



Appeal Decision

Site visit made on 2 September 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2020

Appeal Ref: APP/D0840/W/20/3249973

The Beach, Kennack Sands, Ruan Minor TR12 7LX

- 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 Robert Fletcher of Daro Properties against the decision of Cornwall Council.
 - The application Ref PA19/03885, dated 7 May 2019, was refused by notice dated 22 October 2019.
 - The development proposed is the residential development of 4 houses.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. At the appeal stage representations were received by a resident of one of the flats at The Beach. This submission raised an objection regarding the potential for overlooking between the windows of that flat and two of the proposed dwellings. While this matter did not form a reason for refusal, I am satisfied that as I have directly sought the views of both main parties on whether there would be any overlooking between the properties, and taken into account the responses, no party would be prejudiced by my consideration of this matter as another main issue in this appeal.

Main Issues

3. Accordingly, the main issues are:
 - the effect of the development on the living conditions of existing and future occupiers, in particular with regard to any overlooking between properties, and
 - the effect of the development on the character and appearance of the area, having particular regard to the location within the Cornwall Area of Outstanding Natural Beauty (the AONB).

Reasons

Living conditions

4. The Beach is a three storey building consisting of flats. First and second floor windows of the broadly north eastern elevation of this existing building would face towards the appeal site. In particular, a pair of full height windows on both

of the upper floors would approximately face towards the rear of Plots 1 and 2 of the proposed development.

5. The Council considered this relationship in their Planning Report and explained that the proposed development would be situated at 12.2 metres distant from the closest elevation of The Beach and that all other neighbouring residential property to the west of the application site would be situated in excess of 25 metres. The Council comment that with respect to overlooking impacts upon The Beach, the nearest elevation of this building and its glazing is readily visible within the landscape from the right of way and from the internal access road. The Council concluded that in these circumstances, that adverse neighbour amenity harm would not be brought and comments that such concerns were not raised by the Planning Inspectorate when considering the previous development, which was of a greater scale and mass.
6. However, the present proposal is a different scheme and layout to that previously dismissed at appeal and I have considered this latest proposal, and the relationship between properties, on its merits.
7. The nearest elevation of The Beach and the rear of Plots 1 and 2 would be reasonably close together. Views from the full height windows in the flats would look towards the rear elevation of Plot 1, with Plot 2 a little offset. In my judgement this would allow a fairly direct line of sight to the rear first floor bedroom windows of Plot 1 and bedroom 2 of Plot 2. Equally there would be views back from these windows towards the adjoining flats in The Beach and, in particular, the full height windows. With the reasonable proximity of the buildings, the mutual intervisibility between these windows would cause an adverse and undue overlooking situation, harming the living conditions of both existing and future occupiers.
8. Plots 1 and 2 would be set slightly lower on the slope of the land than The Beach. Based on the plans and my site visit, there would also be views from the full height, second floor windows down towards the rear ground floor windows of Plots 1 and 2, as well as the outside amenity areas to the immediate rear of these proposed dwellings. This would cause some overlooking and adds to my concern regarding the adverse relationship between the windows that I have highlighted above.
9. I have noted the Council's considerations as to why it came to the view that the relationship between properties would be acceptable. At the present time, there would be some views towards the first and second floor windows in The Beach from the grassed and adjoining surrounding areas. However, it is likely that these views would be reasonably transitory because of the nature of the uses of these outside areas and the views would be up from a generally lower level. In contrast, the views from the first floor windows from Plots 1 and 2 would be from a higher position, allowing generally a less angled line of sight, and from habitable rooms within permanent buildings. Consequently, I am not persuaded by the Council's analysis in this case and believe that the relationship between properties would cause undue harm to living conditions of present occupiers.
10. The appellant has commented that it is only the smaller bedrooms which are located to the rear of Plots 1 and 2 and if there was considered to be some element of overlooking then a condition could be attached requiring them to be

obscure glazed. In this way, it is argued there would be no opportunity for any loss of privacy for either the occupiers of The Beach or Plots 1 and 2.

11. Requiring an obscure glazed window to the rear elevation of bedroom 2 of Plot 1 may be reasonable as this room has its main window to the side. However, bedroom 3 of Plot 1 and bedroom 2 of Plot 2 only have single aspect windows and requiring the glass to be obscure glazed to a habitable room would not provide attractive living conditions for occupants. Such a situation would not meet with the National Planning Policy Framework (the Framework) policy requirement that developments should provide a high standard of amenity for existing and future users. The obscure glazing would not be a reasonable solution in all the circumstances of this case and, in any respect, if the windows were to be opened there may be, depending on design, some element of overlooking that would still occur.
12. In the light of the above analysis, I conclude that the development would not provide satisfactory living conditions for the occupiers of the adjoining flats in The Beach and the occupiers of Plots 1 and 2. As a consequence, the scheme would not comply with Policy 12 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan) and the Framework which seek in this respect, notably, to protect individuals and property from overlooking and unreasonable loss of privacy.

Character and appearance

13. The appeal site is a gently sloping grassed area of land broadly to the north east of the three storey flats. From the elevated location of the site there are extensive views over parts of the camping and caravanning site, to open countryside and the coast. This site lies at the periphery of Kuggar and close to the single track road that leads to the beach at Kennack Sands. There is a public right of way that runs along the south eastern boundary of the site which is bounded by an established hedge.
14. The site is located within the South Coast Western Section of the AONB, which covers the coastal district of the Lizard Peninsula. The Cornwall AONB Management Plan 2016-2021 (the MP) and the Cornwall and Isles of Scilly Landscape Character Study characterise the surrounding area as a rugged open plateau of predominantly pastoral fields bounded by Cornish hedges. The appeal site, because of its elevated position in the landscape, although modest in size and in proximity to the adjoining built development, reflects some of these characteristics of the wider AONB.
15. The Framework sets out that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs which have the highest status of protection in relation to these issues. These requirements are reflected in Policies 3, 12 and 23 of the Local Plan concerning the location of housing, design and the natural environment.
16. In this case, two pairs of semi-detached houses are proposed. The design is well articulated with gables and recessed elements that would help to break up the bulk of the buildings and with a palette of materials, including green oak cladding and sections of natural stone, which would be sympathetic with the surrounding built form. The dwellings would be set a little way down the slope of the site, with some spacing to the sides and front, that would allow a suitable landscaping scheme to help soften the impact of the development in

the wider landscape. The ridge lines of each pair would be lower than the eaves line of the adjoining flats behind, such that the dwellings would appear subservient in scale, form and bulk on the site compared to the adjoining building. The dwellings would sit comfortably within the site and the arrangement would not appear awkward or draw the eye given the surrounding built form.

17. There would be views of part of the dwellings from the lane that comes up from the beach. However, the landscaped boundary and the context of the other built development would mean that the proposed housing would not be at odds with the entrance to the village from this direction. Furthermore, views from the nearby right of way would not be adversely affected.
18. The proposed dwellings would be prominent in views from the open land broadly to the north and east, including from parts of the coast. However, the development would be seen in the context of the larger building behind and, for the reasons explained above, the development could be successfully accommodated on the site. The scheme would form a logical extension of the existing built form of Kuggar without encroaching into open countryside.
19. I have carefully considered the appeal decision for 5 houses on the site which was dismissed in February 2019¹. That proposal incorporated, in part, a three storey building and the Inspector considered that the discordant roof forms of varying height, the overall mass and scale of the blocks, on this elevated site, would sit awkwardly within the surroundings. However, the present proposal has been amended to seek to overcome the reasons for the earlier refusal. I am satisfied that this scheme for 4 dwellings is materially different and would address the objections that were identified by the previous Inspector.
20. Accordingly, I conclude that the proposal would not harm the character and appearance of the area. In particular, the scheme would conserve and enhance the landscape and scenic beauty of the AONB. Consequently, the proposal would comply with Policies 1, 2, 3, 12 and 23 of the Local Plan and the Framework which seek in this respect, amongst other things, to consider the impact of development on the beauty and diversity of landscape.
21. Additionally, I also conclude that the scheme would comply with Policies MD2 and MD9 of the MP, because the scheme would be compatible with the distinctive character of the location and would be of an appropriate scale within the AONB.

Other Matters

22. The scheme would provide 4 units of accommodation on a site that complies with the locational strategy for the delivery of housing. There would be a small boost to housing supply on a windfall site and with economic and social benefits during construction and in subsequent occupation. However, as only 4 residential units are proposed the cumulative benefits afford limited weight.

Conclusion

23. I have found that the scheme would not harm the character and appearance of the area and would conserve and enhance the AONB. The benefits of the scheme merit limited weight in favour of the proposal for the reasons

¹ APP/D0840/W/18/3211037

explained. However, I attribute the harm that would result from the adverse effect of the development on the living conditions of existing and proposed occupiers significant weight. It is such that the benefits would not outweigh the identified harm.

24. Accordingly, 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