



Neutral Citation Number: [2024] EWHC 2198 (Admin)

Case No: AC-2023-CDF-0000134

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

Bristol Civil Hearing Centre
2 Radcliffe St, Bristol. BS1 6GR

Date: 23/08/2024

Before :

HIS HONOUR JUDGE JARMAN KC

Sitting as a judge of the High Court

Between :

THE KING
(on the application of CINDY JONES)
- and -
CORNWALL COUNCIL
-and-
SITU8

Claimant

Defendant

Interested
Party

Mr Andrew Parkinson (instructed by **Richard Buxton Solicitors**) for the **claimant**
Mr Sancho Brett (instructed by **Cornwall Council Legal Service**) for the **defendant**

The interested party did not appear and was not represented

Hearing dates: 17 July 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 23 August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE JARMAN KC

HHJ JARMAN KC:

Introduction

1. The claimant seeks judicial review of the decision dated 6 October 2023 of the defendant as local planning authority (the authority) to grant outline planning permission for five dwellings to include affordable housing on a site known as land east of Two Stiles, Treyarnon Lane, St Merryn, Padstow, Cornwall. The grounds are that the authority did not give adequate reasons for its decision.
2. It is important when considering these grounds to have an understanding of the physical situation of the site. It is on the edge of the Cornwall AONB and forms a small part of 6.5-acre field classified as Grade 3 agriculture land which is farmed at Trehemborne Farm. To the east of the site runs the B3276, separated by a Cornish hedge bank, with a row of dwellings on the other side of the highway. The highway and land to the east is outside of the Cornwall AONB. Another Cornish hedge bank runs along the southern boundary of the site, on the other side of which is Treyarnon Lane. On the western boundary of the site there is a low block wall which is part of Two Stiles, a detached dormer bungalow directly west of the site. Beyond that are four other detached dormer bungalows that face Treyarnon Lane. The northern boundary of the site currently has no boundary feature and is open to the field.
3. This was the second application for planning permission for five dwellings on the site, the first of which made no provision for affordable housing. The authority refused that application and a planning inspector then dismissed the subsequent appeal.
4. The decision to grant the present planning permission was made by a planning committee of the authority, which considered the application on 8 August 2022 and, after following representations that certain evidence had not been considered, again on 10 July 2023. A report of a planning officer of the authority was put before the committee on each occasion, each of which recommended that the application should be refused. The committee, as it was entitled to, did not follow the recommendations, by an unanimous vote on the first occasion and a vote of 8 to 1 on the second.

The reasons

5. The reasons given by the proposer in the committee for granting the application, which must be taken as the reasoning of the committee itself, are as follows:

“1. Great weight is given to safeguarding the distinctive landscape and scenic beauty of the Area of Outstanding Natural Beauty (AONB) but, in this case, the housing benefits associated with providing affordable homes in an area of significant need outweigh the limited and localised harm to the surrounding AONB.

2. The application is clearly not major development in an AONB as any harm is limited and localised.
 3. It is accepted that sufficient information has not been provided to evidence that the application site is the most preferred land parcel to deliver the affordable homes proposed by this application from a 'landscape led' approach on land that is well related to the settlement of St Merryn. However, more weight is given to the housing benefits of this application, being that it addresses the acute housing need for affordable homes in the area and the urgent need to deliver affordable homes as soon as possible. Importantly also is that the proposal itself would not result in significant harm to the AONB.
 4. The proposal supports small scale developments that helps to enable the identified needs of local people to be met in terms of provision of affordable housing.
 5. The proposal would not result in a material increase of users at the nearby roads junction of Treyarnon Lane and the B3276. A planning condition can ensure that visibility at this junction is improved.
 6. The proposal complies with Policy 9 of the Cornwall Local Plan.
 7. Sustainable modes of travel are possible from this site to the nearby settlement, with the site being close to a request bus stop and in"
6. It was not ultimately in dispute before me that, given the committee was departing from the officers' recommendations, and given that the committee did supply reasons, such reasons must be adequate. Counsel helpfully agreed the principles which are to be applied in answering the question whether they were or not.

Legal principles

7. The essential issue in this case is whether the reasons given reached the required standard. The law is well settled. The classic expression of the principle is given by Lord Brown in *South Bucks v Porter* [2004] UKHL 33 at [36]:

"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to

reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

8. That was a case which concerned reasons given by a planning inspector in a decision letter following an appeal. The position is not the same where, as here, a planning committee makes a decision, as explained by Lord Carnwarth, giving the lead judgment in *R (CPRE (Kent)) v Dover District Council* [2017] UKSC 79 at [36].

"37. There has been some debate about whether Lord Brown's words are applicable to a decision by a local planning authority, rather than the Secretary of State or an inspector. It is true that the case concerned a statutory challenge to the decision of the Secretary of State on a planning appeal. However, the authorities reviewed by Lord Brown were not confined to such cases. They included, for example, the decision of the House of Lords upholding the short reasons given by Westminster City Council explaining the office policies in its development plan (*Westminster City Council v Great Portland Estates plc* [1985] AC 661, 671-673). Lord Scarman adopted the guidance of earlier cases at first instance, not limited to planning cases (eg *In re Poyser and Mills' Arbitration* [1964] 2 QB 467, 478), that the reasons must be "proper, adequate and intelligible" and can be "briefly stated" (p 673E-G). Similarly local planning authorities are able to give relatively short reasons for refusals of planning permission without any suggestion that they are inadequate."

Landscape and visual impact assessments before the committee

9. Both this application and the previous application was accompanied by a landscape and visual impact assessment (LVIA) commissioned by the interested party as potential developer. The inspector in the appeal on the previous application dealt with that in the decision letter as follows.

"13. The LVIA considers that visual effects of the development would be 'moderate' when seen at close proximity and 'minor' overall. However, for the reasons given above, I am unable to agree with this assessment. This is a sensitive location as there is a public footpath crossing the site and Treyarnon Lane provides a route to the nearby beach. The development would be well

exposed to public views and, by noticeably increasing the quantity of built development over undeveloped space, it would undermine the rural characteristics of Treyarnon Lane and the public footpaths which lead towards it. The scenic beauty of the AONB in this location would be diminished.”

10. A similar assessment accompanied the present application which came to similar conclusions as the previous assessment. The present assessment was carried out by a landscape expert and ran to some 80 pages. The assessment of harm on the AONB was stated in the following way:

“7.6.7 Visual effects generally within the Area of Outstanding Natural Beauty within close proximity, have a magnitude of predominantly Medium, i.e., ‘the proposal is likely to be visible and a recognisable new development, but which is not intrusive’. At very close proximity, when approaching on the footpath south of Treyarnon Lane, the change to the character of the views will have an impact on a limited section of the path, but the proposed development will be viewed within the context of the five adjacent dwellings, to the west of the Application Site. The new property, directly to the east of the site is substantial in mass and has little opportunity for mitigation from the approach along Treyarnon Lane and the Public Footpath from the south. Furthermore, the settlements of St Merryn, Trethias, Treyarnon Bay and Constantine Bay forms the context to the wider coastal views with the villages rising up the valley sides and dominating the ridgelines. This settled character extends along the B3276, out of St Merryn up to the eastern boundary of the site. Beyond the houses to the west of the site, the more rural/coastal characteristics then become the more dominant character, with the coastal slope, cliffs and small clustered development around the Treyarnon Bay becoming the main focus for visual receptors and not the west side of St Merryn village.

7.6.8 The visual effects on the wider part of the AONB will be limited, as there is no inter visibility between the proposed development and the AONB landscape to the north of Constantine Bay and southwards, beyond the landform around ‘Trevoyan’ and ‘Carnevas’...

7.6.12 Overall the magnitude of visual effects is considered to be Minor, because the development will be set within an appropriate landscape setting and therefore it will not become an intrusive or incongruous element.”

The officer’s report

11. The officer’s report at [40] emphasised the need to determine the application in accordance with the development plan:

“Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise”. The development plan for this application is the Cornwall Local Plan Strategic Policies 2010-2030 (CLP) and saved policy ENV1 ... that the Plan remains up to date and continues to carry full weight in decision-making.”

12. The officer then noted that the application had been made under Policy 9 of the Cornwall Local Plan:

“43. Policy 9 of the Cornwall Local Plan identifies that ‘Development Proposals on sites outside of but adjacent to the existing built-up area of smaller towns, villages and hamlets, whose primary purpose is to provide affordable housing to meet local needs will be supported where they are clearly affordable housing led and would be well related to the physical form of the settlement and appropriate in scale, character and appearance.’

44. Notwithstanding the assessment of the physical characteristics of the site and the rural context within which it is located, which are important material planning considerations to be considered, the Committee will note that this current outline planning application has been submitted as an affordable housing led scheme under Policy 9 of the CLP.”

13. The officer set out the location of the site in this way:

“52. It is the officer assessment that this proposal seeks to establish the principle of new residential development within the open countryside. It is assessed that this scheme does not form part of, nor is located on the edge of, an established settlement - St Merryn village; is not well related to the physical form of any settlement; is not infilling a gap within a continuous frontage of development and as a consequence is not appropriate in scale, character and appearance for this rural context within this statutory landscape designation.”

14. The need for affordable housing was also set out:

“58. The plan ‘Securing Homes for All: A Plan to respond to Cornwall’s Housing Crisis’ was considered by Cabinet on 15 December 2021. Cabinet resolved that the plan be agreed and implemented in order to advance the outcome of ‘A Secure Home for All’. The plan recognises that Cornwall is experiencing a housing crisis and sets out a number of objectives and interventions to respond to it. Four main objectives are proposed in respect of homelessness prevention, increased availability of homes for local residents, a step-change in

affordable housing provision and assuring delivery of the new homes needed under the Local Plan. For each of these objectives a number of interventions are proposed to be taken forward together with partners, local councils and communities to both respond to the immediate challenges residents face and to set in train more fundamental changes to address the roots of the housing crisis...

60. The current proposal would respond to the housing crisis by increasing the supply of housing, including much needed affordable housing. As evidenced in the response from the Council's affordable housing officer above, there is an evidenced local need for affordable housing in the parish which the application would help to address. This weighs in favour of approving the application."

15. The officer's report then referred to the balancing exercise between the acknowledged need for affordable housing on the one hand and harm to the landscape and AONB on the other in this way:

"87. It is your Officer's opinion that this proposal does not constitute major development because of the scale of the development and the sensitivity of the receiving AONB landscape. The proposal would be seen in the context with other built development nearby, with 4 detached homes fronting Treyarnon Road to the immediate west and detached homes to the east, across the B3276. As evidenced below, the development itself would mostly be prominent to views from nearby advantage points. The actual harm to landscape is localised as the surrounding topography/landform would screen the proposal from more distant views. The proposed introduction of homes onto this undeveloped field would clearly harm the AONB (addressed below) but this does not represent a major development in the context of the site and its surroundings...

91. The application site is located on the northern facing, gentle slope of a shallow valley, between the settlements of St Merryn Village, Trethias and Treyarnon Bay, circa 1km south of Constantine Bay. The submitted LVIA found that the topography, coastline, vegetation, landform and settlement enclose this area of the AONB, limiting the inter visibility to within the shallow valley setting, primarily 0.75km to the north, 1km to the south west and south sides and 0.25km to the east. This accepted by your Officers. The Officer for the AONB unit recognises also that the proposal would result in a localised impact.

16. The officer's report then referred to the interested party's LVIA in these terms:

"101. ... The development site itself whilst placed on higher ground within the wider landscape plateau would, according to

the applicants LVIA, be less intrusive and not compromise the special qualities and character of the wider AONB designation or the character of the setting of the AONB and will contribute to it if the materials, building form and siting reflected the more historic setting.

102. The LVIA concludes also on the Landscape effects, that the area including Constantine Bay, Trethias, Treyarnon Bay and St Merryn has seen more development recently, of a lower density pattern than that of the original core of the settlements. The village of St Merryn has extended along the 4 approach roads, generally in a single line (ribbon development pattern). The proposed development on the application site is asserted to continue this pattern of settlement and therefore is not deemed to be incongruous in the AONB.

103. ... The LVIA identifies that ...“There will be changes to the characteristics of the landform and landcover on the site and as a consequence this will affect the character of the adjacent public footpath, cycle path, lane and the character of the immediate locality”... although suggesting that ...“these are not considered to be detrimental to the wider AONB setting”. ...”

17. The officer then drew conclusions on the harm to the AONB as follows:

“111. The planning officer assessment of this specific application fully endorses the consultee advice of the Cornwall AONB Unit. It is very much evident that the proposed introduction of new homes on this field with associated access will harm the natural and distinctive character of this part of the AONB. This is a significant material consideration that carries great weight in the balance of material planning considerations and counts against support for this planning application. The Committee will note that the application of great weight to the AONB and duty to conserve and enhance this statutory landscape designation is a national and local policy requirement.”

Reasons in relation to the AONB

18. In terms of assessing the harm of the proposal to landscape and the AONB, it is not disputed that the harm is localised as accepted in the officer’s report and as reasoned by the planning committee. The reason for this is clearly set out in the officer’s report as “the surrounding topography/landform would screen the proposal from more distant views.” The controversy centres on the word “limited” which the committee used in conjunction with the word “localised.” This is to be contrasted with the views of the officers, that the introduction of new homes on the field with associated access “will harm the natural and distinctive character of this part of the AONB. This is a significant material consideration that carries great weight in the balance of material planning considerations...”

19. I accept the submission of Mr Parkinson for the claimant, that in weighing the material planning considerations it is necessary to determine what weight the various considerations carry. I also accept his submission that the word “limited” is a general word, and does not, for example, indicate to what extent the committee agreed with the assessment of the interested party’s landscape expert that the visual impacts would be “moderate” from close proximity and “minor” overall. Whilst the planning inspector in the appeal in the previous application did not agree with that assessment for the reasons given, it is notable that the inspector did not go on to define precisely what degree of harm was found. In giving its reasons in the present application, the committee accepted that great weight was given to safeguarding the landscape and the AONB, but that the proposal would not result in significant harm to the AONB. In my judgment that part of the reasoning is important, because it acknowledges that there will be some harm.
20. The committee also accepted in its reasoning that insufficient evidence had been submitted to show that the site was the preferred land to deliver affordable housing. This was a factor which the officers regarded as important, as there is available land well related to St Merryn which is not in the AONB. However, the committee in its reasoning gave more weight to the urgent need to provide affordable housing as soon as possible.
21. In my judgment, that was a planning judgment which the committee was entitled to make. The reasons although briefly stated were adequate. It was not necessary to set out in great detail the level of harm to the landscape and AONB which the committee accepted. It was sufficient to say, as the committee did, that such harm was not significant and that great weight was being accorded to the urgent need for affordable housing, which in policy terms was described as a crisis.
22. Moreover, I do not accept Mr Parkinson’s submission that the claimant has been genuinely and substantially prejudice by the level of reasoning. It is tolerably clear what the committee decided, and why it decided as it did, with regards to the particular characteristics of this site.

Reasons on highway issues

23. Turning to the highway issues, the application was accompanied by a traffic assessment commissioned by the interested party, which was referred to in the officers report at [69]. The assessment dealt with the junction between Treyarnon Lane, onto which the dwellings in the proposed dwelling would have vehicular access, and the B3276 as follows:

“... Whilst the existing restricted emerging visibility at the junction is not disputed when assessed against current guidance (Design Manual for Roads & Bridges) the fact remains that this junction has existed for hundreds of years and whilst traffic flows have grown the current and former (County Council) failed to find reason to ever improve the emerging visibility. The applicant is willing to provide the land on the eastern boundary free of charge to Cornwall Council to undertake any visibility improvement to the north of the junction”.

24. The planning inspector in the decision letter on the appeal in the previous application dealt with this issue as follows at [28]:

“Yet despite its inadequacies, the junction is an existing feature. Although the proposed dwellings would result in increased use of the junction, the appellant’s highways information suggests that the overall increase would be relatively modest and I concur with this assessment. Furthermore, the appellant indicates a willingness to help improve visibility on the north side of junction and a planning condition could be imposed to enable this. While this would not bring the junction up to modern standards, it does at least represent some improvement over the existing situation. In paragraph 27. I therefore conclude on this issue that the proposal would have an acceptable effect on highway safety. There would be no conflict with the highway safety objectives of Cornwall Local Plan Policies 16 and 27”.

25. Policy 27 of the Local Plan provides:

“All developments should: Provide safe and suitable access to the site for all people and not cause a significantly adverse impact on the local or strategic road network that cannot be managed or mitigated.”

26. In the present application, where 50% of the proposed dwellings was by virtue of a section 106 agreement under the Town and County Planning Act 1990 to be affordable housing, and when the site is on a bus route, it is not in dispute that the assessment was that there would be no material increase in the number of vehicles using the junction in question.

27. There were also concerns in relation to the impact of the proposed development on the local highway network as set out in the statutory consultation response of the highway authority which the planning officers quoted in their reports as follows:

“73. The Council’s Highways Consultee has clearly reviewed this current planning application (taking careful account of the Appeal Decision) and evidently raises a number of concerns which are based on highway safety. Notwithstanding the application details and possible measures seeking to improve visibility at the Treyarnon Lane / B3276 junction, there remains serious concerns above safety for all road users. The opinion of the highway’s officer is given significant weight.

74. Based on the above, it is considered the proposed development would conflict with Policy 27 of the CLP as safe and suitable access for all has not been demonstrated.

28. In my judgment, the committee was entitled to come to the view that the application is acceptable from a highway safety perspective because the development would not result in a material difference in the number of users and because a condition could ensure that visibility was improved. Although this improvement related only to the northern

visibility splay, it was nevertheless an improvement. In my judgment the reasoning of the committee in this regard also is adequate.

Reasons in relation to policy

29. Finally, the claimant submits that the reasons of the committee do not deal adequately with the compliance or otherwise of the application with Local Plan policies. In particular, the officers took the view that there was no compliance with Policy 9, set out above. The narrative thereunder states:

“2.61 It is further recognised that within the smallest rural communities (e.g. hamlets), where it would not normally be appropriate to develop because of a lack of immediate access to key facilities and services, there may be circumstances where the provision of housing to meet a local need is best met at a specific community rather than in a more sustainable nearby settlement.”

30. It is important, when considering whether the reasons were adequate in this regard, that there was no obligation on the committee to decide whether the application complied with each and every policy. In *R (Corbett) v The Cornwall Council* [2020] EWCA Civ 508, Lindblom LJ said at [45]:

“Under section 38(6) the members' task was not to decide whether, on an individual assessment of the proposal's compliance with the relevant policies, it could be said to accord with each and every one of them. They had to establish whether the proposal was in accordance with the development plan as a whole. Once the relevant policies were correctly understood, which in my view they were, this was classically a matter of planning judgment for the council as planning decision-maker.”

31. In the present case it is clear from the committee's reasoning that it regarded one of the main policy considerations was Policy 9, which it found was complied with. It was acknowledged in the reasons that there was insufficient evidence to show that the site was preferred land and well related to St Merryn. However, Policy 9 supports development outside settlements which is affordable housing led, as this application clearly was. The committee was entitled to use its planning judgment to disagree with the officer's assessment.
32. In my judgment the reasons given by the committee, although short, dealt properly adequately and intelligibly with the main issues. I am not satisfied the claimant has been substantially prejudiced by any shortcomings in the reasoning, given the particular circumstances of this application, the position of the site within the AONB and the urgent need to provide affordable housing.

Relief

33. In the alternative, even if there were shortcomings and/or prejudice, Mr Brett submits that relief should be refused pursuant to Section 31(2A) of the Senior Courts Act 1981, because the outcome is highly likely to have been the same if adequate reasons were given. The committee decided to grant permission on two occasions despite the views

of officers and did so with the benefit of the detailed materials and representations, because of the urgent need for affordable housing. I accept that submission.

Conclusion

34. Accordingly the claim fails. I am grateful to counsel for their clear and focussed submissions. A draft order agreed as far as possible, together with written submissions on any matters which cannot be agreed, should be filed within 14 days of hand down of this judgment.

Richborough