



Appeal Decision

Site visit made on 11 December 2024

by E Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2025

Appeal Ref: APP/D0840/W/24/3344184

Land North West of Kenilworth, Uphill, Callington, Cornwall PL17 7PB

- 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 Miss Laura Bradbear against the decision of Cornwall Council.
 - The application Ref is PA23/09394.
 - The development proposed is described as 'PiP (stage 1) for one infill dwelling on previously developed land (garden)'.
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Decision

1. The appeal is allowed and permission in principle is granted for one infill dwelling on previously developed land (garden) at Land North West of Kenilworth, Uphill, Callington, Cornwall L17 7PB in accordance with the terms of the application, Ref PA23/09394.

Application for costs

2. An application for costs was made by Miss Laura Bradbear against Cornwall Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The address in the banner heading above differs from that on the application form. However, it reflects the site address used on the appeal form, and I am satisfied it accurately describes the location of the site.
4. The proposal is for permission in principle. Planning Practice Guidance advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has 2 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 2 stages.
5. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted. All other matters are considered as part of a subsequent Technical Details Consent application if permission in principle is granted. I have determined the appeal accordingly.

Main Issue

6. The main issue is whether the site is suitable for residential development, having regard to its location, the proposed land use and the amount of development.

Reasons

7. The appeal site comprises part of the garden of the residential property known as Kenilworth. It is situated between Kenilworth and the adjoining barn, which benefits from planning permission for conversion to a dwelling¹. The appeal proposal would see the construction of a single dwelling on the land, with vehicular access proposed from the highway to the front of the site.
8. The development plan includes the Cornwall Local Plan Strategic Policies 2010-2030, adopted November 2016 (CLP) and the Linkinhorne Neighbourhood Development Plan, made February 2022 (LNDP).
9. Policy 3 of the CLP sets out that other than at the main towns, housing growth will be delivered through, among other things, infill schemes that fill a small gap in an otherwise continuous built frontage and do not physically extend the settlement into the open countryside. It is the Council's view that the proposal would accord with Policy 3 of the CLP, as it would constitute infill in Uphill, which is considered to be a settlement for the purposes of Policy 3.
10. Policy GP1 of the LNDP sets out the presumption in favour of sustainable development and supports development proposals where, among other things, they are small-scale developments of 1 or 2 houses that comply with the general policies of the LNDP.
11. Policy GP2 of the LNDP sets out that development within the settlement boundaries of Upton Cross, Rilla Mill, Minions and Henwood will be supported, subject to compliance with policies and objectives of the LNDP. Policy GP2 is clear that proposals for new housing development outside of these settlements, and on land that does not adjoin a village boundary, will be assessed against Policies 9 or 7 of the CLP respectively. In addition, in such cases where development is acceptable, priority will be given to infilling, re-use of existing buildings or previously developed land.
12. Policy H1 of the LNDP relates primarily to new development within the designated village boundaries and sets out that all development outside village boundaries will be considered as rural exception sites and must comply with Policy 9 of the CLP and is to be read alongside Policy GP2 of the LNDP.
13. The site is located beyond the settlement boundaries identified under Policy GP2 and neither Policy 7 nor Policy 9 of the CLP apply to the appeal proposal for an open market dwelling. The proposal would therefore conflict with Policy GP2 of the LNDP having regard to the location of the site beyond a defined settlement boundary, notwithstanding the reference in the policy to a settlement or a village. Whether or not regard is to be had to the intention of Policy GP2, when read as a whole, the wording of the policy is clear.
14. The appeal site is located within a group of dwellings known as Uphill, which is devoid of a defined settlement boundary under Policy GP2 of the LNDP, but nonetheless a settlement. The appellant contends that in the case of smaller settlements within the Parish, such as Uphill, it is up to the discretion of the decision maker to determine a settlement boundary. However, there is no policy basis for such an approach.

¹ LPA Ref. PA23/07101

15. While my attention is drawn to a document on the Linkinhorne Parish Council website 'Guiding Principles of village boundary', there is no compelling evidence that this is to be used other than to set the village boundaries which form part of the LNDP. As such, in the absence of identified development boundaries for the smaller settlements, the proposal falls to be assessed against the relevant criteria-based policy.
16. Given the clear policy steer with regards to the location of development within the 4 settlement boundaries identified, and support for development beyond these areas, including other villages within the Parish, in specific circumstances, the LNDP cannot be said to be silent in relation to development proposals in locations beyond the settlement boundaries. Consequently, the situation in this case differs from that in *Chichester District Council V SSHCLG* [2018] EWHC 2386 (Admin) where there was no clear policy position for development outside the settlement boundaries.
17. The site is located within a reasonable walking distance of Rilla Mill, where there are facilities including a public house and village hall, from which the Post Office operates on a weekly basis. There is also a bus stop which includes daily services to the larger settlements of Liskeard and Launceston which offer a broader range of services and facilities to meet day to day needs, as well as the school bus service.
18. I acknowledge that the rural nature of the surrounding highway network may discourage future occupiers of the development from walking or cycling between the site and Rilla Mill, particularly in the dark, or during inclement weather. These characteristics are such that development in this location cannot be said to minimise the need to travel or maximise the use of public transport in conflict with Policies C1 and T1 of the Climate Emergency Development Plan Document, adopted February 2023. Nevertheless, at the time of my site visit, which I appreciate is only a snapshot in time, the route was lightly trafficked, and given the relatively modest distance to Rilla Mill, including bus stops therein, there would be opportunities to access local services by means other than the private car.
19. Consequently, despite being somewhat suboptimal, the appeal site would nonetheless benefit from a degree of accessibility to services and facilities so as to reduce the need to travel and would enable trips by public transport. Future occupiers of the development need not be wholly reliant on private motor vehicles. In addition, the provision of cycle stores and electric vehicle charging points could be secured at the technical details stage. I am also mindful of guidance contained in the Framework which recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
20. Thus, the proposal, in using previously developed land in a location with some accessibility to nearby facilities, would, overall comply with the aims of Policy 21 of the CLP.
21. The appellant contends that, for several reasons, the LNDP is flawed and unusable in decision making. However, it is not for me as part of this appeal to consider whether the Council followed the correct procedure in the making of the LNDP, or whether it meets the basic conditions. Moreover, as the timeframe for a legal challenge to be brought against the LNDP, which was made in February 2022, has lapsed, it forms part of the statutory development

plan. Section 38(5) of the Planning and Compulsory Purchase Act 2004, provides that, if to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan. Thus, in this case the conflict between the LNDP and the CLP must be resolved in favour of the LNDP.

22. For the reasons set out above, the proposal would conflict with Policies GP1, GP2 and H1 of the LNDP because of its location beyond a defined settlement boundary. That provides a clear indication that the proposed development is not acceptable and so, I find that it conflicts with the development plan, read as a whole.
23. The Council's Draft Interim Policy Position Statement dated January 2024 acknowledges that the Council is not able to demonstrate a 5 year supply of housing land. Further, it sets out that the shortfall in housing land supply means that housing supply policies of Neighbourhood Plans, including those which designate development boundaries, will be out of date in the same way as any other local plan supply policies. As such, the weight to be attributed to the conflict with Policies GP2 and H1 of the LNDP in this case is limited.
24. In addition, despite the conflict with the LNDP, the proposal would not conflict with the strategic policies in the CLP including Policy 3, and as such would not give rise to conflict with Policy 1 of the CLP, which seeks sustainable development and CLP Policy 2, which sets out the spatial strategy for the location of new development, including a sustainable approach to accommodating growth. Moreover, it would comprise the reuse of previously developed land in a location where future occupiers of the dwelling would benefit from some opportunities to access services and amenities in the area, and travel, by means other than the private car.
25. The proposal would also offer economic benefits both during and post completion and would contribute towards the supply of housing. While a single dwelling would not greatly improve total supply, given the Council's stated current housing supply position, any additional provision would be valuable.
26. In light of the Council's housing land supply position paragraph 11 d) of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, having particular regard to key policies for directing development to sustainable locations and making effective use of land when assessed against the policies in the Framework taken as a whole.
27. Despite the conflict with policies in the LNDP, the proposal would nonetheless accord with strategic policies in the CLP, including Policies 3 and 21. I am also mindful of advice in the Framework that neighbourhood plans must be in general conformity with the strategic policies contained in any development plan that covers their area and should not promote less development than set out in the strategic policies for the area. Given this, and in the context of a shortfall in housing land supply, I find that, notwithstanding the provisions of paragraph 14 of the Framework, the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits, when considered against the policies of the Framework taken as a whole.

28. The proposal would therefore benefit from the presumption in favour of sustainable development, set out at paragraph 11 of the Framework. This is a material consideration to which I attribute significant weight. Accordingly, this indicates that a decision should be made otherwise in accordance with the development plan.

Conclusion

29. For the reasons given above the appeal should be allowed.

E Worley

INSPECTOR