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## Appeal Decision

Site visit made on 20 June 2017

**by Thomas Bristow BA MSc MRTPI**

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

**Decision date: 3<sup>rd</sup> August 2017**

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**Appeal Ref: APP/Z0835/W/17/3168678**

**Holy Vale Farmhouse, Holy Vale Lane, Holy Vale, St Mary's TR21 0NT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
  - The appeal is made by Mr Ian Sibley against the decision of the Council of the Isles of Scilly.
  - The application Ref P/16/060/FUL, dated 1 June 2016, was refused by notice dated 22 September 2016.
  - The development proposed is the reconfiguration of 5 existing dwellings and the conversion of outbuildings to create 3 new dwellings.
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### Decision

1. The appeal is allowed and planning permission is granted for the reconfiguration of 5 existing dwellings and the conversion of outbuildings to create 3 new dwellings at Holy Vale Farmhouse, Holy Vale Lane, Holy Vale, St Mary's TR21 0NT in accordance with the terms of the application Ref P/16/060/FUL, dated 1 June 2016, subject to the schedule of conditions in this decision.

### Application for costs

2. An application for costs was made by Mr Ian Sibley against the Council of the Isles of Scilly, which is the subject of a separate decision.

### Preliminary matters

3. The description of development given in the banner heading is that used in the Council's decision notice. This accurately describes the current scheme, as opposed to that originally submitted which was instead for the creation of 4 new dwellings.
4. The Council explain that the internal physical alterations proposed do not require planning permission, and do not object to the effects of the development proposed in relation to the character or appearance of the area.<sup>1</sup>

### Planning background

5. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The

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<sup>1</sup> As set out in paragraphs 6.2 and 7.1 of the Council's statement of case, including with regard to applicable designations (Conservation Area, Area of Outstanding Natural Beauty and Heritage Coast).

Isles of Scilly Local Plan was adopted in November 2005, and all policies were subsequently saved by Government direction.

6. Policy 3 'Housing' of the Local Plan sets out that in order to promote sustainable communities no 'general open market housing' will be permitted. Residential development is only supported by policy 3 where it relates to a 'specific local need' for affordable housing, is to accommodate a 'key worker', or is for the provision for staff accommodation.
7. The appeal site comprises a close-knit cluster of buildings associated with Holy Vale Farmhouse. It is within the hamlet of Holy Vale nestled within the landscape on account of the topography and surrounding tree cover. I understand that occupancy of the 5 existing residential units within the appeal site is unrestricted.
8. The proposal is to reconfigure existing buildings to create an additional 3 dwellings. As specified in the application form, these would be market housing. There are no obligations pursuant to section 106 of the Town and Country Planning Act 1990 as amended (the 'TCPA') before me which would restrict their occupancy in accordance with policy 3 of the Local Plan. Accordingly I cannot impose a restrictive occupancy condition as this would render the development substantially different from that proposed.<sup>2</sup>
9. It is therefore not disputed that the proposal conflicts with the requirements of policy 3 of the Local Plan. The main issue in this appeal is therefore whether or not the harm resulting from the conflict with policy 3 of the Local Plan would be outweighed by the benefits of the development proposed.

## Reasons

10. Supporting text to policy 3 explains that it seeks to ensure that all housing development relates to needs generated 'within the islands'. Policy 3 is informed by the limited housing stock on the islands comprising the Isles of Scilly, a finite supply of land, financial constraints on affordable housing provision, and the effect of high levels of second home ownership and tourist accommodation on the local housing market. Policy 3 therefore takes local circumstances into account and aims to create sustainable communities, objectives common with the National Planning Policy Framework (the 'Framework').<sup>3</sup>
11. In practice policy 3 operates through the use of a model agreement pursuant to section 106 of the TCPA (the 'model agreement').<sup>4</sup> This contains clauses which would restrict the occupation of accommodation to a qualifying person, defined as a person with a 'specific local need' or a 'key worker'. The appellant contends that the use of the Council's model agreement is impractical.
12. 'Specific local need' is defined by conditions A and B of the third schedule to the model agreement. Condition A is fulfilled where accommodation is 'inadequate', which may include consideration of whether accommodation meets the

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<sup>2</sup> Planning Practice Guidance Reference ID: 21a-012-20140306.

<sup>3</sup> Paragraphs 10 and 50 in particular.

<sup>4</sup> Reproduced at appendix 3 of the appellant's statement of case.

particular circumstances of individuals.<sup>5</sup> I cannot therefore support the appellant's contention that the Council's model agreement would inevitably meant that a 'child living with their parents within an adequate house are unable to purchase a house on the island for themselves (at any age)'.<sup>6</sup>

13. The fourth schedule to the model agreement refers to the Council's Key Worker Policy and Procedure Supplementary Planning Document dated November 2012 (the 'SPD'). Employees of private companies, such as those engaged in agriculture, fishing and tourism are not defined as key workers in the SPD.
14. I acknowledge that private enterprise is beneficial to the Isles of Scilly, tourism in particular being the mainstay the local economy. However the SPD has been informed by the demographic, economic and housing market context to which policy 3 seeks to respond. In this context the Council's SPD seeks to ensure that there is sufficient accommodation for those engaged in public service functions, health care professions, and associated supporting roles.
15. Whilst the appellant avers that it would be challenging to secure development finance were development permitted subject to the model agreement, there is no robust evidence before me in support of this position in this case (such as evidence from potential lenders). I accept that construction costs on the island are, for logistical reasons, higher than on the mainland. Nevertheless the appellant's viability evidence relates principally to detached new build properties as opposed to the proposal here which is for the conversion of structurally sound buildings. Whilst the appellant has supplemented this evidence at appeal, the proposal is not supported by a robust viability appraisal.
16. On the basis of the evidence before me I am therefore not satisfied that the use of the model agreement would necessarily be impractical. However my locus is to determine whether or not the development proposed is acceptable, and I have considered the operation of policy 3 only as it has a bearing on the planning context relevant to the development proposed.
17. Whilst the age of a development plan policy is not determinative of its currency, the Local Plan was adopted before the publication of the Framework in March 2012. I understand that the Council are therefore undertaking a review of the Local Plan. Two documents related to this review are before me: the Council's Housing Growth Plan dated May 2014 (the 'HGP') and Strategic Housing Market Assessment dated 2016 (the 'SHMA').
18. The HGP explains that the islands have an ageing population, second home ownership stands at approximately 30% of housing stock, and that housing needs exist for both affordable and market housing. It recommends that 'existing planning and housing policies should be relaxed' in order to support the viability of local services and communities.<sup>7</sup>
19. The HGP also references the change of emphasis in the Framework from the policy context in which the Local Plan was established, i.e. seeking to meet

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<sup>5</sup> The Council's published Criteria for the Assessment of Qualifying Persons asks individuals to 'describe the type and size of accommodation you are currently living in, including its physical condition'.

<sup>6</sup> Paragraph 5.22 of the appellant's statement of case.

<sup>7</sup> At page 2.

- objectively assessed needs for market and affordable housing. It furthermore recommends focusing housing supply on previously developed land to minimise adverse effects to the character of the islands.<sup>8</sup> Criterion (b) of policy 2 'Sustainable Development' of the Local Plan likewise supports the re-use of previously developed land.
20. Similarly the SHMA identifies that there is existing demand for market housing, a component part of a figure of 120 homes established therein as representing objectively assessed housing needs to 2030.<sup>9</sup> The SHMA further establishes that there is a forecast shortfall in delivery of market housing of seven dwellings to 2019, and that needs for market housing are predominantly for one or two bedroom properties.<sup>10</sup>
21. The Council has made the case at appeal, however, that it is either unnecessary to demonstrate a five year land supply of deliverable housing sites for the Isles of Scilly as set out in paragraph 47 of the Framework, or alternatively that 'an emerging' supply can be demonstrated against objectively assessed needs of 120 homes as set out above.<sup>11</sup>
22. I accept that the islands are accorded particular protection on account of their natural and historic character. However paragraph 47 of the Framework does not exempt certain local planning authorities from planning to meet housing needs as fully as possible, including through the maintenance of a five year land supply of deliverable sites. The Framework furthermore does not specify that the approach in paragraph 47 can be obviated by defining the entirety of a local planning authority's administrative area as one to which rural exception site policy applies.<sup>12</sup>
23. Moreover the Council do not object to the proposal with regard to its effect on the character or appearance of the area, being in essence a proposal for the conversion of existing buildings. On the evidence before me, and with regard to the nature of the development proposed and its surroundings, there is nothing to lead me to a different position in this regard.<sup>13</sup>
24. The Council refer in their statement of case to having commenced work on a Strategic Housing Land Availability Assessment (the 'SHLAA'). However neither the SHLAA, SHMA nor Council's position in respect five year land supply has been considered at examination.<sup>14</sup> There is therefore no robust evidence before me to support the Council's position that they are able to demonstrate a five year land supply, or to indicate what has become of the shortfall in market housing provision identified in the SHMA as set out above.
25. Relevant policies for the supply of housing must therefore be considered out-of-date.<sup>15</sup> Nonetheless on account of the demographic and economic factors

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<sup>8</sup> Page 15.

<sup>9</sup> In particular at table 133-11.

<sup>10</sup> At paragraphs 13.6.5 and 2.7.6 respectively.

<sup>11</sup> Council statement of case paragraphs 5.12 and 6.18.

<sup>12</sup> Although such an approach may be proposed in the preparation of a Local Plan, this approach will be tested at examination with reference to appropriate evidence and in terms of its consistency with the Framework (a process which has not been undertaken here).

<sup>13</sup> With regard to the relevant provisions of the Framework and applicable statutory requirements.

<sup>14</sup> With reference to the requirements of paragraph 182 of the Framework.

<sup>15</sup> With reference to paragraphs 49 and 14 of the Framework.

which policy 3 of the Local Plan seeks to address as explained above, I am of the view that policy 3 carries moderate weight in the present.<sup>16</sup> Accordingly the harm arising from the development proposed conflicting with policy 3 also attracts moderate weight.

26. However the proposal would have various benefits. It would provide for 3 new open market homes, for which there is an existing level of need as set out in the HGP and SHMA, and in line with the approach in the Framework of seeking to meet objectively assessed development needs. The proposal would entail further social and economic benefits in supporting employment during construction and as future occupants would make use of nearby services and facilities.
27. Furthermore the dwellings proposed would be either one or two bedroom in size, in respect of which there is particular need acknowledged in the SHMA. The proposal would re-use previously developed land which is supported by criterion (b) of policy 2 of the Local Plan, and would entail no unacceptable effects to the character or appearance of the area. Taken together the benefits of the development proposed carry significant weight in its favour.
28. For the above reasons I therefore conclude that the adverse impacts of the development proposed resulting from the conflict with policy 3 of the Local Plan would not significantly and demonstrably outweigh the benefits that would result.

### **Other matters**

29. I have considered the concerns raised by nearby residents regarding the adequacy of the parking provision proposed, access arrangements, and sewerage capacity. Based on the information before me and my site visit observations, I am of the view that parking provision would be comparable with that associated with many other properties nearby and would not serve to unduly constrain the functional space available along the carriageway adjacent to the appeal site. All drainage provision will need to comply with the relevant provisions of Building Regulations,<sup>17</sup> which is a separate regime to planning. I would also note that the Council raises no objection to the development proposed in these regards. Accordingly neither these matters, nor any others, are of such significance so as to alter my reasoning in respect of the main issue in this appeal.

### **Conclusion**

30. For the above reasons, and having taken all other relevant matters into account, the harm arising from the conflict with policy 3 of the Local Plan would not outweigh the benefits of the proposal. Therefore with regard to the Local Plan taken as a whole and the approach in the Framework, I conclude that the proposal represents sustainable development and should be allowed subject to conditions set out below.

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<sup>16</sup> With reference to paragraph 215 of the Framework.

<sup>17</sup> Approved Document H- Drainage and Waste Disposal in particular.

## Conditions

31. I have imposed a condition requiring compliance with the relevant plans in the interests of certainty. There is no specific provision in policy 3 enabling the imposition of a condition requiring that dwellings proposed are occupied as principal residences, and the use of the development proposed is specified as dwellings rather than holiday accommodation.<sup>18</sup> Condition 3 as proposed by the Council in their statement of case is thereof unreasonably and unnecessary.<sup>19</sup>
32. As established above the buildings proposed for conversion are a close-knit cluster and the character and appearance of the area is sensitive to change. Given the potential for even relatively minor alterations to the dwellings proposed to either adversely affect the living conditions of the occupants of neighbouring properties or the character of the area, I am satisfied that it is appropriate to withdraw certain permitted development rights via condition.<sup>20</sup> However this condition need not apply to Schedule 2, Part 1 classes F, G, and H of the Town and Country Planning (General Permitted Development) (England) Order 2015, as the limitations or conditions in these classes provide adequate safeguards to avoid undue effects.
33. In order to safeguard the living conditions of those nearby during construction it is necessary to specify via condition the hours during which building operations may occur. To ensure that the proposal integrates appropriately with its surroundings it is further necessary to impose conditions requiring that agreed external materials are used, and that an agreed landscaping scheme and boundary treatment scheme are implemented. Appropriate external materials must necessarily be agreed before any external development takes place.
34. I have imposed a condition requiring that an agreed sustainable design scheme is implemented. This accords with the approach in criterion (2) of policy 2 'Sustainable development' of the Local Plan, which sets out that the design of development should seek to use natural resources efficiently, and applies before any development is commenced as such a scheme may influence the approach taken to construction.
35. It is unnecessary to impose a condition addressing the potential effects of the development proposed on birds and bats as protections apply under separate legislation,<sup>21</sup> and as the appellant's Bat Survey Report dated 22 May 2016 concludes that 'no evidence was found that bats were roosting in these buildings or had done so in the past'.
36. A condition related to waste management, as proposed by the Council, is unnecessary. The condition proposed by the Council seeks to control hypothetical adverse effects resulting from the disposal of waste material, and there is no specific provision in policy 1 'Environmental protection' for such an

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<sup>18</sup> With regard to section 75(3) of the TCPA.

<sup>19</sup> With reference to paragraph 206 of the Framework.

<sup>20</sup> With reference to the Planning Practice Guidance Reference ID: 21a-017-20140306.

<sup>21</sup> Including variously the Countryside and Rights of Way Act 2000, The Wildlife and Countryside Act 1981, and the Natural Environment and Rural Communities Act 2006.

approach. In any event the Council have other powers to remedy adverse effects that may arise in this regard.<sup>22</sup>

37. In imposing conditions I have had regard to relevant requirements,<sup>23</sup> and have accordingly amended the wording of certain conditions proposed by the Council without altering their aim.

*Thomas Bristow*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 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: 100/03 Rev 2, 100/04 Rev 2, 1008 Rev 1, 100/09.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, re-enacting or modifying that Order), no development permitted by Schedule 2, Part 1, Classes A, B, C, D, or E of that Order shall be undertaken in relation to the dwellings hereby permitted.
- 4) No construction works related to the development hereby permitted shall take place outside of the following hours: 0800 – 1800 Mondays to Saturdays. No construction works related to the development hereby permitted shall take place on Sundays, on public holidays, or on bank holidays.
- 5) Other than internal works no development hereby permitted shall be undertaken until details or samples of the external materials to be used have been agreed in writing with the local planning authority (which shall include details of the manufacturer, range, and colour details where applicable). Development shall be carried out in accordance with the details and samples thus agreed.
- 6) In the first planting season following the first occupation of any of the dwellings hereby permitted, or the completion of the operational development hereby permitted, whichever is the sooner, a landscaping scheme shall be implemented in accordance with details previously agreed in writing with the local planning authority (which shall include details of all existing trees and hedgerows on site, details of any trees and hedgerows to be retained together with measures for their protection during construction,

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<sup>22</sup> Including notices under section 215 of the TCPA.

<sup>23</sup> Including paragraph 206 of the Framework, Guidance Reference ID: 21a-004-20140306 and Article 35(1)(a) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

a schedule of proposed plant species, size, density and planting locations alongside an implementation programme). Any trees or plants which within a period of 5 years from the implementation of the landscaping scheme die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 7) Before any of the dwellings hereby permitted is first occupied a boundary treatment scheme shall be implemented in accordance with details previously agreed in writing with the local planning authority (which shall include details of the position, design, materials, height and type of any boundary treatments proposed). The boundary treatment scheme shall thereafter be retained in accordance with the details thus agreed.
- 8) No development hereby permitted shall be undertaken until a sustainable design scheme has been agreed in writing with the local planning authority (which shall include details of any water conservation and harvesting measures and renewable energy generation). Development shall be carried out in accordance with the sustainable design scheme thus agreed.