The Planning Inspectorate

Appeal Decision

Site visit made on 4 August 2016

by R J Marshall LLB DipTP MRTPI

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

Decision date: 07 November 2016

Appeal Ref: APP/D0840/W/16/3149721
Bosvale Community Centre site, Hillside Road, Falmouth, Cornwall, TR11 4HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr James Parkhurst (The Abbeyfield Society) against the decision of Cornwall Council.
- The application Ref PA15/02640, dated 18 March 2015, was refused by notice dated 22 December 2015.
- The development proposed was for the construction of 75 Extra Care dwellings, including associated communal space and a new Community Centre for the use of the Bosvale Community Association. To provide new C2 Extra Care accommodation and D1 Non– residential for the Community Centre. Total GIA 8000m^2, new landscaping and associated parking.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 11 October 2016.

Decision

1. The appeal is allowed and planning permission is granted for the construction of 69 Extra Care dwellings, including associated communal space and a new Community Centre for the use of the Bosvale Community Association. To provide new C2 Extra Care accommodation and D1 Non– residential for the Community Centre. Total GIA 8000m^2, new landscaping and associated parking at Bosvale Community Centre site, Hillside Road, Falmouth, Cornwall, TR11 4HD in accordance with the terms of the application, Ref PA15/02640, dated 18 March 2015, and the plans submitted with it subject to the conditions on the attached list.

Procedural matters

2. The application is in outline with all detailed matters reserved for later consideration. I have taken the application description from the planning application form. However, following negotiations the scheme was amended to reduce the number of Extra Care dwellings proposed from 75 to 69. It is on this basis that I have determined the appeal.

3. The application was recommended for permission by Officers subject to various matters on affordable housing and open space being dealt with by legal agreement. Following the Council's decision the appellant has provided a

Unilateral Undertaking (UU) purporting to deal with these matters. I shall deal with this, where appropriate, in my decision.

Main Issues

4. The main issues in this appeal are: **first**, the effect of the proposed development on the character and appearance of the surrounding area; and **second**, whether there would be an undesirable loss of open space.

Reasons

Background

5. The appeal site comprises a large area of open, largely undeveloped, land within the built-up area of Falmouth. A small part of the site is occupied by a prefabricated building currently used as the Bosvale Community Centre. The appellant, Abbeyfield, is a long established major charitable provider caring for older people. The key aspect of the proposal would be the provision of the Extra Care accommodation.

Character and appearance

6. The appeal site is an elongated area of land in a valley setting. It is largely surrounded on 3 sides by houses, most of it 2 storey housing but also with a small block of flats. On the remaining side there is further open space which wraps around an area of housing. Although much of the appeal site is open grassland there is extensive tree cover along most of the boundaries with neighbouring properties, and this is especially pronounced along the site's southern boundary. The contours of the land and the boundary trees give the site an attractive character and appearance, albeit in this setting surrounded by housing a suburban one.

7. Illustrative plans have been provided showing that the proposed development could be accommodated towards the western part of the site. They show that there could be a substantial retention of the woodland on the site's boundaries and that there could be adequate space to protect the trees to be retained. The Councils tree officer is now satisfied on this point and all that I saw supported this view. Thus an attractive feature of the area would be retained and the proposed development would benefit from a level of screening that would help in assimilating it into the area. Further plans show that the proposed building could be constructed at varied heights and in a way that, in this valley setting largely surrounded by trees, need not look unduly intrusive or over dominant.

8. It is concluded that the proposed development would not detract from the character and appearance of the surrounding area. There need be no conflict with Policy 13 of the emerging Cornwall Local Plan Strategic Policies 2010-2030 which seeks to ensure that new development responds to its landscape and townscape setting and the requirement in the National Planning Policy Framework (the Framework) that seeks to ensure that new development responds to local character.

Open space

9. The proposed development would result in most of the extensive open grassland area of the appeal site being built over. The Council's concern is that there would thereby be the loss of an area of open space said to have been

used and enjoyed by the community for many years. This resulted in permission being refused notwithstanding advanced work on a Section 106 Agreement which Officers saw as likely to be able to achieve a satisfactory compensatory provision of open space/public access.

10. In determining whether the Council's concerns are justified account needs to be taken of Local and Government Policy on the loss of such land, the status of the land and the extent to which it has been used by the public, and the alternative open space provision that would be made.

Local and Government Policy

11. There is no saved development plan Policy on the protection of open space in Cornwall Council. However, turning to Government Policy Paragraph 74 of the Framework says that existing open space and recreational land should not be built upon unless, amongst other things: an assessment has been undertaken which has clearly shown the open space or land to be surplus to requirements; or the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. The Framework defines open space as all open space of public value.

12. Following publication of the Framework, and pending the adoption of a local plan the Council has adopted the *Open Space Strategy for the Larger Towns in Cornwall - Recommendation for future provision standards (OSS) (2014)*. This is to inform policy and determine the level of open space required at local level. The assessment categorised open space as falling within various types. The appeal site was categorised as a parks and amenity type of space. The assessment found that in the study area of Falmouth there was a more than adequate level of such open space provision. Indeed, this would remain the case even in the absence of the appeal site as open space.

Status of land and extent used as open space

13. The appeal site is in private ownership. In 2015 an application for village green status of the land was made by a third party. This was rejected on the grounds that its existing use is "by right" and is not "as of right". As I understand it from the cases made the right to use the land is conveyed by the Bosvale Community Association, and that it is limited to those residents of Boslowick, Swanvale and the neighbourhood. It seems from observations made in the Council's Committee report, that have not been contradicted, that the right to access the site could be withdrawn. Though whether this would in fact occur must be a matter of conjecture.

14. The appellant says that the site is used for little more than dog walking and at the time of my visit that was all that I saw occurring. However, such a snapshot view does not necessarily provide a full indication of how the site is used. Observations by third parties are that the site is also used by, for example, young people playing football. From what I saw it certainly has the potential to be used for this purpose.

Alternative open space provision

15. Given the findings of the *OSS* there is no quantitative requirement to retain the appeal site as open space for use as appropriate to the parks and amenities category. However, given the long-standing use of the site for informal recreation it would be advantageous for the community to retain some access

to it. Indeed the appellant recognises this, for the Design and Access Statement refers to the proposal introducing a number of pedestrian routes around the site for use by the wider community. And a need, therefore, in the detailed design for there to be a clear division between the public and more private spaces. This is followed through in the appellant's final observations where reference is made to the proposed development providing links through the site secured "as of right" to public activities such as dog walking.

16. The UU provides for the provision of an open space maintenance and management specification to be submitted to the Council for approval and for the informal open space to be maintained and managed in accordance with the specification in perpetuity. In light of this, and the plans submitted with the appeal, there is the prospect for access to attractive new footpath links and open space on the site to be incorporated in the proposed development.

17. Whilst the *OSS* saw no need for parks and amenity space in the area the evidence of the Council's public space officer is that there is a latent demand for formal sports pitches in the area. The appeal site is, as already noted, suitable for informal games of football. It seems to be appropriate, therefore, to ensure that development on the appeal site would provided some compensation for the loss of this facility. The appellant appears to recognize this, making in the UU a £25,000 contribution to improve a play area nearby at Prislow Field for ball games.

18. The Council says that to provide an acceptable compensation for the loss of the ability to play informal football on appeal site a substantially greater sum than the £25,000 offered should be given. This would enable a Multi-Use Games Area (MUGA) to be provided. However, a MUGA would provide a notably formal play area. Given the informal nature of any use of the appeal site I am satisfied that the more modest improvements to pat of Prislow Field, allowed for the £25,000 figure, would sufficiently compensate for what would be the lost. And there is no substantial evidence to support some local concerns that Prislow Field is unsuitable as a play space due to land contamination.

Conclusion

19. Drawing together my findings and views above the appeal site is not required in quantitative terms as open space, sufficient provision would be made in compensation for the contribution it makes to ball games and the UU gives the prospect for attractive publicly accessible open space on the site. It is concluded therefore that there would be no undesirable loss of open space. There would be no conflict with the Council's *OSS* referred to above.

Other third-party concerns

20. There are concerns that the proposed development would be harmful to the living conditions of some neighbours through loss of light, overdominance and overlooking. However, the appellant, following discussions with the Council, reduced the proposed number of units and provided revised sketch plans/sections indicating how the proposed development could be undertaken. I am satisfied from these plans, and what I saw, that the proposed development could be undertaken at a height and separation from neighbouring properties that would ensure that the harm alleged need not occur.

21. No substantial evidence has been provided to support a view that the surrounding highway network would not satisfactorily accommodate the amount of traffic generated by the proposal and nothing I saw suggested otherwise. The appellant's illustrative plans suggest that vehiclular access to the site could be onto Charles Avenue or alternatively Hillside Road. These are the only practicable way that such access could be achieved. I note local concerns on the use of Charles Avenue as an access. However, given the observations of the Council, and what I saw, I am satisfied that access could be satisfactorily undertaken from this road, including for emergency vehicles, and that there would not be an unacceptable effect on parking. And regarding an access onto Hillside Road, although it would have rather limited visibility being located on sharp bend, traffic speeds past it are likely to be low. Thus there need be no unacceptable harm to highway safety. There is no evidence that would support a view that there would be insufficient on site parking.

22. Initial concerns raised by the Environment Agency (EA) have been overcome by the appellant undertaking infiltration testing. The EA now has no objection to the proposal subject to conditions. I have been provided with no substantial evidence to support a contrary view. The appellant's discussions with South West Water show that, notwithstanding local concerns, there is sufficient foul drainage capacity to support the proposed development.

23. The appellant has had an ecological assessment and bat survey undertaken. These show that there need be no harm to matters of ecological importance and no conflict with the Framework on the protection of the natural environment. Although I note concerns to contrary they are not supported by substantial evidence.

24. Undertaking development of the scale proposed would have some impact on the living conditions of those nearby during the construction period. However, there is an ability, through conditions, to limit such impacts to an acceptable level. There is no evidence that would support a view that local services and doctor’s facilities would be unable to cope with the proposed development.

25. Reference has been made to some locally of a Neighbourhood Plan covering the area. However, there is no evidence to suggest that it has got anywhere near the stage that it would be greatly material to this case.

Other matters put forward in favour of proposal

26. The proposed development would provide accommodation for the elderly that would offer a degree of independence whilst providing support, care and assistance. The Council's Strategic Housing Market Needs Assessment (SHMNA) says that the number of people aged 65 or more in Cornwall will increase by 43% over the period of the emerging Local Plan and that this will include a doubling in the numbers of those aged 85 and over. The Council recognises that this imposes a strategic challenge of ensuring that there is a range of appropriate housing provision for this particular group in the future. The proposed development would clearly with such provision.

27. The appellant's UU provides for either 40% of the units on site to be affordable properties either for rent or intermediate sale, or in the alternative for a financial contribution equivalent to the provision of these affordable properties. The Council's Affordable Housing Team welcomes such provision referring to a significant need for it. However, the Council has expressed concerns about the

wording of the UU in terms of the nomination of persons in need and the lack of a "cascade" to allow nominations from people outside Falmouth should there be insufficient interest from those in the town. Such an arrangement would have been beneficial, as the appellant acknowledges. However, even without this the proposal for the affordable provision of properties is to be welcomed. Certainly the Council's concerns on the UU should not stand against the proposal. For existing and emerging development plan policies refer to such provision is being required in proposals for dwellings. Under the provisions of the Use Classes Order Class C2 accommodation, of the type proposed, refers to the provision of residential accommodation and care to people in need of care (other than use within Class C3 (dwelling houses)). In my view, therefore, there could be no requirement on the scheme before me for affordable provision.

28. There is an existing rather rundown community hall on the appeal site. The proposed development provides for its replacement and the Unilateral Undertaking would ensure its provision for local community associations. I have been given no reason to believe that this would not be a satisfactory replacement and observations that other alternative provision could be made are unsupported by substantial evidence.

Overall balancing

29. I place substantial weight on the provision of the additional residential accommodation proposed. This is because of the acknowledged need for accommodation of this type in the area and the support in the Framework for the provision of a type and range of accommodation to reflect local demand. I fully acknowledge the concerns locally of losing this area of open space. However, in quantitative terms its retention cannot be justified. And the proposed development could be undertaken in a way that would not detract from the character and appearance of the surrounding area and it offers the prospect of acceptable alternative open space provision. In view of this I am minded to allow the appeal. In arriving at this view I appreciate that the Council states that its now has a 5 year housing land supply. However, even if that is the case its does not act as a ceiling for new residential accommodation.

Conditions

30. As I am minded to allow the appeal I have considered what condition should be imposed in addition to the standard conditions on outline applications. To protect the living conditions of those nearby I shall: require the submission and approval of a construction management plan; and for the period of construction shall restrict hours of work and place limitations on the use of floodlighting. In light of guidance from an initial survey I shall, to prevent harm through pollution, require a land contamination survey and details of any necessary remediation. To protect the character and appearance of the area I shall: require details on the protection of trees during construction; and require the underground location of power lines. To protect the ecology of the area I shall require the submission of an ecological management plan and details of a lighting scheme. To ensure satisfactory land drainage of the site I shall require the submission of a surface water management plan and protection of the watercourse. In the interests of sustainability I shall require details of footpaths and cycle and vehicle parking. These conditions are derived from

those put forward by the Council. They have been amended, where justified, to accord with observations made and Government guidance.

31. As this is an outline application with all detailed matters reserved I see no need for the suggested landscaping conditions and for the development hereby permitted to be undertaken in accordance with, what are only illustrative, plans.

Conclusion

32. For the reasons given above it is concluded that the appeal should be allowed.

R J Marshall

INSPECTOR

Conditions

1. Approval of details of the appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out in accordance with the approved reserved matters.

2. Application for approval of the first of the reserved matters shall be made to the local planning authority before the expiration of 3 years from the date of this permission.

3. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

4. The development hereby permitted shall not commence until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall provide for:
   (i) the parking of vehicles of site operatives and visitors;
   (ii) loading and unloading of plant and materials;
   (iii) storage of plant and materials used in constructing the development;
   (iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
   (v) wheel washing facilities;
   (vi) measures to control the emission of dust and dirt during construction;
   (vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
   (viii) hours of working;
   (ix) safe removal of asbestos.
   The development shall be carried out strictly in accordance with the approved Construction Environmental Management Plan.

5. Works of construction or demolition, including the use of plant and machinery, necessary for the implementation of this permission, shall not take place between 18:00 and 08:00 hours on any day and not at any time on Sundays, Bank or Public Holidays or after 13:00 on any Saturday.

6. Any floodlights used at the site during the construction phase shall only be used between 08.00 and 19.00 on any day of the week.

7. No development shall take place until a land contamination site investigation has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the Local Planning Authority. The results of the site investigation shall be made available to the Local Planning Authority. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it

suitable for the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The site shall be remediated in accordance with the approved measures before the development begins.

8. If, during the course of development, any contamination is found which has not been identified in the site investigation, then additional measures for the remediation of the source of contamination shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures.

9. The development hereby permitted shall not begin until a scheme has been submitted to and approved by the Council for the protection of on-site trees to be retained, and the protection of any trees planted in accordance with an approved landscaping scheme. The approved scheme shall remain in place through the duration of the building works in connection with the development hereby permitted.

10. The development herby permitted shall not begin until details of a scheme for the provision of surface water management has been submitted to and approved in writing by the Local Planning Authority. The details shall include:

- details of the drainage during the construction phase;
- details of the final sustainable drainage scheme;
- provision for exceedance pathways and overland flow routes;
- a timetable of construction;
- a construction quality control procedure;
- a plan for the future maintenance and management of the system and overland flow routes.

The approved scheme shall be completed prior to first occupation of development herby permitted and shall thereafter be managed and maintained in accordance with the approved details.

11. Prior to the commencement of development details of all works proposed within 5m of the watercourse shall be submitted to and approved in writing by the Local Planning Authority. The works as approved shall be completed prior to first occupation of the development hereby permitted.

12. Prior to the commencement of the development hereby permitted details shall be submitted to and approved by the Local Planning Authority of footway/cycleway construction and vehicle/cycle parking facilities. The development shall be undertaken in accordance with the approved details before the first occupation of the development hereby permitted.

13. Power lines shall be sited underground unless otherwise agreed in writing with the Local Planning Authority. Any installation or maintenance of underground or overhead utility services shall be agreed in writing with the Local Planning

Authority prior to installation and undertaken in accordance with the National Joint Utilities Group publication 10 'Guidelines for the Planning, Installation and maintenance of Utility Services in Proximity to Trees'.

14. The development hereby permitted shall not commence until an Ecological Management Plan detailing ecological mitigation measures, including the provision of bat boxes in the new building and on trees around the site and other recommended mitigation and enhancement, made within the Devon Wildlife Trust's report dated 24/10/2014 and CEC's Bat Survey Report (November 2015), has been submitted to and approved in writing by the Local Planning Authority. Development shall be undertaken in accordance with the approved measures prior to first occupation of the development hereby permitted

15. No dwelling hereby permitted shall be occupied until a detailed lighting scheme including the design, height, lux levels, positioning and timetable for its implementation is submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall accord with recommendations in the CEC's Bat Survey Report dated November 2015. It shall be implemented in accordance with the approved details within the approved timetable. And retained thereafter only as approved.