
Appeal Decision

Site visit made on 20 June 2017

by Thomas Bristow BA MSc MRTPI

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

Decision date: 3rd August 2017

Appeal Ref: APP/Z0835/W/16/3166073

Land at White Cottage, Porthloo, St. Mary's, Isles of Scilly TR21 0NF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr Eric Hicks against the decision of the Council of the Isles of Scilly.
 - The application Ref P/16/084/FUL, dated 8 August 2016, was refused by notice dated 4 October 2016.
 - The development proposed is described on the application form as the 'demolition of 2 bedroomed chalet & erection of 2 bedroomed cottage.'
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of 2 bedroomed chalet & erection of 2 bedroomed cottage at land at White Cottage, Porthloo, St. Mary's, Isles of Scilly TR21 0NF in accordance with the terms of the application Ref P/16/084/FUL, dated 8 August 2016, subject to the schedule of conditions in this decision.

Application for costs

2. An application for costs was made by Mr Eric Hicks against the Council of the Isles of Scilly, which is the subject of a separate decision.

Procedural matters

3. The description of development in the banner heading is that used in the application form. The Council's alternative description of development in the decision notice does not alter the nature of the development proposed.
4. The appeal site has an extensive planning history,¹ application Ref P/16/084/FUL following unsuccessful application Ref P/16/035/FUL.² Whilst I have determined the proposal before me on its particular merits, I have referred to this planning history in so far as it has a bearing in the present.

Planning context

5. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The

¹ As detailed in paragraph 4.1 of the Council's statement of case.

² Whilst the description of development used in the application form and Council's decision notice refers to the proposal before me as a resubmission of application Ref P/16/035/FUL it appears that there are material differences in design between the current scheme and its predecessor.

Isles of Scilly Local Plan was adopted in November 2005, and all policies were subsequently saved by Government direction.

6. Policy 3 'Housing' of the Local Plan sets out that in order to promote sustainable communities no 'general open market housing' will be permitted. Supporting paragraph 27 to policy 3 sets out that 'in order to justify any new housing including the size (or range of sizes) of the dwelling being proposed, it must effectively meet the long term needs of the community'. Residential development is only supported by policy 3 where it relates to a 'specific local need' for affordable housing, is to accommodate a 'key worker' or is for the provision for staff accommodation.
7. Policy 3 is informed by the limited housing stock on the islands comprising the Isles of Scilly, a finite land supply of land, financial constraints on affordable housing provision, and the effect of high levels of second home ownership and tourist accommodation on the local housing market.
8. As specified in the application form, the dwelling proposed would be market housing. There are no obligations pursuant to section 106 of the Town and Country Planning Act 1990 as amended (the 'TCPA') before me which would restrict its occupancy in accordance with policy 3 of the Local Plan. Accordingly I cannot impose a restrictive occupancy condition as this would render the development substantially different from that originally proposed.³

Main issues

9. Against this planning context the main issues in this appeal are:
 - 1) whether or not the development proposed would be tantamount to the creation of a new dwelling with reference to policy 3 of the Local Plan, and if so
 - 2) whether or not the harm resulting from the conflict with policy 3 of the Local Plan would be outweighed by the benefits of the development proposed.

Reasons

10. White Cottage is a detached two storey property facing the nearest road, apparently unnamed, which is located some 48 metres away. The land between the property and the road is largely flat, in character is essentially that of a residential garden, and is enclosed by substantial mature planting.
11. Within this land is a modest timber-clad chalet which has the outwards appearance of several connected pre-fabricated sheds. The lawful use of the chalet is residential with no occupancy restrictions.⁴ The proposal is to demolish the chalet and to erect a dwelling.
12. The chalet comprises 2 bedrooms, has a footprint of approximately 42 square metres and an internal volume of approximately 105 cubic metres.⁵ The

³ Planning Practice Guidance Reference ID: 21a-012-20140306.

⁴ As established via appeal Ref APP/Z0835/C/15/3006441.

