



Appeal Decision

Site visit made on 3 July 2019

by **Mrs H Nicholls MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9th July 2019

Appeal Ref: APP/Z0835/W/19/3225058

Men-A-Vaur, Church Road, Hugh Town, St Mary's TR21 0NA

- 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 Andrew Sellack against the decision of the Council of The Isles of Scilly.
 - The application Ref P/18/090/FUL, dated 13 December 2018, was refused by notice dated 5 March 2019.
 - The development proposed is construction of residential property for holiday letting purposes, specifically designed to enable occupation of groups including mobility impaired guests, incorporating ground floor wet room ensuite bedroom accommodation and level access to all ground floor and garden areas.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the original application was refused, the National Planning Policy Framework has been updated (the Framework). Since the relevant policies have not significantly changed, I have taken the policies of the revised Framework into account in reaching my decision and do not consider that either party is prejudiced by me doing so.

Application for costs

3. An application for costs was made by Mr Andrew Sellack against the Council of The Isles of Scilly. This application is the subject of a separate Decision.

Main Issues

4. The main issues are:
 - The effect of the proposal on the living conditions of neighbouring occupiers at Nos 4 and 8 Branksea Close, with regard to overlooking and also with regard to noise and disturbance from the increased use of the access path;
 - the effect of the proposal on the biodiversity of the site; and
 - whether the proposed means of access to the site would be adequate for service and emergency vehicles.

Reasons

Living conditions

5. The appeal site is situated in an area of relatively high density residential development and is surrounded on all sides by existing dwellings. There are views to and from the appeal site towards a number of windows of neighbouring properties, particularly at first floor level, which are not obscured by intervening boundary fences.
6. Nos 4 and 8 Branksea Close have blank gable ends facing towards the appeal site. Their front elevations face towards one another across an open courtyard, in the same way as the remainder of dwellings in Branksea Close. Due to their mutual overlooking across the courtyard, the occupants of Branksea Close largely rely on internal privacy measures to maintain privacy within bedrooms.
7. Whilst it is indicated that the proposal has been designed so as to make the most of the outlook over the open landscaped courtyard, the proposed holiday units would be in closest proximity and perpendicular to Nos 4 and 8 Branksea Close. There would be two bedroom windows at first floor level which would be positioned in such a way as to permit oblique views towards the front elevations and windows of Nos 4 and 8.
8. The reference to the 45 degree rule from the SPD¹ is not particularly relevant as that refers to the protection of daylight, rather than privacy. Nor does the window for bedroom 2 appear to be 'backwards' of the principal elevation of No 4 as claimed. As such, despite the oblique angles of view that would be achieved, there would be opportunities to overlook the bedroom windows of Nos 4 and 8 Branksea Close from the proposed first floor bedrooms. Whilst there is already a reliance on internal privacy measures by occupiers of Nos 4 and 8, the increased degree of overlooking and perception of being overlooked by residents of the proposed development would be harmful to the living conditions of occupiers of Nos 4 and 8.
9. I note that the tight character of the settlement may not allow for the strict adherence to relevant minimum distances set out in the Design Guidance SPD. Whilst there is already a degree of mutual overlooking from dwellings in the area, the exacerbation of the effects of overlooking towards Nos 4 and 8 at a closer distance still would be particularly harmful to the living conditions of the affected occupiers. I have reached this conclusion with due regard to the Council's view expressed in the Committee Report. I have also considered the offer by the appellant to fix privacy screens or louvres by planning condition, however, I do not have any such details before me and cannot be satisfied that these measures would achieve an adequate external appearance or internal living environment for future occupiers of the proposed development.
10. In respect of the potential issues of noise and disturbance, the proposal would result in an increase in footfall of pedestrians passing the rear garden of No 8 Branksea Close in order to access the appeal site. The same route is already used by all occupants of Branksea Close to achieve access to their properties.
11. Whilst the appeal proposal would represent an increase in the number of people using the path alongside No 8, given the urban context of the site and its lawful use, the existing arrangements for occupants of Branksea Close and

¹ Isles of Scilly Design Guidance Supplementary Planning Document (2007)

the modest amount of accommodation proposed, I do not consider that this aspect in itself would result in unacceptable noise and disturbance which would harm the living conditions of the occupiers thereof.

12. In view of this main issue, the proposal would be harmful to the living conditions of neighbouring occupiers at Nos 4 and 8 Branksea Close, with particular regard to overlooking. In the absence of a specific development plan policy in relation to this aspect, the proposal conflicts with the provisions of the Framework which seeks to ensure development is designed to provide a high standard of amenity for existing and future users. It would also conflict with guidance set out in the Isles of Scilly Design Guide (2006) that seeks to ensure new development takes account of the need to respect the privacy of adjacent households.

Biodiversity

13. The appeal site has a number of trees and shrubs on, and surrounding it and appears to be a pocket of green in a relatively urbanised context. The trees that are protected by the Conservation Area designation make a degree of contribution to the visual qualities of the area. That is a separate matter to the biodiversity value of the site to which the second reason for refusal relates.
14. Policy 1 of the Isles of Scilly Local Plan² (Local Plan) relates to environmental protection and seeks to protect locally important biodiversity habitats. This policy predates the Framework which states at paragraph 170 that development should contribute to and enhance the natural and local environment, including sites of biodiversity or geological value. The Framework's requirements are more onerous than the development plan policy, thus limiting the weight that can be ascribed to it.
15. The Council's reason for refusal refers to the Framework and also to Policy OE2 of the emerging Draft Isles of Scilly Local Plan³. However, this emerging plan has not yet been submitted for examination and is therefore in the early stages of its preparation. I cannot be confident that the Policy relied on would be adopted in its current form and I therefore give it little weight.
16. I have had regard to the modest number of trees to be removed, the size of the appeal site and its position within an urban area and consider that its biodiversity value may be limited. Nonetheless, there is a potential that the site hosts some habitats of value or is used for foraging by species, including protected species, i.e. bats. The assessment of any potential effects on biodiversity usually requires the submission of a biodiversity survey which sets out the baseline position and the likelihood of any effects. No such survey was submitted with the appeal application although reference was made to the retention of as many trees as possible within the submitted Design and Access Statement.
17. There does not appear to be any details of specific measures could realistically be implemented within the limited area of site to remain undeveloped to achieve a contribution or enhancement in biodiversity terms. Whilst the appellant has agreed that a condition would be accepted in this regard, this does not provide comfort that any impacts on the biodiversity value of the site or protected species could be avoided or sufficiently mitigated through

² The Isles of Scilly Local Plan (adopted 2005)

³ Draft Isles of Scilly Local Plan 2015 - 2030

appropriate enhancement measures that would be necessary to accord with the precautionary approach advocated by the The Conservation of Habitats and Species Regulations 2017.

18. As such, in the absence of information to the contrary, the proposal would harm the biodiversity value of the site and would therefore conflict with Local Plan Policy 1 and the provisions of the Framework.

Access

19. The appeal site would be accessed via a pedestrian path which runs alongside No 8 Branksea Close. The pathway is generally level from the main highway with some small areas of uneven surfacing. I note that a part of the path is narrower than appears on the plan due to a fenced area and planted flowerbed.
20. Notwithstanding some of the more minor aspects about the condition of the path, from the evidence it would appear that it is capable of accommodating a refuse service vehicle. There would appear to be no reason why the same type of service vehicle could not collect refuse from the appeal site if it were sited in such a way as not to obstruct the path itself.
21. The consultation response of Cornwall Fire and Rescue indicates that there should be vehicle access for a pumping appliance to within 45m of all points within the dwelling house. However, it is noted that at least half of the properties in Branksea Close are more distant from a suitable vehicular access point than 45 metres. Not all of the proposed development would be within 45 metres of the kerbside where it is presumed a pumping appliance would park. This aspect may be a shortcoming of the proposal. However, to the extent that this aspect is covered by other legislation and that I am dismissing the appeal for other reasons, this matter is not determinative in this appeal.

Other Matters

22. The appeal site falls within the Isles of Scilly Conservation Area (CA). Subject to the compensatory planting suggested by the Council to offset the loss of trees, there have been no concerns raised in terms of the effects of the scheme on the CA. Consequently, the appeal proposal would preserve the character and the appearance of the CA.

Planning balance and conclusion

23. I note that the proposal would provide accessible accommodation that would contribute to the tourism industry offered on the island. The proposal would also generate economic benefits both throughout the construction phase and following completion when visitors would use local shops and services.
24. The stated benefits would not outweigh the harm to the biodiversity value of the site or the living conditions of neighbouring occupiers. The proposal therefore conflicts with the development plan as a whole and with the Framework.
25. For the above reasons, the appeal is dismissed.

Hollie Nicholls

INSPECTOR