



Appeal Decision

Site visit made on 5 February 2024

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2024

Appeal Ref: APP/D0840/W/23/3325988

Briar Cottage Forth Coth, Carnon Downs TR3 6HJ

- 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 R Grant against the decision of Cornwall Council.
 - The application Ref PA22/09920, dated 4 November 2022, was refused by notice dated 28 March 2023.
 - The development proposed is demolition of existing garage and construction of new dwelling with garden amenity area and off-road parking. Formation of new access, off-road parking and garage for existing cottage.
-

Decision

1. The appeal is allowed and planning permission is granted for proposed demolition of existing garage and construction of new dwelling with garden amenity area and off-road parking. Formation of new access, off-road parking and garage for existing cottage at Briar Cottage, Forth Coth, Carnon Downs TR3 6HJ in accordance with the terms of the application, Ref PA22/09920, dated 4 November 2022, subject to the conditions set out in the Annex attached to this decision.

Preliminary Matters

2. During the appeal process the appellants have submitted an amended plan. They suggest that this information should be considered in the appeal decision to address concerns in relation to living conditions.
3. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals and is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application. The amended plan relates to a change of the ground floor floorplan. I have had regard to the degree of engagement of the main parties and interested parties and the interests of fairness. Noting the opportunity for the Council to fully respond, and that the amendments do not fundamentally alter the proposal, I do not consider that any party would be prejudiced if I take the information into account. I have subsequently referred to it in reaching my decision. However, I have referred to the revised plan as 4226-01-B(revised floorplan) as the revised plan has the same reference as the former plan.
4. My attention has been drawn to both the National Design Guide, the Cornwall Design Guide December 2021 and the Chief Planning Officer's Advice Note – Good Design in Cornwall (March 2023). These documents provide guidance on matters of design, which include living conditions and as such I have had regard to them, where relevant, in the determination of this appeal.

5. The National Planning Policy Framework (Framework) was revised in December 2023. However, as the provisions in the Framework that are most relevant to this appeal have not materially changed, no parties will have been prejudiced by my having regard to the latest version in reaching my decision.
6. The site is within the zone of influence of the Fal and Helford Special Area of Conservation (SAC), as identified in the European Sites Mitigation Supplementary Planning Document July 2021. The appellant has made an undertaking pursuant to S111 of the Local Government Act 1972 (the S111) for a financial contribution towards Strategic Access Management and Monitoring (SAMM) of the SAC. The Council has commented on the S111 and I have therefore taken it into account.

Main Issues

7. The main issues are therefore:

- the effect of the proposal on the living conditions of the occupiers of Little Paston, with particular regard as to whether it would be overbearing, overshadow, or overlook; and
- the effect of the proposal on the SAC.

Reasons

Living conditions

8. The rear elevation of the proposal would be sited forward of the western elevation of Little Paston by approximately 9.8 to 10 metres, with the intervening boundary formed by a low wall with timber panels and planting above. Due to a higher ground level, Little Paston is set noticeably above the ground level of the appeal site.
9. The appeal site benefits from an outline planning permission¹ for the construction of a new dwelling. However, a planning condition associated with that permission restricts the height of development to a maximum of 1.5 storeys. Notwithstanding, despite the proposal before me being a two-storey dwelling with pitch roof, the difference in the ground levels result in the ridge of the proposal being just 2.53m, as stated by the Council, higher than the roof of Little Paston, which is a flat roof single storey dwelling.
10. Although the Council claim that the proposal would be overbearing and result in overshadowing, no substantive evidence has been provided by either party to demonstrate whether this is the case and, if so, how much overshadowing there would be. The proposal would be offset to the southwest of Little Paston. The bedroom window of Little Paston closest to the proposal would therefore be angled away from the proposed dwelling, with the dwelling not appearing central from this window.
11. Furthermore, in combination with the differing ground levels, separation distance, and that the proposal's pitch roof would slope away from Little Paston, whilst the outlook from Little Paston would change, the proposal would not appear overbearing. Moreover, by reason of the spatial relationship of the proposal being off set, although some overshadowing would occur, any impact on day and sun light reaching the bedroom window would be limited during the

¹ PA21/03284

afternoon and evening and the impact on living conditions would not be significant.

12. The proposal features three first floor windows facing towards Little Paston. The closest first floor window, serving a bedroom would have a triangular oriel bay window, with the glazing facing the window of Little Paston being obscured. This window arrangement, providing the obscure glazed element was fixed, would effectively limit direct or perceived overlooking of the window and garden area of Little Paston. Furthermore, the first-floor bathroom window is also proposed to be obscure glazed. Although I note the Council's comments in relation to this being fixed, given it serves a bathroom, and its position and size, the ability to open the window would not result in unacceptable overlooking.
13. The third window serves a bedroom, although given the spatial relationship of the proposal to Little Paston, this would be at a sufficiently oblique angle to prevent any significant actual or perceived overlooking and therefore also would not require the use of obscure glazing.
14. The proposal would also feature a ground floor window to the rear, solely serving a kitchen, and patio doors from a living area leading to the garden. Nevertheless, given the differences in ground levels, together with existing boundary treatment and the potential for additional landscaping to be secured via condition, the ground floor window or doors would not result in any unacceptable overlooking.
15. For the reasons above, the proposal would not have a harmful effect on the living conditions of the occupiers of Little Paston, by way of any overbearing effects, overshadowing or overlooking. The proposal would therefore accord with policies 1 and 12 of the Cornwall Local Plan Strategic Policies 2010-2030 (LP) and Policy H1 of the Feock Neighbourhood Development Plan 2017-2030. Together these policies seek, amongst other things, for development to protect individuals and property from overlooking, unreasonable loss of privacy, overshadowing and overbearing impacts. The proposal would also accord with the provisions of the Framework which seeks to provide high standards of living conditions for existing and future users.

Special Area of Conservation

16. Features of interest within the SAC include saltmarsh, intertidal mudflats, subtidal sandbanks, large shallow inlets and bays, estuaries, and reefs. The SAC is protected pursuant to the Conservation of Habitats and Species Regulations 2017 (the Regulations).
17. Recreational pressure, predominantly from those living or staying within the zone of influence causes harm to the habitats within the SAC. Additional residents from the proposal could result in adverse effects on the integrity of the SAC. As a result, alone and in combination with other development, the proposal would have a significant effect on the SAC.
18. Accordingly, as the competent authority in the context of this appeal, I am required to carry out an Appropriate Assessment under the Regulations. Mitigation has been developed in the form of SAMM, to avoid such adverse effects, funded through proportionate developer contributions. In this case, the appropriate contribution has been secured through the S111 undertaking.

Natural England have been consulted during the application process and have not objected to the proposal subject to securing the contribution.

19. On this basis, in carrying out the Appropriate Assessment, the adverse effects of the proposal on the integrity of the SAC would be avoided. For these reasons, the proposal would not harm the integrity of the SAC and would accord with LP Policy 22 and guidance outlined in the Councils' European Sites Mitigation Supplementary Planning Document July 2021 which in combination, sets out a strategic approach to the provision of mitigation. The proposal would also accord with the provisions of the Framework which seeks to ensure development does not adversely affect the integrity of Habitats sites.

Conditions

20. The Council has provided a list of conditions, which I have assessed and where necessary amended, having regard to the advice in the Planning Practice Guidance. As well as the standard time limit for commencement, a condition requiring adherence to the approved plans is necessary for certainty.
21. Conditions are required to ensure the provision of effective boundary treatments, ensure obscure glazing is fitted where necessary, and to remove permitted development rights for extensions and alterations and outbuildings to protect the living conditions of neighbouring occupiers.
22. A condition is necessary to ensure the provision of suitable surface water drainage in the interests of preventing flooding and the living conditions of neighbouring occupiers. A condition is also necessary to ensure the submission and approval of materials in the interests of protecting the character and appearance of the area.
23. Finally, conditions are necessary in order to provide visibility splays and appropriate parking and turning areas in the interests of highway safety.

Conclusion

24. For the reasons given above, I conclude that the proposal would comply with the development plan, read as a whole. The appeal is therefore allowed.

S Harrington

INSPECTOR

Annex

Conditions

- 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: 4226-01-B(revised floorplan); 4226-02-C.
- 3) No development shall commence until details of the proposed height, siting, appearance and construction of all boundary treatments (means of enclosure) have been submitted to and approved in writing by the local planning authority. The approved boundary treatment (means of enclosure) shall be completed in accordance with the approved details prior to the first occupation of the development (or the use hereby approved is commenced) and notice shall be given to the local planning authority when the approved scheme has been completed.

The boundary treatment (means of enclosure) shall not thereafter be altered or removed, other than by necessary replacement.

- 4) No development shall commence until details of a system for the disposal of surface water on the site, including a programme for maintaining the system, 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.
- 5) Before any other building or engineering works are carried out on the site, visibility splays shall be provided at the site access in accordance with a scheme which shall have been submitted to and approved in writing by the local planning authority. The access shall not be brought into use until all land within the said visibility splays has been reduced to a height not exceeding 900mm above the adjoining carriageway level and thereafter no obstruction shall be permitted within the approved visibility splays.
- 6) Prior to their fitting, details of the materials to be used in the construction of the external surfaces (doors/windows/lintels/sills/rendering/cladding/roof covering) of the dwelling hereby permitted 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.
- 7) Before the first occupation of the dwelling hereby permitted, parking and turning areas shall be provided in accordance with a detailed scheme which shall have been submitted to and approved in writing by the local planning authority. The parking and turning areas shall not thereafter be obstructed or used for any other purpose.

- 8) Before the first occupation of the dwelling hereby permitted the north-eastern side window of the first-floor triangular oriel bay window shall be fitted with obscure glazing and fixed closed, whilst the first floor bathroom window shall be fitted with obscure glazing. The windows shall be permanently retained in that condition thereafter and no new openings shall be created on the east elevation at first floor level.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), no development within Classes A, B, C, D and E of Part 1 of Schedule 2 to the said Order shall be carried out without an express grant of planning permission, namely:

The enlargement, improvement or other alteration of the dwellinghouse;
The enlargement of the dwellinghouse consisting of an addition or alteration to its roof;

Any other alterations to the roof of the dwellinghouse;

The erection or construction of a porch outside any external door of the dwelling; and

The provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure.

End of Conditions