



Appeal Decision

Hearing Held on 14 February 2018

Site visit made on 14 February 2018

by Colin Cresswell BSc (Hons) MA MBA MRTPI

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

Decision date: 06 April 2018

Appeal Ref: APP/D0840/W/17/3179166

Land off Loggans Road, Loggans Road, Hayle TR27 4PL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Ben Pearce (Pearce Fine Homes Ltd & St Piran Homes Ltd) against Cornwall Council.
 - The application, Ref PA17/01250, is dated 9 February 2017.
 - The development proposed is forty three dwellings (including thirteen affordable dwellings (30%)) with estate road and all associated works.
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Decision

1. The appeal is dismissed and planning permission for forty three dwellings (including thirteen affordable dwellings (30%)) with estate road and all associated works is refused.

Application for costs

2. An application for costs was made by Mr Ben Pearce against Cornwall Council. This application is the subject of a separate Decision.

Procedural Matters

3. It emerged at the hearing that the appellant failed to serve the correct certificate on all of the relevant parties. However, there is no evidence before me to indicate that any person who might have been notified was not aware of the appeal and has thus been denied the chance to comment. Given my decision to dismiss the appeal, I am not granting planning permission and so the formal notification process is of less significance.
4. A revised layout plan (16112-200D) was submitted during the course of the appeal process which supersedes an earlier version of the plan (16112-200C). While the overall layout remains essentially the same, the revised plan shows a development free buffer zone along the northern boundary of the site. As the changes introduced by the revised plan are very minor, no party would be prejudiced if I were to determine the appeal on the basis of it.
5. The appellant submitted a signed unilateral undertaking after the hearing had closed. As the Council has been provided with an opportunity to comment on the document I am able to take it into account. I return to this matter later within my decision.

Background

6. The appeal site is an open field situated on the edge of Hayle. Despite being outside the established built up area of the town, the site is in close proximity to existing housing and a supermarket. Immediately to the south there is Loggans Mill, a sizeable Grade II listed building which is partly supported by scaffolding and appears to be in a poor state of repair. The landscape to the north west of the site is predominantly rural in nature, including the adjacent Loggans Moor Site of Special Scientific Interest (SSSI).
7. It is proposed to construct 43 dwellings on the site, of which 13 would be affordable homes. The development would be accessed via Loggans Road, which joins a double mini-roundabout known as Carwin Rise. As well as serving the Lidl supermarket, this junction is also part of the main route between the town centre and the A30 to the east.
8. The Council object to the proposal on the grounds that it would conflict with the development plan housing strategy for Hayle. Concern is also expressed at the absence of any financial contributions towards a planned signalisation upgrade of the Carwin Rise mini-roundabouts.
9. The Council takes no issue with the effect of the proposal on the listed building. However, other parties object to the development on these grounds, including the Neighbourhood Plan Steering Group. I am also mindful of my statutory duty under the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to such matters.
10. A Statement of Common Ground (dated 19th January 2018) was submitted prior to the Hearing. This addresses some of the concerns previously raised within the Council's appeal statement. It was confirmed at the hearing that agreement had now been reached on an appropriate level of contributions towards open space, education, ecological mitigation and affordable housing. There is no dispute that the relevant tests would be met (necessary, directly related to the development and fairly related in scale and kind).

Main Issues

11. The main issues in this case are therefore:
 - whether the site provides a suitable location for the proposed housing, having particular regard to the development plan strategy.
 - the effect of the proposal on the safe and efficient operation of the highway network in the vicinity of the appeal site.
 - the effect of the proposal on the setting of the grade II listed Loggans Mill.

Reasons

Location

12. Policy 3 of the adopted Cornwall Local Plan (the Local Plan) advises that the scale of new development should be based on the role and function of places. Part one of the policy lists the main towns where the majority of new housing is to be located. This includes Hayle. It is indicated that in these main towns, new development should be managed through a Site Allocations DPD or through Neighbourhood Plans.

