The Planning Inspectorate

Appeal Decision

Site visit made on 5 August 2019

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2019

Appeal Ref: APP/D0840/W/18/3214359
Jolly Park, Jubilee Hill, Pelynt, Cornwall

- 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 Jolliff against the decision of Cornwall Council.
- The application Ref PA17/09690, dated 16 May 2017, was refused by notice dated 19 April 2018.
- The development proposed is mixed use development comprising of housing (including affordable housing and sheltered accommodation), employment, public open space, local community parkland and landscaping.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application is submitted in outline with details of access provided for consideration. I have treated the Masterplan as indicative.

3. The above description of development is taken from the application form. However, the submitted documentation explains that the proposal is to provide: up to 130 dwellings, of which a proportion would be affordable units; 6 employment units (125m^2 each); a minimum of 0.6 ha community open space incorporating an equipped play area; and 2 ha of community recreation land to be made available to Pelynt Parish Council.

4. The original application proposed 20% of the total number of dwellings as affordable homes. This figure was revised upwards during the application process, with the Council's decision being based on a 22% contribution. The appellant has undertaken further viability analysis in advance of the appeal and is now offering 25%. My determination of the appeal is made on this basis.

5. A signed unilateral undertaking (UU) was submitted during the appeal process. This secures affordable housing, delivery of employment space, the transfer of recreation land to the parish council, the provision of on-site open space and financial contributions towards education infrastructure at Pelynt Academy. I shall return to this later.

Main Issue

6. The main issue is whether the proposal complies with the development plan taken as a whole, and if not, whether there are material considerations to justify a decision otherwise than in accordance with the development plan.

Reasons

Site description

7. The appeal site comprises an 8.65 ha parcel of land on the edge of Pelynt. The site is bisected by a public footpath; the area to the north of this is laid out as pony paddock whereas to the south is a large swathe of agricultural land. There is an existing entrance onto Jubilee Hill, adjacent to the dwelling known as Pegasus and this would be remodelled to create access for the development.

Compliance with development plan policy

8. Policy 3 of the Cornwall Local Plan Strategic Policies 2010-2030 (LP) explains that the scale and mix of uses of development and investment in services and facilities should be based on the role and function of places. The policy includes a list of named towns where new development should be managed through a Site Allocations DPD or Neighbourhood Plans.

9. Pelynt is not identified as a main town. LP Policy 3 states that development growth in the remainder of the Community Network Area of Liskeard and Looe will be delivered through: identification of sites where required through Neighbourhood Plans; rounding off of settlements and development of previously developed land within or immediately adjoining that settlement of a scale appropriate to its size and role; infill schemes that fill a small gap in an otherwise continuous built frontage and do not physically extend the settlement into the open countryside; and rural exception sites under LP Policy 9.

10. There is no Neighbourhood Plan for Pelynt. The site does not comprise a small gap in an otherwise continuous built frontage and as such the proposal would not constitute infill. In any case, paragraph 1.68 of the LP anticipates that such developments will constitute one-two units. Rounding-off could conceivably be larger, but the supporting text to Policy 3 stipulates that these sites need to be substantially enclosed and they should not visually extend building into the open countryside. The development would be contained within existing field boundaries, but it would nevertheless represent a significant southward extension of built form onto open farmland which presently reads as part of the countryside. The scheme therefore goes well beyond what could be reasonably described as a rounding-off of the existing settlement form.

11. The Council concedes that part of the site is previously developed on the basis that it was granted a Certificate of Established Use in 1972 for a residential caravan site. The Design and Access Statement explains that 14 permanent concrete bases have been constructed along the northern boundary. I have no reason to dispute this, although I did note that most of the area to the north of the public footpath has the appearance of grazing land.

12. An application for the construction of roads and sewers on the lower part of the site was approved in 1976. The permission was implemented by forming the entrance/part of the highway and laying a sewer, and a Certificate of Lawfulness was issued in 1999. Notwithstanding that the original permission may be extant, the southern portion of the site contains no permanent structures. Consequently, it does not fall within the definition of previously developed land set out within the National Planning Policy Framework (the Framework). As such, compliance with LP Policy 3 on the grounds of the site being previously developed land adjoining a settlement cannot be demonstrated.

13. The appellant argues that the scheme is compliant with LP Policy 8 which states that developments of 10 dwellings of above should provide 25% affordable housing. However, this requirement must be read alongside other policies of the plan. Proposals such as the appeal scheme, which are on sites outside of but adjacent to the existing built up area of smaller settlements, are expected to work from a base position of 100% affordable housing. Although the Council accepts that the northern part of the site could be considered under LP Policy 8 as previously developed land, it is not appropriate to separate off parts of the site from one another to be considered discretely against a particular policy. The appeal scheme must be assessed as a whole.

14. That just leaves the question of whether this would be a rural exceptions site. LP Policy 9 states that the primary purpose of such sites should be to provide affordable housing to meet local needs and they should be clearly affordable housing led. The policy stipulates that inclusion of market housing will only be supported where it is essential for the successful delivery of the development based on detailed financial appraisal, with market housing not representing more than 50% of the homes. The proposal is for 75% of the new dwellings to be market homes and therefore it cannot be classed as a rural exceptions site.

15. Drawing my findings together, the proposal is not a form of development permissible under LP Policy 3, and it does not fall within any of the categories of housing development listed within LP Policy 7 as being acceptable in the countryside. I therefore conclude that the scheme conflicts with the development plan taken as a whole.

Other material considerations

16. Significant amongst other material considerations is the fact that the Council has already granted outline planning permission for a substantively similar proposal[1]. The previous application was determined under the current policy framework and the permission remains extant. The s106 for that scheme makes 'default provision' for not more than half of the total dwellings as affordable homes; this figure may be varied downwards to a minimum of 20% by agreement with the Council, having regard to a financial appraisal. The intention of such mechanisms being to ensure a financially neutrally position whereby the developer's profit is pegged at no more than 20%.

17. The appellant has not been through the process set out in the s106, which provides for expert arbitration in the event of a dispute, but has instead chosen to submit a fresh planning application to 'fix' the affordable housing provision. Given that a reduced affordable housing contribution has not been agreed under the extant permission the fallback position is a scheme with 50% provision.

18. The appeal is accompanied by an up-to-date viability analysis. The analysis is comprehensive, but it makes certain assumptions regarding the detailed make-up of the scheme. The application includes an indicative masterplan, but there is limited information on which to make a meaningful assessment; the Design and Access Statement envisages a wide range of house types. The outline planning permission would be a blank sheet of paper, with developers able to put forward their own proposals at the reserved matters stage. The likelihood is that no two schemes would be the same in terms of build costs, gross development value and the percentage of affordable housing which is viable.

[1] Council Ref. PA12/10700

19. I note that there is nothing within the Council's policies which precludes viability testing at the outline stage. The s106 for the extant permission allows for the submission of a financial appraisal either before or together with any reserved matters application. Nevertheless, the latest viability analysis does not provide a robust basis on which to determine the viable level of affordable housing. Accordingly, it has not been demonstrated that the maximum level of affordable housing possible would be delivered to meet the identified housing need. The registered local housing need in Pelynt is 43 households, but evidence indicates that there will also be need in neighbouring parishes.

20. The appellant asserts that the large difference between 20% and 50% affordable housing has deterred developers from taking the site forward. However, there is no correspondence or other evidence to support this statement. There is no reason why a developer could not work up a detailed scheme for viability assessment under the existing s106 provisions. I have seen nothing to suggest that the Council would not act constructively in such circumstances.

21. I have considered the possibility that the site could be lawfully brought into use as a residential caravan park. This is a material consideration to which I must have regard. However, I am not necessarily convinced that such a fallback position would be any more harmful than the appeal scheme. Even if it were, there is no substantive evidence before me to indicate that there is a significant probability of a caravan site coming about should this appeal be dismissed. This limits the weight that I can attach to it as a fallback position.

Planning Balance

22. There is disagreement between the parties over the reasons for the Council's decision to grant planning permission on this site. Irrespective of what stance one takes on this matter, I am not bound by the authority's past actions when considering a fresh application.

23. The proposal would make a meaningful contribution to the supply of housing in Cornwall. Given the Government's objective to significantly boost the supply of housing, this would be a key benefit of granting permission. However, the weight I attach to this factor is tempered by the Council's ability to demonstrate a 6.7 year supply of deliverable housing land. This is uncontested by the appellant.

24. The development would also deliver affordable homes which would go a significant way towards addressing the outstanding local housing need. This is a social benefit of considerable weight.

25. The scheme includes provision for employment units which would create job opportunities and contribute towards meeting the Council's employment space targets. This is in addition to the economic activity arising from construction and the additional financial revenues to the local authority by means of Council Tax and New Homes Bonus.

26. The UU contains a mechanism to transfer 2 ha of land to Pelynt Parish Council. This would be large enough for a football pitch and clubhouse, but the developer would not provide any monies for their provision. The offer of land transfer counts in favour of the scheme, but the weight I can attach to it as a material consideration is limited by the fact that there is no evidence that the parish council wishes to be party to the arrangement. In the absence of

funding, which I note was secured in the extant scheme, there is no guarantee that the facilities would be provided and made available to the community.

27. The open space provision is principally intended to meet the needs of the occupiers of the scheme. Likewise, the education contributions secured within the UU would mitigate the adverse impact of the development on the local school. These are neutral in the overall planning balance.

28. S38(6) of the Act states that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 15 of the Framework makes clear that the planning system should be genuinely plan-led. The development plan in Cornwall is up-to-date and, judging by the authority's housing land supply position, it is delivering the overall level of homes needed in the county. The proposal must be considered in this context.

29. I have established that the proposal would conflict with the development plan. The appeal scheme would bring forward social and economic benefits, but not to the same level as the extant scheme, and they would not justify a decision otherwise than in accordance with the development plan.

Conclusion

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

Robert Parker

INSPECTOR