
Appeal Decision

Site visit made on 14 November 2016

by Thomas Bristow BA MSc MRTPI

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

Decision date: 21st March 2017

Appeal Ref: APP/D0840/W/16/3156962

Elm Tree Cottage, Ricketts Road, Polgooth PL26 7DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Yeo against the decision of Cornwall Council.
 - The application Ref PA16/03798, dated 25 April 2016, was refused by notice dated 20 June 2016.
 - The application sought planning permission for a new detached 2 storey dwelling without complying with a condition attached to planning permission Ref PA12/02794, dated 16 May 2012.
 - The condition in dispute is No 3 which states that:
'Within three (3) months from the occupation of the dwelling house hereby approved, the property known as Elm Cottage shall be demolished and the site returned to its natural state. The static caravans positioned on the site shall also be disconnected from services and removed from the property in the same timeframe'.
 - The reason given for the condition is:
'The addition of a dwelling on the property outside of the development envelope would be contrary to policy 76 of the Restormel Local Plan 2001'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr & Mrs Yeo against Cornwall Council, which is the subject of a separate decision.

Planning context

3. Planning permission Ref PA12/02794 (the '2012 permission') was for a new detached dwelling within the appeal site.¹ I understand permission was granted for that proposal as it complied with criterion 4 of saved policy 76 of the Restormel Borough Local Plan 2001-2011 adopted originally in 2001 (the 'former plan'). This criterion of policy 76 allowed for replacement dwellings outside of defined development envelopes.

¹ This followed former application Ref 09/00668 which was for a differently designed dwelling.

4. The dwelling created by virtue of the 2012 permission (the 'new dwelling') was permitted as it was effectively a replacement dwelling to an existing property (the 'existing dwelling'). The new dwelling is set centrally within the appeal site, the existing dwelling falls to the south-east thereof. The existing dwelling is named Elm Cottage on drawing ND12/WE/2 supporting application Ref PA16/03798, and the new dwelling was signed Elmtree Cottage at the time of my site visit.
5. The existing dwelling remains despite the requirements of condition 3 of the 2012 permission, and I understand that the new dwelling has now been occupied for a period exceeding 3 months. No static caravans were present within the appeal site at the time of my site visit, and hence it appears that condition 3 has been complied with in part.²
6. The existing dwelling should, within the terms of condition 3, have been demolished. Therefore the effect of removing condition 3 would be to enable the creation of a further new dwelling (albeit by permitting the retention of the existing dwelling as it stands).³ I have approach the appeal on this basis and therefore referred to the development that would result as a consequence of allowing the appeal as 'the development proposed'.
7. The dispute before me is essentially whether or not the remaining unimplemented requirements of condition 3, the demolition of the existing dwelling and the return of the site to its natural state, remain appropriate in the light of current circumstances.
8. Of particular relevance to current circumstances is that on 22 November 2016 the Council adopted the Cornwall Local Plan: Strategic Policies 2010-2030 (the 'Local Plan'), in relation to which the main parties have commented at appeal. Also relevant is that permission was granted at appeal for six dwellings on land abutting the appeal site (the '2016 permission'), albeit that this proposal was considered with reference to different policies than that of the 2012 permission, being affordable housing led.⁴

Main issue

9. On the basis of the information before me I consider that the main issue in this appeal is whether or not the appeal site is an acceptable location for the development proposed.

Reasons

10. The appeal site falls approximately 300 metres distant from the main built form of the village of Polgooth. Polgooth is not identified as a 'main town' within the Local Plan, and no development boundary here is proposed via the Council's

² As reiterated in paragraph 1.3 of the appellants' appeal statement.

³ An approach consistent with the position set out in paragraph 5.11 of the appellants' appeal statement where the proposal is summarised as effectively an outline application with all matters reserved.

⁴ Ref APP/D0840/W/15/3140180.

emerging Site Allocations Development Plan Document (the 'emerging DPD'). The appeal site is furthermore outside of the settlement boundary for Polgooth that was set via the former plan.

11. The appeal site is accessed via Ricketts Road which is, in the main, a rural track bounded by Cornish banks and trees. Although Ricketts Road does not have dedicated footways it is a reasonably pleasant walking route between the appeal site and the village, which contains various services and facilities catering for day to day needs.
12. The 2016 permission was for the erection of 6 dwellings within the plot of land immediately to the north-west of the appeal site, which, if implemented, would serve to increase the visual integration of the appeal site with the built form of the village. There is no indication before me that this development is unlikely to come forward.
13. Nevertheless whilst to the north-west of the appeal site dwellings become more regularly arranged in rectilinear plots along both sides of Ricketts Road, in the immediate vicinity of the appeal site properties fall irregularly within spacious plots, interspersed with occasional parcels of undeveloped land. Thus the character of the immediate environs of the appeal site is essentially rural.
14. Whilst not subject to any protective designations relevant to this appeal, the surrounding area is identified as the Gerrans, Veryan and Mevagissey Bays Landscape Character Area within the Cornwall and Isles of Scilly Landscape Character Study dated 2008, primarily a farming landscape with patches of woodland cut by valleys. There is no information before me to indicate that the appeal site is identified within the emerging DPD or St Mewan neighbourhood plan ('NP'), and the proposal makes no provision for affordable housing.
15. Given the rural character of the surroundings of appeal site, its situation beyond the main built form of Polgooth, the dispersed pattern of development nearby, and indeed the absence of clear boundary features demarcating the extent of the built form of Polgooth to the south-west, in my view the proposal does not represent the rounding of the settlement or infilling therein. Consequently the proposal conflicts with the approach in policy 3 'Role and function of places' of the Local Plan, which, in part, seeks to protect the intrinsic character and beauty of the countryside as is encouraged by the National Planning Policy Framework (the 'Framework').⁵
16. Accordingly the proposal falls for consideration with reference to policy 7 'Housing in the countryside' of the Local Plan. I note the inspector who determined the 2016 appeal found that the adjacent site could not be described as 'isolated' with reference to paragraph 55 of the Framework. Nevertheless paragraphs 14 and 15 of that decision indicate that the appeal site represented part of the countryside. Based on the information before me and as explained above, I have no reason to disagree with his findings in these respects.

⁵ As explained within supporting paragraphs 1.65 and 1.68 of the Local Plan in particular.

17. For the reasons given in paragraphs 5 and 6 of this decision, the proposal cannot reasonably be described as a replacement dwelling, nor as for the re-use of a redundant building (given that within the terms of condition 3 of the 2012 permission the existing dwelling should have been demolished). The proposal furthermore does not represent the subdivision of an existing dwelling, and no case has been made by the appellants that it is for either temporary workers accommodation or workers engaged in rural occupations (being the remaining forms of development permissible via policy 7 of the Local Plan).
18. The proposal would therefore result in the introduction of a dwelling in an inappropriate countryside location in conflict with the approach in policies 3 and 7 of the Local Plan, entailing clear harm to the intrinsic character and beauty of the countryside. I therefore conclude that the appeal site is not an acceptable location for the development that would result from the removal of condition 3 of planning permission Ref PA12/02794.

Other matters

19. The appellants contend that the Council are presently unable to demonstrate a five-year supply of deliverable housing sites with reference to paragraph 49 of the Framework. Were the Council unable to demonstrate a five-year land supply, the provisions of paragraph 14 of the Framework would be engaged as relevant policies for the supply of housing would need to be considered out-of-date and the weight accorded to them tempered as a result.
20. I acknowledge that the overall housing target of the Local Plan is not expressed as a maximum, and that housing delivery will be reliant on implementation in practice which is in part contingent upon the emerging DPD and neighbourhood plans. Nevertheless the Council's document entitled 5 Year Housing Statement, dated September 2016, explains how in excess of a five year land supply in Cornwall has been calculated.
21. Moreover the examining inspector's report in respect of the Local Plan, dated 23 September 2016, explains that 'there is no evidence of substance to undermine the SHLAA's [Strategic Housing Land Availability Assessment] that there are more than sufficient potential housing sites to deliver the housing requirement in accordance with its broad distribution over the plan period'. The inspector also explains that based on the evidence before him 'delivery is credible over the plan-period'. I cannot therefore reasonably conclude on the basis of the evidence before me that the Council are presently unable to demonstrate a five year land supply.⁶
22. I acknowledge that the proposal would result in an addition to housing stock in Cornwall. However the benefits of the proposal in this respect would be essentially confined to an incremental numerical addition rather than in terms of appropriately located development, and such development is not required to meet the housing target for Cornwall as established above.

⁶ In contrast to the inspector in appeal Ref APP/D0840/W/15/3140180, who explained in paragraph 9 of that appeal decision that his determination was reached in the context of 'a lack of a five year supply'.

23. I further accept that the proposal would entail some social and economic benefits in supporting employment during construction and as future occupants would make use of nearby services and facilities in line with the encouragement given in the Framework in these respects. However the benefits in respect of one new home would inevitably be modest, and consequently do not outweigh the clear harm that would result.
24. The appellants explain that in their view condition 3 fails not only the tests of necessity and relevance but also of precision and thus enforceability.⁷ For the reasons given above in the light of current circumstances condition 3 remains necessary and relevant. I cannot concur with the appellant that the use of the phrase 'and the site returned to its natural state' is imprecise when this terminology is accorded its ordinary meaning rather than subject to an unduly forensic interpretation, i.e. returned to a condition so as to appear unaffected by human action.⁸ Condition 3 therefore is in my view sufficiently precise and enforceable as it stands.
25. I have considered whether a longer period for compliance with condition 3 would be appropriate. However doing so would perpetuate the harm resulting from the proposal, which for the above reasons is not supported by the relevant provisions of the development plan. Moreover there is no compelling evidence before me that compliance with the unimplemented requirements of condition 3 was unachievable within this time period for practical reasons. Therefore neither this, nor any other matter, is of sufficient significance to outweigh or alter my finding in respect of the main issue in this appeal.

Conclusion

26. For the above reasons, and taking all other matters into account, the proposal conflicts with the development plan taken as a whole and with the approach in the Framework. I therefore conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR

⁷ With reference to paragraph 206 of the Framework.

⁸ For the sake of comprehensiveness I note in paragraph 1.6 of the appellants' Design and Access Statement supporting the original application that the argument is made that condition 3 is invalid as 'no dwelling known or ever known as Elm Cottage exists on the site'. However paragraph 3.1 of the appellant's appeal statement refers to the existing dwelling as being 'known according to OS plans as Elm Cottage'. Thus this matter is no longer at issue.