



Appeal Decision

Site visit made on 9 October 2023

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2023

Appeal Ref: APP/D0840/W/23/3320333

Land adjacent to Sun View, Eastcliff, Porthtowan, Truro TR4 8AL

- 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 Ms D Kent against the decision of Cornwall Council.
 - The application Ref PA22/07640, dated 19 August 2022, was refused by notice dated 14 October 2022.
 - The development proposed is an application for permission in principle for the construction of maximum one dwellinghouse on previously developed land adjacent to the settlement.
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Decision

1. The appeal is allowed and permission in principle is granted for residential development comprising a minimum of one and a maximum of one dwelling at land adjacent to Sun View, Eastcliff, Porthtowan, Truro TR4 8AL in accordance with the terms of the application, Ref PA22/07640, dated 19 August 2022.

Preliminary Matters

2. The proposal is for permission in principle. The Planning Practice Guidance (the Guidance) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages: the first stage (or 'permission in principle' stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted.
4. The Guidance explains that, in summary, that a decision on whether to grant permission in principle to a site following a valid application must be made in accordance with relevant policies in the development plan unless there are material considerations, such as those in the National Planning Policy Framework (the Framework) and national guidance, which indicate otherwise.
5. This proposal is for a minimum of one dwelling and a maximum of one dwelling. In effect, a single dwelling is proposed. I have considered the proposal accordingly.

6. My attention has been drawn to a recent appeal decision¹ on the land immediately to the broadly south west of the present site. This was a detailed planning application for two dwellings. Both main parties have been given the opportunity to make comments on any implications of this appeal for the present proposal and I have taken these views into account in my consideration of this appeal.

Procedural Issues

7. Certain types of development are excluded from the grant of permission in principle. A proposal that would constitute habitats development is one of the exclusions. The Guidance explains that this means for sites where development is likely to have a significant effect on a qualifying European site or a European offshore marine site without any mitigating measures in place, the local planning authority should ensure an appropriate assessment has been undertaken before consideration of the grant of permission in principle. If the local planning authority is satisfied, after taking account of mitigation measures in the appropriate assessment and concluding that the development will not adversely affect the integrity of the protected site, then, subject to compliance with other statutory requirements regarding the permission in principle process, the Guidance explains that it can grant permission in principle.
8. The Cornwall Council European Sites Mitigation- Supplementary Planning Document – July 2021 (the European Sites SPD) explains that the Penhale Dunes Special Area of Conservation (SAC) is important and has qualifying features because of the specified range of rare plant species amongst the shifting sand dunes. Recreational activity within this area has the potential to disturb this habitat. The European Sites SPD concludes that additional residential development within the identified zone of influence, in combination with other residential development, would likely increase recreational visits and, thereby, increase disturbance to this habitat. There is, therefore, an impact pathway between additional residential development in the zone of influence and a resulting likely significant effect on the qualifying features of the SAC.
9. As recreational pressure would compromise the site's conservation objectives as detailed in the European SPD, an adverse effect on integrity cannot be ruled out.
10. A strategic scheme is available and the European Sites SPD sets out a series of measures, which include for the Penhale Dunes SAC costed Strategic Access Management and Monitoring (SAMM) plans, to mitigate the effect of increased recreational pressure resulting from additional residential development within the zones of influence.
11. In this case, the site for the proposed dwelling would be located within the zone of influence of the Penhale Dunes SAC. Without mitigation the additional residents who would occupy the unit of accommodation would be, in combination with other schemes, likely to adversely affect this European habitats site by way of increased recreational disturbance.
12. I am aware that the Guidance explains that conditions and/or planning obligations cannot be secured at the permission in principle stage, only at the

¹ Appeal Ref: APP/D0840/W/23/3316342 - Construction of two detached dwellings - Land at Eastcliff, Porthtowan, Truro TR4 8AW – Dismissed 11 October 2023.

technical details consent stage. However, in this case, rather than a planning obligation under s106 of the Town and Country Planning Act 1990, a signed and dated undertaking under s111 of the Local Government Act 1972 has been submitted. This provides an undertaking, with the appropriate payment for the contribution to SAMM, to mitigate the effect of an additional dwelling within the zone of influence of the Penhale Dunes SAC. As the payment has already been made, the mitigation requirements in the European Sites SPD have been secured.

13. Any application for technical details consent must specify the permission in principle to which the technical details consent relates. There is, therefore, a direct link between the mitigation payment, related to the permission in principle stage for this scheme, and the process of submitting and considering any subsequent technical details, including its effects on habitats sites.
14. Natural England has confirmed that the measures proposed, which would result from the submitted payment, would be sufficient to avoid or reduce impacts in order to maintain the integrity of the European site and its qualifying features.
15. Following the completion of the s111 undertaking and submission of the related payment, the Council has confirmed that it is satisfied that the second reason for refusal, concerning the effect of the development on the Penhale Dunes SAC, has been addressed. The Council has confirmed that it does not wish to pursue the second reason for refusal.
16. In these circumstances, I am satisfied that the proposal, either alone or in combination with other schemes, would have no adverse effect on the integrity of the Penhale Dunes SAC. There is sufficient certainty that the adverse effect on the integrity of the habitats site and its qualifying features would be avoided. Consequently, when undertaking an appropriate assessment, I am satisfied that the scheme would accord with the requirements of the Conservation of Habitats and Species Regulations 2017. The proposal would, therefore, not be habitats development and can be considered under the permission in principle application procedure. The scheme would also meet, in this respect, with the associated requirements of Policy 22 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan).

Main Issue

17. The main issue is, therefore, whether the development plan would support the proposal, having regard to its location, the proposed land use and the amount of development.

Reasons

18. Policy 3 of the Local Plan sets out the strategic approach for the location of development across the plan area, based on the role and function of places. Housing development is to be focused at 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 that fill a small gap in an otherwise continuous built frontage and do not physically extend the settlement into the open countryside, rural exception sites, and the identification of sites through neighbourhood plans.

19. 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 and I attribute it substantial weight.
20. The development plan also includes the St Agnes Parish Neighbourhood Development Plan 2018-2030 (the St Agnes NDP). This explains that the village of Porthtowan is dispersed with a collection of five residential areas and identifies settlement boundaries for those areas. The St Agnes NDP includes Policy 7 which can allow infill housing development within the settlement boundaries.
21. One of the identified settlement areas, Eastcliff, lies on an elevated and exposed section of hilltop to the broadly north east of the beach. In this area, there is a concentration of dwellings with generally a clearly defined demarcation between the built form and the surrounding countryside. The appeal site is a section of land which has been built up and levelled on what would have been a sloping part of the hillside. It lies on the other side of the road from Sun View, a chalet bungalow, and the site is outside but adjoining the settlement boundary in this area.
22. At my site visit, the platform area within the site had some parked vehicles and some minor informal storage taking place. The planning history shows that this area benefits from a certificate of lawfulness for existing use or development for the ancillary and incidental use at a C3 dwellinghouse. The reasoning which forms part of the certificate indicates that the site was lawful as garden land ancillary and incidental to the residential use of Sun View and that the engineering works that have been undertaken to reprofile the surface of the site were also lawful. Consequently, as garden land outside a built-up area, it can be considered to fall within the definition of previously developed land.
23. Policy 7 of the St Agnes NDP refers to infill development within a settlement and, therefore, this policy is not applicable to the appeal proposal because of the location beyond the settlement boundary. It does not preclude development outside the boundary and, therefore, the principle of whether or not a dwelling on this site is acceptable falls to be considered under Policy 3 of the Local Plan.
24. The provision of a dwelling on this site would not constitute infill development in terms of Policy 3 because it would not infill a small gap in an otherwise built frontage. It would not round off the settlement because it would not provide a symmetry or completion of the settlement and would not be enclosed by long standing and enclosing boundary features. Furthermore, it would not be surrounded on at least two sides by existing built development as highlighted in the Advice Note in terms of the approach to rounding off.
25. The site has not been identified for development in the St Agnes NDP and the scheme is not promoted as a rural exception site.
26. However, the appellant advances the proposal on the basis that it would accord with the Policy 3 of the Local Plan allowance for new housing that consists of the development of previously developed land within or immediately adjoining that settlement. The Advice Note explains that the development of previously developed land within or adjacent to settlements is acceptable unless other environmental, social and economic considerations outweigh this. The policy

also requires that the scale of the proposal should be appropriate to the size and role of the settlement.

27. In this case, the site is previously developed land, and it is located immediately adjoining the identified settlement boundary in the St Agnes NDP. The scale of the development, with the provision of a single dwelling, would be appropriate to the size and role of the settlement. As a matter of principle, therefore, the scheme would meet with the relevant requirements of Policy 3 of the Local Plan.
28. The Council also object on the basis that the dwelling would be located where there would be a dependence on the private car to access services and facilities. In the valley bottom, along the road towards the beach, there is a modest range of services and facilities, and a bus stop. At my site visit I walked from the bottom car park up the hillside to the site. This journey could be possible for some residents on some occasions but with the terrain and path surface it would not be a reasonable or achievable walk for many in inclement weather, those with a mobility issue, or those with a pushchair or with smaller children. In reality residents of the site would be heavily dependent on the private vehicle.
29. Nevertheless, as I have concluded, the principle of a dwelling on this site would comply with Policy 3 of the Local Plan. Accordingly, the proposal would fall within the higher level strategic approach of Policy 2 of the Local Plan which sets out the spatial strategy for the location of new development across Cornwall. Because of the dwelling's locational compliance with the spatial strategy, it should be considered to be sustainably located in terms of the Local Plan approach to the distribution of development, notwithstanding the likely dependence of future occupiers on the private motor vehicle to access services and facilities. Consequently, I do not consider that the lack of sustainable transport options, in the circumstances of this case where the site adjoins part of a designated settlement, should weigh against the proposal.
30. The Council also argue in the reason for refusal that there would be harm to the character and appearance of the area from the development. At this point, no design or other details of any dwelling have been, or need to be, submitted at this permission in principle stage. I accept that matters of character and appearance can be relevant as far as they relate to the principle of the development.
31. I have taken into account all the landscape information that has been submitted by the Council, including the location within Cornwall Character Area Description CCA14 St Agnes and the characteristics of this area. In particular, I have also had regard to the St Agnes NDP Village Character Assessment (the VCA) for Porthtowan and this explains that Eastcliff is more unusual since the housing sits on the top of the hillside and is the only development area that breaks the skyline. It is explained in the VCA that it is accessed by an old farm road leading from Coast Road, sits within a Site of Special Scientific Interest and much of the land at Eastcliff is designated as an Area of Outstanding Natural Beauty². It is explained that the surrounding landscape is a windswept hilltop of heathland. The VCA details that the buildings are not screened on their edges by planting or hedgerows and do not establish a coherent built

² The appeal site is located outside the AONB and SSSI.

frontage as they are mostly replacements of holiday chalets taking advantage of the views out.

32. The appeal site is very prominent and exposed, and is visible across the valley from Coast Road and also from the adjoining road and right of way. At my visit, from sections of Coast Road, I was able to see the level platform and vehicles parked within the appeal site, in conjunction with the backdrop of Sun View. I am conscious of the appeal that was dismissed on the adjoining site and the considerable concerns of that Inspector with the effects of the development on the landscape. However, that scheme was for two dwellings that extended across a more extensive section of the hillside, including in part dropping down the slope. That land does not appear to have been developed in any way and did not involve the use of previously developed land.
33. In this case, the site is more compact, is visually and character-wise generally more associated with the road and adjoining built form, and is used for parking and informal storage in conjunction with the adjoining dwelling. These factors, together with the presence of the platform which raises that part of the site to a similar level as the road, mean that the development of a single dwelling could, potentially, visually relate more to the existing built development than the scheme which was dismissed at appeal on the adjoining land.
34. The site is reasonably close to the boundaries with the Cornwall Area of Outstanding Natural Beauty and the Cornwall and West Devon Mining Landscape World Heritage Site. However, I do not consider that these important designations should, in principle, be adversely affected by the proposal, given its location, the nature of the scheme for a single dwelling and the relationship to their boundaries.
35. Also, the site lies within the Heritage Coast, however, I do not judge that the scheme should be considered, at this permission in principle stage, as incompatible with this designation. The site and the surroundings are being considered as a possible area for the extension of the Area of Great Landscape Value, however, at this point that consideration should merit only very limited weight in this appeal.
36. Taken together, at this in principle stage and in the absence of details, while any development would be prominent, I do not believe that it can be assumed that the presence of any dwelling on this site would, as a matter of course, harm the character and appearance of the area such that approval of the proposal should be withheld on this basis. This is an application for permission in principle and if it were to be granted there would be no planning permission in place, unlike with an outline permission. The main focus at this stage, is the 'in principle' aspects of residential development of the site. If permission in principle was to be granted, the development cannot proceed until technical detailed consent has been approved and there is no requirement for this to be given automatically.
37. Drawing these matters together, the development of a dwelling on this previously developed land adjoining the settlement boundary would, as a matter of principle, comply with Policy 3 of the Local Plan and thereby with the strategy for the distribution of development across the plan area. Accordingly, given this compliance, I do not consider that the heavy dependence on the private vehicle for future occupants should weigh against the scheme. For the reasons I have explained, it is not possible to reach a clear and merited

decision on the effect of a dwelling on the character and appearance of the area at this permission in principle stage because of the level of detail that is available and the nature of the site and its surroundings. This assessment should be left for consideration at the technical details consent stage.

38. I have taken the appeal decision on the adjoining site fully into account in my considerations in this appeal. However, as I have explained, that was a scheme for two dwellings, on a larger site that was not previously developed land and where the details of the scheme were available to fully analyse the effect on the character and appearance of the area. I do not therefore consider it determinative in this appeal where the site circumstances mean that there is compliance with Policy 3 of the Local Plan and at this permission in principle stage only matters of location, land use and amount of development can be considered.
39. Accordingly, in conclusion when examining the main issues in this case, the development plan would support, in principle, the proposal in this location because of the compliance with Policy 3 of the Local Plan. The residential land use would be acceptable and the amount of development, being one dwelling, would be achievable given the space available. On this basis, the development plan requirements, at this permission in principle stage, have been met. In particular, there would be either compliance with, or no conflict with, Policies 1, 2, 3, 7 12, and 23 of the Local Plan, Policies 1, 6, 7 and 10 of the St Agnes NDP and the Framework which amongst other things, set the strategic framework for the delivery of housing development across the plan area.

Other Matters

40. I have taken into account the objections to the development from local residents and St Agnes Parish Council. I have considered the main issues in this appeal in the analysis above. That the proposal lies outside the settlement boundary is understood, however, as I have explained, the criteria under Policy 3 of the Local Plan can allow the use of previously developed land for residential development outside a settlement to be considered policy compliant. I do not consider that the provision of a dwelling on this site should lead to highway safety concerns either in terms of the entrance or access road to Eastcliff.
41. Furthermore, if permission in principle was to be granted, I do not consider that this would set a precedent or necessitate the approval of any other site in the vicinity. Each proposal would need to be considered on its merits, including in terms of having regard to the lawful use of the site, the relationship to the settlement boundary and the impact on the character and appearance of the area.

Conditions

42. It is not possible for conditions to be attached to a grant of permission in principle and its terms may only include the site location, the type of development and amount of development. Conditions may be attached to any approval at the technical details consent stage.
43. Where permission in principle is granted by application, such as this, the default duration of that permission is three years, and there is no justification to vary this period in this case.

Conclusion

44. For the reasons set out above, I conclude that the appeal should be allowed and permission in principle granted for a minimum of one and a maximum of one dwelling.

David Wyborn

INSPECTOR