



Appeal Decision

Site visit made on 5 October 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2020

Appeal Ref: APP/D0840/W/20/3251616

Land west of 7 Tywarnhayle Road, Perranporth, Cornwall

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Phillip Henwood against the decision of Cornwall Council.
 - The application Ref PA19/07228, dated 16 August 2019, was refused by notice dated 18 March 2020.
 - The development proposed is an outline application with some matters reserved (appearance and landscaping) for a self-build dwelling (revised scheme to refused app.no. PA18/03853 with a reduced size building).
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Decision

1. The appeal is allowed and planning permission is granted for an outline application with some matters reserved (appearance and landscaping) for a self-build dwelling (revised scheme to refused app.no. PA18/03853 with a reduced size building) at land west of 7 Tywarnhayle Road, Perranporth, Cornwall in accordance with the terms of the application, Ref PA19/07228, dated 16 August 2019, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The application has been made in outline with access, layout and scale for consideration at this stage and matters of appearance and landscaping reserved. 3D representations have been submitted and I have treated these as illustrative of what the appellant has in mind for the development.
3. The site address on the application form says Street Record. This appears to be imprecise and therefore I have used the address from the decision notice and appeal form as this more accurately describes the site.

Main Issue

4. The main issue is the effect of the development on the living conditions of the occupiers of 5 Tywarnhayle Road, with particular regard to any overbearing impact.

Reasons

5. The appeal site is a section of land lying between the rear of 5-7 Tywarnhayle Road and 33/33a Droskyn Way. It contains a reasonably small single storey former pumping station, and the evidence indicates that the land has been used as an allotment in the past. The site is accessed via an existing driveway,

- which also provides vehicular access to residential garages and parking, and provides a pedestrian link between the adjoining roads.
6. Nos 5-7 are two storey terraced properties with their ground floor at a significantly lower level than the ground level of the site, due to the hillside location. Their rear gardens slope upwards to the boundary wall adjoining the site. The gardens have a mix of terrace and sloping areas, with some outbuildings and some planting between the gardens. On the appeal site, a fence has been erected, it is explained under permitted development rights, and this fence is set a little way in from the boundary and faces towards the gardens of Nos 5-7.
 7. It is proposed to demolish the existing building and erect a single storey dwelling. The level at the rear of the appeal site would be lowered and the dwelling would be mainly constructed along the back half of the site with two projecting wings at each end.
 8. The site has been the subject of two previous appeal decisions¹. Both Inspectors considered that the northern wing, with its set back from the boundary, was acceptable and would not unduly affect the living conditions of the occupiers of the terrace. However, the southern wing, which in both proposals projected closer to the boundary than the northern wing, was judged would harm the living conditions of adjoining properties and this was the substantive matter that led to the dismissal of the appeals in both cases. With the present proposal the southern wing has been set back further from the boundary than the previous appeal proposals and the dimensioned plan shows it to be the same distance from the boundary as the northern wing.
 9. The southern wing would face towards the rear of No 5. Within the rear garden area of No 5, both within the outside terrace area and the upper sloping section of the garden, the top parts of the single storey dwelling would be visible above the fence. However, the proposed dwelling would be set back from the boundary to a sufficient extent, such that the presence of those parts of the dwelling that would be discernible above the fence would not appear as an overly dominant feature. Existing levels of light and aspect when the occupiers of No 5 were using their garden would not be substantially affected.
 10. The view from the rear ground floor kitchen window of No 5 is already affected by the slope of the rear garden and the terrace area and the proposed dwelling would not make a meaningful impact on the present situation in this respect. No 5 has two rear, first floor windows. The bathroom has obscure glazing, however, there would be clear views of the appeal site from the adjoining rear bedroom window. The views from this window would be from a higher level than the garden area and more of the proposed dwelling would be visible.
 11. The proposed dwelling would extend across virtually all of the rear boundary of No 5 and it would clearly be apparent from this rear window. However, the set back of the proposed dwelling in the plot would provide spacing to the boundary and this would help to mitigate any undue sense of enclosure or overbearing effect of the proposed dwelling on the outlook when experienced from the rear bedroom window. The bulk of the building would be minimised by the intended flat roof. The existing fence near the boundary is prominent but it would help reduce any overlooking from the development and a sympathetic

¹ APP/D0840/W/17/3189911 and APP/D0840/W/19/3225096

landscaping scheme at the reserved matters stage would soften the appearance of the fence and the views towards the new building.

12. Taking all these matters into account, I conclude that the changes to the present scheme would overcome the objections that were raised by the previous Inspectors. The proposed dwelling would be set back sufficiently far from the boundary that it would not be overbearing or unduly affect outlook such that the proposal would have an acceptable effect on the living conditions of the occupiers of No 5. Accordingly, the proposal would comply with Policy 12 of the Cornwall Local Plan Strategic Policies 2010-2030 which seeks, notably, that development proposals should protect individuals and property from overlooking, unreasonable loss of privacy and overbearing impacts.

Other Matters

13. I have carefully considered and taken into account all the representations from local residents both for and against the scheme, and the objections of the Parish Council.
14. Objections from local residents raise a range of concerns, including the principle of the development, highways and parking, design, impact on the character and appearance of the area and surrounding properties, drainage and land stability. However, these are matters which were before the Council and earlier Inspectors and did not form reasons for refusal. Following my site visit, I have found no reason to disagree with the Council and earlier Inspectors on these matters and consider that the single reason for refusal with the latest proposal has been adequately addressed for the reasons explained above.
15. Although the Council did not consider this was an issue when they determined the application, at the appeal stage the Council has raised concerns with the accuracy of the plans and this accords with the views of some local residents. The appellant has responded to explain that the plans have been subject to surveys from professional agents and has included a further dimensioned plan which specifies the 5.8m set back of the two wings from the boundary. This distance accords with the dimension on the proposed north elevation and would confirm an important separation of the building to the boundary. In any outline approval it would be necessary to list the approved plans, which would include the stated dimension. Furthermore, the reserved matters submissions would be required to accord with the outline plans in all respects and therefore I am satisfied that the separation to the boundaries would be secured.
16. The application was accompanied by a bat and barn owl assessment and no evidence of these protected species were recorded. Local residents have highlighted bat activity on and in the vicinity of the site, however, there is no robust evidence that the pump house is a roost itself such that this would require further consideration as part of this appeal.
17. I note the comments that this further application submitted to the Council should not have been registered as it follows previous refusals. However, this was a matter for the Council and I have determined the appeal before me based on its merits.
18. The evidence indicates that there is a restrictive covenant concerning the use of the site and that this could prevent the development taking place. I have noted the background history and details of the covenant, however, this is a

separate legal matter and does not prevent the application proposal being considered on its planning merits. I also note the reference to a covenant that allows access for the owners of Nos 5-7 to maintain their rear boundary walls and that the fence may impede this access. Again this is a private legal matter and, consequently, I attribute the covenants limited weight in my overall considerations.

Conditions

19. I have had regard to the conditions suggested by the Council and the advice in the Planning Practice Guidance. Conditions setting out the statutory time limits for outline applications and a condition specifying the approved plans are necessary in the interests of certainty.
20. Exceptionally it is necessary to remove a range of permitted development rights, including for extensions and outbuildings, because such additions could increase the presence of built development close to neighbouring properties thereby potentially affecting the amenities of adjoining residents. A condition is necessary to ensure that the parking space is laid out, including drainage, prior to occupation to ensure that there is safe and convenient parking available. Conditions 7, 8, 9 and 10 are necessary to address any contaminated land on the site given the range of previous uses and the pumping station building.
21. A condition is necessary to ensure that a scheme for foul and surface water drainage is agreed and implemented in the interests of the amenities of neighbours and to prevent flooding. With the proximity of neighbouring properties and the shared access to the site, it is necessary for the works to take place in accordance with an agreed Construction Method Statement.
22. Pre-commencement conditions are required in relation to contaminated land and the Construction Method Statement as these matters need to be addressed and steps put in place from the outset of construction works on site.

Conclusion

23. Having regard to the above, I conclude, subject to the listed conditions, that the appeal should be allowed.

David Wyborn

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site/location Plan AP 112.000 rev1,
 - Block Plan 112.03.002 rev1
 - Typical Cross Section 112.03.001
 - Tracking Plan AP 112.002
 - Elevations 112.03.005
 - Survey and layout 112.111
- 5) 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 shall be carried out without an express grant of planning permission in respect of:
 - 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 of any porch outside any external door of the dwellinghouse, or
 - 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.
- 6) The dwelling shall not be occupied until the parking space shown on the approved plan has been constructed, drained and surfaced in accordance with details to be submitted to and approved by the Local Planning Authority. The parking space shall be retained and used for no other purposes than as approved.
- 7) No development, other than demolition of any buildings or structures, shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by

the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site.

The assessment shall include:

- a) a survey of the extent, scale and nature of contamination;
 - b) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 8) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.
- 9) The approved remediation scheme in condition 8 shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 10) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported in writing immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development [or relevant phase of development] is resumed or continued.
- 11) The development hereby permitted shall not be occupied until the installation of a system to serve the development for the disposal of foul and surface water drainage has been completed in accordance with details which shall first have been submitted to and approved in writing

by the local planning authority. The details shall include a programme for maintaining the system if required. The system shall be retained and maintained thereafter in accordance with the approved details.

- 12) No development shall commence until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The Statement shall provide for:
- i. the parking of vehicles of site operatives and visitors;
 - ii. loading and unloading of plant and materials;
 - iii. storage of plant and materials used in constructing the development;
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v. wheel washing facilities;
 - vi. measures to control the emission of dust and dirt during construction;
 - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii. hours of working.

The development shall be constructed in accordance with the Construction Method Statement.

End of schedule