



Appeal Decision

Site visit made on 30 November 2021

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2022

Appeal Ref: APP/D0840/W/21/3278892

Knot Shore, Restronguet Hill, Mylor Bridge TR11 5ST

- 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 Hills against the decision of Cornwall Council.
 - The application Ref PA21/02311, dated 3 March 2021, was refused by notice dated 18 May 2021.
 - The development proposed is a single dwelling and garage.
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Decision

1. The appeal is allowed and planning permission is granted for a single dwelling and garage at Knot Shore, Mylor Bridge, TR11 5ST in accordance with the terms of the application, Ref PA21/02311, dated 3 March 2021, subject to the conditions in the attached schedule.

Applications for costs

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

Main Issues

3. The main issues are:
 - (i) whether the site is an appropriate location for housing, with regard to development plan policies; and
 - (ii) the effect on the character and appearance of the area, with particular regard to the scenic beauty of the Area of Outstanding Natural Beauty (AONB).

Reasons

Location

4. Policy 3 of the Cornwall Local Plan 2010-2030 (LP) sets out a spatial strategy for Cornwall. Amongst other things, it indicates that development may be permissible at small settlements in various circumstances, including previously developed land (PDL) adjoining that settlement.
5. The supporting text to Policy 3, and a Chief Planning Officer's Advice Note: Infill/Rounding off, set out that a settlement should have a form and shape, and clearly definable boundaries. It should not be just a low density straggle of dwellings and should be in reasonable proximity to a larger village with more significant community facilities.

6. Restronguet (also referred to in evidence as Restronguet Passage) is located a short distance from the larger settlement of Mylor Bridge. A number of dwellings stretch along the shoreline. At these shoreline extremities, the built form is somewhat fragmented, but there is a clear cluster of dwellings around the Pandora Inn, which appears to act as a functional and visual focus at the bottom of Restronguet Hill. Whatever its origin and evolution, therefore, I find that Restronguet is a settlement for the purposes of Policy 3.
7. The cluster of dwellings extends up Restronguet Hill as far as Knot Shore, which is the final dwelling in the settlement and marks a clear end to the built form. Heading out of the settlement, the access lies beyond the dwelling and beyond this, is the enclosed, grassed appeal site. There is evidence that this land has been in the same ownership as the house since at least 1938, but that does not, in itself signify use as residential garden.
8. An Ordnance Survey map from 1973, detailing various physical features including field boundaries, depicts the area as a single parcel. In 1976, the Council served an 'Article 4 Direction' removing permitted development rights for development in residential gardens across the whole of Restronguet, including the entirety of Knot Shore and the appeal site. As the site is right at the extremity of the settlement, this strongly suggests that the land was deemed to be residential garden at that time, otherwise the rights being withdrawn would not have applied to the site, which is beyond other built form.
9. I note that the land covered by the Article 4 Direction also included substantial land at the other extremities of Restronguet. However, I have no evidence about the use of those areas then, or now, and so they do not influence my findings in respect of the appeal site.
10. More recently, an aerial photograph from 2006 shows the land divided from the lawns around the house. However, the photograph suggests it was closely mown along with the garden, indicating that the residential use spread across both areas. While the visible stripes in the grass are wide, indicating the use of large machinery, that would not be inconsistent with the overall size of the grounds. Later photographs, supplied by the Council, do not indicate such a manicured approach, but do not demonstrate any other non-domestic use.
11. Sales particulars for the property in 2018 describe an area, presumed to be the appeal site, as a paddock. However, that is not inconsistent with its position distinct from other areas and is, presumably, designed to create interest to a broad range of purchasers. It has very little weight in demonstrating the historic or contemporary use of the land in conjunction with the dwelling or not.
12. While there are aspects of the appellant's evidence, such as some statutory declarations, that do little to provide definitive commentry of the historic use, and previous owners may have used the site as a paddock, for the reasons given the Council's evidence casts no real doubt over the appellant's claims. Overall, the evidence points clearly to the lengthy use of the land as residential garden. There is no certificate of lawful use to confirm this, but that, in itself, is not a prerequisite of an established use.
13. A use as part of the residential curtilage of the dwelling renders the land PDL, as defined by the National Planning Policy Framework (the Framework). It is at the edge of Restronguet and, therefore, not within a built-up area. Regardless of effects on the travel needs of future occupiers, this location, adjacent to the

existing edge of development at the settlement means that it is an appropriate location for a new house in respect of LP Policy 3.

