



Appeal Decision

Site visit made on 12 November 2024

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 December 2024

Appeal Ref: APP/D0840/W/24/3336734

Land SSE Of Mizpah, Kingswood Road, Gunnislake PL18 9DF

- 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 B Cleveland of Charland Home Ltd against the decision of Cornwall Council.
 - The application Ref is PA23/00761.
 - The development proposed is described on the planning application form as 'Construction of 2 x 4 bedroom detached homes and associated works, as previously approved via planning application PA18/04427'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the postcode from the Council's Decision Notice as one was not provided on the planning application form.

Main Issues

3. The main issues in this appeal are:
 - Whether the appeal site is a suitable location for housing having regard to the policies in the development plan;
 - Whether the appeal site is a suitable location for the appeal scheme having regard to its designation as Local Green Space; and
 - Whether or not very special circumstances demonstrate that the development of Local Green Space should be permitted.

Reasons

Location

4. Together, Policies 2 and 3 of the Cornwall Local Plan Strategic Policies 2010-2030 (the LP) set out the Council's spatial strategy for development. Policy 2 seeks to provide for homes and jobs based on the function of each place. Policy 3 seeks to secure the majority of housing at or well related to a number of named towns but goes on to list a number of specified circumstances outside of these areas where housing may be permitted. This includes through allocation in a Neighbourhood Plan, rounding off of settlements, the reuse of previously developed land, infill and rural exception sites.

5. The Council have produced a Chief Planning Officer's Advice Note dated December 2017 (CPOAN) to provide clarity on the Council's intentions behind the relevant policies relating to infilling and rounding off. Whilst it provides useful information for decision-making purposes, it does not form part of the development plan. However, as both parties have referred to it in their submissions, I have had regard to it in the determination of this appeal.
6. Within the context of Policy 3 of the LP, rounding off is defined as being development on land that is substantially enclosed but outside the urban form of a settlement and where its edge is clearly defined by a physical feature that also acts as a barrier to further growth. It should not visually extend building into the open countryside.
7. There is no dispute between the parties that Gunnislake has the clear form, shape and definable boundaries to be a settlement.
8. The appeal site is accessed via Kingswood Road, a narrow lane serving properties either side along its length. The entrance to the appeal site sits opposite an existing residential property identified as 'The Willows' on the site plan. To the north of the appeal site is the dwelling known as 'Mizpah'. The gardens of the properties known as Crockers Row lie to the west of the appeal site and mature trees form the boundary just to the east of the appeal site with the public right of way (PROW) along the River Tamar.
9. Accordingly, the appeal site is located on the edge of but outside the urban form of the settlement. It is located between existing development to the north and south, would be no closer to the river in the east than existing development and borders residential gardens to the west. The substantial tree belt and PROW to the east acts as a barrier to future growth. The appeal site, being open and unkempt has a noticeably different character to the heavily treed landscape beyond the site to the east. For this reason, the appeal proposal would not visually extend into the open countryside and would constitute rounding off. As such, I find no conflict with Policy 3 of the LP in relation to the location of new housing development.
10. That said, the appeal site lies outside the Gunnislake development boundary as identified in the Calstock Parish Neighbourhood Development Plan 2021-2030, made February 2022 (the NP). In locations outside the development boundary, Policy HP1 of the NP does not support development unless it accords with one of the stated exceptions including Policy 7 of the LP. Policy 7 of the LP refers to replacement dwellings, subdivision of existing dwellings, reuse of existing buildings and accommodation for rural workers. None of these or the other exceptions in Policy HP1 of the NP apply to the proposal before me. Accordingly, a conflict with Policy 7 of the LP and Policy HP1 of the NP would arise.
11. In this respect, the policies for housing in the development plan pull in different directions. On the one hand, the proposal accords with policies 2 and 3 of the LP with regards to the location of housing. However, on the other hand, the site lies outside the development boundary of Gunnislake and does not accord with Policy 7 of the LP or Policy HP1 of the NP. I return to this in the planning balance.

Local Green Space

12. Paragraph 106 of the National Planning Policy Framework (the Framework) allows communities to identify and protect green areas of particular importance to them as Local Green Space (LGS).
13. The appeal site lies within the Gunnislake Riverside LGS as identified in the NP. Comprising an area measuring approximately 5 hectares, the Calstock Parish NDP Green Space Assessment identifies that the LGS has beauty, historic significance, recreational value, tranquillity, richness of wildlife and is a popular riverside walk accessible to and frequented by many local people.
14. Policy LISF4 of the NP does not prevent development on LGS. Rather, it states that inappropriate development of LGS will not be approved except in very special circumstances. Policy LISF4 does not set out what constitutes 'inappropriate development' or 'very special circumstances'.
15. However, Paragraph 107 of the Framework states that policies for managing development within a LGS should be consistent with those for Green Belts. Paragraph 152 of the Framework regarding proposal affecting Green Belt, sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances and this is reflected in the wording of Policy LISF4 of the NP. For these reasons, the Council's assessment of the appeal proposal against Paragraph 154 of the Framework which provides a closed list of exceptions including 'limited infilling in villages', seems to me to be an appropriate approach.
16. Whether a particular proposal is to be regarded as 'limited infilling' for the purposes of Paragraph 154 of the Framework, is a question of fact and planning judgement for the decision maker. In my view, limited infilling in a village must occur within the existing built-up extent of the settlement and would arise where there is a small gap in an otherwise built-up frontage. This would also align with the description of infill in the CPOAN.
17. However, I have set out above that the appeal site lies outside the urban form of the settlement and constitutes rounding off as it is surrounded on three sides by existing development. It cannot in my view also constitute infilling in a village particularly as it is not within an otherwise continuous built-up frontage.
18. I therefore find that the appeal proposal constitutes inappropriate development. I must therefore go on to consider whether there are very special circumstances which justify allowing the appeal as set out in Policy LISF4 of the NP.

Other considerations

19. There have been previous planning permissions granted for development of the appeal site, including at appeal¹. However, as these permissions pre-date the current NP I have given only modest weight to them.
20. The appellant bought the site with planning permission but has indicated that due in part to the Covid pandemic, they were unable to secure the discharge of land contamination conditions and implement the permission. The permission has therefore lapsed. Whilst I do not doubt that Covid foreshortened the period

¹ Appeal Ref: APP/D0840/W/16/3146375 and LPA Ref: PA18/04427

in which conditions could have been discharged and that this has resulted in personal and financial hardship to the family, there is no evidence before me regarding the scale or extent of this or that either of these things amount to very special circumstances. Accordingly, I give this only moderate weight.

21. Whether or not the appeal site was incorrectly omitted from the development boundary and incorrectly included in the LGS is not a matter for this appeal. It is not a function of an appeal to go behind the development plan or undertake re-examination of the plan itself. I give this limited weight.
22. Whilst the Preliminary Ecological Assessment sets out landscaping proposals and ecological compensation and enhancement measures, it seems to me that much of what is proposed seeks to mitigate the effects of development at the appeal site. In any event, Policy EBD1 of the NP requires all development proposals to include measures for increasing biodiversity and therefore this is a neutral factor in my assessment.
23. I am told that the Council has declared a 'housing crisis'. However, I have given this limited weight as I have not been advised what this means in practice in relation to the appeal proposal, particularly as the Council can demonstrate a 6.6 years housing land supply which is not disputed by the appellant. I give this limited weight.
24. The appellant proposes the use of sustainable construction features but as this is required by Policy REN4 of the NP, it is a neutral factor in my assessment.
25. Even if I found that the development of the appeal site would conserve the natural beauty of the Tamar Valley National Landscape, formerly the Tamar Valley Area of Outstanding Natural Beauty (AONB) and the significance of the Cornwall and West Devon Mining Landscape World Heritage Site (WHS), these would be neutral in my assessment rather than benefits.
26. Some benefits would undoubtedly arise from the construction and occupation of the dwellings. There would be a small but positive impact on the economy during construction and further benefits to the local economy through occupation. It would boost the supply of housing, respond to an identified local need and as a small sized site, it could be built-out relatively quickly. It would therefore make a small but important contribution to housing supply which I give modest weight to.
27. The NP identifies concerns about previous large scale development and that the most successful developments in the village have been through small scale incremental growth. However, that does not mean that the policies in the NP in relation to the location of housing should be set aside if a proposal is small scale. I give this limited weight.
28. There is reasonable access to services and facilities from the appeal site and Policy 21 of the LP seeks to increase building density having regard to access to services and facilities but also taking into account the character of the area. The appeal site represents just 4% of the total area of the LGS and is located approximately thirty metres away from the PROW along the River Tamar to the east. The area between the river and the appeal site is well treed and a new hedge is proposed. The appeal site is set well up from river level and therefore the visual impact of two new houses on the appeal site from the PROW would be limited. Be that as it may, the appeal site has been identified through the

NP process as forming part of the overall area of LGS. The character of the area is one which is devoid of development, contributing to the peace and tranquillity of the LGS. Therefore, the proposal for two dwellings on the land does not garner support from Policy 21 of the LP.

29. Drawing everything together, I conclude that there are undoubtedly benefits which would arise from the development of two houses at the appeal site and that there are other considerations which I have given weight to. However collectively I have given these only moderate weight. They fall well short of amounting to circumstances which are very special. The proposal is therefore contrary to Policy LISF4 of the NP and Policies 2 and 25 of the LP which seek to protect locally important green space.

Other Matters

30. The appeal site lies within the zone of influence of the Plymouth Sound and Estuaries Special Area of Conservation (SAC) and the Tamar Estuaries Complex Special Protection Area (SPA) and has the potential to affect its special interest features. However, given my overall conclusion, the proposal would have no effect on the SAC or SPA and therefore I have not considered this matter further.
31. Although not included in the reasons for refusal, the Council's Statement of Case includes the comments of consultees in relation to the NL and WHS made in respect of the earlier planning applications at the appeal site. Similarly, interested parties have raised other matters including, but not limited to, the impact on trees, highway safety and the impact on wildlife. However, as I have identified harm in respect of the main issues, these are not matters on which my decision turns.

Planning Balance and Conclusion

32. Planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. This is reflected in Policy 1 of the LP.
33. However, it is clear that policies in the development plan in terms of the location of housing pull in different directions. On the one hand, Policy 3 of the LP permits housing development where it constitutes rounding off of a settlement but Policy HP1 of the NP does not permit housing development outside the development boundary unless it complies with Policy 7 of the LP, which it does not.
34. Section 38 (5) of the of the Planning and Compulsory Purchase Act 2004 (the Act) requires that this conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published. The proposal would therefore introduce housing into the countryside in a way which would not adhere to the housing policies contained in the NP, and conflict with Policy HP1 of the NP would arise.
35. In addition, I have also identified conflict with Policy 25 of the LP and Policy LISF4 of the NP in terms of development in a LGS. There is internal conflict in Policy 2 of the LP in that it permits new homes but given that it also seeks to protect natural and historic landscape, heritage, cultural and biodiversity assets in recognition of their local status, I find that the proposal would also conflict with this policy.

36. I have identified benefits which would arise from the development of two houses on the appeal site and there are other considerations which I have given moderate weight to. However, they do not indicate that a decision should be made other than in accordance with the development plan.
37. The proposed development is contrary to the development plan when read as a whole and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Act, the appeal is dismissed.

Alison Fish

INSPECTOR