
Appeal Decision

Site visit made on 3 May 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 26th May 2017

Appeal Ref: APP/D0840/W/16/3161536

**Sibbys Cottage, road from Tregrehan Mills to Industrial Units,
Tregrehan Mills, St Austell PL25 3TQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr James Clemo against the decision of Cornwall Council.
 - The application Ref PA16/05880, dated 4 June 2016, was refused by notice dated 18 October 2016.
 - The development proposed is construction of a single dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The adopted Cornwall Local Plan (CLP) has replaced the policies of the Restormel Local Plan 2001-2011 referred to in the Council's decision. I have to consider the appeal against the Development Plan policies now in place. Consequently, the policies of the previous local plan can play no part in my decision.

Main Issues

3. The main issues in this appeal are as follows:
 - Whether this would be a suitable location for housing, having regard to the Development Plan.
 - The effect on the character and appearance of the area.
 - Whether the future occupiers would be at risk from flooding.
 - Whether it has been demonstrated that there would not be a risk to the health of the future occupiers from contamination.
 - Whether it has been demonstrated that there would not be a harmful effect on protected species.

Reasons

Whether the location is suitable for housing

4. The appeal site consists of a small field with a wide frontage onto the adjacent road. The field forms part of a wider area of similar open land which includes a number of fields, as well as land in leisure uses further to the south west. I
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understand that the site was once used in association with mining, but it has since been restored and laid to grass.

5. CLP Policy 3 supports the provision of new housing outside of Cornwall's main towns where it consists of the rounding off of a settlement, development of previously developed land within or immediately adjoining a settlement, infill schemes that fill a small gap in an otherwise continuous built frontage and which do not physically extend the settlement into the countryside, and; rural exceptions sites for affordable housing.
6. Development is strung out along this part of the road, generally being separated by generous areas of open land and woodland. This has resulted in a dispersed pattern of development. Although the site adjoins the grounds of a dwelling on one side, it is adjoined by open land on the other side and at the rear, with woodland opposite. There is no significant barrier which physically or visually separates the site from the adjacent wider area of open land. Consequently, the site is more related to the adjacent open land, as opposed to a group of buildings. The site is also a substantial distance from the more concentrated area of housing to the north-west of the Trenowah Road junction, which comprises the main built-up part of the village.
7. Therefore, the proposed dwelling could not be described as either infilling or rounding off as defined in CLP Policy 3 and the supporting text. The dwelling would not fill a small gap in an otherwise continuous built frontage and it would physically and visually extend building into the countryside. Moreover, although the site was previously developed, it is not immediately adjacent to the settlement and in any event, it has since largely been assimilated into its landscape surroundings. There has been no suggestion that the dwelling would provide affordable housing as meant by CLP Policy 9. Therefore, the dwelling would not accord with CLP Policy 3 or CLP Policy 9.
8. CLP Policy 7 restricts new housing in the countryside unless it meets certain criteria, including amongst other matters where there is an essential need for a rural worker to live in that specific location. This is consistent with the approach in paragraph 55 of the National Planning Policy Framework (the Framework) of avoiding new isolated homes in the countryside, unless there are special circumstances. Open countryside is defined in the CLP as the area outside of the physical boundaries of existing settlements. Given my findings above, it would not be unreasonable to conclude that the site is in the open countryside for the purposes of CLP Policy 7. However, no evidence has been advanced to suggest that any of the criteria in CLP Policy 7 or special circumstances such as those listed at paragraph 55 of the Framework would apply to the dwelling. Consequently, the dwelling would not accord with CLP Policy 7 or paragraph 55.

Character and appearance

9. According to the Cornwall and Isles of Scilly Landscape Character Study¹ the natural features in the area surrounding the site are characteristic of the St Austell Bay and Luxulyan Valley Landscape Character Area (LCA). The small open fields, woodland lining the stream adjacent to the road and the undulating landform gives the surrounding area a largely rural character and appearance. This is notwithstanding the proximity of residential and industrial buildings, the

¹ Published June 2008.

built-up part of the village and the more concentrated group of buildings at Par Moor, adjacent to the A390. As noted above, restoration of the site has successfully integrated it within the rural surroundings. Therefore, to my mind the site contributes significantly to the attractive green wedge of land between the two built-up areas.

