



Appeal Decision

Site visit made on 5 August 2025

by **G Roberts BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 August 2025

Appeal Ref: APP/D0840/W/25/3363682

Yew Tree House, Green Lane, Truro, TR1 2DE

- 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 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by C Hoban & J Seale against the decision of Cornwall Council.
- The application Ref is PA24/04793.
- The application sought planning permission for demolition of existing bungalow and construction of two residential dwellings without compliance of condition 2 of decision PA21/01468 dated 05/08/2021.
- The condition in dispute is No 2 which states, together with its reason, that:

Condition 2 – 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”.

Reason – For the avoidance of doubt and in the interests of proper planning.

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing bungalow and construction of two residential dwellings at Yew Tree House, Green Lane, Truro, TR1 2DB, in accordance with application Ref PA24/04793 without compliance with condition 2 imposed on planning permission Ref PA21/01468 and subject to the conditions listed in the Annex to this decision.

Main Issue

2. The main issue is whether the condition is reasonable and necessary in the interests of protecting the living conditions of neighbouring occupiers.

Reasons

3. The appeal site comprises two detached two storey properties that were recently built on the site of a previous bungalow at 68 Daniell Road. This appeal relates to the new dwelling on the southwestern part of the site that is accessed from Green Lane, Unit 2 on the approved plans, now referred to as Yew Tree House. The other new dwelling occupies the northeastern part of the site and is accessed from Daniell Road, Unit 1 on the approved plans. Similar detached properties within spacious plots are to be found to the northwest and southeast of the appeal site.
4. The appeal proposal relates to an existing casement window on the first floor east elevation of Unit 2 that serves a master bedroom. Within the August 2021 planning permission for the two dwellings (Ref PA21/01468) a high level window was shown

on this east elevation. A subsequent application was made to amend this design to a larger openable window, which was refused by the Council due to concerns over the potential loss of privacy to the occupiers of 66 Daniell Road (No.66), to the southeast of the appeal site. Notwithstanding this refusal, a larger window was installed but with a different design to that now proposed.

5. The window now installed is a three pane (panel) casement window, with all three panes obscure glazed. Two of the window panes are fixed shut and the third pane is fitted with a locked restrictor that prevents the window opening by more than 100mm.
6. It is condition 2 (approved plans) to the August 2021 planning permission that this appeal seeks to vary by substituting the plans and elevations of Unit 2 to show this casement window retained as built. The Council contend that this window results in the overlooking of No.66 and a significant loss of privacy, which is not mitigated by the measures put forward and implemented by the Appellant.
7. Paragraph 56 of the National Planning Policy Framework (NPPF) states that “*Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions.*” Paragraph 57 continues by stating that “*Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects.*”
8. The above policy approach is repeated in the Planning Practice Guidance chapter on the ‘Use of planning conditions’.
9. The Council have referred to policy 12 of the Cornwall Local Plan Strategic Policies 2010-2030 (CLP), policy E4 of the Truro and Kenwyn Neighbourhood Plan 2015-2030 (NDP) and paragraph 135 of the NPPF. These require new development to protect individuals and property from overlooking and an unreasonable loss of privacy, with a high standard of amenity for existing and future occupiers.
10. As the casement window is in place, I was able, on my site visit, to fully experience the views and its impact on the living conditions of the occupiers of No.66. I fully understand the reasoning why the 2021 August permission included a high level window on the east elevation of Unit 2. Even so, in my judgement, the casement windows design is acceptable and does not lead to any significant overlooking of No.66. That finding is based on the fact that all three window panes are obscure glazed. The central and left hand window panes, as viewed externally, are fixed shut. The third window pane has a lockable secure restrictor that allows it to open by only 100mm.
11. With the locked restrictor in place, the third window pane opens in a south westerly direction, which only allows views to the south. As I observed when standing at this window pane, the views are very limited and are of the common boundary fence with No.66 and of some trees and low planting in the rear part of the garden to that property. No views are possible towards the rear windows of No.66 or to the main part of its rear garden, including the immediate private amenity area to the rear of that house. All of the measures implemented mitigate for any harmful overlooking of No.66. As such, the limited views available would not result in any harm to their living conditions. I am also satisfied that all of these mitigation measures could be controlled by an appropriate condition

12. That finding is supported by the fact that the casement window serves a bedroom where it would be unlikely to find the occupiers standing for any length of time at the window. Any person sitting close to this window would also not have any view of the rear garden to No.66 due to the existing cill height.
13. The Council have referred to perceived overlooking, but I am not convinced that this is relevant. Loss of privacy is generally assessed in relation to whether the occupiers of a new development would have direct and unfettered views into an adjoining property, where no such views exist at present and if so, whether those views would result in an unreasonable level of overlooking compared to existing.
14. I also concur with the Appellant that certain references to the Cornwall Design Guide relate to different building relationships than those that arise in this case. I also do not agree with the Council's contention that window restrictors are only typically found on public buildings or hotels. They are also commonly found on new windows and are a well-used measure adopted by Council's to mitigate for potential overlooking. Indeed, I have, in fact, dealt with other cases where they have been used for that purpose by this Council. Whilst I accept that the window restrictor can be overridden in emergencies, if it is overridden in any other circumstances then that breach would be detectable, could be evidenced and thus enforced.
15. For the above reasons, I find that condition 2 should be varied to refer to the plans showing the casement window as built, with obscure glazing, two fixed panes and a single pane with a window restrictor to allow it to open by 100mm. I have added a condition to ensure that these mitigation measures remain in place in perpetuity. I have, as is required, also reimposed those conditions on the August 2021 planning permission that remain relevant and in effect. Whilst reference was made to the elements of discharged conditions 3 and 4 that remain in effect, I have not been provided with any suggested wording. I have, therefore, included wording which I understand reflects the elements of conditions 3 and 4 that remain in effect.
16. Accordingly, I find that the proposal as varied would comply with policy 12 of the CLP, policy E4 of the NDP and paragraph 135 f) of the NPPF.

Other Matters

17. The Questionnaire indicates that the appeal site lies within the setting of the Truro Conservation Area (TCA). Section 72(1) of the Planning (Listed Buildings and Conservation Area) Act 1990 requires, therefore, that special attention be paid to the desirability of preserving or enhancing the setting of that area. Similar advice is to be found in the NPPF. However, the plan of the TCA that I have been provided with indicates that the nearest part of the conservation area is some distance to the east of the appeal site and as such the setting of the TCA would not be harmed.

Conclusion

18. For the reasons given above and having taken into account all other matters raised, I conclude that the appeal should be allowed.

G Roberts

INSPECTOR

Annex – Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing 001 (Location & Block Plans); Drawing 003 (Unit 2–Proposed Plans & Elevations); Drawing 006 (Unit 2–Foundation Plan & Sections).
- 2) The completed boundary treatment (means of enclosure), approved pursuant to condition 3 of planning permission ref. PA21/01468, shall not be altered or removed thereafter, other than by necessary replacement.
- 3) The completed system for the disposal of surface water, approved pursuant to condition 4 of planning permission ref. PA21/01468, shall be retained and maintained thereafter in accordance with the agreed programme for maintaining the system.
- 4) The completed parking and turning areas, shown on approved Drawing 001 (Location & Block Plan), shall thereafter not be obstructed or used for any other purpose.
- 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 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 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; 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.
- 6) The three window panes (panels) of the casement window at first floor level, that serves the master bedroom, as shown on the 'Unit 2 – Proposed East Elevation' of approved Drawing 003 (Unit 2-Proposed Plans & Elevations), shall be permanently retained as obscured glazing. Any replacement window panes shall retain this level of obscurity. The central and left hand window panes, as viewed externally, of this casement window shall be permanently fixed shut. The right hand window pane, as viewed externally, of this casement window, as shown on the 'Unit 2 – Proposed East Elevation' of approved Drawing 003 (Unit 2- Proposed Plans & Elevations), shall be permanently fitted with a secure locked restrictor that will not allow this window pane to open by more than 100mm, in a south westerly direction, at any time. Any replacement window pane shall retain this level of restriction.

End of Annex