



Appeal Decision

Site visit made on 18 December 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2024

Appeal Ref: APP/D0840/W/23/3316689

Sunnyside, A3078 Between Chy Mor and Trethem Mill, Trethewell, St Just in Roseland, Cornwall TR2 5JE

- 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 Chris White and Sophie Hare-Scott against the decision of Cornwall Council.
 - The application Ref PA22/06491, dated 14 July 2022, was refused by notice dated 27 September 2022.
 - The development proposed is open market infill dwelling within garden area.
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Decision

1. The appeal is allowed and planning permission is granted for open market dwelling within garden area at Sunnyside, A3078 Between Chy Mor and Trethem Mill, Trethewell, St Just in Roseland, Cornwall TR2 5JE in accordance with the terms of the application, Ref PA22/06491, dated 14 July 2022, subject to the conditions set out in the attached schedule.

Applications for costs

2. An application for costs was made by Chris White and Sophie Hare-Scott against Cornwall Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of development in the banner heading and decision above is taken from the planning application form, albeit with the word 'proposed' omitted as this word does not refer to an act of development.
4. The Government published the revised National Planning Policy Framework on 19 December 2023 (Framework). The main parties have had an opportunity to comment on the significance of the changes, and I have taken any relevant comments into consideration.
5. Notwithstanding the announcement that all designated Areas of Outstanding Natural Beauty are to be renamed National Landscapes. I have referred to these designated landscapes as Areas of Outstanding Natural Beauty (AONB) in my decision below, which is the existing terminology that is referred to in the Framework.
6. The site is within the Zone of Influence of the Fal and Helford Special Area of Conservation (SAC). This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). Although not an issue raised by the Council in its reasons for refusal, the Council has made it clear from an early

stage that the site is within the Zone of Influence of the SAC. It is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the European Site. As such, it is necessary to consider this matter as a main issue. As the main parties have commented on this matter, I am satisfied that their interests would not be prejudiced by me doing so.

7. The appellants made an undertaking pursuant to s111 of the Local Government Act 1972 for a financial contribution towards Strategic Access Management and Monitoring (SAMM) of the SAC and paid the specified sum to provide mitigation. The Council has confirmed payment receipt in this respect. I will consider the matter later.

Main Issues

8. The main issues are

- whether the proposed development would be in a suitable location for a dwelling, having regard to local and national planning policies; and,
- the effect of the proposed development on the integrity of the Fal and Helford SAC.

Reasons

Location

9. The development plan comprises the Cornwall Local Plan Strategic Policies 2010-2030 (adopted November 2016) (the CLP) and the Roseland Neighbourhood Development Plan 2015-2030 (adopted May 2015) (the RNDP).
10. The CLP seeks to ensure that development occurs in the most sustainable locations in order to protect the open countryside from harmful development. The Council's settlement strategy contained within Policy 2 of the CLP provides a sustainable approach to accommodating growth and maintaining the dispersed development pattern of Cornwall and provide homes based on the role and function of each place. Policy 3 of the CLP aims to steer the majority of new housing towards the main towns. However, the policy does allow a limited amount of new development to take place outside the main towns in circumstances which are listed in part 3 of the policy, including through; the identification of sites within neighbourhood plans, rounding off of settlements and development of previously developed land within or immediately adjoining the settlement, infill schemes and rural exception sites.
11. In accordance with paragraph 1.68 of the CLP, in smaller villages and hamlets in which 'infill' sites of one or two housing units are allowed, the settlement should have a form and shape and clearly definable boundaries, not just a low-density straggle of development.
12. Policy GP1 of the RNDP refers to sustainable development and seeks development that makes a positive contribution to sustainable development, enhancing the self-reliance of the local community and economy. RNDP Policy GP3 supports development comprising infilling, re-use of existing buildings, or previously developed land within the main settlements, including Gerrans/Portscatho, Portloe, St Just in Roseland, St Mawes and Veryan/Veryan Green. Development outside these settlements will be treated as an exception.

Policy HO4 of the RNDP provides support for infill affordable housing led schemes, but outside the settlement boundaries the policy requires that proposals comprise 100% affordable housing.

13. The appeal site relates to part of the garden associated with Sunnyside, which is a detached dwelling that lies adjacent to the A3078 highway. The site is boarded on two sides by residential development and there is residential development on the opposite side of the highway. A copse of trees and open farmland lies to the rear of the site.
14. The site lies within the hamlet of Trethewell and is part of a network of settlements, including St Just in Roseland, with some local services and facilities. However, Trethewell is not a settlement as defined through the RNDP. Consequently, in accordance with the RNDP, development of the appeal site should be treated as an exception where, compliant with RNDP Policy HO4, housing development should comprise 100% affordable housing.
15. Nevertheless, as mentioned above, part 3 of CLP Policy 3 provides that infill schemes that fill a small gap in an otherwise built-up frontage and do not physically extend the settlement into the open countryside can support housing growth.
16. Trethewell is a well-defined group of dwellings with a collective name. There is no dispute that the appeal site is within the physical extent of Trethewell, forms a small gap in an otherwise built-up frontage of the hamlet, and that the proposal would not physically extend development into the open countryside.
17. The proposal is for a single dwelling. The site has the character of being part of the clear form and shape of Trethewell and would contribute to the sense of a coherent pattern of the shape and form of the hamlet. As such, the proposal would constitute suitable 'infill' for the purposes of CLP Policy 3 part 3. Whilst I note paragraph 1.68 of the CLP advises that Neighbourhood Plans can provide detailed definition on which settlements are appropriate for infill and boundaries to which the policy will operate, it does not indicate that housing should not otherwise be delivered where it would accord with CLP Policy 3.
18. The appeal scheme would therefore comply with Policies 1, 2 and 3 of the CLP, which together seek to direct development to settlements, including in relation to infill schemes that fill a small gap in an otherwise built frontage. As I have found that the proposal would represent an acceptable form of infilling for the purposes of the CLP, I find no conflict with CLP Policy 7, which is concerned with housing in the countryside. Given that Trethewell is a settlement for the purposes of the CLP, I also find no conflict with Policy 9 of the CLP, which is concerned with rural exceptions sites.
19. Notwithstanding this, as outlined above, RNDP does not identify Trethewell as a settlement and Policy GP3 requires that, outside the settlements that have been identified, development shall be treated as an exception. Policy HO4 of the RNDP requires that in such circumstances housing schemes should provide 100% affordable housing only.
20. The proposal is for an open market dwelling, which for the purposes of the RNDP is located outside the settlement. I acknowledge the statement of conformity and the need for affordable housing as highlighted by the Council. For these reasons, the scheme would not strictly comply with Policies GP3 and

HO4 of the RNDP and, as such, the principle of development would not be supported by the RNDP.

21. Notwithstanding, there is no dispute that the design, scale and materials of the proposed dwelling would reflect the distinctive character of the area. Although a large dwelling, the proposal would sit comfortably in the plot and infill a gap between existing development, where it would integrate with existing housing. The appeal scheme would not lead to the loss of important green gaps or spaces between settlements and would provide suitable access for the traffic generated by the proposal. Accordingly, the proposal would comply with Policy GP2 of the RNDP.
22. The site lies within the AONB. Paragraph 182 of the Framework requires that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs. Moreover, RNDP Policy LA1 requires that development conserves and enhances the diverse landscape and special qualities of the AONB. Having regard to the scale and nature of the development proposed together with its relationship with existing developments, the proposal would not have an adverse effect on the AONB and would comply with Policy LA1 of the RNDP.
23. In summary, whilst Trethewell is a hamlet and the appeal scheme would infill a small gap in an otherwise built frontage, the site lies outside the boundary of a settlement identified by Policy GP3 of the RNDP. The proposal is for an open market dwelling and would not, considering the above therefore, strictly accord with Policies GP3 and HO4 of the RNDP. Nevertheless, the appeal scheme would comply with Policies GP2 and LA1 of the RNDP. Moreover, the appeal scheme would comply with the provisions of Policies 1, 2 and 3 of the CLP. It would also comply with those parts of the Framework which concern rural housing.
24. The appeal scheme would provide an additional unit towards the housing supply. There would be benefits arising from the construction period and future spend of occupants giving support to local services and facilities. Given only one dwelling is proposed, the contribution would be limited, and I give this factor modest weight even though the Council can demonstrate a sufficient housing land supply. These are materially positive benefits which weigh in favour of the scheme.
25. It is possible for development plan policies to pull in different directions. The Planning and Compulsory Act 2004 (s38) indicates that where there is conflict between policies, the conflict must be resolved in favour of the policy contained in the most recent plan. In this instance, I attach more weight to the appeal scheme's compliance with the policies of the CLP given its more recent adoption when compared to the date of the adoption of the RNDP.
26. For the above reasons, there would be no conflict with the judgement in *Barwood Strategic Land v East Staffordshire BC and SSCLG [2017] EWCA Civ 893* where it was held that, where a proposed scheme conflicts with an up-to-date development plan, the starting point for analysis should not be that there is a presumption in favour of development.

Fal and Helford SAC

27. Features of interest within the SAC include saltmarsh, intertidal mudflats, subtidal sandbanks, large shallow inlets and bays, estuaries, and reefs. The SAC is protected pursuant to the Habitats Regulations.
28. Recreational pressure, predominantly from those living or staying within the zone of influence causes harm to the habitats within the SAC. Additional residents from the proposal could result in adverse effects on the integrity of the SAC. As a result, alone and in combination with other development, the proposal would have a significant effect on the SAC.
29. Accordingly, as the competent authority in the context of this appeal, I am required to carry out an Appropriate Assessment under the Regulations. Mitigation has been developed in the form of SAMM, to avoid such adverse effects, funded through proportionate developer contributions. In this case, the appropriate contribution has been secured. I have consulted Natural England, who have not objected to the proposal.
30. On this basis, in carrying out the Appropriate Assessment, the adverse effects of the proposal on the integrity of the SAC would be avoided. The undertaking and payment are necessary to make the development acceptable in planning terms, are directly related to the proposal and are fairly and reasonably related in scale and kind to it. For these reasons, the proposal would not harm the integrity of the SAC.

Other Matter

31. Reference has been made by the appellants to a number of application and appeal decisions. Those examples appear to differ from the current proposal in several ways, including in terms of the appeal proposal's location. This limits the equivalence of the other cases to the current proposal. Moreover, I am required to assess the proposal on its own merits. Having done so in this case, I have found the proposal to be acceptable for the reasons set out.

Conditions

32. The Council has provided draft conditions, in the event that the appeal was allowed. I have assessed these against the relevant tests set out in the Framework and I have amended the wording accordingly, where this is necessary. I have limited the use of pre-commencement clauses to where it is essential for the condition to achieve its purpose and I sought the written agreement of the appellants to the pre-commencement conditions. I have had regard to any comments received where necessary.
33. As well as the standard time condition, a condition specifying the approved plans is necessary to provide clarity and in the interests of certainty.
34. In the interests of an effective drainage system to minimise flood risk and in the interest of public health a condition would be manifestly necessary to secure details of surface and foul water drainage schemes. There is some detail with the submitted information to indicate the materials to be used, but this is not at a level sufficient to ensure suitable materials are to be used. In the interests of the character and appearance of the building and the surrounding area, conditions requiring details of materials and landscaping to be submitted and approved would be reasonable and necessary. Given the integral nature of

landscaping and materials, it is necessary to secure the details prior to commencement.

35. In the interests of the living conditions of neighbouring occupiers, with particular regard to privacy, it is necessary to ensure windows within the north east elevation are obscure glazed and to control the subsequent addition of first floor windows in this elevation. However, given the distance between buildings, it would not be necessary or reasonable to require that these be permanently fixed closed.

Conclusion

36. For the reasons given above, I conclude that the proposal would comply with the Development Plan, read as a whole. The appeal should therefore be allowed.

J White

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin no later than 3 years from the date of this decision.
2. The development hereby approved shall not be carried out except in accordance with the details shown on the following approved plans, 2769-3-350A and 2769-3-360.
3. The development hereby permitted shall not be occupied until the installation of a system to serve the development for the disposal of foul and surface water drainage 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 if required. The system shall be retained and maintained thereafter in accordance with the approved details.
4. No development shall commence until details of the materials to be used in the construction of the external surfaces (doors, windows, lintels, sills, rendering and cladding, roof covering and method of fixing) of the dwelling hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.
5. No development shall commence until full details of hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out in accordance with the approved details prior to the occupation of the dwelling unit hereby permitted and notice shall be given to the Local Planning Authority when the approved scheme has been completed. The protection measures proposed shall be completed in accordance with the approved scheme before the development hereby permitted commences and shall thereafter be retained until it is completed.

All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner.

Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species as those originally planted.

Notice shall be given to the Local Planning Authority when the approved scheme has been completed. The approved details shall be retained thereafter.

The hard and soft landscaping details shall include:

- proposed finished ground levels or contours;
- means of enclosure;
- car parking layout;
- other vehicle and pedestrian access and circulation areas;

- hard surfacing materials;
- minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.);
- proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc. indicating lines, manholes, supports etc.).

The landscaping scheme shall provide planting plans with written specifications including:

- Details of all existing trees and hedgerows on the land, showing any to be retained and measures for their protection to be used in the course of development
 - Full schedule of plants
 - Details of the mix, size, distribution and density of all trees/shrubs/hedges
 - Cultivation proposals for the maintenance and management of the soft landscaping.
6. Before the first occupation of the dwelling hereby permitted the windows on the north east elevation serving the en-suites shall be fitted with obscure glazing and the windows shall be permanently retained in that condition thereafter and no new openings shall be created in that elevation at first floor level.

End of Schedule