⁵ Figures as set out in the Council's officer report.

dwelling proposed would have two bedrooms, a footprint of 96 square metres and an internal volume of 422 cubic metres.

13. The Council aver that as the dwelling proposed would be larger than the existing chalet, the proposal is effectively for a new rather than replacement dwelling. As set out above policy 3 of the Local Plan is clearly framed in relation to 'any new housing'. Accordingly, and in the absence of a mechanism to restrict occupation, the Council contend that the dwelling proposed would be a less affordable form of accommodation than at present.⁶
14. The Council are therefore of the view that the development proposed would not respond appropriately to the drivers behind policy 3 of the Local Plan as set out above, in particular as the dwelling proposed would command a greater market value and be more attractive as either tourist accommodation or a second home.
15. I accept that whether a proposal amounts to the creation of a new dwelling as opposed to a replacement dwelling is a matter of planning judgement. However in this instance the modest market value of the chalet results from the accommodation it contains being highly limited in footprint and height, and as the building is of insubstantial construction. Any upgrading of the chalet to modern standards of accommodation would increase its market value, and thereby make it more attractive as tourist accommodation or as a second home.
16. The chalet comprises two bedrooms, as would the dwelling proposed, and the footprint of the dwelling proposed would partially overlap with that of the existing chalet. The dwelling proposed therefore has some degree of relationship to the existing chalet.⁷ More significantly the proposal would not result in a net addition to housing stock without occupancy restrictions on the islands; the existing chalet could presently be used as tourist accommodation or as a second home.⁸
17. Whilst development plans cannot realistically address every development scenario that may arise, policy 3 of the Local Plan contains no reference to replacement dwellings and is clearly phrased as relating to 'new dwellings'. The National Planning Policy Framework (the 'Framework') is similarly silent in respect of policy considerations related to replacement dwellings.
18. Whilst the proposal would result in a larger dwelling on site, the dwelling proposed has some degree of relationship with the existing chalet, and in this instance no net addition to housing stock on the islands without occupancy restrictions would occur. Moreover the Council do not object to the proposal in other respects, including with regard to its effects on the character and appearance of the area.⁹ On the evidence before me, and with regard to the nature of the development proposed and its surrounding context, there is

⁶ 'Affordable' accorded its ordinary meaning with reference to the market value that it may command as opposed to representing 'affordable housing' as defined in the National Planning Policy Framework.

⁷ Notwithstanding that alterations affecting only the interior of a building are not development, and as shown on plan WCC-5.

⁸ The appellant explains in his statement of case that it is currently available as tourist accommodation.

⁹ Including its effect on character and appearance with regard to the designations that apply (Conservation Area, Area of Outstanding Natural Beauty and Heritage Coast).

nothing to lead me to a different position in respect of character and appearance.¹⁰

19. For the above reasons I therefore conclude that the development proposed would not be tantamount to the creation of a new dwelling with reference to policy 3 of the Local Plan. Accordingly it is unnecessary to address the second main issue identified above.

Other matters

20. The appellant has brought to my attention a nearby appeal, Ref APP/Z0835/A/10/2120334. Whilst the inspector in that case concluded that the scheme before him would not amount to the creation of a new dwelling, his decision is nevertheless based on the premise that determining whether a proposal represents a new dwelling is a matter of planning judgement. Moreover the development proposed in that appeal and the nature of the existing dwelling proposed for demolition are materially different from the circumstances in this case.

Conclusion

21. For the above reasons, and having taking all other relevant matters into account, the proposal accords with the development taken as a whole and with the approach in the Framework. I therefore conclude that the appeal should be allowed subject to the conditions set out below.

Conditions

22. In the interests of certainty and clarity, I have imposed conditions requiring compliance with the relevant plans and requiring that the existing chalet is demolished (the latter must necessarily occur before any other development is undertaken). There is no specific provision in policy 3 enabling the imposition of a condition requiring that dwellings proposed are occupied as principal residences, and the use of the development proposed is specified as a dwelling rather than holiday accommodation.¹¹ Condition 3 as proposed by the Council in their statement of case is thereof unreasonable and unnecessary.¹²
23. Given the potential for even relatively minor alterations to the dwelling proposed to adversely affect the protected character or appearance of the area, I am satisfied that it is appropriate to withdraw certain permitted development rights via condition.¹³ However this condition need not apply to Schedule 2, Part 1 Classes F, G, and H of the Town and Country Planning (General Permitted Development) (England) Order 2015, as the limitations or conditions in these Classes provide adequate safeguards to avoid undue effects.
24. In order to safeguard the living conditions of those nearby during construction it is necessary to specify via condition the hours during which building operations may occur. To ensure that the proposal integrates appropriately with its surroundings it is further necessary to impose a condition requiring that

¹⁰ With regard to the relevant provisions of the Framework and applicable statutory requirements.

¹¹ With regard to section 75(3) of the Town and Country Planning Act 1990 as amended.

¹² With reference to paragraph 206 of the Framework.

¹³ With reference to the Planning Practice Guidance Reference ID: 21a-017-20140306.

agreed external materials are used and an agreed landscaping scheme implemented. Agreement of external materials need not delay demolition, site clearance and groundworks, however an agreed landscaping scheme must be agreed before any development takes place as this may affect the approach taken to any construction work.

25. I have imposed a condition requiring that an agreed sustainable design scheme is implemented. This accords with the approach in criterion (2) of policy 2 'Sustainable development' of the Local Plan, which sets out that the design of development should seek to use natural resources efficiently, and applies before any development is commenced as such a scheme may influence the approach taken to construction.
26. A condition related to waste management, as proposed by the Council, is unnecessary. The condition proposed by the Council seeks to control hypothetical adverse effects resulting from the disposal of waste material, and there is no specific provision in policy 1 'Environmental protection' for such an approach. In any event the Council have other powers to remedy adverse effects that may arise in this regard.¹⁴
27. In imposing conditions I have had regard to relevant requirements,¹⁵ and have accordingly amended the wording of certain conditions proposed without altering their aim.

Thomas Bristow

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: WCC-1A, WCC-3 and WCC-5.
3. The existing dwelling within the appeal site, described in the description of development as the chalet, shall be permanently demolished before any other development hereby permitted is undertaken.
4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, re-enacting or modifying that Order), no development permitted by Schedule 2, Part 1, Classes A, B, C, D, or E of that Order shall be undertaken in relation to the dwelling hereby permitted.

¹⁴ Including notices under section 215 of the TCPA.

¹⁵ Including paragraph 206 of the Framework, Guidance Reference ID: 21a-004-20140306 and Article 35(1)(a) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

5. No construction works related to the development hereby permitted shall take place outside of the following hours: 0800 – 1800 Mondays to Saturdays. No construction works related to the development hereby permitted shall take place on Sundays, on public holidays, or on bank holidays.
6. Other than demolition, site preparation and groundworks, no development hereby permitted shall be undertaken until details or samples of the external materials to be used have been agreed in writing with the local planning authority (which shall include details of the manufacturer, range, and colour details where applicable). Development shall be carried out in accordance with the details and samples thus agreed.
7. No development hereby permitted shall be undertaken until a landscaping scheme has been submitted to and approved in writing with the local planning authority (which shall include appropriate details of any finished ground levels or contours, means of enclosure, parking layout, vehicular and pedestrian access routes and circulation spaces, hard surfacing, measures for the protection of any trees or plants on site that may be affected by development, a schedule of proposed plant species, size, density and planting locations alongside an implementation programme). The landscaping scheme shall be implemented in accordance with the details thus agreed prior to the occupation of the dwelling hereby permitted and maintained as such thereafter. Any trees or plants which within a period of 5 years from the implementation of the landscaping scheme die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
8. No development hereby permitted shall be undertaken until a sustainable design scheme has been agreed in writing with the local planning authority (which shall include details of any water conservation and harvesting measures and renewable energy generation). Development shall be carried out in accordance with the sustainable design scheme thus agreed.