



Appeal Decisions

Site visit made on 8 June 2021

by C Cresswell BSc (Hons) MA MBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 September 2021

Appeal A - Ref: APP/D0840/W/21/3267140

Land Adj to No 46, Gurnick Road, Newlyn TR18 5DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Chris Burt against the decision of Cornwall Council.
 - The application Ref PA20/05295, dated 29 June 2020, sought approval of details pursuant to condition No 1 of a planning permission Ref PA17/11908, granted on 19 March 2018.
 - The application was refused by notice dated 4 September 2020.
 - The development proposed is a dwellinghouse and a garage.
 - The details for which approval is sought are: appearance, layout, landscaping and scale.
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Appeal B - Ref: APP/D0840/W/21/3267490

Land Adj to No 46, Gurnick Road, Newlyn TR18 5DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Chris Burt against the decision of Cornwall Council.
 - The application Ref PA20/07862, dated 14 September 2020 sought approval of details pursuant to condition No 1 of a planning permission Ref PA17/11908, granted on 19 March 2018. The application was refused.
 - The development proposed is a dwellinghouse and a garage.
 - The details for which approval is sought are: appearance, layout, landscaping and scale.
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 18 August 2021.

Decisions

1. **Appeal A** is allowed and the reserved matters are approved (namely appearance, layout, landscaping and scale) pursuant to condition No 1 of planning permission Ref PA17/11908, granted on 19 March 2018 for a dwellinghouse and a garage at Land Adj to No 46, Gurnick Road, Newlyn TR18 5DG in accordance with the terms of the application, Ref PA20/05295, dated 29 June 2020, subject to the conditions which are set out in the Schedule at the end of this Decision.
2. **Appeal B** is allowed and the reserved matters are approved (namely appearance, layout, landscaping and scale) pursuant to condition No 1 of planning permission Ref PA17/11908, granted on 19 March 2018 for a dwellinghouse and a garage at Land Adj to No 46, Gurnick Road, Newlyn TR18

5DG in accordance with the terms of the application, Ref PA20/07862, dated 14 September 2020, subject to the conditions which are set out in the Schedule at the end of this Decision.

Applications for costs

3. Applications for costs were made by Mr Chris Burt against Cornwall Council in both Appeal A and Appeal B. These applications are the subject of separate Decisions.

Procedural Matter

4. For clarity, the descriptions of development in the headings above have been taken from the Appeal Forms rather than the Application Forms.

Background

5. The appeals concern a vacant plot of land which is situated within the built-up area of Newlyn. Two alternative proposals for a single detached dwelling on the site are under consideration. One of these (Appeal A) was refused by the Council due to its effect on the character and appearance of Tredavoe Lane. Although the Council has not formally determined a second proposal (Appeal B) its planning committee¹ was minded to refuse the application on the grounds that the dwelling would overlook Rosevean, a nearby property.
6. There is already planning permission² for a single, detached dwelling on the site. The proposals being put forward in the current appeals are, in essence, alternative designs for the same development. In the event of the appeals being dismissed, the current planning permission would remain extant and would therefore represent a potential 'fall-back' position.

Main Issues

7. The main issues are therefore:
 - the effect of the proposals on the character and appearance of the area.
 - the effect of the proposals on the living conditions of neighbouring occupiers having particular regard to privacy.

Reasons

Character and appearance

8. Tredavoe Lane is narrow and winding as it climbs uphill from the junction with Gloucester Crescent towards Gernick Estate. There is a continuous row of housing on one side of the lane, while the opposite side is defined by trees and a tall hedgerow. This gives Tredavoe Lane a particularly green and vegetated appearance at this point. Although the appeal site occupies elevated land on the other side of the hedgerow, it cannot be easily seen from the lane due to the difference in levels and the amount of screening provided by vegetation. However, despite the abundance of greenery, this is a distinctly built-up area within the townscape of Newlyn. There is housing present along the length of Tredavoe Lane and built development is a feature of longer views in and out of this location, including views towards the coast.

¹ Cornwall Council West Sub-Area Planning Committee 8 March 2021

² Council Ref: PA18/06395.

9. The existing planning permission on the appeal site is for a single storey dwelling which would be split over two levels. Both the north and east elevations would face Tredavoe Lane. While the north elevation would be relatively featureless, with only a door and small window facing the street, it would nonetheless still be visible above the hedgerow. Most of the glazing on the east elevation of the approved dwelling would be low level and, due to the hedgerow being retained, would not be easily seen from Tredavoe Lane. However, the large sloping roof would be a more prominent feature. Although the roof would slope upwards away from the lane, it would nonetheless elevate well above street level and at relatively close quarters to the hedgerow. Hence overall, the approved dwelling would very noticeably increase the perception of built development on this side of the lane.
10. I am not aware of any reasons why the existing planning permission on the appeal site could not be implemented. Indeed, in the event of no alternative plans being approved on the site, it seems highly likely the approved dwelling would be constructed. Hence, the existing planning permission is a material consideration to which I attach substantial weight.
11. The dwelling in Appeal B is of a very similar design to the approved dwelling. Indeed, the footprint, roof slope and overall proportions are almost identical. The main difference is that the Appeal B proposal is for a two-storey dwelling. In order to serve the first floor living areas, there would be additional rooflights as well as dormer windows in the east elevation. This glazing would be visible above the hedgerow within Tredavoe Lane.
12. Nonetheless, this is a residential area where architectural styles are mixed. There is nothing particularly unusual about the dormer windows or rooflights that would draw undue attention to the proposed dwelling. Glazing of this type is a feature of the wider townscape, even though there may be no equivalent examples within this particular part of Tredavoe Lane. Given the similarities in size, positioning and overall design, it seems to me that the Appeal B proposal would not have a considerably different impact on the character of Tredavoe Lane than the approved dwelling would.
13. The house being proposed in Appeal A is a more substantial departure from the design of the previously approved dwelling. While the approved dwelling would feature a large roof that slopes away from Tredavoe Lane, the east elevation of the Appeal A scheme would be a full two storeys in height. As a consequence, it would result in a greater amount of built mass closer to the lane.
14. Despite this, the increase in mass would be relatively slight and the dwelling would have a lower ridge height than the approved scheme. Hence, it would not appear any more dominant or overbearing. Although the east elevation would feature a good deal of first floor glazing, this would not be out of keeping with the residential characteristics of the area or draw undue attention to the property. While the Appeal A dwelling would clearly have a different appearance to the previously approved scheme, it would not have any greater impact on the character of Tredavoe Lane.
15. I therefore conclude on this issue that the proposals in Appeal A and Appeal B would have an acceptable effect on the character and appearance of the area. They would not have a substantially different effect than the previously approved dwelling would, which forms the baseline for comparison in this case.

There would be no conflict with Policies 1, 2 and 12 of the Local Plan³ which seek appropriate standards of design.

Living conditions

16. The north elevations of both the Appeal A and Appeal B dwellings would have few openings and so there would be limited opportunity for any overlooking to take place. However, the glazing in the east elevations of these properties would be more extensive. These windows would face properties on the other side of Tredavoe Lane, including Rosevean.
17. The lower floor windows in the east elevations of both proposed dwellings would be mainly screened by the hedgerow and so would have limited outlook. Although the proposed first-floor windows would have unrestricted and elevated views, they would be positioned above the opposing windows in Rosevean. As such, they would not enable a direct line of sight inside the private living space of that property. Any views towards the windows of Rosevean from the proposed dwellings would be downwards and at a relatively tight angle, so it would not be easy to see inside any rooms.
18. Although Rosevean benefits from some open space at the front of the property along the Tredavoe Road frontage, most of the private outdoor space is situated at the rear. This would not be easily seen from the proposed dwellings as views into the rear garden would be largely obscured by Rosevean. While it may be possible to see the driveway and a small side of the rear garden, there would nonetheless be enough separation between Rosevean and the proposed windows to maintain acceptable privacy. Furthermore, the main outlook from inside the proposed dwellings would be above Rosevean and towards the coast. There is little reason to assume that future occupiers of the proposed dwellings would focus attention on the neighbouring garden.
19. It would also be possible to look towards Gernick Field from the first-floors of the proposed dwellings. However, views from the east elevation windows would be at oblique angles and it would not be easy to see a great deal of Gernick Field from here. Although the north elevations of the proposed dwellings would directly face Gernick Field, these side windows would not provide the main outlook from the proposed dwellings and, in any case separation distances are adequate to maintain privacy.
20. Some degree of mutual overlooking may be expected in residential areas such as this, and for the reasons set out above, would not lead to a harmful loss of privacy in this particular case. I appreciate that the proposed dwellings may cast shadows at certain times of the day. However, neither the Appeal A or the Appeal B properties would have a substantially different impact than the previously approved scheme would.
21. I therefore conclude on this issue that the proposals in Appeal A and Appeal B would have an acceptable impact on living conditions. There would be no conflict with Policy 12 of the Local Plan in this regard.

Other matters

22. I am informed that the ground level of the appeal site has been artificially increased over a period of time. Although I am unable to confirm whether or

³ Cornwall Local Plan Strategic Policies 2010-2030.

not this is the case, I have based my decision on the plans provided, which includes measurements of ground levels. Both the Appeal A and Appeal B dwellings would be dug into the ground and their ridge heights would be no higher than that of the previously approved dwelling.

23. It has been suggested that the proposed dwellings would cause flooding and drainage problems. The prospect of contamination has also been raised. However, only limited evidence has been provided to support these claims and hence I am unable to give them a great deal of weight in this decision.
24. I do not consider that the proposed boundary wall with No 46 Gurnick Rd would cause an unacceptable sense of enclosure provided a condition were to be imposed to limit its height. However, the dispute regarding covenants is a private, legal matter beyond the scope of these appeals.

Conclusion

25. For the reasons given above, I therefore conclude that Appeal A and Appeal B should be allowed.
26. Similar conditions are imposed for both proposals. In the interests of clarity, there are conditions requiring the developments to be tied to the original outline permission. There are also conditions requiring the developments to be carried out in accordance with the approved plans. To protect both the character and appearance of the area as well as residential amenity, conditions have been imposed which remove certain permitted development rights, including changes to the roofs. For similar reasons, there are further conditions which specify boundary treatments.

C Cresswell

INSPECTOR

(Schedule of Conditions attached)

Schedule of Conditions (APPEAL A)

- 1) This approval must be read in conjunction with outline planning permission, Ref PA17/11908, and the conditions attached thereto.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P20-01E, 420-03E, 420-04E, 420-05E, 420-06E, 420-07E, 420-08E, 420-09E.
- 3) No boundary treatment shall be formed along the western site boundary with No 46 Gurnick Road, other than a 0.75m stone wall as shown on approved drawing no 420-04E. Otherwise, the proposed improved planting along the northern and eastern site boundaries shall be completed in accordance with the detail shown on said drawing prior to the first occupation of the dwelling hereby permitted, or in the first planting and seeding seasons following the first occupation of the dwelling or the completion of the development (whichever is the sooner), and shall not thereafter be altered or removed, other than by necessary replacement.
- 4) Prior to the first occupation of the dwelling hereby permitted, details of the southern site boundary treatment, shown on approved drawing no 420-04E, shall be submitted to, and approved in writing by, the local planning authority. The boundary treatment shall be completed in accordance with the approved details prior to the first occupation of the dwelling hereby permitted and shall be retained as such thereafter.
- 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 within Class A of Part 2 of Schedule 2 to the said Order shall be carried out without an express grant of planning permission, namely the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.
- 6) 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 and C 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.

Schedule of Conditions (APPEAL B)

- 1) This approval must be read in conjunction with outline planning permission, Ref PA17/11908, and the conditions attached thereto.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed 420 -01F, 420-04H Rev C, 420-05H Rev D, 420-06H Rev B, 420-07H Rev B, 420-08H Rev C.
- 3) No boundary treatment shall be formed along the western site boundary with No 46 Gurnick Road, other than a 0.75m stone wall as shown on approved drawing no 420-04H Rev C. Otherwise, the proposed improved planting along the northern and eastern site boundaries shall be completed in accordance with the detail shown on said drawing prior to the first occupation of the dwelling hereby permitted, or in the first planting and seeding seasons following the first occupation of the dwelling or the completion of the development (whichever is the sooner), and shall not thereafter be altered or removed, other than by necessary replacement.
- 4) Prior to the first occupation of the dwelling hereby permitted, details of the southern site boundary treatment, shown on approved drawing no 420-04H Rev C, shall be submitted to, and approved in writing by, the local planning authority. The boundary treatment shall be completed in accordance with the approved details prior to the first occupation of the dwelling hereby permitted and shall be retained as such thereafter.
- 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 within Class A of Part 2 of Schedule 2 to the said Order shall be carried out without an express grant of planning permission, namely the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.
- 6) 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 and C 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.