



Appeal Decision

Site visit made on 18 March 2025

by **G Roberts BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 April 2025

Appeal Ref: APP/D0840/W/24/3354321

Jubilee House, Fore Street, Pensilva, Liskeard, Cornwall, PL14 5QJ

- 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 59JH Property Development Ltd against the decision of Cornwall Council.
 - The application Ref is PA24/01347.
 - The development proposed is erection of three dwellinghouses.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (NPPF) came into force on 12 December 2024. The revised NPPF was addressed in the Council's Statement of Case (CSOC) (dated 3 January 2025). The Appellant responded to the latter in their Final Comments. In view of this I have not considered it necessary to invite any further comments from the parties on the revised NPPF.
3. The appeal was accompanied by an Arboricultural Impact Assessment (AIA) (dated 16 October 2024). This was submitted in response to the Council's third reason for refusal. The Appellant indicated that a request for a tree report was only made by the Council just before the application was refused. The reasonableness of that request is not a matter that I can comment on and if the Appellant remains unhappy with this then this is a matter that they should take up directly with the Council.
4. The Appellant has requested that the appeal be determined on the basis of the AIA under the *Wheatcroft Principles* (*Bernard Wheatcroft Ltd v SSE* [JPL 1082 P37]). Whilst I have been provided with a copy of the AIA, it would appear from the CSOC that the Council were provided with a report for a 2 dwelling scheme. Even so, as paragraphs 16.1–16.2 of the 'Procedural Guide: Planning Appeals – England' (September 2024) state, it is important that what is considered by the Inspector is essentially the same as that considered by the Local Planning Authority, as well as interested parties, at the application stage. Paragraph 16.3 refers to the 'tests' that will be considered when revised information is submitted, 'tests' that have been refined since the *Wheatcroft Principles* in the judgement of *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin).
5. The impact on trees and hedgerows is a key issue in this appeal and is referred to in the objections from interested parties. The AIA has not been advertised and

interested parties and consultees have not been given an opportunity to comment on its findings. Consultation is an important part of the planning system and interested parties/consultees comments would have been given in this case on the original application and documentation that supported it. Given the above and the in view of the significance of the AIA to this issue, its acceptance at this stage of the appeal process would cause unlawful procedural unfairness to interested parties and consultees. As such, I find that my consideration of the appeal should relate to the documentation considered by the Council and interested parties at the application stage.

Main Issues

6. The main issues are: (a) whether the proposed development would be acceptable having regard to local and national planning policies on the location of new housing, (b) the effect of the development on the character and appearance of the area; (c) the effect of the development on the World Heritage Site, and (c) whether the proposal has adequately considered the implications for trees and habitats.

Reasons

Suitability of location

7. The appeal site is located on the southern edge of the settlement of Pensilva. It comprises a two storey house and detached garage on the frontage to Fore Street, with an area of hardstanding to the rear, a garden and static caravan. Beyond this is a five bar gate that leads to two large fields that slope downwards from north to south. At the time of my site visit they were being used to graze a horse. In the northernmost corner of the fields, abutting the boundary with the static caravan, is a rusty corrugated single storey building with an agricultural appearance.
8. The appeal proposal involves the construction of three detached dwellings with a shared access. The lower part of the site would be retained as an area of mixed scrubland.
9. The spatial strategy for the area is set out in policy 2 of the Cornwall Local Plan Strategic Policies 2010-2030 (CLP). In relation to housing it seeks to manage the location and scale of new development. This approach is expanded in policy 3 which confirms that housing development will be accommodated in accordance with a hierarchy: with part 1 delivered through a Site Allocations Development Plan Document or Neighbourhood Plan for the identified main towns; part 2 through eco-communities; and part 3, in areas outside the main towns, through Neighbourhood Plans, rounding off, previously developed land, infill or rural exception sites.
10. Pensilva has a reasonably defined form and shape, with built development on Fore Street mostly concentrated on the road or on the frontages of nearby lanes. The exception to this is the development of three dwellings to the west of the appeal site, two of which are sited abutting part of the common boundary to the fields. An aerial photograph in Figure 7 of the Appellants Heritage Impact Assessment (HIA) indicates that this development pre-dates 2001. In terms of the residential curtilage to the host property I have assumed that this is formed by the five bar gate, fencing and mature hedge that runs to the south behind the static caravan. The two fields beyond that, other than the corrugated building, are undeveloped with similar fields located to the south and east. As such and as I observed on my site visit, in visual,

functional and physical terms, the fields to the appeal site lie outside the logical and natural boundary of Pensilva and within the open countryside.

11. The appeal site is not allocated for development, it is not within an identified main town and does not form part of one of the eco-community proposals. In relation to part 3 of policy 3, there is no current Neighbourhood Plan and the proposal is not being promoted as a rural exception site (in line with policy 9). It also does not fall within the definition of previously developed land as set out in Annex 2 of the NPPF (reflected in policy 21 of the CLP). In terms of infill and rounding-off, guidance on this is provided in the Chief Planning Officer's Advice Note (2017) (CPOAN). The latter is not a statutory document but provides a consistent approach to interpreting part 3 of policy 3. It is, therefore, an important consideration in this appeal and provides helpful guidance on what the Council regard as both infill and rounding off.
12. Based on the guidance in the CPOAN and in paragraph 1.65 of the CLP, infill is defined as development that fills a small gap in an otherwise continuous frontage *"that does not physically extend the settlement into the open countryside"*. In this respect, the development is proposed on two fields to the rear of the host property which does not represent a small gap in a continuous frontage. It would also physically extend the settlement into the open countryside. The appeal proposal does not, therefore, fall within the definition of infill.
13. Turning to rounding-off, based again on the CPOAN and my observations on site the proposal would not constitute rounding-off in that: it does not include any clearly defined physical features that would act as a firm barrier to future growth; it would not provide for the symmetry or the completion of the settlement whose form and shape is reasonably well defined; it could facilitate continued incremental growth; it would visually and physically extend built development into the open countryside; it would not represent a logical extension to the settlement and a large part of the site would not be surrounded on at least two sides by existing built development.
14. As with all such assessments they require an element of judgement to be applied on a case by case basis, having regard to various considerations. Whilst I note the reference to existing hedging and trees, similar features are to be found enclosing the fields to the south and east. They are, therefore, a common feature of the fields that characterise the area and are not a clearly defined physical feature that would act as a firm barrier to future growth.
15. The Council have also referred to conflict with policy 7 of the CLP which states that new homes in the countryside will only be permitted where there are *"special circumstances"*. There is no evidence before me that the proposal would fall within any of the exceptions to this policy.
16. Reference has been made to pre-application advice received from the Council which suggests that the development of the northern field would be acceptable as rounding-off. However, I have not been provided with a copy of this advice and that proposal is not before me. I can only determine the proposal as submitted and do so, as is required, on its individual merits. The Appellant also suggests that the proposed housing would be suitable for the elderly to effectively downsize releasing other properties onto the housing stock. However, the proposal is for three large 3 bed units and the application form indicates that they would be for market housing. The Appellant also suggest a condition to restrict the units to local occupancy but my attention has not been drawn to any development plan policy that would support

such a restriction or any evidence of an identified need that this would address or whether such a condition would be necessary and reasonable.

17. Accordingly, I find that the appeal proposal is not suitably located and that there are no exceptional circumstances to justify development in the countryside. As such, the proposal is contrary to policies 2, 3, 7, 9 and 21 of the CLP as well as the corresponding policies of the NPPF.

Character and appearance

18. The proposal would result in built development encroaching further into the open countryside. It would harm the contribution that the appeal site makes to the rural and landscaped setting of the settlement. It would also result in a development that would be poorly related to the predominant built rhythm of the settlement and would introduce an unsympathetic suburban form of development that does not respect or maintain local distinctiveness. I also agree with the Council that the proposed layout appears cramped and contrived. The scale, form and design of the new dwellings would also be in stark contrast with the host and its neighbours that form an attractive group of 19th Century properties.
19. The harm that would result to the rural and landscape setting of the site would be accentuated by the fact that the proposal would appear to involve the units being cut and filled into the slope of the site and that the open undeveloped character of the area would be replaced by an extensive amount of built development. The latter would cover, together with the large areas of hardstanding and shared access road, a large part of the northern field and a good proportion of the southern field.
20. Overall, the proposal would not promote local distinctiveness and would result in a development whose design, scale, mass, footprint and layout would be excessive and at largely at odds with the prevailing pattern of built form on this part of Fore Street. The proposal would have a harmful urbanising effect and would fail to respect or enhance the natural and historic setting of the settlement. It would, therefore, represent an incongruous development, resulting in significant harm to the rural and landscaped setting of Pensilva. Whilst I have had regard to the development to the west, this pre-dates the current development plan and may be the result of less restrictive planning policies. It does not, therefore, provide any justification for the appeal proposal or affect my findings in this issue.
21. Whilst the appeal site does not benefit from any designated landscape policy protection it is situated within the Lynher and Tiddy River Valleys Character Area, CCA42. The 'key characteristics' of this area are: a largely pastoral land use with the area around Pensilva including straight sided rectilinear fields and former miners smallholdings; fields enclosed by hedges throughout with relics of the mining industry with former smallholdings evident in the field patterns surrounding Pensilva; and a tranquil landscape and areas of dark sky nights. The pressures on the area include new development on the outskirts of existing settlements and the loss of or decline of hedgerows. For the reasons given above, the appeal proposal would result in a harmful impact on a number of the key characteristics of the CCA.
22. Policy 23 of the CLP seeks to protect local distinctiveness and confirms that where new development is to be permitted it should protect and where possible enhance Cornwall's natural environment. Policy 12 of the CLP and policy C1 (7) of the Climate Emergency Development Plan Document (DPD) adopt a similar approach

with the need for new development to provide continuity in built form and respect, conserve, enhance and work with the natural and historic environment according to its significance. Further guidance is provided in the Cornwall Design Guide (CDG) which supports the above policy approach. The appeal proposal would conflict with a number of these requirements and as such it would have a harmful impact on the rural and landscape character of the area. Whilst I accept that the provision of the area of mixed scrubland would secure some wildlife and biodiversity benefits these do not mitigate for the significant harm that I have found.

23. Accordingly, I find that the appeal proposal would result in significant harm to the character and appearance of the area contrary to policies 1, 12 and 23 of the CLP, policy C1 (7) of the DPD, the CDG and the corresponding policies of the NPPF.

World Heritage Site

24. The appeal site is located within the Caradon Mining District World Heritage Site (WHS). Paragraph 202 of the NPPF states that there are a range of heritage assets from those of local value to those of the highest significance, such as WHS, which are internationally recognised to be of Outstanding Universal Value (OUV). It continues by stating that these assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. In considering the potential impact on the significance of designated heritage assets paragraph 212 of the NPPF states that great weight should be given to the asset's conservation and the more important the asset the greater the weight should be.
25. Policy 24 of the CLP sets out a similar approach and states that new development within the WHS should accord with the WHS Management Plan, and that proposals resulting in harm to the authenticity and integrity of the OUV should be wholly exceptional. Policy C9 of the Cornwall & West Devon Mining Landscape World Heritage Site Management Plan 2020-2025 (MP) states that the historic character and distinctiveness of the WHS will be maintained. Further support is provided by policy C1 of the DPD and the CDG, stating that the former mining areas, including their field patterns, are an important part of the natural and historic heritage of Cornwall. The WHS designation is therefore recognition of the international importance of the area to the mining culture and identifies the radical reshaping of the local landscape as a result of the mining for tin and copper.
26. The advice received by the Council from the Cornish Mining World Heritage Site Office (WHS Advice) states that it is reasonable to conclude from the O.S. mapping and other evidence that the appeal site was associated with mine workers in the 19th Century as part of a smallholding. It continues by stating that a precautionary approach is required with the fields remaining largely as they were in the late 19th and early 20th Century. The fields retain the same character and relative layout as seen on historic mapping, with the morphology of Pensilva intrinsically linked to the history of mining. The WHS Advice continues by stating that the appeal sites relationship between the undeveloped garden and fields to the linear development on the road is still legible compared to the plots to the west and east, whose value has been compromised by modern development. The advice concludes that the proposed development would not conserve or enhance this part of the WHS.
27. Based on my observations on site and the evidence before me, including mapping, aerial photographs, the MP and the accompanying Supplementary Planning Document, on balance, I concur with those findings. I attach considerable weight to

the WHS Advice as it is based on their extensive experience and local knowledge of the WHS. That approach is supported by paragraph 10 of the Planning Practice Guidance chapter on the 'Historic environment'. Whilst I have also had regard to the findings of the HIA, this does not affect my findings on the issue. I note that the WHS Advice Office reached the same view on reviewing the HIA.

28. In relation to the summary within the HIA this states that it is unlikely that the new development would cause any appreciable impact on the WHS beyond a cumulative effect. It continues by stating that this limited impact is helped by the fact the site is largely surrounded by buildings, walls and hedges which provide screening and limit any views and experience of the site to glanced views and that it would not extend the settlement beyond its already extant built lines. As such, it concludes that the impact can be assessed as negligible adverse. I am not convinced and do not concur with a number of those statements. As I found, the proposal would extend the settlement into the countryside and the existing walls, trees and hedging are an integral part of the rectilinear shape of the appeal site fields and those located to its south and east. These are no extant built lines but on the contrary an undeveloped field pattern that characterises this part of the WHS.
29. Based on the above, there is no substantive evidence before me to conclude that the appeal site is not a former mineworker's small holding or that it has no historic value to the WHS in its present undeveloped form. Consequently, on balance, I find that the proposed development would dilute its historic significance, which stems in part from its undeveloped nature. It would thus result in harm in that it would not preserve or enhance the character or appearance of the WHS.
30. As is required by the NPPF, considerable importance and weight must be attached to the harm to this heritage asset. The appeal proposal would, in my view, lead to less than substantial harm to the significance of the heritage asset, with the level of harm at the lower end of the scale, which must be weighed against the public benefits of the development. The latter relate primarily to the provision of three residential units but neither this nor other public benefits would be sufficient to outweigh the harm I have identified.
31. The Appellant refers to the approval for housing at Valhalla, to the east of the appeal site, where no WHS objection was raised. I understand this related to the provision of three units within the existing residential curtilage of that property and did not relate to land associated with any previous mine workings or small holdings.
32. Accordingly, I find that the proposed development would be contrary to policy 24 of the CLP, policy C1 of the DPD, policy C9 of the MP, the CDG and paragraphs 212 and 215 of the NPPF.

Trees and habitats

33. The existing trees within and on the boundary to the appeal site, together with the mature hedgerow, make a positive contribution to the character of the area and the landscape and historic context of the site. Policies 1, 2, 12 and 23 of the CLP, policy C1 of the DPD and the CDG highlight the importance of retaining existing trees and hedging within new developments and in protecting and enhancing the natural environment. Those policies and guidance are consistent with paragraph 136 of the NPPF. Both fields are enclosed by trees and hedging, with a further line

of trees/hedging dividing the fields. All are visible, even in glimpsed views and make an important contribution to the landscaped setting of the site.

34. The application was not accompanied by a tree report. Leaving aside the points over the lateness of the Council's request for a report, I agree with the Council's concerns in relation to the potential for the development to result in the loss of mature trees and hedging, which represent irreplaceable habitats. In addition, as to whether the development would result in any harm or put at risk the future health and retention of other trees and hedgerows.
35. I referred earlier to the AIA submitted with the appeal. Whilst I decided not to accept that report, as far as I can its tree protection plan shows the loss of a number of good category trees and hedgerows, as well as the requirement to prune a number of hedgerows and the potential that some of the new units and amenity areas would be overshadowed by retained trees. The justification for all these works appears to simply be to accommodate the development, which as I found earlier appears cramped and excessive. I am not convinced, therefore, that the loss of these trees and hedging would be justified. Also, that where works are proposed close to hedging, whether the latter would survive, and the pressure that future occupiers may place on retained trees that overshadow individual plots.
36. Accordingly, I find that it has not been demonstrated that the appeal proposal would avoid unacceptable harm to existing trees and habitats contrary to the requirements of policies 1, 2, 12 and 23 of the CLP, policy C1 of the DPD, the CDG and the corresponding policies of the NPPF.

Other matters

37. The appeal site falls within the zone of influence of Plymouth Sound and Estuaries Special Area of Conservation (SAC) where a financial contribution is sought from all new dwellings to fund agreed mitigation measures. The Appellant has already signed an undertaking pursuant to section 111 of the Local Government Act 1972 and paid its contribution. Even so, in view of my findings on the main issues I have not considered the implications of the proposal on the SAC further.

Planning balance and conclusions

38. The NPPF states that existing development plan policies should not be considered out of date simply because they were adopted prior to the NPPF's publication. Each policy should be assessed and due weight given to it based on its general conformity with the NPPF. In this respect policies 1, 2, 7, 9, 12, 21, and 23 of the CLP, policy C1 of the DPD and the corresponding policies of the MP and CDG are consistent with and remain in general conformity with the NPPF's aims and objectives. These seek to restrict new housing in the open countryside, ensure that new development is suitably located, respond to and where possible enhance local character and local distinctiveness, and conserve and enhance the natural beauty and character of landscapes.
39. Turning to policy 3 of the CLP, whilst its detailed locational aspects may be out of date in relation to housing supply, its more generic locational guidance in relation to understanding the extent of settlements and identifying opportunities for infill and rounding-off development remain in general conformity with corresponding policies in the NPPF. These seek to ensure that development is sympathetic to local character and history, including the surrounding built environment and landscape

setting, add to the overall quality of the area, reflect local needs and are suitably located.

40. In terms of other considerations, there are benefits to the appeal proposal. These include securing new residential units in a sustainable location and boosting the supply of new homes in line with paragraph 61 of the NPPF, as well as short term employment from construction, all supported by other development plan policies. I attach moderate weight to those benefits. However, as I have found, the appeal proposal would conflict with policies 1, 2, 3, 7, 9, 12, 21 and 23 of the CLP, policy C1 of the DPD and policy C9 of the MP. These policies should be accorded significant weight as they remain consistent with and in conformity with the NPPF. Consequently, I find that the appeal proposal would conflict with the development plan as a whole.
41. The Cornwall Interim Policy Position Statement – Draft for Consultation (January 2025) states that following the publication of the NPPF the Council can no longer demonstrate a five year supply of housing land. Paragraph 11 d) of the NPPF requires, therefore, that planning permission be granted unless the application of policies in the NPPF that protect areas or assets of particular importance provide a strong reason for refusing the development or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. Footnote 7 confirms that the policies referred to in 11 d) i are those in the NPPF, rather than those in the development plan, and include policies relating to designated heritage assets.
42. Whilst the appeal proposal leads to harm to the WHS, in view of my findings on this issue, I am not convinced that this would on its own provide a “*strong*” reason for refusing the development. However, as I have found, the appeal proposal would not be suitably located, there is no policy justification for development within the open countryside, it would have an adverse impact on the natural, historic and landscaped character of the area and would have a significant impact on its character and appearance. These adverse impacts lead to conflict with a number of development plan policies which remain up to date as they are consistent with those in the NPPF and thus should be accorded significant weight.
43. In my view, the harm I have identified would significantly and demonstrably outweigh the moderate benefits of the appeal scheme when assessed against the policies in the NPPF, taken as a whole. Consequently, the presumption in favour of sustainable development envisaged in the NPPF does not apply in this instance. The NPPF is not a material consideration in this instance that indicates a decision other than in accordance with the development plan.
44. For the reasons given above and having taken all other matters raised into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR