



Appeal Decision

Site visit made on 3 July 2019

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 August 2019

Appeal Ref: APP/D0840/W/19/3226497

Land east of St Levan's Church, Higher Porthpean, PL26 6AY

- 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 Sarah Gardner, Shaun Christie and Anna Christie against the decision of Cornwall Council.
 - The application Ref PA18/08947, dated 7 September 2018, was refused by notice dated 27 November 2018.
 - The development proposed is a new dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the Appellant against Cornwall Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appellant has raised concerns over the Council's handling of the application, the positive advice received from Planning Officers at the pre-application stage and their positive recommendation to Planning Committee to grant planning permission. The handling of application would need to be taken up with the Council and some of the other matters raised are addressed in the Decision on costs. Whilst I have had regard to the positive advice and recommendation received from the Planning Officers, this has not affected my duty to assess the appeal proposal based on an impartial assessment of the planning merits of the case.
4. The 2018 version of the National Planning Policy Framework (Framework) has been replaced by the February 2019 version. However, the policies that are relevant to this appeal have not changed.

Main Issues

5. The main issues are:
 - whether the proposed development would be acceptable having regard to local and national planning policies on the location of housing; and,
 - the effect of the proposed development on the character and appearance of the area.

Reasons

Suitability of the location

6. The appeal site is located to the east and north east of St Levan's Church and to the north of a lane referred to on some plans as Porthpean Beach Road. The site is largely open and covered in grass, apart from a caravan and timber shed.
7. The spatial strategy for the area is set out in Policy 2 of the Cornwall Local Plan Strategic Policies 2010 - 2030 (CLP). In relation to housing, it seeks to manage the location and scale of new development. This approach is expanded in Policy 3, which confirms that housing development will be accommodated in accordance with a hierarchy, with part 1, delivered through a Site Allocations Development Plan Document or Neighbourhood Plan for the identified main towns; part 2 through specific eco-communities; and part 3, in areas outside the main towns, through Neighbourhood Plans, rounding-off of settlements, previously developed land, infill or rural exception sites.
8. The settlement of Higher Porthpean is best described as a small hamlet. It contains no local services or facilities, other than the existing church. The hamlet has a well defined form and shape, with existing built development providing definable boundaries. In visual, functional and physical terms, the appeal site does not form part of this hamlet. It lies outside its logical boundary and forms part of the open countryside that surrounds the hamlet.
9. Within this context, the appeal site is not allocated for development, it is not within an identified main town and does not form part of one of the eco-community proposals. In relation to part 3 of Policy 3, there is no current Neighbourhood Plan and the proposal is not being promoted as a rural exception site (in line with Policy 9). It also does not fall within the definition of previously developed land, as set out in Annex 2 of the Framework, namely "*Land which is or was occupied by a permanent structure, including the curtilage of the developed land.*" There is no evidence before me to suggest that there has ever been a permanent structure on the site. Whilst I note that the site has been retained as a garden and that there is a caravan on the land, it would still not, even for these reasons, constitute previously developed land.
10. The appellant contends that the proposed development represents infill and/or rounding-off in accord with part 3 of Policy 3. Infill is defined as development that fills a gap in an otherwise continuous frontage, which will normally be a road frontage. Whilst the church adjoins the appeal site, there is no development beyond the site to the east and north east and the it does not represent a gap in a continuous frontage. The proposed development does not, therefore, fall within the definition of infill.
11. In terms of rounding-off, the Council have produced a Chief Planning Officer's Advice Note on Infill/Rounding-off (December 2017) (CPO Note). Whilst the latter is not a statutory document, its purpose is to provide a consistent approach to interpreting part 3 of Policy 3 of the CLP. It is, therefore, an important consideration in this appeal and provides helpful guidance on what the Council regard as rounding-off.
12. Based on the above, the proposed development would not represent rounding-off. This finding is based on the fact that the appeal site is not substantially

enclosed by existing built development; it does not include a clearly defined physical edge or feature that would act as a firm barrier to future growth; it would not provide for the symmetry or completion of the settlement boundary; it would visually extend the settlement and built development into the countryside; and it would not represent a logical extension to the hamlet. As with all such assessments, they require an element of planning judgement to be applied, but, even so, these findings are supported by the observations I made on my site visit, as well as the various photographs and plans that have been provided in evidence.

13. The appellant has referred to the fact that the north and north western boundary of the appeal site adjoin the gardens of Rosemary Cottage and The Laurels. That may be so, but it is not uncommon to find irregular shaped boundaries in such locations. As highlighted in the CPO Note, these boundaries often include large long gardens, as in this case, which form an important part of the setting of the settlement and the transition to the open countryside. Moreover, in this case, these gardens serve properties that front onto the main street that runs through the hamlet, whereas the appeal proposal would result in built development extending well beyond these existing properties and further down the lane towards Lower Porthpean.
14. The appellant contends that the property to the south, Treburthick, results in the site being enclosed on at least two sides. However, the proposed dwelling would extend well beyond the main house on that site. In addition, due to the physical separation provided by the existing lane, as well as the mature boundary screening and mounding on both sides of the lane, the appeal proposal would not, in my view, be adjacent to that property or enclosed by it.
15. The appellant has referred to the fact that since the 1970's planning permission has been granted for only one new dwelling within the hamlet, which they argue was not in accord with the guidelines. They also contend that more new housing should be encouraged. The Council have responded by saying that the new dwelling approved was well related to the hamlet and that the circumstances of that case were different. I have no other information before me that would lead me to reach a different view. In relation to the absence of new dwellings, this is likely to be due to a number of factors including the compact and close knit form of the hamlet.
16. The appellant has questioned the relevance of the housing policies referred to by the Council. However, as I have made clear above, these set out the spatial strategy for managing the location and scale of new housing development, against which the appeal proposal must be assessed. The appellant also indicates that the proposed dwelling is for the family and would be affordable. However, the appeal proposal has not been promoted as affordable housing and there is no evidence to show that the new dwelling would meet an identified local need.
17. In relation to Policy 7 of the CLP, this sets out the special circumstances whereby new dwellings will be permitted in the open countryside. The latter is defined in paragraph 2.33 of the CLP, as those areas outside the physical boundaries of existing settlements, which, as I found above, would include the appeal site. However, none of the exceptions in this policy apply to the appeal proposal. Whilst I would agree with the appellant that the appeal site is not "isolated" in the context of paragraph 79 of the Framework, there is no

reference in Policy 7 or its supporting text to “*isolated*”. Even so, the broad aims of this policy remain consistent, in my view, with those of the Framework, in seeking to restrict inappropriate development within the countryside.

18. The appellant has provided extracts from a Conveyance Document for the appeal site to support its use as a garden. I note that this refers to the “*piece or parcel of land formerly used as a garden.*” Even so, as I have found, its use is not a determining factor in this appeal. Also, whether its use as a garden or indeed for the citing of a caravan, is lawful or not, is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990 (Act). It is open to the appellant to apply to have the lawfulness of the use/caravan determined under section 191 of the Act, and my understanding is that no such application has to date been submitted.
19. The appellant contends that the Council’s references to the land east of the appeal site, which is the subject of a separate application/appeal for a new dwelling and where an appeal for a similar form of development was dismissed in June 2004, are unfair and not relevant. This site and the current proposals for it are material considerations and whilst I have had regard to them, I have determined the appeal proposal on its individual merits and with regard to the specific circumstances of this case.
20. Accordingly, I find that the proposed development is not suitably located and that there are no exceptional circumstances to justify development in the countryside. In addition, that the proposed development would not constitute infill or rounding-off. As a consequence, the appeal proposal would be contrary to Policies 1, 2, 3 and 7 of the CLP and the corresponding policies of the Framework.

Character and appearance

21. As you approach the appeal site from the church, the character of Porthpean Beech Road becomes distinctly rural. Other than the access to the appeal site, as well as that to the site further east and to Treburthick, the lane is characterised, on both sides, by extensive mounding, mature hedging and trees. It has a tranquil, rural feel, which is a pleasing aspect of its character.
22. Within this context, the appeal proposal would result in built development encroaching further into the open countryside. It would harm the contribution that the appeal site makes to the open rural character of the lane and the transition from the established built form of the hamlet to the countryside. It would also result in a development that would be poorly related to the hamlet, due to the fact that it would appear visually and physically separated from it.
23. Whilst the appeal site does not benefit from any designated landscape policy protection, it is situated within the Gerrans, Veryan & Mevagissey Bays Landscape Character Area, LCA 40, in the Cornwall & Isles of Scilly Landscape Character Study (2008). The latter confirms that the landscape character of this area has already been affected by incremental development, that has spread away from village cores and along existing roadways, leading to an erosion of its rural character. It also confirms that a number of smaller hamlets have retained their original settlement pattern and avoided new development that has, in other locations, resulted in the deterioration of village character and the surrounding landscape.

24. In this respect, Policy 23 of the CLP seeks to protect local distinctiveness and confirms that where new development is to be permitted it should protect and where possible enhance Cornwall's natural environment. A similar approach is set out in Policies 2 and 12 which, amongst other requirements, emphasise the need for proposals to maintain and enhance the special character of Cornwall and says that its rural landscapes, whether designated or undesignated, are important and should be protected and conserved.
25. The appeal proposal would involve the construction of a large dwelling and an area for parking and turning, on the western side of the site. Although not shown on the submitted plans, it is also apparent that a section of the mature boundary screening to the lane would need to be removed to provide the required visibility splays to the south east. On the basis, therefore, of the evidence that is before me, the proposed development would, in my view, have a harmful impact on the established rural and landscape character of this part of the lane and the area generally.
26. The appellant contends that the proposed development would improve the appearance of the appeal site, which they refer to as a 'roadside site'. The meaning of the latter is unclear, but, even so, the current appearance of the site from the lane is that of a typical agricultural gateway leading to an open parcel of land, albeit one which includes a caravan and shed. Whilst I accept that appeal site does have boundary screening, the front part of the site, where the proposed development will be concentrated, is currently visible from the lane and would be more so with the proposed development. As a consequence, the rural identity of the appeal site would be eroded, and domesticated by the new dwelling and associated areas for parking and turning.
27. The Council have referred to long range views of the appeal site, but my analysis has concentrated on the immediate relationship of the appeal proposal to the hamlet, the countryside and its rural/landscape setting. The appellant has also referred to extensions that have been permitted to existing properties within the hamlet, which they contend are more intrusive and harmful than the proposed dwelling would be. As I confirmed above, I have considered the appeal proposal on its individual merits, but notwithstanding this, I do not know the full planning circumstances of these cases and as they involved extensions, they are unlikely to be comparable to the appeal proposal.
28. Accordingly, I find that the proposed development would result in harm to the character and appearance of the area contrary to Policies 2, 12 and 23 of the CLP. Combined, these seek to maintain and enhance the quality of the natural environment, with the emphasis on protecting, conserving and enhancing natural landscapes. This approach is consistent with paragraphs 127 and 170 of the Framework.

Other Matters

29. The appeal site lies within the setting of the Grade II Listed Building at St Levan's Church. Section 66 of the Planning (Listed Buildings and Conservation Area) Act 1990 requires, therefore, that special regard must be had to the desirability of preserving the buildings setting. Similar advice is to be found in the Framework. The Council concluded that the appeal proposal would not result in any harm to the setting of this heritage asset due to the topography of the site and the fact that the proposed dwelling would sit at a much lower level to the church, the proposed use of local materials and the screening provided

by the intervening landscaping. Whilst I agree that the site topography and existing landscaping mitigate views of the church, no section plan or similar evidence has been provided to show the proposed relationship. Based on my observations on site, the new dwelling would, in my view, have an impact on the setting of the church. Even so, I find, on balance and on the basis of the evidence before me, that the harm that arises would not be significant nor substantial.

30. Concerns have been raised regarding the loss of existing tress, highway safety, flooding, design and the presence of Japanese knotweed. However, no detailed evidence has been submitted to suggest that these concerns would result in any material harm. I also note that these issues were addressed by the Council but were not matters that they subsequently raised in their objections to the proposed development. I am satisfied, therefore, that none of these issues would give rise to any significant harm.
31. The appellant argues that there are benefits to the appeal proposal in terms of providing more housing in a hamlet where there has been limited growth, close to local facilities and services in St Austell. I accept that the appeal proposal would make a contribution to meeting future housing provision, as well as increasing spending locally and would generate short term employment during construction, benefits that are supported by other policies in the development plan and the Framework. However, the contribution to future housing provision would be very small, as would any economic benefits. The Council indicate that they are able to demonstrate a 5 year supply of housing land, which has not been challenged. There is also no evidence before me to indicate that the housing requirements of the area cannot be met through commitments, allocations and windfall sites, the latter in locations that comply with the CLP's spatial strategy. In view of this, I have attached only limited weight to these benefits and they are not sufficient, either individually or cumulatively, to outweigh the significant harm that I have identified.
32. In relation to the presumption in favour of sustainable development, as paragraph 11 c) of the Framework confirms, that only applies to development that accords with an up to date development plan. As I have found, the proposed development would be contrary to the CLP, which is up to date and consistent with the policies in the Framework.

Conclusions

33. For the reasons given above and having taken all other matters into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR