



Appeal Decision

Site visit made on 3 October 2022

by Thomas Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 19 October 2022

Appeal Ref: APP/D0840/W/21/3288794

76 St. Peter's Way, Porthleven TR13 9BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a grant of planning permission subject to conditions.
 - The appeal is made by Mr & Mrs Forster against the decision of Cornwall Council.
 - The application Ref PA21/10038, dated 5 October 2021, was approved on 7 December 2021 and planning permission was granted subject to conditions.
 - The development permitted is 'Proposed first floor extension above garage and porch to rear access with noncompliance of Condition 2 and 3 in relation to Decision Notice PA18/03742 dated 30.05.2018.'
 - The condition in dispute is No. 1 which states that 'Within three months of the date of this decision notice, the lower large (left side) pane of the window to the South elevation (subject of this application drawing 1487/04C) shall be obscure glazed to at least Pilkington 5 level or equivalent and fixed closed. This window and the attached lower large (right side) window pane which is already installed with obscure glazing shall be permanently retained in that condition thereafter.'
 - The reason given for the condition is 'To protect the privacy of the occupants of the nearby neighbours and in accordance with paragraph 130 of the National Planning Policy Framework 2021'.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. Via decision dated 30 May 2018 the Council granted permission at No. 76 for 'proposed first floor extension above garage and porch to rear access' (Ref PA18/03742, the '2018 permission'). Works thereafter undertaken did not match the approved plans. The appellants explain, in relation to subsequently unsuccessful application Ref PA21/02230, that 'windows and rooflights varied on all sides from the originally approved drawings'.
3. Via decision dated 7 December 2021 the Council granted permission for the development described in banner heading above (Ref PA21/10038, the '2021 permission'). The associated application form indicates, however, that the development was completed on 1 December 2018 rather than being proposed at that point. Section 73A(2)(c) of the Town and Country Planning Act 1990 as amended (the '1990 Act') nevertheless enables permission to be granted for development to be carried out which does not comply with conditions subject to which permission was previously granted. The 2021 permission therefore overlaps, rather than alters, the 2018 permission (with the appeal therefore falling under section 78(1)(a) of the 1990 Act).

4. Setting that aside, paragraph 1.1 of the appellants' appeal statement refines the extent of the dispute over condition No. 1, namely that it 'requires an additional window to be reinstated with obscure glazing within 3 months of the decision.' With reference to the southern elevation illustrated on plan 1487/04, that condition applies not only to the shaded window pane annotated as obscured, but to what is shown as clear pane beside it.¹ Therefore, for the purposes of this decision, 'the proposal' is to maintain that clear pane as such.
5. The appellants argue that condition 1 is not necessary to make the development acceptable, as required via paragraph 55 of the National Planning Policy Framework ('NPPF'). That is in the context of criterion a. of policy 12 of the Cornwall Local Plan Strategic Policies 2010-2030 (adopted November 2016, 'LPSP') and criterion f. of NPPF paragraph 130. Those provisions respectively seek to ensure individuals are protected from 'overlooking and unreasonable loss of privacy' and that a 'high standard of amenity' is achieved.

Main issue

6. The main issue is therefore whether or not disputed condition 1 is necessary with regard to the privacy of the occupants of nearby properties.

Reasons

7. No. 76 is the penultimate property along a short southern spur of St. Peter's Way. As with many Cornish settlements, Porthleven has successively expanded into surrounding hillsides. Roads track contours. Properties tend to be arranged to make best advantage of expansive coastal views. It is therefore understandable that the appellants would seek to maximise views towards Porthleven Beach, broadly southwards, and towards the Harbour and Trigg Rocks westwards.
8. As with other properties along St. Peter's Way, 76 appears late twentieth century in origin. Properties here, in contrast to older buildings down along Peverell Terrace and Harbour Road beyond, typify suburban development of that era. There is some variance in individual design, including resulting from alterations over time. Nevertheless properties along St. Peter's Way tend to have a similar footprint and to be arranged along a broadly consistent building line within relatively regular plots. Order and harmony prevail.
9. Those characteristics result in broadly consistent living conditions. Properties tend, as is the case of 76 and its immediate neighbour to the south, No. 74, to have their principal aspect coastwards. Windows within elevations facing neighbouring properties are therefore generally more modest, where present at all. There is a balcony at 74. The same is true of 76, which relates to planning permission granted via decision dated 8 December 2015 (Ref PA14/10599, the '2015 permission'). However balconies or terraces are relatively few and far between; the tiered landform itself enabling open views. Only rarely have properties in the surrounding been altered by way of substantial forward extensions with extensive glazing.
10. Inherent in my reasoning above is that the eye is naturally drawn to distant coastal views in this location. The sill related to the window to which disputed

¹ Notwithstanding that the plans associated with the 2018 permission were amended at some point to reflect both obscured planes in broadly the same location (appellant statement of case, paragraph 4.6).

condition 1 relates is set at a good height, impeding visibility towards 74 from certain perspectives. The windows in the elevation of 74 facing towards 76 are not in the direction of the principal aspect of that property. At first floor level the room served by the window at 74 facing towards 76 is also dual aspect. One facing window at ground floor level at 74 is obscure glazed and serves a shower room.

