between the dwellings proposed and No 21 Carnyorth Hill should be, with figures of 12 metres and 12.5 metres referenced to. I must determine the appeal before me, rather than comment on what may be acceptable.
18. However whether or not a proposal is acceptable in respect of overlooking and overshadowing is inherently a matter of planning judgement with reference to the particular nature of development proposed and its surrounding context. It is not a matter that can be settled with reference to standardised or universal metrics. This is why each proposal must be determined on its particular merits.
19. Based on Drg 5 the Council sets out, and the appellant does not specifically dispute, that the nearest elevation of the dwellings proposed would be approximately 4.1 to 4.3 metres directly opposite the south-west elevation of No 21. The dwellings proposed would be two storeys high, the Council giving their maximum height as approximately 7.7 metres, the appellant stating that this is instead approximately 7.2 metres.

⁴ The Council did not, however, refuse permission other than in relation to the effect of the development proposed on the living conditions of the occupants of No 21 Carnyorth Hill (paragraph 5.1 of their statement of case).

20. Irrespective of whether the height of the dwellings proposed would be 7.7 or 7.2 metres in height, their overall scale and proximity to No 21 would represent a close inter-relationship. The effect of the development proposed would be to significantly limit the openness of outlook from which the occupants of No 21 currently benefit and result in a detrimental sense of enclosure (particularly at ground floor level).
21. Given the height and bulk of the development proposed and its proximity to the south-west facing elevation of No 21, it is also highly likely that the level of natural light reaching habitable rooms of No 21 will be reduced. Whilst the appellant contends that the proposal would comply with the approach recommended by the Building Regulation Establishment, there is no robust evidence before me in support of this position.
22. Moreover in one scenario which the appellant has modelled through the website 'FindMyShadow', the proposal would substantially obscure sunlight reaching the south-west elevation of No 21.⁵ Other evidence before me submitted by the appellant is either not directly relevant to the development proposed,⁶ or is insufficiently precise to enable me to determine the extent of shading that would result.⁷
23. For the above reasons I conclude that the proposal would be detrimental to the living conditions of the occupants of No 21 Carnyorth Hill by virtue of the significant overbearing and overshadowing effects that would result. The proposal therefore conflicts with the relevant provisions of policy 12 of the Local Plan and with relevant elements of the Framework.

Other matters

24. I accept that the proposal would have certain benefits, including resulting in the provision of two additional houses which reflect the local vernacular, and further social and economic benefits in supporting employment during construction and as future occupants would make use of services and facilities in the area.
25. However the benefits arising from two new homes would be modest, and neither the support in the Local Plan nor Framework to enabling appropriate housing provision is at the expense of ensuring that all development integrates appropriately with its surrounding context. I further do not consider that the limited screening that would result from the development proposed in respect of 21 Carnyorth Hill, which is not of the prevailing historic vernacular, carries significant weight in favour of the proposal.
26. The appellant has referred to what he considers to be the inappropriate design of, or inter-relationship between, other properties (including 22 Carnyorth Hill and the proposal in application ref PA16/01549). However there is little information before me as to the planning considerations, if any, that applied in

⁵ Particularly the model generated for 1300 on 7 November 2017, notwithstanding that this relates to Drg 5B.

⁶ Including a photograph of a blocked up window, data on average sunlight hours, a document entitled 'Daylighting Pattern Guide', Appendix F 'Daylight, Sunlight & Overshadowing' addendum to the Environmental Statement Volume III.

⁷ Plan 'Drg 1B' entitled 'shading/ overlay' does not clearly illustrate the shading that would result and appears in one diagram to show No 21 as to the south-west rather than north-east of the dwellings proposed.

these instances. Moreover if sub-standard design is present elsewhere, this would in any event not serve to justify the development proposed.

27. There is further reference within the information before me to affordable housing provision associated with the development proposed. However it appears that these references are to a different policy context than currently applies.⁸ Accordingly neither this, nor any other matter, is sufficient to outweigh or alter my reasoning in relation to the main issue in this case.

Conclusion

28. For the above reasons, and having taken all other matters raised into account, the proposal conflicts with the development plan taken as a whole and with the approach in the Framework. I therefore conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR

⁸ With reference to Guidance Reference ID: 23b-031-20161116.