

## Appeal Decision

Site visit made on 22 January 2018

**by K Taylor BSc (Hons) PGDip MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15<sup>th</sup> February 2018**

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**Appeal Ref: APP/D0840/W/17/3183739**

**Land adjacent to Cassacawn Road, Blisland PL30 4JF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Kearnsweare Ltd against the decision of Cornwall Council.
  - The application Ref PA16/12208, dated 28 November 2016, was refused by notice dated 10 April 2017.
  - The development proposed is the erection of 12 dwellings to include 6 affordable dwellings.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Cornwall Council against Kearnsweare Ltd. This application is the subject of a separate decision.

### Procedural matter

3. The application is in outline with all matters reserved for future consideration except for the means of access. A vehicular and pedestrian access is proposed at the northern edge of the site with a pedestrian access in the south west corner. Various drawings have been submitted and, other than where the detail relates to access, I have treated this as indicative. This includes a block plan which, despite the description of the development, only appears to show ten houses. Four dwellings are shown close to the road at the north of the site, with one dwelling located to the west of the access and then three to the east. A fifth dwelling is set a little into the site and to the rear of the proposed vehicular access. Together these five dwellings are indicated as being open market housing. The five dwellings indicated as being affordable housing are shown to sit in the southern and western section of the site to the rear of the access and two of the market dwellings.

### Main issues

4. The main issues are:
  - whether the proposal makes adequate provision for affordable housing;
  - the effect of the development on the character and appearance of the area including whether it would conserve and enhance the natural beauty of the Area of Outstanding Natural Beauty (the AONB) and preserve or enhance the character or appearance of the Conservation

Area (the CA) and the effect of the development on the setting of the nearby listed buildings; and

- whether adequate provision would be made for public open space.

## **Reasons**

### *Affordable housing*

5. Together Policies 2, 2a, and 3 of the Cornwall Local Plan Strategic Policies (the LP) set out the development needs and a spatial strategy for the County along with a settlement hierarchy and a broad distribution to meet those needs over the plan period. These seek to provide the majority of development, including housing, within or well related to the named towns. Policy 3 seeks to permit housing outside of these named towns in a number of circumstances. Of relevance to this appeal is through infill schemes at a settlement and through rural exception sites under Policy 9 of the LP.
6. The appeal statement and the original planning statement are clear that the development is proposed as a rural exception site. However, it is also suggested that the development of the road frontage would amount to infill development in line with Policy 3.
7. Dealing first with Policy 9. This allows for the development of sites outside but adjacent to the existing built up area of smaller towns, villages and hamlets, whose primary purpose is to provide affordable housing to meet local needs. The Policy is clear that such developments must be primarily to provide affordable housing. The inclusion of market housing is only supported where it is essential for the successful delivery of the development based on a detailed financial appraisal. The Policy also states that the market housing must not represent more than 50% of the homes or 50% of the land take (excluding infrastructure and services). The supporting text is also clear that schemes should work from a base position of 100% affordable housing and this proportion should only be decreased with the needs of achieving viability.
8. The National Planning Policy Framework (the Framework) defines rural exception sites as providing affordable housing in perpetuity where sites would not normally be used for housing. It notes that small numbers of market housing may be allowed at the local authority's discretion, for example where essential to enable delivery of affordable units without grant funding.
9. Various iterations of a draft planning obligation have been submitted. Although the initial appeal submission suggests that there would be a unilateral undertaking, a multilateral agreement has been provided which would place obligations on the Council. The agreement seeks to secure at least 50% of the housing as affordable with the exact level to be agreed at the reserved matters submission and subject to viability. Wording has been added to suggest that this should work backwards from 100%. The obligation has not been completed and the correspondence I have seen does not provide confidence that the wording in the most recent version has been agreed. The appellant's description of development states that only six of the twelve dwellings are proposed as affordable housing. While this may not be definitive, it suggests that this has been seen as the starting point rather than having 100% as the base position.

10. No viability information has been submitted. This is fundamentally contrary to the Policy. The appellant's justification for this is a suggestion that a meaningful assessment of viability cannot be made when many elements of the scheme have not been finalised. Viability appraisals submitted with outline applications is not uncommon. The appellant has not provided any evidence that there are any circumstances that would make assessing the viability of the scheme at the outline stage unusually problematic. There is nothing within Policy 9, or its supporting text, which would support viability testing only at the reserved matters stage.
11. The sole purpose of a rural exception scheme is to provide affordable housing, with any market housing only included to enable delivery. There is no authoritative evidence to show how much, if any, market housing would be necessary to enable viable delivery. The appellant's approach does not therefore comply with Policy 9 of the LP.
12. Notwithstanding the above, I have no completed planning obligation before me which would secure the provision of the affordable housing. There would be considerable intricacies involved including securing the housing as affordable in perpetuity at an appropriate rent or sale price, the approval of the size, tenure, and mix of the housing, and the phasing and transfer, if necessary, to a registered provider. In this case the viability testing, before the approval of reserved matters, would need to be secured. I have no evidence that a condition could secure such matters with the necessary precision and certainty. The development itself is neither complex nor strategically important and therefore the basic tests for considering whether to secure an obligation through a negatively worded condition would not be met<sup>1</sup>.
13. A planning obligation would be necessary to secure the affordable housing so that the development could amount to a rural exception scheme. The lack of a completed obligation is therefore fatal and, in such circumstances, I could not allow the appeal.
14. The Council has indicated that there are a relatively small number of households in affordable housing need registered with a local connection to Blisland. Only 9 households have indicated a preference to live in Blisland. The majority of these have identified a need for affordable rented one bedroomed homes. In this context the current lack of specificity in terms of the amount, size and tenure mix of the affordable housing is of concern to the Council.
15. Rural exception schemes should seek to address the needs of the local community. I do note that the numbers of households who have identified the settlement as their preference exceeds the minimum number of affordable houses proposed. However, given the relatively modest and specific local need, I consider that the lack of detail and lack is a further indication that the development proposed does not align with the overarching policy driver for rural exception sites to be clearly affordable housing led and meet local needs.
16. I also note that the Council has some concerns as to whether the market dwellings would exceed the maximum 50% of the land take (excluding infrastructure and services). Given the outline nature of the application and lack of detail as to the amount, tenure, and size of the affordable housing it is not possible to make a meaningful judgement on this matter. In any event,

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<sup>1</sup> Planning Practice Guidance Reference ID: 21a-010-20140306

given my findings on the other matters relating to the provision of affordable housing, it is not crucial that I reach a definitive finding on this particular issue.

17. Under Policy 3 infill is a scheme that would fill a small gap in an otherwise continuous built frontage and will not physically extend the settlement into the open countryside.
18. At its northern side the appeal site sits between Newton House and Butts Cottage. On the appeal site side of the road to the south there is no frontage development to either the east or west of the site. Any development in this southern portion of the site would not therefore be development in an otherwise continuous built frontage and so it would not amount to infill in line with the Policy. The proposed development is for the site as a whole, each part is integral to the other and it would all share the same access points. Parts of the site cannot therefore be separated off from one another to be considered discretely against a particular policy. When the development is considered as a whole, as it must be, it would not amount to infill and so it would not comply with this part of Policy 3. That being so, whether or not development on the site frontage in isolation could amount to infill is of no relevance and I do not reach any direct finding on this.
19. On this first main issue I therefore conclude that it has not been demonstrated that the proposal would make adequate provision for affordable housing. The development would conflict with Policies 2, 3 and 9 of the LP.
20. Policy MD5 of the Cornwall Area of Outstanding Natural Beauty Management Plan supports small scale development that enables identified needs of local people to be met, including in respect of affordable housing. It is not clear that the market housing element of the scheme would be directly proportionate in scale to enable a viable affordable housing development which would meet the specific local needs. This being the case, the appeal development would not be supported by this policy. It follows that I also cannot conclude that it is necessary development within the AONB and as such Policy MD9 of this document would also not offer support for the development.

#### *Character and appearance*

21. The appeal site is located within the AONB, on the edge of the settlement. It is separated from the garden walls associated with Newton House by an intervening piece of land. The site is agricultural land bounded by hedging and trees. When seen from the road to its northern edge it forms the majority of a gap of significant length between Newton House and Butts Cottage. There is frontage development to the northern side of the road, but to the south, the appeal site appears as open countryside to the edge of the built form of the village with Butts Cottage appearing as an isolated building to the southern side of the road which is otherwise surrounded by agricultural land. The contrast between the frontage development to the north and largely agricultural setting to the south significantly reinforces the rural character to this edge of Blisland.
22. From the road to the south of the site the site is seen as part of agricultural land which then leads into the parkland setting of land located to the rear of Newton House and the village green. This similarly has resulted in a rural setting to this approach to Blisland. The topography of the surrounding land and the significant boundary planting is such that the appeal site is not greatly

prominent from wider views. However from local views, when entering and exiting the village, it makes a significant contribution to the character and appearance of the area and to how this small part of the natural beauty of the AONB is enjoyed.

23. The application is in outline, with the layout of the site and the appearance and scale of the buildings reserved matters. However, the proposal would introduce development where there currently is none. The location of the vehicular access would be such that it would open up views into the deeper section of the site and therefore any development in this location would be visible. Landscaping could not fully mitigate such views. The development would inevitably have an urbanising effect. It would result in the loss of a very large portion of the gap between the curtilage of Newton House and Butts Cottage. The important contribution this land makes to the rural character of this approach to the village would be severely compromised.
24. A Landscape Visual Impact Assessment has been prepared. This concludes that the development would have a 'neutral' impact. However, I note that the assessment sets out that the significance of a number of the landscape effects are 'moderate', 'minor/moderate' or 'minor' and the significance of the visual impacts are generally shown as being 'moderate' or 'minor/moderate'. These conclusions take account of mitigation measures, such as additional landscape features and planting. The overall conclusion suggests that the development would complement the scale, landform, and pattern of the landscape, but that it would affect an area of recognised landscape character.
25. The associated table, which sets out the significance criteria, lists one of the factors that would lead to the impact being categorised as 'minor adverse' as a scheme which would affect an area of recognised landscape character. It is not clear, therefore, why the overall conclusion that there would be a 'neutral' impact has been reached. The assessment appears to have been based on the indicative block plan and a number of the mitigation measures are detailed having reference to this layout. Due to the outline nature of the application, there can be no certainty that the layout and scale of the dwellings would follow a similar approach. Furthermore, the assessment is based on the assumption that the scheme would be for detached dwellings, however this layout appears to only accommodate ten dwellings. Therefore, inevitably a scheme for twelve detached dwellings would require a different layout.
26. The appellant has highlighted that neither the Council nor the AONB unit has prepared its own Landscape Visual Impact Assessment. Such matters involve a degree of subjectivity and I do not consider that the lack of an alternative assessment should prevent either from reaching their own view on the impact of the development.
27. Taking these factors together with my own observations on site I cannot reach the view that the appeal development would result in a neutral impact on the landscape. For the reasons I have set out above, while the development would only have a relatively localised effect, it would result in harm to the character and appearance of the area and fail to preserve and enhance the natural beauty of the AONB.
28. A small portion of the south westerly corner of the appeal site is located within the CA. The pedestrian access is proposed in this location. I am satisfied that the intervention necessary to provide this would be modest and the character

of the CA would be preserved. The boundaries to the appeal site are such that there would be a degree of screening and visual separation from the site and the remainder of the CA. Therefore I am also content that the site could be developed without harm to the setting of the CA. There are a number of listed buildings in the locality including Newton House, Manor House, and St Portus and St Hyacinth Church. These are a little distant from the appeal site and the intervening land and vegetation is such that they appear visually separate from it. I am therefore also satisfied that the appeal development could be provided without harm to their setting.

29. There is a stone located in the western part of the appeal site, its origin and historic use is not certain. However, it has historic interest and I consider it to be a non-designated heritage asset of moderate significance. Although the proposal is in outline form, I am satisfied that a scheme could come forward which would retain this feature and accord it an appropriate setting in line with its significance. The lack of harm that would arise to these designated and non-designated heritage assets are neutral factors in the planning balance, but this does not weigh in favour of the development.
30. On this second main issue, I therefore conclude that the development would result in harm to the character and appearance of the area and it would fail to conserve and enhance the natural beauty of the AONB. The development would therefore conflict with Policy 23 of the LP and saved Policy ENV1 of the North Cornwall District Local Plan which together seek to ensure that development respects the special character of Cornwall, the important landscapes and gives great weight to conserving the landscape and natural beauty of the AONB.
31. The Council considers the development would not amount to major development in the AONB. Given its size I share this view. The proposal would not therefore fall within the category of development that should be refused except where exceptional circumstances exist. However, the Framework is clear that AONBs have the highest status of protection in relation to landscape and scenic beauty and that great weight should be given to conserving these attributes. The fact that the scheme is not for major development does not diminish this approach. In view of this, the harm that would arise to the AONB is a matter that weighs very significantly against the development.

#### *Public open space*

32. There is some evidence to suggest that the development would give rise to the need for a contribution towards the provision of public open space to be made in order to mitigate its impacts. This has not been disputed by the appellant and such a contribution is included within the draft planning obligation. However, as there is no completed obligation this would not be secured and so any impact of the development in this respect would not be mitigated. Furthermore, there is a distinct lack of specificity within the obligation and so I am not satisfied that it would secure the contribution to provide infrastructure that would be directly related to the development or that it would not fall foul of the pooling restriction.
33. I cannot conclude, therefore, that the obligation would comply with Regulations 122 and 123(3) of the Community Infrastructure Levy Regulations 2010 (as amended). There would be conflict with Policies 13 and 28 of the LP which together seek to secure the provision of necessary infrastructure including



public open space or, where there is access to existing provision, contributions to its ongoing maintenance and management.

*The planning balance*

34. The development would result in the provision of housing in a location that is close to some services and facilities. There would be social and economic benefits associated with this. Given the relatively modest scale of the development I give these benefits only moderate weight. The development was put forward to provide at least six affordable homes, and there would be additional social benefits associated with this. However, as there is no mechanism that would secure this, such benefits would not arise. Had this been secured, without a clear picture of the proportion of affordable housing that would be provided along with the lack of clarity as to the extent to which it would meet the local need I would only be able to attribute limited weight to these benefits.
35. It would be possible to secure some biodiversity enhancements as part of the development, however this would be a minor benefit and I only afford this very limited weight. The Council did not refuse planning permission based on highway impacts, the effect on trees, ecological or archaeological matters, or the effect on the living conditions of neighbouring residents. I am satisfied that such matters are either acceptable or could be made so through planning conditions. This however indicates a lack of harm on these particular issues but that does not positively weigh in favour of the development.
36. The appellant's approach is contrary to Policy 9 in respect of the provision of a rural exception scheme and it would fail to conserve and enhance the natural beauty of the AONB. These factors weigh significantly against the development, with the lack of a means to secure the provision or maintenance of public open space adding modest additional negative weight.
37. Even when taken together the moderate weight I give to the general benefits associated with the provision of housing and the limited additional benefits specifically associated with the affordable housing (had this been secured) and any biodiversity enhancements, would not outweigh the conflict with Policy 9 of the LP or the great weight that must be given to conserving the landscape and scenic beauty of the AONB. The development would fail to meet the environmental role of sustainable development and the approach to the provision of affordable housing would fail to meet the social role. When considered in the round the development would not amount to sustainable development and it would fail to accord with Policy 1 of the LP.

**Conclusion**

38. The proposal would not accord with the development plan when it is considered as a whole. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*K Taylor*

INSPECTOR