



COUNCIL OF THE ISLES OF SCILLY

Planning & Development Department

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11 September 2017

Dear Sir/Madam,

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

Costs application in relation to Appeal Ref: APP/Z0835/W/17/3168678

Date Appeal/Costs Decision Issued: 3rd August 2017

Location: Holy Vale Farmhouse, Holy Vale Lane, Holy Vale, St Mary's TR21 ONT

The Local Planning Authority (LPA) are extremely concerned and very disappointed with the above decisions made by the Planning Inspectorate to the extent that we are making a formal complaint. The LPA are especially concerned that the above decisions undermine the current and emerging policy approach for permitting new homes on the Isles of Scilly by failing to take into account the particular circumstances and issues facing the islands. In essence the LPA consider that the appeal decision will increase pressure to permit more open market housing on the islands, which will not address the acute needs for more affordable homes to sustain the island communities.

For the reasons explained in this complaint, the LPA fail to understand how the Planning Inspector has awarded costs for acting unreasonably when current and emerging policies and documents have been taken into account in the decision making process to refuse the Holy Vale planning application. This decision has damaged the reputation of the LPA and cost the authority over £6,000, which equates to more than a third of the total income it receives annually from planning fees, and has therefore had a significant impact on our already stretched budget.

As indicated in this complaint, the Holy Vale decision is in complete contrast and totally inconsistent with another very recent decision (Appeal Ref: APP/Z0835/C/17/3172304) made in July 2017 that considered similar issues in relation to the rear of the Ropewalk, Porthloo, St Mary's, Isles of Scilly.

Delivering affordable homes is fundamental to making the island communities more sustainable and as self-contained as possible. Currently the Local Plan, through Policy 3, endeavours to ensure that housing is available to meet the needs of the community in

perpetuity and to promote sustainable communities on the inhabited islands and therefore **no general open market housing will be permitted** (my emphasis added).

Providing affordable homes is fundamental to the continuing sustainability and viability for the Isles of Scilly, in accordance with the sustainable development requirements of the NPPF. Currently there is an acute lack of decent affordable homes for rent or sale to meet the needs of the community. Much of the housing stock is unrestricted and used as second and holiday homes (about 30% based on Council Tax records) reflecting its exceptional environment and the dominance of tourism.

The value of homes on the islands is especially high (at an average price £495k, the highest in the South West) whilst income levels are low. The Strategic Housing Market Assessment (SHMA) highlighted that 35% of households had incomes below £20,000.

Housing supply on the Isles of Scilly is extremely limited with opportunities for new homes restricted due to a number of factors, including an exceptional environment, small land mass, infrastructure constraints and high building costs. Consequently, the existing and emerging policy framework for permitting residential development is in response to protecting the exceptional quality of the environment, whilst ensuring any new homes make a positive contribution to the sustainability and viability of the islands. Every new home that is delivered through the planning system without an occupancy restriction has the potential to make the current housing situation worse because the property can be used as a holiday or second home, whilst every local home delivered is one more that contributes towards making the communities on the islands more sustainable now and in the longer term.

The LPA considers that the findings of the SHMA supports the position of a continued rural exceptions-style approach on the islands due to the significance of affordable housing needs on the Isles of Scilly. It is clear from this work that the Objectively Assessed Housing Needs (OAN) equates to the delivery of 120 homes over the emerging new Local Plan period (2015-2030). The OAN is based on demographic and dwelling projections that are driven by net migration gains plus the high vacancy rate (2nd/holiday homes) and a further uplift of 10% to accommodate a range of market signals. As the recent analysis of the housing need shows, 105 dwellings should be for a local need, which equates to virtually the entire total of the 120 figure for OAN until 2030.

The LPA have consistently and justifiably argued that the combination of factors continues to justify the approach taken in Policy 3 of the adopted Local Plan and also accords with the requirement to have regard to local circumstances and to conserve and enhance the natural beauty of AONBs in accordance with paragraphs 54 and 115 respectively of the National Planning Policy Framework (NPPF). Indeed the LPA have argued that the particular circumstances and atypical housing situation of the islands are an effective and justified counter position to more general housing statements set out in the NPPF, including paragraph 14 and section 47 in general. For example, applying the standard approach to 5 year land supply to the Isles of Scilly with its tiny population, scarce land base and highly protected landscape is simply not a proportionate or reasonable planning approach for the Islands; even though the LPA consider that an emerging 5 year supply does exist.

The above considerations are reflected in the conclusions of the Planning Inspector on 10th July 2017 in dismissing the Ropewalk appeal as indicated below:

“The Framework sets out the Government’s requirements for the planning system only to the extent that it is relevant, proportionate and necessary to do so and is a material planning consideration in the determination of planning applications. The circumstances of the Scilly Isles are unique and the Council through its planning policies has endeavoured to ensure that housing is available to meet the needs of the community in perpetuity and to promote sustainable communities on the inhabited islands. The Scilly Isles are vulnerable to their own popularity as a destination for second home owners and house prices have become unaffordable to sections of the community. However, local needs can only be met on the islands themselves and not on the mainland. The standard approach to housing as set out in the Framework, whilst material in the determination of this appeal, should be considered in the context of the unique local circumstances that prevail in the Scilly Isles and the need for relevant policies for the islands to reflect the sensitivity of these circumstances”.

As stated within the planning statement relating to the Holy Vale appeal, the LPA recognise that the Housing Growth Plan (HGP) and SHMA identifies that market housing could form part of the housing requirements on the islands. However, the position in both documents is caveated with regard to the particular circumstances and nuances of the islands in that any open market housing should only be permitted as a means of delivering or enabling affordable homes to meet the needs of the community in the interests of sustainability in recognition that for example, *“securing more social housing for local people will require an element of cross-subsidy from more open market housing”* (HGP).

Both the HGP and SHMA do not directly advocate an approach to permit pure open market dwellings to meet demand, particularly given the potential likelihood that such unrestricted housing could be used as second homes or as investment opportunities and let as tourist accommodation. In recognising the increasing difficulties of delivering affordable homes on the islands the HGP advocates that *the “Council, working with its key partners (the Duchy of Cornwall and active developing housing associations) needs to review alternative approaches to delivery of market housing and explore: a) The minimum level of sale housing required to maximise delivery of affordable housing”*. Furthermore the HGP states *“Given the limited opportunities for new housing and the wide range of demands for the housing, the type and tenure of the new supply should be planned as an integrated package and not on a ‘first come, first served’ basis”*. The decision of the Planning Inspector in the case of the Holy Vale decision is completely at odds with the approach advocated in the HGP given that it permits 3 new open market dwellings ‘on a first come, first served’ basis only and not as ‘an integrated package’ to include the provision of much needed affordable homes.

The Inspectors’ misinterpretation and misunderstanding of the planning issues facing the Isles of Scilly in relation to the Holy Vale appeal are clearly apparent and are completely at odds in comparison to the appeal decision relating to the Ropewalk, where, just 3 weeks earlier, the Inspector was clearly giving continued weight to Policy 3.

“Notwithstanding paragraph 49 of the Framework which indicates that Policy 3 of the Local Plan should not be considered to be up-to-date in the absence of a 5 year supply of deliverable

housing sites, I nevertheless attach considerable weight to Policy 3 and the intention behind it to promote sustainable island communities. The Council is reviewing the Local Plan and has carried out considerable work on housing that will inform the new local plan in due course and will be subject to the examination process. Policy 3 is fundamental to the current plan and should not be set aside lightly pending the adoption of a new local plan”.

The emphasis of the Planning Inspector in relation to Holy Vale appeal is strikingly different and appears to take little account of local circumstances (which the previous Inspector concluded was unique), including current policy approach of the Local Plan, but is made with a very strong emphasis on the national policy framework.

Clearly the approach and decision making of the Planning Inspectorate is inconsistent and has placed the LPA in a difficult situation when considering similar applications in the future. The ambiguity and uncertainty resulting from this appeal decision could undermine the exceptional environmental quality and sustainability of these fragile islands by paving the way for more open market housing outside the reach of the islands’ communities.

