The Planning Inspectorate

Appeal Decision

Site visit made on 4 July 2017

by P N Jarratt BA DipTP MRTPI

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

Decision date: 10 July 2017

Appeal Ref: APP/Z0835/C/17/3172304
Land to the rear of The Ropewalk, Porthloo, St Mary's, Isles of Scilly, TR21 0NF.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr T Hiron against an enforcement notice issued by The Council of the Isles of Scilly.
- The enforcement notice, numbered A-17-003, was issued on 17 February 2017.
- The breach of planning control as alleged in the notice is the use of land as an independent unit of residential accommodation, including the use of a chalet (approximate position of the chalet is edged in green on the plan attached to the notice), resulting in a change of use without the benefit of planning permission.
- The requirements of the notice are to cease the use of the land as an independent unit of residential accommodation, including the use of the chalet.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
- **Summary of decision: Appeal dismissed and notice upheld.**

The site and relevant planning history

1. The appeal site is on land to the rear of a dwelling known as the Ropewalk. It is enclosed by a high hedge and a 2m high fence on the west boundary. The site is accessed by a pedestrian gate and a timber chalet is located in the south west corner. The single storey chalet comprises a single bedroom, a living/kitchen area and a shower/WC. It has a felt roof. Within the appeal site is a greenhouse and a garden shed and there is an ungated access between the Ropewalk and the appeal site.

2. When the Ropewalk was granted planning permission in 2006, the appeal site was identified as garden associated with the new dwelling. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, condition 8 of the 2006 permission prohibited extensions, outbuildings or external alterations of the property without the prior written agreement of the local planning authority. In 2012 a two storey rear extension was permitted to the cottage.

3. The site is close to the foreshore in an area of residential use and a boatyard. It is within the Isles of Scilly Conservation Area and the Isles of Scilly Area of Outstanding Natural Beauty. The appeal site is subject to an Article 4 Direction restricting various permitted development rights including some related to dwellings.

4. An application for a Lawful Development Certificate was determined in early 2017 on the basis that although the chalet structure was considered to be lawful, the use of the land and chalet as a separate residential unit was not.

The appeal on ground (a)

5. An appeal on this ground is that planning permission should be granted for the development alleged in the notice.

Main issues

6. The main issues in this appeal are whether the use of the chalet as an independent unit of accommodation would affect the opportunities for meeting the needs of the community for local housing in perpetuity and whether it would represent sustainable development.

Reasons

7. Policy 3 of the Isles of Scilly Local Plan 2005 does not permit any general open market housing in order to ensure that housing is available to meet the needs of the community in perpetuity and to promote sustainable communities on the inhabited islands. New housing is only permitted in respect of key workers or staff accommodation subject to limitations. Furthermore, Policy 3 also states that all new residential development will be subject to secure arrangements to ensure that it remains permanently available to meet specific identified need that justified its original permission.

8. Since its erection the chalet has been occupied by local residents but the appellant has not indicated an intention to enter into an agreement to restrict its occupation. It therefore would have the potential to be a second or holiday home. The Council considers that the appeal is effectively an application for a new open market dwelling, with which I agree. On this basis the appeal should fail unless other considerations indicate otherwise.

9. The Local Plan is being reviewed but is not at a stage where any significant weight can be attached to it. The appellant considers that the policies in the adopted local plan relating to the supply of housing are out of date due to the lack of a 5 year supply of deliverable housing sites and that Policy 3 is not consistent with the National Planning Policy Framework (the Framework) and should be given limited weight. It is argued that significant weight should be given to the Framework and that paragraph 49 triggers the tilted balance in respect of the presumption in favour of sustainable development set out in paragraph 14. The appellant is critical of the pre-conditions of the model s106 agreement relating to occupancy restrictions, the definition of key workers and the viability of affordable housing schemes.

10. The Council's Housing Growth Plan 2014 acknowledges that the Local Plan pre-dates the Framework and that some 40-70 dwellings would be needed over 10 years to achieve the estimated provisional figure of 90-120 new dwellings. The Growth Plan indicates that priority would be given to brownfield and infill sites before greenfield development is considered. The appellant also refers to the Strategic Housing Market Assessment 2016 and an Objectively Assessed Need of 120 units to 2030 but I note that, as the Council points out, the need for affordable housing is 105 by 2030 which suggests there would be restrictions on virtually all the potential new delivery by 2030.

11. 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.

12. 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.

13. The appellant considers that the dwelling provides economic benefits through Council tax and other expenditure; social gains by boosting the supply of housing; and, has limited environmental impacts. However, I do not consider that granting permission for the residential use of a timber chalet with unrestricted occupancy represents sustainable development. It contributes nothing to the creation of a high quality built environment, which forms an aspect of the social and environmental roles of sustainable development, and fails to meet local housing needs of future generations.

14. The appellant refers to Policy 2 of the Local Plan regarding the reuse of previously developed land and also to paragraph 111 of the Framework regarding the effective use of brownfield land. However I attach little weight to such arguments as the development relates to the use of private residential garden land of the Ropewalk.

15. I consider that the use of the chalet as an independent unit of accommodation would affect the opportunities for meeting the needs of the community for local housing in perpetuity and would be contrary to the adopted local plan and that it would not represent sustainable development in the context of the Framework.

Other considerations

16. It is only the use that is unauthorised as the chalet structure has been determined to be lawful. Consequently the visual impact of the development would be limited to the activities associated with the occupation of the chalet as a permanent dwelling. Although this would be likely to be greater than its use as an outbuilding ancillary to the Ropewalk, its impact would not be

significant in terms of the character or appearance of either the Conservation Area or the AONB.

17. The Council considers that in view of the appellant's knowledge that the use of the chalet and occupation of the land as a separate dwelling was development requiring planning permission, the development represents a case of intentional authorised development that should be given weight in the determination of the appeal.[1] The appellant acknowledges unauthorised development has taken place but states that there is no evidence that this was done intentionally. Irrespective of the intentions behind this unauthorised development, I find that this does not have any significant effect on my conclusion on the main issues.

Conclusion

18. For the reasons given above and having had regard to all other relevant considerations, including the appellant's reference to the planning decision at South Tinks, I conclude that the appeal on ground (a) should be dismissed.

Formal decision

19. The appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

P N Jarratt

Inspector

[1] Written Ministerial Statement confirmed in letter from DCLG Chief Planner 31 August 2015