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## Appeal Decision

Site visit made on 28 October 2020

**by T Gethin BA (Hons), MSc, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30 November 2020**

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**Appeal Ref: APP/D0840/W/20/3256139**

**Land east of Cuttivet, Cuttivet, Landrake PL12 5AW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Ms Leah White against the decision of Cornwall Council.
  - The application Ref PA20/00807, dated 30 January 2020, was refused by notice dated 3 June 2020.
  - The application sought planning permission for Demolition of existing property and construction of replacement dwelling, provision of garden amenity space and vehicular access without complying with conditions attached to planning permission Ref PA19/03193, dated 19 July 2019.
  - The conditions in dispute are Nos 2 and 3 which state that:  
Condition 2: The development hereby permitted shall be carried out in accordance with the plans listed below under the heading "Plans Referred to in Consideration of this Application".  
Condition 3: Before the first occupation of the dwelling hereby permitted the rooflight windows on the West (rear) elevation shall be fitted with obscure glazing and the windows shall be permanently retained in that condition thereafter.
  - The reasons given for the conditions are:  
Condition 2: For the avoidance of doubt and in the interests of proper planning.  
Condition 3: To protect the privacy of the occupants of the dwelling known as Trefula Noweth and in accordance with Policy 12 of the Cornwall Local Plan Strategic Policies, adopted November 2016.
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### Decision

1. The appeal is allowed and planning permission is granted for Demolition of existing property and construction of replacement dwelling, provision of garden amenity space and vehicular access at Land east of Cuttivet, Cuttivet, Landrake PL12 5AW in accordance with the application Ref PA20/00807, dated 30 January 2020 and subject to the conditions set out in the schedule to this decision notice.

### Application for costs

2. An application for costs was made by Ms Leah White against Cornwall Council. This application is the subject of a separate Decision.

### Background and Main Issue

3. Planning permission subject to conditions was granted under Ref PA19/03193 which allowed for demolition of existing property and construction of replacement dwelling, provision of garden amenity space and vehicular access. The appellant is seeking the removal of condition 3 and the variation of

condition 2 attached to planning permission Ref PA19/03193. This would allow for rooflights in the dwelling's west (rear) elevation to be clear glazed and an amended drawing to be listed as the approved plan. Amongst other things, the amended drawing submitted with the appeal – Drawing No 2 Rev. F (Job No. 2208, titled 'Scheme as Proposed', Rev F dated April 20) – shows a new first-floor opening with Juliet balcony on the south elevation of the approved dwelling and clear glazed roof lights on the west elevation.

4. Taking this into account and based on the submitted evidence, the main issue is therefore: whether the proposed first-floor Juliet balcony and the clear-glazed rooflights would harm the living conditions of neighbouring occupiers, with particular regard to overlooking of Trefula Noweth and its grounds.

## **Reasons**

5. The appeal site is situated on a plot of land to the east of the settlement of Cuttivet. The approved new dwelling, which I observed on my site visit is under construction, is situated close to the shared boundary with the neighbouring property, known as Trefula Noweth, and its grounds. Amongst other things, its relatively flat and largely private grounds include garden/outdoor amenity space and various outbuildings close to the property and a reasonably large and enclosed area of land that extends up to the shared boundary with the appeal site.
6. The occupiers of Trefula Noweth indicate that they also use this area of land as a garden and have done so for several years. However, there is some debate as to its lawful use, whether it falls within the curtilage of the property and, amongst other things, it has been put to me that it is an agricultural field/paddock which was baled for hay in 2010, and the lack a lawful development certificate means that it should not be considered to be a domestic garden.
7. Within the context of an appeal under section 78 of the Town and Country Planning Act 1990, it is not for me to formally determine the lawful use of land which, in this case, is outside of the appeal site. If a person wishes to ascertain whether an existing use is or would be lawful, the correct approach is for an application to be made under section 191 or 192 of the Act for a certificate of lawful use. Nevertheless, it is clear to me that the use of the land in question is, in this instance, directly relevant to my findings on the main issue.
8. Although the available evidence does not conclusively confirm the lawful status of that area of land, there is little substantive evidence which indicates that its only lawful use is agricultural. The Council has not indicated that it is subject to any enforcement action with regards to the occupiers of Trefula Noweth using it as part of their garden. The land also has a domestic character and appearance, with amongst other aspects various plants and shrubs, trees, well-maintained mown grass and, on the edge of the area, a greenhouse. As I observed on my site visit, although some planting may be recent and relatively immature, much of these features appear to be well-established.
9. On the basis of the available evidence, the circumstances as they are today, and without substantive evidence to indicate otherwise, it therefore seems to me that overlooking of the neighbouring property and its grounds – including the garden area surrounding the property and the area of land stretching up the shared boundary with the appeal site – could harm the living conditions of

the occupiers of Trefula Noweth through an actual and/or perceived loss of privacy. For clarity and simplicity, I will refer to this latter area of land as the lower garden and it seems reasonable to me to identify the garden space closest to the property as the main garden area.

10. During my site visit, I was able to get a good vantage point, on the temporary scaffolding, from the level of the proposed first-floor opening and Juliet balcony – which was bricked up at the time of my visit – and the clear glazed rooflights. I also viewed the proposed development from Trefula Noweth, including from various points within its grounds.
11. The angle of the proposed clear glazed rooflights, combined with their location on the roof – positioned at a relatively good height above the level of the first-floor, as shown on the submitted drawing – means that views out of them would be predominantly towards the sky. The rooflights would also serve non-habitable rooms. Accordingly, and subject to a condition ensuring that the rooflights are positioned a minimum of 1.7 metres above the finished internal level of the first-floor, I am satisfied that their being clear glazed would not result in overlooking of Trefula Noweth and its grounds.
12. There is a significant degree of separation between the proposed first-floor Juliet balcony opening and the neighbouring property and its main garden area. Soft landscaping and some outbuildings in and around Trefula Noweth and its main garden area also provide some screening, while the Juliet balcony would not face towards them. Accordingly, I am satisfied that any views from the Juliet balcony to the neighbouring property and its main garden area would be restricted to limited, distant glimpses which would not harm the privacy of the occupiers of Trefula Noweth.
13. The proximity of the lower garden to the site means that views of it from the proposed Juliet balcony, irrespective of the fact that it would serve a bedroom, could result in a loss of privacy for the neighbouring occupiers when they are in their lower garden. However, with the Juliet balcony not extending beyond the external walls of the replacement dwelling and involving inward opening doors, the degree of possible views to the lower garden would be limited. Despite its limited projection, the proposed privacy screen would further inhibit possible views of the lower garden, restricting any views available to limited, oblique glimpses. The positioning of the replacement dwelling means that it also gradually extends and orientates away from the shared boundary from north to south. The Juliet balcony would therefore be angled away from the lower garden, and I observed on my site visit that its main outlook would be towards open countryside to the south and south-east and away from Trefula Noweth.
14. In addition to these aspects, the shared boundary contains soft landscaping, including some relatively tall trees. Although parts of the hedge are of limited height and thus provide little screening at first-floor level, some of the trees on it reach up to the general height of the Juliet balcony. Although their heights vary and, being deciduous, they are not in leaf all year, I observed on my site visit that the branches of the trees would to some extent disrupt any of the limited, oblique glimpses that might be possible from the Juliet balcony beyond the privacy screen to the lower garden. The presence of leaves on the trees would also provide significant screening during the summer months when, it seems to me, the weather is likely to be more conducive to greater domestic use of outside space.

15. Accordingly, I am satisfied that the proposed Juliet balcony would not result in any degree of overlooking that would harm the privacy of the neighbouring occupiers in the lower garden. In coming to this view, I have taken account of the personal circumstances of the occupiers of Trefula Noweth, including: that they are practising naturists; that they purchased the property on the basis of its significant privacy which allows them to carry out their naturism – including within their grounds – in private; and their concerns that a loss of privacy from the proposed development overlooking a large part of their property and grounds would harm their mental and physical well-being. I have also taken account of the fact that that a protruding balcony was removed from the previous scheme, that the development approved under planning permission Ref PA19/03193 includes no first-floor windows on its southern and western elevations, and that the people writing in support of the appeal proposal may not necessarily be directly affected by it. Furthermore, given the circumstances of the development referred to by the Council at Land off Bodiniel Road do not appear to be particularly comparable to the appeal proposal, including in relation to topography and the orientations of the plots and properties, that appeal decision does not lead me to a different conclusion.
16. For the above reasons, I conclude that the proposed first-floor Juliet balcony and the clear-glazed rooflights would not harm the living conditions of neighbouring occupiers, with particular regard to overlooking of Trefula Noweth and its grounds. I therefore find that the proposed development accords with Policy 12 of the Cornwall Local Plan Strategic Policies 2010-2030 which, amongst other aspects, requires development to protect individuals and property from overlooking and unreasonable loss of privacy.
17. Although not listed within the Council's Decision Notice, my attention has been drawn to Policy 7 and the design checklist of the 'made' Landrake with St Erney Neighbourhood Development Plan 2017-2030. For the above reasons, I find that the appeal proposal would also accord with that policy and the design checklist in relation to the relationship of new development to existing development and the design addressing site constraints. It would also be consistent with: the provisions in the National Planning Policy Framework in relation to achieving a high standard of amenity for existing users; and the various national and local guidance put to me, covering matters such as wellbeing, providing good quality external spaces, being a considerate neighbour, considering the impact of design, and considering, respecting and maintaining privacy.
18. Given my findings above, the proposed development would not interfere with the right – that everyone has the right to respect for his private and family life, his home and his correspondence – afforded under Article 8(1) of the European Convention on Human Rights, as incorporated into domestic law by the Human Rights Act 1998.

### **Other matters**

19. A number of other matters have been raised by the main and interested parties, including for example in relation to the processing and determination of the planning application by the Council, the roles of officers and councillors, amendments carried out to the previous scheme, and the reasons for cutting back of the boundary hedge and trees. However, such issues are not

determinative as to the acceptability of the appeal proposal. I have therefore considered the proposal on its merits, based on the evidence before me.

### **Conditions**

20. Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original planning permission, unless they have already been discharged. On this basis, I have included condition 4 from the original permission. However, as the proposed development has begun, it is not necessary to impose the standard time limit condition.
21. Given my findings above, I have amended the plans condition and not included the condition requiring the rooflights in the west elevation to be obscured glazed (conditions 2 and 3 of the original permission). The amended plans condition refers to the drawing submitted with the appeal and which the Council made their decision on, and is necessary in the interests of certainty. However, to ensure that the clear glazing of the rooflights would not harm the living conditions of neighbouring occupiers, it is necessary to include – as suggested in the Council’s Officer Report – a new condition ensuring that the clear glazed rooflights are a minimum of 1.7 metres above the finished level of the first-floor of the development hereby approved. Given the role that the privacy screen for the Juliet balcony would serve in avoiding overlooking, it is also necessary to impose a condition to secure its provision and retention.

### **Conclusion**

22. For the above reasons, the appeal is allowed. I will therefore grant a new planning permission, retaining those non-disputed conditions from the previous permission that still appear to be relevant and, as set out above, varying, removing and adding conditions as necessary.

*T Gethin*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: Drawing No 2 Rev. F (Job No. 2208, titled ‘Scheme as Proposed’, Rev. F dated April 20, and received by the Council on 21 April 2020).
- 2) The lowest part of the clear-glazed rooflights on the west elevation of the development hereby approved shall be positioned a minimum of 1.7 metres above the finished level of the first-floor.
- 3) Prior to occupation of the development hereby approved, the privacy screen to the Juliet balcony shall be provided in accordance with the details shown on the approved drawing (Drawing No 2 Rev. F) and thereafter maintained and retained.
- 4) 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 of 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.

**END OF SCHEDULE**