

Appeal Decision

Site visit made on 18 August 2020

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2020

Appeal Ref: APP/D0840/W/19/3243611

Kei Wei, Rinsey Lane, Ashton TR13 9SF

- 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 A Ballard, Oakland Homes against the decision of Cornwall Council.
 - The application Ref PA19/06000, dated 4 July 2019, was refused by notice dated 22 October 2019.
 - The development proposed is described as development of rural exceptions housing scheme.
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Decision

1. The appeal is allowed and planning permission is granted for development of rural exceptions housing scheme at Kei Wei, Rinsey Lane, Ashton TR13 9SF in accordance with the terms of the application, Ref PA19/06000, dated 4 July 2019, and subject to the conditions set out in the schedule to this decision.

Procedural Matters

2. Although the application form indicated that approval was sought for matters of access and layout as part of the outline application, the evidence before me indicates that layout was subsequently omitted from the application following discussions between the main parties. Accordingly, the appeal is made in outline with all matters except access reserved for future consideration. I have therefore assessed the drawings submitted with the appeal as merely illustrative insofar as they relate to the reserved matters of scale, layout, appearance and landscaping.

Main Issues

3. The main issues are the effect of the proposed development on the character and appearance of the surrounding area and on highway safety.

Reasons

Character and appearance

4. The appeal site is located on the edge of the built environment of Ashton, which includes linear development running along Fore Street (the A394) and built form extending to the north and south of it. Situated on slightly lower ground, the site adjoins the buildings fronting Fore Street. It is also in close proximity to various properties to the east, which extend to the south of Fore Street and along Rinsey Lane. On my site visit, I observed that the site is separated from those developments by a small parcel of land which adjoins its eastern boundary and contains, amongst other things, several sheds and

- outbuildings. To the south and west, the site is bounded by hedges with fields beyond. However, numerous properties on Hendra Close – which extends south of the A394 – are nearby and are clearly visible from the site and the public right of way that runs through it, and to a lesser extent from Rinsey Lane.
5. With the proposed development being for a rural exception housing scheme, Policy 9 of the Cornwall Local Plan Strategic Policies 2010-2030 (CLP) is relevant. Amongst other aspects, it sets out that development proposals on sites outside of 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 will be supported where they are clearly affordable housing led and would be well related to the physical form of the settlement and appropriate in scale, character and appearance.
 6. The site appears as open, undeveloped agricultural land and exhibits characteristics of the area as described in the Council's Landscape Character Study. However, its proximity to surrounding built form means that it is adjacent to the built up area of Ashton. The location of the site and the indicative layout plan indicate that the proposed development would also be well related to the physical form of the settlement, which includes built form extending away from the A394. With reserved matters including appearance and scale, these matters – and the final layout proposed – would be secured at a later point. However, the available evidence indicates that the proposed development could be designed with an appearance, layout, scale and landscaping that would be appropriate to its surroundings.
 7. The proposed development would change the character of the site from agricultural to residential and would read as extending the built environment into the rural setting of the settlement from some vantage points. Given the screening provided by existing hedges and surrounding built form, the most noticeable effect from the public realm would be for users of the public right of way that runs through the site. However, with its numerous current views of the built form of Ashton, I observed on my site visit that the surrounding area as experienced from the gold priority footpath involves a mixed semi-rural and suburban character. The submitted indicative layout plan also shows that a hedge could be provided between the proposed dwellings and the short section of adjacent footpath, which would continue to follow its original course and not be obstructed by the development. This would limit views of the appeal proposal from the footpath and ensure that its part- semi-rural nature would be retained, thereby avoiding a significant effect on footpath users.
 8. The change arising from the development would also be perceptible in the locality, such as through the widened access off Rinsey Lane and from the highway near the garage and the A394-Higher Lane junction. However, the site's set-down position from the A394 and gently sloping north-south topography limits its prominence from within Ashton. Given its position in relation to surrounding built form and hedgerows, the site is generally only visible in glimpsed views between buildings and over field boundaries, while additional landscaping would further restrict views of the site and the proposed development. As shown on the indicative layout plan, there would also be a reasonable degree of separation between the proposed houses and Rinsey Lane. The proposed development would therefore not appear as a significant feature in the surrounding area. With Ashton including development stretching

away from the A394, the appeal proposal would also neither appear as an isolated nor incongruous feature in the locality.

9. Linking with the open and undulating plateau of the wider area, the site contributes to the rural setting of the settlement from the glimpsed views in the area immediately to the north, including from the A394-Higher Lane junction. However, I observed on my site visit that the undeveloped fields stretching south of the site form the main element of Ashton's rural setting from this area and, given the position of the proposed development and existing built form, would continue to be visible. From other positions in the locality, the proposed development would be more in the foreground but experienced within the context of surrounding built form. With Ashton in the background from those vantage points, it would therefore read as a suitable extension of the settlement. The existing hedge running along the southern side of the footpath on the boundary of the site would define the extent of the development and limit views of it and any feeling of the built environment significantly encroaching into the countryside. With an appropriate scale also determined at reserved matters stage, the appeal proposal would therefore neither significantly erode the rural setting of Ashton nor harm the character of the surrounding area.
10. The proposed development would change the character and appearance of the site and extend the built environment into agricultural land. However, it would be adjacent to the built up area of Ashton, be well related to the physical form of the settlement and maintain the character and distinctiveness of the locality, including from various points in the public realm. There is also no reason why an appropriate scale and appearance could not be achieved at reserved matters stage. Accordingly, for the above reasons, I conclude that the appeal proposal would not harm the character and appearance of the surrounding area.
11. I therefore find that it accords with CLP Policies 1, 2, 9, 12, and 23. Amongst other aspects, these set out the Council's approach to decision making, its spatial strategy and approach to exception sites, and require development of a high quality to: ensure Cornwall's enduring distinctiveness and maintain and respect the special character of Cornwall and the locality; be well related to the physical form of the settlement and be appropriate in scale, character and appearance; and be of a scale, mass and design that recognises and respects landscape character. The proposal would also be consistent with the provisions in the National Planning Policy Framework (Framework) in relation to achieving sustainable development, protecting public rights of way and access, achieving well-designed places, and conserving and enhancing the natural environment.

Highways

12. Incorporating an existing field entrance, the proposed development would be accessed off Rinsey Lane, which is a relatively narrow rural road. It has no separate footways, contains hedges on both sides and narrows and includes a slight bend near to the site. Given the lane links Ashton with surrounding settlements, is used as an alternative access to Porthleven and provides access to surrounding fields, agricultural enterprises and various properties, it is identified by various interested parties as relatively busy and used by large vehicles such as tractors and lorries. Approximately 100 metres from the proposed site access, the lane joins the A394, which runs through Ashton, is a busy through route and contains bus stops and separate footways.

