



Appeal Decision

Site visit made on 24 April 2023

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2023

Appeal Ref: APP/D0840/W/22/3313223

Land south of former Mill Garage, Trewardreva Mill, Constantine, Falmouth TR11 5QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Messrs/Mses J, J, K, O, P & C Hyde against the decision of Cornwall Council.
 - The application Ref PA21/11882, dated 26 November 2021, was refused by notice dated 22 July 2022.
 - The development proposed is an outline planning permission with some matters (appearance, landscaping, layout and scale) reserved for the construction of a dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application has been made in outline with access for consideration at this stage, and matters of appearance, landscaping, layout and scale reserved.
3. The Council refused the proposal for two reasons. The second reason concerns the absence of a mechanism to secure the provision of a financial contribution towards mitigating recreational impacts upon the Fal and Helford Special Area of Conservation (SAC). At the appeal stage, the appellant has submitted an undertaking and accompanying payment under s111 of the Local Government Act 1972. It would appear, given the comments of the Council in its appeal statement and the advice in the associated supplementary planning document, that this should address the requirements of the second reason for refusal. Accordingly, I will examine this matter later in this decision, rather than as a main issue.

Main Issue

4. The main issue is whether or not the development plan would support the proposed development in this location.

Reasons

5. Policy 3 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan) sets out the locational strategy for the delivery of housing across the plan area based on the role and function of each place. Most development is to be directed to the main towns. Outside these areas, in summary, housing is to be delivered through rounding off of settlements and development of previously developed land within or immediately adjoining that settlement, infill schemes which fill a small gap in an otherwise continuous built frontage and do not

- extend the settlement into open countryside, rural exception sites, and the identification of sites through neighbourhood plans.
6. In this case, the site has not been advanced as a rural exception site nor identified in a neighbourhood plan. In terms of examining whether the scheme could benefit from the other elements of Policy 3 of the Local Plan it is necessary to, firstly, determine whether the site for the dwelling would be located within or adjoining a settlement.
 7. In this respect, the Chief Planning Officer's Advice Note: Infill/Rounding Off (December 2017) (the Advice Note) provides additional advice on the interpretation of Policy 3 of the Local Plan, including the approach to consider whether a location constitutes a settlement. I attribute the Advice Note substantial weight.
 8. The Advice Note explains that a settlement is a place where people collectively live in permanent buildings and, while there is no absolute definition, the smaller villages and hamlets should have a form and shape and clearly definable boundaries, not just a low-density straggle of development. The Advice Note also sets out that well-defined groups of dwellings with a collective name will normally be settlements and that local residents are well placed to assist with making this judgement and that asking the opinions of the parish/members would be useful.
 9. In this case, there are two official road signs identifying Trewardreva Mill which are located on the road side on either side of the valley. I am conscious that the appellant has also highlighted that Trewardreva Mill is recorded on the Tithe map and on the 1st and 2nd Edition 1:2500 maps, and that furthermore, the adjacent smithy at Trewardreva Mill is also shown on the OS map of 1878. The post box and the Wayside Cross nearby have also been highlighted. The policy does not require any services or facilities to be present for a location to be considered a settlement, although in this case there is a restaurant/cafe. These are matters, together with the other arguments made by the appellants, that weigh in favour of the view that there is a settlement in this location.
 10. On the other hand, on the ground, the buildings in this area are reasonably limited in number and some have a more dispersed location in relation to others. For instance, the Slice of Cornwall restaurant is separated and further up the slope from those buildings by the stream and is also somewhat visually separated by an area of trees. Trewardreva Mill is set back from the road and fairly well screened from the other properties. The other main buildings, such as the Mill Houses, the converted residential building and the commercial building form a small group, but they do not in themselves have a focus, form or appearance that could be said, on their own or in conjunction with other buildings, to provide a sense when travelling through this area of being any more than a small number of buildings in a rural setting.
 11. I have carefully considered all the arguments in favour of the area being considered a hamlet, and therefore a settlement in planning terms. The weight of evidence and the findings at my site visit is such that I consider that the reasonably limited number of buildings, with some having a somewhat separated positioning relative to the others, does not contribute the appearance, arrangement and built form to the area for it to be recognisable as a settlement. In my view, notwithstanding elements such as the road signs, there is not the form or shape with clearly definable boundaries that would

justify this reasonably small collection of buildings and spaces as being considered a settlement for the purposes of Policy 3 of the Local Plan.

12. The Advice Note indicates that local residents, including the parish and members, may be well placed to assist with understanding whether a place is a settlement. In this case, I note that Constantine Parish Council has objected to the scheme, including on the basis that it views the proposal as being one for a new home in the countryside. This local view adds support to my conclusion that the appeal site is not within or adjoining a settlement and the area should be considered to fall within the countryside for planning purposes.
13. The site may be within walking distance of Constantine via the public footpath and a relatively short drive to this village, but that in itself does not assist with the analysis as to whether the appeal site adjoins or is within a settlement, or satisfy me that it is sustainably located.
14. A number of other planning applications that the Council has permitted in accordance with Policy 3 of the Local Plan have been referred to in support of this location being a hamlet and therefore falling within the definition of a settlement¹. There may very well be many other examples where modest collections of buildings have been deemed to have a form and shape with clearly definable boundaries that justify their consideration as a settlement. However, it seems to me that each set of buildings will need to be considered separately and the buildings will have their own relationship to each other, and differing number and density of form, that taken together help to determine whether there is a settlement for planning purposes. This is clearly a matter of judgement in each case. None of these examples refer to land in the vicinity of the appeal site to provide a clear direction in this appeal. In these circumstances, I am not satisfied that these other examples are especially instructive in deciding whether the number, form and configuration of buildings and spaces adjoining the appeal site should be considered to be a settlement for planning purposes. I therefore attribute these permissions limited weight.
15. Appeal decisions have also been included in support of the present scheme. In the case of the Byre Cottage, Sancreed² decision, it appears to be accepted by all the parties that Sancreed was a settlement. That Inspector found, because of the pattern of the buildings that the appeal site directly adjoined that settlement. A main issue in that appeal therefore was whether the site adjoined the settlement, and in this case, the issue is whether there is a settlement at all. Consequently, given the different substantive issue and that each area will have its own character to make an assessment against, I attribute the appeal at Sancreed limited weight.
16. The other appeal decision that has been highlighted is at Illogan³. In that case, three dwellings on the other side of the road were under construction and the Inspector considered that they formed part of a larger cluster of development. He judged that this cluster had a definable form and shape which met the loose description of a settlement. The Inspector went on to consider that the appeal site immediately adjoined that settlement and met with the requirements of Policy 3 of the Local Plan. Again, the judgement in that case was based on the

¹ For instance, PA21/02899 at Trelill, PA19/08411 at Fentonadle, PA19/03778 at Bodiggo, PA19/07493 at Treskilling and PA22/03593 at Trevallas

² APP/D0840/W/22/3295727 - Byre Cottage, Sancreed, Penzance TR20 8QS dated 2 December 2022

³ APP/D0840/W/21/3275724 The Cottage, Harris Mill, Illogan, Redruth TR16 4JF – dated 19 October 2021

form and shape of the cluster of development, together with the three new houses that had been permitted, and this led to the conclusion that the site for development was policy compliant. That was a site-specific assessment and I have applied the same policies and advice in the case of this appeal. This has led to the conclusion that the adjoining buildings to the appeal site are not a settlement. Consequently, the Illogan appeal is not directly applicable or especially similar to this appeal proposal, and I afford it limited weight.

17. In terms of this appeal site, I have carefully considered the planning and other background history which sets out the past use of this land. I acknowledge that the evidence indicates that the site was previously occupied residentially for over 30 years and that planning permission was granted in the mid-1960s for a dwelling on the site, that may have been commenced. I saw the drainage and water supply that continue to exist, and there remains areas of hardstanding and some landscaping that has a domestic appearance. I understand the background that the appellants explain, and which is said to have led to the refusal by the Council of the Lawful Development Certificate which sought to demonstrate residential use of the site. Nevertheless, there is not a granted certificate or other undisputed evidence that shows a lawful residential use of the site for me to take into account.
18. It is not the role of a section 78 planning appeal to determine the lawfulness of the use of a site or any works. Therefore, if the appellants consider that there is merit in the arguments that a lawful residential use subsists, or the previous approval has been lawfully implemented, then it is open for a further lawful development certificate to be submitted. In the present circumstances, the background information does not justify permitting a residential use on the site in itself or materially assist in my analysis of whether the site is within or adjoins a settlement for planning purposes.
19. Based on my assessment above, I conclude that the site does not fall within or adjoin a settlement. It follows that the scheme cannot benefit from the allowances under Policy 3 of the Local Plan for new residential development including rounding off, infill or use of previously developed land within and adjoining settlements. As a consequence, the scheme would thereby not accord with the requirements of the spatial strategy under Policy 2 of the Local Plan for the location and distribution of development. It then follows that the proposed dwelling in this location would not represent sustainable development as required by Policy 1 of the Local Plan.
20. The proposed dwelling would be located within the countryside for planning purposes. With the proposed open market occupation, it would not meet with any of the exceptions for new housing in the countryside as set out in Policy 7 of the Local Plan, nor paragraph 80 of the National Planning Policy Framework (the Framework).
21. The site is argued to be previously developed land. Even if that was to be the case, as the site would not be sustainably located it would not meet with this requirement for such development under Policy 21 of the Local Plan.
22. In respect of the policy approach of the Framework, as the proposed dwelling would not be within or adjoining a settlement and it would be in the countryside for planning purposes, the housing would not be located where it would enhance or maintain the vitality of rural communities as required by paragraph 79. In particular, the scheme would not benefit from the Framework

policy approach in the circumstances where there are groups of smaller settlements, and development in one village may support services in a village nearby.

23. Drawing all these matters together, I conclude there is no settlement in this location for the site to adjoin or be within. As a consequence, the proposed dwelling would not be able to benefit from the approach for new housing under Policy 3 of the Local Plan. It, therefore, follows that the proposed dwelling would not accord with the spatial strategy, would not be sustainably located and overall would conflict with Policies 1, 2, 3, 7 and 21 of the Local Plan and the Framework which set the approach to housing across the plan area.

Other Matters

24. The proposed dwelling would fall within the zone of recreational influence of the SAC. The S111 undertaking and related payment would mitigate the impacts on the SAC in accordance with the Cornwall Council European Sites Mitigation Supplementary Planning Document July 2021. In these circumstances, the evidence indicates that the proposal, either alone or in combination with other schemes, should not have a significant or adverse effect on the integrity of the SAC, although because of my overall conclusion I have not needed to consider this matter further.

Conclusion

25. The construction of the appeal dwelling would provide a boost to the supply of housing on a windfall site and would make efficient use of the land. There would be no harm to the character and appearance of the area because of the screened location behind the commercial building. There would be social and economic benefits to the local economy during construction and in subsequent occupation, although these would be to a limited degree due to the scale of the proposal, and in respect of construction would only be for a limited time.
26. There would also be the opportunity to construct an eco-friendly and sustainable dwelling, and the site could be developed to provide a net gain to biodiversity. However, as only one additional dwelling would be provided, I attribute the cumulative benefits of the proposal limited weight.
27. In terms of harm, the scheme would conflict with the approach to the location of housing in the development plan and Framework. This is an important matter of substantial weight and would outweigh the benefits of the proposal.
28. For the reasons given above, the scheme would conflict with the development plan when considered as a whole and there are no material planning considerations that indicate that the proposal should be determined other than in accordance with the development plan. Accordingly, I conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR