



Appeal Decision

Site visit made on 12 April 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2021

Appeal Ref: APP/D0840/W/20/3255851

Churchtown Farm, Tresmeer, Launceston, PL15 8QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Keith Austin against the decision of Cornwall Council.
 - The application Ref PA19/01347, dated 8 October 2019, was refused by notice dated 11 November 2019.
 - The development proposed is the erection of 6 self-build dwellings and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline form with all matters save for access reserved for future consideration. In this context, the plans detailing the scale, position and design of the houses, along with all landscaping measures between and to the rear, have been treated as indicative only.

Main Issues

3. The main issues are:
 - whether the location and nature of the development would accord with local policies that define the types of residential development that may be acceptable in relation to smaller settlements;
 - whether the proposal would make adequate contributions towards affordable housing and education infrastructure; and
 - whether the proposal would harm a Protected Species.

Reasons

Location and nature of development

4. The appeal site comprises part of an agricultural field on the northern side of the small settlement of Tresmeer which has few community facilities. Dwellings and farmsteads generally adjoin the roads but there are large gaps of agricultural land between them. The settlement takes on a more dense and identifiable form from the area south of the appeal site, where development, including the redevelopment of former farm buildings, appears on both sides of the road without large gaps.
5. To the north of the site are buildings and structures forming part of Churchtown Farm, owned by the appellant. To the south is the residential estate known as 'Hendra Garth' laid out with two dwellings backing onto the

appeal site. To the west is the minor rural road, separated from the site by a Cornish hedgebank with trees.

6. The development plan for the area includes the Cornwall Local Plan Strategic Policies 2010 – 2030 (CLP). This was adopted in 2016 and largely superseded all development plans from the former district councils (except for where policies were specifically 'saved'). Where development was approved and constructed under a former development plan, such as the Hendra Garth estate, there can be no assumption that the same policy support should extend to proposals currently under consideration. I have limited evidence to suggest why the Hendra Garth estate was previously found to be acceptable in the context of policies relevant at that time, nor any particular relevance of it being a scheme promoted by the then Council. In any event, the starting point for my consideration of this appeal, under Section 38(6) of the PCPA¹, is the current development plan, unless other material considerations indicate otherwise.
7. The CLP policies cited in the first reason for refusal include Policies 1 and 2 which are the overarching policies enshrining the presumption in favour of sustainable development and setting the CLP's overall aims.
8. CLP Policy 3 seeks to direct most housing growth towards the larger named settlements, with more organic growth permissible in smaller, unidentified settlements through either: Neighbourhood Plan allocations, rounding off of settlements, development of previously developed land (PDL) within or immediately adjoining a settlement, infill schemes that fill a small gap in an otherwise continuous built frontage and do not physically extend the settlement into the countryside, or through rural exceptions schemes under CLP Policy 9.
9. There is no allocation relevant to the site under a Neighbourhood Plan. Whilst the appellant suggests that the appeal site is PDL, only limited evidence is provided about suggested past storage uses that have not resulted in the obtainment of a Certificate of Lawfulness of an existing use under Section 191 of the Act. As such, and from my assessment of the site, I am of the view that the site is undeveloped land forming part of an agricultural field, irrespective of whether it has been actively or recently used for such a purpose.
10. The appellant asserts that the proposal would amount to an infill development. Whilst Churchtown Farm exists to the north, preventing the sprawl of further development northwards, the absence of any eastern boundary feature and the scale of the site also points more towards the extension of the settlement rather than the filling of a small gap in an otherwise continuous built frontage. The proposal would not, therefore, constitute an infill development.
11. The Council's Advice Note² on infilling and rounding off suggests that rounding off schemes should not visually extend development into the open countryside and should be predominantly enclosed by edging features. The site is only really enclosed to its southern side by an existing residential development. There is no separation of the site from the adjoining agricultural land to the east. It has a definable western boundary, albeit no enclosure by existing development. In my view, the proposal would amount to an extension of the settlement in a northerly direction to adjoin the more sporadically sited Churchtown Farm and its associated farm buildings.

¹ Planning and Compulsory Purchase Act 2004 (as amended)

² Chief Planning Officer's Advice Note: Infill/Rounding Off (2017)

