



Appeal Decision

Site visit made on 5 March 2024

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2024

Appeal Ref: APP/D0840/W/23/3320369

Plots 1-5 Menhyr Close, Newlyn Rd, St Buryan TR19 6FF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions imposed on the approval of reserved matters or details pursuant to a previous planning permission.
 - The appeal is made by Mr Gavin Jackson, Longstone Ltd against the decision of Cornwall Council.
 - The application Ref is PA23/00083.
 - The application sought planning permission for residential development of up to 10 dwellings and access from Newlyn Road without complying with a condition attached to reserved matters Ref PA20/10674, dated 04 Feb 2021.
 - The condition in dispute is No. 1 which states that: The development hereby permitted shall be carried out in accordance with the plans listed below under the heading "Plans Referred to in Consideration of this Application".
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 10 dwellings and access from Newlyn Road at Plots 1-5 Menhyr Close, Newlyn Rd, St Buryan TR19 6FF, in accordance with the application Ref PA23/00083 without compliance with condition number 1 previously imposed on reserved matters approval Ref PA20/10674 dated 04 Feb 2021 and subject to the conditions in the attached schedule.

Preliminary Matters

2. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published. The main parties have had the opportunity to comment on the implications of this change and no parties will have been prejudiced by my having regard to the latest version in reaching my decision.

Background and Main Issue

3. Outline planning permission and reserved matters has been granted for up to 10 dwellings. The appellant seeks to erect dwellings on plots 1–5 of a different design to that approved. The main issue is the effect of the revised design on the character and appearance of the area.

Reasons

4. The appeal site is located on the edge of St. Buryan adjacent a residential development of single storey bungalows, and the access road to a community

hall and playing fields. At the time of my site visit, development had commenced, with plots 6-10 either complete or nearing completion, these being in the form of room in roof style dwellings featuring a low eaves height and projecting gables.

5. The character of St. Buryan is formed by a mixture of detached and terraced historic and modern two storey dwellings of traditional design, as well as modern bungalows, such as that in the vicinity of the appeal site. Plots 1-5 would be the dwellings that would first appear on the edge of the settlement when approaching from an easterly direction on Newlyn Road.
6. Whilst the predominant form of dwelling on Newlyn Road is that of bungalows, I observed that on the approach to the village, the eye catching and prominent built form of the church tower, the Wesleyan Sunday school building, St. Buryan Garage and adjacent two storey hipped roof dwellings contribute vertical emphasis and scale to the character of the settlement.
7. Moreover, plots 6-10 which now also contribute to the character of the immediate area, whilst featuring low eaves, have resulted in dwellings of noticeably and substantially larger scale than the nearby bungalows.
8. The proposed amendment to the design of plots 1-5 would result in dwellings of more traditional two storey appearance with high eaves level. Although the dwellings would be prominent on approach to the village, they would be seen in the context of the previously described more distant built form, as well as the adjacent dwellings at plots 6-10. These dwellings, whilst feature a lower ridge height, would provide visual transition to the neighbouring bungalow development.
9. Moreover, the approved design features significant areas of slate covered roof, which due to the close proximity of the dwellings and length of ridgeline result in a prominent roof scape and massing of built form. The proposed hipped roof design, in combination with narrower footprint resulting in a greater gap between built form, and clad first floor elevations would have the effect of reducing the visual massing of the proposed dwellings.
10. Furthermore, although featuring a higher ridge and eaves height than the previously approved design, the dwellings would be of a more traditional appearance and would not appear any more conspicuous than the previously approved design and would accord with the characteristics of good design as defined in the National Design Guide including context, identity and built form.
11. The countryside surrounding St. Buryan is designated an Area of Great Landscape Value and a defined Heritage Coast. However, the proposal would be read in the context of the built form and as being part of the settlement of St. Buryan. As such, it would not have any harmful effects on the surrounding countryside landscape.
12. Consequently, I conclude that the proposed revised design would not adversely affect the character and appearance of the area. As such, it would accord with Policies 1, 2, 12 and 23 of the Cornwall Local Plan Strategic Policies 2010-2030 and saved Policy CC-5 of the Penwith Local Plan 2004. These policies, amongst other things, seek to ensure development is of high quality design that respects and enhances quality of place and natural landscape. The proposal would also accord with the provisions of the Framework which seeks to ensure well-

designed and beautiful places that contribute to and enhance the natural and local environment.

Other Matters

13. A condition of a reserved matters approval is a condition of a planning permission (that being the combination of the outline planning permission and reserved matters approval). Furthermore, an application under s73 of the Town and Country Planning Act 1990 (as amended) (The Act) is an application for development to be carried out without complying with a condition imposed on a planning permission. The result of a successful s73 application is the grant of a new planning permission.
14. Therefore, it is not possible to grant a new 'approval of reserved matters' through a s73 application (a reserved matters approval being an approval of a condition of planning permission) and if this appeal were allowed, a new planning permission would be created.
15. The outline planning permission, Ref PA18/09367, was granted following a planning obligation securing certain financial contributions under S106 of the Act. Notwithstanding, later planning permissions¹ have been granted under s73 of the Act, albeit purporting to be approval of reserved matters without compliance with conditions. These permissions lacked a new planning obligation or a variation of the original obligation to apply it to the new permissions.
16. It has been put to me that these later permissions have been implemented and evidence has been provided in the form of a Building Inspector's Site Report. No substantive evidence to the contrary is before me, and I have therefore no reason to consider this not to be the case.
17. Although no new or varied planning obligation is before me in respect of this appeal, the previous granting of the planning permissions represents a genuine greater than theoretical 'fallback' position to which I give substantial weight. Therefore, whilst a new or amended mechanism to secure planning obligations is not before me, it has not been demonstrated that such an obligation is necessary in consideration of the fallback position.

Conditions

18. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have limited information before me about the status of the other conditions imposed on the outline planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
19. I have removed the commencement condition as it is no longer necessary given that works have commenced. I have varied the plans condition to include the plans showing the amended design the subject of this appeal.

¹ PA22/07117 & PA23/03853

20. Previously imposed conditions remain relevant and necessary restricting certain classes of permitted development in order for the Council to assess any proposal which may affect neighbouring occupiers living conditions; ensuring a safe and satisfactory access in the interests of highway safety; and ensuring the proposal is carried out in accordance with an Ecological Report in the interests of conserving and enhancing the ecological values of the site and surrounding area.

Conclusion

21. For the reasons given above the appeal is allowed.

S Harrington

INSPECTOR

Schedule

Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: SB/10Arev; SB11; SB/09rev; SB/09A.
- 2) From the date of commencement of the development hereby permitted, and aside from any necessary removal to create the site access, the existing hedgerows bordering the site shall be retained and shall not be removed.
- 3) Prior to the first occupation of any of the dwellings hereby permitted, the visibility splays and the new section of footway along the north-western boundary of the site, shown on approved drawing no 2146-004 Rev P02, shall be constructed and shall be retained thereafter.
- 4) The development hereby permitted shall be undertaken in accordance with the mitigation recommendations set out on page 8 of the submitted Ecological Impact Assessment, dated January 2018.
- 5) 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 Class B of Part 1 of Schedule 2 to the said Order shall be carried out without an express grant of planning permission, namely:

The enlargement of the dwellinghouse consisting of an addition or alteration to its roof.

End of Conditions