



Appeal Decision

Site visit made on 10 December 2021

By Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 FEBRUARY 2022

Appeal Ref: APP/D0840/W/21/3278101

Fern Lodge Boarding Kennels and Cattery, Golberdon Road, Pensilva, Liskeard, Cornwall PL14 5RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission in principle.
 - The appeal is made by Ms Charlotte Pringle against the decision of Cornwall Council.
 - The application Ref PA20/10656, dated 30 November 2020, was refused by notice dated 2 February 2021.
 - The development proposed is for five (one detached and two pairs of Semi-detached) dwellings, together with private driveway. Together with the removal of all existing buildings including two units of residential accommodation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for permission in principle. The Planning Practice Guidance (the PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages: the first stage or planning in principle stage establishes whether a site is suitable in principle and the second technical details consent stage is when the detailed proposals are assessed. This appeal relates to the first of these 2 stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted¹. All other matters are considered as part of a subsequent Technical Details Consent (TDC) application if permission in principle is granted. I have determined the appeal accordingly.
4. Since the refusal of the application, Cornwall Council (the Council) have adopted the Cornwall European Sites Supplementary Planning Document (2021) (the SPD). Both the Council and the appellant have made reference to the effect of this in their respective statements.
5. Since the refusal of the application, the appellant has also completed an agreement under section 111 of the Local Government Act 1972 (LGA 1972) (the section 111 agreement) and made a payment for mitigation with regard to

¹ PPG Paragraph: 012 Reference ID: 58-012-20180615

recreational pressures of additional residential units, in line with the requirements of the SPD.

Main Issues

6. The main issues are:

- Whether permission in principle can be granted for the development proposed; and,
- If permission in principle can be granted for the form of development sought, whether the principle of the proposed development is acceptable, having regard to its location, land use and the amount of development permitted.

Reasons

Permission in Principle

7. The first reason given in Cornwall Council's (the Council) decision notice for their refusal of the planning application relates to the requirement set out in the planning practice guidance that permission in principle may be granted provided the development is not, amongst other stated types of developments, Habitats Development.
8. Habitats Development is defined in article 5B(5) of PPG the as development which is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects) and is not directly connected with or necessary to the management of the site; and for which the competent authority has not given consent, permission, or other authorisation in accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017. (Habitat Regulations)
9. The appeal site falls within the zone of influence areas of the Plymouth Sound and Estuaries Special Area of Conservation (the SAC). In this instance, the Habitat Directive² (the Directive) and the Cornwall European Sites Supplementary Planning Document (2021) (the SPD) require mitigation of recreational pressures in these areas for additional dwellings created by development. The proposal would result in a net increase of 3 dwellings. The SPD sets out a requirement for a mitigation payment in this instance of £317 per dwelling. This sum was arrived at through the Council's Appropriate Assessment in line with the Habitat Regulations and Directive.
10. Since the commencement of this appeal the appellant has made the payment required to satisfy this requirement and has entered into an agreement under section 111 of the Local Government Act 1972 (LGA 1972) to secure the required mitigation measures.
11. This provides certainty that if a planning permission was forthcoming the required mitigation measures would be secured and, therefore, the proposal would not be Habitats Development. For this reason, the proposal would accord with Policy 22 of the Cornwall Local Plan (2016) (the Local Plan), which requires mitigation measures for recreational impact on European protected sites.

² European Union Council Directive 92/43/EEC

12. For these reasons I find that the proposal is not Habitats Development and the first reason given for refusal in the Council's decision notice has been overcome and the proposal is, therefore, suitable for consideration for permission in principle, in line with the PPG.

Form of development

13. The location of the proposed development is to the east of the village of Pensilva and is accessed from a private tree lined lane that runs from Golberdon Road on the edge of the built-up area of the village. The full length of the lane to its junction with Golberdon Road is included in the appeal site boundary. The lane also provides access to a single detached dwelling, which nearer to Golberdon Road than the buildings on the appeal site and access to neighbouring fields.
14. The buildings and structures on the appeal site appear to be approximately 100 metres beyond the defined boundary of the village. These include a dwelling in a converted older agricultural stone building and a flat in the main utilitarian concrete kennel building. Whilst there appear to be questions over the planning status of the existing dwellings on the site, this is not a matter that forms part of this appeal.
15. That the appeal site is located outside of the defined boundary of the village, as set out in the Local Plan, which runs with Golberdon Road at this point, is acknowledged by both the Council and appellant.
16. The private tree lined lane, which leads to that part of the appeal site that is the location for the proposed development, links to Golberdon Road and, therefore, the defined village boundary. The location of the proposal is, however, separated from the village boundary by the large plots of two detached dwellings on one side of the lane and open fields on the other. Whilst the access lane included in the appeal site joins with the village boundary, the location of the proposed development on the site is visually and spatially isolated from the village. The location of the proposed development is surrounded by fields and trees and appears to be located in the open countryside.
17. Given that the appeal site is outside of the defined boundary of Pensilva and the location of the proposed development is separated from the village, I find that the proposed development could not be considered as infill or rounding off the village boundary. Further, the site is not identified and allocated in the Local Plan as a site allocated for housing and is not identified for housing in any adopted neighbourhood plan. The proposal is also not for an affordable housing led scheme.
18. For these reasons I find that the proposal does not accord with Policy 3 of the Local Plan, which, other than at the main towns identified in the policy, seeks housing growth through sites allocated in neighbourhood plans, rounding off settlements and development of previously developed land within or immediately adjoining that settlement, infill schemes that fill a small gap in an otherwise continuous built frontage, do not physically extend the settlement into the open countryside and accord with the requirements for Policy 9 of the CLP for rural exception sites for affordable housing led schemes.

19. The appellant has brought to my attention a recent Royal Courts of Justice judgement³ regarding a dwelling permitted in the Council area. This clearly sets out the courts finding with regard to the interpretation of 'immediately adjoining', used in the wording of Policy 3 of the Local Plan, and concludes that this does not bear a single meaning. Rather, it sets out that this is a matter of fact and degree and for the judgement of the decision maker. Although I find that the subject development of this judgement differs to the appeal proposal with regard to location in relation to the village boundary, I have afforded significant weight to this judgement in my consideration of the issues raised in this appeal and in my findings.
20. As I have identified above the proposal is located in an area of open countryside. Replacing the existing buildings and structures on the appeal site with the proposal would result in a slight reduction in the coverage of the site with buildings and structures. However, it would also result in the extension and imposition of residential use and concomitant character and appearance into the local area of open countryside. Policy 7 of the Local Plan sets out that development of new homes in the open countryside will only be permitted where there are special circumstances, and the proposal does not meet any of the restrictions listed in this policy for such developments and would, therefore, be contrary to this policy.
21. The proposed development does appear to be within walking distance of local services and bus routes in the village, however, given the distances from local services and bus stops, the lack of footways and street lighting on the lane and road would result in this not being an easy walk for many people, especially at night. Whilst cycling is a potential option for the occupiers of the proposed dwellings, they would also be heavily reliant on the use of the car and other vehicular servicing.
22. It is arguable as to whether the proposal has the potential to result in a slight reduction in vehicle journeys for those accessing the location. However, the proposal would add to vehicular movement more generally, as those using the services of the existing kennels and Cattery would have to access these services elsewhere.
23. For these reasons the proposal would not accord with Policy 27 of the Local Plan that seeks developments that ensure a resilient and reliable transport system for people, goods and services, located to prioritise safe access by walking, cycling and public transport to minimise car travel.
24. Further, I find that the appeal site's location away from the village and its limited access to wider public transport would result in a housing development that would reinforce the over reliance on the car and unsustainable traffic movements. The proposal does not, therefore, commend itself as an exceptionally sustainable form of development in this regard. The proposal would, therefore, be contrary to the spatial strategy set out in Policy 2 and 3 of the Local Plan, which, whilst seeking to maintain the dispersed development pattern of Cornwall, also seeks homes where they can best support regeneration and sustainable development.
25. Paragraph 120 the National Planning Policy Framework (the Framework) sets out that planning decisions should give substantial weight to the value of using

³ Corbett R v Cornwall Council [2021] EWHC 1114 (ADMIN)

suitable brownfield land within settlements for homes. However, the appeal site is in the open countryside outside of the defined boundary and it is separated and isolated from the village and does not, for the reasons given above, commend itself as a sustainable location. The proposal would not, therefore be suitable for inclusion on the register of brownfield sites suitable for housing development maintained by the Council in accordance with paragraph 121 of the Framework. As such, the proposal would be contrary Policy 21 of the Local Plan, which encourages sustainably located proposals that use previously developed land and buildings.

26. From my site visit the appeal site exhibited evidence of maintenance deficit and redundant and damaged structures. Whilst the appellant states that the proposal would result in improvements to the character and appearance and biodiversity of the appeal site, this is, however, possible to achieve without the proposed development.
27. Whilst the Council is meeting its housing delivery targets, these are not capped and windfall sites that provide for additional dwellings do collectively make an important contribution to housing stock. However, the 3 proposed additional dwellings would be a modest contribution to the council's housing stock within this context and is a matter of only very limited weight in favour of the appeal scheme.
28. Whilst the construction of the proposal could potentially lead to temporary construction jobs and the occupancy of the dwelling could potentially lead to spending in shops and other local services, these benefits would be limited in scope and would have a minimal impact on the local economy and, for this reason, carry little weight in favour of the proposal.
29. I find, therefore, that the benefits of the proposal would not outweigh the unsustainable aspects of the proposal that I have identified above and that it would not constitute a sustainable development and would be contrary to Policy 1 of the Local Plan, which seeks to secure development that improves the economic, social and environmental conditions in the area.

Other Matters

30. I acknowledge the client's position with regard to the ongoing kennels and cattery business and the structural issues of buildings on the site, however, these are not matters that I can give any significant weight in my planning considerations.

Conclusion

31. For the reasons given above, and with Paragraph 11 of the Framework in mind, I conclude that the appeal should be dismissed.

Victor Callister

INSPECTOR