



Appeal Decision

Site visit made on 30 August 2023

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2023

Appeal Ref: APP/D0840/W/23/3315817

Harberton, Rock Road, St Minver, Wadebridge, Cornwall PL27 6PW

- 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 & Mrs Smith against the decision of Cornwall Council.
 - The application Ref PA22/06699, dated 3 August 2022, was refused by notice dated 7 October 2022.
 - The development proposed is provision of a tennis court and enclosure fencing to be used in conjunction with Harberton, Rock Road, St Minver.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development is a suitable location with regard to the effect on the character and appearance of the area.

Reasons

3. Harberton is a detached residential dwelling located in St Minver. The proposed development is located to the rear of Harberton and other residential properties along Rock Road. Planning permission was granted under PA16/04872 for the erection of a dwelling between Harberton and the appeal site (the 2016 permission).
4. The appellant submits that the appeal site has a lawful use for residential purposes ancillary to Harberton. They have provided an email, dated 14 June 2016, sent in relation to the 2016 permission, which included a location plan showing the appeal site within the red line area. However, the Council have submitted a different, undated, location plan that does not include the appeal site within the red line area. I note that there are plans listed on the decision notice as received by the Council on 14 June 2016. However, that list of plans shows the location plan as having been received by the Council on 17 June 2016. It is possible the plan was amended and resubmitted between 14 and 17 June 2016. On that basis, I consider, on the balance of probability, the plan provided by the Council is correct. As a result, the appeal site did not form part of the application site for the 2016 permission.
5. It may also be possible the land has gained lawfulness for a residential use through the passage of time. However, there is no planning permission or lawful development certificate before me formalising the use of the site for residential purposes. Neither is it for me within the context of an appeal under Section 78 of the Town and Country Planning Act 1990 (the Act) to formally determine the lawful use of land. If a person wishes to ascertain whether a use

is or would be lawful, the correct approach is for an application to be made under Section 191 or 192 of the Act for a certificate of lawful use. Consequently, I have determined the appeal on the basis of it not being in residential use.

6. The site is bordered by mature hedgerows that help screen it from the wider landscape. The proposed tennis court would be dug down within the site and this would also help prevent public views of the development being achieved. However, the construction of a tennis court within pasture, which would be beyond the clearly defined built development boundary along this part of the settlement, would impact negatively on the intrinsic character of the landscape.
7. I acknowledge that there was a polytunnel on the site in previous years, but a tennis court is a remarkably different type of structure in the context of the rural landscape. The establishment of an alien structure on non-residential land would result in the spread of domestic development into the open countryside and create pressure for further urban spread into the rural landscape.
8. Policy STMNDP 2.6 of the St Minver Neighbourhood Development Plan (NDP) specifically refers to very exceptional circumstances for development (additional build, rebuild or extension) beyond the development boundary. The exceptional circumstances are where there is a substantial benefit of the development to the local people that cannot be achieved in another way and that this benefit very clearly outweighs any harm to the landscape character, setting of heritage assets and sensitive biodiversity of the area.
9. I note that the appellant contends that the policy does not apply as the proposal does not constitute additional build. The policy refers to development in general and additional build is included as an example of development. Looking at the matter plainly, the construction of a tennis court associated with an existing dwelling would be additional build in relation to that dwelling.
10. The appellant asserts that the tennis court would provide health benefits for the occupants of the associated dwelling. However, this benefit would be restricted to the occupants of the associated dwelling and not extend to the wider local population. As such, the benefit would be limited and would not outweigh the harm to the character of the landscape that I have identified. The proposal would not result in a substantial benefit to local people and would therefore not constitute an exceptional circumstance outlined under Policy STMNDP 2.6 where development would be permitted beyond the development boundary.
11. Having regard to all of the above, the proposal would cause material harm to the character and appearance of the landscape and therefore conflicts with Policies 12 and 23 of the Cornwall Local Plan and Policy STMNDP 2.6 of the NDP, which collectively seek, in part, to sustain local distinctiveness and character and protect and, where possible, enhance Cornwall's natural environment.
12. Additionally, the proposal would conflict with the National Planning Policy Framework (the Framework), which seeks, in part, for the intrinsic character and beauty of the countryside to be recognised in order for development to contribute to and enhance the natural and local environment.

Conclusion

13. For the above reasons, and having regard to all other matters raised, the proposed development would harm the character and appearance of the landscape and therefore conflicts with the development plan, when taken as a whole, and the Framework. Accordingly, I conclude that the appeal should be dismissed.

K Reeves

INSPECTOR