



Council of the
ISLES OF SCILLY

APPEAL STATEMENT

FOR

APPEAL AGAINST REFUSAL

AT

MEN-A-VAUR, CHURCH ROAD, ST MARYS

REFUSED ON 8TH MARCH 2019

APPEAL REFERENCE APP/Z0835/W/19/3225058

30TH MAY 2019

This appeal statement is submitted on behalf of the Council of the Isles of Scilly in relation to appeal reference APP/Z0835/W/19/3225058 and planning application reference P/18/090/FUL.

Application Site

1. This appeal has been submitted following the refusal of planning application reference P/18/090/FUL by the Council of the Isles of Scilly. The proposed development that is the subject of this appeal is for the erection of two semi-detached dwellings in the rear garden of Men-a-Vaur.
2. Men-a-Vaur is a detached dwelling that is situated on Church Road in Hugh Town, which on the island of St Marys. The property is within a residential area on the island and sits within the street scene between two residential properties.
3. The property has a large rear garden but there is no off road parking provision associated with the site. The rear garden adjoins a neighbouring property's garden on the north western boundary.
4. A public pedestrian access runs along the south eastern boundary of the site and this used by the occupiers of Branksea Close to access their properties. These neighbouring properties are arranged around a courtyard and sit to the south east of the application site.
5. At the end of the rear garden of Men-a-Vaur is the private road of Ram's Valley. There is no existing access from this road into the application site.
6. The application site is within a Conservation Area, an Area of Outstanding Natural Beauty and a Heritage Coast.

Proposal Description

7. The proposed development is the construction of two semi-detached dwellings that would be used for holiday letting accommodation. The dwellings would be constructed in the rear garden of Men-a-Vaur.
8. The larger of the two dwellings would be two storeys and would have four bedrooms with an additional bedroom on the ground floor. The ground floor of this dwelling would also accommodate an open plan kitchen/living/dining area.
9. The smaller of the two dwellings would be adjoined to the other dwelling by a two storey link that would act as the main access for both dwellings. This smaller dwelling would be single storey and would provide one double bedroom with an open plan kitchen/living/dining area.
10. Whilst the two dwellings would be technically independent of each other in terms of facilities, it is envisaged that they would sometimes be used by a single group. In addition, both dwellings have been designed to be wheelchair accessible, thereby providing disabled friendly holiday accommodation.
11. The external walls of the dwellings would be painted render upon a brick plinth, with sections of boarded cladding on the link. The roofs of the two dwellings would be clad in natural slate and the roof of the link would be clad in terracotta pan tiles.
12. The site would only be accessible by foot and there is no on site parking proposed. The pedestrian access to the site would be via Branksea Close. Paths would then be set out within the site to allow disabled access on a level surface.
13. It is mentioned earlier in the statement that the site adjoins Ram's Valley and that there is no access to the site from this road. It is still not proposed to provide an access to the site from this road.

Relevant National Legislation

14. The application site is within a Conservation Area, where there is a requirement to ensure that any development preserves or enhances the character or appearance of the area, as embodied in Section 72 of the Planning (Listed Buildings and Conservation Area) Act 1990.
15. The Isles of Scilly is also a designated Area of Outstanding Natural Beauty (AONB). The legal framework for such areas is provided by the Countryside and Rights of Way Act 2000. The Act places a statutory duty on the Local Authority to have regard to the purpose of conserving and enhancing the natural beauty of the AONB when exercising or performing any functions affecting land within it.
16. At the heart of the National Planning Policy Framework 2019 (NPPF) is a presumption in favour of sustainable development. The NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place. With respect to general development and the Strategic Policies it is considered that the Local Plan remains up to date and conforms to the requirements of the NPPF.
17. Chapter 15 of the NPPF relates to the conservation and enhancement of the natural environment. Paragraph 172 advises that great weight should be given to conserving the landscape and scenic beauty in Areas of Outstanding Natural Beauty, which have the highest status of protection.
18. The conservation of wildlife and cultural heritage are important considerations. Paragraph 194 of the NPPF sets out clearly that any harm to, or loss of, the significance of a designated heritage asset would require clear and convincing justification and assets of the highest significance, notably scheduled monuments should be wholly exceptional.

Local Planning Policy Framework

19. Section 70(2) of the Town and Country Planning Act requires the Local Planning Authority to have regard to the development plan, so far as material to the application, and any other material considerations when determining planning applications.
20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
21. The Isles of Scilly Local Plan – A 2020 Vision, which was adopted in November 2005, is the currently adopted development plan for the Isles of Scilly.
22. The Isles of Scilly Local Plan 2015 – 2030 is the draft Local Plan for the islands and is currently in the form of a Pre-Submission Draft. This draft Local Plan is considered to be in advanced stage of adoption and it is considered to be consistent with the NPPF. As such, it is considered that this policy document can be afforded great weight under Paragraph 48 of the NPPF, subject to their being no significant unresolved objections for certain policies.
23. If there is conflict between policies of the adopted Local Plan and the policies of the draft Local Plan, then under Paragraph 38(5) of the Planning and Compulsory Purchase Act 2004, the conflict must be resolved in favour of the policy that is contained within the last document adopted, the 2005 Local Plan. The adopted Local Plan is the starting point when determining planning applications.
24. The Isles of Scilly Design Guide also forms part of the development plan as a Supplementary Planning Document (SPD). This document was approved in 2006 and provides clear and practical guidance in order to achieve high quality and sustainable design and ensure the special character of Scilly is retained, and where possible, enhanced.

Isles of Scilly Local Plan 2005

25. Policy 1 relates to environmental protection and seeks to permit development proposal only where they respect and protect the recognised quality of the island's natural, archaeological, historic and built environment. Proposals should (a) conserve or enhance the natural beauty, wildlife and cultural heritage of the Area of Outstanding Natural Beauty and protect the unspoilt character and good appearance of the heritage coast, (b) Preserve nationally important archaeological remains and their settings; (c) Preserve or enhance the character or appearance of the Conservation Area and preserve the architectural or historic interest of all listed buildings, including their features and settings; (d) safeguard the integrity and nature conservation objectives of Special Protection Areas (SPAs), RAMSAR sites and Special Areas of Conservation (SAC); (e) protect a statutorily protected plant or animal species and the wildlife, geographical and geomorphological interest and features of designated Sites of Special Scientific Interest (SSSI); and locally important biodiversity habitats, species and landscape features.

26. Policy 2 relates to Sustainable Development and seeks to permit development in situations where the development contributes to the sustainability of the islands' environment, economy or local community. Policy 2 (a) requires development to ensure conserve or enhance the landscape, coastline, seascape and existing buildings of the islands through appropriate design including siting, layout, density, scale, external appearance (i.e. details and materials) and landscaping.

27. Policy 4 relates to Economic Development and seeks to promote employment and economic activity by providing opportunities for businesses to support viable communities. Proposals based on the existing economic base of tourism, agriculture and fishing, as well as the distinctiveness of the islands, will be supported where it meets one of five scenarios set out in the policy.

Draft Isles of Scilly Local Plan 2015 – 2030

28. The emerging policies within the Pre-Submission Draft of the Local Plan set out a clear range of policies designed to protect the natural environment (Policy OE2) and the provision of appropriate tourism development (Policy WC5).
29. No significant objections have been received in relation to the above two policies of the draft Local Plan. There has been support received for the policies, together with comments suggesting minor amendments. As such, these policies are not considered to have significant unresolved objections and can be afforded great weight given the draft Local Plan's advanced stage in the adoption process.

Reasons for Refusal

30. The refused application went before the Isles of Scilly Full Council meeting on 5th March 2019. Members of the Council considered the proposal and voted to refuse the application for three reasons. These reasons were provided on the decision notice dated 8th March 2019, but are set out below for ease of reference and in the interests of clarity.
31. The first reason for refusal is that the proposed development by reason of the close proximity to existing neighbouring properties on Branksea Close is considered to give rise to significant overlooking contrary to the guidance set out in the Isles of Scilly Design Guide. This Supplementary Planning Document requires development to be designed to minimise overlooking of existing neighbouring properties.
32. The second reason for refusal is that the proposed development would result in the loss of greenspace and biodiversity habitat, which is not compensated for in the application, contrary to the requirements of emerging Policy OE2 of the Draft Isles of Scilly Local Plan 2015-2030 and paragraph 170(d) of the National Planning Policy Framework, 2018.

33. The third reason for refusal is that the proposed development would provide up to 12 bedspaces of holiday letting accommodation that would be served by an access road that is inadequate for service vehicles, number of pedestrians and the proximity of that access to other properties.

Amplification of Reasons for Refusal

34. It is noted that the application was presented to the Full Council meeting by Officers with a recommendation for approval and that the decision taken by Members was contrary to the recommendation. However, the reasons for refusal were matters that were considered by Officers but Members have decided to use their own independent judgement to apply greater weight to these matters when deciding to refuse the application.
35. Officers consider that Members have not acted unfairly when reaching this decision and the matter of costs shall be dealt with in a separate statement to be submitted to the Inspectorate.
36. Taking the decision of Members, where they applied greater weight to the matters considered by Officers, it is considered that it was not unreasonable to refuse the application and Officers consider it appropriate to defend the Council's decision.
37. The following three sections of this appeal statement shall focus on the three individual reasons for refusing the application.

Adverse Impact on Neighbouring Amenity

38. The first reason for refusal relates to the impact of the proposed development on the amenity of neighbouring properties at Branksea Close and this impact is considered to be detrimental in the form of overlooking.
39. The Isles of Scilly Design Guide is specifically referred to in this reason for refusal. This document advises that when constructing a new dwelling, an

appropriate house is designed to minimise overlooking of its neighbours. An inappropriate house is a poor neighbour in that it causes overlooking problems. There are further references in the document that require new development to respect the privacy of neighbouring properties, including Section 3, which states that privacy between neighbours can be compromised through the ill-considered layout and design of a new development.

40. It is also important to note the policies of the emerging draft Local Plan. Policy WC5 of the draft Local Plan was referenced in the committee report considered by Members and while it is not specifically mentioned in the reason for refusal, it is still considered to be a material consideration in this appeal. This policy states that proposals for new tourism development will not be permitted where they do not result in an unacceptable impact on the environment or residential amenities, in accordance with other relevant policies in the Local Plan.
41. Branksea Close is situated to the south east of Men-a-Vaur and consists of attached dwellings formed around a courtyard. The proposed dwellings would sit adjacent to the north western edge of this courtyard and would face directly over it. The dwellings of Branksea Close would be perpendicular to the proposed dwellings but the Council considers that there would be an increase in overlooking of 4 and 8 Branksea Close.
42. There would be four windows in the eastern elevation of the first floor of the two storey dwelling and a further windows in this elevation of the first floor of the link. All of these windows would face towards Branksea Close.
43. It is acknowledged that the above stated windows in the proposed development would not be parallel with the windows of 4 and 8 Branksea Close, but the Council considers that the proposed development would increase overlooking into these properties. These windows in the proposed development would look into the windows of these neighbouring properties.
44. The windows in the proposed development would have an oblique view into the neighbouring windows. With the windows of other dwellings on Branksea Close

looking into 4 and 8 Branksea Close, it is considered that the proposed development would further reduce the areas of the upstairs rooms that are free from overlooking by providing views into these properties that are currently not achievable.

45. In addition to the above, it is considered that the proposed development would increase the perception of overlooking. The perception of overlooking is considered to be a material consideration to take into when determining the impact on amenity. This was expressed in an appeal in Brighton and Hove (appeal reference APP/Q1445/D/16/3164178). This previous appeal decision is attached at **Appendix A** of this statement and was where an appeal was dismissed on the grounds that the proposed first floor windows would cause significant harm to neighbour's amenity by reason of the perception of overlooking.
46. It is a currently accepted situation that there is mutual overlooking between properties on Branksea Close. However, the introduction of a further large dwelling on the end of the row of terraces, which would essentially face towards the existing properties and would be a dominating presence of the edge of the public courtyard, would lead to a level of development that would increase the perception experienced by occupiers of 4 and 8 Branksea Close that they are being overlooked.
47. The proposed development is considered to materially increase overlooking to a harmful degree that the Council consider warranted refusing the application.

Unacceptable Loss of Green Space & Biodiversity

48. The second reason for refusal relates to the loss of green space and biodiversity that would result from the proposed development, and the lack of compensation for this loss.
49. The rear garden of Men-a-Vaur, where the two dwellings would be constructed, is characterised by its undeveloped nature with a range of trees and other flora.

Although, it is noted that tree works were being carried out during the application determination process. The garden does provide potential habitat for wildlife and is a visible green space within this built up area.

50. It is acknowledged that Officers originally considered that the loss of potential habitat and green space could be dealt with by way of planning conditions. However, following the Full Council meeting, the Council considers that conditions cannot sufficiently mitigate against the loss of wildlife habitat.
51. Policy OE2 of the draft Local Plan is specifically referenced in the second refusal reason. This policy states that development will be required to conserve, protect and, where possible, restore and/or provide measurable net gains to biodiversity and geodiversity interests and soils. All development must ensure that the importance of habitats, designated sites and species are taken into account; they must also incorporate appropriate measures to avoid and reduce the disturbance of sensitive wildlife sites and habitats, provide opportunities for enhancement wherever possible, and minimise the impacts of non-native species through the lifetime of the development.
52. Paragraph 170(d) of the NPPF is also referenced. This states that planning policies and decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
53. The trees within the site have the potential to provide habitats for nesting birds and possibly bats. It is noted that objection letters received during the application determination process stated that bats had been seen in the area. The construction of two dwellings on this site would lead to an irreversible change in the nature of the site. It is clear that potential habitat would be lost as a result of this proposed development.
54. The site is considered to have a high value in terms of potential habitat provision and is protected from unjustified loss of trees due to it being within a

Conservation Area. There is the potential for alternative provision to be provided as part of the proposed development, but the Council consider that sufficient provision would be difficult to incorporate into the development to the extent that it would at least conserve the wildlife interests on site.

55. It is difficult to ignore that two dwellings with all the noise, activity and hard standing associated with such development would not provide as suitable environment for wildlife as the currently undeveloped nature of the site.
56. The loss of habitat, which is not considered to be achievable to compensate for, is contrary to Policy OE2 of the draft Local Plan and Paragraph 170(d) of the NPPF.

Adverse Impact on Access to Branksea Close.

57. The third reason for refusal relates to the amount of people that would visit the dwellings and the impact that this would have on the number of pedestrian using the access to Branksea Close, and the associated noise disturbance to properties close to this access. Reference is also made to this access being inadequate for service vehicles.
58. In respect of service vehicles, Cornwall Fire and Rescue commented during the application determination process and they stated that there should be vehicle access for a pumping appliance to within 45m of all points within the dwelling house. Every elevation to which vehicle access is provided should have a suitable door, not less than 750mm wide, giving access to the interior of the building.
59. The comments received suggest that a fire vehicle would not be able to use Branksea Close to reach the dwelling and it is noted that the plans indicate that there are areas of the dwelling that are further than 45 metres from the main road of Church Road.

60. Members gave weight to this matter and this is not considered to be unreasonable given that the safety of the occupants of the proposed development could be considered to be a material consideration. Given weight to this matter, the Council considers that the access is inadequate to allow a fire vehicle access to the property in the event of an emergency.
61. In addition to the issues with the access for service vehicles, the proposed development would also see a significant increase in the amount of pedestrians using the access to Branksea Close. The rear garden for 8 Branksea Close is adjacent to this access and there is the potential for noise disturbance from groups of people coming to and from the application site.
62. The number of potential bedspaces in the proposed development is considered to materially increase noise disturbance over and above the existing occupants of Branksea Close travelling to and from their properties.

Conclusion

63. Overall, the proposed development was considered by Full Council and was refused planning permission. The three reasons for refusal are considered to be well founded. This appeal statement should clarify the reasons for refusing the application and is considered to explain that the development has been considered by the Council to be contrary to the Isles of Scilly Design Guide 2006 and the draft Isles of Scilly Local Plan 2015 – 2030. As such, it is respectfully requested that this appeal be dismissed.

Kieran Reeves *MRTPI*

Planning Officer

On Behalf of the Council of the Isles of Scilly

Appendix A



Appeal Decision

Site visit made on 23 January 2017

by **Philip Willmer BSc Dip Arch RIBA**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 09 February 2017

Appeal Ref: APP/QI445/D/16/3164178

9 Beechwood Avenue, Brighton, East Sussex, BN1 8ED.

- 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 Nicholas Bolton against the decision of Brighton and Hove City Council.
 - The application Ref BH2016/05207, dated 6 September 2016, was refused by notice dated 8 November 2016.
 - The development proposed is described as erection of a two storey rear extension with associated roof alterations. Window configuration altered and building re clad due to the amendments to the internal layout.
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Decision

1. The appeal is dismissed.

Main Issue

2. I consider that the main issue in this case is the effect of the proposed development on the living conditions of the occupiers of number 11 Beechwood Avenue in terms of the extension's potential to appear overbearing and overshadow existing side windows and, in respect of both numbers 7 and 11, its potential to lead to overlooking resulting in a loss of privacy.

Reasons

3. The appeal property, number 9 Beechwood Avenue, is a two-storey detached dwelling house. The surrounding area is characterised by detached properties on relatively spacious plots. While there is no overriding architectural style prevalent in the local area, number 9 is unusual having a Dutch style mansard roof set eaves onto the road.
4. The property sits on the crown of the rise with the land sloping away to both the north and south. It has a single storey rear addition with raised access decking to accommodate the sloping land.
5. In conjunction with alterations to the fenestration and the re-ordering of the internal rooms, the appellant proposes the replacement of the existing rear extension with a two-storey full width rear addition.
6. Number 11 Beechwood Avenue, located on the corner of Beechwood Avenue and Beechwood Close, is a bungalow with roof space accommodation. Due to the topography of the site it is located at a lower level than number 9. It has

both a pair of French doors and a small window in its rear wall that face towards the appeal site. Number 7 is a detached house separated from number 9 by a shared drive.

7. The proposed extension, because of the designer's adoption of the existing roof style for the new addition, would serve to increase the three dimensional form and overall mass of the house. However, given the separation distance between numbers 9 and 11 and the existing built up nature of the area, I do not consider that the proposed extension would have such an overbearing impact on the neighbouring occupiers as to cause significant harm to their living conditions.
8. The proposed addition would be sited due south of number 11. Given the separation distances involved and the number of windows that serve the living room of number 11, I am not persuaded that the extension to number 9 would result in the loss of natural light to this habitable room. There may be some loss of sunlight when the sun is low in the sky to the small rear courtyard garden area and the living room through the French doors. However, given the orientation of the two properties, the separation distance between them and the limited depth of the proposed extension, I do not consider this would be so significant as to be detrimental to residential living conditions.
9. Alterations are proposed to the existing fenestration in the retained facades of the building, which generally I find acceptable. Further, depending on the cill height above finished floor level, a matter that could be conditioned if I were minded to allow the appeal, I do not consider that the new high level windows, in either the south or north elevations of the extension at ground floor level, would cause harm to the living conditions of neighbouring residential occupiers, by reason of either actual or perceived overlooking.
10. However, the scheme design includes for two new large first floor windows, one each in the north and south elevations serving bedrooms 1 and 2 respectively, shown obscure glazed. The first floor window to bedroom 1 would look directly down and over the private rear amenity space of number 11 and would afford views into the living room. I accept that the impact on privacy would be somewhat diminished by obscure glazing the window as proposed. However, if obscure glazed and even locked shut, the inclusion of such a large area of glazing here would, I believe, result in a harmful perception of overlooking. While views of the rear garden of number 7 from the first floor window to bedroom 2 would be less prominent, I nevertheless consider, as identified by the Council, that a large window here would also result again in the perception of overlooking. Due to the prominence of the two first floor windows, I consider, despite the existing level of overlooking from number 9 Beechwood, that in this case, even the perception of overlooking from the two additional windows would be harmful to the living conditions of the occupiers of numbers 7 and 11 Beechwood Avenue.
11. I conclude in respect of the main issue that the proposal would not appear either so overbearing or result in such a level of overshadowing as to cause harm to residential living conditions. However, it would, by reason of the perception of overlooking from the new first floor windows in the extension, cause significant harm to neighbours' amenity. The development would

therefore not accord with Policy QD27 of the Brighton and Hove Local Plan 2005.

Overall conclusion

12. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Philip Willmer

INSPECTOR