



Appeal Decisions

Site visit made on 30 January 2023

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

an Inspector appointed by the Secretary of State

Decision date: 07 March 2023

Appeal A Ref: APP/D0840/W/22/3298053

Higher Charaton, Road from Penharget Cottage to Golberdon Road, Pensilva, PL14 5RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Pathfinder Homes Ltd against the decision of Cornwall Council.
 - The application Ref PA21/08058, dated 6 August 2021, was refused by notice dated 28 February 2022.
 - The application sought planning permission for the construction of six units of disabled holiday accommodation lodges with ancillary supervision unit and hydrotherapy pool with associated changing rooms and toilets. Formation of new vehicular/pedestrian access to highway without complying with a condition attached to planning permission Ref: PA11/03319, dated 5 October 2011.
 - The condition in dispute is No.3 which states that: *"Units 1-6 (as shown on approved plan 10/311/4 Revision A) of the development hereby permitted shall be used as holiday accommodation only and shall not be occupied as a person's sole or main place of residence. The owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of each individual unit on the site, and of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority."*
 - The reason given for the condition is: *"To accord with development plan housing policies under which permanent residential accommodation would not normally be permitted on the site and the accommodation, by reason of its construction and/or design, is unsuitable for continuous occupation and in accordance with the aims and intentions of Policy 13 of the Cornwall Structure Plan 2004 and Policy TM8 of the Caradon Local Plan 1999."*
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Appeal B Ref: APP/D0840/W/22/3298064

Higher Charaton, Road from Penharget Cottage to Golberdon Road, Pensilva, PL14 5RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Pathfinder Homes Ltd against the decision of Cornwall Council.
- The application Ref PA21/08059, dated 6 August 2021, was refused by notice dated 28 February 2022.
- The application sought planning permission for a proposal for three accessible lodges and associated landscaping without complying with a condition attached to planning permission Ref: PA19/08006, dated 20 December 2019.
- The condition in dispute is No.3 which states that: *"The development hereby permitted shall be used as holiday accommodation only and shall not be occupied as a person's sole or main place of residence. The owners/operators shall maintain an up-to-date*

register of the names of all owners/occupiers of each individual unit on the site, and of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority".

- The reason given for the condition is: "To accord with development plan housing policies under which permanent residential accommodation would not normally be permitted on the site and the accommodation, by reason of its construction and design, is unsuitable for continuous occupation and in accordance with the aims and intentions of Policies 7, 12 and 13 of the Cornwall Local Plan Strategic Policies 2010-2030."
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Appeal A Background and Main Issues

3. Planning permission, under reference PA11/03319, was granted by the Council in October 2011, for the development of the site for six units of disabled holiday accommodation lodges with ancillary supervision unit, hydrotherapy pool with associated changing rooms and toilets, and the formation of pedestrian and vehicular access, subject to various planning conditions. As described in the banner heading above, this included the disputed condition which restricted the occupancy of the six lodges to holiday accommodation, with a requirement that a register of occupiers of that holiday accommodation be maintained by the operator or owners.
4. It is not disputed that implementation of planning permission PA11/03319 was commenced. Permission is now sought for the development to no longer comply with the disputed condition. The effect of removing the disputed condition would be to enable the six units of disabled holiday accommodation lodges to be used as permanent residential dwellings.
5. The main issues in Appeal A are:
 - Whether it is possible under section 73 of the Town and Country Planning Act 1990 (the 1990 Act) to alter the use of the six units of disabled holiday accommodation lodges by 'removing' the disputed condition attached to planning permission reference PA11/03319, in the way proposed,
 - Whether the appeal scheme would be in a suitable location with regards to Local and National Planning Policy; and,
 - Whether the appeal scheme makes an adequate contribution to affordable housing.

Appeal B Background and Main Issues

6. Planning permission, under reference PA19/08006, was granted by the Council in December 2019, for three accessible lodges and associated landscaping, subject to various planning conditions. These three accessible lodges were to be located in an area which had been intended for positioning of the ancillary supervision unit of accommodation, hydrotherapy pool, and associated facilities

as permitted under planning permission reference PA11/03319, described above within Appeal A.

7. As described in the banner heading above, planning permission reference PA19/08006 included the disputed condition which restricted the occupancy of these lodges to holiday accommodation, with a requirement that a register of occupiers of that holiday accommodation be maintained by the operator or owners. The effect of removing the disputed condition would be to enable the accessible lodges to be used as permanent residential dwellings.
8. The main issue in Appeal B is whether the disputed condition is reasonable and necessary with regards to Local and National planning policy which concern the location of the appeal site.

Reasons

Appeal A – Section 73 of the 1990 Act

9. The application that is the subject of this appeal was submitted under section 73 of the 1990 Act. This enables the development of land without complying with conditions subject to which a previous planning permission was granted.
10. The Planning Practice Guidance provides that “Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted”.
11. In *Finney v Welsh Ministers & Others* [2019] EWCA Civ 1868, the Court of Appeal held that an application under section 73 of the 1990 Act may not be used to obtain a permission that would require a variation to the terms of the operative part of the planning permission, that is the description of the development for which planning permission had originally been granted.
12. Since the appeal was lodged, judgement in the case of *Freddie Reid vs SSLUHC* [2022] EWHC 3116 (Admin) (the Reid Judgement) has been handed down by the High Court. Both the Appellant and Cornwall Council were afforded time to comment on the Reid Judgement and therefore have not been prejudiced in this regard.
13. In the Reid Judgement, an application under section 73 of the 1990 Act sought to remove an existing condition that restricted the use of 34 self-catering holiday units to holiday accommodation and not any other purpose. The Council in that case argued that by seeking to remove the condition, it would enable the units to be used as permanent residential dwellings, which would be contrary to the description of development. In the Reid Judgement the Court was not convinced that the removal of conditions gives rise to the same considerations as their variation or addition.
14. The Court found that when a condition is removed, the operative part of the permission remains intact, albeit in an unconditional way. If the condition restricting the units to holiday accommodation was removed, the way the development could change would have nothing to do with the description. The Court held that what can be done with the use of the land may not be

exhaustively written into the description but may arise by the operation of law - that is a lawful change of use to another purpose within the same Use Class. Therefore, it is the decision maker's function to consider, as a matter of planning judgement, the planning merits of removing the condition. The Reid Judgement is of direct relevance to the appeal proposal as it involves the removal of a condition restricting use of the lodges to holiday accommodation.

15. In this case the description of development on the original application refers to, amongst other various facilities, the development comprising the construction of six units of disabled holiday accommodation lodges. The Council's first reason for refusal maintains that lifting the disputed condition would alter the nature of development in a way that would materially differ from the approved permission and that, consequently, the planning application fell outside the scope of section 73 of the 1990 Act.
16. In considering the conclusions in the Reid Judgement, the proposal can be determined under section 73 of the 1990 Act. Additional comments regarding the implications of the Reid Judgement were received from the Council during the determination of this appeal. The Council accepts that in light of the Reid Judgement, the first reason for refusal has been incorrectly applied.
17. However, the removal of the condition would allow the occupation of the building in an unrestricted way. I therefore need to determine whether the potential use of the lodges as independent dwellinghouses would be contrary to the development plan.

Appeal A – Affordable Housing

18. Policy 28 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan) provides that developer contributions will be sought to ensure that the necessary physical, social, economic and green infrastructure is in place to deliver development.
19. Policy 8 of the Local Plan concerns affordable housing and provides that where there is a net increase of more than ten dwellings, there must be a contribution towards meeting affordable housing need. However, that policy also confirms that within designated rural areas, the threshold for contribution towards affordable housing would be more than five dwellings, and that for developments of six to ten dwellings in such designated rural areas, financial contribution in lieu of on-site provision of affordable housing would be sought. Policy 8 of the Local Plan also provides that a financial or other contribution will be sought from proposals to remove holiday occupancy restrictions on existing dwellings using the thresholds set out in the Policy as described above, where there is evidence of need and where development would otherwise have been provided on site for community infrastructure including affordable housing.
20. The site is located within the parish of St Ive and Pensilva which is a designated rural area, and the evidence before me demonstrates that there is an identified affordable housing need within that parish.
21. The Appellant maintains that 'static caravans' are a form of affordable housing product which would accord with the National Planning Policy Framework's (the Framework) definition of Affordable Housing. The Framework's definition of "Other affordable routes to home ownership" confirms that this "is housing provided for sale that provides a route to ownership for those who could not

achieve home ownership through the market” and which includes “homes for sale (at a price equivalent to at least 20% below local market value)”.

22. I acknowledge the Appellant’s submissions which indicate that the “expected” market rate of the lodges is to be “in the region of £260,000”, and that by reason of average prices of detached dwellings within Pensilva being £335,938, as of March 2022, the expected market rate for the lodges would be more than 20% lower than average prices of detached dwellings within Pensilva.
23. However, whilst noting the details provided by the Appellant, as above the definition contained within the Framework refers to “at a price equivalent to at least 20% below local market value” which, in my view, does not equate with housing whose market value is 20% below the market value ‘average’ within the area. Furthermore, the submissions that the lodges are “expected” to be “in the region of” provides no certainty that the units would be sold at that value. Consequently, in this instance, given that there is no mechanism before me that provides that the units would be sold at ‘a price equivalent to at least 20% below local market value’, I do not accept in this instance that the ‘static caravans’ can be properly defined as affordable housing within the context of the Framework.
24. In arriving at that conclusion, I have taken into account the appeal decisions at Bersted in West Sussex as referred to me by the Appellant. Whilst I am not bound by the decisions of my colleague Inspectors, it appears that the Inspector in those Bersted appeals found that mobile homes can be considered to offer an affordable route to home ownership in that instance and based on the specific evidence that was before that Inspector in that case. Given the very limited information provided in respect of those cited appeals, I cannot be sure that the circumstances of those cases are comparable with the appeal proposal. I have therefore determined this appeal on its own merits and based on the evidence that is before me.
25. In conclusion of this main issue, the proposal would fail to provide an off-site financial contribution towards delivery of affordable housing for which there is an identified need. The proposal would conflict with Policies 8 and 28 of the Local Plan.

Appeal A – Location of Appeal Scheme

26. Policy 12 of the Local Plan provides that proposals will be judged against fundamental design principles of, amongst other matters, movement by creating a network of safe well-connected routes which are easy to read and navigate. Policy 27 of the Local Plan confirms that all developments should provide safe and suitable access to the site for all people and not cause a significantly adverse impact on the local or strategic road network that cannot be mitigated.
27. Pensilva contains some limited services and facilities, including a public house, a primary school, a village shop and access to bus stops which provide services to larger settlements within the wider area. However, access to the limited services and facilities contained within Pensilva would be via a long, narrow and unlit lane which does not benefit from pedestrian footways or street lighting. On approach to the settlement from the site, the rural road, which is constrained by high hedges, slopes uphill and includes a sharp bend where forward visibility is restricted. I saw on my visit that traffic on this road was not

light, and that on the straight section of road close to the point of access for the wider appeal site, vehicles were travelling at speed.

28. Consequently, it cannot be said that travelling to the nearest services and facilities on foot or by bicycle would represent an attractive option for all, especially during hours of darkness or in adverse weather conditions. Furthermore, when traveling on foot or by bicycle from the site to services, facilities and wider transport links contained within Pensilva, or when travelling from Pensilva to the appeal site, there would be potential for conflict between vehicles and pedestrians and cyclists using that narrow rural road resulting in an unacceptable impact on highway safety. As such pedestrians and cyclists would be unlikely to feel safe using that rural road. Safe and suitable access to the site could therefore not be achieved for all users.
29. It is therefore likely that occupants of the appeal scheme would be heavily reliant on private motor vehicles in order to access even basic services. The use of the lodges as permanent accommodation would change the nature and pattern of travel in comparison to holiday accommodation, not least in the need to access services and facilities as well as places of employment, healthcare and education, with residential occupants being more likely to travel more regularly to and from such services, facilities and places of employment in separate vehicles than would be the case in respect of holiday accommodation. Whilst dependence on private vehicles may be expected in a rural location such as this, the proposal would only exacerbate this level of reliance. It would contribute to a pattern of development that would cause environmental harm as a result of increased car journeys and hence carbon emissions.
30. For the above reasons, the proposal would conflict with Policies 12 and 27 of the Local Plan, and would fail to accord with those parts of the Framework that seek to ensure development does not have an unacceptable impact on highway safety, provides safe and suitable access for all users and which gives priority first to pedestrian and cycle movements.

Appeal B – Location of Appeal Scheme

31. Policy 3 of the Local Plan sets out the strategy for the delivery of housing across Cornwall and growth is centred on the named, larger settlements within the county. The supporting text to this policy provides that settlements that are not named within Policy 3 of the Local Plan can help meet housing requirement by: identification of sites where required through Neighbourhood Plans, rounding off of settlements and development of previously developed land (PDL) within or immediately adjoining the settlement of a scale appropriate to its size and role; infill schemes that fill a small gap in an otherwise built frontage; and rural exceptions sites for affordable housing.
32. Following approval of planning permission reference PA19/08006 the appeal site comprises a separate planning unit from that planning unit approved under planning permission PA11/03319. As such, whilst acknowledging that the site would accord with the definition of PDL, this separate planning unit site is substantively detached from the settlement in both the physical and visual sense. Consequently, the proposal would not represent infill, the rounding off of the settlement or development of PDL that is within or immediately adjoins the settlement.

33. There is no evidence before me to suggest or confirm that the appeal site has been allocated for housing within an existing or emerging Neighbourhood Plan. For the reasons given above under Appeal A, the lodges at this appeal site would not accord with the definition of affordable housing. The proposal is not promoted as an affordable housing led scheme. Consequently, and in light of the above reasons regarding the location of the site outside the built up area of Pensilva, the proposal would not accord with the provisions of Policy 9 of the Local Plan which concerns rural exceptions sites.
34. The supporting text to Policy 7 of the Local Plan defines open countryside as being the area outside of the physical boundaries of an existing settlement. For the reasons given above, the appeal site is located outside of any settlement within the context and definitions of the Local Plan. Policy 7 of the Local Plan does provide support for proposals outside of settlements where it is shown that special circumstances, such as and amongst other things, accommodation for rural workers, exist. The proposal would not comply with any of the criteria which provide support for proposals within the open countryside as defined by the Local Plan.
35. By reason of the nature of the unlit, narrow rural road, described above under Appeal A, that also connects this appeal site to Pensilva, through increased numbers of movements associated with permanent residential accommodation which would increase potential for conflict between vehicles and pedestrians or cyclists, poor level of access to services and facilities reasonably required on a daily basis and the consequent likely heavy reliance on private motor vehicles, the proposal would conflict with Policies 12 and 27 of the Local Plan. Furthermore, the proposal would fail to accord with those parts of the Framework which concern promoting sustainable transport.
36. The proposal would conflict with Policies 3 and 9 of the Local Plan for the above reasons. Even in the event that the appeal site does not represent a separate planning unit to that described above under Appeal A, the appeal scheme would also conflict with Policies 12 and 27 of the Local Plan and, further, would fail to accord with the provisions of the Framework with regards to unacceptable impact on highway safety, provision of safe and suitable access for all users or be a proposal which gives priority first to pedestrian and cycle movements.

Other Matters

37. The proposals would provide additional permanent residential dwellings which would contribute towards local housing stock. The units would provide for single storey living accommodation and could be occupied by those with restricted mobility. I also accept that there would be some economic benefits arising from permanent residential occupation of the lodges. In these respects, individually I attach only moderate weight to the benefits of both the appeal schemes.
38. Against those benefits, I attach significant weight to the appeals schemes' conflict with the policies of the development plan and the resulting harm as identified above in respect of location, highway safety and provision of affordable housing. Accordingly, material considerations do not indicate that these appeals should succeed.

39. The sites that are the subject of these appeals would be within the zone of influence of the Plymouth Sound and Estuaries Special Area of Conservation, which is a European Protected Site. While an important issue, I have not found it necessary to examine this matter in greater detail as, for the reasons outlined above, it does not alter my overall conclusion in relation to these appeals.

Conclusions

Appeal A and Appeal B

40. For the reasons given above, I find that the removal of the disputed planning conditions could result in unsuitable permanent residential accommodation at their respective locations. Consequently, I conclude that the disputed conditions are both reasonable and necessary and that, therefore, Appeal A and Appeal B should be dismissed.

Mr A Spencer-Peet

INSPECTOR