The Planning Inspectorate

Appeal Decision

Site visit made on 15 May 2017

by Thomas Bristow BA MSc MRTPI

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

Decision date: 26 June 2017

Appeal Ref: APP/D0840/W/16/3159991
Prow Park, Treloggan Industrial Estate, Newquay, Cornwall TR7 2SX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
- The appeal is made by Mr Paul Isherwood against the decision of Cornwall Council.
- The application Ref PA16/02486, dated 15 March 2016, was refused by notice dated 30 September 2016.
- The development is described on the application form as '16 Live-work Serviced Workers Accommodation Units associated with Prow Park Business Village.'

Decision

1. The appeal is dismissed.

Preliminary matters

2. The decision notice cited policy 71 of the Restormel Local Plan (adopted October 2001). This policy is no longer part of the development plan, having been superseded by the Cornwall Local Plan Strategic Policies 2010-2030 (adopted 22 November 2016, the 'Local Plan'). Policies of the Local Plan, then emerging, were referenced within the Council's officer report and all parties have had the opportunity to comment on them.

3. There is an extensive planning history related to commercial uses nearby. The appellant would therefore have been aware of the need to obtain consent. However application Ref PA16/02486 was the first validated by the Council relating to the appeal site.[1] The development was commenced on 1 April 2015, and application Ref PA16/02486 made retrospectively. The development therefore represents intentionally unauthorised development, which carries some weight against it.[2]

Main issues

4. The main issues are:

   1) whether or not the units provide adequate living conditions for their occupants with regard to noise and disturbance, and

   2) the effect of the development on the potential development, operation and future expansion of a key employment area.

[1] Whilst the appellant refers to a previous application submitted in 2015, there is no evidence before me of this.
[2] With reference to the Ministerial Statement of 17 December 2015.

Reasons

5. The appeal site is part of the Prow Business Village, which abuts and is part of the Treloggan Industrial Estate ('TIE'). The appeal site is adjacent to a variety of uses including light industrial, heavy industry, commercial and storage and distribution.

6. The units are to provide temporary accommodation for a film crew, with part of the appeal site given over to parking for associated vehicles. The units are occupied on a seasonal basis by employees of FFP New Media GmbH. FFP produces adaptations of Rosamunde Pilcher novels, many of which are set in or inspired by Cornwall, for German television channel ZDF.

7. Filming commenced in 2011. Several further adaptations have been produced. The appellant explains that in late 2014 it was intended that the FFP contract would be extended by a further five years. However there is no clear evidence as to the duration of the filming season, nor of a definitive contract end date.

8. Whilst converted from shipping containers, the live-work units have been modified such that they appear permanent (windows, doors and balconies have been created and external cladding and roofs added). In this context I cannot impose a condition securing their temporary use that would be reasonable, with reference to the operational requirements that the units fulfil, or enforceable, as no physical changes would be required for the units to be used permanently.[3]

Living conditions

9. Criterion 2 of policy 12 'Design' of the Local Plan seeks to protect individuals from 'unreasonable noise and disturbance'. Similarly policy 13 'Development standards', and policy 16 'Health and wellbeing', of the Local Plan set out how development should avoid adverse impacts resulting from noise. The National Planning Policy Framework (the 'Framework') explains how development should always seek to secure a good standard of amenity for all occupants of land and buildings.

10. I accept that the appeal site falls at an extremity of the TIE, that the units are in part shielded from other uses by a bank of shipping containers, and would at times be further shielded by film crew vehicles. However during my site visit, in the afternoon, noise related to surrounding uses and vehicular movements was readily apparent at the appeal site.

11. Whilst the appellant contends the TIE becomes 'almost deserted' between 1900 and 0700, the Council's Environmental Health officer indicates that there are 'noisy industrial companies that operate 24 hours a day'. The Council have explained that many nearby uses do not have restricted hours of operation. It is therefore highly likely that some noise-generating activity occurs at the TIE at most times.

12. Particularly at night, noise and disturbance is likely to be noticeable and intrusive to the occupants of the units. The Planning Practice Guidance (the

[3] With reference to paragraph 206 of the National Planning Policy Framework.

'Guidance') explains that this should be 'mitigated and reduced to a minimum'.[4] Of critical importance is that there is no methodological evidence before me related to the noise levels experience at the units, or indication of mitigation measures that have been taken to address any adverse effects.

13. I therefore conclude that the development fails to provide for adequate living conditions for its occupants with regard to noise and disturbance. The development conflicts with the relevant provisions of policies 12, 13 and 16 of the Local Plan and with the elements of the Framework and the Guidance cited above.

Effect on key employment area

14. Policy 2a 'Key targets' of the Local Plan identifies target levels of business space provision over the plan period: 27,750 square metres of office floorspace and 30,250 square metres of industrial, for the Newquay and St Columb Community Network Area. Policy 5 'Business and tourism' of the Local Plan establishes how the Council will seek to ensure that there is a continued supply of appropriate business space.

15. Pursuant to policy 5, policy NQ-E1 of the Council's emerging Site Allocations Development Plan Document (the 'emerging DPD') identifies the TIE as a strategically important employment site. Part of the appeal site is within the allocation as shown on plan NQ1 of the emerging DPD, however not the live-work units.[5] However as the emerging DPD has yet to be examined, including in respect of its consistency with the Framework, I cannot accord it substantial weight.

16. The Framework is strongly supportive of appropriate economic development. However no on element thereof automatically outweighs any other. As cited above, the Framework also sets out that development should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. It further explains that businesses should not have unreasonable restrictions put on them because of changes in nearby land uses.

17. The Council has directed my attention to their Employment Land Review dated November 2010 ('ELR'). Whilst this advocates a cautious approach to managing competing pressures on employment sites, this is in the context of an overall surplus of such land.[6] Table 3 supporting policy 5 of the Local Plan shows that there has also been some progress in bringing forward industrial space in particular with reference to the relevant Local Plan target.

18. In this context the direct loss of land that results from the development would be negligible, and would not unduly affect the amount of land available in the TIE or in Cornwall more generally for employment uses. However under the Environmental Protection Act 1990, a separate regime to planning, local authorities are required to investigate and seek to remedy noise which is prejudicial to health or a nuisance.

[4] Reference ID 30-005-20140306.
[5] As explained in paragraph 48 of the Council's officer report.
[6] Paragraph 13.26.

19. In the event that noise experienced by occupants of the units amounts to a statutory nuisance, which I cannot discount on account of my finding in respect of the first main issue, the local authority would be required to serve an abatement notice. Therefore as a result of the close inter-relationship of the live-work units and industrial and commercial uses, the development may result in an adverse effect on the TIE by constraining the operation thereof (or by preventing business development nearby in the future).

20. I therefore conclude that the development has a detrimental effect on the potential development, operation, and future expansion of a key employment area in conflict with the aim of policy 5 of the Local Plan and paragraph 123 of the Framework.

Other considerations

21. The development has substantial economic benefits, both supply chain employment and by way of a significant uplift in tourism from German speaking nations (the 'Pilcher effect'). There are also benefits of the appeal site to FFP in terms of its accessibility, security and seclusion. I further acknowledge the circumstances, as set out by the appellant, that have led to the development occurring as a pragmatic response to accommodate FFP.

22. However whilst the appellant has stated that the appeal site is the only viable option for the filming operation, this is not robustly evidenced (for example in relation to evidence of alternative approaches that have been considered and discounted for whatever reason). I cannot therefore conclude that the development is the sole, or most appropriate, means of achieving such benefits.

23. Notwithstanding my reasoning in paragraph 8 above, the harm arising from the development exists now and would continue to exist for some time even were I in a position to grant permission on a time-limited basis. Therefore neither this, nor any other matter, is sufficient to outweigh or alter my reasoning above.

Conclusion

24. For the above reasons, and having taken all other matters raised into account, the development conflicts with the development plan taken as a whole and with the approach in the Framework. I therefore conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR