

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: 1 November 2016

Appeal Ref: APP/D0840/W/16/3146313

Part of Motha Farm, Carey Park Road, Polperro, Looe, Cornwall PL13 2JE

- 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 Mr J K Shaw against the decision of Cornwall Council.
 - The application Ref PA15/05764, dated 22 June 2015, was refused by an undated notice.
 - The development proposed is outline application for affordable and open market housing, 20 units in total.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Cornwall Council against Mr J K Shaw. This application is the subject of a separate Decision.

Procedural Matters

3. I have been provided with a copy of the Council's decision notice which is undated and unsigned. However, the appeal form indicates the decision was issued on 1 December 2015. I am satisfied that the application was refused and am dealing with the appeal on this basis.
4. The application is in outline with only access for consideration at this stage. I have considered the appeal in these terms. I have also been provided with an illustrative plan showing a potential layout, but this does not appear to have been part of the application documentation. As it was not subject to consultation and interested parties may wish to comment upon it I have not used it in my determination.
5. A Planning Obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) by way of Unilateral Undertaking to the Council dated 12 July 2016 has been submitted. I will cover this later in my decision.

Main Issues

6. The main issues are:
 - the effect on the character and appearance of the area being within an Area of Outstanding Natural Beauty (AONB) and within a Heritage Coast; and
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- whether the proposal makes adequate provision for affordable housing and open space.

Reasons

Effect on ANOB and Heritage Coast

7. The appeal site is an approximately 1.45ha generally rectangular shaped area of land on the east side of the road. It slopes down from west to east and to the southeast corner. In what would have been the southwest corner of the rectangle there is an excluded area on which are two dwellings and their curtilages. The boundaries of the site are made up of Cornish hedgerows and trees, with Bridals Lane to the south of the site. The site sits close to the top of western side of a valley leading down to Talland Bay on the coast. To the south and west of the appeal site lies a residential area known as Carey Park. To the north, with a field between, is the Seaview Holiday Village.
8. The proposed access would be located in the northwest corner of the site. The proposal is for 20 dwellings and these, together with their curtilages, road, footpaths and landscaping, would then need to be located on the land and would cover a reasonable proportion of the site.
9. The site is located within an AONB. The National Planning Policy Framework (the Framework) indicates in paragraph 115 that great weight should be given to conserving landscape and scenic beauty in AONBs which have the highest status of protection in relation to landscape and scenic beauty. Paragraph 116 indicates that planning permission should be refused for major developments in AONBs except in exceptional circumstances and where it can be demonstrated that they are in the public interest. The Framework then goes on to set out three areas which should then form part of that consideration.
10. The site also lies within a Heritage Coast. Paragraph 114 of the Framework indicates that the character of the undeveloped coast should be maintained, with protection and enhancement of its distinctive landscape, particularly in areas defined as Heritage Coast.
11. The parties disagree whether the proposal represents a "major" development. There is no definition in the Framework, and the national Planning Practice Guidance (the PPG) indicates¹ that this will be matter for the decision maker, taking into account the proposal in question and local context.
12. The site falls within Landscape Character Area CA22 'South East Cornwall Plateau' of the Cornwall Landscape Character Assessment. The Landscape Character Assessment describes CA22 as open, medium to large scale gently rolling plateau with pattern of low irregular Cornish hedges with hedgerows and sparse tree cover and Polperro specifically is identified as a significant coastal village.
13. Polperro is a reasonably sized settlement but the Carey Park area is set slightly separate and inland from the historic centre of the village. The appeal site can clearly be seen from a number of vantage points to the east in both medium and longer distance views. In this regard the appellant has provided a Visual Appraisal of the proposals. However, in visiting the area I noted that this was not an exhaustive appraisal, in that the site was also clearly visible from a

¹ Paragraph Reference ID: 8-005-20140306

number of other vantage points, such as through the field entrance opposite the entrance to the property known as Polyne on the road to Talland Bay from the north.

14. Although, apart from the access point, the layout would not be fixed, if permission were to be granted the number of dwellings would be determined. The appeal site covers an extensive area and a good proportion of this would be covered with built development and their curtilages, roads and footpaths, and it is indicated that a children's play area would also be located on the site. It is reasonable to assume that there would be development on the highest part of the site close to the road to ensure appropriate linkages to the nearby settlement. Despite the vegetation on the top of the Cornish hedgerow, this development would clearly breach the skyline from a number of viewpoints on both roads to Talland Bay, and would extend throughout the depth of the site. It would therefore be visually intrusive into the landscape, both through the breaching of the skyline and from the extent of the area of land which would be developed, and this would be harmful to the landscape and its scenic beauty. In addition the creation of the access, and its visibility splay, would have an urbanising effect on what currently appears as the edge of a rural field.
15. Although there would remain an open field to the north of the appeal site, the proposed development would extend development along the road reducing the separation between built development at Carey Park and the Seaview Holiday Village. This would also be harmful to the character and appearance of both the AONB and the Heritage Coast and their scenic beauty.
16. The appellant referred to an appeal decision in Beaminster² where an Inspector concluded that a scheme for 20 dwellings did not represent 'major development'. I do not have all the details of that scheme and as the PPG makes clear a judgement needs to be made on the basis of the individual proposal and its effects. I therefore can only give that decision very limited weight.
17. Overall for the reasons set out above I consider that the Visual Appraisal has underestimated the effects on the landscape. Consequently given the extensive size of the appeal site in relation to the area of Carey Park and the effect on the area the proposal represents 'major development' within the terms of paragraph 116 of the Framework and the advice in the PPG. Consequently the proposal should be refused unless there are exceptional circumstances as set out above. I will therefore examine the proposal against the three bullet points set out in paragraph 116, being the need for the development, the cost and scope of building outside the AONB or meeting the need in some other way, and the effect on the environment, landscape and recreational opportunities.
18. Firstly, to look at the need for the development.
19. The site lies in the area covered by the Caradon Local Plan First Alteration (the CLPFA) which dates from 2007. 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 CLPFA does not meet this requirement, and to that extent its policies for the supply of housing land

² APP/F1230/W/14/3002790

- cannot be considered consistent with the Framework, and can only be given very limited weight in line with paragraph 215 of the Framework.
20. The Council is seeking to put in place the Cornwall Local Plan (the CLP). 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 (the CLP 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.
 21. The CLP has been produced taking into account the policies in the Framework and the current version tested and examined against it, with the latest FOAN figure being based on the CLP Inspector's preliminary findings. However, the CLP 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.
 22. 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.
 23. 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 is the final figure. This means I cannot be satisfied that a 5 year supply of housing land does exist.
 24. As a 5 year supply of housing land cannot be demonstrated, in line with paragraph 14 of the Framework, planning permission should be granted unless specific policies, such as those for AONBs, indicate that development should be restricted. I am satisfied, however, that there is a general need for additional housing in the area.
 25. Secondly, whether there is scope for developing sites to meet the need outside the AONB.
 26. In support of this the appellant has submitted an Alternative Sites Analysis (ASA). However, although this ranks various sites around Polperro these sites are only identified by numbers. I have not been provided with any information as to how sites were selected for consideration.
 27. While looking at various criteria and ranking the sites against their sensitivity the ASA does not rank the criteria. For example, whether the site is in or not the AONB has the same sensitivity as the proximity to services or vehicular and pedestrian access. There is no weighting for one criterion against another. Certainly it is not possible to show that 'great weight' has been given to conserving landscape and scenic beauty, as required in paragraph 115 of the Framework. I am therefore only able to give this ASA very limited weight, and am therefore not satisfied that there is no scope for developing outside the AONB, or on less sensitive sites within the AONB.

28. The appellant has not provided any information as to the cost of developing outside the AONB or meeting the need in some other way, and whilst indicating the application was to be supported by a Viability Statement has confirmed that one is not being submitted.
29. Thirdly, is the effect on the landscape which I have already considered above. While landscaping could be introduced as part of the proposal this would not have the effect of materially mitigating the harm to the environment and landscape.
30. Overall, the proposed development would represent major development in the AONB which would be harmful to the character and appearance of the area and would not conserve landscape and scenic beauty. It has not been demonstrated that there are exceptional circumstances in the public interest so as to allow permission to be granted. As such the proposal is contrary to Policies CL6 and CL7 of the CLPFA which seek to minimise the effect of development on the landscape and would be unduly prominent from viewpoints within both the AONB and the Heritage Coast. It would also be contrary to Policy 2 of the CLP in that it would not protect, conserve and enhance landscape character and the natural beauty of the AONB and undeveloped Heritage Coast. It would also be contrary to paragraphs 114, 115 and 116 of the Framework as set out above.

Affordable Housing and Open Space

31. 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.
32. 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.
33. The Planning Obligation makes provision for ten of the dwellings to be affordable as defined in the Planning Obligation. I have not been provided with any policies in the CLPFA which refer to affordable housing. However, the Framework in paragraph 47 seeks that local planning authorities should look to meet their full, objectively assessed needs for affordable housing and, in paragraph 50, where such a need has been identified, set policies for meeting this need on site.
34. Policy 8 of the CLP sets out that affordable housing will be sought, subject to viability on all new housing schemes within the plan area. As the proposal lies above the threshold for contributions towards affordable housing and other, tariff-style contributions set out in the PPG, which refers to the Written Ministerial Statement (the WMS) of 28 November 2014, I am satisfied that provision is needed as it is directly related to the development and fairly and

- reasonably related in scale and kind to the development. As affordable housing does not represent 'infrastructure' within the terms of the CIL Regulations Regulation 123 is not engaged.
35. The Council has criticised the Planning Obligation for not setting a review mechanism for the quantum of affordable housing at the reserved matters stage, seeking, if viable, a higher proportion of affordable housing. However, as I understand it, this scheme is not being promoted as an affordable rural housing scheme facilitated by some market housing, of the type envisaged in the second sentence of paragraph 54 of the Framework. As such, this type of review mechanism would not be necessary.
36. The Council also criticises the Planning Obligation in not providing what the Council considers to be the appropriate, ie necessary, tenures, and providing an inappropriate housing mix. Looking at the evidence I agree with the Council that the Obligation would not meet the needs of the area. The appellant has indicated that he is willing to amend the Obligation to meet these criticisms. However, I have not been provided with a revised Obligation to this effect, and given I am minded to dismiss the appeal for matters unrelated to this issue I need not take this matter further, although at present the Obligation does not make adequate provision for affordable housing.
37. Policy EV16 of the CLPFA indicates that housing developments of more than 20 dwellings should include provision for casual open space and/or children's play areas. As this proposal is for 20 dwellings such a provision is not required. Policy 14 of the CLP, however, indicates that public open space will be expected in proportion to the scale of development, and this could indicate a lower threshold. Although not yet development plan policy, given the progress towards adoption, I conclude that providing a small Locally Equipped Area of Play (LEAP) on the site would be necessary for the proposed occupiers and that the provisions of the Planning Obligation which require the delivery of a LEAP would be directly related to the development and fairly and reasonably related in scale and kind to the development. As this would be first Obligation relating to the provision of this facility Regulation 123 would be satisfied.
38. Overall, with the Planning Obligation as provided at present, I am satisfied that while the proposal makes adequate provision for open space, it does not in respect of affordable housing. It provides a benefit over and above that required by Policy EV16 of the CLPFA and would comply with Policy 14 of the CLP which seeks public open space. However, it would not comply with Policy 8 of the CLP in respect of affordable housing. It would also not comply with paragraphs 47 and 50 of the Framework as set out above.

Other matters

39. Local residents have expressed concern at the effect of the proposal on the local highway network. However, while the Highway Authority has criticised aspects of the Transport Statement, it has no overall objection to the proposal. Having looked at the access point at the site visit I am satisfied that, subject to conditions, an appropriate access could be provided and the proposal would not give rise to severe residual impacts which is the test set out in paragraph 32 of the Framework if development is to be prevented.
40. Concerns have also been raised about drainage. I note that the site is located in Flood Zone 1 based on the Environment Agency maps with a comparatively

low risk. A Flood Risk Assessment has been submitted which indicates that the site could be satisfactorily drained and I am satisfied that, subject to conditions, an appropriate drainage solution could be delivered.

41. The application was accompanied by an extended phase 1 habitat survey which indicated that the proposal could impact upon foraging bats. Given that the proposal should not affect the roosts of bats, and as the Council's Ecological Officer has no objection, I am satisfied that these protected species would not be unacceptably affected by the proposal.

Planning Balance

42. 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.
43. The proposal would provide economic benefits through the construction of houses and through the longer term occupation of the dwellings. There would be the social benefits of the additional housing to which I give significant weight. There would also be a limited social benefit from the provision of the LEAP.
44. However, the proposal would represent major development in the AONB and would not provide for affordable housing to meet the needs of the area. To be granted there needs to be exceptional circumstances and the development has to be in the public interest. This has not been shown and the proposal would result in harm to the landscape and scenic quality of not only the AONB but also the distinctive landscape of the Heritage Coast. Great weight should be given to conserving the landscape and scenic beauty of the AONB. This harm to the environment outweighs the benefits set above and, as such, the proposal does not represent sustainable development.

Conclusion

45. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

RJ Jackson

INSPECTOR