

Appeal Decision

Site visit made on 20 September 2016

by R J Jackson BA MPhil DMS MRTPI MCMI

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

Decision date: 11 October 2016

Appeal Ref: APP/D0840/W/16/3152460

**Land at Mount Pleasant, Withiel Turn, Roche, St Austell, Cornwall
PL26 8LH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mount Pleasant Sustainable Self Build Ltd against the decision of Cornwall Council.
 - The application Ref PA15/07270, dated 4 August 2015, was refused by notice dated 21 December 2015.
 - The development proposed is exemplar sustainable self-build development, consisting of: 10 No exemplar sustainable self-build plots (use class C3), 1 No sustainable B1 unit.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was made in outline with all matters except access reserved for later consideration. I have considered the appeal on this basis. However, an illustrative plan showing a potential layout was also submitted, and I have used that in my consideration to assist me.
3. During the processing of the application by the Council a revised plan showing details of the access was submitted and the Council took this into account when it made its decision. I, too, will use this plan.
4. I have been provided with a Planning Obligation by way of Unilateral Undertaking dated 19 September 2016 to Cornwall Council. I will cover this later in this decision.

Main Issues

5. The main issues in this case are:
 - whether the site is in an appropriate location bearing in mind the policies of the development plan;
 - the effect on the character and appearance of the area;
 - whether the proposal makes adequate provision for affordable housing and education; and
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- whether there are other material considerations that indicate that the development should be determined otherwise than in accordance with the development plan.

Reasons

6. The appeal site is located to the north of the A30 Victoria interchange to the east of the Withiel Road. Immediately to the north are a number of industrial and storage uses, to the southwest is a single dwelling, and I am advised that a second dwelling is under construction. To the east of the appeal site is a track to land to the rear and beyond the track is a dwelling and restaurant, with a row of evergreen trees between the two.
7. The western part of the appeal site close to the entrance is surfaced, partly with scalping and partly with concrete. The central part of the site has a beaten earth surface, and the eastern part of the site is covered in vegetation. The southern boundary is vegetated with a gate to a triangular grassed area created when the A30 was diverted to the south. There are bus stops located on either side of the former A30 roughly level with the eastern boundary of the appeal site. The site slopes gently down to the southeast corner of the site.
8. In 2008 and 2009 two Certificates of Lawful Development or Use were granted for the appeal site. These were for, in précis, the parking of cars and HGVs, the storage and break up of scrap vehicles and sale or reclaimed parts, undercover storage, a cold store for retail sale of frozen produce and a single dwelling. In 2010 planning permission was granted for seven industrial units, a site office and parking and turning. The appellant maintains that this planning permission has been implemented.
9. This appeal is not the forum to establish whether the planning permission has been lawfully implemented, but whether or not it has been it is clear that there remains a fall-back position of either this permission or the certified uses.

Accessible location

10. As part of my site visit I toured the area and drove to the villages of Roche and Victoria and noted the location of the Roche railway station. In its grounds of appeal the appellant seeks to show that the appeal site lies within a settlement. There is no definition of a settlement within the National Planning Policy Framework (the Framework), and the appellant refers to a dictionary definition as being 'a place, typically one which has previously been uninhabited, where people establish a community'. It maintains that the settlement is based on the immediate area based to the junction of Withiel Road with the former A30.
11. However, I consider that this area does not have the particular attributes to form a settlement within the normal planning sense of the term. A settlement will have a mixture of facilities to serve the needs of the residents, although in rural areas such as this, they may be spread over a number of different and nearby settlements. This reflects the advice in paragraph 55 of the Framework that development in one village may support services in a village nearby.
12. In the immediate vicinity of the appeal site are a small number of dwellings and a small number of businesses. While there is a restaurant immediately to the east, the Auberge Asterisk, there are no shops, schools or other community or leisure facilities. Rather this seems to be an area of sporadic development in the countryside. That, if permitted, the occupiers of the ten dwellings would

create some sort of community with the existing residents, does not mean that a settlement would be created.

13. Overall I therefore am of the view that the proposed development would represent the construction of new isolated dwellings in the countryside, which following paragraph 55 of the Framework, should be avoided unless there are special circumstances. It would mean that any future residents would be generally reliant on the private car to get to higher order facilities. In saying I note that there are bus stops close to the site, but these offer only, at best, an hourly service during the day.
14. I appreciate that there are some facilities in the surrounding area. The Cornwall Services are a short distance away, but these predominantly are to provide facilities for users of the trunk road network rather than facilities for local residents. All the other facilities are in the villages of Victoria and Roche are some distance away and would require the occupiers of any of the dwellings to travel some distance. That there are pavements beside the highway allows them to be used, but with traffic moving at high speed this would not represent a high quality environment which residents of the new dwellings would be encouraged to use by non-car modes, particularly at night.
15. I therefore conclude that the appeal site is not well located in an accessible location. Given the distances from the main facilities I give this harm significant weight. It would therefore be contrary to Policies 1 and 76 of the Restormel Local Plan (the RLP) in that the proposal would not be of a size and type appropriate to the needs of the locality, its environmental constraints and its potential for reducing the number and length of journeys, especially by car, and would not represent infill development of one or two dwellings, or an agricultural workers dwelling. It would also not comply with Policies 3 and 8 of the Cornwall Local Plan (the CLP) in that would not be a windfall scheme of under ten units and would not represent a replacement dwelling or re-use of a redundant, disused or historic building. It would also not comply with paragraphs 34, 37 and 55 of the Framework in that it would represent isolated homes in the countryside and would not be located where the need to travel would be minimised, particularly in relation to journey lengths for employment, shopping, leisure and other activities.

Character and appearance

16. The introduction of ten dwellings and a single light industrial unit covers a considerably larger area than the permitted scheme extending into the area marked a "Transport Yard" on the approved drawing at the eastern end of the appeal site, and the area adjacent to the Auberge Asterisk to the west. Because the proposed development would extend built development, along with the ancillary activity, further to the west than the approved scheme, it would represent a further urbanising encroachment into the countryside significantly harmful to the character and appearance of the area.
17. I can appreciate that the appellant has not actively pursued the light industrial scheme because of the proposal for the residential re-development of the appeal site. I fully take account of the appellant's assertion that the light industrial scheme would be constructed in the event of the appeal being dismissed. However, given the length of time between the planning permission being obtained and the current appeal application being submitted, there is

some considerable uncertainty that it would actually be built out. I therefore only give this limited weight.

18. I have not been provided with copies of the Lawful Development Certificates, but notwithstanding this the introduction of ten dwellings and a light industrial unit would have a greater urbanising effect than the uses described.
19. Policy 2 of the RLP indicates that certain benefits of development will be taken into account. Included within this are developments which include the refurbishment or regeneration of unused buildings and areas. However, as it has not been demonstrated to me that the proposed scheme is the minimum necessary to resolve this site I am only able to give this limited weight in favour of the development.
20. Overall, the proposal would be harmful to the character and appearance of the area. As such it would be contrary to Policy 3 of the RLP and would be contrary to the core planning principle set out in paragraph 17 of the Framework in that it would not recognise the intrinsic character and beauty of the countryside.

Affordable housing and education provision

21. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations) states a planning obligation may only constitute a reason for granting planning permission if the obligation passes three requirements. This is reiterated in paragraph 204 of the Framework. These requirements are that the Obligation is necessary to make the development acceptable in planning terms, that it is directly related to the development and fairly and reasonably related in scale and kind to the development.
22. Regulation 123 of the CIL Regulations also states a planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure where five or more separate planning obligations provide for the funding or provision of that project or provide for the funding or provision of that type of infrastructure.
23. Policy 74 of the RLP indicates that when proposals for housing development are being considered the Council will seek to include a reasonable provision for affordable housing; the proportion varying according to market and site conditions. In 2014 the Council published a draft Cornwall Affordable Housing Supplementary Planning Document (the CAHSPD) which sets out either the proportion of affordable housing to be delivered on site or, where appropriate, the equivalent monetary sum to allow for provision elsewhere.
24. The National Planning Policy Guidance (the PPG) refers to the Written Ministerial Statement (the WMS) of 28 November 2014 and indicates that affordable housing and tariff style contributions should not be sought from small scale and self-build development, setting a threshold of 10 units or less or those schemes which have a maximum gross floor space of 1,000m². Although only for 10 dwellings, as an outline application it is not possible to determine whether the proposed floorspace would exceed 1,000m²; this would be dealt with at the reserved matters stage. Although the CAHSPD sets a threshold of a net increase of two or more units as a more recent statement of policy I prefer the threshold set out in the WMS.

25. It would not be possible to require a contribution at the reserved matters stage if the floorspace exceeded 1,000m² if it had not been secured at this outline permission stage. If the proposal exceeds 1,000m² I am satisfied that a contribution would be necessary to make the development acceptable and, if calculated in accordance with the CAHSPD, then it would be directly related to the development and fairly and reasonably related in scale and kind to the development. The parties agree that provision for affordable housing should be made by way of financial contribution and I agree that this would be appropriate given the nature of the proposal.
26. The Planning Obligation sets out a contribution towards affordable housing and I am satisfied that this would make appropriate provision in line with the CAHSPD. The Council objects to the triggers for payment set out in the Obligation, but I am satisfied, given the nature of the proposal, that it would ensure that appropriate provision would be made and that the triggers could be identified. I am therefore able to take this contribution into account. As affordable housing does not represent infrastructure within the terms of the CIL Regulations I am satisfied that this element of the Obligation would comply with Regulation 123.
27. Policy 7 of the RLP indicates that when certain infrastructure is made necessary by a proposed development then consent may be withheld until such time as the required infrastructure is provided, or the provision of such infrastructure may be made the subject of a planning consent condition or negotiated as part of an agreement under Section 106 of the Town and Country Planning Act 1990 or an equivalent unilateral undertaking.
28. The Council has identified that the local primary school has insufficient capacity to accommodate the children who would be living at the site. It therefore seeks a contribution towards education facilities at Roche CP School, and the Obligation makes this provision. The Council has published Guidance on Section 106 Planning Obligations for Education Provision (the GEP) to set out what money would be sought. Given the shortfall in provision in the area I am satisfied that a contribution is necessary and through the GEP would be directly related to the development and fairly and reasonably related in scale and kind to the development. However, I do not have information to confirm that the contribution would comply with the totting-up requirements of Regulation 123. Had I been minded to allow the appeal I would have reverted to the main parties, but as the appeal is to be dismissed I do not need to take this matter further.
29. I am therefore satisfied that the proposal makes adequate provision for affordable housing, and subject to clarification on the totting-up provisions set out above, may also make adequate provision for education provision. The proposal would then comply with Policies 7 and 74 of the RLP as set out above and the CAHSPD and the GEP. It would also then comply with Policies 8, 11 and 28 of the CLP in that it would provide appropriate affordable housing and enhance local infrastructure that would be adversely affected by the development. It would, subject to clarification, comply with paragraphs 50 and 72 of the Framework which seek appropriate provision of affordable housing and education.
30. In line with Policy 2 of the RLP these benefits should be taken into account. However, as both these contributions are needed to ensure that the

development does not have any greater impact on the local community both are neutral factors in the final planning balance.

Other material considerations

31. Under the terms of the policies of the RLP the appeal site lies in the countryside. Here policies restrict additional housing development, only permitting, as an exception to the normal policies of restraint, for affordable housing, infill developments of one or two dwellings within the built up part of settlements not listed in Policy 3, and for dwellings for agricultural workers. As such the proposal is contrary to the RLP. The RLP was adopted in 2001 and the Council is currently producing the CLP as a replacement.
32. The CLP is currently going through the process of examination. The CLP was originally submitted in February 2015 but there was then a suspension of the examination as the Local Plan Inspector asked for clarification and further work. Various changes were produced and further hearings were held in May 2016. Further Post Hearing Changes have been made and these were consulted upon during the summer of 2016, with comments sought being limited to those changes.
33. The Framework in paragraph 47, in seeking to boost significantly the supply of housing, requires local planning authorities to ensure that their local plans meet the full, objectively assessed needs (FOAN) for market and affordable housing. It is clear that the RLP does not meet this requirement, and to that extent its policies for the supply of housing land cannot be considered consistent with the Framework, and can only be given very limited weight in line with paragraph 215 of the Framework.
34. Further, as a 5 year supply of housing land cannot be demonstrated when compared with the policies for the supply of housing in the RLP relevant policies for the supply of housing should, in line with paragraph 49 of the Framework, be considered out-of-date. Therefore, in line with paragraph 14 of the Framework planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
35. The CLP has been produced taking into account the policies in the Framework and current version tested and examined against it, with the latest FOAN figure being based on the CLP Inspector's preliminary findings. However, the Inspector's final report on the CLP has yet to be received and, while the Council does not anticipate that the FOAN figure will change, this cannot be guaranteed.
36. Paragraph 216 of the Framework indicates greater weight can be given to emerging plans depending on the stage of preparation, the extent of unresolved objections, and the degree of consistency with the Framework. In light of the CLP Inspector's preliminary findings I am satisfied that, overall, the housing figure in the CLP is a reasonable basis against which to judge the current housing land supply situation, but can only be given considerable rather than full weight.
37. Utilising the housing figure in the CLP the Council is of the view that it can show a 5 year supply of housing land, but as explained above I cannot be sure that this level of requirement is the final figure. This means I cannot be

- satisfied that a 5 year supply of housing land does exist and, therefore, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
38. The appeal site also lies in the area covered by the forthcoming Roche Neighbourhood Plan (the RNP). I have been provided with a copy of the draft RNP, but as this is at a very early stage in the process I can only give this very limited weight.
39. The appellant suggests that the proposal should be considered against the provisions in the fourth bullet point to paragraph 55 of the Framework. This allows, as one of the special circumstances, permission to be granted for an isolated dwelling in the countryside because of the exceptional quality or innovative nature of the design. However, to meet these criteria any dwelling would need to meet these requirements, and as an outline application it is very difficult to show that any dwelling would meet these exceptional requirements. To state that the proposal, as in the description, would be an "exemplar", is not sufficient; it needs to be demonstrated. There is nothing in the application to indicate that the proposals would be truly outstanding or innovative, and consequently I can give this proposal no additional benefit under these provisions.
40. Under the Self-build and Custom Housebuilding Act 2015 the Council is required to keep a self-build and custom housebuilding register. The PPG makes it clear¹ that the purpose of the register is to provide information on the demand for these types of housing as part of the authority's evidence base. This forms part of the planned development for the area as set out in paragraph 50 of the Framework. Just because a proposal would be a self-build scheme would not make a scheme that was otherwise in an unacceptable location acceptable.
41. The proposal is not a rural exception scheme, for those whose needs are not met by the market, and consequently those policies in the RLP, such as Policy 75, and the CLP relating to such schemes are not material. Similarly the proposal is not one for starter homes.
42. When it originally considered the application the Council resolved to grant planning permission subject to a Planning Obligation restricting the occupation of the dwellings to those with a local connection and this is provided for within the Planning Obligation. The Planning Obligation sets a 'cascade' whereby, following advertising, sale of any plot would be first offered to those with a local connection, as defined, within 7 miles of the appeal site, secondly to those similarly connected to the county of Cornwall, and finally to others.
43. I do not consider that such an obligation is necessary. Planning does not, generally, recognise users; rather it deals with uses. The effects of someone living on the site would be, essentially, the same wherever they have previously lived. This is a different situation to that for rural exception sites where a need is shown that cannot be met through the normal provision of housing. It has not been demonstrated that there is a need for self-build properties in the locality which could not be met through another site. This

¹ Reference ID: 57-003-20160401

particular part of the Planning Obligation cannot be given any weight as it does not comply with the CIL Regulations or Framework as set out above.

Other matters

44. Local residents are concerned about potential flooding from the appeal site. However, the local lead flood authority has indicated that surface water drainage could be satisfactorily resolved by implementation of an appropriate scheme. I am satisfied, therefore, that drainage could be resolved by the imposition of an appropriate condition if permission were to be granted.

Planning Balance

45. Paragraphs 6, 7 and 8 of the Framework indicate that purpose of the planning system is to contribute to the achievement of sustainable development, with sustainable development having three roles, economic, social and environmental. None of these roles should be undertaken in isolation because they are mutually dependent.
46. The proposed development would provide an economic benefit through the provision of the dwellings both during construction and thereafter through their occupation. Through the provision of housing and contributions towards affordable housing and education provision the proposal would be of social benefit, although for the reasons set out above the contributions are of limited weight.
47. However, for the reasons set out above the proposal would be significantly and demonstrably harmful to the environment as it would be located in an area where travel would not be minimised and would be harmful to the character and appearance of this area of countryside. This harm significantly and demonstrably outweighs the benefits. As such the proposal does not represent sustainable development.

Conclusion

48. For the reasons given above I conclude that the appeal should be dismissed.

RJ Jackson

INSPECTOR