



Appeal Decision

Site visit made on 18 July 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2023

Appeal Ref: APP/D0840/W/22/3310297

Land East of Pengersick Lane, Praa Sands, Penzance, Cornwall

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr Steve Edwards of Penmellyn Ltd against the decision of Cornwall Council.
 - The application Ref PA22/00139, dated 7 January 2022, was refused by notice dated 4 May 2022.
 - The development proposed is residential development (minimum of 8 and maximum of 9 dwellings).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Planning Practice Guidance (PPG) advises that permission in principle is an alternative way of obtaining planning permission for housing led development. The first stage establishes whether a site is suitable in-principle, whereas the second technical details consent stage is when detailed development proposals are assessed. This appeal relates to an application for permission in principle. The scope of the considerations for such applications is limited to location, land use and amount of development.
3. The provisions of articles 5A and 5B of the Town and Country Planning (Permission in Principle) (Amendment) Order 2017 (the Order) stipulate that a local planning authority (or by extension an Inspector on appeal) may grant permission in principle subject to certain exemptions. These include that the development must not be major development. The definition of major development contained in article 5B of the Order includes three components, any of which would constitute major development. Amongst those listed is development carried out on a site having an area of 1 hectare or more.
4. It follows that permission in principle may not be granted upon direct application involving a site having an area of 1 hectare or more, even if the maximum number of houses specified falls below the limit otherwise specified within the definition of major development in article 5B of the Order.
5. The Location Map (Drawing no. 001) and application form in this case both confirm the appeal site to be in the order of 1.4ha in area. This disqualifies it from meeting the legislative requirements for permission in principle. The appellant does not dispute this. Moreover, this is reflected in refusal reason 1 on the Council's decision notice.

6. The appellant has submitted a revised Location Map (Drawing no. 001 Rev A) showing an amended red line and site area annotated as 1 hectare. It is contended that the reduced area meets the statutory criteria, and it is requested that my determination is made in relation to the revised plan.
7. However, the Procedural Guide: Planning Appeals – England¹ advises that the appeal process should not be used to evolve a scheme. It is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the local planning authority and interested parties at the application stage.
8. Moreover, having regard to the ‘Wheatcroft Principles’² I cannot agree that revision to the red line would not make a substantial difference to the nature of the proposal. The appellant explains that had the Council accepted the revised plan during the application stage they would have conducted a further consultation exercise. As previously mentioned, the scope of considerations in a permission in principle application is limited. It seems to me that the specific area of the site is fundamental to the assessment of location and amount of development.
9. As such, interested parties would be inclined to comment on a reduction to the site area, especially given that the amount of the development remained the same. Moreover, areas excluded in the revised site area include spaces annotated as open space and community hall parking on the indicative site layout (Drawing no.003).
10. Furthermore, the precise boundary of the site would be of direct relevance to the consideration of factors on the ground when making a judgement as to whether the development would amount to ‘rounding off’ of a settlement permitted under policy 3 of the Cornwall Local Plan Strategic Policies 2010-2030, November 2016. This is a central argument in the substantive case put forward by the appellant. It is a matter I consider the Parish Council, amongst others, would be likely to wish to comment on further, particularly given housing policies in the Breage Parish Neighbourhood Development Plan 2017-2030 having been made following the Council’s determination.
11. In addition, it cannot be ruled out that some interested parties declined to comment on the application because it did not meet the criteria for permission in principle development. They may have judged it unnecessary to make a response in those circumstances.
12. Therefore, I cannot agree that no one would be prejudiced by my consideration of the revised plan and my determination is made in relation to the plans submitted with the application.
13. In any event, the definition of major development in article 5B of the Order includes a site ‘having an area of 1 hectare or more’. The revised plan indicates a site of 1 hectare and consequently, would still constitute major development.
14. It follows that irrespective of the merits of the scheme, it is exempted from qualifying for permission in principle. It is therefore unnecessary to consider

¹ Section 16

² Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

the matters of location, land use and amount any further as they would not be determinative to the outcome of the case. Accordingly, the proposal must be rejected on procedural grounds.

15. It is drawn to my attention that since the appeal was submitted, the Council have refused permission in principle³ on a separate application concerning a reduced site area and therefore, part of the appeal site. However, that is not the scheme before me and each application and any subsequent appeal must be determined on their own merits, they cannot be conflated. As such, this would not lead me to a different conclusion in relation to the procedural points outlined for this appeal.

Conclusion

16. For the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

³ Reference PA23/03689 dated 8 June 2023