



Appeal Decision

Site visit made on 17 January 2023

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th January 2023

Appeal Ref: APP/D0840/W/22/3304087

Treworlas Farm, Road From Junction South Of Lower Penhallow Farm To A3078 At Treworlas, Ruan High Lanes, Cornwall TR2 5LN

- 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 Nigel Savage against the decision of Cornwall Council.
 - The application Ref PA22/03743, dated 18 April 2022, was refused by notice dated 1 July 2022.
 - The development proposed is erection of a replacement dwellinghouse and the installation of a sewage treatment plant.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a replacement dwellinghouse and the installation of a sewage treatment plant at Treworlas Farm, Road From Junction South Of Lower Penhallow Farm To A3078 At Treworlas, Ruan High Lanes, Cornwall TR2 5LN in accordance with the terms of the application, Ref PA22/03743, dated 18 April 2022, and the plans submitted with it, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are:
 - a) Whether the site is suitable for the proposed dwelling, bearing in mind development plan policies, the accessibility of the site, and the effect of the development on the landscape character of the Area of Outstanding Natural Beauty (the AONB); and,
 - b) The impact of the development on the integrity of the Fal and Helford Special Area of Conservation (the SAC).

Reasons

Development plan policies, accessibility of the site, and effect on the AONB

3. The Council's settlement strategy is set out in Policies 2 and 3 of the Cornwall Local Plan Strategic Policies 2010 – 2030 (adopted 2016) (the Local Plan). The strategy seeks to maintain the dispersed development pattern of Cornwall, and provide housing based on the role and function of each place. Policy 3 says that, outside specific main towns, housing growth is to be delivered through rounding off of settlements; development of previously developed land (PDL) within or immediately adjoining settlements; infill schemes; rural exception sites; and the identification of sites through Neighbourhood Plans.

4. Proposals for rounding off, infill, or development of PDL are only supported by Policy 3 within or immediately adjoining a settlement. Whilst the site lies within a loose group of dwellings, the scatter of buildings does not have a distinct form, or shape. There are no clearly defined boundaries, or any sense that this is a distinct community with a shared identity. Rather, it is a low-density cluster of individual buildings in the countryside. The appeal site does not, therefore, lie within or adjacent to a settlement. The development is not put forward as a rural exception site, and the site is not identified for residential development by the Roseland Neighbourhood Development Plan 2015 – 2030 (the Neighbourhood Plan). Therefore, the construction of a dwelling in this location would not comprise any of the types of new housing that is supported by Policy 3 of the Local Plan.
5. Policy 7 of the Local Plan says that development of new homes in the countryside will only be permitted where there are specified special circumstances, including where the proposal is for a replacement dwelling in accordance with criterion 1, or the reuse of an existing building under criterion 3. Whilst I am aware of the background to this case, which I shall return to, at the time of my visit there was no existing building on the site that could be converted, and no dwelling that could be replaced. Consequently, none of the exceptional circumstances identified in Policy 7 could be invoked in support of a new dwelling on the site. The site lies outside of any settlement boundaries identified by the Neighbourhood Plan. In these circumstances, Policy GP3 says that development will be treated as an exception.
6. The appellant contends that, as the site is partially developed pursuant to a previous planning permission, it comprises PDL, so the proposal is supported by Policy 21 of the Local Plan. However, this policy encourages sustainably located proposals. In this case, the site is in the countryside, about 4 kilometres by road from Portscatho, the nearest settlement that has a range of services. Access to these services is via the A3078, which is unlit, has no footways or cycleways, and carries significant levels of traffic. It is not, therefore, conducive to walking or cycling. Furthermore, the evidence indicates that bus services along this route are infrequent. As a result, occupants of a dwelling on the site would be likely to be reliant on private vehicles for most journeys. Consequently, the proposal is not supported by Policy 21.
7. I therefore conclude that the construction of a new dwelling on this site would be contrary to the settlement policies of the development plan. The legislation¹ states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. In this regard, the background to the proposal needs to be considered. On 15 September 2021, planning permission was granted² for “Proposed Conversion of Farm Outbuilding/Store to Single Residential Dwelling” at the site (the Original Permission). It is not disputed that development commenced pursuant to the Original Permission within the statutory time limit. Consequently, it is the appellant’s contention that there is already an extant planning permission for a dwelling on the site, which could be implemented, regardless of the outcome of this appeal.
8. The evidence indicates that two of the walls of the original building collapsed during underpinning works. In view of the very limited extent of the original

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004

² Local Planning Authority reference PA21/05927

building that remains, the Council considers that it is no longer possible to implement the Original Permission, which was described as a conversion of the building. However, it is established case law³ that the description of a development does not introduce an implied condition to the permission. Whilst the delegated report indicates that the permission was granted on the basis of it being a conversion, there was no planning condition on the Original Permission that required the retention of any particular elements of the building. Consequently, although little of the original building remains, the description of the development does not prevent the implementation of the Original Permission in accordance with the approved drawings.

9. It was a condition of the Original Permission that development should proceed in accordance with a list of approved plans. That list includes drawing no. 2844-3-320, which is entitled "*Proposed Floor Plans & Elevations indicating Proposed & Existing Walls*". The drawing showed that extensive parts of the building would be of new construction. This drawing should be read in conjunction with drawings 2844-3-300 and 2844-3-310A, which are also referred to in the planning condition. These drawings carry notes as follows: "*Proposed new dwelling utilising existing external walls where suitable*"; and "*Existing external masonry walls to be retained wherever possible*". Consequently, notwithstanding the shading on drawing no. 2844-3-320, the approved drawings, viewed as a whole, included a degree of flexibility, to encompass the vagaries of the construction process.
10. The fact that the walls collapsed whilst attempts were being made to underpin them and to incorporate them into the proposed dwelling, indicates that they were not suitable, and that their retention did not prove possible. Reconstruction of the walls in these circumstances would not conflict with the condition requiring the development to proceed in accordance with the approved plans, as the notes on the drawings already allowed for this possibility.
11. In any event, the approved plans show that the external walls, whether retained or reconstructed, would be entirely concealed behind corrugated metal sheeting. The appellant has drawn my attention to a High Court judgement⁴ which bears marked similarities to the current proposal. In that case, planning permission had been granted for conversion of a stable to a dwelling, involving substantial alterations and the concealment of all of the existing fabric that was to be retained. The existing structure was not retained, and the Council issued an enforcement notice, alleging that the permission did not authorise reconstruction. The Inspector's decision to quash the enforcement notice was upheld by the High Court. The judge noted the absence of a condition requiring retention of any part of the new building, and found that the non-incorporation of fabric, which would not be visible, should not take the works outside the limits of the planning permission granted. The Council has not offered any evidence to cast doubt on the relevance of this judgment to this appeal.
12. In view of the above considerations, I conclude that the Original Permission is still capable of implementation. Consequently, the appeal scheme represents an alternative design for a dwelling that already has planning permission, rather than a proposal for the construction of a new dwelling in the countryside. In these circumstances, there is no conflict with Policies 1, 2 and 7

³ I'm Your Man Limited v SSE & North Somerset DC (1999) 77 P. & C.R. 251

⁴ Basildon BC v SSE and Asplin 28 June 1985 (unreported)

of the Local Plan, or Policies HO3, HO4, HO8 and GP3 of the Neighbourhood Plan.

13. The appeal scheme is almost identical to the Original Permission in its site layout, floor plan, and external elevational details. The resultant dwelling and residential curtilage would not visually extend built development into the countryside to any greater extent than has already been permitted. Consequently, the impact on the landscape character of the AONB would be no different to that already accepted under the Original Permission. There would, therefore, be no conflict with Policies 12 and 23 of the Local Plan, or Policies LA1, LA2 and GP2 of the Neighbourhood Plan which, taken together, seek to ensure high quality design, and to conserve the landscape qualities of the AONB and the Roseland.

Fal and Helford SAC

14. The appeal site is located within the zone of influence of the SAC. This European Site is liable to harm from increased recreation pressure resulting from new housebuilding within the zone of influence. If the proposal were for an additional dwelling, I could not safely conclude that when considered alone, or cumulatively with other schemes, it would not have significant effects on the European Site. However, I have found that there is already a partially implemented planning permission for a very similar dwelling on the appeal site. The revised design now proposed would not result in a larger dwelling, or one that could accommodate more residents. Consequently, it would not result in any increased recreational pressure on the SAC. Accordingly, it is not necessary for me to consider the proposal any further in respect of the Conservation of Habitats and Species Regulations 2017.
15. As the proposal would not result in any harm to the SAC, it would be in accordance with Policy 22 of the Local Plan, which seeks to secure mitigation measures for recreational impacts on European Sites.

Other Matters

16. I have had regard to concerns raised in a representation relating to the potential for overlooking of the residential property to the west. However, I saw that the proposed windows facing in this direction would either be screened by the boundary wall, or set some distance from the boundary. In any event, the windows are in virtually identical positions to those already approved under the Original Permission, so there would be no additional loss of privacy.

Conditions

17. In accordance with the legislation, I have imposed a condition limiting the period within which the development must commence. I have also included a condition specifying the relevant plans, as this provides certainty. The Council has suggested conditions to cover other matters. I have considered these against the advice in the Planning Practice Guidance (the PPG). Where I have agreed that the conditions are necessary, I have altered them, in the interests of clarity and precision, to better reflect the guidance.
18. Although the submitted drawings specify the types of materials to be used on the roof, walls, and windows/doors, the colour is not specified. A condition is therefore necessary to ensure that the external materials are suitable, in the

interests of protecting the landscape character of the AONB. A condition to ensure that suitable foul and surface water drainage provision is provided, prior to occupation, is also reasonable and necessary.

19. The Council has suggested a condition removing permitted development rights for enlargement, improvement, roof alterations, porches, and outbuildings. However, as the site lies within the AONB, the legislation⁵ already limits the extent to which these permitted development rights can be exercised. Furthermore, the PPG advises that blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity⁶. For these reasons, I have found the proposed condition would fail the tests, so I have not imposed it.
20. As I have found that there would be no harm to the SAC, the Council's suggested condition requiring a scheme to secure mitigation of additional recreational pressures is not necessary.

Conclusion

21. For the reasons given above, I conclude that the appeal should be allowed.

Nick Davies

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2844-3-110 B – Existing Floor Plan, Elevations & Site Plan; 2844-3-300 A – Proposed Floor Plans & Elevations; 2844-3-310 B – Proposed Site Plan & Sections.
- 3) Development shall not proceed above damp-proof course level until details of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) The dwelling hereby permitted shall not be occupied until the installation of a system for the disposal of foul and surface water drainage to serve the development has been completed in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The details shall include a programme for maintaining the system. The system shall be retained and maintained thereafter in accordance with the approved details.

⁵ The Town and Country Planning (General Permitted Development) (England) Order 2015

⁶ Paragraph: 017 Reference ID: 21a-017-20190723