
Appeal Decision

Site visit made on 9 August 2017

by Thomas Bristow BA MSc MRTPI

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

Decision date: 22nd August 2017

Appeal Ref: APP/D0840/W/17/3175043

39 Tregea Close, Portreath, Redruth, Cornwall TR16 4TR

- 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 Roger Rossignol against the decision of Cornwall Council.
 - The application Ref PA16/11246, dated 5 November 2016, was refused by notice dated 5 April 2017.
 - The development is described in the application form as 'works carried out in back garden of property including decking, fence and shed & extension of garden'.
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Decision

1. The appeal is dismissed.

Application for costs

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

Preliminary matters

3. Application Ref PA16/11246 was made retrospectively, the development having been commenced on 20 August 2016 and completed on 10 October 2016.
4. No 39, along with other properties nearby, was constructed pursuant to outline consent Ref PA11/01245 for the construction of 40 houses (the 'outline permission'), and reserved matters application Ref PA12/02760 (the 'detailed permission'). Further properties have subsequently been constructed along Martin Meadows to the rear of No 39.
5. The development comprises extending the rear boundary of the garden of No 39 by approximately 2 metres towards Martin Meadow, resulting in an addition to garden area of approximately 20 square metres. This additional area of garden is enclosed by close-boarded fencing, and a summer house and decking has been erected.
6. The outline permission was accompanied by an Ecological Impact Assessment ('EcIA').¹ The EcIA concludes that the incorporation of a biodiversity 'buffer zone' would ensure that the implementation of the outline consent would result in 'no significant negative impacts upon protected species', including badgers

¹ Prepared by Hutchinson Ecological Associates, Ref HEA 113/11/A, dated April- May 2011.

and bats.² The buffer zone is also described in the EcIA as providing for additional foraging habitat for birds and maintaining or enhancing reptilian habitat.

7. The detailed permission is supported by plan P1221-SP-002-F which defines the extent of the 'ecology buffer zone' related to the outline permission, which arcs around Tregea Close. Condition 7 of the outline permission, was discharged via application Ref PA12/07713 (the '2012 permission') and an agreed Landscape Maintenance & Management document (the 'LMM').³
8. It is common ground between the main parties that the extended garden of the property, the shed and decking fall in whole or part within the ecology buffer zone as described above.⁴ I would also note that condition 4 of the outline permission withdraws permitted development rights for buildings incidental to the enjoyment of a dwellinghouse,⁵ and that I have considered relevant pre-application advice and enforcement action.⁶

Main issue

9. The main issue is whether or not the effect of the development on ecology is acceptable.

Reasons

10. As established above, the development extends the garden of No 39 into the ecology buffer zone adjacent. Close-boarded fencing, decking and a summer house have also been erected, features which would prevent the use of the land by certain species. I acknowledge that this development is beneficial to the appellant in enabling him to more fully enjoy his land, and represents a comparatively modest loss of natural habitat to built development.⁷
11. However, as established above, the preservation of natural habitat was a factor in ensuring that development proposed via the outline permission would have an acceptable effect upon ecology. Whilst I accept that the rear boundary wall of neighbouring No 40 marks the end of the buffer zone, this does not justify its further reduction.⁸ Nor does the proximity of Martin Meadow negate any ecological value of the land here as the appellant contends, for example to birds or reptiles.
12. I accept that no species were recorded within the EcIA as making use of the buffer land that falls directly behind No 39. However the EcIA refers to the need for a buffer zone as a whole being necessary relative to the reduction in natural habitat that would result from that scheme. Neither the EcIA, plan

² At page 18.

³ Prepared by AJN Landscape Consultants.

⁴ As acknowledged in paragraph 5.1.3 of the appellant's statement of case.

⁵ With reference to Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.

⁶ Ref PA16/01865/PREAPP and EN16/01619.

⁷ Notwithstanding the appellant's contention that planting associated with the detailed permission has not hitherto been implemented, and having considered the correspondence before me on behalf of Belmont Property Management dated 3 June 2016 related to the incorporation of buffer land into the garden of No 39.

⁸ The Planning Practice Guidance (the 'Guidance') explains that the coherence of habitats may be important aspects of their value, Reference ID: 8-009-20140306, which is compromised by the development.

P1221-SP-002-F nor the LMM refer to only certain elements of the buffer zone as being necessary or beneficial in this context.

13. I understand that the ecology buffer zone transgresses land owned by Nos 37, 38 and 39 Tregea Close, whereas from No 36 onwards the land it encompasses is instead owned by the management company in connection with the LMM.⁹ However, although land ownership is a private as opposed to planning matter, Paragraph 5.8 of the LMM explains that 'the ecological buffer zone will be maintained by the site owners or their appointed management company'.
14. Paragraph 5.6 of the LMM further explains that it should be made available to owners to 'help outline the principles of the retained habitats and encourage the future management of these areas in perpetuity'. The preservation of the buffer zone therefore appears to apply equally to owners as to the management company.
15. Moreover the plot size of No 39, without encroaching into the buffer zone, is comparable with, or greater than, other properties nearby. Although each proposal must be determined on its particular merits, in the absence of robust justification for the development in this particular instance, allowing the appeal may lead to pressure for encroachment into the ecology buffer zone elsewhere (and therefore further loss of natural habitat).
16. For the above reasons, whilst I appreciate that the development has a limited effect in terms of reducing natural habitat within the ecology buffer zone,¹⁰ this effect is nevertheless negative. On the basis of the evidence before me the personal benefits of the development to the appellant do not outweigh this harm, particularly given the nature of surrounding properties.
17. I therefore conclude that the development has an unacceptable effect on ecology, in conflict with the relevant provisions of policy 23 'Natural environment' of the Cornwall Local Plan Strategic Policies 2010-2030 (adopted November 2016) and paragraph 118 of the National Planning Policy Framework (the 'Framework').¹¹

Conclusion

18. For the above reasons, and having taken account of all other matters raised, the development 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

⁹ As set out in the Council's officer report.

¹⁰ Which appears to be accepted in paragraph 7.1.6 of the appellant's statement of case where it is stated that the development 'would not result in the level of damage which is implied [by the Council in their decision notice]'.

¹¹ In summary the former sets out that development will need to protect or enhance Cornwall's natural environment, and the latter explains how the planning process should conserve and enhance biodiversity.