



Appeal Decision

Site visit made on 16 August 2022

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Appeal Ref: APP/D0840/W/22/3290276

Little Inside Farm, Penpol, Feock, Truro TR3 6RU

- 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 Mr T Vigus against the decision of Cornwall Council (the Council).
 - The application Ref PA21/01046, dated 1 February 2021, was refused by notice dated 26 November 2021.
 - The development proposed is the formation of three holiday pods.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr T Vigus against the Council. That costs application is the subject of a separate Decision.

Preliminary Matters

3. Whilst not forming part of the Council's reason for refusal, the effects of increased recreational activity upon the Fal and Helford Special Area of Conservation (the SAC) has been referred to within the Council's statement of case. It is incumbent upon me as the competent authority to consider the impact of the appeal scheme on the SAC and as such, it is necessary to consider that matter as a main issue in this appeal. Accordingly, I have sought comments from the Appellant on that matter.

Main Issue

4. The main issues in this appeal are:
 - Whether the proposal would constitute an appropriate form of development with particular regard to the provisions of local and national policy in respect of the location of the development and its effect on the character and appearance of the surrounding area; and,
 - The effect of the proposed development on the SAC.

Reasons

Location of Development

5. The Council's settlement strategy is contained within Policy 2 of the Cornwall Local Plan Strategic Policies (2010-2030) (the Local Plan). It sets out a sustainable approach to accommodating growth and maintaining the dispersed

- development pattern of Cornwall and providing jobs in a proportional manner based on the role and function of each place.
6. The appeal site is in a rural location outside the urban form of any settlement and falls within the countryside for planning purposes. The evidence before me confirms that the site is situated outside of, but adjacent, to the Cornwall Area of Outstanding Natural Beauty (the AONB). The site comprises agricultural land predominately enclosed by hedgerow and mature trees, positioned adjacent to the B3289 highway. At the date of my visit, there was a bus stop located on the highway and north of the site, with a cluster of residential development located on the opposite side of that highway from the appeal site.
 7. The proposal relates to the provision of three tourist accommodation units, described as holiday pods, and which would be accessed from the adjacent abovementioned highway. Whilst noting the description of development included in the planning application, the evidence before me indicates that the holiday pods would provide to those who used them, the facilities required for day-to-day private domestic existence. The holiday pods would not lose that characteristic if they were occupied for only part of the year, or at infrequent intervals, or by a series of different persons. Consequently, the proposed accommodation units exhibit the characteristics of dwellinghouses. Accordingly, the appeal scheme should be assessed against policies of the development plan which concern housing in the countryside.
 8. Policy 3 of the Local Plan defines how housing will be accommodated, based on a hierarchy of role and function. Outside specific main towns, development is to be delivered through the identification of sites through Neighbourhood Plans; rounding off of settlements; development of previously developed land within or immediately adjoining settlements; infill schemes; and rural exception sites. The proposal is not located within a settlement and would not conform with the criteria of this policy.
 9. Policy 7 of the Local Plan concerns housing in the countryside and provides that such development will only be permitted where there are special circumstances. Those special circumstances refer to forms of exception to restricting development in the countryside and, amongst other matters, includes where the proposal is for rural workers accommodation. However, the appeal scheme would not accord with any of those special circumstances or exceptions as provided for under Policy 7 of the Local Plan.
 10. It is noted that the decision notice also refers to Policy H1 of the Feock Neighbourhood Development Plan 2017-2030 (the NP) which concerns infill and rounding off development within settlements. The Appeal site is located outside of the settlement boundary as defined within the NP and therefore Policy H1 of the NP does not apply.
 11. Notwithstanding the above, it is well established that the appeal scheme must be assessed against the policies of the development plan when taken as a whole. In this instance, the appeal scheme concerns holiday accommodation and therefore requires that the proposal be considered in relation to other sections and policies of the development plan.
 12. Policy 5 of the Local Plan is supportive of appropriate tourism development and provides that proposals within the countryside must be of a scale appropriate to its location and to their accessibility by a range of transport modes, and that

proposals should provide a well balanced mix of economic, social and environmental benefits. This Policy broadly conforms with the advice in paragraph 84 of the National Planning Policy Framework (the Framework), which says planning policies and decisions should enable sustainable rural tourism and leisure developments which respect the character of the countryside. There is, therefore, no objection in principle to a countryside location for new tourist accommodation providing the criteria of Policy 5 of the Local Plan are met.

13. Access to services and facilities contained within the nearest settlements on foot or by bicycle would not be convenient for all by reason of distance and given that the highways connecting the site to those services do not have the benefit of continuous footways nor provides street lighting. However, the appeal site is located within very close proximity to a bus stop located on the adjacent B3289 highway, and which would provide for an alternative mode of transport other than private motor vehicle for future users of the scheme in accessing local services and facilities.
14. The proposal is for tourism accommodation in a countryside location, and it is therefore likely that a large proportion of visitors would be reliant on private transport to reach the site. Paragraph 85 of the Framework recognises that sites to meet business needs in rural areas may have to be found adjacent to or beyond existing settlements in locations that are not well served by public transport.
15. Considering the modest quantum of tourism accommodation proposed, and by reason of the provision of nearby convenient access to the abovementioned bus stop and the frequency of services it provides, I find that the proposal would accord with the requirements of Policy 5 of the Local Plan in respect of being of an appropriate scale to its accessibility by a range of transport modes.
16. The proposal is for three detached single storey individual units of accommodation with curved roof forms and constructed in timber. The site is visible from within the surrounding area including from the abovementioned adjacent highway. The design of the proposed units of accommodation and the proposed use of materials would result in structures that would reflect simple agricultural buildings.
17. The Council indicate that the appeal site falls within the Redruth, Camborne & Gwennap Landscape Character Area, defined by the Cornwall and Isles of Scilly Landscape Character Study which, amongst other matters, describes one of its key landscape characteristics is strong field pattern enclosing small-medium scale fields.
18. In terms of the effect of the proposal on the character and appearance of the surrounding area, the proposal would result in the existing field being subdivided. Whilst I acknowledge the Council's submissions with regards to the surrounding landscape, the development would be seen in the context of the adjacent buildings at Little Inside Farm and those residential buildings that form a cluster opposite the site and across the highway. Whilst landscaping could take some time to establish, additional proposed planting in combination with existing vegetation would help limit visibility of the proposed structures, and the domestic paraphernalia associated with occupation.

19. There would be some change to the existing character of the site. However, by reason of the small scale nature of the proposal, its visual relationship with the buildings at Little Inside Farm and at the adjacent development on the opposite of the highway, and given the design of the proposed units of accommodation, I find that the appeal scheme, including the provision of access onto the highway, would not be harmful to the character and appearance of the surrounding area, and would not be harmful to the intrinsic character or beauty of the countryside.
20. As noted above, the appeal site is located outside of, but adjacent to, the AONB. Paragraph 176 of the Framework provides that great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB and that development within the setting of the AONB should be sensitively located and designed to avoid or minimise adverse impacts on the AONB. In that regard, given, as above, that the scheme would be seen in the context of nearby built development, would be of a design that would not look out of place at this location, I find that the proposal would be sensitively located and designed to avoid or minimise adverse impacts and would not, therefore, be harmful to the setting of the AONB.
21. Notwithstanding the above, the Council's decision notice also refers to the potential loss of best and most versatile agricultural land. Policy 21 of the Local Plan provides that, in order to ensure the best use of land, encouragement will be given to sustainably located proposals that take into account the economic and other benefits (including food production) of Grade 1, 2 and 3a agricultural land. The evidence before me indicates that the site is grade 2 agricultural land or comprises a split between grade 2 and 3a agricultural land.
22. Whilst noting the Appellant's submissions that the proposal would be reversible, the appeal scheme seeks permanent, rather than temporary, planning permission for the proposed holiday units. The appeal site cannot be considered to be previously developed land and the scheme would result in the loss of a very modest area of agricultural land. As such, the proposal would not fully accord with Policy 21 of the Local Plan.
23. For the above reasons, the proposed development would be of an appropriate scale to its location and to its accessibility by a range of transport modes. The appeal scheme would provide economic and social benefits in terms of spend of future users and potential job creation, would provide some, albeit limited, environmental benefits in terms of biodiversity enhancement from additional hedge planting. The proposal would therefore comply with Policy 5 of the Local Plan. Whilst the appeal proposal may not strictly accord with Policies 3 and 7 of the Local Plan, I attach greater weight to compliance with Policy 5 of the Local Plan given that the proposal is for tourist accommodation.
24. By reason of its position, scale, design and use of materials, the proposed development would not be harmful to the intrinsic character and beauty of this countryside location, would respect landscape character and would conserve the setting of the AONB. The proposal would thereby accord with Policies 12 and 23 of the Local Plan and would not conflict with Policies LS2 or D1 of the NP. For the same reasons, the proposal would accord with paragraphs 130 and 174 of the Framework.
25. Nonetheless, the proposal would conflict with Policy 21 of the Local Plan for the reasons given above. However, as noted above the proposal would provide

some benefits in terms of employment opportunities, spend of future users and limited biodiversity enhancement. Given the very modest amount of agricultural land that would be lost to the development the harm in relation to the conflict with Policy 21 of the Local Plan would be limited and, in my view would be outweighed by the benefits of the appeal scheme.

26. Within their submissions, the Council refers to a recent appeal¹ within Cornwall which concerned holiday pods. Whilst the details of that recent appeal are well known to me, that development is not comparable to the present appeal in terms of the prominence of the site nor in respect of the location and proximity of the respective sites to alternative modes of transport. I have therefore considered this appeal scheme on its own merits.

Protected Habitats

27. The evidence before me confirms that the appeal site is located within the zone of influence of the SAC. The SAC is designated for its saltmarsh, intertidal mudflats, subtidal sandbanks, large shallow inlets and bays, estuaries and reefs.
28. The Cornwall European Sites Mitigation Supplementary Planning Document (the SPD) 2021 sets out that increases in population are placing greater pressure from recreational activity on the features of interest for which the Habitats sites are designated. It sets out mitigation strategies through strategic access management and monitoring (SAMM). SAMM is to be funded by contributions from new residential development and such is said to allow adverse impacts on the integrity of the sites to be avoided. The SPD confirms that mitigation is required for all tourist accommodation, and the Council has suggested that a planning condition is used to secure appropriate mitigation.
29. Whilst noting the Council's suggestion that payment of contributions or the submission of a mechanism to secure delivery of mitigation could be secured by planning condition, the Planning Practice Guidance advises that positively worded conditions cannot be used to secure payment of money and that negatively worded conditions to require a planning obligation should only be used in exceptional circumstances. This may be where there is clear evidence that the delivery of the development would otherwise be at serious risk, such as in particularly complex development schemes. There is no such clear evidence before me, nor does the proposal appear to be particularly complex.
30. Moreover, in deferring the detail of any planning obligation, as Competent Authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), I could not be certain of the detail of any mitigation proposed and whether it would effectively avoid adverse impacts. Accordingly, under those Regulations, I cannot agree to the project at this time.
31. In the interests of fairness, I have made the Appellant aware of the potential issue surrounding habitats sites, the need to consider Government guidance in respect of planning conditions, and whether there was any other form of mechanism that would secure the necessary mitigation. No further information has been received from the Appellant in that regard, and I am unable to request additional or new planning obligations as part of the appeal process.

¹ Appeal Reference: APP/D0840/W/21/3274403

Conclusion

32. Whilst I have, for the above reasons, found that the proposed development would not adversely affect the character and appearance of the area and would be of appropriate scale for its level of accessibility to services and facilities, the scheme would result in the loss of best and most versatile agricultural land. However, the harm resulting would be outweighed by the economic and social benefits of the appeal scheme. Nonetheless, the requirements of the Habitats Regulations are such that the second main issue must be determinative.
33. Therefore, for the reasons given above in relation to the second main issue, the appeal is dismissed.

Mr A Spencer-Peet

INSPECTOR