

Appeal Decision

Hearing held on 7 September 2016

Site visit made on 7 September 2016

by R C Kirby BA (Hons) DipTP MRTPI

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

Decision date: 15 November 2016

Appeal Ref: APP/D0840/W/16/3142537

Horizon Poultry Farm, Tremar, Cornwall PL14 6EA

- 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 Gubblecote Properties Ltd against the decision of Cornwall Council.
 - The application Ref PA15/02602, dated 18 March 2015, was refused by notice dated 18 August 2015.
 - The development proposed is described as an application for a development containing up to 87 no. dwelling houses, 1 no. retail outlet and change of use of 1 no building from agricultural use to up to 40 no. apartments.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - whether new dwellings in this location would be acceptable having regard to the relationship to services and the characteristics of the local highway network;
 - whether or not the proposal would make adequate provision for affordable housing; and
 - the appropriateness or otherwise of contributions sought towards public open space and education infrastructure.

Procedural Matters

3. The application was submitted in outline and the application form makes it clear that permission is being sought for access, appearance, layout and scale. Although reference is made within the development proposal to 'up to 87 No dwellings and 40 No apartments', layout is one of the matters for which permission is being sought. The submitted drawings show 87 no dwellings and 40 no apartments. It is therefore on this basis that I have considered the proposal, along with the proposed retail outlet.
 4. Reference is made within the Council's second reason for refusal that the proposal included 10 affordable properties. The appellant confirmed at the
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Hearing that the scheme proposed contains 5 affordable units. It is on this basis that I have considered the appeal.

5. During the course of the appeal, the Planning Practice Guidance (PPG) was amended to reflect the successful appeal to the Court of Appeal on 11 May 2016¹, overturning the previous High Court judgement on 31 July 2015 on applications by West Berkshire District Council and Reading Borough Council for judicial review of the Written Ministerial Statement (WMS) of 28 November 2014. This related to policy changes in respect of planning obligations, affordable housing and tariff-style contributions, and circumstances where the vacant building credit (VBC) should be offered to developers. Both parties have commented on this matter in their evidence and this is considered later in my Decision.
6. At the time that the Council determined the planning application it accepted that it could not demonstrate a 5 year supply of deliverable housing sites. Its decision notice therefore makes no reference to policies within the development plan relating to the supply of housing. However, since determining the planning application, the Council now suggests that it can demonstrate a 5 year supply of deliverable housing sites. It has therefore drawn my attention to housing policies it considers relevant to the appeal proposal in its evidence.
7. The Council has also drawn my attention to policies within the emerging Cornwall Local Plan Strategic Policies 2010-2030 (CLP) which it considers are relevant to the appeal proposal. Following the Inspector's Initial Findings, the Examination into the CLP was suspended for further work to be undertaken. The Council advised that a further consultation exercise in respect of its Proposed Schedule of Further Significant Changes has been undertaken and it is currently awaiting the review of this consultation process. Given these circumstances, I am only able to attach limited weight to the policies contained therein. I have therefore determined the appeal against the policies of the Caradon District Local Plan (LP) 2007 and the National Planning Policy Framework (the Framework).

Reasons

Whether new dwellings in this location would be acceptable

8. The appeal site is a former poultry farm, comprising a range of buildings, located on both sides of the Tremar - Liskeard road. The use of the site ceased in 2011 due to changes in legislation relating to egg production using caged birds. As well as egg production, the appellant asserts that there were a range of other non agricultural uses on the site, including the packaging of eggs from other farms, the processing of egg products, distribution and office use.
9. The Council does not dispute that the site was used for non agricultural purposes, in addition to its agricultural use. Indeed it referred to the site as a 'previously developed site' within its first reason for refusal. At the Hearing both main parties agreed that, having regard to the scale of the buildings upon the site and given its past use, the site should be considered as

¹ [2016] EWCA Civ 441

previously developed land. On the basis of the evidence before me, I have no reason to reach a different conclusion to the main parties in this respect.

