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# Appeal Decision

Site visit made on 9 May 2024

**by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 June 2024**

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**Appeal Ref: APP/D0840/W/23/3326511**

**Land East Of Wesley Road, Cubert, Newquay, Cornwall TR8 5HB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant permission in principle.
  - The appeal is made by Kingsley Homes Limited against the decision of Cornwall Council.
  - The application Ref is PA23/01150.
  - The development proposed is permission in principle for the erection of up to five dwellings.
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## Decision

1. The appeal is allowed and planning permission is granted for permission in principle for the erection of up to five dwellings at Land East Of Wesley Road, Cubert, Newquay, Cornwall TR8 5HB in accordance with the terms of the application, Ref: PA23/01150, dated 10 February 2023.

## Applications for costs

2. An application for costs was made by Kingsley Homes Limited against Cornwall Council. That application is the subject of a separate decision.

## Preliminary Matters

3. The appeal proposal is for a Permission in Principle. The Planning Practice Guidance (the PPG) advises that this is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle for the proposed development (first stage) from the technical detail (second stage). The appeal proposal is at the first stage and therefore I have considered the principle of the scheme.
4. The PPG advises that the scope of permission in principle applications at the first stage, is limited to location, land use and amount of development. The amount of residential development must be expressed as a range, indicating the minimum and maximum number of new dwellings. In this case, permission for up to five dwellings is being sought. I have determined the appeal on this basis.

## Main Issue

5. The main issue is whether the principle of the proposed development is acceptable, having regard to the location of the appeal site and to the policies of the development plan.

## Reasons

6. The appeal site comprises the western section of a field located at the periphery of Cubert at its eastern edge. The site is bounded to the south by an affordable housing led residential development of thirty homes (the Exceptions Site) and to the west by Wesley Road. To the north of the site is a residential development of two dwellings (the Homeslink Site). To the east of the site is agricultural land.
7. The Council's settlement strategy is contained within Policy 2 of the Cornwall Local Plan Strategic Policies (2010-2030) (the Local Plan). It sets out a sustainable approach to accommodating growth and maintaining the dispersed development pattern of Cornwall and providing jobs in a proportional manner based on the role and function of each place. Policy 3 of the Local Plan sets out the strategy for the delivery of housing across Cornwall and growth is centred on the named, larger settlements within the county. Policy 7 of the Local Plan concerns Housing in the countryside, and provides support for development proposals outside of settlements where it is shown that special circumstances exist, listing a number of criteria against which proposals may be assessed.
8. There is no doubt that Cubert constitutes a settlement in the context of the Local Plan. However, there is dispute as to whether the appeal site is located within the settlement or within the open countryside for planning purposes. In that regard I have been referred to the wording and supporting text of Policy 7 of the Local Plan, as well as to the Chief Planning Officer's Advice Note – Infill/Rounding Off (December 2017) (the CPOAN). Whilst being informal guidance, the CPOAN provides clarity on the approach to be adopted in relation to such matters, and as such I have had regard to this advice. I have also been referred to provisions of the emerging Cubert Neighbourhood Plan (the ENP), and to a previous appeal<sup>1</sup> at this site (the Previous Appeal) which similarly concerned an application for permission in principle for up to five dwellings.
9. I acknowledge that the ENP sets out a development boundary for Cubert, and which places the appeal site immediately adjacent to and outside of the settlement. However, the ENP has not been adopted, with the evidence before me confirming that a working draft neighbourhood plan has been produced for which comments have been invited. As such and given its consequent potential to change, the ENP has only limited weight in my assessment of this appeal.
10. I further acknowledge that the Inspector in the Previous Appeal considered that the appeal site formed part of the expansive swathe of countryside which, at that time, extended eastwards from Wesley Road. However, it is noted that the determination of the Previous Appeal was made prior to the approval of reserved matters for the residential development at the Exceptions Site, and prior to the redevelopment of the above described Homeslink Site situated north of the appeal site. Consequently, the appeal site situation has changed since the date upon which the Previous Appeal was determined.
11. The supporting text to Policy 7 of the Local Plan provides that open countryside is defined as the area beyond the physical boundaries of existing settlements where they have a clear form and shape. The CPOAN contains similar guidance that open countryside is beyond the physical boundaries of existing settlements and is part of an expansive area before the next settlement.

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<sup>1</sup> Appeal Reference: APP/D0840/W/20/3258348

12. From observations made on my visit, the site is now intimately related to the Homeslink Site development, the Exceptions Site development and to housing on the western side of Wesley Road. In my view the appeal site no longer forms part of the expansive swathe of countryside located east of Cubert, nor forms part of an expansive area between Cubert and the next settlement. The appeal site now forms part of a gap in built form along the eastern side of Wesley Road and, where seen from within the surrounding area, would be seen in the context of adjacent housing, reading as part of the settlement.
13. As above, I acknowledge that the residential development to the south of the appeal site was approved as an exceptions site for the purposes of the development plan, and note that such sites are only supported by rural exceptions sites Policy 9 of the Local Plan if they are located outside of but adjacent to settlements. However, the Exceptions site has been approved and as I observed on my visit, now clearly forms part of the built up area of the settlement.
14. The proposal is not for an affordable housing led scheme and, for the above reasons, I conclude that the appeal site now reads as being within the settlement at Cubert and not within the countryside. Consequently, the provisions of Policies 7 and 9 of the Local Plan do not apply in this instance. Nonetheless, the proposal must be assessed against the provisions of Policy 3 of the Local Plan.
15. Cubert is not listed as a named settlement within Policy 3 of the Local Plan. However, at such settlements housing is to be delivered through rounding off of the settlement and development of previously developed land (PDL) within or immediately adjoining that settlement, rural exceptions sites, and the identification of sites through neighbourhood plans. There is currently no adopted neighbourhood plan, nor would the proposal constitute use of PDL. Furthermore, the eastern boundary of the appeal site is open to the remainder of the field, providing no physical feature that would act as a barrier to further growth. As such the proposal would not represent rounding off.
16. Notwithstanding the above, Policy 3 of the Local Plan also provides that within a settlement such as Cubert, housing can be delivered through infill schemes that fill a small gap in an otherwise continuous built frontage and do not physically extend the settlement into the open countryside. Development of the site would not extend the settlement into the countryside given that the appeal site now reads as forming part of the settlement.
17. In terms of infill, Policy 3 of the Local Plan further provides that proposals should consider the significance or importance that large gaps can make to the setting of settlements and ensure that this would not be diminished. These considerations in terms of infill are replicated within the CPOAN, but which further advises that the layout and density of development should be in character with and similar to others in the continuous frontage. The density and layout of development are matters that fall under consideration of the second stage of a permission in principle.
18. As above, the appeal site now forms part of a gap in built form along the eastern side of Wesley Road. In terms of the size of that gap, whilst noting that the supporting text to Policy 3 of the Local Plan indicates that large gaps are those that are "*bigger than one or two dwellings between buildings or groups of buildings*", the policy itself does not specify that one or two dwellings would be

the upper limit for what would constitute a small gap in an otherwise continuous frontage. As such, and consistent with the findings of the Inspector in the Previous Appeal, it is the significance of the gap that must be considered in the context of the settlement.

19. The appeal site now reads as being part of the settlement and, by reason of the presence of the development to the north and the housing development to the south and which somewhat encloses the site, the appeal site no longer forms part of the transition between the settlement and the sensitive countryside beyond and east of the appeal site. When seen from the wider surrounding area east of Cubert, the proposal would be seen in the context of the adjacent housing and the housing on the western side of Wesley Road. From within Cubert views to the east of the settlement are now dominated by the adjacent development at the Exceptions Site. Consequently, the appeal site no longer contributes to the rural feeling of the village edge, nor makes an important contribution to the setting of Cubert.
20. In summary of the above, the appeal site forms part of the settlement and consequently the provisions of Policies 7 and 9 of the Local Plan do not apply in this instance. The scheme would fill a gap in an otherwise continuous frontage and would not result in an extension or intrusion into the open countryside, nor would have an adverse effect on the setting of the village. As such the scheme would accord with the provisions of Policies 2 and 3 of the Local Plan.

### **Other Matters**

21. Interested parties raise further concerns regarding the scheme, on grounds of highway safety and biodiversity impacts. However, such matters fall outside of the scope of considerations at the first stage and would form part of the assessment of the second stage of a permission in principle application.
22. It is acknowledged that interested parties also raise concerns that the scheme would result in further development of the remaining eastern section of the field in which the appeal site is located. Whilst noting those concerns, if permission in principle was granted at the appeal site, that would not set a precedent nor would necessitate the approval of any other site in the vicinity. Each proposal would be required to be considered on its own merits and assessed against the policies of the development at that time.
23. It is noted that development of the site would result in the loss of agricultural land. Policy 21 of the Local Plan provides that decisions should take into account the economic and other benefits of such land. However, the appeal site is modest in size and the scheme, subject to the approval of the second stage considerations, would make a contribution towards housing in a location which has convenient access to services and facilities.
24. The appeal site is located within the zone of influence of the Penhale Dunes Special Area of Conservation (the SAC). 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.
25. The PPG 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 PPG explains that it can grant permission in principle.

26. The Cornwall Council European Sites Mitigation- Supplementary Planning Document – July 2021 (the European Sites SPD) explains that the 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.
27. As recreational pressure would compromise the site's conservation objectives as detailed in the European Sites SPD, an adverse effect on integrity cannot be ruled out. A strategic scheme is available and the European Sites SPD sets out a series of measures, which include for the 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.
28. In this case, the site for the proposed dwellings would be located within the zone of influence of the SAC. Without mitigation the additional residents who would occupy the units of accommodation would be, in combination with other schemes, likely to adversely affect this European habitats site by way of increased recreational disturbance.
29. I am aware that the PPG explains that conditions and/or planning obligations cannot be secured at the permission in principle stage, only at the technical details 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 the additional dwellings within the zone of influence of the SAC. As the payment has already been made, the mitigation requirements in the European Sites SPD have been secured.
30. 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.
31. Natural England has confirmed that as the proposed development would result in a net gain of residential units, mitigation in the form of an appropriate financial contribution would be required. As above, the financial contribution has been made, and 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.

32. 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 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 Local Plan.

### **Conclusion**

33. For the above reasons, I conclude that the appeal should be allowed and permission in principle for up to five dwellings, is granted. As stated in the PPG, it is not possible for conditions to be attached to a grant of permission in principle and I have therefore not considered such matters in the determination of this appeal.

*Mr A Spencer-Peet*

INSPECTOR