

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: 22nd March 2017

Appeal Ref: APP/D0840/W/16/3153446

Land to north of Osocozy, Wheal Kitty Lane, St Agnes, Cornwall TR5 0RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant outline planning permission.
 - The appeal is made by Mr Bernard Harvey against the decision of Cornwall Council.
 - The application Ref PA16/03576, dated 19 April 2016, was refused by notice dated 28 June 2016.
 - The development proposed is described on the application form as 'outline application for the construction of four dwellings'.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was made in outline with matters of appearance, landscaping, layout and scale reserved (the 'reserved matters'). Therefore, other than in so far as they relate to access, the plans supporting the application are illustrative.
3. In refusing permission the Council cited that the proposal would conflict with policies of the former Carrick District Wide Local Plan adopted originally in 1998 (the 'former plan') which at that time was part of the development plan.
4. On 22 November 2016, however, the Council adopted the Cornwall Local Plan: Strategic Policies 2010-2030 (the 'Local Plan') which supersedes the former plan. The main parties have commented on this changing policy context at appeal. I have therefore determined the proposal in line with the development plan unless material considerations indicate otherwise.
5. Whilst there is some discussion in the information before me regarding previous planning applications at the appeal site, for the avoidance of doubt I have determined this appeal on its particular merits.

Main issues

6. The appeal site falls within the St Agnes Mining District of the Cornwall and West Devon Mining Landscape (the 'WHS'), an area accorded particular recognition on account of the legacy of historic mining activities and the landscape in which this occurred.
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7. Whilst the appeal site is also within the Heritage Coast, covered by a Tree Preservation Order and in close proximity to the St Agnes Conversation Area, the Council's case focuses on the effect of the proposal on the WHS rather than in other respects. There is nothing in the information before me or reason apparent from my site visit to indicate that unacceptable effects would arise from the proposal in other respects (particularly given that the scheme is in outline).
8. The main issues in this case are therefore:
 - 1) the effect of the proposal on the WHS, and, in the event that harm would result,
 - 2) whether or not the benefits of the proposal outweigh any harm.

Reasons

Effect on the WHS

9. The appeal site is part of an untended field variously bounded by banks, stone walls and vegetation aside from the north eastern corner where a timber gate and vehicular access is present. It is apparently presently put to no active use.
10. The topography slopes downwards from the appeal site to the south, being the direction in which the main built form of St Agnes lies nestled within the rolling countryside. Being undeveloped and commanding a relatively prominent position, there are largely open views from several nearby vantage points through and with reference to the appeal site of the surrounding landscape which is punctuated by remains of the area's mining heritage.
11. As explained within the appellant's Heritage Impact Assessment ('HIA'),¹ Wheal Kitty Lane represents an historic route which would have been taken by mine workers from St Agnes to the Wheal Kitty Mine works. The Lane still provides convenient access towards the centre of St Agnes, and I witnessed a number of pedestrians using this route during my site visit.
12. Osocozy is a dwelling of modern design within a smaller plot than the appeal site.² It falls to the south of the site at a significantly lower ground level and is therefore less prominent in the landscape than development would likely be at the appeal site (notwithstanding that matters of appearance, landscaping and scale are reserved). The dwelling Windy Ridge is to the north, and I understand that its present form results from the redevelopment of an existing dwelling in this location.³
13. However properties nearby fall predominantly to the east of Wheal Kitty Lane rather than to the west thereof as is the location of the appeal site. Thus Wheal Kitty Lane appears to have historically, if not ostensibly in policy terms, demarcated the extent of the main built form of St Agnes in this particular location.

¹ Heritage Impact Assessment, prepared by CgMs consulting, Ref TC/MS/21723, dated April 2016.

² Permitted via planning permission Ref PA13/04629.

³ Permitted via planning permission Ref PA11/06032.

14. Policy 24 'Historic environment' of the Local Plan sets out that development will only be permitted if it would sustain the distinctiveness and significance of Cornwall's historic environment. This position is essentially reiterated within criterion 1.d. of policy 2 'Spatial Strategy' of the Local Plan.
15. The National Planning Policy Framework (the 'Framework') sets out that great weight should be given to the conservation of designated heritage assets, and that any loss thereof or harm arising from development proposed should be considered against the benefits that would result. Briefly stated, the Framework sets out that consideration should be given to the relative significance of the element of a World Heritage Site that would be affected by development.
16. The Cornwall and West Devon Mining Landscape World Heritage Site Management Plan 2013-2018 (the 'WHS Plan') describes the St Agnes Mining District as characterised by extensive areas of mineworkers' smallholdings, i.e. plots which arose from the enclosure of land to provide for small-scale agricultural production in association within an expanding industrial population.⁴
17. Mineworkers' smallholdings, whilst also present in other areas of the WHS, are identified within the WHS Plan as an attribute which contributes to the Outstanding Universal Value (OUV) of the WHS. Consequently mineworkers' smallholdings are an important feature of the WHS both visually and in respect of an understanding of its origins, and their presence one of the reasons for its establishment.⁵
18. The Council contend as a result of the enclosure of the appeal site at some point between 1841 and 1880 based on historic mapping and given the presence of mining heritage nearby that 'on the balance of probability' the appeal site is a former mineworkers' smallholding. The appellant's HIA and Historic Environment Report ('HER') consider in detail the evidence relating to whether or not the appeal site was at some point a mineworkers' smallholding.⁶
19. The HIA finds that the appeal site 'may have been part of an agricultural smallholding...', notwithstanding that this smallholding may have subsequently been unused or replaced.⁷ It further establishes that despite the presence of some nearby residential development in respect of the appeal site's relationship with nearby evidence of mining heritage, the appeal site has 'a very minor positive contribution to the OUV [of the WHS]'.⁸ The HIA summarises as the harm that would result from the development as 'negligible' and 'limited'.⁹

⁴ The appeal site also falls within Character Area 14 'Newlyn Downs' of the Cornwall and Isles of Scilly Landscape Character Study released in 2007. Whilst I accept that no explicit reference is made to mineworkers' smallholdings in respect of this Character Area 14, nevertheless the area is described as featuring 'rectilinear post medieval enclosure'. In any event the absence of specific reference to mineworkers' smallholdings in this document does not undermine their value as stated in the WHS Plan.

⁵ I accept that there is some academic debate in relation to mineworkers' smallholdings and whether they were used as such, as is discussed in the appellant's Historic Environment Report. Nevertheless it is not for me within the confines of this appeal to resolve this debate, and the value of mineworkers' smallholdings is nevertheless clearly expressed within the WHS plan.

⁶ Historic Environment Report, prepared by AOC Archaeology Group.

⁷ At Section 6.2.

⁸ At Sections 6.2 and 5.1.

⁹ At Sections 6.2 and 7.0 respectively.

20. The HER identifies that the proposal is unlikely to be an 'early miners' smallholding', given the date at which enclosure likely occurred. It summarises the effect of the development as 'limited and non-significant'.¹⁰ The appellant also accepts that the historic evidence related to the site does not definitively establish that the appeal site is not a former mineworkers' smallholding.¹¹
21. Therefore on the basis of the information before me, particularly the presence of nearby mining remains, the historic use of Wheal Kitty Lane, and the visual connection of the appeal site to surrounding mining heritage, I cannot conclude that the appeal site is not a former mineworkers' smallholding or that it has no historic value to the WHS in its present state.
22. Consequently the introduction of residential development within the appeal site would dilute its historic significance, which itself stems in part from its undeveloped nature, thereby resulting in a degree of harm to the WHS. I would note here that the existence of permissions to develop on mineworkers' smallholdings elsewhere does not justify development that would be unacceptable in the present. Indeed there is limited information before me as to the planning circumstances relevant to the other proposals which have been brought to my attention by the appellant in support of the appeal.¹²
23. I accept, however, that mineworkers' smallholdings are present elsewhere within the WHS, that the appeal site is a small part of the WHS as a whole, that there is residential development nearby, and indeed that the intention is that the boundaries of the appeal site are essentially preserved. Thus it is appropriate to describe the harm that would arise as limited less than substantial harm with reference to the approach in the Framework.¹³
24. I therefore conclude that the development proposed would lead to limited less than substantial harm to the historic integrity of the WHS. Accordingly the proposal conflicts with the relevant provisions of policies 24 and 2a of the Local Plan and with relevant elements of the Framework.

Benefits

25. Policy 2 'Spatial Strategy' of the Local Plan sets out the Council's overarching principles as to how development should be brought forward. Policy 2a 'Key Targets; of the Local Plan establishes a minimum housing target over the plan period of 52,500, of which around 1,100 homes are planned for the St Agnes and Perranporth Community Network Area.
26. Policy 3 'Role and function of places' of the Local Plan guides development primarily towards certain named towns, of which St Agnes is not one. Other than in these locations, policy 3 establishes that housing will be delivered through neighbourhood plans, the rounding off of settlements, infill schemes and rural exception sites.

¹⁰ At page 6.

¹¹ At paragraph 1.43 of final comments submitted at appeal.

¹² With reference to applications Ref PA25/2257/04/R, PA25/1456/03/R and PA14/10618 which have been brought to my attention by the appellant. I furthermore note in respect of the latter that a number of affordable homes were proposed and that decision was taken prior to the adoption of the Local Plan, meaning that direct parallels cannot be drawn between it and this appeal.

¹³ I would note here that the appellant explains at paragraph 4.14 of his appeal statement that 'if there would be harm, this would be less than substantial'.

27. There is no evidence before me to indicate that the appeal site is identified as potentially suitable for development within the emerging St Agnes neighbourhood plan. The appeal site is similarly not identified within the Council's emerging Site Allocations Development Plan Document (the 'emerging DPD'). On account of its location, and given the absence of affordable housing proposed, the proposal cannot be considered as a rural exception site.
28. There is some ambiguity in the information before me as to whether the site may be described as infill development.¹⁴ Supporting paragraph 1.65 of the Local Plan sets out that 'infilling' is defined as the filling of a small gap in an otherwise continuously built up frontage that does not physically extend the settlement into the open countryside.
29. Whilst there is development nearby, there is however no continuously built up frontage on account of the relatively low level, or suburban, residential density of the surroundings. Thus the proposal cannot reasonably be described as infill, or indeed rounding off given that there is no clear physical feature to the west of Wheal Kitty Lane that would act as a natural limit to further growth in this direction. Consequently the development proposed is not supported by the relevant housing policies of the Local Plan cited above.
30. The appellant contends, however, that the Council is 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.
31. The appellant cites appeals Ref APP/D0840/W/16/3148723 and APP/D0840/W/16/3147376 in this context. However both pre-date the Council's adoption of the Local Plan, which must necessarily have been found to be consistent with the approach in the Framework to have been adopted.¹⁵
32. 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.
33. 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'. On the basis of the evidence before me, the Council are therefore presently able to demonstrate a five year land supply.

¹⁴ The Council's officer report associated with the application explains that 'this could be considered as an infill site' whereas paragraph 4.14 of the Council's appeal statement indicates that the proposal 'could not be classed as infill'.

¹⁵ With reference to paragraph 182 of the Framework.

Accordingly relevant policies for the supply of housing must be considered up to date.

34. I acknowledge that the proposal would result in an addition to housing stock in Cornwall of 4 homes and make use of a presently under-used site. However neither the encouragement given within the Local Plan to housing delivery nor within the Framework is at the expense of appropriately located development. Residential development of the appeal site is not supported by housing policies of the Local Plan nor necessary to meet the Local Plan housing target or Council's five year land supply.
35. I accept that the proposal would have further social and economic benefits in supporting local employment during construction and as future residents would make use of nearby services and facilities. However the benefits resulting from four dwellings in these respects would be modest. Moreover such benefits, and indeed those in respect of additions to housing stock, are very minor when set against the significant levels of development identified for the St Agnes and Perranporth Community Network Area as established above.
36. The Framework furthermore underscores the importance of a plan-led system, and the Planning Practice Guidance (the 'Guidance') explains how 'considerable weight should be given to the housing requirement figures in adopted Local Plans'.¹⁶
37. Planning appeal Ref APP/D0840/W/15/3141049 has been brought to my attention by the appellant. Notwithstanding that both that appeal and this proposal fall within the WHS, paragraph 18 of that decision sets out that 'there are no significant views of the wider countryside through, or with reference to the appeal site', in contrast to the situation of the appeal site here. Indeed there is no reference to mineworkers' smallholdings in that appeal decision. Consequently that appeal and this case are not directly comparable.
38. For the above reasons I can only accord the benefits of the proposal highly limited weight. I therefore conclude that they do not outweigh the harm that would arise as established in relation to the first main issue in this appeal.

Conclusion

39. For the above reasons, and having taken all other matters raised 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

¹⁶ Reference ID: 3-030-20140306.