11. As would be expected of a somewhat exposed and windswept area, boundary features and planting are typically modest or low-level. As such there is a qualified level of privacy here. There is already potential intervisibility between users of the balcony at 74 and the windows and plot of 76. There is some visibility towards 74 from the existing balcony at 76 (albeit at an angle and with some screening by virtue of the roof form of 74 and intervening planting). I note the appellants' argument that boundary features could be erected within the plot of 74 which may not require planning permission. Some form of planting could also theoretically provide additional screening. The appellants contend that the 2015 permission is extant, and draw my attention to the lack of undue effect found by the Council in the assessment of that scheme.
12. Circumstances are nuanced. However, as set out above, balconies or extensively-glazed elements of properties projecting coastwards beyond 'standard' forms and building lines are atypical. I was unable to identify a comparably close and open inter-relationship between facing windows at neighbouring properties in the immediate surroundings as exists between the foremost extension at 76 and 74. Views are naturally coastwards from 76. However, inevitably, individuals will occasionally glance towards 74 (for example where motion attracts attention, unthinkingly). Moreover the presence of individuals within 76 may be perceived as intrusive, even if they are looking elsewhere. Privacy is dependent on perception.
13. In that context I saw that the sole aspect from one ground floor bedroom at 74 is squarely towards 76.² Moreover there is a significant difference in reciprocal intervisibility between 76 and 74 given their relationship to one another and the coast. When within 76 looking southwards towards Porthleven Beach would be across the plot of 74. Instead, 76 falls to the north, or landwards, of 74 (and therefore there is a lesser potential for occupants to gaze in that direction). The proposal therefore results in a loss of privacy at 74 and the perception thereof. Whilst it may be possible to erect screening or introduce planting within the plot of 74, that would in itself introduce features uncharacteristic of the area, potentially impractical to maintain accordingly, and result in an undue sense of enclosure relative to the prevailing nature of the area.
14. I acknowledge that there would be some reduction in privacy to the occupants of 74 were the 2015 permission effected in full (notwithstanding that, although it may be extant and therefore a realistic possibility, that eventuality is unlikely given the form the property currently assumes). However the 2021 scheme is more substantial in scale and bulk than the foremost balcony permitted via the 2015 permission, intrinsically more likely to draw the eye. More significantly, balconies are used intermittently. That is typically during clement weather and hours of daylight, during which there is also a higher probability neighbours are likewise outside. Internal rooms may be used whenever. There is therefore a

² As shown in the photograph below paragraph 5.3 of the Council's statement of case.

greater potential for adverse effects to privacy over a more sustained period by virtue of the proposal compared to the 2015 scheme.

15. With obscure glazing to the window referred to in paragraph 4 above, however, adverse effects to the privacy of the occupants of 74 would intrinsically be reduced. Direct intervisibility would be prevented. The perception of loss of privacy would also be reduced. There would also remain wide open views from within 76, such that condition 1 is not unreasonable in that respect. I therefore conclude that disputed condition 1 is necessary with regard to the privacy of the occupants of 74 St. Peter's Way, to bring the proposal in line with the relevant provisions of LPSP policy 12 and NPPF paragraph 130 cited above. In its absence, for the foregoing reasons, the proposal would fail to ensure a reasonable level of privacy.

Other matters

16. The appellants argue that the Council did not adequately assess the potential implications of the scheme. The onus is, however, principally on an applicant to substantiate their position.³ Given my reasoning above that is also academic in terms of the merits of the proposal. Section 79(1) applies to appeals under section 78(1)(a) of the 1990 Act, including that it is open to me to reverse or vary any part of the decision of the Council. However the construction of disputed condition 1 meets the tests in NPPF paragraph 56; the appellants do not argue otherwise. It is evidently much more than three months since the decision date of the 2021 permission. However any implications of non-compliance with disputed condition 1, as is generally the case, is a matter for the main parties to resolve.

Conclusion

17. For the foregoing reasons, having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR

³ Section 62(3) of the 1990 Act.