10. The dwelling would be of a chalet bungalow design, providing three-bedroom accommodation. It would be sited towards the rear of the site, with a finished floor level around two metres higher in relation to that of the adjacent road. A new vehicular access would be formed from the road together with a drive and parking and turning area, with the rest of the spacious plot used as gardens.
11. The dwelling would have a substantial size and bulk, which would be emphasised in the street scene by its significantly raised level. This would be accompanied by the harsh and engineered appearance of the hardsurfaced access and parking arrangements and the presence of parked cars, together with the accumulation of domestic paraphernalia such as outdoor furniture, children's play equipment and ornamental planting within the extensive garden. Consequently, although the dwelling would occupy a relatively small area, it would result in the site having a much more built-up and urbanised appearance.
12. Accordingly, the dwelling would be viewed as a substantial extension of residential development into the largely undeveloped countryside between the built-up areas. This would be entirely at odds with its rural surroundings and as a result, the dwelling would appear as an incongruous feature. The dwelling would not respect the recognised landscape qualities of the area, which the LCA identifies as being under pressure due to expansion of rural villages. As a result, the dwelling would cause unacceptable harm to the rural character and appearance of the area.
13. Therefore, the dwelling would not accord with CLP Policy 23, as it does not recognise and respect the character of the landscape and it has not been guided by the LCA. I have not found any failure to accord with CLP Policy 13 in this respect, as it contains no relevant criteria. However, the dwelling would also be inconsistent with the Framework key principle at paragraph 17 requiring account to be taken of the intrinsic character and beauty of the countryside as well as paragraph 109, which seeks to protect valued landscapes.

Flood risk

14. The approach to managing flood risk set out at Section 10 of the Framework is to avoid inappropriate development in areas at risk of flooding by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.
15. The dwelling itself would be sited on land which falls within Flood Zone 1. There is therefore a low probability of the dwelling itself being directly affected by flooding. However, the stream which runs opposite the site is parallel to the road which would be used for access and egress to the dwelling. Due largely to the presence of the stream, the road is within Flood Zone 3 and is therefore at a high probability of flooding. Therefore, future occupiers of the dwelling would be placed at an increased risk as result of the higher probability of a flood

event when using the access. Accordingly, it is relevant to apply the sequential test to the appeal scheme.

16. The Council has undertaken a sequential test, based on its Strategic Flood Risk Assessment. This confirms that there are reasonably available sites for a dwelling in the area with a lower probability of flooding. The appellant has referred to a lack of other suitable sites for a house in the village and a local need for family housing identified in the Carlyon Parish Plan². However, there is no evidence to cast doubt on the Council's findings. Consequently, the sequential test has not been passed.
17. Therefore, in strict terms it is unnecessary to consider the exception test. However, I have taken the submitted site-specific Flood Risk Assessment (FRA) into account. This confirms that a dry access and egress route to the dwelling could not be achieved during 1 in 100 and 1 in 1000-year flood events, due to flooding of the road. Even so, based on the advice in the Planning Practice Guidance (PPG) section 'Flood risk and Coastal Change' the access and egress does not necessarily have to be dry during flood events to be safe³. The FRA suggests that any flooding of the road is only likely to occur for short periods. Moreover, due to the maximum depth and velocity of the flood water, the flood hazard would fall below the 'danger for some' risk level for most flood events. The FRA findings are based on and consistent with the Environment Agency's own hazard mapping. Therefore, I give the FRA conclusions more weight than the general advice in the Defra/Environment Agency document the Council relied on.
18. Whilst some sections of the local road network would be within the 'danger for most' risk level, it would not be essential to use those sections to reach the appeal site in a flood event, as alternative lower risk routes would still exist. Overall, it would appear that the access and egress arrangements could ensure that the future occupiers were not put at unacceptable risk due to the access and egress to the dwelling during flood events. However, there would be a residual element of risk, especially for older or disabled persons or young children accessing or egressing the site. Such a level of risk would be unlikely to be associated with a site with a lower probability of flooding.
19. As a result, the FRA reinforces my conclusions regarding the application of the sequential test to the appeal scheme. As the sequential test has not been passed, the dwelling would be unacceptable on wider flood risk grounds. Therefore, the dwelling would not accord with CLP Policy 26, as it would not avoid an area of flood risk, having regard to the vulnerability of the proposed use. Consequently, the dwelling would also be inconsistent with the guidance on managing flood risk at Section 10 of the Framework.

Contamination

20. The PPG section 'Land Affected by Contamination' paragraph 007⁴ recommends that developers should provide proportionate but sufficient site investigation information to determine the existence or otherwise of contamination, its nature and extent, the risks it may pose and to whom so that these risks can be assessed and satisfactorily reduced to an acceptable

² Published September 2011.

³ Paragraph 039 Reference ID: 7-039-20140306.

⁴ Reference ID: 33-007-20140612.

level. Paragraph 009⁵ advises that development should be appropriate to its location and not pose an unacceptable risk.

21. The appellant's submitted environmental report found that the site is potentially contaminated, as the ground may contain high levels of toxic metals due to the historic mining activity. It was recommended that a more detailed investigation to identify the full extent of any contamination on site was undertaken. However, one has not been submitted.
22. Therefore, based on the information currently available it is not possible to ascertain whether the site could be remediated without leaving an unacceptable level of residual risk to the health of the future occupiers of the dwelling. I appreciate that the appellant is willing to undertake further investigative works at the site and carry out any recommended remedial measures. Nevertheless, a planning condition could not reasonably be imposed to achieve those objectives, due the uncertainty as to whether the potential risk to the health of future occupiers could be adequately mitigated. Whilst the appellant has referred to the development of other reclaimed sites, no further details have been provided and in any event, similar requirements are likely to have applied to those sites.
23. Consequently, the dwelling would not accord with CLP Policy 13, as it would not avoid adverse impacts from pollution. The failure of the dwelling to mitigate against harmful impacts and health risks arising from ground contamination would not accord with CLP Policy 16. Moreover, the failure to prevent the development being put at unacceptable risk from pollution would also be inconsistent with the Framework at paragraphs 109 and 120.

Protected species

24. No survey has been carried out to establish whether there are protected species which might be affected by the dwelling. I am mindful of the advice in the PPG section 'Natural Environment', that ecological surveys should only be required where they are clearly justified. In my experience, it is not unreasonable to assume that there might be protected species present at the site or in the locality, having particular regard to the roadside stream and wider areas of woodland nearby. Consequently, in the absence of a survey it is impossible to determine the likely impact of the dwelling on protected species.
25. I would echo the appellant's surprise that this matter was not raised when he sought pre-application advice. Nevertheless, the dwelling would not accord with CLP Policy 23, as it has not been demonstrated that adverse impacts on protected species would be avoided. The dwelling would also therefore be inconsistent with the guidance on biodiversity at paragraphs 109 and 118 of the Framework.

Other matters

26. I acknowledge that Carlyon Parish Council supported the application and that there were no objections from local residents. I understand that the appellant wishes to return to the village to be closer to elderly relatives. This is an entirely understandable aspiration. However, personal circumstances can change quickly whilst the planning consequences of development will endure long after such circumstances have ceased to be relevant. Moreover, planning

⁵ Reference ID: 33-009-20140306.

permission runs with the land. Consequently, I have given these matters limited weight.

Planning balance

27. Sustainable development has to be assessed against the three mutually dependent roles-economic, social and environmental-set out at paragraph 7 of the Framework. The dwelling would fulfil the economic role and part of the social role. It would provide employment, in particular in the short term in the construction sector. It would also assist in sustaining local shops and services. In social terms, the dwelling would contribute to the supply of housing required to meet current and future needs.
28. However, the benefits of the dwelling would be small-scale. The dwelling would not fulfil the social role, as it would not create a high quality built environment. Moreover, the dwelling would fail to achieve the environmental role, as it would not contribute to protecting and enhancing the natural environment by amongst other matters, helping to improve biodiversity, minimising pollution and mitigating and adapting to climate change. The failure of the dwelling to achieve the social and environmental roles means that it would not amount to sustainable development as defined in the Framework.

Conclusion

29. The dwelling would not accord with the Development Plan or the Framework.
30. For the reasons given above I conclude that the appeal should be dismissed.

Stephen Hawkins

INSPECTOR