



Appeal Decision

Site visit made on 24 September 2020

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2020

Appeal Ref: APP/D0840/D/20/3250128

16 Kenstella Road, Newlyn, TR18 5AY

- 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 S Haffenden against the decision of Cornwall Council.
 - The application Ref PA19/06374, dated 23 July 2019, was refused by notice dated 5 March 2020.
 - The development proposed is conversion of existing ground floor building, extension to provide first floor balcony.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. An application for costs was made by the appellant against Cornwall Council. This application is the subject of a separate Decision.
3. Following my site visit, I invited both parties to comment on the existing timber fence that sits on top of the bomb shelter on the boundary with 17 Kenstella Road. Based on the comments received, the parties are in agreement that this fence does require planning permission, and that no application to retain the fence has been submitted to date. The Council indicate that the fence is some 3.2 metres in height measured from ground level. The appellant has confirmed that this fence does not form part of the appeal proposal.
4. Given the above, I have determined the appeal on the basis that planning permission does not exist for this fence, and that its existence is not a consideration which I can, therefore, attach any weight too.
5. During the determination of the application, amended plans were submitted showing, amongst other changes, the removal of a balcony over the proposed extension and its replacement by a Juliette balcony to the rear first floor bedroom of the existing house. I have determined the appeal on this basis.

Main Issue

6. The main issue is the effect of the proposal on the living conditions of the adjoining neighbouring occupiers at 17 Kenstella Road (No.17).

Reasons

7. The appeal site comprises a semi-detached two storey property. Its neighbour, No.17, is located to the north and forms the other half of this pair of semi-detached properties.
8. From the front of the appeal property the land falls away significantly towards the end of the rear garden. No.17 is also in a slightly elevated position. At the rear of No.17 is an existing decking area. As I observed on site, this decking is accessed from the properties main living room.
9. The appellant has confirmed that the proposed extension would project some 4 metres from the main rear wall of the host property, and would be some 3.9 metres in height, at its highest point. The extension would be sited right up against the boundary with No.17, replacing the existing bomb shelter, with the timber fence above it, as well as the existing sheds.
10. The proposed extension would result in a significant new building on the boundary with No.17. It's close positioning to the decking area and rear ground floor windows of No.17, combined with its projection, would result in a loss of light and outlook to the rear of No.17 and would appear overbearing to its occupiers. It would also lead to a sense of enclosure, which would be harmful to the living conditions of the occupiers of No.17.
11. The appellant refers to the fact that the Council have not raised any objections to the proposed design of the extension or to any other aspects of the appeal proposal, such as the Juliet balcony. I concur with the Council's views in these respects, but that does not affect my overall findings.
12. The appellant argues that as No.17 is at a higher level the full height and projection of the proposed extension will not be appreciated, and that only the top half would be visible. As I observed on my site visit, the proposed extension would be highly visible to the occupiers of No.17, both from their decking area and living accommodation, resulting in a significant impact on their living conditions.
13. The appellant contends that whilst the proposed extension will result in some loss of light, this would be very modest. For the reasons set out above, I do not agree. The appellant indicates that the proposal would be no different to other extensions permitted in the area. I do not know the full planning circumstances of these cases and it is not possible for me, therefore, to determine whether they are comparable to the appeal proposal. Even so, I have considered the appeal proposal on its individual merits, having regard to the particular circumstances of this case
14. The appellant contends that the proposed extension is only 1 metre longer than an extension that could be built under permitted development, and that this is a material consideration in favour of the scheme that should be accorded weight (the Council refer to the proposed extension as being 33% larger than that allowed under permitted development). This reduction in the length of the proposed extension would not, the appellants contend, result in any material difference.
15. The appellant has not provided any evidence, in the form of plans or a Certificate of Lawful Development, to show that an extension 1 metre shorter would be lawful and thus permitted development. It is not for me to determine

whether a smaller extension would be permitted development in relation to an appeal that has been made under section 78 of the Town and Country Planning Act 1990.

16. However, I accept that a fallback option is a material consideration to which weight can be accorded. The appellant has indicated that it would be their intention to use these permitted development rights, if the appeal was dismissed, and, on balance, I am satisfied that there is a greater than theoretical possibility of a fallback option being implemented.
17. Even so, assuming an extension 1 metre shorter was lawful and could be implemented under permitted development, I do not agree with the appellant's contention that the impact of this smaller extension would not be materially different to that of the appeal proposal. In my judgement and based on my observations on site, the impact on the living conditions of No.17 of an extension 1 metre shorter would be significantly less than the impact that would result from the appeal proposal.
18. I therefore find that the impact on the living conditions of 17 Kenstella Road would be unacceptable and that the proposed rear extension fails to comply with Policy 12 of the Cornwall Local Plan Strategic Policies 2010 - 2030, Section 2.6 of the Cornwall Design Guide 2013, the advice of the Cornwall Council Domestic Alterations and Extensions Guide 2017, and paragraph 127 of the National Planning Policy Framework 2019. Combined, these seek to ensure that new extensions do not harm the living conditions of neighbouring properties.

Other Matters

19. The Council's Delegated Report and Appeal Questionnaire confirm that the appeal site lies adjacent to the Newlyn Conservation Area (NCA). Whilst the Council have not raised this as an issue, paragraph 190 of the Framework requires consideration to be given to the impact of any new development on the setting of a conservation area. However, based on the relationship of the appeal proposal to the NCA, I am satisfied that the proposed development would not have any material impact on the setting of the conservation area

Conclusions

20. For the reasons given above and having taken all other matters into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR