



Appeal Decision

Site visit made on 24 November 2020

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2021

Appeal Ref: APP/D0840/W/20/3258348

Land East of Wesley Road, Cubert, Cornwall TR8 5HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Kingsley Homes Limited against the decision of Cornwall Council.
 - The application Ref PA20/05462, dated 2 July 2020, was refused by notice dated 7 August 2020.
 - The development proposed is the erection of up to five properties.
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Decision

1. The appeal is dismissed.

Application for Costs

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

Procedural Matters

3. The appeal proposal is for Permission in Principle. In accordance with the Town and Country Planning (Permission in Principle) (Amendment) Order 2017, the scope of my assessment is limited to the location, land use and amount of development. This consent route has two stages. The first stage establishes whether a site is suitable in principle, and the second stage, the technical details consent, is where the detailed development proposals are assessed. The appeal proposal is at the first stage and I have considered the principle of the scheme.
4. During the appeal the appellant produced a completed Unilateral Undertaking (UU) which would secure mitigation with regard to the Penhale Dunes Special Area of Conservation (SAC). I return to this matter later in this decision.
5. At the latter stages of the appeal the appellant further submitted two decisions relating to infill development at other settlements in Cornwall. As these schemes were of potential relevance, I accepted them and had regard to them¹.

Main Issue

6. The main issue is the suitability of the site for the proposal, having regard to the development plan's spatial strategy for the supply of housing.

Reasons

7. The appeal site comprises the western side of a field at the east edge of the settlement of Cubert. Wesley Road bounds the site to the west, the dwelling 'Homes-Link' is to the north, and the site is open to the remainder of the field

¹ Refs PA19/08172, PA20/06302

- to the east and north east. Adjoining the site to the south is farmland which has extant outline permission, with all matters reserved, for an affordable housing led development of up to 30 dwellings² (the Extant Permission).
8. The introduction to the Cornwall Local Plan: Strategic Policies Document 2010–2030 (adopted 2016) (CLP) states that all policies will be considered together in decision making. Policy 2 of the CLP sets out Cornwall’s spatial strategy, which seeks to maintain the dispersed development pattern and provide housing based on the role and function of each place.
 9. Policy 3 of the CLP conveys Policy 2’s spatial strategy into a hierarchy for the distribution of growth to ‘...provide additional guidance on how the spatial strategy will be implemented across Cornwall, and how the growth required will be split to achieve the sustainable growth required by Policies 1 and 2’³. It states that beyond specific named locations growth is to be delivered through several means. This includes, at settlements such as Cubert, proposals that would infill a small gap in an otherwise continuous built frontage. Proposals should consider the significance or importance that large gaps can make to the setting of settlements and ensure that this would not be diminished.
 10. The supporting text to Policy 3 and Policy 3 itself state that proposals for infill should not physically extend the settlement into the open countryside. Open countryside is clarified by paragraph 2.33 of the CLP to be the area outside of the physical boundaries of existing settlements. Policy 7 of the CLP states that the development of new homes in the open countryside will only be permitted where there are given special circumstances.
 11. I agree with the appellant’s contentions that Policy 3 and its supporting text do not seek to specify or set an upper limit to the size of a candidate gap within a built frontage. Instead, the significance of each potential gap should be considered on its merits, within the context of the settlement in question. That said, the land to the south of the site is farmland in this case and the site cannot therefore be considered any size of gap in a continuous built frontage.
 12. Whilst the Extant Permission may be developed, this does not aid the proposal to achieve compliance with Policy 3 in the here and now. Moreover, whilst I note that a reserved matters submission is before the Council, the details of the Extant Permission are not permitted. This does not provide for certainty or allow for an informed assessment of the potential policy compliance of the appeal scheme in the event that the Extant Permission were to become reality.
 13. The appeal site is part of the expansive swathe of countryside which extends eastwards as far as the eye can see away from Wesley Road. At this point of Wesley Road, it is the carriageway and the long hedgerow which extends southwards from Homes-Link which defines the extent and shape of the village and therefore, in the CLP’s terms, separates Cubert from its open countryside setting. It follows that the proposal would physically extend the settlement into the open countryside, albeit the initial part adjoining Cubert. This draws the proposal into conflict with Policy 3, and for consideration under Policy 7. None of the special circumstances given by Policy 7 would be met in this case.
 14. Policy 7 does not refer to ‘isolated’ dwellings, unlike Paragraph 79 of the National Planning Policy Framework (the Framework), and I also note the

² Appeal Ref APP/D0840/W/19/3239304

³ CLP Paragraph 1.43

comments of the Inspector during examination of the CLP in 2016. However, I do not consider this matter to render Policy 7 inconsistent with the Framework when its role within the spatial strategy of the CLP is considered as a whole. For the same reason, I do not find the cited case law to be particularly influential in this case, as it does not relate directly to the policies at play here, and the holistic approach they encompass within the CLP⁴.

