The Planning Inspectorate

Appeal Decision

Site visit made on 4 April 2017

by Colin Cresswell BSc (Hons) MA MBA MRTPI

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

Decision date: 28 April 2017

Appeal Ref: APP/D0840/W/16/3160559
Tremedda, Wheal Venture Road, St Ives TR26 2PQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Douglas Vallender against the decision of Cornwall Council.
- The application Ref PA16/04923, dated 25 May 2016, was approved on 21 July 2016 and planning permission was granted subject to conditions.
- The development permitted is demolition of existing house and replacement with two houses
- The condition in dispute is No 2 which states that: *The dwelling indicated as Plot 2 on drawing no 006 hereby permitted shall not be occupied otherwise than by a person as his or her only or Principal Home. For the avoidance of doubt the dwelling shall not be occupied as a second home or holiday letting accommodation. The Occupant will supply to the Local Planning Authority (within 14 days of the Local Planning Authority's written request to do so) such information as the Authority may reasonably require in order to determine whether this condition is being complied with.*
- The reason given for the condition is: *To safeguard the sustainability of the settlements in the St Ives NDP area, whose communities are being eroded through the amount of properties which are not occupied on a permanent basis and to ensure that the resulting accommodation is occupied by persons in compliance with policy H2 of the St Ives Neighbourhood Plan 2015-2030.*

Decision

1. The appeal is dismissed.

Procedural matter

2. The Cornwall Local Plan (the Local Plan) has been adopted and the St Ives Area Neighbourhood Development Plan (the Neighbourhood Plan) has been made since the application was originally determined by the Council. Both documents now form part of the development plan. This appeal is determined on the basis of the development plan at the time of writing.

Application for costs

3. An application for costs was made by Mr Douglas Vallender against Cornwall Council. This application is the subject of a separate Decision.

Background and Main Issue

4. The appeal site contains a single, detached dwelling. Planning permission has been granted for the existing dwelling to be demolished and two new dwellings to be constructed in its place. Condition 2 of this permission requires that the

dwelling built on Plot 2 should not be occupied other than as a person's only or principal home. This is in response to Policy H2 of the Neighbourhood Plan. The policy indicates that due to the impact upon the local housing market of the continued uncontrolled growth of dwellings used for holiday accommodation (as second or holiday homes) new open market housing, excluding replacement dwellings, will only be supported where there is a restriction to ensure its occupancy as a principal residence.

5. The appellant argues that condition 2 fails to meet any of the tests set out in paragraph 206 of the National Planning Policy Framework (the Framework). The main issue is therefore whether condition 2 is necessary, relevant to planning, relevant to the development, enforceable, precise and otherwise reasonable in the interests of providing housing for local people.

Reasons

6. Policies H2 and H3 of the Neighbourhood Plan were subject to a legal challenge prior to the plan being made. The subsequent judgement[1] rejected the grounds of challenge which argued that the policies were incompatible with article 8 of the European Convention on Human Rights and the requirements for Strategic Environmental Assessment. Paragraph 2 of the judgement states that there were originally eight grounds of challenge, including claims that the plan failed to have proper regard to the Framework and did not contribute to sustainable development. However, these grounds were abandoned by the claimant and the judgement does not deal with these matters further.

7. The appellant draws attention to the fact that the judgement was limited in its scope and argues that it has little relevance as to whether the disputed condition meets the tests within paragraph 206 of the Framework. While this may be the case, the outcome of the judgement nonetheless enabled the Neighbourhood Plan to proceed and Policy H2 now forms part of the statutory development plan for the area. Planning law is very clear that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

8. I have been referred to an Appeal Decision[2] for a development at Carbis Bay where the Inspector gave little weight to Policy H2. However, as this decision was issued prior to the Neighbourhood Plan being made, the circumstances of that particular case are not directly comparable to those in the current appeal. My attention has also been drawn to an Appeal Decision[3] for a development at St Just In Roseland where the Secretary of State gave limited weight to the Roseland Neighbourhood Development Plan, even though it had been made. As the Council was unable to demonstrate a five year supply of deliverable housing land at that time, the relevant development plan policies were considered to be out of date. Since then, the Local Plan has been adopted and the Council indicate that a 5.25 year housing supply can now be demonstrated. This is uncontested by the appellant, though I am informed that the issue of housing supply is due to be discussed at a forthcoming public inquiry. However, based on the evidence before me in this appeal, I consider Policy H2 to be up to date in the context of paragraph 49 of the Framework.

[1] RLT Built Environment Ltd v Cornwall Council [2016] EWHC 2817 (Admin)
[2] Appeal Decision: APP/D0840/W/16/3145638
[3] Appeal Decision: APP/D0840/W/15/3003036

9. Because the Local Plan already includes an allowance for second/holiday homes as part of its overall housing provision, the appellant argues that imposing the disputed condition would amount to 'double counting'. However, it is clear from paragraph 62 of his report[4] that the Local Plan Inspector was aware of the proposed restriction in second/holiday homes in St Ives when establishing the 7% uplift in Local Plan housing targets. Hence there is little to suggest that the policies of the Neighbourhood Plan and Local Plan are incompatible with one another.

10. It is argued that the demand for second/holiday homes is concentrated in the harbourfront area of St Ives. I have been referred to 'Housing Evidence Base Briefing Note 11: Second and Holiday Homes November 2013' which was produced by the Council to help inform the emerging policies of the Local Plan. This contains a map showing that the areas outside St Ives harbourfront have a lower proportion of second homes. I note that the map is based on somewhat dated information (October 2009) and due to its very low resolution, it is not entirely clear whether the appeal site lies within the boundaries of the harbourfront area as defined by the map. Regardless, Policy H2 applies to the whole of the Neighbourhood Plan area and does not distinguish between areas of higher and lower demand for second/holiday homes.

11. The appellant argues that if the disputed condition is applied to all new housing development, the demand for second homes in St Ives would, over time, be met through the existing housing stock. Not only would the condition fail to meet the objectives of Policy H2, it would also mean that housing for local people would eventually become concentrated in less accessible parts of town, away from the harbour and commercial centre where most shops and services are located. It is further suggested that the condition would reduce the value of market housing, thereby stifling housing supply, including that delivered through affordable housing contributions.

12. However, the Neighbourhood Plan was subject to Examination quite recently and was found to be sound. Its polices were therefore considered to achieve sustainable development in accordance with the Framework and other aspects of the development plan. Although the effect of Policy H2 may be something which is monitored to inform future plan making, there is little before me at present to show that the condition would necessarily lead to an unsustainable pattern of development in the manner suggested by the appellant.

13. Taking the above into account, I therefore consider that the disputed condition is necessary in order to implement Policy H2. It is relevant to planning as it concerns a clear policy objective of the development plan. The condition is also relevant to the development permitted as the policy objective of restricting second/holiday homes applies to new housing development. I now turn to the matters of whether the condition is precise and enforceable.

14. The condition states that the proposed dwelling should not be used for holiday letting accommodation, which is a clearly definable activity. However, I accept that the terms 'principal home' and 'second home' are somewhat more open to interpretation. Nonetheless, it is clear enough from reading the informative attached to the condition and Policy H2 that the overall intention is for those occupying the property to be living primarily within St Ives as opposed to

[4] Report on the Examination into the Cornwall Local Plan Strategic Policies (23 September 2016).

outside the area. This is a relatively straightforward objective. On that basis, I consider the condition to be reasonably precise in its meaning.

15. The informative indicates that various forms of evidence may be accepted as proof of principal residence. I accept the appellant's point that some of the individual items of evidence listed would not necessarily prove whether a dwelling was being used as a principal residence or not. However, I consider the Council would be able to determine with a reasonable level of certainty whether a property was being used as a principal residence provided that a suitably wide range of evidence was collected. Taking into account a variety of evidence from different sources is also a pragmatic approach, especially considering that personal circumstances are likely to vary between different occupiers. For example, it would enable account to be taken of a situation where a locally based individual may need to work away from the area on a temporary basis, similar to the scenario described by the appellant. It is not an indication that the condition is imprecise, as the appellant suggests.

16. I see little reason why enforcement action could not be taken if evidence comes to light that the property was being used as a second/holiday home contrary to the provisions of the condition. The second/holiday home activity could be required to cease and an opportunity provided for the dwelling to be occupied by a locally based person, potentially through the letting market or other means. Whilst I agree with the appellant that it may sometimes be appropriate for the Council to apply discretion in pursuing enforcement action (including a consideration of whether human rights would be infringed) this does not mean that the disputed condition is necessarily unenforceable.

17. I understand that that appeal property has been subject to fire damage. Although it is argued that the proposed condition has affected the financial viability of redeveloping the site, I have not been provided with any figures or other substantive evidence to demonstrate this. As such, I give this consideration little weight in my decision.

Conclusion

18. I conclude that condition 2 is necessary, relevant to planning, relevant to the development permitted, enforceable, precise and otherwise reasonable in the interests of providing housing for local people. As such, it meets the tests set out in paragraph 206 of the Framework. For the above reasons and having regard to all other matters raised, the appeal should therefore be dismissed and condition 2 retained in its present form.

Colin Cresswell

INSPECTOR