



Appeal Decision

Site visit made on 23 May 2023

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2023

Appeal Ref: APP/D0840/W/22/3310394

**Taran Edhen, Road from Marble Head Cottage to The Old Barn,
Restronguet Point, Feock TR3 6RB**

- 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 Mr Martin Denny against the decision of Cornwall Council.
 - The application Ref PA21/11250, dated 11 November 2021, was refused by notice dated 27 May 2022.
 - The application sought planning permission for the erection of a dwelling and extension of existing garage without complying with a condition attached to planning permission Ref PA16/02242, dated 8 March 2016, and granted on appeal on 20 January 2017 under reference APP/D0840/W/16/3156041.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: 2195.D.100A, 2195.D.101A, 2195.D.102A, 2195.D.103A, 2195.D.104A, 2195.D.105A, 2195.D.107.
 - The reason given for the condition is in the interests of certainty.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of a dwelling and extension of existing garage at Taran Edhen, Road from Marble Head Cottage to The Old Barn, Restronguet Point, Feock TR3 6RB in accordance with the terms of the application, Ref PA21/11250, dated 11 November 2021, and subject to the conditions in the attached schedule.

Preliminary Matters

2. Planning permission was granted at appeal for the dwelling Taran Edhen and was subject to condition No 2 which listed the approved plans. Subsequently, there has been amendments to that permission which reflect some of the changes to the dwelling constructed on site.
3. This proposal seeks to amend the original permission, incorporating the agreed changes, and to additionally seek the removal of the roof lantern from the approved plans and the retention of the increase in the height of the ground floor glazing by about 0.2m. It is these fenestration changes that are in dispute. The appellant wishes a new planning permission to be granted and that the condition listing the approved plans to be amended to reflect these changes.
4. When the application to vary the plans was submitted, the application form indicated that the works had started but had not been completed. I saw at my site visit that the dwelling has now been constructed and is occupied. The

works incorporate the increased height of the windows and the roof does not contain the permitted lantern. I will consider the proposal accordingly.

Main Issue

5. The original permission for the construction of a dwelling on the site is not in dispute. It is only the changes which are the substantive matters for consideration. The main issue, therefore, is the effect of the removal of the lantern and the increased height of the windows on the character and appearance of the area, having regard to the location within the Cornwall Area of Outstanding Natural Beauty (AONB).

Reasons

6. Restronguet Point is a promontory of land which has a spine road running its length. There are rows of dwellings either side of the road from which, because of their generally elevated position, often allow the occupants to have panoramic views out over the water.
7. The appeal dwelling, Taran Edhen, is located on the western side of the promontory. It has been constructed in the lower garden area of Tregytreat, a dwelling towards the ridge. These properties and the others along this side of the spine road have extensive views out over the Restronguet Creek and the countryside beyond. These properties, including the appeal dwelling, fall within the settlement boundary as defined in the Feock Neighbourhood Development Plan 2017-2030 (the Feock NDP).
8. The site and the wider area is located within this part of the Cornwall AONB and within Landscape Character Area 13 (LCA13) as identified in the Cornwall and Isles of Scilly Landscape Character Study. The Character Study explains that LCA13 is a stunning visual landscape dominated by the Fal estuary, its creeks and side rivers. The objective set out in the Character Study for LCA13 must be to maintain this natural beauty whilst accommodating development and increased recreational use.
9. At my site visit, I visited the property itself and was able to view in and around the building, and also from the other side of Restronguet Creek where I looked back towards the appeal site and the wider promontory from the Pandora Inn area. From this latter location it is possible to see Taran Edhen positioned on the lower level of the slope from Tregytreat, together with the extent of other properties along the ridge and those dotted along the slope down to the Creek. While there is a good cover of mature trees in places, there are also spaces where the dwellings are clearly apparent, and these buildings form a notable part of the character of the area. These dwellings often have balconies and fairly extensive windows and other openings which allow occupants to take advantage of the stunning views of the Creek.
10. Taran Edhen is set into the slope of the land with other properties further up towards the ridge and others to the broadly side, such as Lower Creek Bank. Lower Creek Bank is another more recent dwelling and which has reasonably extensive areas of glazing. I do not consider that the appeal property is any more visually prominent than others in the vicinity and its glazing does not appear to be especially more apparent or extensive than some other buildings in the area.

11. The scheme seeks to remove the lantern from the flat roof of the approved building. This would remove about 5.65m² of glazing. This lantern would be quite a sizeable addition to the roof with its diameter of about 4.75m and a height above the flat roof of about 1m. Removal of this lantern feature would simplify the roof form. Furthermore, with the position and nature of the rounded glazing these lantern windows would be unlikely to be covered by blinds or curtains and therefore when the lights in that part of the property were switched on, light would be emitted from the lantern and provide a glow around and across the adjoining roof. The lantern is an approved part of the dwelling, and the removal of this feature from the plans would be a positive aspect of the appeal scheme. While not all the glazing would be visible from the Creek and the lantern would be set back on the roof, this change would still make a meaningful contribution in reducing light spillage from the site.
12. The other element of the proposal is the increase in the height of the glazing along the western elevation of the building. Because of the slope of the site, these windows are on the upper part of the building and extend across the vast majority of this western, ground floor elevation with a curving layout. The increased height of these windows has not increased the height of the building as a whole because of the way it has been constructed. At my site visit, I was able to see the overhang of the roof and the shadow line that this created across the tops of the windows.
13. The increase of about 0.2m in height of the windows has added about 3.3m² of glazing along this elevation. With the roof overhang, and when considering that this elevation is most likely to be seen in public viewpoints from boats or across the Creek, from these distances the increased height of the glazing does not have a noticeable or adverse effect on the appearance of the building compared with the approved plans. My observations at the site visit, particularly from the area around the Pandora Inn, is that this fenestration was suitably proportionate to the scale of the building and did not look out of character with the dwelling itself or the surrounding built form.
14. In terms of potential light spill, the windows to this ground floor of the dwelling are open to views from the Creek area. The most curved sections of the glazing have internal, vertical blinds which are electrically operated and slide across behind the full height of the windows. They provide an effective cover to those windows when extended. With the less curved glazing, there are blinds which are positioned between the two panes of glass. These blinds can concertina down and when extended provide complete cover to these windows. Again, they are electrically operated and therefore assist ease of use. Consequently, at times of darkness, when privacy is most likely to be required, the glazed areas of these Creek facing openings have the potential to be covered, thereby, significantly reducing any light spill.
15. Furthermore, those blinds which are integrated into the frames have a casing within the top of the window frame such that the blinds do not fully withdraw and are still visible. This provides a small but effective screen at the top of the frame permanently preventing light escaping even in situations when the blinds are not used in these windows.
16. With the extent of glazing already permitted, the blinds which are in place and the times when they are likely to be used, the increase in the window height has not had a material and adverse effect on the extent of light spillage from

these windows. When the benefits from the removal of the lantern are taken into account, the appeal scheme has a net benefit in terms of its effect in helping to maintain a dark environment for the Creek and AONB. During the day time, the increased height of the windows is not readily discernible, and the removal of the lantern provides a more simple and improved profile. Again, a net benefit to the visual appearance of the area and AONB, when compared with the approved scheme.

17. The National Planning Policy Framework (the Framework) requires that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues. Given my findings that the scheme has been beneficial to the visual appearance of the AONB, this Framework requirement has been met. Furthermore, I am satisfied that the scheme as now constructed, when compared with the approved scheme, is acceptable in terms of protecting the key characteristics of the LCA13. It follows that in terms of the requirements of Policy LS1 of the Feock NDP, the proposal does not damage the quality of the creek-side landscape in this location.
18. I have taken into account the objections, including from local residents, the AONB Unit and Feock Parish Council. I note the comments including the concerns with the previous changes to the glazing and the cumulative impacts that this has had. However, for the reasons I have explained above, the scheme for consideration in this appeal is acceptable and does not harm the landscape character and visual qualities of the area.
19. I have also carefully considered the arguments made by the Council. This includes that the scheme, although within a settlement, would not be permitted today. Whether that is the case or not, that is not the key issue for consideration in this appeal as a permitted dwelling is in place. I do not agree with the Council that the development as constructed has a more assertive presence, indeed, I consider that the overall scheme is more sympathetic to the area than what has been permitted.
20. In the light of the above analysis, I conclude that the removal of the lantern and the increased height of the windows, in combination, has an acceptable impact on the character and appearance of the area, and conserves and enhances the landscape and scenic beauty of the AONB. As a consequence, the scheme accords or does not conflict with Policies LS1, LS2, D1 and H1 of the Feock NDP, Policies 12 and 23 of the Cornwall Local Plan Strategic Policies 2010-2030, Policies PD-P3, PD-P11 and SCC-P1 of the AONB Management Plan 2022-2027 and the Framework which, notably in this respect, requires that development will only be supported in relation to creeks and coast where it can be demonstrated that it will not damage the quality of the creek-side landscape.

Conditions

21. I have had regard to the conditions suggested by the Council which effectively replicate the conditions attached to the original approval, with the exception of the condition concerning tree protection. However, I am also conscious that the dwelling has been constructed and conditions attached to the original permission which required the submission of details to the Council and

subsequent approval have been met¹, in most cases. I will therefore set out the conditions to reflect this position, much as the Council did when it approved a variation to the original permission in October 2021, under application PA21/07326.

22. The works have been undertaken and therefore there is no need for a commencement condition. A list of the approved plans is required in the interests of certainty, in particular, to ensure that it is clear the lantern does not form part of this approval.
23. Conditions that confirm the agreed form and appearance of external materials and the agreed boundary treatments are necessary in the interests of the visual amenities of the area, and that they should so after be retained in their agreed form. Confirmation of the agreed scheme for the surface water management of the site is necessary to prevent flooding and that it should thereafter be retained. A condition requiring all electricity and telephone lines to be underground is still necessary in the interests of the visual appearance of the area.
24. A condition requiring certain windows to be obscure glazed and with restricted openings is necessary in the interests of the living conditions of adjoining residents. A condition is necessary to continue to require that the dwelling has the agreed access, parking and turning areas in the interests of highway safety.
25. A condition requiring details of sewage disposal works to be submitted and agreed was attached to the original appeal decision, and also repeated on the approval for PA21/07326. However, I can find no confirmation that these details have been submitted and approved by the Council. These details are important and necessary to ensure that there is no harm to human health and/or there is no unacceptable discharges to the adjoining creek that could affect water quality. In the light of this, I have worded the condition to require submission of details within a 3 month period, and appropriate sanctions were the scheme not to be submitted, approved and implemented.

Conclusion

26. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise².
27. The works the subject of the proposal have been completed. The Council argue that this constitutes intentional unauthorised development and is a material consideration that should weigh against the scheme. In the circumstances of this case and with the extent of the works, this weighs to a minor extent against the proposal.
28. On the other hand, I have found that the works, compared with the approved scheme, have conserved and enhanced the landscape and scenic beauty of the AONB and are acceptable. This is a matter that I attribute substantial weight in favour of approval.

¹ Application PA18/02633 - Submission of details to discharge conditions 4, 6, 8 and 10 in respect of Decision Notice PA16/02242 Allowed on Appeal APP/D0840/W/16/3156041 dated 20th January 2017 – approved on 8 May 2018.

² Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

29. I am satisfied that the proposal accords with the development plan when considered as a whole and that there are no material considerations of such weight that indicate that a decision should be made other than in accordance with the development plan.
30. I therefore conclude that the appeal should succeed, and that planning permission should be granted.

David Wyborn

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site/location Plan 2195.D.100 Revision A, 2195.D.204 Rev A, 2195.D.203 Rev A and 2195.D.400.
- 2) All new electricity and telephone lines shall be laid underground.
- 3) The materials to be used in the construction of the external surfaces (doors/windows/lintels/sills/stonework/timber cladding/roof covering and method of fixing) of the building hereby permitted shall accord with those details and specifications approved under the discharge of condition application reference PA18/02633 dated 8 May 2018 in relation to Condition 4 attached to the appeal decision reference APP/D0840/W/16/3156041 and as updated on drawing number 2195.D.204 Rev A. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 4) The windows on the ground floor of the southern gable elevation of the host property, Tregytreat, and the windows and doors on the south elevation of the new dwelling as specified on approved drawing number 2195.D.204 Rev A, shall be fitted with obscure glazing and fitted with a means to restrict their opening to allow ventilation only in respect of the windows, and the windows and doors shall be permanently retained in that condition thereafter.
- 5) The dwelling hereby permitted shall not be occupied unless the boundary treatment (means of enclosure) as approved under condition discharge approval referenced PA18/02633 and dated 8 May 2018 in relation to condition 6 attached to the appeal decision notice referenced APP/D0840/W/16/3156041 has been completed in accordance with the approved details as shown on drawing numbers 2195.D.300, 2195.D.301 and 2195.D.302. The boundary treatment (means of enclosure) shall be retained at the specified heights and shall not thereafter be altered or removed, other than by necessary replacement.
- 6) The dwelling hereby permitted shall not be occupied unless the access, parking and turning areas have been laid out and constructed in accordance with approved drawing no. 2195.D.102 and 2195.D.105 and as updated by drawing no. 2195.D.203 (as approved as part of Application PA21/07326 dated 21 October 2021) and the said areas shall not thereafter be obstructed or used for any other purpose.
- 7) The dwelling hereby permitted shall not be occupied unless the surface water drainage management works for the development, as approved under condition discharge application reference PA18/02633 dated 8 May 2018 in relation to condition 8 attached to the appeal decision notice referenced APP/D0840/W/16/3156041, have been implemented in full and the scheme shall thereafter be maintained in accordance with these approved details.

8) The occupation of the dwelling hereby permitted shall cease within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 3 months of the date of this decision a scheme for sewage disposal works to serve the development shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.
- ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
- v) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

End of Schedule