15. I have also been referred to two appeals elsewhere that turned on the application of Policy 3, and with which neither conflict nor accordance was found⁵. However, the decisions relate to schemes within or integral to named locations which, unlike Cubert, are at the top of the hierarchy within Policy 3. Growth in the named locations is managed with a different approach, namely pursuant to the Site Allocations Development Plan Document (SADPD) or Neighbourhood Development Plans. I also note that both cited appeals predate the adoption of the SADPD and were therefore decided at a time when the application of Policy 3 at the named locations was less than clear. For these reasons, they are of little relevance to the application of Policy 3 in this case.
16. Policy 21 of the CLP states, amongst other things, that encouragement will be given to sustainably located proposals that increase building density where appropriate, taking into account the character of the surrounding area and access to services and facilities to ensure an efficient use of land. This is consistent with the similar objectives of the Framework.
17. The extension of built form into the open countryside is not necessarily an indication of harm in character terms. As was found with the Extant Permission, the farmland along this section of Wesley Road relates closely to Cubert. The site is intimately related to Homes-Link and the housing on the other side of Wesley Road. This is to such an extent that, if viewed from the east, the housing would sit against the immediate backdrop of the village. From within Wesley Road it would relate well to Homes-Link and contribute proportionately to the already sporadic development on the east side of the highway. The scheme would not therefore harm the character of the surrounding area.
18. As such, and given the facilities within Cubert, I consider the scheme to accord with Policy 21. However, the policy seeks to provide only 'encouragement' to candidate schemes, and its supporting text identifies the primacy of Policy 3 in meeting the plan led objectives of the CLP. Consequently, the accordance with Policy 21 in this case does not remedy the overall conflict I have identified with the CLP's spatial strategy as set out across Policies 2, 3 and 7.
19. I have also had regard to the 'Chief Planning Officer's Advice Note: Infill/Rounding Off (2017) (the CPOAN). The CPOAN is a guidance document which has not borne the scrutiny of examination and cannot be considered, nor does it appear to be intended to, displace the content of the development plan. I do not consider its guidance to be inconsistent with my findings in any event. It has therefore had very little influence upon my reasoning.
20. Drawing my findings together, whilst the scheme would accord with Policy 21 of the CLP, I conclude that the site would not be suitable for the proposal having regard to the development plan's spatial strategy for the supply of

⁴ Chichester DC v (1) Secretary of State for Housing, Communities and Local Government (2) Beechcroft Land Ltd
⁵ Appeal Refs APP/D0840/W/17/318472 and APP/D0840/W/17/317729

housing. It would conflict with the spatial strategy insofar as it is conveyed by Policies 1, 2, 3 and 7 of the CLP.

Other Matters

21. The site is within the influence of the SAC. There is no dispute that the proposal would, in combination with other projects, have likely significant effects on the SAC through increased recreation. To that end, the appellant has supplied a Unilateral Undertaking to secure necessary mitigation. Had I been minded to allow the appeal, it would have been necessary for me to consider this matter within an Appropriate Assessment. However, as I am dismissing the appeal for other reasons, I have not taken it further.

Planning Balance

22. The scheme's overall conflict with the CLP's spatial strategy draws it in to conflict with the development plan when read as a whole. Consequently, the proposal would undermine the Council's plan-led approach, contrary to Paragraph 15 of the Framework. As planning law requires proposals to be determined in accordance with the development plan unless material considerations indicate otherwise, this matter attracts significant weight.
23. The government is seeking to significantly boost the supply of housing and the scheme would contribute up to five homes to the local housing supply. It would do so in a location with adequate access to services and without harm to the character of the area. The homes would not be isolated, and I have no reason to doubt that the site would be built out relatively quickly. Given the modest quantum of development, the housing constitutes a benefit of limited weight. It would not outweigh the harm I have identified above.
24. Consequently, there are no other considerations, including the Framework, which outweigh the conflict I have identified with the development plan.

Conclusion

25. I therefore conclude, for the reasons given, and taking all other matters raised into account, that the appeal should not succeed.

Matthew Jones

INSPECTOR