The LPA fail to understand how the Planning Inspector has awarded costs when clearly current and emerging policies and documents have been taken into account in the decision making processes to refuse the Holy Vale planning application. Indeed, the following extract from the award of costs demonstrates a misunderstanding of the emerging policy approach where both the HGP & SHMA explain that the **need** for open market housing exists as an enabler of affordable homes and is therefore not a **need** in itself but simply a facilitator to enable the much needed affordable homes and would not be permitted in isolation.

“The Council’s Housing Growth Plan dated May 2014 (the ‘HGP’) and Strategic Housing Market Assessment dated 2016 (the ‘SHMA’) are referenced by the Council in their appeal statement. However there is no substantive recognition given by the Council at appeal to the evidence within these documents illustrating that needs exist on the islands for market homes. Thus the Council’s own evidence conflicts with the inflexible approach in policy 3 of the Local Plan”.

The Holy Vale appeal decisions make various references that a housing need exists for market housing and, rather inexplicably, concludes that the LPA have failed to provide any evidence of “*what has become of the shortfall in market housing provision identified in the SHMA*”. The LPA note that the Planning Inspector concluded that there were perceived benefits to the Holy Vale scheme, in that it would provide “*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 and constitute sustainable development*”. The LPA maintain that this conclusion is highly flawed and demonstrates a complete misunderstanding and interpretation of existing and emerging policy and documents and fails to take into account the particular circumstances of the islands.

The LPA are aware that we can challenge the appeal decision made by the Planning Inspectorate through the High Court but consider the process to be prohibitively expensive for such a small authority. We are also aware that we can challenge the cost decisions on *Wednesbury* grounds (see ***Golding v SSCLG*** [2012] EWHC 1656 (Admin)) and also on the ground that an Inspector has failed to give “clear and intelligible reasons” (***R v SSE ex parte North***

Norfolk DC [1994] 2 PLR 78 at 89). However, we are aware that as cost decisions involve discretionary judgments from an inspector who has actually heard the evidence, it is rare that it would be appropriate for a court to interfere with such a decision (**Golding** at [42]). In conclusion, we consider that any challenge to the cost decision would be unfavourable and could result in further costs for the LPA.

It appears to the LPA that the Holy Vale Inspector did not correctly analyse the information before him and therefore came to a decision which is difficult to justify based on the submissions and planning circumstances of the Isles of Scilly. Contrastingly his colleague with the Ropewalk appeal showed in his analysis that he had interpreted the evidence correctly, applied the importance of the sustainable development test in the NPPF to the Isles of Scilly and came to a decision based on all the circumstances of the case. The Ropewalk decision came out before the Holy Vale decision and this earlier decision was not taken into account by the Holy Vale Inspector. Clearly this was a material planning consideration when the planning issues were the same and this just adds to the feeling of inconsistency and injustice.

In summation and for the reasons stated above, the LPA are extremely concerned about the decisions relating to Holy Vale and the potential implications for the Isles of Scilly and request the following comments:

1. A detailed explanation of how the Planning Inspectorate could have made such inconsistent decisions within less than a month and interpreted the planning policy framework, supporting documentation and particular circumstances so widely as they relate to the of the Isles of Scilly.
2. Advice on how the LPA deals with planning applications for residential development based on the inconsistent approach of the Planning Inspectorate and the implications until such time as the new Local Plan is adopted (anticipated date - Spring 2019).
3. An independent assessment explaining the reasons why the Planning Inspectorate considers that the LPA acted unreasonably in relation to the Holy Vale planning application, including reference to the Planning Inspectorate decision relating to the Ropewalk appeal.

Due to the significant concerns of the LPA and the potential impacts on the Isles of Scilly in relation to the Holy Vale decision, please note that we have copied this complaint to Steve Quartermain at DCLG and we will also be contacting our Local MP, the RH Derek Thomas, about the housing issues this decision presents.

I look forward to your comments in due course.

Yours faithfully,



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