12. Policy 9 of the CLP supports rural exceptions schemes on sites that adjoin or are well related to a settlement. These schemes should be affordable housing led and comprise a number and tenure of dwellings that reflects the appropriately evidenced local need, identified through the main housing register or other more locally-specific housing needs survey. In this case, the Council's affordable housing consultee indicated that there was an insufficient registered local need for the proposed affordable dwellings.
13. The appellant's anecdotal evidence suggests that aside his own two children, there are sufficient individuals or families wishing to reside in Tresmeer that would like to purchase a dwelling or plot on a self-build basis. Despite the suggestion that the Freedom of Information process highlighted a number of relevant individuals on the self-build register, such a demand has not been sufficiently evidenced with this appeal.
14. The appellant has offered details about the suggested discounts from open market value that would be offered to purchasers of the self-build plots or dwellings and the intended stipulations of any sales. However, for the scheme to comprise a self-build scheme or for any such terms to be fixed, a planning obligation made under Section 106 of the Act would be necessary. No S106 has been received. Furthermore, the suggested sale price of the plots does not appear comparable when compared with the financial terms of dwellings built as part of a rural exceptions scheme. Consequently, the tenure of the scheme can only be treated on an open market basis.
15. Though the appellant provides references for permissions given for residential developments which are allegedly similar to the proposal, I have not been provided with sufficient detail to enable useful comparisons to be made. The details supplemented by the Council suggest that those respective schemes were better related to their host settlements so as to be considered as either infill or rounding off developments. Similarly, any residential development in Tresmeer otherwise in accordance with CLP Policy 3 on the basis of its nature and relationship to the settlement is not determinative in respect of the appeal site, the development of which would result in an extension to the settlement.
16. Drawing together this main issue, given that CLP Policy 3 precludes development on sites that would extend a settlement, other than where it would comprise a rural exceptions scheme under Policy 9, the proposal conflicts therewith. CLP Policy 7 also seeks to restrict housing in the countryside unless one of the specifically listed circumstances applies, which they do not in the case of the appeal proposal. Absent of justification for development in the countryside, the proposal also conflicts with CLP Policy 23 which recognises and requires development to respect landscape character of both designated and undesignated landscapes and protect Cornwall's natural environment and assets. Drawing together these issues, the location and nature of the development would not comply with the aforementioned CLP Policies.

Affordable housing and educational infrastructure

17. Where a scheme seeks to, or should, deliver affordable housing under a rural exceptions scheme, a S106 planning obligation is necessary to restrict the tenure of said dwellings. No S106 obligation has been submitted on this basis, or indeed to restrict the dwellings or plots under the Self-Build or Custom Housebuilding Act 2015, as amended.

18. In respect of educational infrastructure, the Council's evidence suggests that school capacity is deemed to be insufficient where either the designated primary school and/or secondary school are operating with fewer than 10% surplus places. From the evidence, both the designated primary and secondary schools for the area are operating above 90% capacity.
19. The Council seeks to secure financial contributions towards additional school places to meet the demand created by new developments. Each open market dwelling with two or more bedrooms ('qualifying dwellings') generates a requirement for a contribution of £2,736. Such contributions are to be paid by way of Section 106 obligations.
20. No financial contribution has been offered by way of S106 obligation and nor has any exception been sought on the basis of the tenure of the dwellings. Thus, the proposal conflicts with Policies 8 and 28 of the CLP, which collectively require planning obligations to deliver affordable housing and contributions to facilitate any necessary physical, social, economic and green infrastructure.

Protected Species

21. The appeal application was supported by a Preliminary Ecology Appraisal (PEA) (Smart Ecology, November 2018) which identifies the potential impacts on species and habitats, along with mitigation and enhancement measures. The PEA notes that there are limited details pertaining to the form of the development, given its outline nature. However, in relation to its potential effects on bats, a Protected Species, the assumption has been made that the linear western boundary hedge would be altered to form a new road access and that artificial lighting could affect this feature used by bats as a foraging and commuting route.
22. The Council has taken a precautionary approach and has found the potential disturbance to bats, combined with the lack of overriding public interest reasons to support the scheme, to result in an overall failure of the derogation tests³. In my view, whilst it appears that potential effects on bats, along with other species and habitats, could be avoided through appropriate design or mitigated by way of planning conditions, as I am dismissing the appeal for other reasons, this matter is not determinative.

Other matters

23. Whilst I empathise with the appellant's frustration, there is nothing before me to suggest that the Council has unacceptably moved any goalposts in relation to the assessment of the proposal or that any conduct by elected members has contributed to the proposal being determined without proper regard to the site and policy context.
24. I note the numerous aspirations for the scheme to be constructed to be cost-effective and low carbon and to have an overall positive effect on local character. Given the outline nature of the scheme, these aspects cannot be attributed weight. Similarly, other aims to provide a wildflower meadow and possible business proposal involving the reuse of a farm building lie outside of the defined site area and do not add weight in support of the scheme.

³ Conservation of Habitats and Species Regulations 2017, as amended

25. The Parish Council's support and a number of positive comments from nearby residents add minor weight in favour of the proposal.

Planning balance and conclusion

26. In respect of its location and nature, and the absence of any S106 obligation restricting its tenure or providing for an education contribution, the proposal conflicts with the development plan, when read as a whole.
27. Whilst the appellant's desire to provide housing for his own family members is understandable, this is not an overriding factor, though the general boost to housing is a positive aspect of the scheme. The appeal proposal would add six dwellings to the local housing stock, thus increasing opportunities to access housing. The new residents would contribute to the local community and add economic input to local services; these amount to social and economic benefits of the scheme. Though modest and temporary in nature, I also note that there would be some economic benefit during the construction process.
28. However, the above benefits and other stated factors do not amount to considerations of sufficient materiality to outweigh the conflict with the development plan or dictate that a decision should be taken other than in accordance therewith.
29. Consequently, the appeal is dismissed.

Hollie Nicholls

INSPECTOR