
Appeal Decision

Site visit made on 10 August 2021

by C J Ford BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2021

Appeal Ref: APP/D0840/W/21/3275523

The Old Nursery, Higher Penponds Road, Penponds, Camborne, Cornwall TR14 0QG

- 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 Camborne, Redruth and Hayle Methodist Circuit against the decision of Cornwall Council.
 - The application Ref PA18/08586, dated 12 September 2018, was refused by notice dated 8 February 2021.
 - The development proposed is erection of two dwellings and formation of new access.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two dwellings and formation of new access at The Old Nursery, Higher Penponds Road, Penponds, Camborne, Cornwall TR14 0QG in accordance with the terms of the application, Ref PA18/08586, dated 12 September 2018, and subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by Camborne, Redruth and Hayle Methodist Circuit against Cornwall Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of the proposed development on the application form was 'Erection of three, two-storey dwellings and formation of new access'. A revised description reflecting a reduction in the proposed development to two dwellings was agreed by the Council and the appellant, and the application was determined on that basis. The revised description has therefore been used in the banner heading and the formal decision above, and the appeal has been determined on this basis.
4. A revised version of the National Planning Policy Framework (the Framework) was published in July 2021 and the main parties were given the opportunity to submit comments. The 2021 version of the Framework is referred to in the decision.

Main Issues

5. The main issues are:
 - Whether or not the proposed development would lead to the loss of open space; and

- The effect of the proposed development on the character and appearance of the area.

Reasons

Open space

6. The use of the site as allotments has ceased and it now comprises agricultural land. Nevertheless, the Council considers that it forms an area of open space from a visual amenity value perspective and having particular regard to the definition of open space provided in the Glossary of the Framework, namely, 'All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity'.
7. Through the inclusion of the word 'and' towards the end of the definition, it is apparent that any open space which acts as a visual amenity in this particular context is secondary to it first offering opportunities for sport and recreation. Likewise, the Council's, 'Open Space Strategy for Larger Towns in Cornwall – Recommendations for future provision standards' 2014, specifically focusses on land that is regularly available for recreational or sporting use by the community.
8. As the site is private land with no public access, and the allotment use has ceased, it does not offer any such opportunities for sport and recreation by the local community. Consequently, the proposed development would not lead to the loss of open space and there is no requirement for it to satisfy one of the three criteria set out in paragraph 99 of the Framework. This is not to say the land has no value from a visual amenity perspective, a matter which is considered below as part of the second main issue, but planning policy which relates to the protection of open space is not applicable to the site.

Character and appearance

9. The site is contained on three sides by the settlement's existing urban form while the fourth side, to the south, is separated from the wider open countryside by a substantive hedgerow which follows a dismantled railway line. With this in mind, the site does not provide a strong visual link with the surrounding area or make an important contribution to the rural setting of the settlement.
10. Due to the fairly high tree lined perimeter hedgerows, the site is somewhat hidden from the public areas of the settlement, save for a glimpsed view via a field gate at the north corner of the site. However, the view is of a small enclosed field which has a degraded appearance. Consequently, its visual amenity value as an undeveloped greenfield site is limited.
11. The construction of the proposed two new dwellings would undoubtedly change the site's appearance. However, the buildings would be of an acceptable design and confined to the northern part of the site. The majority of the area would remain open, either as public open space, private gardens or the vehicular access. The site boundary along Higher Penponds Road would be altered to achieve the necessary access and visibility splays but elements of the existing hedgerow would be retained where possible. New hedges would also be provided within the site.

12. It would therefore be a sensitive development scheme that would suitably integrate with the settlement's existing built form and landscape setting. As such, it would not be unacceptably harmful to the character and appearance of the area and would not conflict with Policy 23 of the 2016 adopted Cornwall Local Plan Strategic Policies 2010-2030 (LP). Amongst other things, this policy seeks to ensure development sustains local distinctiveness and character. Similarly, it would not conflict with paragraphs 130 and 174 of the Framework which promote development that is sympathetic to local character and which protects valued landscapes.

Other Matters

13. As the proposal would represent a suitable 'rounding off' of the settlement of a scale appropriate to its size and role, it would accord with Policies 2, 2a and 3 of the LP. Amongst other things, these policies set out the spatial strategy of the development plan, the role and function of places in Cornwall and the number of homes that should be delivered within the plan period, which is expressed as a minimum. Given the latter consideration and in light of the Government's objective of significantly boosting the supply of homes, the granting of planning permission for large housing sites in the wider area would not justify withholding permission for the proposed scheme.
14. The site was listed as an Asset of Community Value (ACV) in January 2021. However, the primary purpose of ACV listing is to afford the community an opportunity to purchase the site if it came up for sale, not to prevent otherwise acceptable development from being permitted. In August 2021 the Council also granted Penponds Community Interest Company planning permission at the site for, 'Change of use to public open space and allotments'¹. Nevertheless, the permission similarly does not prevent the appeal proposal from being considered on its own merits.
15. Concerns have been raised with regard to highway safety but the traffic generated by two houses would be limited and conditions could secure the required parking, turning areas and the visibility splays alongside the access. As such, there would not be an unacceptable impact on highway safety, notwithstanding the configuration of the fairly narrow roads in the locality, the lack of pavements, the existing on street parking and the nature and volume of traffic in the settlement.
16. Concerns have also been raised that the development would increase the risk of flooding in an area of the village that is already prone to serious flooding and photographic evidence has been submitted to illustrate such events and their regularity. Subject to the imposition of a pre-commencement condition in this regard, I am satisfied that the increased flood risk would be suitably mitigated. Similarly, I am satisfied that concerns about former mining activity and possible contamination can also be suitably addressed by conditions. The siting and design of the two dwellings, as well as intervening trees, would ensure that the living conditions of the occupiers of nearby residential properties would not be unacceptably harmed by the development.

¹ Council Ref: PA21/05014

Planning Balance

17. Given its former allotment use and in light of the ACV listing and the recent planning permission for public open space and allotments, the longstanding value the Penponds community places on the site in these regards is acknowledged. However, the land is in private ownership and it has not been demonstrated that there is a realistic prospect of the recent planning permission being implemented. Indeed, it is noted that a 2004 application by The Penponds Villlage Association for the provision of public open space at the site encountered a similar issue and was not implemented². Consequently, these considerations may only be afforded limited weight in the determination of the appeal.
18. The proposal would secure positive benefits which include the provision of two family sized houses, economic benefits during construction and once occupied and the environmental enhancement of degraded land. It would also secure an area of public open space in the village. Cumulatively, these benefits attract significant weight and they outweigh the limited weight afforded to the ACV listing and the recent planning permission. The proposal therefore represents sustainable development and as such it would not conflict with Policy 1 of the LP or paragraph 8 of the Framework, both of which seek the achievement of sustainable development.

Conditions

19. The conditions suggested by the Council have been considered having regard to the tests set out in the Framework and the advice of the Planning Practice Guidance. Where appropriate, the conditions have been amended for clarity and precision.
20. A condition specifying the approved plans is necessary to ensure certainty. Conditions in respect of a mining investigation report and contaminated land risk assessment, as well as any subsequent remediation scheme and the reporting of any unexpected contamination, are necessary to ensure the development can be carried out safely and without unacceptable risks to workers, neighbours, offsite receptors or future occupiers.
21. A drainage condition is necessary to prevent an increased risk of flooding and to minimise the risk of pollution. Conditions which secure the access, parking and turning areas are necessary to ensure highway safety. A condition requiring a landscaping scheme is necessary in the interests of the visual amenity of the area and to safeguard ecology on the site. A condition requiring details of the external materials of the buildings is needed to ensure the development visually harmonises with the locality. A condition requiring details of the open space provision is necessary to improve the health and well being of the Penponds community. A condition requiring a traffic management plan is necessary in the interests of highway safety. Lastly, a condition requiring the development to be carried out in accordance with the recommendations of the Ecological Impact Assessment is necessary to safeguard the ecology on the site.
22. The conditions numbered 3,4,5,8,9,11 and 14 in the attached schedule need to be pre-commencement conditions to ensure that the interests they seek to

² Council Ref: W2/PA04/00833/F

safeguard are protected throughout the construction of the development. Given the landscaping condition requires the provision of planting plans, the separate condition suggested by the Council in relation to the planting of the proposed hedges would be unnecessary and has therefore not been imposed.

Conclusion

23. There are no material considerations that indicate the proposal should be determined other than in accordance with the development plan. The appeal is therefore allowed, subject to the attached schedule of conditions.

C J Ford

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2139.01 B, 2139.30 A, 2139.31, 2139.32, 2139.33, 2139.34, 2139.35 and 2139.36.
- 3) No development shall commence until an intrusive on-site Mining Investigation, as recommended in section 4.2 of the submitted 'Contaminated Land Survey Phase 1' dated 23 March 2018 (Ref: A1412/P1/JW), has been submitted to and approved in writing by the local planning authority. The report shall include an assessment to identify the extent of unstable ground and the measures to be taken to avoid risk to buildings when the site is developed. The approved scheme shall be completed before the development hereby permitted is first occupied.
- 4) No development 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. This 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.
- 5) Following the risk assessment, where land is found to be affected by contamination and pose risks identified as being unacceptable, 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.
- 6) The approved remediation scheme in condition (5) shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 7) 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 the development is resumed or continued.
- 8) The foul and surface water drainage systems shall be in accordance with the principles set out in the EDS Flood Risk Assessment and Drainage Strategy J-1282-Rev.01. The development hereby permitted shall not be commenced until the following details are submitted to and approved in writing by the local planning authority:
1. A description of the foul and surface water drainage systems operation;
 2. Details of the final drainage schemes including calculations and layout;
 3. A Construction Surface Water Management Plan;
 4. A Construction Quality Control Plan;
 5. A plan indicating the provisions for exceedance pathways, overland flow routes and proposed detention features;
 6. A timetable of construction;
 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 overland flow routes.

The surface water drainage systems shall fully manage surface water flows resulting from the developed site up to the 1 in 100 year peak

rainfall event plus a minimum allowance of 40% for the impact of climate change.

The approved scheme shall be implemented in accordance with the timetable so agreed and the scheme shall be managed and maintained in accordance with the approved details for the lifetime of the development.

- 9) No development shall take place until details of the gradient, surfacing, drainage and visibility splays of the proposed access shown in Drawing No 2139.30 A have been submitted to and approved in writing by the local planning authority. The access shall be laid out and constructed in accordance with the approved details before any other building or engineering works are carried out on the site. The access shall be retained as approved thereafter and no obstruction exceeding 0.9m in height above the adjoining carriageway level shall be permitted within the approved visibility splays.
- 10) Prior to the first occupation of the development hereby permitted, the parking and turning areas shall be laid out and constructed in accordance with approved drawing no. 2139.30 A and the said areas shall not thereafter be obstructed or used for any other purpose.
- 11) No development shall commence until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The landscaping scheme shall provide planting plans with written specifications including:
 - Details of all existing trees and hedgerows on the land, showing any to be retained and measures for their protection to be used in the course of development.
 - Full schedule of plants
 - Details of the mix, size, distribution and density of all trees/shrubs/hedges
 - Cultivation proposals for the maintenance and management of the soft landscaping

The protection measures proposed shall be completed in accordance with the approved scheme before the development hereby permitted commences and shall thereafter be retained until it is completed.

All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of any of the dwellings or the completion of the development, whichever is the sooner. Notice shall be given to the local planning authority when the approved scheme has been completed.

Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species as those originally planted.

- 12) No development above damp-proof course level shall be carried out until details of the materials to be used in the construction of the external surfaces, specifically doors, windows, lintels, sills, stonework, roof slates and method of fixing have been submitted to and approved in writing by

the local planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.

- 13) Prior to the first occupation of the development hereby permitted, details of the management and maintenance of the open space, as shown on approved drawing no. 2139.30 A, shall be submitted to and approved in writing by the local planning authority. The details shall include a maintenance management plan, including confirmation of who will maintain the area of open space, the timings of all maintenance, an associated health and safety statement and a plan for the future funding to cover the operational costs of the ongoing maintenance and management including full details of any management company proposed and how it will operate.

The approved scheme shall be implemented, 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.

- 14) No development shall commence on site until a traffic management plan has been submitted to and agreed in writing by the local planning authority. The principal areas of concern that should be addressed are:
- i. Movements and control of muck away lorries (all loading and unloading should be undertaken off the adopted public highway)
 - ii. Movements and control and timings of all deliveries
 - iii. Control of dust, mud and debris

The development shall be carried out in accordance with the approved plan.

- 15) The proposed development shall be carried out in accordance with the recommendations set out in section 6 (Assessment of effects and mitigation measures) and section 7 (Enhancement) of the submitted Ecological Impact Assessment prepared by Cornwall Environmental Consultants Ltd (Ref: CEC3118a) dated 26 June 2018.

End of Schedule