



Appeal Decision

Site visit made on 17 August 2021

by Mrs H Nicholls FdA MSc MRTPI

An Inspector appointed by the Secretary of State

Decision date: 21 September 2021

Appeal Ref: APP/D0840/W/21/3274525

Bealswood, Cemetery Road, Albaston PL18 9AJ

- 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 Chase Oak Homes against the decision of Cornwall Council.
 - The application Ref PA20/03516, dated 26 April 2020, was refused by notice dated 9 November 2020.
 - The development proposed is construction of five dwellings and extension to existing dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Chase Oak Homes against Cornwall Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal application was originally refused for two reasons; the first relating to the potential effects on bats, which are a protected species. The appellant submitted the appeal on the 7 May 2021. A 'Bat Survey and Mitigation Strategy Report: Revision 01: Final Report' (Final Report) dated the 15 June 2021 was submitted on the same date as its publication. The appeal was started on 17 June 2021 and notification of the appeal was issued by the Council on the 18 June 2021. Comments on the appeal, including the 'Final Report', were sought by the 22 July 2021.
4. The Final Report specifically sought to address the reason for refusal, as is customary of evidence submitted at the appeal stage. A number of objectors assert that the submission of such contravenes the 'Wheatcroft'¹ principles - including whether the late submissions would materially alter the nature of the application or whether anyone who should have been consulted on the changed development would be deprived of that opportunity. Whilst I note that there was a short delay between the submission of the appeal and the submission of the Final Report, no parties were prejudiced by the acceptance of the report or timeframe for consideration thereof.
5. The Council has confirmed in its Statement of Case that the Final Report and associated mitigation measures, including the separate requirement to obtain a European Protected Species Licence, are sufficient to address this issue and

1. ¹ Wheatcroft Ltd V SSE [1982]

that it no longer seeks to defend this reason for refusal. As I see no reason to reach an alternative conclusion, this no longer forms a main issue in the consideration of the appeal.

6. Following the determination of the appeal application, the revised National Planning Policy Framework (the Framework) was published in July 2021. As the main parties have had the opportunity to provide comments on the revised Framework, no injustice has been caused, and I have taken it into account.
7. A further material change in policy circumstances also occurred during the processing of the appeal in relation to the Calstock Parish Neighbourhood Development Plan (NDP). Clarification was sought from the parties about the status and weight to be attributed to the plan. As the status of the plan was confirmed as being 'post-examination', the appellant was provided with an opportunity to comment on the implications of this change.

Main Issues

8. The main issues are (i) the effects of the proposal on highway safety, and (ii) whether the location of the development accords with local policies that seek to locate most new development within the defined development boundaries.

Reasons

Highway safety

9. The appeal proposal would involve the demolition of the garage associated with Bealswood and the provision of an access road, extending past the host dwelling and into the appeal site. Whilst cars already utilise the driveway in a similar position in association with the host dwelling, the proposal would result in an increase in the number of users of the altered access, with five additional dwellings served from the same.
10. Measures proposed as part of the scheme following earlier refusals on highway safety grounds involve the provision of a footway immediately outside of the site, extending either side, albeit a greater distance to the north than the south and with a total length of approximately 68 metres. The footway would vary in width between 1.5m and 1.8m and would include three separate areas of tactile paving and lowered kerbs to allow crossing points to the continuous footway on the opposite side of the road. It is envisaged that a bollard would be positioned on each of the outside edges of the outermost crossings.
11. The intent of providing the footway, aside facilitating pedestrian movements along the eastern side of the road which is presently absent of footway for much of its length, is to provide a build-out that enables visibility splays to be provided from the altered access at the appeal site. The visibility splays required owing to the 30mph speed restriction would be 43 metres in each direction from a 2.4 metre set back. The annotation on the proposed plan indicates that such would be achieved with the provision of the footway.
12. The appeal site lies opposite a cemetery which does not have any parking. It is alleged that the road is often congested with on-street parking when burials are taking place. At the time of my visit, there were a few cars parked on the street opposite the appeal site. The south-western end of the road narrows and there were more cars parked on one side of it in the same area where many terraced and semi-detached dwellings do not have off-road parking.

13. Despite claims by the appellant to the contrary, I consider that there would be a modest reduction in the availability of on-street parking. Whilst this could lead to complications for guests attending burial ceremonies, it is unlikely to be a material deterrent or inhibitor to use of the cemetery; attendees would find a way to park further afield and navigate a way to the cemetery if shared car use was not possible. I do not share the same assumption that hearses only park opposite or close to the appeal site; too little evidence exists of such a pattern of use and during my site visit, I noted a vehicle had reversed into the cemetery itself from the access on the unclassified road. Similarly, I do not consider that the operation of the Parish Archive at the cemetery chapel would be harmfully affected, as it is unlikely to receive such a volume of visitors at any one time so as to result in a problem in this regard.
14. In terms of the operation of the Tamar Valley AONB Centre, I note that it has sufficient parking for the typical number of regular employees and visitors. Whilst attendance at meetings is likely to result in an increased demand for parking, I do not consider that there would be such frequent instances of parking spilling over onto the surrounding road/s that would result in a highway safety issue in the vicinity of the appeal site. Similarly, the loss of use of the on-street spaces by Fernleigh House cannot be attributed weight given the absence of evidence in relation to the demand placed thereupon by either its employees, residents or visitors, or that the change of use was permitted based on the availability of on-street parking on Cemetery Road near the site.
15. The neighbouring dwellings in closest proximity to the appeal site have off-road parking and so would not be directly inconvenienced by the loss of around six on-street spaces. The footway would terminate before the point in the road where there are fewer houses with off-road parking.
16. I have considered the claims about the insufficient road width presented by the Council but have doubts about the reliability of the information sources used to derive such measurements. It appears that the Council's Highways Officers have accepted the submitted plans and the tracking diagrams that show that the road would still allow for sufficient two way car movements, provided that there were not cars parked on one side of the street. Clearly, parked vehicles on one side of the street will require more stopping to allow passing in areas where such is possible, i.e. adjacent to driveway openings. Other than resulting in a likely reduction in vehicle speeds, this in itself is not particularly unsafe and is how Cemetery Road operates at its south-western end at the present time, where there is no footway at all.
17. It has been drawn to my attention that the footway would also be intersected by two existing driveways, in addition to the opening at the appeal site. This would mean that there would be continuous dropped kerbs in these areas. Subject to a satisfactory design solution to deal with such interactions, I see no reason for the footway not to work in practice as similar arrangements exist along many footways in residential areas. Similarly, the use of bollards, where agreed through detailed design process with the Local Highway Authority, would not be as problematic or unsafe as asserted by the Council. I noted bollards on similar pedestrian build outs on the adjoining street and it is clear that they exist more for safety of the pedestrians rather than to undermine it.
18. Considered in the round, I have taken the view of the Council's Highways Officers that the proposal as a whole would have a safe access and that the

proposed solution, subject to a final detailed design, would be satisfactory from a highway safety perspective. Whilst I agree that the proposed footway is not specifically required to improve pedestrian safety, given the existence and suitability of the existing footway, it would have the effect of prioritising pedestrians and slowing traffic. As such, I do not agree that the proposed highway measures would be unsafe, even if they would hinder the use of the road by drivers when compared with the current scenario which inadvertently favours them, offering on-street parking and enabling speeds of driving above that permitted.

19. In view of the above, the proposal would not result in any prejudicial effects to highway safety, and would thus accord with, in particular, Policy 27 of the Cornwall Local Plan (2016) (Local Plan) which seeks to ensure new development provides safe and suitable access and does not cause a significantly adverse impact on the local road network. The proposal would also accord with the Framework in respect of its requirement for development to provide safe and suitable access for all users.

Location of development

20. At the time that the appeal proposal was considered by the Council's Planning Committee, the principle of the proposal was noted as being in accordance with the Local Plan as a 'rounding off' scheme. However, the conflict with the emerging NDP, specifically Policy HP1, was highlighted, with the Policy strongly indicating that residential development of the site would not be supportable in view of the site's location outside of the defined development boundary. Given its stage of preparation at that time, the NDP was not capable of attracting significant weight and thus, the principle of development was recommended as being acceptable.
21. Following submission of the appeal, the Council's Statement of Case alluded to the NDP having passed through examination but with consultation required on changes to Policies HP1 (development boundaries) and LISF5 (Local Green Spaces). The consultation stage on these changes ran from March 2021 for three weeks. Correspondence received from the Council more recently in August indicates that the post-examination report was received on the 1 June 2021 and that the NDP will proceed to referendum in due course.
22. In response to the COVID-19 Pandemic, the Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020 prevented all referendums, including neighbourhood plan referendums, from taking place until 6 May 2021. The long moratorium on the holding of referendums has had the effect of creating a backlog; the Calstock NDP has joined this queue and there is currently no date for the referendum to take place. However, the Planning Practice Guidance sets out that neighbourhood plans awaiting referendums can be given significant weight in decision-making² so far as is material to the proposal in question.
23. It was clear from the Council's Committee Report that the acceptability of the principle of development was premised on the inability to attribute the NDP significant weight. Due to the progression of the NDP through the examination stages, this position has changed and the plan can now be attributed, if not

² Paragraph: 107 Reference ID: 41-107-20200513

significant, then at least great weight, and that has a very material impact on the acceptability of the principle given the conflict with Policy HP1 and location of the site outside of the development boundary. Whilst I note the omission of the appeal site from the areas protected as Local Green Spaces under Policy LSIF4, this does not alter the position in relation to Policy HP1 which precludes development outside of the development boundaries unless in specific circumstances listed.

24. The appellant indicates that NDP Policy HP1 3) e) allows for development outside of development boundaries. However, criterion e) does not operate independently, it operates in connection with one of the development types listed in 3) a) to d), such as replacement dwellings and rural exceptions sites; none of which apply to the open market appeal proposal. The nature of the development therefore conflicts with the Policy, even if it were capable of complying with Policy H2 which is a Policy that seeks to preserve a Rural Gap to protect the separate identities of Drakewalls and Albaston.
25. The appellant argues that the NDP does not yet carry significant weight as no Regulation 18 Decision Statement has yet been issued by the Council. However, in its public recommendation report dated 29 July 2021, it is clear that having considered each of the recommendations made in the Examiner's report and the reasons for them, the Council, with the consent of Calstock Parish Council, has decided to accept the modifications to the NDP and accepts the Examiner's recommendations that it should proceed to referendum. It is unclear when such a formal Decision, distinct from a recommendation, will be issued, but it seems unlikely, given the support of the Parish Council, NDP Steering Group and other participants, that the Council would fail to issue one given the manner in which it would undermine the progress of the NDP at this advanced stage. I note from the more recent decision³ of the Council for an almost identical scheme on the appeal site that the NDP Policy conflict also forms a reason for the refusal of that scheme.
26. I accept that the NDP does not form part of the development plan until it passes through referendum, however, in my view, it now forms a consideration of at least great weight, bordering significant weight owing to its likely progression through to the referendum stage in the near future. I return to this in the planning balance below.

Other Matters

27. I note that the existing proposal involves an extension to the existing dwelling, and that this aspect is unlikely to conflict in either principle or in respect of its detailed merits with policies of the development plan or NDP. However, I have not made a split decision in this instance, with the specific configuration of the extension appearing to be predicated on the interaction with the appeal proposal for a more comprehensive development of the site.

Planning Balance and Conclusion

28. The proposal would be compliant with the development plan with particular regard to Policy 3 of the Local Plan in respect of the location and nature of development, and also with Policy 27, in terms of its acceptable effects on

³ Application Reference: PA21/06467 dated 13 September 2021

highway safety. The proposal therefore complies with the development plan as a whole.

29. The proposal would result in the increased provision of housing to the local housing stock, with the social benefits of increased access to housing and contribution to community life. There would be economic benefits through the construction phase, albeit more of a short-term nature, with longer-term benefits accruing from the reliance of future occupiers on local goods and services.
30. However, even taking into account the accordance of the scheme with the development plan and the anticipated modest benefits, the materiality of the NDP as a consideration of such weight indicates that the decision should be taken other than in strict accordance with the development plan.
31. In view of the above, the appeal is dismissed.

Hollie Nicholls

INSPECTOR