

Appeal Decision

Hearing Held on 16 January 2019

Site visit made on 16 January 2019

by Rory Cridland LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11th February 2019

Appeal Ref: APP/D0840/W/18/3199163

Land South of Cross Lanes, Lanstephen, Launceston, Cornwall, PL15 8JP

- 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 ADPAD against the decision of Cornwall Council.
- The application Ref PA17/08162, dated 25 August 2017, was refused by notice dated 7 November 2017.
- The development proposed is described as "the erection of circa 30 age restricted (55 years +) Use Class C2 bungalow/chalet bungalow dwellings, warden's office/accommodation, community facilities, open space and footpath connection (details of means of access only all other matters reserved)".

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 30 age restricted (55 years +) bungalow/chalet bungalow dwellings, warden's office/accommodation, community facilities, open space and footpath connection at Land South of Cross Lanes, Lanstephen, Launceston, Cornwall, PL15 8JP in accordance with the terms of the application, Ref PA17/08162, dated 25 August 2017, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. Notwithstanding the reference to 'Use Class C2' in the description of development set out in the banner above, the Council considered the proposal on the basis that it came within Use Class C3 and accordingly, assessed it against Policy 3 of the Cornwall Local Plan 2010-2030¹ (LP). Whether or not the proposal falls within Use Class C3 or C2 is a matter in dispute between the main parties. However, they agreed at the hearing that if I was to find that the proposal falls within Use Class C2, it should instead be considered against LP Policy 4. I have no reason to disagree and have determined the appeal on that basis.
3. The application is made in outline with all matters except for access reserved. I have considered the appeal accordingly, treating all plans as illustrative where they relate to matters of layout, scale, appearance and landscaping.

Main Issues

4. The main issues are:
 - (i) whether the proposal falls within Use Class C2 or C3 as defined by the Town and Country Planning (Use Classes) Order 1987 ("the Order");

¹ Cornwall Local Plan Strategic Policies 2010-2030 (adopted November 2016).

- (ii) whether the site offers an acceptable location for the proposed development having regard to the Council's settlement strategy and its effect on the surrounding landscape; and
- (iii) the effect of the proposal on the surrounding landscape.

Reasons

Whether the proposal falls within use class C2 or C3.

5. Use class C2 is described in the Order as 'residential institutions' and includes use for the provision of residential accommodation and care to people in need of care (other than a use within class C3). Article 2 of the Order defines 'care' as meaning personal care for people in need of such care by reason of, amongst other things, old age. In contrast, use class C3 is described as 'dwellinghouses' and includes use by (a) a single person or by people living together as a family and (b) not more than 6 residents living together as a single household (including a household where care is provided for residents).
6. The two key characteristics that distinguish a C2 residential institution from a C3 dwellinghouse are (i) the provision of personal care and treatment and (ii) that the residents and staff do not form a single household. However, as is made clear in the appeal decision I have been referred to² by the Council, the use class in which any given scheme falls will depend on the specific facts and circumstances of the case.
7. The proposed bungalows would be single, self-contained units containing the normal facilities for residential use. They would be occupied separately by persons over 55 (in some cases with other family members) who had been assessed as needing a minimum of 2 hours of care per week. In addition to a warden being located on site, residents would benefit from a range of facilities including a communal lounge/recreation hub and an onsite hair dresser. There would be support for bed changing, cleaning, help with shopping, access to disability equipment, the management of heating systems, some personal care, help with cooking and a range of other support available.
8. However, many of the services and facilities referred to above do not fall within the definition of personal care. Those which do would be provided in the residents self-contained units at agreed times and are more appropriately described as 'additional' or 'extra care' services. In many respects, they are little different from many other forms of support available to older persons living in other C3 accommodation, albeit that they may be more easily accessible. Furthermore, while I accept that the appellant's intention is to provide an element of personal care to some residents, it is unclear what this would involve, how individual needs would be assessed and what would happen if an individual's personal care requirement fell below 2 hours.
9. Consequently, on the evidence before me, I find that the proposed units should be considered as falling within use class C3 of the Order and my consideration of the proposal has been undertaken on that basis below.

² APP/L3815/A/13/2198103.

Location

10. Policy CS3 of the LP sets out the housing strategy for Cornwall and makes clear that other than at the main towns, housing will be delivered by the identification of sites through neighbourhood plans, the rounding off of settlements and development of previously developed land within or immediately adjoining settlements, infill schemes and rural exception sites.
11. The appeal site is located outside the settlement boundary of Launceston and is not allocated within an existing or emerging plan. It does not constitute previously developed land and is neither infill nor a rural exception site. However, the appellant argues that the proposal would constitute 'rounding off', which paragraph 1.68 of the explanatory text explains applies to development on land that is substantially enclosed but outside the main form of a settlement. It goes on to explain that the edge of such sites should be clearly defined by a physical feature that also acts as a barrier to future growth (such as a road) and that it should not visually extend building into the open countryside.
12. Further guidance on what constitutes 'rounding off' can be found in the Chief Planning Officer's Advice Note³ which, although not forming part of the Council's adopted planning policy, nevertheless provides a useful indication of the Council's approach to such matters. It explains that to be classified as rounding off, proposals must be adjacent to existing development and be contained within long standing and enclosing boundary features, for example a road or Cornish hedge. It goes on to note that suitable sites are likely to be surrounded on at least two sides by existing built development.
13. The appeal site is surrounded on two sides by existing built development, with the Cedar Grange care home situated to the north and the residential properties along St Marys Road and Plestin Close located to the west. To the east and south the site is well contained within existing hedgerows. Nevertheless, the Council argues that the proposal would extend building into the open countryside and has referred me to View 12 in the appellant's Landscape and Visual Impact Assessment (LVIA) which provides a panoramic view from the Round Tower of Launceston Castle.
14. However, while I agree that, at present, the Cedar Grange care home appears to jut out beyond the established development boundary into the open countryside, as View 12A shows, the addition of the proposed bungalows will help better integrate the existing care home into the surrounding landscape. It would not extend built development beyond the limits of the existing care home or into the open countryside and would help provide a more coherent development boundary along this part of Launceston.
15. Consequently, I find the proposal falls within the definition of rounding off and as such is not in conflict with LP Policy 3.

Effect on the surrounding landscape

16. The appeal site is located adjacent to the development boundary and outside any designated or protected landscape area. However, the Council is concerned that there would be some harm to the surrounding landscape.
17. I do not agree. While I acknowledge the change in use of the site from would alter its appearance and character considerably, it's impact on the wider landscape

³ December 2017.

would be limited. As I have indicated above, it would not extend built development beyond the limits of the existing care home and would help provide a more coherent development boundary along this part of Launceston. Furthermore, I note the LVIA concludes that the site's landscape value is low, visual sensitivity is moderate and that it should be suitable to accommodate the development subject to appropriate mitigation. The Council confirmed at the hearing that it was not challenging these conclusions and I note that their landscape consultee considered the harm to be less than moderate. I have no reason to conclude otherwise.

18. Consequently, I am not persuaded that there would be any material landscape harm and as such, I find no conflict with LP Policy 23 which seeks to protect, and where possible enhance, Cornwall's natural environment. Likewise, I find no conflict with saved Policy ENV1 of the North Cornwall Local Plan 1999 which restricts development in the countryside where, amongst other things, it has a significant adverse effect on the amenity or landscape character of the area.
19. The Council also raised some concerns regarding the accessibility of the appeal site to local services. However, during the hearing I was informed that it no longer wished to maintain this part of its case, in large part, due to a permission recently granted on a nearby site. I accept the Council's position on this matter and, as such, have not considered it further.

Other Matters

20. The emerging Cornwall Site Allocations Development Plan Document ("the Emerging DPD") is currently at a relatively advanced stage, having been examined in public and the proposed main modifications having been consulted upon by the Council. The Council has argued that permitting development on this site would prejudice the Emerging DPD process by determining decisions about the scale and location of new development around the town outside that community led process. However, while I agree with the Council that the emerging DPD should be afforded moderate weight, the Planning Practice Guidance makes clear that the Council will need to indicate clearly how the grant of permission would prejudice the outcome of the plan making process⁴. In the present case, there is no robust information which would indicate that granting permission for the development proposed would result in any material prejudice to the emerging DPD.
21. In reaching my decision I have had regard to the various points raised by the neighbouring occupier, Cornwall Care, including those in respect of the access and visibility splays. However, I note that the Council has not objected to the scheme on that basis and I am mindful that many of these matters relate to an ongoing private law dispute between the parties.
22. Similarly, I have noted the various concerns raised by local residents in relation to traffic congestion. However, the appellant's transport statement indicates that the increase in traffic movements associated with the proposal can be accommodated within the existing network. This is accepted by the Council and there is no robust evidence which would lead me to conclude otherwise.

Planning Obligations

23. An executed Unilateral Undertaking (UU) has been submitted secures a 30% contribution towards affordable housing. This is in response to identified needs and

⁴ Paragraph: 104 Reference ID: 21b-014-20140306.

is supported by LP Policy 8. It also makes the necessary provision for 25% of the dwellings to be accessible and adaptable in accordance with LP Policy 13.

24. The requirement for a scheme of ongoing management and maintenance for the areas of public open space would ensure that these areas remained accessible, fit for purpose and would help meet the requirements of LP Policy 13, albeit that some of the matters included in the open space specification can be considered as part of the reserved matters.
25. The financial contribution towards cycle and footway improvements is reasonable and necessary in view of the number of additional trips identified in the appellant's Transport Strategy and is supported by LP Policy 27.
26. In view of the above, I consider the obligations set out in the UU are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind. Accordingly, they meet the tests within CIL Regulation 122 and those set out in paragraph 56 of the Framework. I have taken them into account in reaching my decision.

Planning Conditions

27. The necessary planning conditions are set out in the attached Schedule and were discussed in detail at the hearing. I agree that conditions in relation to the submission and approval of the reserved matters, the commencement of development and requiring the access to be carried out in accordance with the approved plans are necessary in order to provide certainty.
28. Conditions requiring further details regarding the construction of the estate roads and the submission and approval of a construction method statement are necessary in the interests of highway safety and neighbouring amenity. A condition requiring details of foul and surface water drainage are necessary in order to guard against flooding and to ensure the site is suitably drained while details of the proposed pedestrian link is necessary in order to secure this part of the scheme. Furthermore, an occupancy restriction limiting occupation of the dwellings to those aged 55 and over is necessary to restrict occupancy in line with the scheme proposed.
29. A number of these conditions need to be discharged before work commences on site as they relate to matters which need to be resolved on a fully coordinated basis.
30. However, while I have noted the additional conditions proposed by Cornwall Care, these arise as part of an ongoing private dispute between the parties. There is nothing to indicate that the highway authority has any concerns with the standard of the access or the ability to achieve safe and suitable arrangements for the collection of waste or recycling. In the absence of any robust justification, I do not consider they are necessary or reasonable.

Conclusion

31. For the reasons set out above, and having had regard to all other matters raised, I conclude the appeal should be allowed.

Rory Cridland

INSPECTOR

SCHEDULE

CONDITIONS

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) An application for approval of reserved matters must be made no later than the expiration of 3 years from the date of this decision.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall commence until details of the standards to which the estate road serving the development is to be constructed shall have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the road has been constructed in accordance with the approved details.
- 5) No development shall commence until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The Statement shall provide for:
 - i. the parking of vehicles of site operatives and visitors;
 - ii. loading and unloading of plant and materials;
 - iii. storage of plant and materials used in constructing the development;
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v. wheel washing facilities;
 - vi. measures to control the emission of dust and dirt during construction;
 - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works; and
 - viii. hours of working.

The development shall be carried out in accordance with the Construction Method Statement.

- 6) No development shall commence until details of a scheme for the provision of surface water management and foul water treatment has been submitted to and approved in writing by the Local Planning Authority. The details shall include:-
 - i. A description of the foul and surface water drainage systems operation;
 - ii. Details of the final drainage schemes including percolation test results, calculations and layout;
 - iii. Confirmation from South West Water Ltd that the foul network has sufficient capacity to cater for this development;
 - iv. A Construction Surface Water Management Plan;
 - v. A Construction Quality Control Plan;

- vi. A plan indicating the provisions for exceedance pathways, overland flow routes and proposed detention features;
- vii. A timetable of construction;
- viii. Confirmation of who will maintain the drainage systems and a plan for the future maintenance and management, including responsibilities for the drainage systems and overland flow routes.

The surface water drainage systems serving the developed site shall fully manage flows up to the 1 in 100 year peak rainfall event plus a minimum allowance of 40% for the impact of climate change. Any surface water flows discharged from the site will first be attenuated and be discharged at no greater than the 1 in 10 year greenfield runoff rate.

The approved scheme shall be implemented in accordance with the timetable so agreed and the scheme shall be managed and maintained in accordance with the approved details for the lifetime of the development. Details of the maintenance schedule shall be kept up to date and be made available to the Local Planning Authority within 28 days of the receipt of a written request.

- 7) Before any part of the development is occupied details of the proposed pedestrian link to Plestin Close shall be submitted to, approved and the footpath link completed in accordance with the approved details. The link shall be retained in accordance with the approved details thereafter.
- 8) Each of the residential dwellings (C3) hereby approved shall be occupied only by persons aged 55 or above; persons living as part of a single household with such a person or persons who were living as part of a single household with such a person or persons who have since died.

END OF SCHEDULE

APPEARANCES

FOR THE COUNCIL

Mr Jim Lee

Appeals Officer

Mr Paul Banks

Planning Officer

FOR THE APPELLANT

Mr Alex Graves

PCL Planning

Mr Adam Davies

ADPAD

INTERESTED PARTIES

Mr William John

Cornwall Care

ADDITIONAL DOCUMENTS SUBMITTED AT THE HEARING

1. Email from Sustainable Drainage Lead Officer dated 4-1-19 @ 13:31 proposed amended drainage condition (Exhibit LE1).
2. Letter date 5-5-17 from Trings LLP re access and visibility (Exhibit LE2).
3. Copy of planning permission ref PA18/02377 dated 28 December 2018 (Exhibit LE3).
4. Copy of planning permission Ref 16/04230/FUL (West Oxfordshire District Council) (Exhibit LE4).
5. Example of McCarthy and Stone layout plans for approved development (Exhibit LE5).
6. Extract from Capital Programme (Exhibit LE6).
7. Extract from Launceston Town Framework: Transport Strategy 2030 (Exhibit LE7).

END