

Case Name: *Corbett v Cornwall Council* [2022] EWCA Civ 1069 (27 July 2022)

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Commentary:

This was an appeal against the High Court's decision to dismiss a claim for judicial review of a planning permission granted by Cornwall Council for the construction of a dwelling-house and garage to replace an existing garage, store and utility room within the curtilage of Beacon House East, Trevarrian.

There were two issues in this appeal:

1. Did the Council misinterpret and misapply Policy 3 of the Cornwall Local Plan, in particular the concept of development "immediately adjoining" as settlement, so that its decision to grant planning permission was flawed by an error of law?
2. Did the Council take into account an irrelevant consideration, namely the "functional" relationship between the proposed development and the settlement?

Policy 3 states: *"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 and role..."* The reasoned justification for this policy states that: *"In principle the use of previously developed land within or immediately adjoining the settlement will be permitted provided it is of a scale appropriate to the size and role of a settlement"*.

Considering whether or not a proposed development of previously developed land was "immediately adjoining" a settlement of a scale appropriate to its size and role is, the court said, a concept of planning policy (not a legal concept) that requires the exercise of planning judgment on the particular facts of the site and proposal in hand. The words "immediately adjoining" do not require an elaborate explanation, nor do they require an unduly prescriptive meaning, nor do they necessarily mean "contiguous" or "conterminous", and there is a degree of flexibility in them. A decision maker is to judge based on facts whether the site and proposed development can be regarded as sufficiently close to the settlement in question to be "immediately adjoining" it – which is what the Council did in this case.

The court considered it appropriate to use the dictionary definition of words "adjoin" and "adjoining" as a starting point, showing that the word "adjoining" has both a narrower and broader sense – the use of the word "immediately" to qualify the word "adjoining" is consistent with intent to use the broader sense of "very near" or "next to" because if "adjoining" in the context of Policy 3 meant simply "contiguous" in its literal sense, the use of the word immediately would not have been necessary. In his report to

the committee recommending that planning permission be granted, the planning officer recognised that the proposed development site and settlement are physically separated by a road but considered that the proposed development complies with Policy 3 insofar as it adjoins Trevarrian.

The court concluded that the Council's interpretation of the relevant local plan policy was correct and that there was nothing irrational or otherwise unlawful in the Council's application of the relevant policy.

In relation to the second issue, the planning officer's report stated that: "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." The Court held that while the main focus of the relevant part of Policy 3 is on the physical and visual relationship between the site and development and the settlement, it does not follow that the functional relationship between them can have no bearing upon the necessary exercise of planning judgement. The references to "size and role" in Policy 3 and the reasoned justification for it support this conclusion. "The residential setting and function of Trevarrian" was therefore not an immaterial consideration.

The appeal was dismissed.

Case summary prepared by Nikita Sellers & Katheen Johnson