



Appeal Decision

Site visit made on 10 February 2015

by Mike Robins MSc BSc(Hons) MRTPI

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

Decision date: 2 April 2015

Appeal Ref: APP/D0840/A/14/2218999

Land off Cogos Park, Mylor Bridge, Cornwall TR11 5SF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Andrew Rowe for Blue Cedar Homes against the decision of Cornwall Council.
 - The application Ref PA13/08886, dated 27 September 2013, was refused by notice dated 25 April 2014.
 - The development proposed was originally described as 15 age-restricted dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for 14 age-restricted dwellings on land off Cogos Park, Mylor Bridge, Cornwall TR11 5SF in accordance with the terms of the application, Ref PA13/08886, dated 27 September 2013, subject to the conditions set out in the attached Schedule.

Application for costs

2. An application for costs was made by Mr Andrew Rowe for Blue Cedar Homes against Cornwall Council. This application is the subject of a separate Decision.

Procedural Matters

3. Notwithstanding the original description of development, the proposal before me comprises 14 dwellings, of which 5 are to be affordable, with all being age-restricted. This change would appear to have arisen following discussions with the Council and was the proposal against which the Council made their decision. I have considered the appeal on this basis and altered the description in my formal decision above.
4. A legal undertaking, signed and dated 1 August 2014, was submitted under the provisions of the Town and Country Planning Act 1990. This was to address age-restriction, affordable housing and the public open space and waste contributions sought by the Council. I have considered this later in my decision.
5. 2012-based household projections for England have also recently been released¹. These have the potential to affect the assessment of housing need and may have implications for Council's housing land supply positions. The main parties were provided with the opportunity to comment on these, and I have taken their responses into account in my assessment of this case.

¹ 27 February 2015

Main Issues

6. I consider that the main issue in this case is whether the appeal site offers a suitable site for housing having particular regard to:
- the effect on the character and appearance of the Cornwall Area of Outstanding Natural Beauty (AONB),
 - whether the proposal should be regarded as 'major development', and
 - the need for housing.

Reasons

7. The appeal site comprises a field defined by hedge and tree boundaries, located beyond the existing residential estate of Cogos Park. A surfaced lane leading to the garage of No 26 also leads to the entrance to the appeal site and connects it to the estate road network. Trees along the northern and western boundaries are covered by a Tree Preservation Order (TPO).
8. The development site is on the edge of the village of Mylor Bridge, a village which is washed over by the Cornwall AONB. Access to the village centre would be via Cogos Park and Comfort Road.

Policy Context

9. The development plan comprises the policies of the Carrick District Council Local Plan (the Local Plan), adopted in 1998, and which covered the period to 2001, and the 'Balancing Housing Markets' Development Planning Document (the BHMDPD), adopted in 2008. The BHMDPD predated current government policy and advice and sought to address the local housing market, focussing on affordable housing. It drew on Regional and Structure Plans, which are now revoked.
10. While the Local Plan may be considered to be time-expired, this does not necessarily render the policies out-of-date, as they were formally saved. Instead the development plan policies must be considered in light of the position set out in the National Planning Policy Framework, (the Framework).
11. Section 70(2) of the Town and Country Planning Act 1990 provides that in dealing with planning applications the planning authority shall have regard to the provisions of the development plan, so far as material to the application, and to other material considerations. This is reflected in section 38(6) of the Planning and Compulsory Purchase Act 2004, which provides that determination must be made in accordance with the development plan unless material considerations indicate otherwise. One such consideration is the Framework. Therefore, while the starting point for determination of any appeal remains the development plan, the Framework paragraph 215, indicates the importance of consistency with the policies in that document.
12. Local Plan Policy 6E identifies Mylor Bridge as lying within the AONB and sets out a presumption that development will be allowed within the settlement boundary. The appeal site is adjacent to, but outside of this boundary. Separate policies address housing in countryside areas and include Policy 6H, which concerns local needs housing. The appellant is clear that this proposal is not promoted as an exception to policies to be considered under Policy 6H.

13. At the heart of the Framework is a presumption in favour of sustainable development and it seeks to guide new and emerging development plans in this approach. However, the Framework also provides a context for planning decisions, particularly in areas where development plans are older or do not respond to recent pressures and are potentially out-of-date. In relation to housing, the direction is clear; paragraph 47 explicitly seeks to significantly boost the supply of housing. It goes further to identify, in paragraph 49, that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
14. In this case, the proposal would, on its face, be contrary to Policy 6E, or, if considered as an exception site, Policy 6H, as well as Policy BHM5 of the BHMDPD. However, while the settlement boundaries of the Local Plan may in part address the protection of the countryside, a protection recognised in the Framework, they also represent restrictive policy as regards the delivery of housing and should be considered against the Framework requirements set out in paragraphs 47 and 49.
15. The Framework confirms that great weight should be given to conserving landscape and scenic beauty in the AONB², which has the highest status of protection in this regard. The Framework goes further³ to set out that for major developments, planning permission should be refused except in exceptional circumstances and where it can be demonstrated that they are in the public interest.
16. The Council have published a pre-submission version of their emerging Cornwall Local Plan (the eLP). It is not clear, from the evidence available to me, whether this document explicitly retains the settlement boundaries established in the earlier Local Plan. However, while the policies may give an indication of the Council's future approach to development, in light of its progress, I can afford them only limited weight.
17. It is therefore necessary to consider whether there is harm arising from this proposal, and accordingly assess that against the policies and, in particular, any material considerations, principally as set out in the Framework. I turn then to the main issues.

Effect on the AONB

18. The proposal would introduce new housing into a currently open and undeveloped part of the AONB. The site is on a rising slope and while the surrounding estate is by no means solely comprised of low-level housing, there are bungalows backing onto the site to the east and south. The proposal includes chalet-style properties, with accommodation at first floor, which would be higher than surrounding dwellings.
19. At the site visit, I was able to observe relatively far reaching views from the site over the top of the neighbouring dwellings. Despite this, I did not find that the site was particularly prominent within the immediate locality or from wider views in the village and surrounding areas. There are mature hedge and tree boundaries, which are shown to be retained and which would provide screening for much of the year.

² Paragraph 115

³ Paragraph 116

20. I note that neither the Council, nor the AONB project team identify specific landscape impacts from the development. While I consider that great care needs to be taken when extending development into such areas, this site is relatively well contained with substantial boundaries and has housing to two sides as well as further to the north. Nonetheless there would be some limited harm to the AONB though the loss of the undeveloped land and this weighs against the development.

Whether the proposal should be regarded as 'major development'

21. The harm I have identified must be considered in terms of whether it should be viewed as 'major' development. I consider that this is not solely a function of the effect it may have, albeit the scale of the development is relevant in terms of the potential for impact. Nor can there be a simple overarching definition, such as that set out in Article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (the DMPO).
22. There is no definition of major development in the Framework, and the Planning Practice Guidance (PPG), published in March 2014, sets out that whether a development can be considered major will be a matter for the relevant decision taker, taking into account the proposal in question and the local context. This is consistent with the appeal and court decisions put forward by the appellant. The appellant also refers me to what they consider to be a comparable case in Trevone, near Padstow⁴, where the Council concluded that 15 dwellings in a considerably smaller village was not major development. In the officer's report, I note the Council reference to another legal case⁵, where 30 dwellings were considered as major development.
23. I consider that 'major' in such cases should take on its natural meaning and address the development in its context. This is clearly supported in cases, such as that referred to by the appellant⁶, where the reliance on the DMPO to define 'major' development is set aside. It is, in my view, reasonable to consider the scale of development against the capacity of the local area for development, thus direct comparisons with other proposals, adjudged either major or not, is not necessarily relevant.
24. In this case, the village is of a reasonable scale with development extending out from the centre. I consider that this proposal would not represent major development in terms of the Framework policies and falls to be considered against paragraph 115, rather than 116.

The Need for Housing

25. The appellant argues that the Council is unable to demonstrate a five year housing land supply (HLS) and that paragraph 49 of the Framework renders policies for housing, including settlement boundaries, out-of-date, leaving the proposal to be assessed under paragraph 14 of the Framework. I have little detailed evidence on this matter, other than references by the appellant to a number of recent appeal decisions. I note that the Council, in an e-mail response to the appellant's agents, dated 14 April 2014, explicitly accept that paragraph 14 is engaged, and within the officer's report, there is confirmation that the

⁴ E1/2009/01489

⁵ Mevagissey Parish Council v Cornwall Council and Mevagissey Bay View LLP [2013] EWHC 3684 (Admin)

⁶ Deborah Jane Aston and Westcott Meadow Action Group Ltd v (1) Secretary of State for Communities & Local Government (2) Mole Valley District Council (3) Taylor Wimpey UK Ltd [2013] EWHC 1936 (Admin)

Council not basing its refusal on the existence of a five year HLS. Further comments to the appeal by the Council, dated 27 March 2015, confirm that it cannot demonstrate a five year supply of housing.

26. The Council's appeal statement does not address the HLS position, but considers that the settlement boundary, although potentially subject to change, renders the proposal contrary to development plan policies for housing. On the evidence before me, I consider that the appropriate assessment must be one that centres on paragraph 14 and the support for sustainable development set out in the Framework.
27. Turning to the need for age-restricted housing, the appellant argues that there is significant national policy support for such provision and that a local need has been demonstrated by the Mylor Parish Plan. This Plan appears to draw on responses to a questionnaire. Some responses suggest that the majority of respondents consider there is no need for further development, although some housing needs are identified. Of these, it would appear that the majority identify needs for the elderly. Furthermore, the responses also indicate that a high proportion of residents are in the older age groupings and retired. Nonetheless, while I do not find this persuasive evidence of need, I do note the reference in the Council's pre-application response, dated 3 January 2013, that there is a need for affordable units for occupants aged 55 and over in this Parish.
28. The Council have not promoted evidence that there is no need, merely that alternatives should be considered. Setting aside the matter of whether this is a sustainable site for age-restricted dwellings, which I deal with below, I am satisfied that there is national policy and guidance support for the provision of housing for older persons, and such provision can have positive benefits on the housing market generally. As regards the affordable housing provision, I note that the Council consider that there is insufficient proposed. However, although the Officer's report, indicated that the requirement should be at least 50%, in order to comply with BHMDPD Policy BHM5 and eLP Policy 9, I consider that this is not the relevant approach in light of the Council's own acceptance that the proposal falls to be considered against paragraph 14 of the Framework, and in absence of the need to show exceptional circumstances.
29. Therefore, while the Framework, paragraph 54, deals with rural exception sites and the possibility of the inclusion of some open market housing, in this case, I do not accept that it needs to be considered as an exception scheme, led by affordable housing. Nonetheless, there is still policy support for affordable provision and I consider that the inclusion of affordable housing can be viewed as a positive element of the scheme. In such circumstances, a full appraisal of viability is necessary and I note that the appellant has supplied a viability assessment.
30. Although this has been questioned by the Council's affordable housing officer, I have little evidence to support their reasoning and conclusion that the scheme could achieve a higher percentage of affordable units. Nor is this matter argued further in the Council's statement. On the evidence presented to me, I consider that the scheme provides an acceptable level of affordable housing.

Other Matters

31. I am conscious of the concerns of local residents and groups as regards the appropriateness of the location for age-restricted dwellings, which I address

below, but also the effect on traffic and road safety, the local environment and on their own living conditions. The appellant has provided a Transport Statement, and I am satisfied that the addition of 14 dwellings here, while it would represent a small increase in traffic through Cogos Park and into the surrounding road network, would not be considered as having a severe cumulative impact leading to a refusal on transport grounds. In this, I support the conclusions of the highway development management team. Suitable parking would be provided for each dwelling and I consider that the risk of overspill visitor parking into the surrounding estate roads to be very low.

32. The proposed dwellings are to be generally arranged facing into the central part of the site and the managed garden space. Rear gardens are relatively short, and along the western boundary the protected trees would lead to some shading. However, I do not regard this as likely to lead to significant pressure to lop or prune and, with the imposition of suitable conditions, I am satisfied that the site is acceptable in terms of its environmental impact. The houses would back onto the rear gardens of properties along Cogos Park and Springfield Park. Although those to Cogos Park are of two-storeys, the design limits the presence of the first floor to the rear and significant overlooking elements. Bungalows are proposed to the eastern boundary and there would be adequate separation to Springfield Park. Overall, residents in the existing properties would experience an alteration in their outlook, but I am in agreement with the Council on this matter and am satisfied that there would be no material harm to their living conditions.
33. I have also considered the Council's argument that the current proposal would set a precedent for similar developments. Whilst each application and appeal must be treated on its individual merits, I can appreciate the Council's concerns that approval of this proposal could be used in support of other major developments on the edge of villages in the AONB. Setting aside my conclusion on the matter of whether this is a major development, I have considered the specific circumstances here and reached a conclusion on the appeal that should not form any sort of precedent, in particular the judgements required to assess whether such an application represents major development in the AONB, as well as harm to the characteristics of the AONB itself. Such judgements must be specific to the location, scale and context of the individual site.

Planning Balance

34. The Framework sets out a presumption in favour of sustainable development and, in paragraph 47, seeks to boost significantly the supply of housing. The development plan is of some age and the Council have accepted that paragraph 14 of the Framework is engaged; I agree. The Framework identifies that where the development plan is out-of-date, permission should be granted unless specific policies of the Framework indicate development should be restricted.
35. In this case, the development lies within an AONB where great weight should be given to the conservation of the landscape and scenic beauty. However, no specific objection has been made as regards the effect of the proposal, in terms of its location or design, on the landscape of the AONB. I concur, and have concluded only limited harm arising from the loss of open land on the edge of the village. The village is accepted in the Local Plan as being in principle acceptable for development, and the settlement boundaries cannot be considered as determinative in the circumstances currently before me.

36. The village provides a reasonable range of facilities and services. I note references to some specific services that may not be available, but I was able to observe that a school, pub, shops and other services are all available within a relatively short walk from the site. However, this walk would encompass the slope along Cogos Park and two short stretches without pavements, including a narrow section along Comfort Road.
37. Traffic volumes and speeds would be very low at the top of the estate, where the road would reasonably operate as a shared surface, and I find that there would be safe and suitable pedestrian access here. Along Comfort Road, the narrow section is priority controlled and speeds approaching the section to the east without pavements are, as a result, low. The character of the road here is that of a village street and shared use is unlikely to compound highway safety risks.
38. The slope, particularly as one enters Cogos Park, is relatively steep and would present a challenge to less mobile pedestrians. The development is proposed to be age-restricted to 55 years and above. The nature of the dwellings and the appeal site's position would militate against it being an attractive open market proposition for severely mobility impaired persons, and may reduce the numbers who would choose to walk to the services. Therefore, although this is in principle a relatively sustainable location, it would not represent a highly accessible site for the nature of the proposed residents.
39. Notwithstanding this, in relation to open market housing generally there is clearly a need in the district, and while there is a lack of specific evidence regarding local need, I accept there is also a general need for age-restricted dwellings. The proposal would provide economic and social benefits and I have not identified significant environmental harm; it would be a reasonably sustainable development.
40. Turning to the test set out in paragraph 14 of the Framework, I consider that there are no specific policies that would indicate the proposal should be restricted. The adverse impacts that I have identified, including limited harm to the AONB and a slightly reduced level of accessibility, would not significantly or demonstrably outweigh the benefits of sustainable development here, thus, the planning balance weighs in favour of the development.

The Legal Undertaking

41. I have considered this in light of the Framework, paragraph 204, and the statutory tests introduced by Regulation 122 of The Community Infrastructure Levy (CIL) Regulations, 2010.
42. The Council have signed and therefore accepted that the submitted legal undertaking would ensure appropriate provision of the affordable housing; I see no reason to disagree. The agreement also addresses contributions for public open space and waste collection services. I note the space standards sought by Local Plan Policy 10B and the submissions by the Open Space Officer. There is existing public open space within the village and additional residential population would increase pressure on such a facility. The agreement links the contribution to open space provision and I am satisfied that this meets the relevant tests.
43. As regards the waste contribution, I note the Council have an adopted Supplementary Planning Document⁷, which seeks to integrate waste provision

⁷ Waste Storage and Recycling in New Development

into new developments. This notes the high cost of providing extended and improved kerbside collection and sets out the expectation of contributions from new development in Policy WPD3. I am satisfied that this meets the relevant tests.

Conditions

44. I have considered the conditions put forward by the Council against the requirements of the national PPG and the Framework. In addition to the standard timescale condition (1), I have imposed a condition to provide a Construction Method Statement (3), as there is potential for noise and disturbance to surrounding residents. Surface water management is required and addressed by condition (4), and to protect the character of the area and the living conditions of neighbouring residents, I have imposed the condition related to the protection of trees (5) and introduced a condition regarding retention and strengthening of the natural hedge boundaries (6). To further address potential effects on the character and appearance of the area, I have imposed conditions requiring the submission of material samples (7) and the undergrounding of cables (12). To address highways safety, I have required the provision of the proposed parking areas and for these to be suitably surfaced and drained (11).
45. Although there has been a desk study which indicated limited previous contaminative uses, there are issue around natural contamination in this area, and I have imposed a simplified version of the Council's recommended conditions relating to contaminated land (8, 9, 10). Otherwise than as set out in this decision and conditions, for the avoidance of doubt and in the interests of proper planning, it is necessary that the development shall be carried out in accordance with the approved plans (2). Where necessary and in the interests of clarity and precision, I have altered the suggested conditions to better reflect the relevant guidance.

Conclusion

46. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Mike Robins

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2605 PL-01 Rev A, 2605 PL-02 Rev B, 2605 PL-03 Rev B, 2605 PL-04 Rev C, 2605 PL-09 Rev A, 2605 PL-10 Rev B, 2605 PL-11 Rev B, 2605 PL-12 Rev A, 2605 PL-20 Rev B, 2605 PL-21 Rev B, 2605 PL-22 Rev B, 2605 PL-23 Rev B, 2605 PL-24 Rev B, 2605 PL-25 Rev B, 2605 PL-26 Rev D, 2605 PL-27 Rev D, 2605 PL-28 Rev C, 2605 PL-29 Rev C, 2605 PL-30 Rev B, 2605 PL-31 Rev B, 2605 PL-32 Rev C, 2605 PL-33 Rev B, 2605 PL-35 Rev B, 2605 PL-36 Rev B, 2605 PL-37 Rev B, 2605 PL-40 Rev A.
- 3) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. 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) measures to control the emission of dust and dirt during construction
 - vi) a scheme for recycling/disposing of waste resulting from demolition and construction works
 - vii) The hours of building and construction works.
- 4) No development shall take place until details of a scheme for the management of the site's surface water has been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) details of the final drainage scheme, including pathways and flow routes for excess surface water during extreme weather;
 - ii) a construction quality control procedure.
 - iii) a plan for the future maintenance of the system and of any overland flow routes.
- 5) No development shall take place until details of the position of fencing for the protection of trees has been submitted to and approved in writing by the local planning authority. Such fencing shall be erected, in accordance with figure 2 and paragraph 9.2.2 of BS5837, in the positions approved before the development commences, and thereafter retained until completion of the development. The parts of the tree or trees contained by the fencing shall not be harmed and nothing shall be stored or placed in any fenced area, nor shall the ground levels within those areas be altered.
- 6) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with

details of additional planting to the hedgerows, to include the retention and strengthening of the boundaries to the south and east of the site. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

- 7) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted, namely the wall cladding (including method of laying and pointing the stonework), slate (and method of fixing) and window and door details, have been submitted to and approved in writing by the local planning authority. The details to be provided must enable the materials to be identified by reference to a product number and/or British Standard and include reference to size, colour, texture and finish. Development shall be carried out in accordance with the approved details and retained thereafter.
- 8) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins.
- 9) If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.
- 10) If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
- 11) No dwelling shall be occupied until the space has been constructed, drained and suitably surfaced within the site for the parking of cars in accordance with the approved plan No 2605 PL-10 Rev B. Once implemented, the parking provision must be maintained in accordance with the approved plan and used solely for the parking of vehicles. Details of the proposed drainage required by this condition shall be submitted to and approved in writing by the local planning authority, and thereafter implemented in accordance with the approved details.

Prior to the occupation of any dwelling, it shall be demonstrated to the satisfaction of the local planning authority that the scheme is completed in accordance with the approved details. The scheme shall thereafter be maintained in accordance with the approved details.

- 12) All new electricity and telephone cables shall be laid underground.