



Appeal Decision

Site visit made on 9 December 2019

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2020

Appeal Ref: APP/D0840/W/19/3229439

Land off Bodiniel Road, Bodmin PL31 2UE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Hume against the decision of Cornwall Council.
 - The application Ref PA18/08575, dated 13 September 2018, was refused by notice dated 23 November 2018.
 - The development proposed is the construction of single dwelling and ancillary site works.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The reason for refusal refers only to Policy 13 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan). However, both main parties have also referred to Policy 12 of the Local Plan in their submissions and in these circumstances, I consider that no party would be prejudiced if I do as well.

Main Issue

3. The main issue is the effect of the development on the living conditions of the occupiers of 6 Flaxmoor Terrace.

Reasons

4. The site consists of about the rear half of a section of land stretching back from Bodiniel Road which forms part of a lower slope of the hillside. A new dwelling and garage has been constructed on the front section of this land. A vehicular drive is shown to pass this new dwelling to access the proposed dwelling. A level area has been cut into the hillside across much of the site and this would form the approximate level from which the dwelling would be built, if approved, or potentially the swimming pool and gym building agreed as permitted development¹.
5. Broadly to the south-east lies 6 Flaxmoor Terrace, a residential property on a lower level than the appeal site. The property has an enclosed garden to the side which can be accessed from the double doors of a single storey extension, which I saw at my site visit is used by the occupants as their main lounge area.

¹ PA19/02533 - Lawful Development Certificate for the construction of a swimming pool enclosure including mezzanine level as incidental accommodation to the dwelling. Watery Lane House Bodiniel Road Bodmin Cornwall PL31 2U. Granted 3 April 2019.

6. The proposed dwelling would be constructed within the broadly northern section of the plot and has been designed to minimise its impact on the neighbouring property. However, the dwelling would have two obscure glazed bathroom windows and a staircase window to the south-east elevation which would be readily apparent from the bottom section of the garden of No 6. Furthermore, the two bedroom windows in the end gable would provide angled views down towards parts of the side garden area of No 6 and towards, despite the angle, the existing windows and double doors of the single storey extension. These windows in the proposed dwelling would, notwithstanding the separation distance and boundary treatment, lead to some overlooking or the perception of being overlooked for occupants of No 6.
7. I noted that part of the garden area of the new dwelling at the entrance to the site had been provided by a terrace formed into the slope of the land both behind and to the side of the dwelling. In all likelihood, a similar approach would be taken by future residents of the proposed dwelling and this garden, because of the proposed layout, would be located in the area of the slope to the broadly south-west of the dwelling. Such use of the slope as a garden, even without a terrace, would provide direct and elevated views into the largely private garden area of No 6, which is not presently overlooked to a material extent. Having visited inside the property, I consider that occupants of No 6 when using the side extension, because of the windows that face in a broadly west and north direction, would be conscious of residents using some of the elevated garden areas within parts of the proposed property.
8. The site of the proposed dwelling and its garden area falls within the approved curtilage of the dwelling recently constructed towards the front of the site. This land, therefore, could already be lawfully used as a garden and this could lead to overlooking of the garden and dwelling of No 6. However, this area within this new curtilage is a reasonable distance from the new dwelling and, in all likelihood, would be used less frequently than the amenity areas close by the dwelling itself. I therefore consider that the provision of the appeal dwelling would be likely to lead to a more intensive use of this rear area of garden land, with the consequent overlooking towards No 6, than the situation with the presently approved dwelling.
9. Concerns have also been raised with the use of the proposed vehicular access and parking area to serve the new property and its effect on the living conditions of occupants of No 6. While I am conscious of the issues involved, in this case, the tall and substantial boundary fence which has been erected along the side of the plot would screen activity to an acceptable extent.
10. The site lies within the built-up area of Bodmin and in such a location where residential properties are reasonably closely spaced, a degree of visibility between properties and between garden areas would be generally accepted depending on the particular circumstances of the relationship. In this case, the effect of the development would be to lead to some overlooking and the perception of overlooking from windows and the garden area of the proposed development towards the largely private garden and windows of No 6. The result of this would be to detract from the enjoyment of their property through loss of privacy, particularly within the garden area, for occupants of No 6.

11. I do not consider that additional planting along the boundary, on either the appeal site or No 6 would satisfactorily overcome the harm I have identified because of the elevated nature of the appeal site.
12. The planning system does not necessarily aim to protect the rights of one private individual in preference to those of another and the owners of a site should normally be able to develop their land within the constraints set out in the development plan. In particular, I note that it is explained that the separation distances would be in excess of that set out in the Cornwall Design Guide. Nevertheless, the personal circumstances of an individual can also be a material consideration, where this accords with the wider public interest.
13. The Council has argued, in the circumstances of this case in relation to the occupiers of No 6, that the proposal would constitute a violation with the rights under The Human Rights Act 1998 (HRA), which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights (ECHR)², and would conflict with the Public Sector Equality Duty (PSED) contained in the Equality Act 2010.
14. I consider that in this case, that human rights issues are engaged because the occupants have lived at No 6 for many years and their particular circumstances is such that the use of the largely private garden has special importance. Given my findings regarding the harm that would result from the proposal and the clear and detailed background evidence that is before me, the loss of privacy, in particular to the largely private garden area, would have a significant and adverse impact on the living conditions of the occupiers of No 6. The effect of the development, if permitted, in the particular circumstances of this case, would be to cause for the occupiers of No 6 a severe interference with their human rights (as listed in footnote 2).
15. In terms of the PSED, it is necessary to have regard to the protected characteristics of any individual and to have due regard to the need under Section 149(1)(b) of the Equality Act 2010 to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. Given the circumstances of this case, this is an important and material planning consideration.
16. I have also taken into account the findings of the Inspector when she considered a scheme for 4 dwellings on the land³. This proposed 4 dwellings in a terrace which would have faced broadly south-east and it was found that overlooking would occur from the two most south-westerly dwellings towards the garden of No 6. I consider that my findings of overlooking from the windows in the end gable of the proposed dwelling and from the garden area of the proposal are broadly consistent with the conclusions of this earlier appeal.
17. A swimming pool and gym building has been agreed to be permitted development. This quite sizeable building has windows facing towards No 6, both the garden area and the dwelling itself. While the ground floor elements of these double height windows of the proposed outbuilding would be somewhat screened by the tall boundary fence, the first floor sections of the windows

² In particular, Article 8 concerns the right to respect to private and family life, home. This is a qualified right and it is necessary to consider whether any interference would be justified, in accordance with the criteria set out in Article 8(2). Article 1 of the First Protocol sets out that every natural and legal person is entitled to the peaceful enjoyment of his possessions. Again, this is a qualified right.

³ APP/D0840/A/2/2169245 dated 18 September 2012

would be clearly apparent from No 6. I consider that were permission to be refused for this appeal proposal, as the land has been levelled and a Certificate granted, there is a realistic prospect the swimming pool and gym building would be constructed.

18. However, while the size of the outbuilding would adversely influence the enjoyment of the garden of No 6 and the windows would lead to the perception of overlooking and to overlooking itself, I also note that by its nature it would be an incidental building to the main house and not primary residential accommodation. It would therefore, in all likelihood, not have the same intensity of occupation as a dwelling. The ground floor area within the building around the swimming pool would be largely screened by the fence and internally the mezzanine would be set back. Given the size of the building and its coverage of the site, there would not be the same opportunities to create an external terrace or use the slope as garden area in the same way as with the proposed dwelling. The swimming pool and gym building is clearly a fallback position, but I consider that overall, for the reasons explained, the provision and use of this outbuilding would be less harmful to the living conditions of the occupiers of No 6 than the appeal proposal.
19. Taking all these matters into account, the scheme for the single dwelling would lead to some overlooking and the perception of overlooking for the occupiers of No 6. When combined with the requirements to have due regard to human rights and the PSED, in the particular circumstances of this case, I conclude that the proposal would have an unduly harmful impact on the living conditions of the occupiers of No 6. The proposal would therefore fail the requirement of Policy 12 of the Local Plan which requires that development proposals should protect individuals and property from overlooking and unreasonable loss of privacy and the policy in the National Planning Policy Framework (the Framework) that decisions should create places with a high standard of amenity for existing and future users.
20. Given the wording of Policy 13 of the Local Plan which sets development standards, I am not satisfied on the evidence before me, that the scheme would conflict with this policy. Nevertheless, this does not detract from the conclusion of the impact of the scheme set out above.

Other Matters

21. I have had regard to the representations from Bodmin Town Council, including their initial support and subsequent objections in the light of the further information that the Council considered. I have also taken into account the representations from local residents, including the support for the proposal, and the comments that the scheme would deliver a family house in a sustainable location and that the house recently built is a quality building with an attractive design.
22. The proposal would provide a small but worthwhile windfall addition to the housing stock with an acceptable and energy efficient design. There would be economic and social benefits with the construction of a dwelling on this site within the settlement area of Bodmin. The site would be in proximity to a wide range of services and facilities and where development, in accordance with the settlement hierarchy, is directed. The proposal would accord with Framework requirements to make the efficient use of land as this site is already within the

curtilage of an approved dwelling. However, as a single dwelling is proposed, the cumulative benefits of the scheme afford limited weight.

Planning Balance and Conclusion

23. In this case I have found that the benefits with the provision of the dwelling would afford limited weight. The overlooking and perception of overlooking to the garden and windows of No 6 would cause tangible but moderate harm. In the particular circumstances of this case, which I consider to be exceptional, the impact to the living conditions of the occupiers of No 6 would be significant. Having due regard to the protection of human rights and to the PSED, the interference would be to such an extent that the proportionate response is that the proposal should not be allowed. Overall, I find that the scheme would conflict with Policy 12 of the Local Plan and the Framework.
24. For the above reasons, and having regard to all other matters raised, the proposal would not comply with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and the associated development plan conflict. I therefore conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR