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## Appeal Decision

Site visit made on 28 September 2015

**by P N Jarratt BA(Hons) DipTP MRTPI**

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

**Decision date: 20/10/2015**

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**Appeal Ref: APP/D0840/W/15/3122862**

**Part Mortha Farm, Polperro Road, Looe, Cornwall, PL13 2JE**

- 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 J K Shaw against the decision of Cornwall Council.
  - The application Ref PA14/03530, dated 14 April 2014, was refused by notice dated 30 December 2014.
  - The development proposed is for up to 50 dwellings to include affordable housing.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application is in outline with all matters reserved except access and layout.
3. The appellant submitted a master plan layout, Rev A dated 20 November 2014, as part of the appeal. However, this was not the plan determined by the Council which had the same reference but indicated dwellings close to Pounds Cross. I therefore have disregarded the later plan in favour of the original master plan.
4. An ecology report dated 15 July 2015 and sent to the Council by the appellant in error does not form part of the appeal documentation.
5. The appellant has submitted a completed s106 Unilateral Undertaking (UU) relating to open space and affordable housing comprising 8 rented dwellings and 17 shared ownership or intermediate homes for sale (50% affordable housing). The outline application specified, however, that there would be 20 affordable homes, representing a 40% provision. No explanation has been provided by the appellant for this change. I have determined the appeal on the basis of the application as determined by the Council.

### Main Issue

6. The main issue in this appeal is whether in the context of paragraph 116 of the National Planning Policy Framework (the Framework) there are exceptional circumstances to permit the proposed development in the Area of Outstanding Natural Beauty (AONB) taking into account the need for the development, whether the need could be met outside the AONB; and, the effect on the landscape.

7. Other issues are whether the proposal represents sustainable development in terms of access to services and facilities; the effect of the development on the living conditions of the occupants of Pounds Cross; whether there would be a risk of contamination arising from the proposed drainage of the development; and, whether there is an adequate mechanism to secure the provision of affordable housing.

### **Reasons**

8. The appeal site is a field extending to 1.45 hectares close to Polperro and in open countryside. It is in the Cornwall AONB and within the Heritage Coast. The site is bounded by a road (identified as Carey Park on the submitted plans) and two residential properties on the western boundary. The southern boundary runs parallel to Bridals Lane, the other side of which are residential properties. Cornish hedgerows and trees define the field boundaries. The site slopes downwards to the south-eastern corner and there are views of the sea at Talland Bay.
9. A single vehicular access is proposed onto Carey Park and the proposed layout indicates a terrace of three dwellings and two semis fronting the northern end of the western boundary and a circular internal road with a mix of terraced, semi and detached dwellings. Indicative information shows three house types, all two storeys in height with two types of detached dwellings and one type of semi. The development provides for 20 dwellings (40%) of the 50 proposed to be affordable.

### *The AONB*

10. Paragraph 116 of the National Planning Policy Framework (the Framework) indicates that permission should be refused for major developments in AONB's except in exceptional circumstances and where it can be demonstrated to be in the public interest. Such applications should be assessed on:
  - the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
  - the cost of, and scope of, developing elsewhere outside the designated area, or meeting the need for it in some other way; and
  - any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which they could be moderated.
11. It is common ground that the proposed development would constitute 'major development' although this is not defined in the Framework. Whether a proposal constitutes major development depends on the facts of the case. In view of the scale of the proposed development in relation to the northern part of Polperro and the context of the location in the AONB environment, I consider the scheme to represent a major development for the purposes of paragraph 116.
12. The appellant considers that there are exceptional circumstances that indicate the development would be in the public interest, namely that the proposal meets the sustainability tests of the Framework; the scale, layout and location conserves or enhances the landscape and scenic beauty of the AONB; and, local housing need cannot be met by developing sites outside the AONB.

*The AONB - need*

13. The Framework makes it clear that the delivery of a wide choice of high quality homes is fundamental to achieving sustainable development and paragraph 54 supports the provision of affordable housing on exception sites in rural areas. It also recognises that consideration should be given to allowing some market housing if it would facilitate the provision of significant additional affordable to meet local needs.
14. The appellant does not submit that the open market dwellings qualify for the special circumstances set out in paragraph 55 of the Framework.
15. The County Council's Affordable Housing Officer has provided a detailed assessment of the scheme and has given some limited and qualified support to the proposal. The Council confirms that there is a high level of housing need with some 102 households in the Lansallos Parish seeking affordable rented homes. They state that scheme should include 70% affordable rented dwellings and meet other local requirements and not 100% of the affordable homes being shared ownership as originally proposed. Schemes which include an element of market housing need to demonstrate that the level of market housing is the minimum required to cross subsidise the affordable dwellings. The submitted viability appraisal fails to include sufficient detail of valuations and build costs for meaningful conclusions to be drawn.
16. As referred to earlier, the submitted UU indicates a different proposal than determined by the Council but this still shows that the unit size mix is not aligned to the local housing need; some 68% of the proposed affordable dwellings are intermediate homes whereas there is a much higher need for affordable rented dwellings; and, as a proposed development on a rural exception site, robust evidence has not been submitted to demonstrate that the market dwellings are required to facilitate the affordable housing.
17. The examination of the Cornwall Local Plan is currently suspended pending further work by the Council on various matters including housing requirements, distribution and delivery. As the plan is some way off adoption I attach only limited weight to its policies relating to housing distribution, mix and affordable housing. The saved policies of the Caradon Local Plan 1999 and First Alteration 2007 include policies relating to housing in the countryside (HO7), affordable housing (HO11) and rural exception sites (HO13). However the proposed development does not accord with Policy HO13 as it includes open market dwellings and it does not immediately adjoin a settlement limit. It would also be contrary to paragraph 54 of the Framework and no meaningful appraisal of scheme specific development viability has been submitted.
18. The Council cannot demonstrate a five-year supply of housing and, as stated under paragraph 49 of the Framework, in such circumstances relevant policies for the supply of housing should not be considered up to date. The paragraph also indicates that housing applications should be considered in the context of the presumption in favour of sustainable development. However, paragraph 14 of the Framework indicates that this presumption does not apply if specific policies in the Framework indicate that development should be restricted and footnote 9 to that paragraph identifies policies relating to AONB's to be an exception.

*The AONB – alternative sites*

19. Turning to the cost of, and scope of, developing elsewhere outside the AONB, or meeting the need for it in some other way, the appellant has not submitted any alternative site assessment. Although there have been some recent or current housing schemes being developed in the area, including the provision of affordable housing, there is no indication that the housing need can be met on alternative sites or through any other means.
20. The appellant does not seek to comment on the economic impact of the scheme.

*The AONB – landscape*

21. Paragraph 115 of the Framework requires great weight to be given to conserving landscape and scenic beauty in the AONB which is one of the designations having the highest status of protection. The site is within Landscape Character Area CA22 South East Cornwall Plateau, as identified in the Cornwall Character Assessment. Introducing built development into an otherwise undeveloped field in a prominent position when viewed from certain viewpoints to the east, together with all the activities associated with a residential development, would adversely affect the character and appearance of the area and adversely affect the AONB and its scenic beauty.
22. Although the site falls away from the road and views into and out of the site would be limited due to the Cornish hedgerows, it would appear as skyline development from certain points on the road to Talland Bay and parts of the development would be visible from the coastal footpath. The impact would be to extend built development further out on the South East Cornwall Plateau, creating permanent change and this would not be significantly moderated by any landscape planting within the proposed site, or by the existing buildings on the edge of the settlement or by a nearby holiday park. The creation of a vehicular access and visibility splay would also suburbanise the village approach further affecting the character of the area.
23. The landscape harm caused by the proposed development would be contrary paragraph 115 of the Framework to which I attach great weight.

*The AONB – conclusions*

24. For permission to be granted for a major development in the AONB, there should be exceptional circumstances and the development can be demonstrated to be in the public interest. In this appeal, exceptional circumstances have not been demonstrated to show why a site in the AONB is essential for residential development and no evidence has been submitted about the existence or absence of alternative sites against which to assess the proposal. Normally the provision of affordable accommodation would be in the public interest but it has not been shown that the provision of affordable housing requires the extent of market housing proposed. Although I attach considerable weight to the contribution that this site could make towards the provision of affordable housing, and some weight to the absence of a five year supply of housing land, these are outweighed by the adverse effect that the development would have to the conservation and scenic beauty of the AONB, to which paragraph 115 of the Framework requires great weight to be

attached. The proposed development would be contrary to paragraphs 14, 54, 55, 115 and 116 of the Framework.

25. The Framework identifies three dimensions to sustainable development being economic, social and environmental. As the proposed development fails to satisfy the environmental role through its failure to protect or enhance the natural environment, it follows that the proposal cannot be considered to constitute sustainable development.

#### *Other Issues*

26. The Council considers that the site is not highly accessible to community facilities and services. Shopping facilities are about 1300m and the primary school some 900m and there is no continuous footpath or lighting connections between the site and these facilities. However, there is a bus stop close to the site. Although the Council refers to a standard of walkable neighbourhoods having a range of facilities within an 800m walking distance, I do not consider the location of the site to be so distant from facilities to be unacceptable on this ground alone.
27. The proposed layout is not reserved and the master plan shows the proposed siting of a terrace of four dwellings some 5m from the boundary of the neighbouring dwelling 'Pounds Cross'. The juxtaposition would result in potential overlooking of the garden area and windows of the existing dwelling adversely affecting the living conditions of the occupants. The layout also fails to distinguish between affordable and open market housing or make provision for public open space, contrary to Policy EV16 of the Caradon Local Plan (although this is referred to in the UU). I consider that the proposed layout is unsatisfactory for these reasons.
28. The application indicates that foul drainage would be disposed of by a package treatment plant but the Environment Agency does not consider sufficient information has been submitted to justify a non-mains foul drainage system, and, if it is justified, whether it would be viable. The appellant states that South West Water has confirmed that it is possible to connect to the public sewer, although a pumped system may be required. In view of this, appropriate conditions could be imposed requiring the submission and approval of drainage prior to the commencement of development.

#### **Unilateral Undertaking**

29. The UU relates to the provision of a Local Equipped Area of Play but its location is not shown on the layout plan or in the UU. As the LEAP is a 400 sqm activity zone combined with a buffer zone of 10m with the boundary of the nearest property open space its location should have been identified to establish its suitability.
30. The UU puts forward a mechanism for securing the provision of affordable housing but this now comprises 8 rented dwellings and 17 shared ownership or intermediate homes for sale (50% affordable housing) rather than the 40% provision that the outline application specified. No explanation has been provided by the appellant for this change. Again, it is not possible to identify where the affordable dwellings are proposed to be located from the master plan.

31. Whilst a UU would normally be an adequate mechanism to secure the provision of affordable housing, as the provisions in the UU relate to a scheme that is different to the outline scheme considered by the Council, I conclude that its provisions do not provide an adequate mechanism and they do not satisfy Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 in that they do not appear to be directly relevant to the development in question.

## Conclusions

32. For permission to be granted for a major development in the AONB, there should be exceptional circumstances and the development can be demonstrated to be in the public interest. This has not been done and the proposed development would therefore be contrary to paragraphs 14, 54, 55, 115 and 116 of the Framework and to Caradon Local Plan Policy HO13 regarding the justification of open market housing and there is no satisfactory mechanism to secure the provision of affordable housing.
33. Additionally, the poor layout and omission of identifiable public open space weighs against the scheme contrary to paragraphs 17, 57 and 73 of the Framework. Although I have found that the site is not inaccessible to local services and facilities, and that the drainage concerns could be overcome with suitable conditions, these alone do not outweigh the harm that the proposed development would have.
34. The proposed development would not accord with Caradon Local Plan Policy EV16 regarding open space and Policy ALT2 regarding living conditions. As these policies of the Local Plan generally accord with the Framework, I am able to attach some weight to them.
35. I have had regard to a recent appeal decision at Mawnan Smith<sup>1</sup> referred to by both parties but that does not alter my conclusions in this appeal which I have reached on its merits.
36. I have had regard to the representations of local people and those of Polperro Community Council. Some objections were raised about the effect on road safety but the Highways Officer does not raise objection to the principle of the development but was concerned over detailed issues that could be overcome through the imposition of appropriate conditions.
37. For the reasons given above, I conclude that the appeal should be dismissed.

*P N Jarratt*

Inspector

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<sup>1</sup> APP/D0840/A/14/2223116