

Appeal Decision

Site visit made on 3 June 2020

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2020

Appeal Ref: APP/D0840/W/19/3243009

Land Rear of 31 Boscaswell Village, Lower Boscaswell, Pendeen TR19 7EP

- 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 J Manser of TJ Cornwall Ltd against the decision of Cornwall Council.
 - The application Ref PA19/00471, dated 15 January 2019, was refused by notice dated 17 June 2019.
 - The development proposed is an affordable housing-led residential development of 6 dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the affordable housing-led residential development of 6 dwellings at Land Rear of 31 Boscaswell Village, Lower Boscaswell, Pendeen TR19 7EP in accordance with the terms of the application Ref PA19/00471, dated 15 January 2019, subject to the conditions in the attached schedule.

Application for Costs

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

Procedural Matter

3. During the appeal the appellant produced a completed Unilateral Undertaking (the UU) and a completed Supplemental Unilateral Undertaking (the SUU). Together they would secure affordable housing and landscaped communal areas within the proposed development. I return to them later in my decision.

Main Issue

4. The main issue is the effect of the proposal on the character and appearance of the area, with particular regard to (i) the Cornwall Area of Outstanding Natural Beauty (AONB), (ii) the Boscaswell Conservation Area (CA) and the Cornwall and West Devon Mining Landscape World Heritage Site (WHS).

Reasons

The site

5. The appeal site comprises a smallholding of rough pasture, located on the coastal shelf at the northern edge of the former mining settlement of Lower Boscaswell. Access is from within the hamlet via a gap between housing on the north side of Carn Ros, from which the site tapers outwards into a larger, granite hedge bound field. To the north and north west is a network of

smallholdings, some of which are of prehistoric origin and many of which were used by the mining families resident within the hamlet. The farmland slopes gently northwards away from the appeal site towards the nearby coastline. Within the adjacent field runs the Public Right of Way 114/194/1 (the PROW).

The AONB

6. The site and its environs are within the West Penwith section of the AONB. The National Planning Policy Framework (the Framework) identifies that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in these regards.
7. Lower Boscaswell is close-knit, with much of its houses set in terraces, which greatly restrict outward public views. The site provides a gap in the Carn Ros street scene and therefore a rare opportunity to observe the rural landscape from within the hamlet, allowing the viewer to appreciate the scenic beauty of Lower Boscaswell's exposed coastal setting. In landscape terms, the appeal site is a component of the verdant and uncluttered granite bound coastal farmland system, which particularly characterises this part of the AONB¹.
8. The proposed housing would form a terrace set back into the site. Given the way the site is experienced against an immediate backdrop of built form from the PROW, the scheme would do little to prejudice the AONB from its vantage points. However, the same cannot be said from within the hamlet itself as, despite its turned orientation and set back position within the site, the terrace would greatly compromise views from Carn Ros. This would be to the detriment of the AONB's perceptible scenic beauty. Development of the farmland, as proposed, would harmfully alter the site's verdant landform and topography, and therefore the role it plays within this landscape. Given such, the landscape and scenic beauty of the AONB would not be conserved.

The CA and the WHS

9. The front of the appeal site, adjacent to Carn Ros, is within the CA and the site is entirely within the WHS. I therefore have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The WHS is also a designated heritage asset of the highest significance.
10. The significance of the CA is principally drawn from its cohesive, strong parallel lines of modest miner cottages. However, it also draws significance from its exposed coastal setting, scattered with mining artefacts and former miner's smallholdings directly linked to the hamlet's mining heritage. The site contributes positively to the CA by affording receptors on Carn Ros an opportunity to visually associate and reflect upon this historic link between the natural and built environments, and the people and the land.
11. Given their explicit mining heritage, Lower Boscaswell and its attendant miner's smallholdings contribute directly to the Outstanding Universal Value (OUV)² of the WHS. The appellant has questioned the provenance of the site in this regard³. However, in the nineteenth century the field was owned by the mining entrepreneur Samuel Borlase and, although the tenant farmer was not himself

¹ As identified within LCA Area CA02 of the Cornwall and Isles of Scilly Landscape Character Study (2007) and the Cornwall Area of Outstanding Natural Beauty Management Plan 2016-2021 (adopted 2016)

² Cornwall and West Devon Mining Landscape World Heritage Site Management Plan 2013 - 2018

³ Heritage Impact Assessment dated October 2018 by Armour Heritage

a miner, his three sons were. To my mind, this evidence is sufficient to legitimately identify the appeal site as an historic miner's smallholding. While the site's north site boundaries are not original, they are a largely faithful reinstatement in terms of siting at least, ensuring that the historic layout is still legible. As such, the site contributes positively to the OUV of the WHS.

12. There is much to appreciate in the way that the proposed terrace would relate to the historic built environment, with the stepped, linear form of the housing reflective of the architectural typology within the CA. However, the siting of the terrace would unavoidably obstruct the important public views through the site, and therefore diminish one's appreciation of the significance that the CA derives from its setting. The urbanisation of the historic miner's smallholding would directly compromise the site's contribution to the OUV of the WHS.
13. I consider the harm to the CA and the WHS to be less than substantial on both counts. Nonetheless, these harms attract great weight under the terms of Paragraph 193 of the Framework and fall to be weighed in the balance with the public benefits. The scheme would provide six new homes to the area, including three affordable homes. Whilst the scale of this provision would be modest, I am mindful of the significant affordable housing need in the area. On this basis, I find the social benefits of the housing to be of moderate weight. The associated economic benefits of the scheme attract limited weight. These benefits would not outweigh the individual harms to the CA and the WHS.

Conclusion on main issue

14. Drawing my findings together, I conclude that the proposed development would have an unacceptable effect on the character and appearance of the area, with particular regard to the Cornwall Area of Outstanding Natural Beauty, the Boscawell Conservation Area and the Cornwall and West Devon Mining Landscape World Heritage Site. It would conflict with the heritage and landscape aims of Policies 1, 2, 12, 23 and 24 of the Cornwall Local Plan Strategic Policies 2010-2030 (adopted 2016) and the Framework.

Other Considerations

15. In 2009 the Council issued a certificate of lawfulness⁴ for the commencement of development for a single dwelling on the site, originally granted planning permission in 1997 (the fallback position). What I gather to be the approved drawings show a large two-storey dwelling, very much at odds with the prevailing pattern of housing in the CA. The building would sit across much of the width of the site's Carn Ros frontage. This would lead it to significantly compromise public views through the site, particularly those towards the coast, in a manner greater than the current proposal.
16. Moreover, the house would encroach partly into the area of the historic smallholding, which would be subdivided by a modern domestic wall. The area of the smallholding within the residential grounds would include an elaborate access drive and turning area, significantly changing its character. It is my view therefore that the fallback position would have a far greater harmful effect than the current proposal. It would do so without achieving the same quantum of housing, and with no affordable housing contribution at all.

⁴ Under Ref W1/09-0338

17. I am mindful that this development is commenced and will remain extant, as I am of the credentials of the appellant as a developer. The site is clearly attractive as a development opportunity owing to the quality of the surrounding environment and the spectacular scenic views on offer. As such, there is little doubt in my mind that the fallback position would become a reality if I were to dismiss the appeal. Consequently, this is a notable consideration in favour of the proposal, to which I return in the planning balance.

Unilateral Undertakings

18. The UU and the SUU would secure the affordable housing, giving priority to those in genuine need and with a local connection. They would secure shared access and the maintenance of the landscaping of the communal areas. This would enable the scheme to comply with Policies 9 and 28 of the CLP. The UU and the SUU are therefore in compliance with Community Infrastructure Levy Regulation 122 and I can take them into account in my decision.

Other Matters

19. Interested parties have questioned the suitability of the location for housing for several reasons. Whilst I have had regard to comments concerning the description of development, I understand that this reflects the scheme's status as an exception site through compliance with the affordable housing requirements of Policy 9 of the CLP. There is no evidence before me that schemes considered under Policy 9 should be subject to a sequential test.
20. Although the accessibility of the location has been challenged, compared to settlement elsewhere, it is evidenced that the affordable homes would be contributing to meeting an existing local demand. Although the scheme would invariably increase the amount of pedestrian and vehicular traffic on Carn Ros, there is no substantive evidence that it would severely compromise the network. In terms of safety, Carn Ros is a residential street with a number of similarly specified domestic accesses, with reversing vehicles evident. I see no compelling reason why this scheme would cause undue risk within this context.
21. Whilst I have noted concerns in relation to archaeology, wildlife and biodiversity, it seems to me that these are also matters influenced by the probable implementation of the fallback position, and the associated ground clearance and works that are effectively already approved.

Planning Balance

22. Planning law and the Framework require proposals to be determined against the development plan unless material considerations indicate otherwise. I have identified that, although the proposal would conflict with the development plan's objective of conserving the landscape and heritage assets of Cornwall, it would also contribute to the provision of much needed affordable housing.
23. I have also found that the extant scheme would cause greater harm to the Cornwall AONB, the CA and the WHS. It would do so whilst providing only a single open market dwelling, whereas the scheme would provide 6 homes, 3 of which would be affordable. The appeal proposal would therefore also contribute considerably more social and economic benefits to the locality. In these circumstances, the fallback position is a consideration which must outweigh the harm I have identified. It indicates that I should make a decision which is not in accordance with the development plan.

Conditions

24. In the event that I was minded to allow the appeal, the Council requested conditions to be applied, which I have assessed with regard to the tests set out in the Framework and the Planning Practice Guidance. I have amended them where appropriate for the sake of clarity and precision.
25. In addition to the standard time condition, a condition is needed to define the approved plans in the interest of certainty. In order to appropriately appraise the archaeology of the site, an agreed written scheme of investigation is required, and this is essential prior to the commencement of development. A condition is needed to ensure that boundary treatments are appropriate visually but also suitably protect the living conditions of future residents. In the interests of the character and appearance of the area, details of the finish materials are required for agreement prior to their installation. With regard to highway safety, conditions are necessary to ensure that the access driveway and individual parking areas are laid out and maintained as approved.

Conclusion

26. I have found that the proposal would result in conflict with the development plan. However, for the reasons set out above, the extant scheme is a material consideration that outweighs that conflict and tips the balance in the scheme's favour. For this reason, I shall allow the appeal, subject to conditions.

Matthew Jones

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 17302-PL-00-01, 17302-PL-01-01, 17302-PL-02-02, 17302-PL-02-01, 17302-PL-00-03.
- 3) No development shall take place until a Written Scheme of Investigation has been submitted to and agreed in writing by the Local Planning Authority. The scheme of investigation shall be carried out in accordance with the approved details prior to the commencement of construction works.
- 4) Prior to installation, details of the proposed height, siting, appearance and construction of all boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be completed in accordance with the approved details prior to the first occupation of the development and shall not thereafter be altered or removed, other than by necessary replacement.
- 5) Prior to installation, details of the materials/finishes to be used on the external surfaces of the dwellings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 6) Before any other building or engineering works are carried out on the site, the site access shall be laid out and constructed in accordance with plan Ref 17302-PL-00-03; with its gradient, surfacing, drainage and sight lines having first been approved in writing by the Local Planning Authority. The access shall be retained as approved thereafter.
- 7) Prior to the individual occupation of the dwellings hereby permitted, the parking areas serving that particular dwelling shall be laid out and constructed in accordance with approved plan Ref 17302-PL-00-03 and shall not thereafter be obstructed or used for any other purpose.