13. The submitted details indicate that the development would involve the erection of 12 dwellings and two flats. Although this is not a negligible amount, the additional vehicular movements arising from this relatively limited number of new residential units would not be significant, particularly in the context of the existing use of Rinsey Lane and the number of existing properties in Ashton.
14. Although the lane bends and narrows near the proposed access, I observed on my site visit that it widens either side of it and that visibility along the road is not significantly restricted in the immediate vicinity. While narrow, the lane is wide enough between the proposed access and A394 for pedestrians, cyclists or horse riders to pass a vehicle without significant conflict and manoeuvrability issues arising. It seems to me that there is also sufficient space along parts of the lane for some parking of vehicles without other highway users being significantly hindered. Although it has been put to me that vehicles speed on the A394 and the Rinsey Lane junction is difficult, I have little substantive evidence which indicates that the lane and junction are unsafe and could not cope with the limited number of additional vehicle movements that would arise from the proposed development.
15. The submitted access plan shows that there would be a 42 metre visibility splay for the proposed access off Rinsey Lane. This would provide adequate visibility for vehicles exiting the site and would also ensure that highway users – including vehicles, pedestrians, cyclists and horse riders – would have good visibility of vehicles leaving the site from both directions. Although there are no separate footways on Rinsey Lane, the submitted access plan also shows a footway running along a short stretch of the lane near the access point and alongside the vehicular route into the site. This would reduce the length of highway that occupiers of the proposed development would have to walk on the carriageway. The Highway Authority has also suggested conditions securing street lighting and footway improvements and a pedestrian refuge near the Rinsey Lane-A394 junction, supported by a Road Safety Audit.
16. Accordingly, the proposed access would be safe. For the above reasons, the appeal proposal would also neither compromise the safety of other highway users nor adversely affect the highway network. Furthermore, the indicative layout shows that sufficient space could be provided within the site for vehicles to turn and park off the highway.
17. It has been put to me that the Highway Authority previously raised concerns about access on to Rinsey Lane for the nearby development which is now under construction. However, as I do not have the full details of that scheme, nor the Highway Authority's comments on it, I cannot compare the highway safety considerations of that development and the appeal proposal. In any event, the Highway Authority has not objected to the appeal proposal and from the evidence before me I have found that it would not significantly increase vehicle movements and neither compromise the safety of other highway users nor adversely affect the highway network. The proposed speed table where the internal access road would meet the public footpath would also ensure the safety of walkers is maintained.
18. For the above reasons, I conclude that the proposed development would not harm highway safety. I therefore find that it accords with CLP Policy 27. Amongst other aspects, this requires development to provide safe and suitable access to the site for all people and not cause a significantly adverse impact on

the local or strategic road network that cannot be managed or mitigated. The proposal would also be consistent with the provisions in the Framework in relation to providing safe and suitable access to the site for all users and only preventing development on highways grounds if there would be an unacceptable impact on highway safety.

Other matters

19. The Council does not allege that the development would have an adverse effect on the setting of the Tregonning Hill Conservation Area, the significance and Outstanding Universal Value of the Cornwall and West Devon Mining Landscape World Heritage Site or the landscape and scenic beauty of the Area of Outstanding Natural Beauty. Having considered the development – including the position of the site in relation to the designated areas – and visited the site, I concur with that view. Accordingly, it is my view that the development would preserve the significance of the designated areas, and I shall make no further reference to this matter.
20. The submitted evidence indicates that the Breage Parish Neighbourhood Development Plan has not been 'made' nor has a draft proceeded to referendum stage after being tested through independent examination. Delaying a decision on the proposed development would therefore not be reasonable, and I am also mindful that the Framework sets out that development proposals that accord with an up-to-date development plan should be approved without delay.
21. It has been put to me that significant additional housing is already planned and/or being built in Ashton and that the Evidence Based Report of the Breage Parish Neighbourhood Development Plan Steering Group found that there is no need for more houses to be built in Breage Parish up to 2030. Be that as it may, the evidence before me – including from the Council's Affordable Housing Team – indicates that there is an identified local need for affordable housing which the appeal proposal would help to meet. As required by CLP Policy 9, the market housing proposed would not represent more than 50% of the homes. Subject to a further financial appraisal at reserved matters stage, the Council does not object to the split between market and affordable housing, and the final appropriate mix and tenure of the affordable housing provision would also be confirmed at that point.
22. The affordable housing would be secured by a s106 legal agreement, entered into by deed, which would also include provision of on-site public open space and contributions towards educational facilities and off-site open space. Amongst other aspects, the obligations within the s106 agreement would: secure a minimum level of the affordable housing provision with the final provision being confirmed at reserved matters stage; provide a contribution to offset the additional educational infrastructure needs that would arise as a result of the development, including in relation to the local primary school operating at close to its current capacity; and secure the provision of public open space within the site and a contribution towards improvements and maintenance of off-site public open space at Ashton Recreation Ground to mitigate the on-site shortfall in certain types of open space. The submitted evidence indicates that the above obligations as set out within the deed are necessary to make the development acceptable in planning terms, are directly

related to the development and are fairly and reasonably related in scale and kind to the development.

23. Concern has been raised that there has been insufficient time and opportunity for local residents to comment on the proposed development, including in relation to Covid-19 limiting people's ability to submit comments at appeal. However, I have little substantive evidence that indicates that local residents who wished to comment on the proposed development have been unable to do so, and I note the submission of several representations at both the planning application and appeal stages.
24. A number of other matters have been raised by interested parties and I have taken them all into account. This includes matters such as: the lack of facilities in Ashton and services such as the school and health centres being at capacity; other infrastructure being remote and also insufficient for the local population; limited bus services; the living conditions of adjoining occupiers being harmed by the proposed development, including with regards to overlooking and noise and light pollution; the various approved schemes and other windfall development mean that Ashton already has too much development and the appeal proposal could also lead to further development of the adjoining field resulting in a development of a similar size as the previously refused scheme; the loss of open space and agricultural land which contributes to the local area; foul and surface water drainage issues and flooding in the locality; not designing out crime; the proposed flats being out of character and not needed; the development harming the Dark Sky Reserve Buffer Zone; and effects on wildlife, air pollution and climate change.
25. However, whilst I take these representations seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters. Some of the issues raised can also be addressed at reserved matters stage while some other issues would be covered by conditions and the s106 legal agreement. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed.
26. The appeal proposal would result in a visual change in the locality, extending the built environment into agricultural land on the edge of Ashton, and would introduce additional vehicle movements on Rinsey Lane. However, for the reasons I have set out above, the effect of the proposed development would be limited and it would not give rise to significant harm, including in relation to the character and appearance of the surrounding area and highway safety. It would also provide benefits such as the provision of affordable housing and some construction-related employment, and the other matters raised by interested parties do not indicate that the appeal proposal would be unacceptable.

Conditions

27. I have had regard to the various planning conditions that have been suggested by the main parties. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents, to ensure that details are submitted to and considered by the Council where relevant and for clarity and consistency.

28. I have imposed a condition requiring that the development is carried out in accordance with the approved plans in the interests of certainty. The conditions covering reserved matters are necessary to secure details of the outstanding reserved matters prior to the development proceeding.
29. Conditions requiring further ground investigations and foul- and surface-water drainage details are necessary in order to prevent flooding, minimise surface water effects on mine workings and manage potential pollution risk by ensuring the provision of suitable control and disposal of foul- and surface-water.
30. The submitted phase 1 assessment indicates the potential for some contaminated land issues that require further assessment and potential remediation. Conditions covering land contamination are therefore necessary in order to assess, minimise and manage the contamination risks associated with developing the site.
31. Conditions covering the speed table, visibility splays, pedestrian refuge and street lighting and footway improvements are necessary in order to ensure the safety of highway users. I have also imposed conditions relating to wildlife, including requiring the development is carried out in accordance with the mitigation measures detailed in the appellant's Preliminary Ecological Appraisal Report and the Badger Survey Report. These are necessary to ensure that a sufficiently detailed mitigation strategy would be in place so that the development would not have adverse effects on wildlife and their habitats, and to ensure that protected species are preserved in accordance with the legislative protection afforded to them. Accordingly, and on the basis of the submitted evidence, I am satisfied that an offence under the Habitats Regulations would be unlikely and that there is no reason in principle why a protected species/disturbance licence would not be granted.

Conclusion

32. For the above reasons, the appeal is allowed.

Tobias Gethin

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) An application for approval of reserved matters must be made to the local planning authority no later than the expiration of 3 years from the date of this decision. The development hereby approved shall commence no later than 2 years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan, Drawing No 16416-PL-00-01; and Access Plan, Drawing No 16416-PL-00-04.
- 4) Part A: No development approved by this permission shall commence until the local planning authority has been provided with and approved in writing the results of further ground investigations undertaken across the whole site. Such investigations should:
 - 1) Establish the position and depth of any mine workings adits and features;
 - 2) Identify locations of potential instability and inform remedial work design/techniques; and
 - 3) Inform the appropriate surface water drainage design and construction techniques.
- 5) Part B - No development approved by this permission shall commence until details of a scheme for the provision of surface water management and foul water treatment has been submitted to and approved in writing by the local planning authority. The details shall include:
 - 1) A description of the foul and surface water drainage systems' operation proposals;
 - 2) Details of the final drainage schemes including calculations, layout and bespoke surface water drainage solutions (based on the findings of the ground investigations) aimed at the management of surface water to the 1 in 100 year peak rainfall event plus a minimum allowance of 40% for the impact of climate change: the drainage design must prevent the potential recharge of below ground mine workings, adits and associated features for the lifetime of the development; and the system must be designed to prevent the mobilisation of potential contaminants;
 - 3) A Construction Environmental Management Plan;
 - 4) A Construction Quality Control Procedure;
 - 5) A plan indicating the provisions for exceedance pathways and overland flow routes;

- 6) A timetable of construction including a plan indicating the phasing of development including the implementation of the drainage systems; and
- 7) Confirmation of who will maintain the drainage systems and a plan for the future maintenance and management, including responsibilities for the drainage systems and any overland flow routes.

Thereafter, the approved scheme shall be implemented in accordance with the details and timetable so agreed and the scheme shall be managed and maintained in accordance with the approved details. Details of the maintenance schedule shall be kept up to date and be made available to the local planning authority within 28 days of the receipt of a written request.

- 6) Other than demolition of any buildings or structures on the site, no development approved by this permission shall commence until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the local planning authority. The assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include: a) a survey of the extent, scale and nature of contamination; b) the potential risks to: human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; ground waters and surface waters; ecological systems; and archaeological sites and ancient monuments.
- 7) Where land affected by contamination is found which poses risks identified as unacceptable in the risk assessment under condition 6, no development shall take place until a detailed remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.
- 8) Where a remediation scheme under condition 7 is found to be necessary, the approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner that demonstrates the effectiveness of the remediation shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 9) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported in writing immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be

submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before development on the part of the site affected is resumed or continued.

- 10) Prior to the occupation of the development hereby approved, the speed table on the internal access road at the public right of way crossing point on the approved Access Plan (Drawing Number 16416-PL-00-04) shall be constructed and thereafter retained.
- 11) Before any other building or engineering works are carried out on the site, all land within the visibility splays shown on the approved Access Plan (Drawing Number 16416-PL-00-04) shall be reduced to a height not exceeding 900mm above the adjoining carriageway level and thereafter no obstruction shall be permitted within the approved visibility splays.
- 12) Prior to the commencement of development, detailed drawings of a pedestrian refuge in close proximity to the A394/C170 junction, supported by a Road Safety Audit, shall be submitted to and approved in writing by the local planning authority. The pedestrian refuge shall be provided in accordance with the approved details prior to occupation of the development and thereafter retained.
- 13) Prior to the commencement of development, detailed drawings identifying street lighting and pedestrian footway improvements between the site access and the A394/C170 junction shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved drawing(s) and provided prior to the occupation of the development.
- 14) The development shall be carried out in complete accordance with the mitigation measures set out in Section 4 of the submitted Preliminary Ecological Appraisal Report (Update) (by Plan for Ecology Ltd, dated 25 April 2019).
- 15) No development, demolition or site clearance works shall commence on site until a Badger Disturbance Licence has been obtained from Natural England and submitted to the local planning authority. Work shall be carried out strictly in accordance with the granted Licence and the recommendations within the Badger Survey Report (by Plan for Ecology Ltd, dated 7 October 2019).

END OF SCHEDULE