



Appeal Decision

Site visit made on 15 November 2016

by R J Jackson BA MPhil DMS MRTPI MCI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 December 2016

Appeal Ref: APP/D0840/W/16/3153632

Land South of Chacewater Hill, Chacewater, Cornwall TR4 8JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Andrew Jarvis, The Tregothnan Estate against the decision of Cornwall Council.
 - The application Ref PA15/10215, dated 30 October 2015, was refused by notice dated 5 May 2016.
 - The development proposed is outline planning application for 57 dwellings, the provision of public open space and associated works. All matters except access left as reserved matters.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was made in outline with all matters except for access reserved for later consideration. I have considered the appeal on a similar basis. The application was also supported by an illustrative layout. As originally submitted the application was for 62 dwellings, but was amended when in front of the Council to 57 dwellings and a revised illustrative layout also submitted. I have considered the appeal based on this lower number, which I have used in the heading, and the revised illustrative plan.
 3. The appeal was accompanied by a Planning Obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) dated 4 November 2016 dealing with affordable housing and infrastructure. I will cover this later in this decision.
 4. On 22 November 2016 the Council adopted the Cornwall Local Plan Strategic Policies 2010 – 2030 (the CLP). This superseded the policies in the Carrick District Wide Local Plan 1998 referred to in the decision notice. The CLP therefore became the development plan against which the determination must be based. The Council and the appellant were given the opportunity to make further representations on this change in circumstance. I have taken into account these representations in this decision.
 5. With the adoption of the CLP the Council confirms that it considers it has a five year supply of land for housing and thus the relevant policies for the supply of housing land are up-to-date. This has not been disputed by the appellant.
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6. Although outside the settlement of Chacewater the Council has confirmed that it only seeks to resist the appeal on the basis of the reasons for refusal.

Main Issues

7. The main issues are:

- the effect on the Cornwall the west Devon Mining Landscape World Heritage Site (WHS); and
- whether the proposal makes adequate provision for affordable housing and infrastructure.

Reasons

World Heritage Site

8. The WHS was incorporated in 2006. It consists of a series of ten areas comprising the distinctive patterns of buildings monuments and sites which together form a coherent series of distinctive cultural landscapes created by the industrialisation of hard rock mining processes in the period 1700 - 1914. The application site is located within Area 6: Gwennap Mining District with Devoran and Perran and Kennall Vale.
9. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) World Heritage Committee has set out a Statement of Outstanding Universal Value (OUV) for the WHS. This sets out that the landscapes of Cornwall and west Devon were radically reshaped during the eighteenth and nineteenth centuries by deep mining for predominantly copper and tin. The remains of mines, engine houses, smallholdings, ports, harbours, canals, railways, tramroads, and industries allied to mining, along with new towns and villages reflect an extended period of industrial expansion and prolific innovation.
10. The UNESCO Heritage Convention Operational Guidelines refer to 'attributes' of a Site as expressing the OUV and the means of meeting the conditions of authenticity and integrity. There are seven key attributes for this WHS as follows:
1. Mine Sites, including ore dressing sites;
 2. Mine transport infrastructure;
 3. Ancillary industries;
 4. Mining settlements and social infrastructure;
 5. Mineworkers' smallholdings;
 6. Great houses, estates and gardens; and
 7. Mineralogical and other related sites of particular scientific importance.
11. The National Planning Policy Framework (the Framework) defines "significance" as the value of a heritage asset to this and future generations because of its heritage interest. This interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.
12. The Framework makes clear in paragraph 132 that in considering the impact on the significance of a designated heritage asset great weight should be given to the asset's conservation and the more important the asset the greater the weight. It is clear that WHSs are of the highest heritage significance.

13. The Planning Practice Guidance (the PPG) sets out¹ that planning decisions should conserve the OUV, integrity and authenticity of each WHS. They should protect the WHS from inappropriate development and from the effect of changes which are relatively minor but which, on cumulative basis, could have a significant effect.
14. The Cornwall and west Devon Mining Landscape World Heritage Site Management Plan (the Management Plan) notes² the central and northern sections of Area 6 are notable for their well-preserved landscape of smallholdings, interspersed with small mining settlements together with the mines which they served. St Day, Carharrack and Chacewater are said to be particularly fine examples of mining villages.
15. The appeal site lies entirely within and surrounded by the WHS, and consists of three small fields to the east of the village of Chacewater. The land rises to the east up Chacewater Hill and to the south so that there is a high point in the southeast corner and low point in the northwest corner. The land is kept to grassland.
16. The three fields are bounded and divided by Cornish hedgerows consisting of stone walls with planting. The planting varies in quality. There are gaps in the hedgerows to allow access between the fields and a gap to Chacewater Hill where the access would be located although this would have to be widened.
17. It is not in dispute that the three fields used to be part of a mineworker's smallholding. However, the Heritage Statement accompanying the application indicated the relict field boundary pattern pre-dated an association with mining dating back to at least the Bronze Age and continuing almost unchanged until the association with mining in the eighteenth century. The pre-mining field pattern is said in the Heritage Statement to be of only low-medium, local or regional interest and thus does not present an overriding heritage constraint.
18. It seems to me that the WHS is made up of all its attributes and that none should be given greater priority than another; it is an integral whole. Thus the fields of smallholdings are important to an overall understanding of the WHS as they show miners often had second areas of work.
19. As the Statement of OUV makes clear the landscapes of Cornwall and west Devon were radically reshaped during the eighteenth and nineteenth centuries and will have overwritten the pre-existing landscape to a greater extent. The legibility of the remaining smallholding fields is therefore highly important in understanding the significance of the WHS. In addition, to my mind, the radical reshaping gives greater importance to any pre-existing field patterns that were retained as part of the 'new' integrated landscape.
20. The Cornwall & west Devon Mining Landscape World Heritage Site Office in making comment about the application and appeal has undertaken a study of the smallholdings and associated boundaries depicted on the Kea Parish Tithe Map (circa 1840). This indicated that some 553 smallholding field plots were in existence at that time within a one kilometre arc east of Chacewater. The Office maintains some 94% of the original subdividing boundaries have now been lost and emphasises the importance of the remaining smallholding boundaries. The appellant disputes this percentage maintaining that the field

¹ Reference ID: 2a-032-20140306

² Page 49

boundaries have been amalgamated into larger land holdings, and continue to be utilised for agricultural purposes. Relict boundaries depicted on the Tithe Map are still in evidence: small fields have been returned to larger, open fields for cultivation. In light of this, it seems to me that it is the small size of these smallholding fields that gives them their particular historic significance.

21. The appellant makes that the point that the appeal site does not represent the whole of a former smallholding. However, to discount the importance of the remaining fields would allow for the cumulative effect of the loss of historic record leading to an overall significant effect, which is specifically noted as being undesirable in the PPG as referred to above.
22. Although an outline application the quantum and nature of development would be fixed. I fully appreciate that the illustrative layout shows but one way of developing the site, but the nature of fifty seven dwellings would create a much tighter grain than the existing fields. The individual properties would have individual curtilages each defined by boundaries, and it is highly likely, if not inevitable, that the existing Cornish hedgerows would be incorporated into a high proportion of the individual gardens and become at least part of their boundaries.
23. It is not clear how the existing Cornish hedgerows would be maintained, particularly as inevitably individual occupiers would have different desires as to how their gardens would be maintained leading to different solutions. This would increase the risk that the hedgerows would be physically lost over time.
24. Part of the understanding of the smallholding is the legibility of the pattern of fields. They are physical markers that define the fields as a mineworker's smallholding through size, shape and layout. In my view the introduction of this number of dwellings with the number of gardens would break up the legibility of the fields leading to harm to the overall heritage asset.
25. That being the case, it then necessary to determine whether the harm represents substantial harm or less than substantial harm to the heritage asset within the terms of the Framework. The PPG makes clear³ in making this assessment an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed.
26. The International Council on Monuments and Sites (ICOMOS) Guidance on Heritage Impact Assessments for Cultural World Heritage Properties (2011) sets out an approach to judge the scale or severity of impacts or changes taking into account their direct and indirect effects and whether they are temporary or permanent, reversible or irreversible. The cumulative effect of separate impacts should also be considered. It then goes on to note that the significance of the effect of change, that is the overall impact, on an attribute is a function of the importance of the attribute and the scale of change.
27. If permission were to be granted it would have a direct effect on the legibility of the smallholding, as a key attribute of the WHS, and would be permanent and irreversible. Whatever the precise per centage there has been a significant reduction in the number of surviving smallholding boundaries in the area since

³ Reference ID: 18a-017-20140306

the 1840s. This increases the importance of the remaining smaller fields which are an integral part of the overall authenticity and integrity of the WHS. Even taking into account that the appeal site is only a very small percentage of the overall WHS I therefore conclude that the severity of the impact would represent a major change and would have a major adverse effect as smallholdings represent a key attribute of the WHS.

28. That being the case the proposals would represent substantial harm to the significance of the heritage asset, and, in line with paragraph 133 of the Framework, permission should be refused unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm, or all of four criteria apply. These four criteria are not applicable to this case. I will make the assessment in the planning balance section of this decision below.
29. To conclude on this issue, the proposal would give rise to substantial harm to the significance of the WHS. As such it would be contrary to Policy 24 of the CLP which indicates that development within the WHS should accord with the Management Plan and that proposals that would result in harm to the authenticity and integrity of the OUV should be wholly exceptional. It would also be contrary to Policies P3 and C7 of the Management Plan which require that new development protects, conserves and enhances the WHS and the historic character and distinctiveness of the mining landscape will be maintained. It would also be contrary to paragraph 131 of the Framework where account should be taken of sustaining and enhancing the significance of heritage assets.

Affordable housing and infrastructure

30. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations) states a planning obligation may only constitute a reason for granting planning permission if the obligation passes three requirements. This is reiterated in paragraph 204 of the Framework. These requirements are that the Obligation is necessary to make the development acceptable in planning terms, that it is directly related to the development and fairly and reasonably related in scale and kind to the development.
31. Regulation 123 of the CIL Regulations also states a planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure where five or more separate planning obligations provide for the funding or provision of that project or provide for the funding or provision of that type of infrastructure.

Affordable housing

32. The appellant maintains that the scheme should be considered as a rural exception site and also makes reference to Policy 8 of the CLP relating to Affordable Housing. In my view Policy 8 of the CLP is not applicable as it relates to affordable housing as part of a market housing led scheme.
33. Policy 9 of the CLP indicates that rural exception schemes may be acceptable outside of but adjacent to existing built up areas of smaller towns, villages and hamlets whose primary purpose is to provide affordable housing to meet local

- needs. The policy clearly allows for mixed tenure schemes, including a proportion of market housing, but in such circumstances it is necessary to show that the market housing is essential for the successful delivery of the development based on a financial appraisal. The policy does, however, indicate that market housing must not represent more than 50% of the homes or land take.
34. The Council has also referred to Policy 10 of the CLP. Under the heading 'managing viability' this policy seeks to maximise the per centage of affordable housing where it has been shown through evidence that a site otherwise could not deliver the full quota of affordable housing without affecting the viability of the scheme so that it would not proceed.
35. The Glossary to the Framework defines 'rural exception sites' as "small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. Small numbers of market homes may be allowed at the local authority's discretion, for example where essential to enable the delivery of affordable units without grant funding".
36. In the context of affordable housing there is no definition in the Framework, the PPG or the CLP of what represents a 'small site' and thus this needs to be determined on the facts of the case. As a scheme for 57 dwellings the proposal would represent a significant increase in housing in Chacewater. Given the effect on the wider environment, and in particular the WHS, I do not consider that the proposal would be small site.
37. The Planning Obligation provides that 29 of the dwellings (that is 50.8%) would be affordable, which is the lowest whole number of dwellings allowed for under Policy 9 of the CLP. However, the supporting text⁴ makes clear that such schemes should start with a base position of 100% of the dwellings being affordable and decrease this proportion only with the needs of achieving viability. In light of the lack of any evidence to show that a higher proportion is not deliverable I am not satisfied that the proposal would represent the minimum number of market houses needed to deliver the affordable housing.
38. That being the case the proposal does not make appropriate provision for affordable housing. As such it is contrary to Policy 9 of the CLP as set out above, and, as it would not conform with the definition of a rural exception site as set out in the Glossary to the Framework, would not comply with paragraph 54 of the Framework which allows for such sites.
39. Table 4 of the CLP indicates an overall need for affordable housing and the delivery of the affordable housing is a benefit of the scheme, and consequently will need to be weighed in the planning balance below. As affordable housing is not included within the definition of 'infrastructure' Regulation 123 is not engaged.
- Infrastructure
40. The Council has shown that both local primary and secondary schools are operating at over capacity and that the additional population would exacerbate this deficiency. The Council has set out in its 'Guidance on Section 106

⁴ Paragraph 2.58

Planning Obligations for Education Provision', a methodology for providing contributions to resolve such deficiencies. The Planning Obligation makes provision for a contribution in line with this Guidance.

41. I am satisfied that the contribution is needed to make the development acceptable, and it is directly related to the development and fairly and reasonably related in scale and kind to the development. The Council has also confirmed that no more than five contributions have been sought to ensure that the proposal complies with Regulation 123.
42. The Planning Obligation also makes for a financial contribution to off-site improvements at the playground at Church Hill with the remainder allocated for improvements to the Chacewater Recreation Ground. With the increase in population there would be a need for such facilities and I am satisfied that the contribution is directly related to the development and fairly and reasonably related in scale and kind to the development. The Council has also confirmed that neither site has received more than five contributions to ensure that the proposal complies with Regulation 123.
43. In addition, the Planning Obligation makes provision for and maintenance of the on-site open space as part of the proposal. I am satisfied that this is needed to ensure an appropriate layout, would directly relate to the development and be fairly and reasonably related in scale and kind to the development. As the first Obligation towards this item of infrastructure it would comply with Regulation 123.
44. Finally, the Planning Obligation makes provision for a Sustainable Drainage Scheme (SuDS). This would ensure that the proposal appropriately dealt with surface water drainage. In light of the comments of the Local Lead Flood Authority I am satisfied that such a scheme is necessary, directly relates to the development and is fairly and reasonably related in scale and kind to the development. As the first Obligation towards this item of infrastructure it would comply with Regulation 123.
45. I am therefore satisfied that the application makes appropriate provision for infrastructure and consequently would comply with Policies 25 and 28 of the CLP which seek clear arrangements for the long-term maintenance of green infrastructure and developer contributions to the necessary physical, social, economic and green infrastructure needed to deliver development. It would also comply with paragraphs 72, 103 and 204 of the Framework which seek to ensure sufficient choice of school places is available, that developments ensure flood risk is not increased elsewhere, and as set out above.

Other matters

46. The site lies adjacent to the Chacewater Conservation Area, which is located to the west of the appeal site. The illustrative layout shows the northwest part of the site would be open space which would mean that the development would have a neutral effect on the setting of the Conservation Area. I am therefore satisfied that the proposal would preserve the setting of the Conservation Area to which special attention should be paid in line with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).
47. Local residents have expressed concern about increases in traffic in the area. I note that the application was accompanied by a Transport Statement which

indicated that there would be a non-detrimental effect on the surrounding highway network. The Council's Highways officer concurs with this view and has no objection subject to conditions. I am therefore satisfied that the proposal would not have a severe residual cumulative impact which is the test set out in paragraph 32 of the Framework if development is to be refused on transport grounds.

48. Concerns have also been expressed about other aspects of infrastructure provision, particularly water supply and sewage treatment. South West Water has raised no objection and I am therefore satisfied that appropriate provision could be made to ensure that no harmful effects resulted from the development.

Planning Balance

49. The Framework indicates in paragraphs 6, 7 and 8 that the purpose of the planning system is to contribute to the achievement of sustainable development. Sustainable development has three roles, economic, social and environmental which cannot be undertaken in isolation because they are mutually dependent.
50. I have found there would be substantial harm to the significance of the WHS as a designated heritage asset of the highest heritage significance. Therefore, in line with paragraph 133 of the Framework, planning permission should be refused unless it can be demonstrated that this substantial harm is necessary to achieve substantial public benefits that outweigh the harm.
51. The provision of additional market and affordable housing are public benefits, both economically and socially, but this must be considered in the context of the recently adopted CLP. Paragraph 17 of the Framework makes it clear that the planning system should be genuinely plan-led. Policy 2a sets out guidance on how the spatial strategy of the CLP will be implemented across Cornwall. The appeal site lies in the Truro and Roseland Community Network Area (CNA) residual with a requirement of 1,200 dwellings for the plan period. The Inspector's report on the CLP noted that in the many of the residual CNAs "the apportionment can be more than met by existing permissions (subject to deliverability) and small site windfalls, so there would be no need to make allocations at individual small settlements"⁵.
52. The supporting text⁶ to Policy 2a of the CLP notes that the majority of parishes do not have town or village names in Policy 3 of the CLP. Here the remaining housing requirement can be met through existing sites with planning permission, infill, small scale rounding off, development of previously developed land within or adjoining settlements and rural exceptions sites.
53. Table 1 to the CLP shows the apportionment of local housing provision as at 31 March 2016. In the relevant CNA 548 dwellings have been completed, 486 dwellings either are under construction or have planning permission but are not yet started, and windfall sites of less than 10 dwellings are anticipated to deliver 297 dwellings in the period 2021-30. These three figures total 1,331 dwellings which is in excess of the 1,200 set out in Policy 2 even allowing for the non-implementation of a proportion of those sites with planning permission but not yet started.

⁵ Report On The Examination Into The Cornwall Local Plan Strategic Policies Paragraph 98

⁶ Paragraph 1.57

54. I have found the appeal proposal does not represent a small site therefore cannot represent small scale rounding off, the site is not made up of previously developed land and I have concluded the proposal cannot be considered to be a rural exceptions site.
55. While it is clear in Policy 2 of the CLP that the total housing requirement figure for the county is a minimum I do not see any pressing need to release this site for housing at this time given that the planning system should be plan-led. This conclusion is made even taking into account the overall need for affordable housing which the Local Plan Inspector considered in his report. The overall housing requirement for Cornwall takes this element into account. I therefore give the provision of the additional market and affordable housing only limited weight.
56. The provision of infrastructure, including the on-site open space, through the Planning Obligation is a benefit. However, only the quantum of open space is not a requirement of the proposal to off-set its effects. Consequently I can only give this benefit very limited weight in favour of the development.
57. That being the case the public benefits are not substantial and therefore do not outweigh the environmental and social harm to the WHS. As such the proposal does not comply with the CLP as a whole.

Conclusion

58. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

RJ Jackson

INSPECTOR