
Appeal Decision

Site visit made on 7 January 2020

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 21 January 2020

Appeal Ref: APP/D0840/W/19/3238083

Land NE of Ludgvan House, Blowing House Hill, Ludgvan TR20 8EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr P O'Neil against the decision of Cornwall Council.
 - The application Ref PA19/04524, dated 28 May 2019, sought approval of details pursuant to condition No 1 of a planning permission Ref PA17/08019, granted on 16 October 2017.
 - The application was refused by notice dated 28 August 2019.
 - The development proposed is an application for approval of reserved matters in relation to outline approval PA17/08019 for two new houses: access, appearance, landscaping, layout and scale.
 - The details for which approval is sought are: access, landscaping, layout and scale.
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Decision

1. The appeal allowed and planning permission is granted for approval of reserved matters in relation to outline approval PA17/08019 for two new houses: access, appearance, landscaping, layout and scale at Land NE of Ludgvan House, Blowing House Hill, Ludgvan, TR20 8EG, in accordance with the terms of the application, Ref: PA19/04524, dated 28 May 2019, subject to the conditions in the attached schedule.

Procedural Matters

2. I have amended the original description of development to reflect that provided within the Council's decision notice and as stated at section E of the appeal form in the interests of accuracy and consistency.

Main Issue

3. The main issue is the effect of the proposed development on the living conditions of nearby residents, with particular reference to privacy and outlook.

Reasons

Policy Context

4. The development plan comprises of the Cornwall Local Plan Strategic Policies 2010-2030¹ (the Local Plan). The evidence before me indicates that the Ludgvan Neighbourhood Plan is currently at examination and that given there are areas of this Neighbourhood Plan which require clarification, I have only

¹ Adopted November 2016

attached limited weight to the Ludgvan Neighbourhood Plan in the determination of this appeal.

5. Policy 12 of the Local Plan, amongst other things, seeks to ensure that development is well designed and protects the privacy of neighbouring property.

Living Conditions

6. The appeal site is located within the settlement of Ludgvan and is accessed via Blowing House Hill. The evidence before me indicates that the site was formerly used as a car park which served a public house known as The Old Inn. To the southwest of the site is located a Grade II Listed building now known as Ludgvan House. To the east of Ludgvan House and located south of the appeal site, is the two storey dwelling known as White Gables. Both of the dwellings at Ludgvan House and White Gables are set down below the level of the appeal site, adjacent to the hillside.
7. The proposal would provide two detached dwellings to be positioned within the northern section of the site. The evidence and submissions before me indicate that the proposed dwelling at plot 1 would be positioned approximately 22 metres from the rear of Ludgvan House, and that the proposed dwelling at plot 2 would be approximately 19.5 metres from the rear elevation of White Gables. Due to the level of land which rises steeply from south to north, the roof ridge heights of Ludgvan House and White Gables would be approximately 3 metres below that of the roof ridge heights of the proposed dwellings.
8. By reason of the position of the proposed dwellings elevated on a terrace above the dwellings at Ludgvan House and White Gables, and due to the separation distances between these properties and the proposed dwellings, the Council have put it to me that the scheme would result in an unacceptable loss of privacy from overlooking.
9. In this respect, the evidence and submissions put to me in this appeal provide that a 2 metre high boundary fence would be erected on the shared boundary between the appeal site and the dwellings at Ludgvan House and White Gables. Whilst I shall return to further consider the potential impact of this proposed boundary treatment below, its inclusion would prevent any opportunity for overlooking from the proposed dwellings into the external amenity space or ground floor rooms of either Ludgvan House or White Gables.
10. However, it is apparent that there would be opportunity for some overlooking from the first floor windows on the south elevations of the proposed dwellings and into the first floor rooms at the rear of the adjacent aforementioned properties. In this regard, it is noted that the first floor windows of the proposed dwellings which would face towards Ludgvan House and White Gables, would serve landings and bedrooms and therefore would be less sensitive in terms of overlooking than in the case of primary living spaces. Similarly, the first floor windows at White Gables and Ludgvan House serve bedrooms and bathrooms rather than primary living space.
11. Whilst I acknowledge the reference by the Council to the advice contained within the Cornwall Design Guide with regards to separation distances, in this instance due to the distance between the dwellings and due to the levels of the land in combination with the introduction of the proposed boundary fencing and

the lower sensitivity of the facing first floor windows, I conclude that there would be no significant overlooking or loss of privacy to the occupiers of the dwellings at Ludgvan House or at White Gables.

12. The Council have further put it to me that the proposed scheme would have an overbearing impact on the residents of the adjacent dwellings at Ludgvan House and White Gables. In this respect, I find that due to the separation distances between the properties as described above, and the relative position of the adjacent housing set against the hillside to the south of the appeal site, the height and massing of the proposed dwellings would not, in my view, have a significant overbearing effect on the neighbouring dwellings at Ludgvan House and White Gables.
13. There is further concern that the introduction of a 2 metre fence at the boundary would in itself have an unacceptable overbearing effect on the occupiers of the neighbouring dwellings to the south of the appeal site. The Council have also put it to me that the proposed boundary treatment would result in an unacceptable loss of light.
14. In this regard, the rear external amenity spaces at White Gables and Ludgvan House are shallow in depth, with these spaces being constrained by the presence of a high retaining wall which separates the higher land at the appeal site from these properties. Consequently, I find that due to the existing position and given that the massing of the proposed fencing would be somewhat broken up by the proposed use of half brick and half timber fencing, the introduction of the proposed boundary treatment would not result in any significant change to the outlook currently experienced from these neighbouring properties. I therefore find that the proposed boundary treatment would not have an unacceptable impact on the properties at Ludgvan House or White Gables with regards to being overbearing or resulting in an unacceptable loss of outlook.
15. In terms of the potential for loss of light, the Council have referred me to the BRE document 'Site Layout Planning for Daylight and Sunlight'. Whilst I have not been provided with a copy of this document, it is understood that the advice provided by this document relates to guidance. In this respect, I find that for the reasons given above in relation to the existing constrained nature of the external amenity space at the rear of Ludgvan House and White Gables, the introduction of the proposed boundary treatment would not significantly alter the outlook from these dwellings and would not result in a significant loss of light.
16. In conclusion of the above, I find that the proposed scheme would not have an unacceptable impact on the occupiers of the neighbouring dwellings at Ludgvan House or at White Gables with regards to overlooking or loss of outlook and light. Consequently, the proposal would comply with Policy 12 of the Local Plan and would accord with the provisions of paragraph 127 of the National Planning Policy Framework (the Framework).

Other Matters

17. As described above, the appeal site is located adjacent to the Grade II Listed Building known as Ludgvan House. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard is had

to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest it possesses.

18. In this regard, the evidence before me indicates that the proposed dwellings would be comparable in terms of scale and appearance to the surrounding built form within Ludgvan. Whilst it is acknowledged that some of the external features and detailing, such as the proposed use of casement windows, would not reflect the appearance of the Listed Building, the proposed dwellings would be seen in the context of the surrounding residential properties which comprises a mixture of traditional and more modern forms of development.
19. Consequently, whilst there would be some harm to the setting and significance of the Listed Building, such harm would be towards the lower end of 'less than substantial harm' within the meaning of the term in paragraph 196 of the Framework. Paragraph 194 of the Framework states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Paragraph 196 requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal.
20. In this regard, the benefits of the scheme arise by reason of the contribution towards housing supply and the use of previously developed land within a settlement where there is access to a range of services and facilities. In my view, these benefits would outweigh the less than substantial harm to the heritage asset and, therefore, the proposal would accord with those parts of the Framework which seek to preserve or enhance the historic environment and the significance of heritage assets.
21. Further to the above, interested parties have raised concerns regarding drainage and access to the site. In respect of drainage concerns, I have not been provided with any substantive evidence which demonstrates that the proposal would adversely affect the local drainage system. Furthermore, the evidence before me indicates that, subject to certain conditions to which I will return to below, the Council's Highways Officer did not raise any objection in relation to access for the previous scheme² at the site and which also proposed to use the shared access onto Blowing House Hill. Consequently, I find that, subject to the identified conditions, the proposed access arrangements are acceptable.

Conditions

22. I have considered the Council's suggested conditions in light of the Framework and Planning Practice Guidance. Where necessary I have altered the wording of the suggested conditions in the interests of precision.
23. The conditions set out should be read in conjunction with those set out on the outline planning permission³ to which this application for approval of reserved matters relates. In addition to the plans condition which is necessary in order to provide certainty, I agree that conditions regarding materials and boundary treatments are also necessary in the interests of character and appearance and in the interests of protecting the living conditions of nearby residents. Furthermore, I agree that a condition requiring obscured glazing be

² Local Planning Authority Reference: PA19/01249

³ Local Planning Authority Reference: PA17/08019

incorporated within one of the proposed dwellings is necessary in the interests of protecting the privacy of nearby residents.

24. Further to the above, I have also included a condition that visibility splays in accordance with the submitted plans are created prior to the occupation of the proposed dwellings in the interests of highway safety. In the interests of protecting the character and appearance of the area, the setting of the nearby Listed Building and in the interests of ensuring that future residents of the proposed dwellings will have sufficient external amenity space, I find it reasonable to include a condition removing certain permitted development rights.

Conclusions

25. For the reasons given above, the appeal succeeds and planning permission is granted subject to the conditions identified in the attached schedule.

A Spencer-Peet

INSPECTOR

Schedule of Conditions

- 1) The development hereby approved shall in all respects accord strictly with drawing numbers: Proposed 002G, Proposed 003E and Existing 006 received by the Local Planning Authority on 28 May 2019 and Proposed 005J received by the Local Planning Authority on 9 August 2019 and Proposed 001T and Proposed 009A received by the Local Planning Authority on 14 August 2019.
- 2) Prior to the first occupation of either of the dwellings hereby permitted, all land within the approved visibility splays, as shown hatched on approved drawing no Proposed 001T, shall be reduced to a height not exceeding 0.9m above the adjoining carriageway level and no obstruction shall be permitted thereafter.
- 3) Prior to the first occupation of either of the dwellings hereby permitted, details of the proposed height, siting, appearance and construction of all boundary treatments (means of enclosure) shall be submitted to, and approved in writing by, the local planning authority. The approved boundary treatments (means of enclosure) shall be completed in accordance with the approved details prior to the first occupation of either of the dwellings hereby permitted. The boundary treatments shall not thereafter be altered or removed, other than by necessary and suitable replacement.
- 4) Prior to their use in the development hereby permitted, details of the materials to be used in the construction of the external surfaces (doors/ windows/stonework/roof slates/chimney stack) shall be submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 5) Prior to the first occupation of the dwelling hereby permitted in Plot 2, as shown on approved drawing no Proposed 001T, the first-floor window in its eastern elevation, as shown on approved drawing no Proposed 002G, shall be fitted with obscure glazing and fixed closed and the window shall be permanently retained in that condition thereafter.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), no development within Classes A, B, C, D and E of Part 1 of Schedule 2 to the said Order shall be carried out without an express grant of planning permission, namely:
The enlargement, improvement or other alteration of the dwellinghouse;
The enlargement of the dwellinghouse consisting of an addition or alteration to its roof;
Any other alterations to the roof of the dwellinghouse;
The erection or construction of a porch outside any external door of the dwelling;
The provision within the curtilage of the dwellinghouse of any building or

enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure.