



Appeal Decision

Site visit made on 6 August 2019

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2019

Appeal Ref: APP/D0840/W/19/3229128

Trelyn, Mile Hill, Porthtowan, TR4 8AT

- 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 Mr and Mrs Evans against the decision of Cornwall Council.
 - The application Ref PA17/07138, dated 27 July 2017, was refused by notice dated 24 January 2019.
 - The development proposed is for the erection of a single dwellinghouse within domestic garden.
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Decision

1. The appeal is dismissed.

Application for costs

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

Procedural Matters

3. The appeal is made in outline with all matters reserved for future consideration. I have considered the appeal on this basis.
4. The National Planning Policy Framework (the Framework) was revised in February 2019. However, as the Framework's policies that are most relevant to this appeal have not materially changed, no parties will have been prejudiced by my having regard to the latest version in reaching my decision.
5. Since the Council's determination of the planning application, the St. Agnes Parish Neighbourhood Development Plan 2018-2030 (NDP) passed referendum stage, which was held on 8 August 2019. For the purposes of decision making, the NDP therefore now forms part of the development plan and I must determine the appeal on the basis of the adopted development plan unless material considerations indicate otherwise. Although the LPA does not allege any specific conflict with NDP policies, my attention has been drawn to, amongst other aspects, its defined settlement boundary for Porthtowan.

Main Issue

6. The main issue is whether the development would be in an appropriate location, with particular regard to the character and appearance of the surrounding area.

Reasons

7. The appeal site consists of an open, well-maintained field. It is bounded by relatively high hedges on three sides and along its northern boundary there is a well-built wall with soft landscaping and several established trees on top. The area immediately surrounding the site involves a mixture of built form and agricultural fields and countryside. This includes fields to the east and beyond the highway to the west, a camping and caravan site to the south-west, some structures to the south, Trelyn to the north and some buildings to the north-east. There is other development in the wider area, including some scattered buildings to the south, the Ecological Park to the east and a row of detached properties along one side of the highway to the north. Although it is more built up to the north of the site, the area to the south of the crossroads and surrounding the site is relatively rural and undeveloped. Reflecting this, the Porthtowan settlement boundary within the St Agnes NDP includes Trelyn and the ribbon development to the north, but not the appeal site. Situated in this context and visible from the public realm through its gated highway access, the site's openness and undeveloped appearance means that it relates to its agricultural, countryside surroundings rather than the domestic context of Trelyn and the more built up environment in the wider area. It is therefore experienced as forming part of the area's semi-rural, undeveloped character and contributes positively to it.
8. The appeal proposal would introduce residential development on the site. This would extend built form beyond the settlement boundary and into the rural landscape. Accordingly, the development would be experienced as eroding the character and appearance of the surrounding area having a suburbanising effect by visually extending sporadic built form into the countryside.
9. In coming to this view, I have taken account of the scale of the proposal and the appellants' intention to reflect the local vernacular in terms of massing, scale and materials. I recognise that landscaping, layout, appearance and scale could, as reserved matters, also be used to limit the visibility of the development. However, the evidence before me indicates that the site would be accessed via a slightly widened entrance from the highway. Accordingly, it seems to me that the construction of residential accommodation here, in conjunction with the domestic paraphernalia associated with residential occupation, would be readily noticeable from the public realm, even if the dwelling was a low-density single-storey bungalow.
10. The site is not within one of the towns listed in Policy 3 of the Cornwall Local Plan Strategic Policies 2010-2030 (CLP) and it is not asserted that the development constitutes an exception site. The NDP now forms part of the development plan and it does not identify the site for housing development. How the NDP and the settlement boundary were finalised is not a matter before me. However, although its map D shows the site as outside the defined settlement boundary of Porthtowan and therefore NDP Policy 7 is not relevant, CLP Policy 3 does allow for housing development to be delivered elsewhere. This includes development which constitutes in-fill or rounding off of settlements or on land that has been previously developed.
11. CLP paragraph 1.65 defines in-fill 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. Rounding off is described in paragraph 1.68 as

applying to 'development on land that is substantially enclosed but outside of the urban form of a settlement and where its edge is clearly defined by a physical feature that also acts as a barrier to further growth (such as a road). It should not visually extend building into the open countryside.' Although its status is unclear, the Chief Planning Officer's Advice Note: Infill/Rounding Off also provides helpful guidance, setting out that, amongst other aspects, 'rounding off provides a symmetry or completion to a settlement boundary, it is not intended to facilitate continued incremental growth'. It also states that '[o]pen countryside is beyond the physical boundaries of existing settlements where they have a clear form and shape and is part of an expansive area before the next settlement'.

12. Although the appellants claim that the structures to the south of the site are lawful given the passage of time, I have little evidence to substantiate this. Describing the land to the south of the site as agricultural, the Council indicates that there have also been numerous enforcement investigations since 2006 and that it has no evidence that a lawful residential use exists there. However, irrespective of their lawfulness, I observed on my site visit that the structures to the south are not particularly visible from the highway and do not appear to provide a built frontage. The site's relatively large size means that it does also not involve a small gap. Although the site adjoins the Porthtowan settlement boundary and is substantially enclosed, the development would visually extend building into the undeveloped, rural landscape. Furthermore, given the development pattern and scattered built form in the surrounding area, the development would be experienced as facilitating incremental growth beyond the settlement boundary and into the open countryside rather than providing a symmetry or completion to a settlement boundary. Consequently, the development cannot reasonably be described as in-fill or rounding off.
13. CLP paragraph 1.68 sets out that 'in principle, the use of previously developed land within or immediately adjoining the settlement will be permitted provided it is of a scale appropriate to the size and role of the settlement'. Although the CLP does not define previously developed land, the Framework describes it as 'land which is or was occupied by a permanent structure, including the curtilage of the developed land...and any associated fixed surface infrastructure' and excludes 'land that was previously developed but where the remains of the permanent structure...have blended into the landscape'.
14. A Statutory Declaration has been submitted setting out the appellants' domestic use of the site. Amongst other aspects, it details that the appellants have for some 40 years used the appeal site as ancillary and incidental to the domestic and recreational uses of Trelyn, maintained it reasonably ornamentally as mainly lawn, and used it as an extended play area with the placing of transitional items such as play equipment. It also confirms that the now dilapidated structure in the north-east corner of the site used to be a gardener's toilet building.
15. The statutory declaration carries considerable weight. A number of neighbours have set out their understanding of the appellants' domestic use and maintenance of the site. On my site visit, I also observed the old gardener's toilet, the direct access from Trelyn and that the site appears to be maintained on a domestic basis. However, although the appellants' state that the site has not been used for agriculture, I have little substantive evidence which confirms its lawful use, such as a Certificate of Lawfulness. In any event, even if the site

were to be classified as residential garden, the site is substantially separated from Trelyn and its main garden area by the sizeable, well-built boundary wall, and the Framework states that 'it should not be assumed that the whole of the curtilage should be developed'. Furthermore, located under the hedge and trees on the site's boundary, the dilapidated gardener's toilet has blended into the landscape, thereby excluding it from the Framework's definition. It was also evidently a small structure and being positioned in a corner, the remainder of the site is open and undeveloped.

16. Accordingly, the appeal proposal cannot be reasonably described as involving the development of previously developed land nor constituting in-fill or rounding off. The appellant disputes the site is within the countryside and therefore questions the applicability of CLP Policy 7. However, while the site abuts the settlement boundary, it is outside of it, and given the site's character and appearance and its semi-rural context, I find that the policy is relevant. It is not asserted that the development would meet any of the exceptions in CLP Policy 7, and the evidence before me does not indicate otherwise.
17. My attention has been drawn to the recent approval of some new dwellings to the north-east of the site. However, the evidence before me indicates that it is not directly comparable to the appeal proposal because, amongst other aspects, the affordable housing element of that scheme. Accordingly, it does not alter my view.
18. For the above reasons, I conclude that the proposed development would not be in an appropriate location, with particular regard to the character and appearance of the surrounding area. I therefore find that it conflicts with CLP Policies 3, 7, 21 and 23. Amongst other aspects, these: set out the Council's approach to accommodating new housing; and seek development which makes best use of land, takes account of the character of the surrounding area and sustains local distinctiveness and the natural environment, including its landscape. The proposal would also be inconsistent with the provisions in the Framework in relation to conserving and enhancing the natural environment.

Other matters

19. I acknowledge the appellants' frustration in relation to the time the Council took to determine the planning application and their assertion that the NDP should not have been a consideration given the date of the application submission. I also note their concern that their statutory declaration and the Council's Delegated Report were not published. However, these matters are not determinative as to the acceptability of the appeal proposal. I have therefore considered the proposal on its merits, based on the evidence before me.
20. The appellants query how the NDP's housing targets will be met given its restrictive approach and the experience of other parishes. How the housing targets were finalised is not a matter before me. However, the independent examination found that, subject to recommended modifications, the NDP met the required Basic Conditions and I note that the NDP was subsequently modified and has now been approved at referendum. It seems to me that it can therefore be considered sound. I also have little substantive evidence that the Council is not meeting its housing targets or that the development plan policies which are most important for determining the application are out-of-date. With regard to the provisions of paragraph 11d) of the Framework, the presumption in favour of sustainable development does therefore not apply.

Planning Balance

21. I have found that the proposal would be in an inappropriate location and would harm the character and appearance of the surrounding area. This harm could not be overcome by the imposition of planning conditions. In turn, this conflicts with parts of the environmental objective in paragraph 8 of the Framework and also indicates that the proposal would not make best use of land.
22. The proposal would provide a new adaptable, lifetime home for the appellants, who have deteriorating health and mobility and find that Trelyn does not meet their needs. The proposal would enable them to continue living in the area and be close to family, friends, the local community and support network, and consequently reduce the pressure on the Council's social care resources.
23. I have given the appellants' personal circumstances careful consideration. However, I am mindful of the advice contained in Planning Practice Guidance¹ that in general planning is concerned with land use in the public interest. It is also probable that the proposal would remain long after the appellants' personal circumstances cease to be material. I therefore find that these aspects do not outweigh the harm I have identified above.
24. The site is accessible to a range of services and facilities and suitable access to the highway could be confirmed at reserved matters stage. The site would be large enough to accommodate an accessible, energy efficient home with sufficient internal space, off-street parking and storage for waste, and these details could be conditioned. It is not within any landscape designations and does not have a history of mining or contamination.
25. No objections have been raised by third parties, while several neighbours and the Parish Council have written in support of the development, including citing that it would be similar to other recent developments nearby, would meet local housing needs in relation to the local elderly population and NDP Policy 3, and would allow a large home to become available for another family. I recognise that other policies in the CLP and NDP provide support to the provision of new residential development in the area. It has been put to me that the development would also provide economic benefits to the local construction sector and through lower utility and servicing costs for the appellants.
26. Be that as it may, the benefits to the local economy and community would be limited given the scale of the development, and the above matters do not outweigh the harm I have identified nor provide justification for development that conflicts with the development plan.

Conclusion

27. For the above reasons, the appeal is dismissed.

Tobias Gethin

INSPECTOR

¹ Paragraph: 008 Reference ID: 21b-008-20140306 – 'What is a material planning consideration?'. Revision date 06/03/2014.