



Appeal Decision

Site visit made on 2 February 2016

by Joanne Jones BSc MA MRTPI

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

Decision date: 18 February 2016

Appeal Ref: APP/D0840/W/15/3139301

Land north of Moonfleet, School Hill, Mevagissey, Cornwall PL26 6TH

- 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 Justin Dodge (Westcountry Land) against the decision of Cornwall Council.
 - The application Ref PA15/03079, dated 28 March 2015, was refused by notice dated 9 June 2015.
 - The development proposed is a residential development for 12 new dwellings (7 affordable and 5 open market) cross subsidy housing scheme on low grade (not BMV) agricultural land.
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Decision

1. The appeal is allowed and planning permission is granted for residential development for 12 new dwellings (7 affordable and 5 open market) cross subsidy housing scheme on low grade (not BMV) agricultural land at Land north of Moonfleet, School Hill, Mevagissey, Cornwall PL26 6TH in accordance with the terms of the application, Ref PA15/03079, dated 28 March 2015, and the plans submitted with it, subject to the conditions set out in the Annex to this decision.

Application for costs

2. An application for costs was made by Mr Justin Dodge (Westcountry Land) against Cornwall Council. This application is the subject of a separate Decision.

Procedural Matter

3. A legal undertaking, signed and dated 21 January 2016, was submitted under the provisions of the Town and Country Planning Act 1990. This was to address affordable housing contributions sought by the Council in the second reason for refusal. I have considered this later in my decision.

Main Issues

4. The appeal site is located within Cornwall Area of Outstanding Natural Beauty (AONB) and from all that I have seen and read the main issue is whether or not the proposed housing would be in an acceptable location having regard to development plan and national policies and other material considerations.
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Reasons

5. The appeal site comprises an area of agricultural land, situated to the north of the town of Mevagissey. A low stone wall defines the site's western boundary, adjacent with School Hill and mature hedges bound the fields to the east. To the south and east the site slopes away towards the coast.
6. The surrounding area is washed over by the Cornwall AONB, however, it is not devoid of built development. There is linear development along School Hill, including the campus of Mevagissey Primary School to the northwest, with the harbour town of Mevagissey to the south and clusters of small hamlets and farmsteads dotted within the wider landscape.

Policy Context

7. The development plan comprises the policies of the Restormel Borough Council Local Plan (the Local Plan), which covered the period to 2001 - 2011. 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).
8. 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.
9. 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 boost significantly the supply of housing. The Council accept, in their Statement of Case, given the issues surrounding the 5 year housing land supply paragraph 49 of the Framework currently prevails.
10. The Framework also confirms that great weight should be given to conserving landscape and scenic beauty in the AONB¹, which has the highest status of protection in this regard. The Framework goes further² 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.
11. The Council in its Statement of Case seeks to rely on a number of Local Plan policies. Policies 6, 11, 13 and 74, amongst other matters, strive to ensure that: new developments harmonise with their surroundings by respecting the

¹ Paragraph 115

² Paragraph 116

character and identity of its surroundings; conserve and enhance the landscape, features and habitats of heritage importance; within AONB's priority will be given to the preservation and enhancement of the natural beauty of the area; and that developments include a reasonable provision of affordable housing. These policies broadly echo the advice set out in paragraphs 17, 50, 58, 109, 110 and 115 of the National Planning Policy Framework (the Framework), and I have no reason not to afford them the full weight to be attributed to the development plan. The Council has also brought Local Plan Policy 89 to my attention, however it refers to open spaces on residential sites. As I have no evidence that the development is deficient in this regard I do not consider this policy particularly relevant in this case.

12. The Council have directed me towards their emerging Cornwall Local Plan Strategic Policies – Proposed Submission Document 2010 – 2030 (the CLP). Whilst I note the content of this Plan has been partially examined, it is not yet close to being adopted and, as such, clearly does not form part of the Council's local development plan at this stage. As such, I note the advice in paragraph 216 of the Framework and therefore the emerging provisions of the CLP can only be afforded limited weight in my decision.
13. Mevagissey Parish Neighbourhood Development Plan is still in its early stages of preparation and therefore subject to change. Accordingly, as it is still the subject of consultation and change, I can afford it little weight.
14. 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.

The AONB

15. In terms of the AONB classification, the site is within the Cornwall AONB. The Framework requires that great weight is given to conserving landscape and scenic beauty in AONBs and that permission for 'major developments' in these areas should be refused other than in exceptional circumstances and where it can be demonstrated that they are in the public interest. There is a dispute between the parties as to whether or not the proposal constitutes 'major development' which I shall first resolve before going on to consider the effect of the scheme on the landscape and scenic beauty of the AONB.

Whether the proposal should be regarded as 'major development'

16. I am assisted in this regard by various planning and appeal decisions provided by both parties³. There is no definition of 'major development' within the Framework. It is established legal principle that the question of whether a development constitutes 'major development' in the AONB is a matter of planning judgment for the decision maker. I must therefore make my own assessment, on the basis of the particular facts and circumstances of this case.
17. The proposal would result in the introduction of 12 new houses on the edge of the town. The site stands opposite and adjacent to existing built development. Having regard to the existing size of the town and the scale of the proposed development, as well as its relationship with the town and its location in the

³ Appeal reference: APP/F1640/A/11/2165778; APP/D0840/A/14/2218999; APP/J1860/A/14/2217413
Planning permission ref: PA13/04859

AONB, I conclude that this would not constitute major development when looked at either in the context of the town or in the context of the wider AONB. It is not therefore necessary for the appellant to demonstrate exceptional circumstances and public interest.

Effect on the AONB

18. The proposal would introduce new housing into a currently open and undeveloped part of the AONB. As such it makes a contribution to the setting and natural beauty of the AONB. The character of the area is usefully set out in the Cornwall and Isles of Scilly Landscape Character Study (CA40 Gerrans, Veryan and Mevagissey Bays Landscape Character Area). I saw that the landscape hereabouts falls comfortably within that landscape character.
19. The appeal scheme would extend the built up area of the town into the AONB. It would be clearly seen from the wider area, not least from the coastal footpath. This loss of part of the rural fringe to the town has to be acknowledged as causing some harm to the natural beauty of the countryside.
20. However, the site stands opposite and adjacent to existing built development of School Hill which are, themselves, visible in the views across the AONB. The proposed scheme would move the boundary of the developed area on this side of School Hill some 90 metres or so, but the new dwellings are unlikely to be significantly more prominent or visually intrusive in the wider views across the AONB than the houses presently along School Hill.
21. I do not doubt that the development would break the skyline and would be visible from the area immediately surrounding the site and from the highway. Local residents would have limited views of the development which would be assimilated into the existing town. Moreover, the ridgeline of existing dwellings, particularly that along the western side of School Hill can already be seen on the skyline when using the coastal footpath. Tourists and others passing through the settlement would be conscious of the houses for a limited amount of time and the houses would be viewed in the context of the wider settlement and adjoining development.
22. In longer distance views, the site may be seen as part of the wider landscape from vantage points within the AONB but it would be seen as a modest extension to the existing built development. In addition suitable landscaping and boundary treatments would soften the development to some extent.
23. Whilst the houses would be modern with painted render and natural stone cladding, the layout is such that the houses would form a linear arrangement along the boundary with School Hill. The development would result in the loss of a greenfield site but it would not cause material disruption to the historic field patterns. Its position on lower land and the arrangement of dwellings, particularly in terms of their scale and massing would not be out of kilter with the prevailing form of development in the area. The new houses would be assimilated to a reasonable degree within the town and would read as a logical extension of the existing built up area.
24. Additionally the Cornwall AONB Management plan accepts that there is a need for affordable housing in the Mevagissey area. To my mind the proposed development would not, for the reasons set out above, undermine the guiding principles or policies of the Management Plan.

25. For these reasons I conclude that the effect of the proposal on the landscape and scenic beauty of the AONB would be limited. As such it would be contrary to Local Plan Policies 6, 11 and 13 which seek to preserve and enhance the natural landscape and beauty of the AONB and to which I must attribute great weight.

Other material considerations relating to the location of development

26. The appellant relies on a number of factors in support of the contention that there are reasons to justify the proposal. One of the factors is the lack of a 5-year Housing Land Supply. Reliance is also placed on the general need for affordable housing and on the presumption in favour of sustainable development.
27. **General requirement for affordable housing:** The appellant points out the high need for affordable housing within Mevagissey, which equates to some 105 people in need of an affordable home. I have no substantive evidence from the Council to dispute this figure, indeed the Council's Home Choice Register points to a requirement for some 107 homes, and I note that no objections have been raised by the Council's Affordable Housing Officer. Therefore, given the acute demand for affordable houses, the proposed 7 affordable homes would make a valuable contribution to that need. In reaching this conclusion I acknowledge the requirement set out in paragraph 50 of the Framework "to deliver a wide choice of high quality homes"
28. **The presumption in favour of sustainable development:** The Framework seeks to promote sustainable development in rural areas and states that housing should be located where it will enhance or maintain the vitality of local communities. It goes on to confirm that there are three dimensions to sustainable development: economic, social and environmental.
29. In terms of economic considerations, the proposal would result in the provision of construction work and would bring additional occupants to the area to support services in the local community. There would also be social benefits with the provision of affordable housing in a district which is in need of such provision. It would also contribute market housing in a district where there is a shortfall. In addition the housing would contribute towards the vitality and viability of services in the settlement.
30. I have no evidence that states that Mevagissey is locationally unsustainable, having relatively good public transport links and a reasonable level of public services to meet future residents day-to-day needs. The site is located close to amenities and within a short distance of the Primary School. The proposal would also result in the provision of market housing, as well as affordable housing, in an accessible location, adjacent to a settlement.
31. In terms of environmental factors, the proposal would result in the loss of a greenfield site, in an area designated as AONB. I have set out the limited harm to the AONB. I shall return to all of these matters in my overall conclusions.

Other matters

32. **Affordable housing contributions:** The Framework sets out policy tests for planning obligations; obligations must be necessary to make the development acceptable in planning terms; directly related to the development and fairly and reasonably related in scale and kind to the development. The same tests

are enshrined in the statutory tests set out in the regulation 122 of the CIL regulations.

33. The Council have signed and therefore accepted that the submitted legal undertaking would ensure appropriate provision of the affordable housing as set out in the Local Plan; I see no reason to disagree. As such I am satisfied that this passes the tests set out in the Framework.
34. **Other similar decisions:** The appellant has brought to my attention a number of appeal decisions and planning permissions both in Cornwall and further afield. However, the circumstances in the appeal before me are different, given the particular character of the area. I have, in any case, reached my own conclusions on the appeal proposal on the basis of the evidence before me⁴.

Overall conclusions and planning balance

35. Significant weight should be attached to the provision of housing in boosting the supply and meeting the acute need for affordable housing. There would be some additional weight applied from the economic and social benefits.
36. Although the scheme would conflict with development plan policies, I have found that there would be only a limited level of harm to the AONB landscape and no other harm would arise from the appeal scheme.
37. Whilst 'great weight' should be given to conserving landscape and scenic beauty in AONB's, the limited level of harm when considered together with the benefits would be a material consideration warranting the grant of permission.
38. For the reasons set out above, and having regard to all other matters raised, the proposal would be sustainable development as sought by the Local Plan and the Framework, and therefore the appeal is allowed.

Conditions

39. I have considered the suggested conditions against the tests set out within the Framework and the advice provided in the Planning Practice Guidance and have amended them where required. In the interests of sound planning and for the avoidance of doubt, conditions are imposed that require the standard commencement controls and the development to be carried out in accordance with the approved plans.
40. In the interests of highway safety it is necessary for conditions to be used to ensure that: the layout, construction and drainage of the vehicle access road(s) are suitable; a construction traffic management plan is submitted; and parking areas are constructed prior to occupation.
41. Given the topography of the area it is necessary for a surface water management scheme to be submitted to prevent flooding from surface water run-off. Those conditions requiring approval and implementation of landscaping measures are justified in order to ensure that the development would respect the character and appearance of the area and the living conditions of neighbouring occupiers. It is also necessary, in the interests of biodiversity and protection of heritage assets, for the development to be

⁴ Appeal decision ref: APP/F1230/W/14/3002790; APP/D0840/A/14/2229258; APP/D0840/A/14/2223116
Planning permission ref: PA14/03453

carried out in accordance with the recommendations of the Ecological Survey and in accordance with an archaeological written scheme of investigation.

42. Unit 1 of the proposed development is close to the boundary of the existing dwelling known as 'Moonfleet'. Therefore to protect the living conditions of the occupiers of Moonfleet a condition will ensure that the proposed window at first floor level on Unit 1's southern elevation is obscure glazed and fixed shut.

Joanne Jones

INSPECTOR

ANNEX to Appeal Decision APP/D0840/W/15/3139301

- 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: Existing L-02; Site/location Plan L-01; Site/location Plan PL-010; Proposed PL-011; Proposed PL-101 B; Proposed PL-102 A; Proposed PL-103 A; Proposed PL-104 A; Proposed PL-105 A; Proposed PL-106 A; and Proposed PL-107 A.
- 3) No development shall commence until detailed plans have been submitted to and approved in writing by the Local Planning Authority relating to line, level and layout of the roads and footway hereby approved and means of construction and surface water drainage. The approved details shall be constructed prior to the first occupation of any part of the development and retained as such thereafter.
- 4) No development shall commence until a Construction Traffic Management Plan and programme of works has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include a pre and post construction phase verge and carriageway condition survey, construction vehicle details (number, size and type), vehicular routes, delivery hours and contractors' arrangements, details of pedestrian routes during construction times, compound, storage, parking, turning, surfacing, drainage and wheel wash facilities. The development shall be carried out strictly in accordance with the approved Construction Traffic Management Plan.
- 5) The on-site car parking spaces associated with any dwelling hereby approved shall be constructed prior to the occupation of the said dwelling and retained.
- 6) No development approved by this permission shall be commenced until details of a scheme for the provision of surface water management has been submitted to and approved in writing by the Local Planning Authority. The details shall include:
 - i. details of the drainage during the construction phase;
 - ii. details of the final drainage scheme; provision for exceedance pathways and overland flow routes;

- iii. a timetable for construction;
- iv. a construction quality control procedure;
- v. a plan for the future maintenance and management of the system and overland flow routes.

Prior to occupation of the site it shall be demonstrated to the satisfaction of the Local Planning Authority that relevant parts of the scheme have been completed in accordance with the details and timetable agreed. The scheme shall thereafter be managed and maintained in accordance with the approved details.

- 7) The development hereby approved shall be undertaken in accordance with the recommendations of the ecology surveys submitted with the application (ref: green ecology, School Hill, Mevagissey Preliminary Ecological Assessment, Final Report December 2014).
- 8) No development shall commence until full details of both hard and soft landscaping works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out in the first planting season following the first occupation of the dwellings hereby approved or the completion of the development hereby approved, whichever is sooner. All hard and soft landscape works shall be carried out in full accordance with the approved details. Any trees or plants which within a period of five 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.
- 9) No development shall take place within the site until the applicant has secured and implemented a programme of archaeological work in accordance with a written scheme of investigation to be submitted by the applicant and approved in writing by the Local Planning Authority.
- 10) Prior to the occupation of the dwelling on Unit 1 hereby approved, details of boundary treatment between this site and Moonfleet shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full prior to the occupation of the dwelling on Unit 1 and retained thereafter.
- 11) Prior to the occupation of the dwelling on Unit 1 hereby approved, the window at first floor level on its southern elevation shall be obscure glazed in accordance with a sample previously submitted to and approved by the Local Planning Authority. The window shall thereafter be permanently fixed shut.