14. The emerging Mylor Parish Neighbourhood Development Plan (NP) proposes settlement limits around Mylor Bridge and Flushing, with policies preventing development beyond those limits. However, while at a relatively advanced stage, I cannot be certain that these policies will remain in this form when the plan is made. Even if they are ultimately deemed to prevent development in the NP area beyond those two settlements, they are not currently part of the development plan so do not outweigh compliance with LP Policy 3 now.

Character and appearance

15. The land rises steeply up from the shore at the Pandora Inn. The site slopes more gently away from the road than the adjoining garden of Knot Shore. Beyond, the surrounding land slopes up very steeply, effectively enclosing the appeal site in a bowl. Roadside planting allows only filtered views of the site from the public domain which, coupled with the surrounding landform and other houses on the downhill side, means that the site is not prominent in the landscape. Thus, despite its affinity with the surrounding countryside, the site is not a strong contributor to the area's character and appearance.
16. That is not to say that the proposed dwelling would not be visible. However, the design would use the landform to its advantage such that an almost single storey scale would be presented to the road frontage, with the higher elevations contained well within the sloping landscape. It would, therefore, not be intrusive in close or longer range views.
17. The Cornwall and Isles of Scilly Landscape Character Study 2008 describes various Landscape Character Areas (LCAs). It identifies the existence of nucleated settlements mostly at the head of the historically navigable portions of rivers. It describes linear settlements along main transport routes on the valley floors. Restronguet is in neither of these locations. It appears to have been a waystation for a ferry transshipment point for timber imports and so contained only a small cluster of dwellings around the Pandora Inn.
18. Subsequent development has extended up Passage Hill in a more linear fashion and, while such settlement forms may not be typical of this LCA, the proposal would continue and complement the established form of Restronguet. While the site is an identifiable small, hedge-lined parcel of land, the development would not disrupt the prevailing pattern of small tree-lined fields evident in the immediate surrounds, which would otherwise remain.
19. The Planning and Land Management Guidelines for the LCA include restricting development in the river valleys and I note that local residents are keen to avoid the development of large opulent houses that has been perceived in some other locations, including at Feock on the opposite side of the river. However, the location of this proposal and its design would avoid that replication. It would appear that works have been carried out to the roadside boundary along the site and entire Knot Shore boundary. However, that does not appear to affect the proposal or its relationship to the public realm.
20. There would be an increase in built form and a small, localised effect when viewed from the Highway. Cumulatively, localised effects could lead to harm, but this is a situation where development is allowed by LP Policy 3 and, as the

undeveloped state of the site does not contribute strongly to the character and appearance of the wider area, the effect would be acceptable in this case.

21. I understand that Mylor has seen fairly rapid growth since the 1960s and it has been said in the representations to have more houses per hectare than nearly all Cornish AONB parishes. However, while great weight must be given to the conservation of the landscape and scenic beauty of the AONB, that does not amount to an embargo on development.
22. There is not evidence before me of rapid growth at Restronguet and this proposal will not harm that settlement's character, nor the scenic beauty of the AONB within which it is set. It would be an individual detached house accessed from an existing private drive. It would be surrounded by soft landscaping and so would not have a suburban appearance in the public realm. That it would be the first house on entry to Restronguet would not change that. The Framework confirms that identification of land as PDL does not necessarily mean that the whole site should be developed. However, I have found no demonstrable harm from the proposed development of this site.
23. I, therefore, find that the proposal would not harm the character and appearance of the area, and the scenic beauty of the AONB would be conserved. There would be no conflict with LP Policies 12 and 23 that seek to ensure that proposals are well designed to maintain Cornwall's enduring distinctive natural and historic character, responding to its landscape, seascape and townscape setting and protecting the natural environment and landscape character.

Other Matters

24. Passage Hill is narrow and there is limited opportunity for pedestrians to take refuge from passing traffic. I understand that it becomes heavily congested at times. However, although the road may be used by some as a walking route to Mylor Bridge, including for accessing school, the development would only lead to a very small increase in pedestrian and vehicular traffic. For these reasons, I have no reason to disagree with the conclusions of the Council that the proposal would be acceptable in highway terms.

Appropriate Assessment

25. The European Sites Mitigation Supplementary Planning Document 2021 (SPD) indicates that the site is within a 'zone of influence' (ZOI) of the Fal and Helford Special Area of Conservation (SAC). The SAC is designated for its saltmarsh, intertidal mudflats, subtidal sandbanks, large shallow inlets and bays, estuaries, and reefs.
26. The SPD sets out that recreational pressure, predominantly from those living or staying within the ZOI are causing harm to the habitats. There is, therefore, potential that additional residents at the site, in combination with other development, could result in adverse effects on the integrity of the SAC.
27. The SPD indicates that mitigation in the form of Strategic Access Management and Monitoring (SAMM) can avoid such adverse effects. This is to be funded through developer contributions proportionate to the scale of development proposed. In this case, the appropriate contribution has been paid and is detailed in an undertaking pursuant to S111 of the Local Government Act 1972. Following appropriate assessment under the Conservation of Habitats and

Species Regulations 2017, I am satisfied that adverse effects on the integrity of the SAC will be avoided.

Conditions

28. A plans condition is required in the interests of certainty. To ensure there is no increase in off-site flood risk and that foul water is adequately disposed of, details of drainage systems are required. To protect the character and appearance of the area, details of external facing materials and landscaping are needed. The landscaping condition requires protection of existing trees and hedgerows so a separate condition in that regard is not necessary.
29. To protect biodiversity, certain mitigation measures in the appellant's ecological survey should be observed during development. The Council's condition suggests that the recommendations of the appellant's report are followed, but there is no clear list of recommendations. Moreover, the mitigation measures listed in respect of hedgebanks, dormouse, and birds simply identify opportunities for enhancement through further planting. This is covered by the landscaping condition. I have, therefore, revised the condition to relate to badgers, bats, and reptiles where clear measures for protection are set out in the report.
30. A somewhat onerous condition regarding biodiversity net gain has also been proposed. While securing net gain is an important planning consideration, supported by national policy, additional, appropriate landscaping should secure such in this case. On this small-scale development, in a rural area where negative effects on biodiversity are unlikely, there is no clear reason to require work beyond that in the landscaping condition, such as on-going recording or additional off-site mitigation. I have, therefore, not imposed this condition.
31. Some of the Council's suggested conditions include requirements to notify them that certain works have been done. These words are not necessary for the enforceability of the conditions, so I have omitted them. I have made other minor adjustments to the conditions in the interests of consistency and to ensure compliance with the Planning Practice Guidance.

Conclusion

32. I, therefore, conclude that the appeal should be allowed.

M Bale

INSPECTOR

Schedule

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 07956-TDA-DR-PL-0005/P01; 07956-TDA-DR-PL-0006/P02; TD01 2145 0720 01/1.
- 3) 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.
- 4) Prior to their installation, details of the materials to be used in the construction of the external surfaces, doors and windows of the building hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained as such.
- 5) Prior to the commencement of the development hereby permitted, a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The landscaping scheme shall provide planting plans with written specifications including: Details of all existing trees and hedgerows on the land, showing any to be retained and measures for their protection to be used in the course of development; full schedule of plants; and cultivation proposals for the maintenance and management of the soft landscaping.

The protection measures proposed shall be completed in accordance with the approved scheme before the development hereby permitted commences and shall thereafter be retained until it is completed.

All planting, seeding or turfing comprised in the approved scheme of landscaping 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 and maintained in accordance with the approved details.

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.

- 6) The mitigation, compensation and enhancement measures set out in the Ecological Impact Assessment prepared by J.L. Ecology Ltd and dated June 2020 in respect of badgers, bats and reptiles shall be complied with during the course of development, and thereafter maintained as such.

End of conditions