Neutral Citation Number: [2021] EWHC 1114 (ADMIN)

Case No: CO/1039/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Bristol Civil Justice Centre
2 Redcliff St.
Redcliffe
Bristol BS1 6GR
(by remote hearing)

Date: 30th April 2021

Before :

MRS JUSTICE JEFFORD DBE

- -

Between :

THE QUEEN **(on the application of WILLIAM CORBETT**	**Claimant**
- and –	
THE CORNWALL COUNCIL	**Defendant**
-and-	
DYMPNA WILSON	**Interested Party**

- -
- -

Mr William Corbett appearing in person
Mr Sancho Brett (instructed by **Cornwall Council Legal Services**) for the **Defendant**

Hearing date: 17 November 2020

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10.00 a.m. on Friday, 30 April 2021.

MRS JUSTICE JEFFORD DBE:

Background facts

The planning application

1. This matter involves the grant of planning permission for the construction of a dwelling house and garage accommodation in the grounds of Beacon House West, a nineteenth century house, in existence since the 1840s, at Trevarrian in Cornwall. The proposed house would be built on the site of an existing garage and store. Planning permission was granted on 3 February 2020.

2. The existing house is accessed from a road, Trevarrian Hill, also referred to as the coast road, which, broadly speaking, runs alongside the west side of the main body of the settlement of Trevarrian. The main body of Trevarrian is the other side of the road. On the same side of the road is Shrub Cottage. To the east of the main body of the settlement is the B3276.

The planning decision

3. The application came before the Council's Central Sub-Area Planning Committee on 20 January 2020 together with the Officer's Report ("the Report"). The Report identified the relevant policy as Policy 3 of the Cornwall Local Plan 2016 which contains the following:

   "Policy 3: Role and function of places

   …

   3. Other than at the main towns identified in this Policy, housing and employment growth will be delivered for the remainder of the Community Network Area housing requirement through:

   ….

   - *rounding off of settlements and development of previously developed land within or immediately adjoining that settlement of a scale appropriate to its size or role …."*

4. As to this Policy, the Report contained the following passages:

(i) *"2. The proposal is supported by policies 3 and 21 of the Cornwall Local [Plan] in that the new home is on previously developed land immediately adjacent to a settlement."*

(ii) At paragraph 16, the Report set out in full the objections of the St Mawgan-in-Pydar Parish Council ("PC"). The PC argued that in order to comply with Policy 3 the development would have to be either rounding off or infilling and it was neither. The PC further said that although Beacon House lay within the settlement of Trevarrian, the main built up part of the hamlet was the other side of the coast road:

"Therefore, in so far as it is being suggested that the site constitutes "previously developed land", this would not accord with the definition of PDL in the glossary to the Framework which specifically excludes "residential gardens in built up areas" ....."

(iii) *"21. The site is located within the countryside. It is previously developed land (PDL) by reason that it contains the garden area of an existing home on land outside of a built up area."*

(iv) *"22. Policy 3 of the Cornwall Local Plan (CLP) supports new housing on PDL provided that the site is located within or immediately adjoining a settlement and that ... the scale of the proposal is appropriate to its size and role. The application complies with this policy insofar that the proposed new home is located on PDL which adjoins the settlement of Trevarrian."*

(v) *"23. An important planning judgement required when considering the proposal against Policy 3 is whether or not the application site immediately adjoins Trevarrian. This is arguable as the site and settlement are physically separated by a road and the proposed new house by the same road and a driveway yet a new home on this site would be more immediately adjoining the settlement than not in terms of its setting and how it would functionally operate. The officer conclusion that the site immediately adjoins is underpinned by the judgment that*

this proposal would extend the residential setting and function of Trevarrian rather than introducing a new home of a more detached nature."

5. An Addendum to the Report dated 20 January 2020 was also before the Committee. That set out the PC's view that the site could not be regarded as previously developed land within or immediately adjoining a settlement. The PC relied on the fact that there was a field between the site and the coast road. In summary, the PC's position was that the applicable policy was Policy 7 in respect of development in the open countryside and set out its arguments as to why permission should be refused applying Policy 7.

6. The Officer's comments accepted that the proposals did not comply with Policy 7 but pointed out that the recommendation to approve was not dependent on that policy but on Policies 3 and 21. The Officer said:

"A difference in opinion between officers and the parish council relates to whether or not the site is immediately adjoining the settlement. If it is, the proposals can comply with Policy 3 .... but it would not if it is not. The officer report makes clear that this judgement is arguable and sets out the reasons why officers have concluded that the site is immediately adjoining a settlement at paragraph 23."

7. The minutes of the meeting indicate that there was some concern expressed about whether the proposed development was immediately adjoining the settlement and that that was an issue fully debated. The application was approved by a majority of 9 to 5.

The legal framework

8. It is uncontroversial that the meaning of planning policy is a question of law: *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13 at [18].

9. A useful guide to the question of interpretation is drawn together in the judgment of Lindblom LJ in *Canterbury City Council v SSCLG* [2019] EWCA Civ 669 at [22]

"If the relevant policies of the plan have been properly understood in the making of the decision, the application of those policies is a matter for the decision-maker, whose reasonable exercise of planning judgment on the relevant considerations the court will not disturb: see the speech of Lord Hoffmann in Tesco Stores Ltd v Secretary of State for the Environment [1995]

1 WLR 759, 780. The interpretation of development plan policy, however, is ultimately a matter of law for the court. The court does not approach that task with the same linguistic rigour as it applies to the construction of a statute or contract. It must seek to discern from the language used in formulating the plan the sensible meaning of the policies in question, in their full context, and thus their true effect. The context includes the objectives to which the policies are directed, other relevant policies in the plan, and the relevant supporting text. The court will always keep in mind that the creation of development plan policy by a local planning authority is not an end in itself, but a means to the end of coherent and reasonably predictable decision-making, in the public interest: ....."

10. The claimant placed particular reliance on the decision of Lieven J in *Wiltshire Council v SSHCLG* [2020] EWHC 954 (Admin) as a recent example of the approach of the Planning Court to the interpretation of policy. In that case, Lieven J decided that the word "dwelling" in the relevant policy was "capable of one objective meaning regardless of the facts of any particular case" (at [26]) and as such was a matter of law. The issue was not, she said, whether the word "dwelling" was reasonably capable of bearing the meaning given to it by the inspector. Further, in reaching her conclusion as to what that one objective meaning was she had regard to overarching policy objective or the "mischief" at which the planning policy was directed. That decision, to my mind, follows the guidance of Lindblom LJ in that the judge formed the view that, having regard to the full context, the word "dwelling" could only bear one meaning. It does not follow that in all cases the words used in a planning policy are only capable of a single objective meaning.

11. Where it is contended that the decision maker has misinterpreted, rather than misapplied, the policy, it will normally be necessary for the claimant to identify the correct interpretation of the words used and how the decision maker's interpretation departs from that meaning (*Trustees of the Barker Mill Estates v Test Valley Borough Council* [2016] EWHC 3028 per Holgate J at [84]).

The issues

12. The claimant's Statement of Facts and Grounds identifies a single ground of challenge to the Committee's decision, namely that the defendant failed to understand, and therefore apply, Policy 3. It is argued that, following paragraph 23 of the Report, the Council interpreted "immediately adjoining the settlement" as meaning (or perhaps

more accurately including) a development which was physically separated from the settlement by a main road and a driveway.

13. It is argued that the Report misled members in a material way such that planning permission was granted on a misinterpretation of a critical policy and, therefore, involved an error of law.

14. The claimant argues that the interpretation of that policy is a matter of law and not planning judgment; that the words "immediately adjoining a settlement" have a clear and specific meaning; and that the site does not fall within that meaning. He relies on the Oxford English Dictionary definition of "adjoining" as "lying next to", "co-terminus with" or "contiguous with" for that clear and specific meaning.

15. The thrust of his argument is that that meaning conveys that there must be no physical feature (presumably natural or manmade) between the development site and the settlement. If there is they are not, he submits, adjoining – they are near to each other but do not touch and so cannot be said to lie next to each other or be co-terminus or contiguous. He argues that the addition of the word immediately reinforces the need for the land to physically touch in order to be adjoining.

16. The claimant then argues that the Officer's Report was misleading in that respect as it presented the issue of whether the land was immediately adjoining as if that were a matter for the planning judgment of the Committee and/or on the basis that a site that was near or very near a settlement could be regarded as immediately adjoining that settlement. It follows, it is submitted, that the Committee must have proceeded on a legally incorrect basis.

17. On 20 May 2020, Lang J refused permission on paper giving the following reasons:
"In my view, the Claimant's narrow and literal interpretation of the words "immediately adjoining the settlement" in Policy 3 of the Cornwall Local Plan is unarguable. The meaning of the phrase "immediately adjoining" is wide enough to include "next to" or "very near". The local planning authority had to make a planning judgment on this issue in this case, in light of the evidence available to it. That judgment cannot be challenged absent an error of law."

18. The claimant renewed his application orally and was given permission.

19. As I explain below, in my view however, the reasons Lang J gave for refusing permission were right and are sufficient to dispose of this judicial review. Lang J clearly did not mean that the words could be given whatever meaning the defendant chose but rather that the words had to be given a sensible meaning which included "next to" to "very near" and whether the site fell within that meaning and was sufficiently "next to" or "very near" then involved an exercise of planning judgment.

The defendant's position

20. The Council's Detailed Grounds dated 18 August 2020, as might be expected, engaged with the claimant's contentions as to the proper interpretation and application of Policy 3 the relevance of which presupposes that the proposed development is not within the settlement. Indeed, it is the claimant's case that if it were, different policy considerations would come into play. The Council's Detailed Grounds did, however, address briefly the point that it was arguable that the site was within the settlement. That is certainly the view of Ms Wilson, the applicant for planning permission and Interested Party, in her witness statement, and appeared to have been the view of the Parish Council.

21. In his skeleton argument for the hearing before me, Mr Brett, on behalf of the Council, took this point first, submitting that the claim was academic because the site was within the settlement. He addressed the "immediately adjoining" argument without prejudice to his primary argument. I do not accept that I should approach the matter on this basis. It was not the basis of the Officer's Report, the Committee's considerations, or the decision to grant planning permission. The argument that the site is within the settlement was not the basis on which the defendant contested this claim and was advanced merely as a point that was arguable. It is not the issue before me.

22. In his oral submissions, Mr Brett approached the matter differently. He addressed the Policy 3 interpretation issue first and fully. But he also argued that the Interested Party's case was that the development site was within the settlement so that if the matter went back to Committee, it is likely that the Committee would grant planning permission. Thus relying on section 31(2A) of the Senior Courts Act 1981, he submitted that the court should refuse to grant any relief even if the claimant's case were otherwise to succeed.

23. Whilst it might seem that the planning decision would be a fortiori if the site were within the settlement, as I have noted, the claimant's case is that different policy considerations would apply and it is not sufficient for the defendant to assert that the decision would be the same. Further that argument presupposes that the Committee would accept the Interested Party's position. The Officer's Report clearly did not proceed on the basis that the site was within the settlement and, whilst the minutes of the meeting record that one Councillor expressed the view that it was, there is nothing to suggest that that was the conclusion the Committee came to. Its decision remained based on the site being one immediately adjoining the settlement.

24. Although, as will become apparent, I do not consider the arguments as to whether the site is within the settlement completely irrelevant, I shall focus on the ground relating to Policy 3 and on which permission was granted.

The interpretation of Policy 3

The meaning of the words

25. There is no dispute that the interpretation of the policy is a matter of law but it does not follow that the issue as to the meaning of immediately adjoining must be answered by some strict definition or that contended for by the claimant.

26. So far as the words are concerned, the short answer to the claimant's case is to be found in other dictionary definitions of the words "adjoin" or "adjoining". The Council has provided a definition of adjoin, adjoining and adjacent from the full online Oxford English Dictionary as follows:

" 'Adjoining' means: 'Adjacent, contiguous; neighbouring; (also) physically joined, attached, connected.'

'Adjoin' means: 'a. transitive. To be located next to or very near (a thing, place or person); to be adjacent to or contiguous to; (also) to be physically joined, attached or connected to.

b. To be located next to or very near a specified or implied location; to be adjacent or contiguous. Sometimes: spec. to share a common border.

‘Adjacent’ means: ‘Next to or very near something else; neighbouring; bordering, contiguous; adjoining.’

27. The very fact of the varying scope of the definitions militates against the claimant’s restrictive interpretation. As the Council submits, the definitions given are wide enough to include “next to” or “very near”; no clear distinction is drawn between adjoining and adjacent; and, even if the definition were limited to something physically joined to the settlement, it would not have to be co-extensive.

28. I do not consider that the addition of the word “immediately” changes any of that. The claimant’s submission is that this word makes clear that the development must not be “physically separated” from the settlement and/or that there must be nothing between the proposed development and the settlement. In my judgment that places too much weight on a word that does no more than reinforce the word “adjoining” and indicate the element of judgment in whether a site is or is not adjoining, if that word is construed as including “very near” or “next to”. To take an example, there may be a settlement with some area of green space (say a playing field or a wooded area). Assuming that there was no argument that the green space was within the bounds of the settlement, a proposed development on a site adjoining the green space would be adjoining the settlement but it might be argued that it was not “immediately adjoining” since it was further from the built element of the settlement. That is a matter of judgment and is of the same nature as the judgment that was exercised here (assuming that Beacon House was not within the settlement) in respect of a property along a driveway from the road.

29. The claimant advanced an argument based on the development of Policy 3 and the change in wording. In short, he submitted that the Policy as originally drafted used the words “within or adjoining the settlement”. That was changed to “within” and then finally to “within or immediately adjoining”. Mr Corbett submitted that that demonstrated that the first wording was too wide, the second too tight and the third sufficiently tight. He may well be right about that but it reaches the position I have set out above and not the legal interpretation for which he contends.

30. The Council objected to any reliance being placed on this argument, in any event, as it involved the adducing of further evidence through reply submissions for which no

permission had been given and the Council argued that it was prejudiced in being unable to address the lengthy and involved development of the Local Plan. Further, the Council submitted that Mr Corbett was simply wrong about the history of the wording. In fact, the Planning Inspector's Report on the Cornwall Local Plan Strategic Policies (September 2016) which preceded the adoption of the Plan, had stated, at paragraph 99, that the wording of Part 3 of Policy 3 had been inconsistent and confusing in terms of infill. The Inspector concluded that he was now satisfied that the Council's approach was justified allowing "infilling of small gaps, but requiring consideration of the significance for the character of settlements of larger gaps; allowing rounding-off where there are clear physical boundaries; and for the redevelopment of previously developed land within or adjoining the settlement."

31. Given the view I have formed it is unnecessary for me to decide any point relating to the development of the Local Plan but the Council's submissions reinforce my view that the claimant's argument places too much weight on the word "immediately".

32. The claimant also placed reliance on Policy 7 Housing in the Countryside. The Council again objected to any reliance being placed on this Policy which was, it was argued, not relied on in the Statement of Facts and Grounds. Mr Corbett argued that it is a material part of the Local Plan, was relied on by him when he renewed his application for permission, and was not a matter on which the judge granting permission required him to amend his grounds. It was addressed in the oral hearing.

33. That Policy includes the following:
"The development of new homes in the open countryside will only be permitted where there are specific circumstances ....."

34. These circumstances include replacement dwellings, subdivision of existing dwellings and reuse of buildings and it is not suggested that the present development falls within any of these circumstances. The narrative to the policy states (at paragraph 2.33):
"Open countryside is defined as the area outside the physical boundaries of existing settlements (where they have clear form and shape). The Plan seeks to ensure that development occurs in the most sustainable locations in order to protect the open countryside from inappropriate development. Supporting text to Policy 3 sets out the Council's approach to sustainable development……"

35. The claimant then points to various aerial photographs and OS maps to support the proposition that the land to the west of Trevarrian Hill or coast road is open countryside within the meaning of Policy 7.

36. The photographs and maps show that in 1907 Beacon House and Shrub Cottage were in existence to the west of Trevarrian Hill. By 1963, there were no further dwellings to the west and Trevarrian remained clustered around the junction of Trevarrian Hill (also referred to as the coast road) and the B3276. Mr Corbett says that since then some holiday cottages have been constructed behind the Watergate Bay Hotel (on the coast) and a new farmstead above Mawgan Porth. Thus he submits that the land to the west of the coast road is in open countryside, with the coast road forming the boundary of the settlement.

37. To the extent that the claimant seeks to argue that the defendant ought to have applied Policy 7 to the application and erred in applying a different policy, that argument is not open to him. It was not his articulated ground of challenge and, whilst it may have been raised on the oral application for permission, I have seen nothing to suggest that additional grounds were allowed. As I understood it, the claimant's argument was rather that the policy in Policy 7 of prohibiting development in open countryside subject to very limited exceptions could and should itself inform the reading of Policy 3. In simple terms, a loose reading of Policy 3 should not be allowed to encroach on or depart from the principles underlying Policy 7 – and the defendant's approach to the meaning of the words "immediately adjoining" did so.

38. Firstly, the definition of open countryside in paragraph 2.33 is dependent on the existing settlement having a clear form and shape. In the Addendum to the Officer's Report, the Officer accepted that Trevarrian was a settlement because it was "a place where people live in permanent buildings which has form, shape and clearly defined boundaries". Nonetheless, where and what the form and shape are and where the boundaries lie must involve an element of judgment and may well include the application of local knowledge. In the present case, there is a concentration of buildings forming the settlement that has extended since 1963 and there are elements of development outside this area of concentration including Beacon House and Shrub Cottage. The Interested Party's Planning Statement described the entire plot of Beacon House East as forming a natural end to the village. That is not to suggest that the Officer or the Committee ought to have reached any different conclusion about whether

the site was within the settlement or in open countryside but it demonstrates why the application of both policies is likely to involve matters of planning judgment rather than be predicated on a single restrictive meaning of the words used and why such a restrictive meaning is not necessary to support Policy 7.

39. Secondly, and in any event, the application of Policy 7 cannot preclude the application of Policy 3 where the development land is immediately adjoining the settlement. That would add a gloss to Policy 3 which is not there and preclude any development in open countryside even if immediately adjoining a settlement. As the defendant submits there are two policies to be applied. The Council, in this case, did not rely on or seek to apply Policy 7. Whilst the application of Policy 3 may create a risk of creep into the open countryside, that is a matter of planning judgment. In this case, to the extent that the Officer and the Council took such risk into account, there was a clear view (at paragraph 30 of the Report) that the proposed development would not harm the distinctive character and beauty of the Great Value Landscape because the site was already residential, it was well-related to the nearby settlement, the proposed development replaced an existing garage, and it was within existing boundary vegetation.

40. Accordingly, in my view, the claimant's reliance on Policy 7 does not add to his arguments on the interpretation of Policy 3 or to the merits of the challenge.

Matters of planning judgment

41. In any event, the claimant's strict reading of the words in Policy 3 as having only the one fixed meaning he contends for raises significant questions and difficulties which militate against his reading.

42. The claimant's reading involves, it would seem, the proposition that a site is immediately adjoining a settlement if it touches the land within the settlement at some point but with no physical division between the site and the settlement.

43. As the defendant argues, within what is accepted to be the settlement itself there are roads, as one would always expect. Yet it is not arguable that the settlement of Trevarrian should be regarded as a series of sub-divisions because developed areas are

separated by roads. Necessarily, therefore, there is an issue as to whether a road is part of the settlement or not.

44. As I have already said, the claimant argues here that the road, Trevarrian Hill, in effect marks the boundary of the settlement (to the west) but is not within the settlement, so that land the other side of the road is not "immediately adjoining" the settlement. However, the bounds of a settlement are not fixed in time and both Beacon House East and West and Shrub Cottage have been regarded by some as within the settlement of Trevarrian.

