



Appeal Decision

Site visit made on 12 June 2023

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2023

Appeal Ref: APP/D0840/W/22/3306608

**Menagissey Vean, Road from Oakdene to Kenmere, Menagissey,
Mount Hawke TR4 8DQ**

- 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 Mrs Tamsin Melville against the decision of Cornwall Council.
 - The application Ref PA21/12506, dated 16 December 2021, was refused by notice dated 6 May 2022.
 - The development proposed is construction of new dwelling with off-road parking and garden amenity within domestic curtilage.
-

Decision

1. The appeal is allowed, and planning permission is granted for construction of new dwelling with off-road parking and garden amenity within domestic curtilage, at Menagissey Vene, Road from Oakdene to Kenmere, Menagissey, Mount Hawke TR4 8DQ, in accordance with the terms of the application, Ref PA21/12056, dated 16 December 2021, subject to the following conditions:
 - 1 The development hereby permitted shall begin not later than 3 years from the date of this decision.
years beginning with the date hereof.
 - 2 The development hereby permitted shall be carried out in accordance with the following approved drawing numbers: 4122-01A and 4122-02A.
 - 3 No development above ground works (slab level) shall commence until details of the materials to be used in the construction of the external surfaces (doors/windows/lintels/sills/rendering/stone cladding and roof covering) of the dwelling 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 retained as such thereafter.
 - 4 Prior to the first occupation of the development hereby permitted details of boundary treatment to the boundaries of the site shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.

Applications for costs

2. An application for costs was made by Mrs Tamsin Melville against Cornwall Council. This application is the subject of a separate Decision.

Preliminary Matters

3. In respect of the Council's third reason for refusal, a legal undertaking and proof of payment towards a scheme of environmental mitigation was received during the appeal. The Council has been given the opportunity to comment on those details.

Main Issues

4. The main issues are:
 - whether the site is suitable for residential development, having regard to the development plan's policies for the supply of housing, including the accessibility to services and facilities;
 - the effect of the proposed development on the setting of the grade II listed Menagissey Vene; and
 - the effect of the proposed development on the integrity of the Fal and Helford Special Area of Conservation (SAC) and Penhale Dunes SAC.

Reasons

Location of development

5. The appeal site forms part of the side garden of Menagissey Vene, a large, detached dwelling set within spacious grounds. The site encompasses a central lawned area to the east of the host dwelling and is enclosed mostly by mature trees and shrubs. Beyond the boundary to the north is the domestic curtilage of Menagissey Barton. A narrow rural lane runs along the site's frontage to the south, while a large agricultural field is located to the east, behind the existing boundary trees.
6. Policy 2 of the Cornwall Local Plan Strategic Policies 2010 – 2030 (adopted 2016) (the Local Plan) sets out the spatial strategy for development. It seeks to maintain the dispersed development pattern of Cornwall, providing homes and jobs based on the role and function of each place. Based on this strategy, Policy 3 defines how development will be accommodated, with growth focussed on identified main towns.
7. Outside the main towns, Policy 3 says housing growth is to be delivered through the identification of sites through Neighbourhood Plans; rural exception sites; infill schemes; or rounding off of settlements and development of previously developed land (PDL) within or immediately adjoining settlements. The site is not identified for development by the Truro and Kenwyn Neighbourhood Development Plan, 2015-30 (revised February 2023) (Neighbourhood Plan), and the proposal is not presented as a rural exception site. Consequently, the proposed development would only be supported by Policy 3, if it comprised rounding off, infill or development of PDL within or immediately adjoining a settlement.

8. There is no definition of a settlement in Policy 3 or its supporting text. However, both parties have drawn my attention to the Chief Planning Officer's Advice Note, December 2017 (the CPOAN) titled Infill/Rounding Off, which provides additional guidance.
9. The CPOAN sets out the need to identify initially whether the proposal physically relates to a recognisable settlement. The Local Plan (paragraph 1.68) defines a settlement as having a "form and shape and clearly definable boundaries, not just a low-density straggle of dwellings". The CPOAN advises that a settlement is a place where people collectively live in permanent buildings. Furthermore, it says that well-defined groups of dwellings with a collective name will normally be settlements.
10. According to the appellant the website Mapcarta states that "Menagissey is a hamlet in Cornwall". It forms a group of around 13 dwellings and other buildings clustered around a rural road leading to the large village of Mount Hawk. When entering Menagissey, from the north and south respectively, there are residential properties on either side of the road, access drives, boundary walls and manicured front gardens. The properties are closely arranged, and residential curtilages are contiguous with one another, such that they form a well-defined group. There is a post box in the centre of the hamlet. Although a basic amenity, it is nevertheless a common sight in a settlement where groups of people reside in dwellings. There is a clear sense when entering Menagissey that you are leaving an area defined by fields, hedges and trees and entering a small built-up hamlet that is clearly distinguished from the surrounding countryside by the density of physical structures, its shape, and overall domestic character of its buildings. This well-defined group, in my view, meets the definition of a settlement in the terms of the Strategic Policies of the Local Plan and the CPOAN.
11. The Council takes an opposing view in that Menagissey forms an undefined spread of sporadic housing and does not form part of a group of dwellings that resemble a settlement. Yet, my assessment of the built form differs, and as the Council states in its evidence, there is a degree of subjectivity and planning judgement in reaching a conclusion as to whether Menagissey forms a settlement appropriate for additional development.
12. I have been referred to several dismissed appeal decisions which the Council considers support its position that the appeal site does not relate to a settlement¹. However, from my understanding of those cases and the details submitted, they are all different in terms of their shape, size, number of houses and the spatial arrangement of properties. Accordingly, this appeal can be distinguished from those others referred to.
13. Policy 3 does not require that a settlement has particular services and facilities in order to be defined as a 'settlement'. However, it does require that it is 'part of a network of settlements and/or be within reasonable proximity to a larger village or town with more significant community facilities, such as a primary school. I also note the wider aims of the Local Plan to minimise the need to travel and to maximise the use of sustainable transport modes by prioritising walking, cycling and public transport to minimise car travel.

¹ 3197029 - Land east of Bosmaric, dismissed 12 September 2018; 3304052 - Porthcothan Traboe, dismissed 2 March 2023; 3300831 - The Laurels, Foxhole, dismissed 10 January 2023.

14. In this regard, Mount Hawk is located some 600m to the north, where facilities include a primary school, doctors surgery and a convenience store. There are also regular bus services to larger settlements such as Truro. The route from the appeal site to the village, to access those facilities, is along a relatively narrow rural highway with no paved footway or street lighting. The road curves slightly and given its narrow width I would expect drivers to travel at low speeds, so they can react to oncoming traffic including pedestrians, of which I observed a small number walking the route during my early afternoon site visit.
15. Pedestrians wishing to walk the route could do so along lengthy sections of wide grass verge, short access spurs, as well as wider sections of the carriageway. Moreover, they could comfortably take refuge along those areas if oncoming vehicles are encountered. I also noted that parking bays at the surgery and village convenience store were somewhat limited, thus occupiers at the appeal site may on several occasions favour walking to access those services, rather than take the short journey by motor vehicle.
16. I am cognisant of the fact that walking might not be conducive to all future occupiers, particularly during low light conditions and inclement weather. Nonetheless, the short distance to access services, together with the prevailing road conditions, would make access by foot, from the appeal site to nearby Mount Hawk desirable to many, while offering a realistic opportunity to minimise the number of trips undertaken by car. Similarly, the journey would be equally appealing by bicycle, along the largely flat road to the village.
17. Accordingly, I conclude that Menagissey can be considered to be a settlement insofar as it relates to the requirement of being within reasonable proximity to a larger village or town with more significant community facilities. Moreover, the proposal's location would allow future occupiers to maximise sustainable transport modes and minimise car journeys.
18. The supporting text to the Local Plan defines rounding off as development on land that is substantially enclosed, but outside of the urban form of a settlement, and where its edge is clearly defined by a physical feature that also acts as a barrier to further growth. Furthermore, it should not visually extend building into the open countryside. Additional guidance is contained in the CPOAN. It advises that the history and nature of the land will be an important consideration; that proposals must be adjacent to existing development; and that suitable sites are likely to be surrounded on at least two sides by existing built development. Additionally, it advises that development resulting in the creation of a further site for rounding off is unlikely to be rounding off in itself.
19. The appeal site is an integral part of the Menagissey Vene curtilage and adjoins the built-up edge of the settlement on two sides. It is bordered by mature trees and shrubs, that form an established physical boundary. The large rural field beyond the site's eastern boundary has an appreciably different character to the domestic garden appearance of the appeal site and would be separated from it by a thick line of tall mature trees. This physical boundary reinforces the settlement's edge and ensures the proposal would not facilitate continued incremental growth or create any further opportunity for rounding off. Taking these factors into account, I conclude the proposed development would constitute rounding off under the terms of Policy 3 of the Local Plan.

20. The appellant also considers the proposal to be infill development within or immediately adjoining the settlement. However, the site does not form a gap in an otherwise built frontage given the presence of the large field to the east. Additionally, I have doubts regarding the land's classification as PDL, insofar as it relates to the definition set out in the National Planning Policy Framework (the Framework) regarding residential gardens in built up areas². In any event I have found that the proposal meets one of the exceptions outlined in Policy 3.
21. For the above reasons, I conclude that the appeal site is suitable for residential development, having regard to the development plan's policies for the supply of housing, including the accessibility to services and facilities. It therefore accords with Policy 2, 3, 7 and 21 of the Local Plan, which amongst other things, seek to direct development to settlements, be within reasonable proximity of larger villages and towns containing facilities and services and to protect the countryside. The proposal also accords with Paragraphs 8, 30 and 124 of the Framework where they require proposals to take into account the availability of services and facilities, modes of transport other than the car, and avoid isolated homes in the countryside.

Setting of listed building

22. The Framework defines the setting of a heritage asset as the surroundings in which it is experienced. Elements of a setting may make a positive or negative contribution to the significance of an asset; may affect the ability to appreciate that significance; or, may be neutral. The Framework, as well as court judgments place emphasis on protecting the setting of a heritage asset. Moreover, the finding of harm is a consideration to which a decision maker should attach considerable importance and weight.
23. Menagissey Vene is a large, detached dwelling set within landscaped grounds. Its special interest lies in its traditional construction and the balanced placement of the building's architectural detailing (e.g. windows, chimneys and front door), particularly on the front and rear elevations. The building appears to have aged well and shows little sign of defect, or alteration. The large variety of trees that surround the dwelling enrich its setting, while the height and proximity of those close to the dwelling induce a sense of intimacy that enhances its historical charm. Therefore, the significance of Menagissey Vene is largely derived from its historic appearance, architectural detailing, and its attractive verdant setting.
24. The garden land and perimeter landscaping that form the appeal site, are located to the west of the listed dwelling. There are views of the dwelling's flank wall and roof profile from the appeal site, although the historic detailing and simple aesthetic that contributes to the significance of the front and rear elevations are not clearly visible due to the filtering effect from close range trees to the dwelling's south and east. Moreover, the appeal site is somewhat divorced from the landscape features that surround the listed dwelling and which create the sense of intimacy which adds to the building's significance. On this basis I do not consider that the appeal site is within the immediate setting which contributes to the significance of the listed building.
25. There would be an appreciable gap between the opposing flank walls of the proposed dwelling and Menagissey Vene. Due to this distance, as well as

² 'Previously Developed Land' definition, Glossary, National Planning Policy Framework, 2021

intervening trees and shrubs, it would be difficult to obtain clear views of the two dwellings side by side and within the same field of vision. I am also satisfied that the proposal's width, depth and height are consistent with that of Menagissey Vene. Therefore, I am satisfied that the proposal would not encroach or be seen as prominent within the parts of the listed building's setting which contribute to its significance.

26. The Council has raised concerns that the dwelling's modern design would contrast with the more traditional aesthetic of the listed dwelling. However, for the reasons given above, it would be difficult to clearly observe and contrast the architectural features of the two dwellings in any detail. Moreover, the proposal's modern design would be consistent with other dwellings within Menagissey, where I found there to be a mix of shapes and styles. On this basis the proposed development would preserve the setting of Menagissey Vene.
27. For all these reasons, the proposed dwelling would not harm the setting of the grade II listed Menagissey Vene, and therefore accords with Policies 12 and 24 of the Local Plan and Policy 11 of the Neighbourhood Plan, as well as Paragraphs 130, 199 and 200 of the Framework. Together, these seek, amongst other things, for proposals to be sympathetic to the surrounding built environment and to consider the significance of heritage assets, including their setting.

Special Areas of Conservation

28. 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) and the Penhale Dunes SAC. The SAC are designated for their saltmarsh, intertidal mudflats, subtidal sandbanks, large shallow inlets and bays, estuaries, reefs, shifting sand dunes and their supporting vegetation.
29. 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 appeal site, in combination with other development, could result in adverse effects on the integrity of the SAC.
30. 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. I am also satisfied that the undertaking and payment are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development.
31. For these reasons, the proposal would not harm the integrity of the Fal and Helford SAC and the Penhale Dunes SAC, while it would accord with Policy 22 of the Local Plan, where it requires mitigation measures for recreational impacts on European Sites.

Conditions

32. I have had regard to the Council's suggested conditions, amending or omitting them where necessary for clarity and to ensure compliance with the tests set out in paragraph 56 of the Framework.
33. It is necessary that planning permission is granted subject to conditions that relate to the standard time limit for commencement of development and a schedule of plans that the development relates to. These are necessary for the avoidance of doubt and in the interests of certainty.
34. I have included conditions requiring details of external materials and boundary treatments to be agreed. These are necessary to safeguard the character of the area and the living conditions of adjoining occupiers. The wording of the conditions suggested by the Council have been amended to ensure they are discharged expeditiously.
35. The Council has suggested a condition that restricts the occupation of the proposed dwelling as a second home or holiday letting accommodation. Whilst there may be good reason for this condition given the need to secure permanent homes and to control tourism accommodation in a popular holiday area, the Council have not provided any detailed evidence why the condition is reasonable and necessary, nor have they referred to any development plan policies that justify such a restriction. Accordingly, I have not included the condition.

Conclusion

36. For the reasons given I conclude that the appeal should succeed.

RE Jones

INSPECTOR