10. There is no dispute between the parties that the site is located within the countryside for planning policy purposes. It is separated from the built up limits of Tremar by agricultural fields. Both parties agree that, given the scale and nature of the proposal comprising predominantly market housing (122 market homes and 5 affordable units), the proposal would not fall within the Framework's definition of a 'Rural Exception Site' (RES). I have no reason to disagree in this regard.
11. The CDLP seeks to locate new housing development within the main towns and villages of Cornwall, as set out within Policy HO2. Housing development in the countryside is strictly controlled except in a number of circumstances, as set out in Policies HO7 (Housing in the Countryside), HO8 (Conversion of Buildings) and HO13 (Rural Exception Housing) of the CDLP. Whilst pre-dating the Framework these policies broadly accord with the Framework, particularly at paragraphs 54 and 55.
12. Paragraph 54 of the Framework states that local planning authorities should be responsive to local circumstances and plan housing development to reflect local needs, particularly for affordable housing, including through rural exception sites where appropriate. Consideration should be given to allowing some market housing where that would facilitate the provision of significant affordable housing to meet local needs. Paragraph 55 states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. New isolated homes in the countryside should be avoided unless there are special circumstances.
13. The appeal proposal for predominantly market housing on a site that is visually and physically separate from Tremar would result in new isolated homes in the countryside, unrelated to the built development within the village. The new dwellings would not comprise rural exception housing; and other than the administrative/distribution building would not comprise a conversion scheme. Furthermore, the proposal would not fall within any of the exceptions set out in Policy HO7 of the CDLP or within paragraph 55 of the Framework. I therefore find that there would be conflict with the development plan and national planning policy (with the exception of the proposed apartments) in this regard.
14. The appellant submits that the appeal scheme is a windfall site and would make an important contribution to meeting housing targets. This is not disputed. However, the CDLP states that the development of windfall sites need to comply with development plan policy. For the reasons given above, I have found that the proposal would not accord therewith. I attach little weight to the appeal site being identified for redevelopment within the St Cleer Neighbourhood Development Plan 2015 – 2030, as this plan was withdrawn prior to adoption.
15. The appellant considers that the Council's housing policies (in this case CDLP Policies HO2, HO7, HO8 and HO13) are out-of-date because the Council cannot demonstrate a 5 year supply of deliverable housing sites. My

attention has been drawn to an appeal decision² dated 4 August 2015 following an Inquiry on 6 July 2015. This decision states at paragraph 29 that 'The Council acknowledges that it cannot demonstrate a 5-year supply of housing land'.

16. Where relevant policies are out-of-date, paragraph 14 of the Framework makes it clear that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole; or specific policies in the Framework indicate development should be restricted.
17. The Council considers that it can now demonstrate a 5 year supply of deliverable housing land. My attention has been drawn to its Monitoring Report Cornwall 5 Year Supply Housing Statement (SHS) December 2015. This indicates that a 5.25 years supply of sites could be demonstrated, based on a full objectively assessed housing need of 52,500 homes over the period 2010 to 2030.
18. Whilst noting the results of the SHS, its introduction states that the housing land supply position contained within the report was as it was on 1 April 2015. If this was the case, it is unclear why the Council acknowledged that it could not demonstrate a 5 year supply of housing land in both the appeal referred to above and the Officer report in respect of the appeal proposal. In light of this matter, I find that there is clearly some ambiguity in respect of the Council's supply of housing land. Based on the evidence before me, the position in relation to housing land supply is therefore inconclusive.
19. However, notwithstanding the position in respect of the supply of housing land, the Framework makes it clear at paragraph 49 that housing applications should be considered in the context of the presumption in favour of sustainable development. There are three dimensions to sustainable development as set out in paragraph 7 of the Framework: economic, social and environmental.
20. Economically, the proposal would generate employment during the construction and fitting out of the proposed dwellings, apartments and shop. The future occupiers of the scheme would be likely to support services and facilities in the area. The new retail unit would be likely to provide employment and result in business rates being paid to the Council. The New Homes Bonus would be an economic benefit of the scheme also.
21. The social role of sustainability seeks to support strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being. The provision of market housing and a small number of affordable dwellings would comprise social benefits, albeit the mix of housing proposed would be unlikely to make a significant impact in creating inclusive and mixed communities as set out in paragraph 50 of the Framework.
22. I have no reason to doubt that the proposal would not result in a high quality built environment. The redevelopment of the site with the removal of large,

² Ref: APP/D0840/A/14/2229258

bulky, prominent buildings and their replacement with a lower density form of development would have social and environmental benefits. The provision of a retail unit would allow the intended future occupiers of the scheme access to a facility that would be likely to serve some of their daily shopping needs. This facility would also be accessible to other residents in the area, including those who live in Tremar.

23. However, apart from the intended new retail outlet proposed, the nearest services and facilities, including primary school, shop and public house are in St Cleer. The closest village Tremar, has no services and facilities. Although St Cleer is not a significant distance from the appeal site, the route from the appeal site to the village is along a narrow unlit road, with few pavements or areas where pedestrians could seek refuge from road traffic. An alternative route to St Cleer is across the unlit, unsurfaced common which could be accessed from the north western corner of the site.
24. From my observations, the road to Tremar and then to St Cleer is undulating with corners, which affects the visibility for both drivers and pedestrians. The main road to the west of the site, across the common, is more heavily trafficked than Tremar Lane, and as a result vehicle speeds are higher. I find that the local road conditions would be unlikely to be an attractive walking or cycling route to St Cleer for the majority of the intended future occupiers of the scheme, particularly those with young children, for those with mobility issues and in inclement weather.
25. The appellant proposes that a Quiet Lane scheme is provided on the approach to the site to the edge of Tremar. Signage and road markings would be provided advising drivers that the road is a shared surface. Whilst this would improve driver and pedestrian awareness on the approach to Tremar, it would not extend to St Cleer, and as a result I remain unconvinced that occupiers of the scheme would find the route to St Cleer by foot to be attractive.
26. Given the local road conditions and limited pedestrian facilities in the area, I consider that there would be a high probability that the intended future occupiers of the scheme would drive to St Cleer rather than walk or cycle. The volume of traffic using the local roads and traffic speeds in the area, as submitted by the appellant do not convince me otherwise. Once in their cars there is likely to be the temptation to drive further afield to access a wider range of services and facilities, including places of leisure, employment and shopping. The limited bus service that serves the site is unlikely to prove attractive to future occupiers of the scheme, other than school children, given the frequency of the service. The provision of bus stops and a lay-by as proposed is unlikely to make the use of public transport more attractive.
27. In light of the above, and recognising that sustainable transport solutions will vary from urban to rural areas, I consider that there would be a heavy reliance on the private car to access basic day to day services, in St Cleer, Liskeard and further afield. For those people that did not have access to a private car the services and facilities would not be accessible. This would be in conflict with the social role of sustainability, as well as the environmental role, which seeks to move to a low carbon economy. The absence of pedestrian injuries in the area is not good reason to encourage a development that is isolated and remote from local services and facilities.

28. The Framework makes it clear that the three roles of sustainability should not be undertaken in isolation because they are mutually dependent. Given my findings, I conclude that the high reliance on the private car as a result of the location of the site relative to services and facilities would result in the scheme not being sustainable. The location of the site for new dwellings is therefore not acceptable. Even if I were to conclude that there is a shortfall in the 5 year supply of deliverable housing sites as suggested by the appellant, and that relevant policies for the supply of housing should not be considered up-to-date, the adverse impacts of granting permission in this location, remote from services and facilities would significantly and demonstrably outweigh the benefits.

Affordable housing provision

29. There is no dispute between the parties that there is a need for affordable housing within the area. The Council advised at the Hearing that there were 113 households registered on the Homechoice Register requiring primarily 1, 2 and 3 bedroom rented properties. The appellant's scheme proposes that 5 of the dwellings would be affordable.
30. The proposed affordable housing provision would conflict with CDLP Policy HO7 in that the proposal would not relate to rural exception housing. There would also be conflict with emerging CLP Policy 8 which requires 25% of the dwellings on a site in zone 5 to be affordable. At the Hearing the Council drew my attention to CDLP Policy HO11. This policy relates to affordable housing provision in towns and villages. The appeal site is not located within a town or village and this policy is not therefore a consideration in this appeal.
31. At the time that the Council determined the planning application, the Court of Appeal's judgment referred to earlier in my decision had not been published, and the PPG had not been amended to reflect this judgment. The Council therefore assessed the proposed affordable housing provision against the viability of the scheme, in accordance with the advice in respect of viability as set out in paragraph 173 of the Framework and emerging Policies 8 and 11 of the CLP.
32. The Council raised concern about the land values submitted by the appellant and the building construction costs set out in their viability appraisals. It considered that the scheme would remain viable with 25% affordable housing provision. Although proposing 5 affordable units as part of the scheme, the appellant asserts that the future development of the site may not prove attractive because the uplift in the existing use value of the site would be unlikely to be sufficient to incentivise the site owners to bring the site forward for development. A scheme with no affordable housing would therefore be likely to be delivered quicker than one with affordable homes.
33. Whilst noting both parties' submissions in respect of this matter, the PPG is a material consideration which I must take into account in my overall Decision. Amongst other matters, the PPG sets out the circumstances where the vacant VBC³ should be applied. The PPG states that the VBC is an incentive for brownfield development on sites containing vacant buildings. Where a vacant building is brought back into lawful use, or is demolished to be replaced by a new building, it states that a developer should be offered a financial credit

³ Vacant building credit

equivalent to the existing floorspace of relevant vacant buildings when a local planning authority calculates any affordable housing provision.

34. The Council consider that the VBC does not apply for RES⁴. Whilst noting the Council's opinion, for the reasons given earlier in this decision, the appeal proposal does not relate to a RES. In any event, it is clear from both the WMS⁵ and the PPG that the circumstances where the vacant building credit would apply is qualified only in terms of floorspace, whether the buildings have been abandoned, or whether the building is covered by an extant or recently expired planning permission for the same, or substantially same development. Therefore, regardless of the location of the site and whether or not it would comprise a RES, as long as the circumstances set out above are complied with the VBC would apply.
35. The appellant has calculated that the existing buildings on the site have a total floorspace of 20,841 square metres. The proposal would be to convert 3,484 square metres of an existing building into apartments and the new build houses would have a floorspace of 8,274 square metres. The floor space proposed would be less than that of the existing buildings. The buildings have not been abandoned and the site is not the subject of either an extant or recently expired planning permission for a similar or substantially development. These matters were not disputed by the Council.
36. Accordingly, I conclude that the appeal proposal would be eligible for the vacant building credit and as such there is no requirement to provide affordable housing upon the site. The viability of the scheme in relation to affordable housing is not, therefore, a determining factor in this case.

Public Open Space and Education Infrastructure Contributions

37. Policy EV16 of the CDLP requires housing developments of more than 20 dwellings to include provision for casual open space and/or children's play areas. The Council has drawn my attention to its Open Space Strategy for Larger Towns in Cornwall which sets out standards for provision. Whilst this document focuses on larger towns in Cornwall, the report identifies that the methodology used could be applied to all settlement areas.
38. The appellant proposes to provide areas of public open space either side of the Tremar to Liskeard road, as well as a children's play area on both the eastern and western part of the site. The Council consider that the space upon the site should be consolidated to meet the needs of the intended future occupiers of the scheme, and the Officer report suggests that this could be achieved if the scheme was amended. Whilst noting these matters, the Council did not include the suitability of open space upon the site as a reason for refusing the planning application.
39. Although separated by the road, the open space proposed would be close to the houses it is intended to serve and would be largely central upon the site. Whilst the size of the spaces may limit certain activities to take place, I have not been provided with substantive evidence to demonstrate that the resultant areas would not be suitable to serve the scheme.

⁴ Rural Exception Sites

⁵ 28 November 2014

40. I note that the Council is seeking an off site contribution towards open space. However, as I have not been provided with details of where such a contribution would be used I am not satisfied that the contribution sought meets the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. I note that the Parish Council considered at the Hearing that the contribution could be used for a building for a youth group and improving facilities in St Cleer. Whilst I have no reason to doubt the benefit of such facilities, I was not provided with comprehensive details of any schemes which the contributions could be put to. In the absence of such information, I am not satisfied that the contributions sought meet either the statutory tests, or those set out in paragraph 204 of the Framework. As such the absence of a mechanism to secure the provision of off site public open space is not a determining factor in this case.
41. The Council is also seeking a financial contribution towards improvements to teaching accommodation at St Cleer Primary School. Its Guidance on Section 106 Planning Obligations for Education Provision (POEP) states that contributions will be sought from development proposals of five or more qualifying dwellings in areas where there is pressure to provide education services. This is identified as where schools in the area serving the development are already operating above 90% capacity.
42. St Cleer School has been identified as operating at 95% capacity. It is the closest primary school to the appeal site and it is likely that a number of the intended future occupants of the scheme would be primary aged children or younger. The appellant questions the need for a contribution to be made towards education provision at Liskeard School and Community College. However, it was confirmed at the Hearing that as this school had approximately 44% capacity at the time of the planning application, contributions were not being sought from the appeal proposal towards this school.
43. The appellant asserts that the scheme would not be viable if such a contribution was necessary. Whilst the POEP accepts that in some circumstances planning obligation requirements associated with a development may render it unviable for the developer to proceed, it requires developers to share a viability appraisal, financial information or a valuation report (with current values) with the Council for independent scrutiny.
44. The submitted viability appraisals make no reference to education contributions and I therefore have no evidence before me to demonstrate whether or not the payment of such a contribution would render the scheme unviable. I am therefore unable to conclude on this matter. Were matters otherwise acceptable, this is obviously something that I would raise with the appellant.
45. I attach limited weight to the appellant's assertion that there may be places at Darite Primary School as I have not been provided with evidence to substantiate this.

Conclusion

46. Having in mind my reasons above, I conclude that the proposal does not comply with the development plan taken as a whole and does not represent

sustainable development in the terms of the Framework. Accordingly, even if it were the case that the Council cannot demonstrate a 5 year supply of land for housing, there are no material considerations which would warrant a decision other than in accordance with the development plan.

47. For the above reasons, and having regard to all other matters raised, the appeal is dismissed.

RC Kirby

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr A Skelton	Steven Abbott Associates LLP
Mr I Weatherhead	Manchester One

FOR THE COUNCIL

Mr S Kirby	Development Officer
Mr W Morris	Housing Officer
Mr J Holman	Development Officer

INTERESTED PARTIES

Mrs B Flynn	Local Resident
Mr J Bucher	Local Resident
Mr A Soady	Local Resident
Mr S Soady	Local Resident
Cllr Mrs D Watson	Local Councillor

DOCUMENTS SUBMITTED AT HEARING

1. Copy of additional conditions suggested by the Council

DOCUMENTS SUBMITTED AFTER HEARING

2. Copy of CDLP Policy HO11: Affordable Housing in Towns and Villages