
Appeal Decision

Hearing held on 25 January 2017

Site visit made on 25 January 2017

by Andy Harwood CMS MSc MRTPI

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

Decision date: 17 March 2017

Appeal Ref: APP/D0840/W/16/3160747

Trewheal, Helston Road, Porkellis, Helston, Cornwall TR13 0JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs E B M Williams against the decision of Cornwall Council.
 - The application Ref PA15/07192, dated 31 August 2015, was refused by notice dated 19 April 2016.
 - The application sought planning permission for the erection of a bungalow and domestic garage without complying with a condition attached to planning permission Ref 2/25/87/00743/O, dated 10 November 1987.
 - The condition in dispute is No 6 which states that: The occupation of the dwelling hereby permitted shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in section 290 of the town and country planning act, 1971 (as amended) or in forestry, or a dependant of such a person residing with him or her, or a widow or widower of such a person.
 - The reason given for the condition is: The proposed development is contrary to the planning policies for this area and is approved solely because of the over-riding special circumstances relating to this case.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a bungalow and domestic garage at Trewheal, Helston Road, Porkellis, Helston, Cornwall TR13 0JS in accordance with the application Ref PA15/07192 dated 31 August 2015, without compliance with condition number 6 previously imposed on planning permission Ref 2/25/87/00743/O dated 26 June 1987.

Background and Preliminary Matters

2. The appeal relates to a 3 bedroom bungalow, now known as Trewheal. The Council accepts that construction of the bungalow commenced in December 1993 following approval of reserved matters and that planning permission 2/25/87/00743/O (the 1987 permission) was implemented. The bungalow was approved on agricultural land by the former planning authority Kerrier District Council. Mr Rowe, the original applicant was a retired farmer and the dwelling was not justified by any particular agricultural needs that existed on the holding at that time. As well as the condition in dispute, the dwelling was approved with a condition limiting the benefit of the permission to Mr Rowe.
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3. At the hearing I was also provided with a copy of planning permission dated 12 April 1994 ref PA87/00743/OD01 (the 1994 permission) relating to the same site and bungalow. The 1994 permission proposed the “erection of a dwelling and domestic garage without compliance with condition 5 attached to decision notice number 2/25/87/00743/O dated 10 November 1987 (personal)”. Under the provision of section 73 of the act, this was therefore a new, alternative planning permission. At that time, there was an option of implementing the 1994 permission or continuing with the 1987 permission. It is not absolutely clear which permission was utilised.
4. The refused planning application, the subject of this appeal, has been submitted in relation to the 1987 permission. I have to consider this appeal in relation to that as all of the publicity for the appeal has been on that basis.
5. Since the Council made its decision in the present case, the Cornwall Local Plan, Strategic Policies 2010-2030 (LP) was adopted in November 2016. The Council provided copies of some relevant LP policies within its appeal statement and further LP policies were discussed at the hearing.

Main Issue

6. The main issue is whether the disputed occupancy condition is reasonable and necessary in light of local and national policies for residential development in this location.

Reasons

7. Porkellis contains a substantial number of dwellings. The appeal site is located next to a similar bungalow and opposite a line of dwellings on the eastern side of Helston Road. The dwellings and other buildings in the village have developed along the roads and are focussed around the junction close to the Star Inn public house.
8. The Council and appellant were not aware at the hearing of any agricultural occupancy restrictions on the neighbouring dwellings. There is no agricultural activity taking place within the modest garden of the bungalow. The field that adjoins the site to the south and west is used for agriculture, although that is not within the appellant’s ownership or control. There is no existing agricultural or forestry activity connected to the bungalow and the Council does not suggest that the land with the bungalow could sustain such activities.
9. Trewheal is a short walk along Helston Road from The Star Inn, which is open at lunch times and evenings during the week, but more extensively at weekends and in the summer. This contains a community library and a general store which provides for basic provisions. In addition, there are 2 village halls, a chapel, a motor repair garage and a metal fabrication workshop all within a short walk from the site. Halwin Primary School is further out from the main concentration of buildings of Porkellis and along a country lane without street-lighting. This can be reached on foot, bicycle or by a short drive from the site.
10. There is also a regular bus service which stops close to the entrance of the site and provides a link between Truro and Helston and places in between including other schools. This runs every 2 hours from early morning until the evening with additional school services on weekdays. Although there is no service on Sundays and public holidays this is a reasonable level of service for a small rural settlement.

11. The settlement therefore has a good mix of facilities and the site is conveniently located for access to these. The Council confirmed at the hearing that Porkellis could be considered appropriate for some residential development on sites complying with locational requirements within LP Policy 3. That policy relates to the role and function of places. Of most relevance in this case, LP Policy 3 allows (amongst other things) for "rounding off" of such settlements. This term is defined within the LP at paragraph 1.68 to include land substantially enclosed, where its edge is clearly defined by a physical feature. The Council points out that if the dwelling did not already exist and was proposed now, it would not comply with the criteria as it would have been built on an open field. I have not been provided with clear evidence about what the physical attributes of the site were before the dwelling was constructed. However, I need to assess the location of the dwelling in relation to present circumstances.
12. If the site were considered to be within open countryside, LP Policy 7 would require special justification for it. Similarly the National Planning Policy Framework (the Framework) at paragraph 55 seeks to avoid isolated homes in the countryside unless there are special circumstances.
13. When seen from the west of the village, from the road and a public footpath that runs along the valley, the bungalow appears within a backdrop of dwellings. As one enters the village from the south, the dwellings on the eastern side of Helston Road give an impression of entering the built-up part of the village. Trewheal is further to the north than those dwellings and appears well related to the existing fabric of the village. When viewed from all directions, the site does not appear as being within open countryside and it is not isolated from other dwellings or services. In terms of the LP definition of open countryside at paragraph 2.33, the dwelling and the wall around the garden form the current physical boundary of this part of Porkellis.
14. The condition in dispute includes a requirement that the occupancy is limited to a person solely or mainly employed, or last employed, in the locality in agriculture. This wording is similar to more modern wording used currently. The Council consider that there could be a purpose to retaining the restriction because people involved in existing agricultural or forestry enterprises in the locality could live at Trewheal as could retirees from such businesses.
15. At the hearing the Council confirmed that a reasonable area for considering the locality for the purposes of this condition is around 3 miles and that the dwelling should have been marketed at a price reflecting the restrictive nature of the condition to fully test the demand in the area. The appellant has not attempted any marketing efforts.
16. The Council has provided very little evidence of the current demand for such dwellings or on the background to farming in the area. Marketing of restricted dwellings can in many circumstances be the best way of ascertaining demand and therefore whether there is a planning purpose to retaining occupancy restrictions. However, given the location of this site within a village and where no agricultural or forestry activity is connected to it, there is little to indicate such a need exists in this instance.
17. Another appeal has been referred to by the Council. This relates to a site at

Venn Park Farm¹ where, similarly to the current case, there had been no marketing effort. It is clear from the decision that the Venn Park Farm site is very different in nature to Trewheal and included 10 hectares of land within open countryside. Trewheal is close to other dwellings in a restricted plot which does not provide an opportunity to carry out high value agricultural enterprises as was the case at Venn Park Farm. The Council had also produced expert evidence in that case from their County Land Agent. Such supporting evidence has not been submitted in this case.

18. The Council confirms that there are no new applications at present by existing farm or agricultural businesses for new dwellings in the locality although they still come forward elsewhere. The occupation of the dwelling by a retired farmer could free up a dwelling on an existing farm elsewhere, preventing the pressure for a new dwelling in a more remote location. There is no evidence however from housing waiting lists, from the evidence base following the recent LP process or other sources, of the extent of such needs. The Council referred at the hearing to the devaluing effect the current restriction has, making the dwelling more affordable for retired farmers. That may be the case but I have no evidence before me about that or whether affordability of dwellings for retired agricultural or forestry workers is a particular problem in the locality.
19. On the other hand, what is clear from information within the LP is that there is an on-going need for unrestricted dwellings in the area. As at 31 March 2016, the LP states that the housing apportionment for the (residual) Helston and South Kerrier Community Network Area in which the site is located is 1,100 dwellings. The Council referred to a further need across the area, taking account of existing developments and permissions, of 450 dwellings. This proposal would not lead to a new dwelling. If the condition were removed it would however free up a dwelling for the general population for which there is evidence of significant levels of need. There are no housing schemes in the village at the moment with much of the housing requirement expected to be delivered elsewhere.

The Planning Balance

20. Without evidence of current demographic trends or needs of the particular group within the community², I give limited weight to the possible benefit of providing a dwelling for an agricultural or forestry worker or a retired agricultural or forestry worker. There is evidence of a need on the other hand for unrestricted housing within the area in the form of the recently adopted LP and its housing requirements. I give substantial weight to the benefit of freeing up an available dwelling in that way.
21. I am mindful that the site, if it was previously part of an open field, may not have complied with the location requirements of LP Policy 3. However, no harm would be caused by lifting the current occupancy restriction as the site is located integrally within Porkellis close to a range of facilities and not in an isolated position.
22. The benefits of the proposal outweigh the conflict with LP Policy 3 and would not conflict with LP Policy 7 or paragraph 55 of the Framework. For the

¹ Venn Park Farm, Crackington Haven, Bude Ref APP/D0840/A/12/2184713

² As required by paragraph 50 of the Framework

reasons set out above, in relation to the main issue the retention of the occupancy condition is unreasonable and unnecessary due to the particular circumstances of this case.

Conditions

23. Planning Practice Guidance (PPG) makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. At the hearing all of the original conditions were discussed. It was agreed by the Council and the appellant that those conditions requiring the submission of further details prior to commencement of the development as well as all of the standard reserved matters conditions (conditions 1 to 4 and 7 to 9), had been discharged and had no on-going effect. It is unnecessary to repeat such conditions on this decision.
24. The Council confirmed that it would not request the re-imposition of the personal occupancy condition. The original applicant for the 1987 permission is no longer alive and the former district authority had previously made a decision on the 1994 permission to relinquish that condition. Furthermore, the PPG makes it clear that personal circumstances will scarcely ever justify a permanent building. To re-impose such a condition would be unreasonable and unnecessary.
25. Cllr Dr Jenkin who attended the hearing suggested that a condition could be imposed as an alternative to restrict occupancy to affordable local needs. Such a restriction would be difficult to achieve through a planning condition rather than a planning obligation. No wording had been prepared for me to consider. Furthermore, no evidence about the degree of affordable local needs within the village or wider Community Network Area was referred to in written submissions or at the hearing. Such a condition would in these circumstances be unreasonable and unnecessary.
26. The 1987 planning permission includes a condition (10) restricting permitted development rights. As pointed out by the Council, the Cornish Mining World Heritage Site has been designated since the previous planning permission was approved and has a restricting effect upon such permitted development rights. Furthermore, advice in PPG is that such conditions should only be used in exceptional circumstances. Such circumstances do not exist and a condition would be unreasonable and unnecessary.

Conclusion

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

A Harwood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr RC Bryant

The Judy Lean Design Partnership

FOR THE LOCAL PLANNING AUTHORITY:

Mr P Blackshaw BA (Hons) MRTPI	Principal Development Officer
Mr M Jose	Development Officer
Dr L Jenkin	Cornwall Councillor

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Cornwall Local Plan, Strategic Policies 2010-2030:
Policies 3, 9 and page 27
- 2 Kerrier District Council decision notice 2/25/87/00743/S01
(reserved matters approval)
- 3 Kerrier District Council decision notice PA87/00743/OD01
(the 1994 permission)
- 4 Building Control commencement record 6 December 1993