



Appeal Decision

Site visit made on 22 April 2024

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 May 2024

Appeal Ref: APP/D0840/W/23/3328642

Land East of Roseland Terrace, Zelah, Truro, Cornwall TR4 9HL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr M James against the decision of Cornwall Council.
 - The application Ref is PA22/09054.
 - The development proposed is the construction of 5 dwellings for self build.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development indicates that the five dwellings would be for self-build. However, there is very little information or confirmation on how the scheme would be delivered to meet the requirements of a self-build or custom build development. The Planning Practice Guidance (the Guidance) explains that in considering whether a home is a self-build or custom build home, relevant authorities must be satisfied that the initial owner of the home will have primary input into its final design and layout. It further sets out that off-plan housing, homes purchased at the plan stage prior to construction and without input into the design and layout from the buyer, are not considered to meet the definition of self-build and custom build housing. In this case, the application is a detailed proposal with the layout of the site, together with the design, appearance, external materials and internal layout of the dwellings, all specified in the submissions.
3. If permitted, a future occupant may be able to purchase a plot on the site but would not have the primary input into the design and layout to accord with the requirements of a self-build or custom build dwelling. It would not be appropriate or reasonable for a condition in any approval to seek to address this fundamental issue. In the absence of a planning agreement which would resolve this matter, I do not consider that the development could be considered to meet with the requirements for a self-build or custom build scheme.
4. In these circumstances, the proposal is effectively a development of five open market dwellings and I have considered the proposal on this basis.
5. The appellant has explained that, at the application stage, the proposal was accompanied by a completed undertaking pursuant to s111 of the Local Government Act 1972. This included a payment to mitigate the recreational impacts from residents of the new housing on the Fal and Helford Special Area of Conservation (SAC) and the Penhale Dunes SAC. I believe that this would

adequately mitigate the impacts on these European habitat sites, such that the proposal, either alone or in combination with other schemes, would not be likely to have an adverse effect on the integrity of these sites.

Main Issues

6. The main issues are:

- whether or not the development plan would support the proposed housing in this location,
- the effect of the development on the character and appearance of the area,
- whether or not the development would make efficient and effective use of the land,
- the effect of the development on biodiversity with particular reference to any impact on slow worms and/or common lizards, and
- whether or not the scheme would make adequate provision to address any impact on education infrastructure.

Reasons

Location

7. Policy 3 of the Cornwall Local Plan Strategic Policies 2010-2030 (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.
8. 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.
9. The appeal site is not advanced as a rural exception site, has not been identified for development in a neighbourhood plan and is not previously developed land.
10. Furthermore, given the separation between the properties in the vicinity of the main road through Zelah and those in Roseland Terrace, the scheme would not fill a small gap in an otherwise continuous built frontage. Consequently, the development would not constitute an infill development within the meaning of Policy 3 of the Local Plan.
11. The scheme is advanced as compliant for a rounding off scheme under Policy 3 of the Local Plan. The supporting text to this policy explains that rounding off applies to development on land that is substantially enclosed but outside the urban form of the settlement and where its edge is clearly defined by a physical feature that also acts as a barrier to further growth. The supporting text also explains that development should not visually extend development into the open countryside.

12. The Advice Note provides further and more detailed commentary to help assess whether a scheme meets with the requirements of rounding off. This includes that rounding off provides a symmetry or completion to a settlement boundary and that a judgement will be required on a case by case basis as to whether a site has the appearance of being within the physical boundaries of that settlement.
13. In this case, the character of the built-up area along the main part of Zelah is generally a mix with some detached, semi-detached and terrace properties in a linear pattern, with some housing occasionally set behind others. Those properties that are close to the junction with the lane to the appeal site tend to form a tighter grouping than elsewhere along this section of the main road.
14. The appeal site consists of two fairly modest sized fields, with an agricultural building along part of the western boundary, which in the past benefited from a permitted development approval for residential use. Further to the west are the properties at Roseland Terrace which are formed in three blocks and again have a fairly compact form. This housing, and the associated parking and open grassed space, has a reasonably developed feel that is distinct from the more rural surroundings.
15. The lane that links from the main built form of Zelah to the housing at Roseland Terrace has well established vegetation along its boundaries. The height and form of this vegetation, together with the reasonably narrow width of the lane, create elements of a rural character. However, this contribution to the character of the area is limited by the fairly short length of lane before the housing at Roseland Terrace, the street lighting and that the village recreation ground, behind vegetation, is alongside part of the northern side of this road.
16. When within the site, especially the eastern field, the presence of some of the housing in the main road is clearly evident and this exerts a built influence within this adjoining section of the field. The housing in Roseland Terrace is also perceptible through the trees. The two appeal fields are, therefore, close to and have elements of a built context and with them adjoining a lane that has some components, such as the presence of street lighting and the position of the recreation ground, that provide some impression of a village location.
17. The appeal site fields are a green, undeveloped open space but because of the closeness of the village and the elements of a built context, the appeal site does not have the appearance or character of being open countryside. It has more of a visual association with the adjoining built form and is a space between these parts of the village.
18. In terms of potential barriers to growth after any development, the lane, together with the east and west outer boundaries of the fields could provide clear boundaries, albeit that there is a space outside the appeal site adjoining the western boundary. Furthermore, the appeal site spans a reasonably modest space between built areas in terms of the village as a whole. In assessing the site, I have also taken into account the previous permitted development approval for the conversion of the agricultural barn to a dwelling and, while this has now lapsed, that an application is in the process of being registered to seek to reinstate this development.
19. Taken all these features together, the site can be considered to visually fall within the boundaries of the settlement for the purposes of applying Policy 3 of

the Local Plan. However, the appeal fields effectively merge with the field to the south and where it is such that the southern boundary of the appeal site is not a meaningful physical feature that would act as a barrier to further growth. This situation would not accord with the requirements for a rounding off scheme as specified in paragraph 1.68 of the Local Plan. Furthermore, the advice in the Advice Note explains that development resulting in the creation of a further site for rounding off is unlikely to be rounding off in itself. Additionally, because of the pattern of the existing built form, with Roseland Terrace extending further to the south than the two fields, development of the appeal site would not provide a symmetry or completion to the settlement boundary.

20. In these circumstances, I am not satisfied that the development of these two fields, having regard to the pattern of existing development and the nature of the boundary along the southern boundary, would be such that the proposal should be considered as a policy compliant rounding off scheme under Policy 3 of the Local Plan.
21. I have had regard to an appeal decision¹ that the appellant has highlighted in support of this appeal. This was a case where the Inspector considered the particular circumstances of that site, including the nature of the boundaries of the land and the relationship to the surroundings and their character, and came to the view that the scheme was policy compliant. I have applied the same approach, and having regard to the circumstances of this development and the application of Policy 3 of the Local Plan, I consider that the balance falls against the proposal meeting the necessary requirements of a rounding off scheme. I therefore attribute this other appeal decision limited weight in influencing the detailed and site specific circumstances in this appeal.
22. Accordingly, I conclude that the scheme would not meet with the requirements of a policy compliant rounding off scheme and would, therefore, not accord with Policy 3 of the Local Plan. It follows, the housing would also not accord with Policies 1, 2 and 7 of the Local Plan, which together with Policy 3, establish the development plan approach to the provision of housing across the plan area.

Character and appearance

23. The appeal scheme would comprise five detached houses set across the two fields. They would have a suburban layout which would take little reference from the built context and pattern of, in places, the more compact forms of development at each end of the lane. Indeed, the scheme would not appear to take inspiration from the positive elements of the local character that make the village distinctive, including the mix and form of development. If developed at this low density and, with the houses and layout in the form proposed, it would appear as an alien enclave unrelated to the surrounding pattern and identity of the village.
24. For these reasons, the scheme would not meet with the National Planning Policy Framework (the Framework) requirement that development should be sympathetic to local character, including the surrounding built environment and landscape setting.

¹ Appeal Ref: APP/D0840/W/22/3298255 Land south of Rosemerryn, St Ruan, Ruan Minor TR12 7JS

25. As a consequence, I conclude that the development would harm the character and appearance of the area and thereby conflict with Policies 1, 2, 12, 13 and 23 of the Local Plan and the Framework which, in this regard, seek to respect and enhance the quality of place.

Efficient and effective use of the land

26. The Framework has a section titled making effective use of land which explains that decisions should support development that makes efficient use of land, including the desirability of maintaining an area's prevailing character and setting. This policy approach is supported by Policy 21 of the Local Plan which concerns the best use of land and existing buildings. This Policy includes that encouragement will be given to sustainably located proposals that increase building density where appropriate, taking into account the character of the surrounding area and access to services and facilities to ensure an efficient use of land.
27. The appeal scheme would comprise five detached houses set across most of the two fields. The proposal would develop that site with dwellings well-spaced apart, detached from each other such that they would generally appear to be at a lower density than the immediate built surroundings. The scheme would miss the opportunity to develop the site at a higher density that could include some of the types of properties that are found in the vicinity and which make more efficient use of their sites. Consequently, the proposal would not result in an efficient and effective use of the land and this is especially when the proposed layout of development would be out of character with the surrounding built form.
28. Additionally, the adjoining field to the south, and a section of the western field outside the red lined area and beyond the barn, have much of the same character as the appeal site. Consequently, if development at the appeal site was to be accepted, a similar argument could be made for development of these adjoining field areas as well. In these circumstances the appeal scheme, because of its layout, could preclude development of this adjoining land. Consequently, this would not lead to an effective and efficient use of the land around this part of the settlement of Zelah, and this adds to the concerns with the inefficient use of the appeal site.
29. Furthermore, if a scheme was to be proposed for a more efficient use of the land, then there is the potential that an increased number of units may lead to a requirement for an element of affordable housing. This provision of affordable housing would, therefore, be an additional benefit of any scheme that resulted from a more efficient and effective use of the site.
30. Accordingly, I conclude that the proposal would not make efficient and effective use of the land and that this would be contrary to Policies 1, 2, 8, 12 and 21 of the Local Plan and the Framework in this respect.

Biodiversity

31. The scheme was accompanied by a Preliminary Ecological Appraisal (September 2016) and an updated Preliminary Ecological Appraisal (PEA 2022) (December 2022). This later report explains that the findings of that report are valid for 12 months from the date of the survey and, if work has not

commenced within this period, an updated survey by a suitably qualified ecologist will be required.

32. The PEA 2022 concludes, amongst other things, that there is potential for slow worm and common lizard to be present within the hedgerow/hedgebank and grassland habitat found on the site. The PEA 2022 sets out that current development plans will result in loss of this habitat, and further survey work is required to inform Reasonable Avoidance Measures. It is explained that these further surveys should involve seven monitoring visits to inspect artificial reptile refugia during the reptile active period, late March to October, and that dependent upon the outcome of these results, a scheme for reptile translocation may be required.
33. The appellant has explained that given the time of year of the recommendation to refuse, being February, and the report being specific that the Reptile Refugia surveys should be completed March – October it was a physical impossibility for the applicant to complete this work. The case is made that a planning condition could have been utilised to simply address this at the application stage or now at the appeal stage.
34. Paragraph 99 of the Biodiversity Circular² explains that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. Furthermore, the Circular sets out that the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted.
35. While I note the submissions made by the appellant, in this case, the required surveys for slow worms and common lizards have not been completed and, therefore, the impact of the development on these species cannot be fully considered. This is an important material consideration which needs to be addressed as part of this decision-making process. It would not be appropriate to leave this matter for resolution at a later date when the effect on these species is not clear. There are not the exceptional circumstances in this case that would justify leaving this matter to a planning condition in any approval.
36. In the light of the above analysis, I conclude that it is necessary to take a precautionary approach and that the scheme does not adequately address any potential adverse effects on biodiversity with particular reference to the impact on slow worms and common lizards. Accordingly, the scheme would conflict with Policy 23 of the Local Plan and the Framework which in this regard requires that development conserves and enhances the natural environment.

Education infrastructure

37. The Council's approach to seeking education contributions is set out in the Section 106 Planning Obligations Guidance for Education Provision (the Education Guidance). This explains the circumstances when a s106 education contribution, of the specified amount per qualifying dwelling, will be charged.

² ODPM Circular 06/2005 - Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System – 16 August 2005.

38. The Council's Education and Early Years Service has explained that local primary and secondary schools are operating close to or beyond their pupil capacity. In particular, Goonhavern Primary School has more pupil numbers than capacity. Consequently, it is explained that a financial sum would be required to provide additional pupil places to directly mitigate the impact of the proposed development.
39. I am satisfied that the circumstances, with the provision of five dwellings within a catchment area where a school is at capacity, would justify the provision of an education contribution and this would meet with the tests for planning obligations³. This would also accord with the general approach of Policy 28 of the Local Plan which concerns the need to provide local infrastructure that would be adversely affected by the development but which will not be delivered on that site.
40. The appellant has confirmed a willingness to pay the education contribution and explains that this requirement was not conveyed during the processing of the application. It is argued that this could be addressed by a suitably worded condition at either the application stage or as part of this appeal. However, the Education Guidance specifies that the required sum should be secured through a s106 agreement and, as part of this appeal, there is no such agreement before me.
41. Additionally, the Guidance advises it is only in exceptional circumstances that a negatively worded condition should require a planning obligation or other agreement to be entered into before certain development can commence may be appropriate. It is explained that this is where there is clear evidence that the delivery of the development would otherwise be at serious risk (and that this may apply in the case of particularly complex development schemes). This scheme is not particularly complex and I consider that there are no exceptional circumstances that would justify a negatively worded condition that would require an obligation to secure the education contribution.
42. In the light of the above analysis, I conclude that there is a need for an education contribution to mitigate the impact of the development and, in the absence of a completed planning agreement, the scheme would not make adequate provision to address the impact on education infrastructure. As a consequence, in this respect, the scheme would conflict with Policy 28 of the Local Plan and the Framework.

Other Matters

43. I have taken into account the objections from local residents and I have considered the main planning issues in this appeal under the headings above. Other matters have been raised, such as there being no mains drainage. On this issue, I have no technical reason to believe that a separate treatment plant would not satisfactorily deal with foul water on the site and in respect of other objections they are not of such significance to be considered issues that should weigh against the proposal.
44. The Council Highway Officer has not raised objection to the development subject to details being agreed. While I have noted the concerns regarding the safety issues which have been raised, I do not consider that there is a

³ Set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

substantive technical or safety reason to disagree with the view of the Highway Officer in this case.

45. I appreciate that St. Allen Parish Council has expressed support for the proposal and include in its initial response the comment that it would wish to see the plot layout remain as it would give privacy to the surrounding properties. I have expressed concerns with the plot layout and I consider that there is no reason that an alternative layout which was more compatible in terms of its impact on the character and appearance of the area could not also ensure the privacy of the surrounding properties.

Planning Balance and Conclusion

46. The proposal would not meet with the requirements of a rounding off scheme in accordance with Policy 3 of the Local Plan. Furthermore, the development would harm the character and appearance of the area, would not deliver an efficient and effective use of the land, would not adequately address some potential adverse effects on biodiversity and would not provide for the required education contribution. These are significant and wide ranging adverse impacts and should, collectively, be attributed very substantial weight against the scheme. These harms and related policy conflicts are such that the scheme would conflict with the development plan when considered as a whole.
47. On the other hand, the development would deliver five family sized dwellings on a windfall site and provide a boost to housing supply. Occupants of the dwellings would be within easy walking distance of the very limited local services and facilities in the village and would have links to the wider area via the local bus service. The development would bring social and economic benefits to the local economy during construction and in subsequent occupation, albeit that they would be limited by the extent of the development and the construction works by the size of the project.
48. The new housing could be designed to provide high levels of sustainability for occupants to minimise their carbon use. With the size of garden spaces available the scheme could provide accommodation for occupants that would provide high quality living conditions. Notwithstanding the vegetation on the site, particularly around the field boundaries, a worthwhile increase in biodiversity could be achieved by the development.
49. Furthermore, the housing could be delivered reasonably quickly, by a small or medium sized builder, and would add to the mix and variety of housing in the local area. Importantly, the scheme would help to address, in a small way, the Climate and Housing Crisis that has been declared in Cornwall.
50. These are all meaningful and worthwhile benefits of the development. However, as only five dwellings are proposed, and in an area where the Council can demonstrate a Framework compliant supply of housing land, I consider that the cumulative benefits of the development should be attributed moderate weight in favour of approval.
51. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
52. To summarise, I consider that the collective benefits should merit moderate weight in favour of approval and they would not be outweighed by the

identified harm and policy conflicts which I cumulatively afford very substantial weight against the proposal. I therefore conclude that the proposal is contrary to the development plan when considered as a whole and there are no material considerations of such weight to outweigh that finding.

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

David Wyborn

INSPECTOR