13. The Hayle Neighbourhood Development Plan Submission Version October 2017 (the Neighbourhood Plan) and the Cornwall Site Allocations Development Plan Document dated March 2017 (the Site Allocations DPD) contain draft strategies for managing growth in Hayle. While neither of these plans has been adopted they have nonetheless reached relatively advanced stages in their preparation. The Neighbourhood Plan has reached the point where it has been submitted for examination. The Site Allocations DPD is currently undergoing examination, with the first hearings having taken place in February 2018.
14. The Site Allocations DPD states that most new residential development will be focused in two locations: Hayle Harbour and Trevassack. The largest of these sites is Trevassack, which is a mostly undeveloped area outside the established built up area of the town. It is indicated that the site also represents a future direction of growth beyond the current plan period. Hayle Harbour is a site within the existing urban area which the Site Allocations DPD anticipates will play an important role in the economic regeneration of the town. The Neighbourhood Plan essentially takes the same approach.
15. The Local Plan establishes a minimum target of 1,600 homes for Hayle over the period 2010-2030. By March 2016 there had already been 119 completions and a further 826 homes had planning permission according to the figures within Table H2 of the Site Allocations DPD. In addition, 99 homes were predicted to come forward on windfall sites with a further 43 units being identified as available urban capacity. This leaves a requirement for 513 homes to be provided elsewhere in Hayle.
16. I understand that Hayle Harbour has potential to accommodate up to 850 new dwellings and already benefits from planning permission. Its contribution to housing supply therefore forms a major component of the calculations which are set out within Table H2. At the hearing, it was argued that the number of homes which are actually deliverable on the site may be subject to change. However, while this may be the case, I have no evidence to show that the capacity of the site would be substantially lower than anticipated.
17. Both parties recognise that development of the Hayle Harbour site is contingent on the signalisation upgrade of the Carwin Rise mini roundabouts. The Council was unable to provide me with a precise indication of when the upgrade was likely to take place and there is clearly some uncertainty regarding this matter. However, the requirement to upgrade Carwin Rise is anticipated within the Site Allocations DPD and I note that some developer contributions have already been secured towards the scheme. Furthermore, I am not aware of any specific reasons why the works could not take place during the plan period. Despite the current uncertainty, it therefore seems to me that there is a good prospect of Carwin Rise being upgraded before it becomes a serious constraint to any future development within the town.
18. Although the Council was unable to provide an update on the housing figures within Table H2 (which is based on data from March 2016) I have no reason to believe that the residual requirement would be any more than the 513 homes anticipated at that time. The Site Allocations DPD aims to accommodate these dwellings at Trevassack (Policy H-UE1) which is shown to have a potential capacity of 1,000 homes, alongside business uses and a new link road.

19. During the course of the hearing, Mr Pearson argued that Trevassack could not be fully developed unless the proposed junction onto the A30 was constructed, making the allocation slow and complicated to implement. However, while the new junction may be necessary if the entire site were to be developed, I am not entirely convinced that it would be needed for the 513 dwellings required to meet the Local Plan housing target. The site can already be accessed from the existing road network and the Site Allocations DPD anticipates that the new junction will be implemented beyond the period of the existing plan. Given that planning permission has already been granted on parts of the site, it seems to me that there are relatively few barriers to development.
20. Hence, based on the evidence presented in this appeal, the indications are that the Local Plan target of 1,600 homes for Hayle over the period 2010-2030 will be delivered in the locations anticipated within the Site Allocations DPD. Although the DPD has not yet been adopted, I have not been informed of any significant objections to the strategy for Hayle. Therefore, taking into account all of the above, I consider that the Site Allocations DPD should carry a good deal of weight for the purposes of this particular appeal.
21. Due to its relatively small size, the appeal site is clearly not 'strategic' in scale. Indeed, the Hayle Housing Evidence Report 2017 confirms that the site was omitted from the Site Allocations DPD for this reason and instead states that it should be considered for development on its individual merits. With this in mind, I recognise that the appeal site is in a relatively accessible location near shops and services and that the evidence report identifies no significant constraints to future development. In addition, the appellant informs me that it can be implemented very quickly by a local builder.
22. However, it seems to me that similar arguments could be made for many other sites on the edge of the urban area. There is little before me to show that the site is so sustainable that it should be given a higher priority than the locations already earmarked for development within the Site Allocations DPD. Although the Local Plan housing target is expressed as a minimum figure, this does not provide leeway to build anywhere on the edge of the town and I am mindful that Trevassack has capacity beyond the current plan period. While I note the high demand for affordable housing within Hayle, this can be equally well provided in the locations anticipated by the DPD.
23. Given that the Council is able to demonstrate a 5 year supply¹ of deliverable housing sites, I therefore see little reason to deviate from the current strategy. In my view, the proposed development would represent an unnecessary greenfield extension which would undermine the planned approach to housing delivery as advocated by Policy 3 of the adopted Local Plan.
24. I note that the 43 dwellings proposed would be less than 3% of the Local Plan housing target of 1,600 new homes and around 8% of the residual requirement of 513 dwellings. However, I am also mindful of the Council's argument that allowing this appeal could make it more difficult to resist proposals for similar developments on the edge of the town. If similar schemes were to be approved on the edge of Hayle in the future, the cumulative effect would be to deviate even further from the planned strategy. Although this is not a matter on which my decision has turned, it nonetheless adds weight to my conclusion that the development would result in harm.

¹ As established in appeal decisions supplied by the appellant, including APP/D0840/W/153002925.

25. During the hearing, it was suggested that the proposed development meets the description of 'rounding off' as set out in part 3 of the policy. However, this part of the policy only applies to smaller settlements. As Hayle is listed as a main town, the policy would not directly support rounding off in this instance. Furthermore, as the north west and south west boundaries of the site adjoin open land, the proposal would have the effect of visually extending building into the open countryside. Hence, it would not accord with the definition of rounding off within paragraph 1.68 of the Local Plan supporting text.
26. I have been referred to an appeal² where a large housing site was approved on the edge of Par on the basis it would be rounding off. However, the Inspector in that case found that the site was substantially enclosed by development. Furthermore, Par is not one of the locations listed in Policy 3 where housing is to be managed through a DPD or Neighbourhood Plan. The circumstances of that case are therefore different from the current appeal.
27. My attention has been drawn to a number of other appeal decisions which have been put forward in support of the proposal. This includes an appeal³ where 95 dwellings were approved at Wadebridge. However, as employment and retail uses were already permitted on the site, a clear fallback position existed. This is not the situation in the present case. In an appeal⁴ for 204 dwellings on another site at Wadebridge, the Inspector noted that housing allocations had been delegated to the neighbourhood plan, which was at a very early stage of preparation. This is not the case in Hayle, where the Site Allocations DPD is at a relatively advanced and contains firm proposals for the town.
28. I have also been referred to an appeal⁵ where 20 dwellings were permitted on the edge of Camborne. However, this scheme delivered 50% affordable housing and was treated as a rural exception site, which is permitted under Policy 3 and Policy 9 of the Local Plan. The development was therefore justified on different grounds than the current proposal.
29. In an appeal⁶ where 46 dwellings were allowed on a former employment land allocation at Callington, a good deal of weight was assigned to the contribution that the proposal would make to local housing supply. Although I have not been provided with the full circumstances of that particular case, it appears that the Inspector had rather less evidence of future housing provision before him than I do in the current appeal. This also appears to be the case in an appeal⁷ at Camborne where 94 dwellings were approved alongside a residential care facility. Each proposal must be treated on its individual merits, and the evidence presented in the current appeal has led me to find that development of the appeal site would undermine the plan-led approach.
30. I therefore conclude on this issue that the site would not provide a suitable location for the proposed housing. The proposal would conflict with Policy 3 of the adopted Local Plan which advises that development in Hayle should be managed through a Site Allocations DPD or Neighbourhood Plan. While neither have been adopted, there is strong evidence that the strategic housing sites planned within the town will be implemented.

² Appeal Reference: APP/D0840/W/16/3162355

³ Appeal Reference: APP/D0840/W/17/3173731

⁴ Appeal Reference: APP/D0840/W/16/3164238

⁵ Appeal Reference: APP/D0840/W/17/3171099

⁶ Appeal Reference: APP/D0840/W/16/3166117

⁷ Appeal Reference: APP/D0840/W/16/3142806

Effect on highway network

31. According to the appellant's Transport Statement, the proposed development would generate a total of 27 vehicular trips during the AM peak (08:00-09:00) and 32 trips during the PM peak (17:00-18:00). Although local residents at the hearing questioned the accuracy of these figures, there is little before me to indicate that the appellant's methodology is flawed.
32. Both parties accept that the majority of vehicles entering and exiting the site would be likely to travel through the double mini-roundabouts at Carwin Rise, which are an identified traffic bottleneck. At the hearing, the Council was able to provide some measurements of traffic flow through the roundabouts, although the data provided was not particularly comprehensive. Despite this, it was evident that the vehicle movements generated by the development would only amount to a small proportion of the total traffic using Carwin Rise.
33. For this reason, I do not consider that the traffic generated by the development would represent a 'significant danger' as the Council claim within their appeal statement. Nonetheless, the development would certainly increase traffic flows through Carwin Rise to some extent and would therefore only exacerbate the other significant problems that I have been informed of, including lengthy queuing during peak hours. As such, the proposal would clearly result in harm to the safe and efficient operation of the highway network.
34. In mitigation, the Council seek a financial contribution towards the signalisation upgrade of Carwin Rise. However, the CIL Regulations⁸ state that no more contributions may be collected for a specific infrastructure project through a section 106 agreement if five or more obligations for that project have already been entered into since 6 April 2010.
35. I understand that contributions towards the Carwin Rise upgrade have already been sought from six separate developments in the town. The Council inform me that contributions from three of these schemes (land off Trevassack Hill, Viaduct Hill and the Premier Inn Extension) were secured through section 106 agreements under the Town and Country Planning Act 1990. However, contributions from the other three developments (Hayle Rugby Club, Cranfords Retail and Hayle Harbour North Quay) were secured through Grampian conditions via section 278 of the Highways Act 1980.
36. The evidence presented therefore indicates that fewer than five contributions towards the Carwin Rise upgrade have been secured through section 106 agreements. I note Mr Robert's point that the Council's approach is not within the spirit of the Regulations. However, the merits of how the Council may have secured contributions by other means is not a matter that I need to give a view on in this appeal. It does though seem (based on the information before me) that the restriction on pooled contributions secured via S106 obligations for the Carwin Rise improvement has not been exceeded.
37. I have considered the appellant's argument that the cost of off-site highways works should be deducted from any contributions made towards Carwin Rise. The letter from the contractors circulated at the hearing highlights the costs of providing a pavement and visibility splay amongst other things. However, no contributions towards the Carwin Rise upgrade are being proposed at all, and it

⁸ The Community Infrastructure Levy Regulations 2010

is not clear how the off-site works listed would help to mitigate the harm caused by the increased use of the roundabouts. Although it is suggested that the level of contribution sought by the Council would make the development unviable, little evidence has been presented to substantiate this.

38. For the reasons given above, I consider the need for the contribution sought by the Council towards the Carwin Rise signalisation upgrade satisfies the three tests in Regulation 122 of the CIL Regulations 2010 (necessary, directly related to the development and fairly related in scale and kind). The proposal would fail to secure the necessary contributions and so would conflict with Policy 27 of the Local Plan which seeks to avoid adverse impacts on the local or strategic road network. I therefore conclude on this issue that the proposal would have a harmful effect on the safe and efficient operation of the highway network in the vicinity of the appeal site.

Setting of listed building

39. Loggans Mill is a sizeable grade II listed building associated with the mining history of the area and the nearby World Heritage Site. Although the main fabric of the building appears to be intact, it is in a state of dereliction and is partly supported by scaffolding.
40. The building is seen from a number of vantage points within the surrounding area. It is clearly visible when approaching Hayle from an easterly direction along the A30, where it forms a prominent landmark near a main entrance into the town. From here, the building is seen with open land in the foreground (including the appeal site) and built development in the background.
41. The proposal would introduce a relatively dense form of housing development on part of this open land. However, the field immediately to the east of the appeal site would occupy the majority of the foreground when the building is viewed from the A30, and hence an open setting would be maintained. Although the proposed housing would partially erode the sense of openness, the visual impact would not be substantial and I am conscious that the listed building is already seen against a backdrop of development.
42. Loggans Mill can be seen at closer quarters in the vicinity of the supermarket, Carwin Rise and Melyn Close. From here, the building appears tightly enclosed by existing development although it remains a prominent feature in the vicinity due to its height and bulk. As the appeal site is mostly obscured from here, the proposed development would have an indiscernible effect on the setting of the listed building from these particular vantage points.
43. Public views of the building from Loggans Road are mainly screened by the existing buildings and mature hedgerow along the street frontage, although it is seen from the rear of private properties and from within the appeal site, which looks down onto the building from more elevated ground. Yet while the proposed housing would occupy the foreground of Loggans Mill as seen from these private properties, it would not substantially alter its setting as the building is already seen in the context of urban development.
44. Draft Policy HB4 of the Neighbourhood Plan applies to land around Loggans Mill (including the appeal site) and indicates that proposals for development within this zone should contribute to the sustainability of the building. The policy states that proposals should improve access to the building, preserve its setting

and ancillary features, avoid areas of flooding, provide an appropriate reuse of the building and contribute to its preservation.

45. During the hearing, Mr Bennett spoke at length about the difficulties faced in preserving the building. He advised me that the scaffolding had been in place for several years and the building was in danger of being permanently ruined. I sympathise with these concerns and saw for myself that the building is a very important asset to the town. However, while Policy HB4 has positive intentions for the future, it has not yet been adopted. Relatively little evidence has been provided to justify assigning much weight to the policy at this stage, or to show that the proposed development would necessarily harm the listed building. Without such evidence, I can only give Policy HB4 limited weight.
46. Consequently, I do not consider that financial contributions towards the upkeep of the building can be justified under Paragraph 204 of the National Planning Policy Framework (the Framework). This advises that planning obligations should only be sought where they are necessary to make the development acceptable, are directly related to the development and are fairly and reasonably related in scale and kind. Even if I were to agree that the proposed development would restrict access to the building from Loggans Road, there is little before me to show that this would necessarily cause harm.
47. I therefore conclude on this issue that the proposed development would preserve the setting of Loggans Mill. Although the proposal would inevitably lead to some changes in the setting of the listed building, this would not result in harm and there would be no loss of significance.

Other matters

48. The signed unilateral undertaking (circulated after the close of the Hearing) proposes contributions towards affordable housing, education, public open space and ecological mitigation. The contributions towards education, public open space and ecology simply fulfil policy expectations and attract no positive weight towards the scheme. Although there are clearly benefits associated with the provision of affordable housing in the town, I found in the first main issue that such housing can be more sustainably delivered in the locations anticipated by the Site Allocations DPD.
49. I note the Council's subsequent comments regarding land ownership, which raises questions as to whether the unilateral undertaking could be relied on to secure the intended contributions. However, as I am dismissing the appeal for other reasons, I have not given any further consideration to this matter.

Conclusion

50. Although I have found no harm to the setting of the listed building, this does not outweigh the harm I have identified in terms of the location and the effect on the highway network. Having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

Colin Cresswell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mick Roberts	Planning Consultant
Jon Pearson	Highway Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Chantal McLennan	Cornwall Council
Robin Watson	Cornwall Council
Peter Blackshaw	Cornwall Council

INTERESTED PARTIES:

John Bennett	Neighbourhood Plan Steering Group
	Hayle Town Council
Richard Hammond	Local resident
Ethel Simmons	Local resident
Angela Francis	Local resident
Karen Murray	Local resident
David Murray	Local resident

DOCUMENTS SUBMITTED AT THE HEARING:

1. Letter from E.Roberts Contractors Ltd dated 7 February 2018