45. What that makes clear is that the relevance of the road is a matter of judgment and perhaps local knowledge. The road itself may be regarded as within the settlement and, in the present case, as Mr Brett pointed out the driveway which runs to the road would not then be separated from the settlement by any physical feature.

46. The same issues would arise in the case of a physical feature such as a stream or a hedge or some other manmade structure which might be regarded as part of a settlement or a boundary to the settlement. In all such instances a sensible reading of the policy is one in which the question of whether the development site was immediately adjoining the settlement would involve an element of judgment and not one in which the physical divider necessarily rendered the site not "immediately adjoining". As Mr Brett submitted, the consequences could involve the situation where because the site, despite some significant physical division, touched the settlement for 1cm, it was "immediately adjoining" whereas in other circumstances, where the site might more readily be said to be immediately adjoining, it was not. In short, it is not a question that can be answered applying a rigid test of the nature the claimant contends for.

47. These examples also illustrate the difficulty of applying the meaning the claimant contends for and defining what physical feature would cause the two pieces of land in question not to be immediately adjoining. Indeed, the facts of this case illustrate the difficulties. The PC relied not on the argument that the road formed a boundary[1] and separated Beacon House East from the settlement but on the factual assertion that there

[1] Mr Corbett also relied on the fact that in the Planning Statement, Trevarrian Hill was identified as the boundary of the settlement. Ms Wilson disputes that and says that that Trevarrian Hill is not the road referred to and could not be since she regards her property as being within the settlement.

was a field between the site and the coast road. That factual assertion is contested by the defendant and Ms Wilson. Ms Wilson's evidence is this:

"9. Beacon House West adjoins Beacon House East to the South. To the side of Beacon House West there is an additional garden, play area and gardens and further to the right is a field. The gardens and driveway for our properties are and I believe always have been part of the Trevarrian settlement and do not constitute open countryside. The driveway leads directly to Trevarrian Hill with a clear view of our neighbours, it is approximately 200ft by 30ft and is used to access both Beacon House East and Beacon House West .....

...

12. To the left of the driveway leaving the property is a small area of bushy undergrowth known as an Issues or Collect, that allows a small stream to gather excess rainfall. <u>It has never been a field and not capable of being such. There is no field between my House directly to the Road</u>." (Emphasis added)

48. I make two observations. Firstly, what this makes clear is that the argument as to why the site is not immediately adjoining the settlement has varied. Secondly, to the extent that the argument relies on the presence of a field, there is a dispute of fact. As I have already said, the road may or may not be regarded as part of the settlement.

49. What it seems to me this again serves to demonstrate is that the restrictive meaning of "immediately adjoining" that the claimant contends for is not right and that the words are apt to include "very near to" and "next to", and that whether the site falls within that meaning involves an exercise of judgment.

50. I should add further that the claimant relied on a decision to refuse permission to build at the southern end of the main body of the settlement where the Inspector applied Policy 7 and considered that the end of the cul-de-sac marked a clear boundary between the developed area and the countryside. Mr Corbett explained, and illustrated by reference to the plans, that permission was refused even though the development site adjoined the garden of a house within the settlement. I do not see that that assists in any way, as this was a planning decision on its own facts and the site was not previously developed.

Error of law

51. It follows, in my judgment, that the Officer's Report was not misleading in identifying that there was such a judgment to be exercised and the Minutes of the Committee meeting make it clear that that issue was properly debated.

52. I would add for completeness that the claimant placed particular reliance on the decision of Lieven J in the *Wiltshire Council* case. That case turned on the meaning of "dwelling" and specifically whether that meant a single residential unit or could mean the property as a whole. Lieven J decided that the word "dwelling" had a single fixed meaning. In reaching that decision, she had regard to the underlying policy which was one against the creation of new residential properties in isolated rural locations. Whilst, in the present case, there is also a general policy against development in open countryside, Policy 3 does permit such development in the circumstances provided for in that policy. I have addressed this issue at paragraph 38 above. There is nothing in Lieven J's decision that either requires me to conclude that the words "immediately adjoining" can only bear a single meaning the claimant contends for.

53. Accordingly, the claim is dismissed.