



Appeal Decision

Site Visit made on 11 December 2020

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2021

Appeal Ref: APP/D0840/W/20/3256807

Land west of 29 Grenville Road, Padstow PL28 8EX

- 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 Oliver Bealing against the decision of Cornwall Council.
 - The application Ref PA20/01087, dated 6 February 2020, was refused by notice dated 29 June 2020.
 - The development proposed is described as Proposed new house.
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Decision

1. The appeal is allowed and planning permission is granted for the proposed new house at Land west of 29 Grenville Road, Padstow PL28 8EX in accordance with the terms of the application, Ref PA20/01087, dated 6 February 2020, and subject to the conditions set out in the schedule to this decision.

Application for costs

2. An application for costs was made by Mr Oliver Bealing against Cornwall Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I observed on my site visit that construction of the proposed house was well underway. I have dealt with the appeal on this basis.

Main Issue

4. The main issue is the effect of the proposed development on the living conditions of the occupiers of 29 Grenville Road, with particular regard to outlook and overshadowing.

Reasons

5. The appeal site forms the end plot of the cul-de-sac of Grenville Road. It is situated between a field to the west, dwellings to the north and east and the highway to the south. The submitted evidence indicates that the site previously formed amenity space for 29 Grenville Road. Prior to the proposed development being built, the site would therefore have been likely to provide No 29 with good levels of afternoon sunlight and an open outlook over the fields to the west.
6. Although the closest parts of the rear garden of No 29 to the proposed house are overshadowed by it, No 29's rear garden is relatively wide and long. I observed on my site visit that the main sitting out area at No 29 is also located roughly in the middle of the rear garden. Both that area and the main section

of lawn – which it seems to me are likely to be the most used parts of the garden – are situated beyond the end of the main rear wall of the proposed house. Accordingly, the occupiers of No 29 would not be significantly affected by the appeal proposal when using their rear garden, with much of it remaining relatively open and receiving good levels of outlook and sunlight.

7. However, the relatively significant depth of the proposed house, as built, means that it projects well beyond the rear wall of No 29, while the gently sloping land emphasises its height. I observed on my site visit that it appears as a relatively significant and imposing feature from the rear elevation of No 29. Combined with the proximity to the shared boundary, the proposed house, as built, therefore reduces outlook and overshadows the rear windows of habitable rooms on the ground- and first-floors of No 29.
8. For the above reasons, I conclude that the proposed development would harm the living conditions of the occupiers of 29 Grenville Road, with particular regard to outlook and overshadowing. I therefore find that it conflicts with Policy 12 of the Cornwall Local Plan Strategic Policies 2010-2030 (CLP) which, amongst other aspects, requires development to protect individuals and property from overshadowing and overbearing impacts.

Planning Balance

9. Planning permission PA18/12050 was granted by the Council in 2019 for a new house on the site with a similar scale and design as the appeal proposal. Although that permission is extant and has been implemented, it has been put to me that the scheme cannot be constructed in the approved position due to the presence of a South West Water (SWW) pipe, which was identified by SWW in their consultation response to that planning application. However, the evidence submitted with the appeal indicates that the pipe is not present in the position shown on the SWW map and does in fact not extend across the site. It seems to me that the approved scheme could therefore be completed in accordance with the approved details. In any event, even if the water main were in the position previously advised, I note that SWW have indicated that it could be diverted at the appellant's expense. Accordingly, I place significant weight on the approved scheme as a realistic and feasible fallback. Despite construction work continuing during the Council's determination of the planning application the subject of the appeal, the evidence before me does also not indicate that the construction of the as built house could reasonably be described as intentional unauthorised development.
10. The submitted evidence, including the site plan and elevation comparison drawings, indicates that the approved scheme and the appeal proposal are broadly similar, including in relation to the distance from the shared boundary. However, the main difference relevant to the main issue is that the appeal proposal is located further to the north and therefore projects further beyond the rear of No 29. Yet, compared with the approved scheme, the additional projection to the rear – at approximately 1.8 metres – is not particularly significant, even taking account of its proximity to the shared boundary, while its ridge height is slightly lower than the approved scheme.
11. I have found that the proposed house, as built, appears as an imposing feature which reduces outlook and results in overshadowing of the rear elevation of No 29. Although few details are included with the appellant's shadow modelling which only covers two dates, it nonetheless provides a useful indication of

overshadowing and shows that the approved scheme would also overshadow No 29 to a not inconsiderable extent. Given its location and scale, the approved scheme would also clearly limit outlook from No 29 and appear as an imposing feature extending along, and in close proximity, to the shared boundary.

12. The proposed development would cause further loss of outlook to the west and more overshadowing, with for example less afternoon/evening sunshine reaching No 29 and particularly its lounge. However, the difference in the levels of outlook and overshadowing between the appeal proposal and the approved scheme would not be significant. The reduction in ridge height also helps to mitigate the change to some extent. Furthermore, I observed on my site visit that No 29 continues to benefit from good levels of outlook across its rear garden towards the rolling landscape to the north and also, albeit to a lesser extent, to the north-west.
13. When consideration is given to the fallback scenario, I find that the change to the living conditions of the occupiers of No 29 between the approved scheme and the proposed, as built house would be limited and the additional harm arising from the appeal proposal in relation to outlook and overshadowing would not be significant. In coming to this view, I have taken account of the provisions relating to achieving well-designed places in the National Planning Policy Framework and the guidance relating to outlook and light within the Council's 'Domestic Alterations and Extensions Guide' and draft 'Design Guide'.
14. The submitted evidence indicates that a single-storey but nevertheless relatively sizeable extension to the approved scheme could be constructed under permitted development rights. It seems to me that such an extension, which could project beyond the main rear wall of the appeal proposal, could result in greater harm to the living conditions of the occupiers of No 29 than the proposed house, as built. While permitted development rights cannot be retrospectively removed from the approved scheme, a planning condition limiting the ability to extend the appeal proposal could be imposed.
15. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. I attach significant weight to the conflict I have identified with the CLP. However, in this instance and with the approved scheme representing a viable fallback scenario that would not cause substantially less harm, I find that the above material considerations outweigh the limited additional harm that I have identified would arise as a result of the appeal proposal. This indicates that permission should be granted, notwithstanding that the development does not accord with the above listed CLP policy.

Other matters

16. A number of other matters have been raised by the Council and interested parties and I have taken them all into account. Those related to planning include: the effect of the proposed development on overlooking/the privacy of adjoining dwellings and the levels of daylight reaching No 29; smoke from the chimney; the position of the red line boundary and land ownership issues; the appellant knowing about the constraint related to the SWW pipe at the time of the previous application and when commencing works on site; the lack of enforcement proceedings; the differences between planning permission and building regulations; and setting a precedent. However, whilst I take these representations seriously, I have not been presented with compelling evidence

to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters. Some of the issues raised can also be addressed by conditions. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed.

Conclusion and Conditions.

17. For the above reasons, the appeal is allowed.
18. As the proposed development has begun, it is not necessary to impose the standard time limit condition. However, in the interests of certainty, I have imposed a condition requiring the carrying out of the development in accordance with the approved plans. A condition relating to the proposed hedgerow to the south of the proposed dwelling and garage is necessary in the interests of the visual amenities of the area and with regards to on-site biodiversity. A condition covering the glazing and opening of the first-floor bathroom window is also necessary in order to protect the privacy of adjoining occupiers, and I am satisfied that this would prevent unacceptable levels of overlooking including into existing habitable rooms.
19. The Planning Practice Guidance indicates that conditions removing permitted development rights should only be used in exceptional circumstances. However, the appellant has suggested that such a condition could be imposed in order to avoid future extensions of the proposed new house from resulting in additional overshadowing and overbearing impacts on No 29. On the basis of the submitted evidence, it seems to me that future extensions of the proposed development could indeed harm the living conditions of adjoining occupiers. In this instance, preventing extensions to the proposed new house under permitted development rights is therefore necessary and reasonable in order to protect the living conditions of adjoining occupiers.

T Gethin

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No 2179[GA]100-02 Rev B; Drawing No 2179[GA]101-02 Rev E; Drawing No Proposed 2179-101-04 REV 04; Drawing No Proposed 2179-101-05 REV 04; Drawing No Proposed 2179-101-03 REV 03; Drawing No Proposed 2179-101-07 Rev 01; Drawing No 2179-100-21; and Drawing No 2179-100-20.
- 2) Prior to occupation of the dwelling hereby approved, details of the hedgerow to the south of the dwelling and garage shall be submitted to and approved in writing by the Local Planning Authority. Details shall include plans and written specifications of the mix, size, distribution and density of the hedgerow as well as cultivation proposals for the maintenance and management. The hedgerow shall be planted and thereafter retained in accordance with details submitted and approved. All planting shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species as those originally planted.
- 3) Prior to occupation of the dwelling hereby approved, the first floor window which serves the bathroom on the east elevation shall be fitted with obscure glazing and restricted to opening 12 degrees out and the window shall be permanently retained in that condition thereafter.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no extensions to the dwelling within Class A of Part 1, Schedule 2 of the Order shall be constructed other than those expressly authorised by this permission without planning permission having first been granted on an application made for these purposes.

END OF SCHEDULE