



Appeal Decision

Site Visit made on 16 February 2021

by Mr A Spencer-Peet BSc.(Hons) PG.Dip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 03 March 2021

Appeal Ref: APP/D0840/W/20/3261786

Land at Wheal Owles Lane, Truthwall, Botallack TR19 7QN

- 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 Ms Rose Hurditch and Mr Griff Midlen against the decision of Cornwall Council.
 - The application Ref PA20/01132, dated 6 February 2020, was refused by notice dated 1 July 2020.
 - The development proposed is the construction of a single affordable dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - The effect of the proposed development on biodiversity,
 - The effect of the proposed development on the character and appearance of the area, having regard to the site's location within the Cornwall Area of Outstanding Natural Beauty (the AONB),
 - The effect of the proposed development on the setting and significance of Heritage Assets; and,
 - Whether or not the proposed development would be in accordance with Local Planning Policies in respect of its location.

Reasons

Biodiversity

3. The appeal site comprises agricultural land with wide hedgerows and rough areas of grass and other vegetation. In this regard, given its characteristics and location, I would concur with the Council that the appeal site does have the potential to provide suitable habitat for protected species, and it is noted that there is contention that the site provides habitat for slow worms.
4. No ecological assessment or survey has been provided in support of the application or in relation to the appeal and, consequently, it is not possible to establish the extent to which biodiversity and protected species may be affected by the appeal scheme.
5. Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their Impacts within the Planning System (the Circular), states that the presence of a protected species is a material consideration when a

development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say that it 'is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted. Otherwise all relevant material considerations may not have been addressed in making the decision'.

6. In light of the information before me and from observations made on my site visit, I am of the view that there is a reasonable likelihood that protected species may be affected by the proposed development and in the absence of any survey information I cannot be satisfied that any effect would not be adverse. The Circular states that conditions for surveys should only be attached to planning permissions in exceptional circumstances which I do not consider are before me and in any event details of any mitigation would be necessary prior to the grant of planning permission so I could be satisfied overall effects would be acceptable.
7. The appeal proposal would therefore fail to comply with the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended) and the Wildlife and Countryside Act 1981. The proposed development would also conflict with Policies 2 and 23 of the Cornwall Local Plan Strategic Policies (2010-2030) (the Local Plan) which, amongst other matters, requires that development should conserve, protect and, where possible, enhance biodiversity ensuring that the importance of habitats and designated sites are taken into account. The scheme would further fail to accord with those parts of the National Planning Policy Framework (the Framework) which seek to avoid harm to biodiversity unless adequately mitigated for.

Character and Appearance

8. The appeal site lies within the West Penwith section of the Cornwall AONB as identified within the Cornwall and Isles of Scilly Landscape Character Study (the LCS) and the Cornwall AONB Management Plan 2016-2021 (the AONBMP). These documents confirm that the key landscape characteristics of this section of the AONB include the exposed nature of the coastal shelf; scrub and bracken along the coast; anciently enclosed land and prehistoric field pattern remains; extensive mining relics around St Just and Pendeen; and little modern clutter. The LCS notes that due to its open and bleak nature, any change could ruin the integrity of this Landscape Character Area and therefore the objective should be to conserve, as well as to seek to minimise any impact.
9. Notwithstanding the presence of a short row of static caravans located east of the site which detract from the quality of the surrounding landscape, the appeal site nonetheless forms part of an important gap between the built form of Truthwall and the remains of structures associated with the historical mining operations at Wheal Owles mine, and reflects the character described within the LCS, making a positive contribution to the landscape character area and to the AONB.
10. Along with National Parks, AONBs are afforded the highest status of protection when it comes to their landscape and scenic beauty. The Framework states that "great weight should be given to conserving landscape and scenic beauty of....Areas of Outstanding Natural Beauty...". Policies 12 and 23 of the Local Plan require, amongst other things, that development respects the character of

its setting and, promotes local distinctiveness, and maintains and enhances Cornwall's distinctive natural and historic character.

11. By reason of the open nature of the surrounding landscape which is largely devoid of tree cover combined with the local topography, the site is prominent to public views within the immediate and wider surrounding area, and especially from the north of the site. The appeal proposal would also be visible to those using the nearby public footpath.
12. While I note that the proposed dwelling would have a relatively low overall profile and would utilise local materials within its design, the introduction of such accommodation to the site would add to the built form within this rural countryside location. Whilst I acknowledge the contention that the building would have a traditional appearance and would have limited external lighting, the proposed dwelling would incorporate modern features, including box like flat roofed areas, with relatively substantial amounts of glazing and paved external amenity space. Parking and the paraphernalia associated with residential occupation would also add to the visual intrusion. Consequently, the proposal would be detrimental to local distinctiveness and harm the landscape and scenic beauty of the AONB.
13. For the above reasons, the appeal scheme would have a harmful effect on the character and appearance of the area. Whilst additional landscaping and proposed planting of coastal plant species would lessen the impact of the proposal, the features described above would result in the appeal proposal being somewhat visually discordant within the surrounding protected landscape. While the harm to the AONB as a whole could be described as limited there would, nonetheless, be some degree of harm to the AONB. The harm I have identified is a matter of particular importance as the site lies within the AONB, and the Framework requires that great weight should be given to conserving and enhancing landscape and scenic beauty in such locations.
14. The proposal would therefore conflict with Policies 12 and 23 of the Local Plan and be contrary to those parts of the Framework, which, together and amongst other things, seek to ensure that local distinctiveness and the character and beauty of the countryside, including the landscape and scenic beauty of the AONB, is protected.
15. Furthermore, the development would conflict with Policies MD9 of the AONBMP which, among other things, seeks to ensure that development responds appropriately to its landscape setting. While the AONBMP does not form part of the development plan, the identified conflict also weighs against the appeal scheme.

Heritage Assets

16. The appeal site is located within the Cornwall and West Devon Mining Landscape World Heritage Site (the WHS). Paragraph 184 of the Framework states that World Heritage Sites are a designated heritage asset which are an irreplaceable resource, and which should be conserved in a manner appropriate to their significance. Policy 24 of the Local Plan provides that development within the WHS will be restricted in accordance with the Cornwall and West Devon Mining Landscape World Heritage Site Management Plan (the WHSMP). Whilst the WHSMP does not attract the same weight as the Development Plan

Policies, it is reflective of the Framework in terms of seeking to conserve such heritage assets and, consequently, the WHSMP is an important material consideration that can be given moderate weight.

17. The WHSMP places the appeal site within Area 1 St Just Mining District of the WHS. The WHSMP describes the significance of this area as being a coastal area of extensive mining which contains remains of mining structures including processing sites. Policies P3 and C7 of the WHSMP state that planning authorities will ensure that new development protects, conserves and enhances the site and that the historic character and distinctiveness of the mining landscape will be maintained.
18. Further to the above, the site is also located outside of, but adjacent to, the Botallack and Truthwall Conservation Area (the Conservation Area). In accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area in reaching this decision. In my view, the remaining structures and the undeveloped nature of the surrounding fields associated with the Wheal Owles mine site, contribute positively to the setting of the Conservation Area.
19. As noted above, the appeal site forms part of an important gap which separates the built form of Truthwall from the Wheal Owles mine site, and which, in my view and by reason of its undeveloped rural nature, contributes positively to the setting of both the WHS and the Conservation Area. The appeal scheme would occupy part of this important gap and would contribute to the coalescence of the distinct built form of Truthwall with the separate historic mining complex west of the site. Consequently, the proposed development would erode the sense of separation between these features and would be detrimental to the positive contribution that that undeveloped site provides to both the setting of the Conservation Area and the WHS.
20. Accordingly, there would be harm to the setting and significance of the WHS, and therefore the proposal would conflict with Policies P3 and C7 of the WHSMP and would be contrary to Policy 24 of the Local Plan in this regard. Furthermore, and for the same reasons, the proposal would be harmful to the setting of the Conservation Area and therefore would also fail to accord with Policy 24 of the Local Plan with regards to maintaining the special character and appearance of Conservation Areas.
21. I have considered the contents and conclusions of the Appellants' Heritage Impact Assessment, and concur that the important gap in development that the appeal site provides between the built up area of the settlement and the historic mine buildings would not be entirely eroded by the appeal proposal. Nonetheless, the appeal scheme, with all the domestic paraphernalia that would entail, would still occupy a substantial and noteworthy portion of that important space which contributes to both the setting of the WHS and the Conservation Area. While it is also noted that the cricket club building west of the site has recently been approved for development, I understand from the evidence before me that that development concerned the reuse and preservation of a building with heritage value that positively contributes to its surroundings.

22. The harm identified above in relation to the WHS and the setting of the Conservation Area, would be less than substantial harm in terms of paragraph 193 of the Framework, given that the proposal would not entirely erode the important sense of space that separates the settlement from the heritage assets associated with the WHS and thereby would not represent a substantial or total loss of significance of the heritage assets. Therefore, in accordance with paragraph 196 of the Framework, it is appropriate to weigh the harm caused by the proposal against any public benefits that would arise from the development. In this regard, I will return to the level of public benefits in the Planning Balance and Conclusion given below.

Location of Development

23. As noted above, the appeal site is located outside of Truthwall. Truthwall is a predominately linear settlement that occupies space on either side of the B3306 highway, comprising a mixture of buildings in terms of their scale and design.
24. Policy 3 of the Local Plan seeks to control the distribution of new dwellings across Cornwall and includes provisions setting out circumstances in which development at locations such as Truthwall, which are outside a number of identified towns, may occur. This includes infill and rounding off. However, these do not apply here because the proposed dwelling would not fill a gap in an otherwise continuous frontage and would not provide symmetry to or completion of a settlement boundary. Nonetheless, the proposal is for an affordable dwelling, and Policy 3 of the Local Plan also provides that developments which accord with the rural exceptions Policy 9 of the Local Plan, may be permissible.
25. Policy 9 concerns rural exceptions sites located outside but adjacent to settlements where the primary purpose is to provide affordable housing to meet identified local needs. Such developments should be clearly affordable, be well related to the physical form of the settlement and be of appropriate scale, character and appearance.
26. It is acknowledged that the proposal would meet identified local needs in respect of affordable housing. However, the Council have put it to me that the scheme fails to accord with Policy 9 of the Local Plan in respect of such affordable housing being well related to the settlement and in regards to the effect of the proposal on the character and appearance of the surrounding area.
27. The appeal site is located just outside of the settlement and, by reason of the built form, including recent development at Truthwall, east of the site, the proposal could be considered to be well related to that settlement. In this regard, the Chief Planning Officer's Advice Note – Infill/Rounding Off (December 2017) (the CPOAN), provides some guidance on Affordable Housing Exception Sites. Whilst being informal guidance, the CPOAN provides clarity on the approach to be adopted in relation to such matters, and as such I have had regard to this advice.
28. The CPOAN provides that affordable housing exception sites 'should be adjacent to, or well related (i.e. reasonably close and within a short and safe walk) to the built up area of the settlement'. As I observed on my site visit, the distance to the settlement and to bus stops located on the B3306 highway was

within a short walk of the appeal site. However, it was also noted that part of the journey on foot to the settlement would be along an unlit unmade trackway which was in a state of disrepair and, in this respect, it could be said that walking to Truthwall would not be safe for all users.

29. Notwithstanding the degree to which the appeal proposal would be well related to the settlement at Truthwall, for the reasons given above in relation to the proposal's impact on the AONB, the WHS and the Conservation Area, the appeal scheme would be harmful to the character and appearance of the area. Consequently, the proposed development would conflict with the provisions of Policy 9 of the Local Plan when taken as a whole.

Other Matters

30. The Appellants have referred me to a recently approved development located east of the site. In this respect, I have been provided with only very limited information regarding that development. However, from the observations made on my site visit, it was apparent that that development was located within the logical boundary of the settlement and, accordingly the circumstances of that development are not comparable to the present appeal scheme. In any event I have determined this appeal on its own merits.
31. I acknowledge that the appeal scheme has support from a number of interested parties. However, these considerations would not outweigh the harm that I have identified above.

Planning Balance and Conclusion

32. In light of the above reasons, the appeal scheme would have a harmful effect on the landscape and scenic beauty of the AONB, the conservation of which must be afforded great weight. It would also cause harm to the setting of the Conservation Area and would be harmful to the significance of the WHS. It would therefore not accord with the policies of the Local Development Plan, the AONBMP or the WHSMP.
33. While it is understood that the Appellants would lead the build, the proposal would, nonetheless, provide some economic benefits in terms of limited employment opportunities during the construction phase. There would be further economic benefits through the spend of future occupants within local businesses, thereby helping to contribute to the local economy. It is also noted that the Council's Affordable Housing Team has advised that there is a high need for affordable housing within the area and has welcomed the proposed provision of an additional affordable dwelling. In this regard, the proposal would assist in meeting local housing needs and would add to the choice and supply of housing within this part of Cornwall.
34. It is also acknowledged that the proposal may provide some ecological enhancements in terms of additional planting and potential improvements to existing hedges. However, the weight to be attached to these benefits would be limited by reason of the absence of an ecological assessment or survey as described above under the first main issue, as it would not be possible to establish the extent to which existing ecology and protected species may be affected by the appeal scheme.
35. By reason of the scale of development, the above noted public benefits can be given moderate weight in the planning balance. However, such benefits either

individually or in combination do not outweigh the identified harm in relation to biodiversity, the AONB, the WHS, the Conservation Area and the associated development plan conflict to which I attach great weight.

36. For the reasons given above I conclude that the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR