



Appeal Decision

Site visit made on 20 March 2018

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2018

Appeal Ref: APP/D0840/W/17/3183372

Discovery Quay Car Park, Campbeltown Way, Port Pendennis, Falmouth, Cornwall TR11 4AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Whitbread PLC against the decision of Cornwall Council.
 - The application Ref PA17/01608, dated 25 January 2017, was refused by notice dated 11 July 2017.
 - The development proposed is the erection of a 70 bedroom Premier Inn Hotel (Use Class C1) with integral ancillary restaurant/breakfast area.
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Decision

1. The appeal is dismissed.

Application for costs

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

Procedural Matters

3. The application was refused for three reasons. The second reason related to the lack of a signed legal undertaking to provide off-site financial contributions to deliver improvements to mitigate cumulative recreational impacts on the Fal and Helford Special Area of Conservation (SAC) and attendant highway works on a section of footway/cycleway between the railway station (Dell) car park and Melville Crescent.
4. The Council's third refusal reason related to the absence of a suitable modification to the S106 agreement attached to planning permission PA02/0080/06/M, which required that the transport needs of users of the 18 existing private parking spaces on the site will continue to be met in the future.
5. A signed S106 agreement dated 12 March 2018 between the Council, the owners, the mortgagees and the developer has been submitted. This agreement obliges the owner of the site to provide a contribution towards raising public awareness regarding water based recreation activities in the SAC prior to the hotel being brought into use.
6. It releases the owner and its successors in title from the need to provide any short-term pay and display car parking on the site but obliges it to re-provide the 18 long stay private parking spaces on the site, and during the construction of the proposed hotel to relocate them within 100m of the entrance of the site.

7. It also requires the owner to enter a Highway Works Agreement on the day it was signed. This has been done through an agreement also of 12 March 2018 between the same parties, made pursuant to Sections 278 and 305 of the Highway Act 1980 and other relevant pieces of legislation. This second agreement obliges the owner to pay the Council £55,145 as highway authority prior to commencement of development as a contribution towards the requisite footway as described above in order to address the transport impacts of the hotel by helping to facilitate accessibility of the railway station to its patrons in the absence of dedicated on-site car parking for them.
8. I agree with the Council that these obligations meet the tests of necessity, direct relationship to the proposed development and fairly and reasonably related in scale and kind to it, as required by Regulation 122 of the *Community Infrastructure Levy Regulations 2010*. The Council also confirms that it meets the current pooling restrictions in Regulation 123, and I have no evidence to challenge this assertion. Consequently I am satisfied that the two legal agreements address the Council's second and third refusal reasons. However, since I am dismissing the appeal for other reasons there is no need for me to comment any further on them.

Main Issue

9. In light of this the main issue is the effect of the proposed hotel on nearby designated heritage assets, in particular the Grade II* listed Arwenack House, the Grade II listed Killigrew Monument and the setting of the adjacent Falmouth Conservation Area (CA), the substance of the Council's first refusal reason.

Reasons

10. The appeal site is a car park close to Falmouth's waterfront, Events Square and the National Maritime Museum (NMM). It has 39 parking spaces of which 21 are short stay public parking spaces and 18 are private spaces licensed for use by residents in neighbouring dwellings. Adjacent to it, on the Arwenack Street frontage, are two much larger public car parks. It is within a short walk of the town centre facilities and Falmouth Town railway station and is easily accessible by buses.
11. It lies outside the CA but, as the Council states, is within 6.5m of its boundary which extends around the grassed area containing the Killigrew Monument. This is a 13m high dressed granite pyramidal obelisk on a stepped square base originally erected to the memory of Sir Peter Killigrew of Arwenack in 1737 and resited for the second time here in 1871, listed Grade II in 1968. The site at its nearest point is about 30m from the obelisk itself.
12. It is also about 65m at its nearest point to Arwenack Manor, which forms part of a joint Grade II* listing from 1949 with Arwenack House adjacent. It is also at its nearest point less than 50m from the separately listed garden wall of the Manor along the road frontage, listed Grade II in 1973. These assets and the Monument together exhibit group value because of their original ownership/association with the Killigrews, a prominent and important local family, and the contextual relationship between them. Adjacent to Arwenack House is 1-7 Grove Place, a terrace of seven large houses dating from the 1840s most of which are now in commercial use; these were also listed Grade II in 1973.

13. Statute requires that special regard is given to the desirability of preserving listed buildings or their settings or any special features of architectural or historic interest which they possess. It also requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of CAs.¹ Case law has established that considerable importance and weight must be given to these statutory duties.²
14. Paragraph 137 of the National Planning Policy Framework (NPPF) states that proposals that preserve those elements of the setting of a heritage asset that make a positive contribution to, or better reveal the significance of, the asset should be treated favourably. The Glossary to the NPPF defines the setting of a heritage asset as the surroundings in which it is experienced.
15. The Council does not raise any adverse impacts on the settings of the listed wall to Arwenack Manor and House or 1-7 Grove Place but because they are listed buildings I must necessarily assess the proposals' effect on them and the way in which any effect impacts on their significance. They are both located in the CA.
16. Setting is not a designation in itself and any effect on the setting of a heritage asset is relevant only to the extent it has on the asset's significance. Significance is defined in the Glossary to the NPPF as: "*The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.*"

Killigrew Monument

17. The appellant argues that the Monument's setting is not an important part of its significance because it has been moved three times and its present location was important because it used to lie on the edge of the harbour next to the original town pier and was visible from the sea. It argues that the reclamation of the harbour during the latter part of the twentieth century and especially the development of buildings higher than the Monument at Discovery Quay including the NMM in 2006/7 has drastically changed its setting and that the appeal proposal, which would itself be sited on reclaimed land, would merely be in a similar vein. It also states that the car parks which surround the Monument, including the appeal site, represent an incongruous and unattractive setting, as does the proliferation of modern street furniture and signage and that a mature tree near the listed structure partially screens it from the appeal site.
18. There is no doubt that the setting of the Monument has markedly changed since it was first erected on its current site. But I disagree that the car parks surrounding it are incongruous. Even if fully parked they would still allow views of the obelisk. Arwenack Street is in a 30mph speed limit zone and the Monument is prominent to passing vehicular traffic as well as to the many pedestrians who use the footway on both sides of the street. The street furniture, signage and fencing in its vicinity does not, in my view, markedly detract from its setting: it is inoffensive and typical of urban streets.

¹ S66(1) & 72(1) respectively of the Planning (Listed Buildings and Conservation Areas) Act 1990

² *Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage, National Trust and SSCLG* [2014] EWCA Civ 137 (*Barnwell*)

19. The mature tree certainly has a partial screening effect but a single tree like this should not be relied upon to screen the proposed building, which would only be 30m or so away from the obelisk and considerably higher than it (at 16.75m). The tree is likely to die before the end of the building's life. The proposed five storey hotel is also considerably higher than the buildings adjacent to it such as Tidemill House, Fisher Court and the other buildings erected around the Port Pendennis Marina in the 1980s, which are two and three storeys high. The higher parts of Maritime House and the NMM further to the north and east do not affect the Monument's setting to such a degree because they are further away from it than the site is.
20. In my opinion the proposed building is out of scale with the adjacent buildings and the Monument, which currently has a substantial presence largely as a result of its open setting, which includes the appeal site. Whilst I do not rule out any development on the appeal site I consider it should be in scale with its surrounding buildings, not higher than the obelisk. Such monuments are designed to attract attention and so their settings are often very important to their significance, as the setting of this Monument is.
21. For these reasons I conclude that the significance of the Killigrew Monument would be harmed. This harm would, I judge be 'less than substantial' as set out in NPPF paragraph 134 but, as per *Barnwell*, such harm does not equate to a less than substantial planning objection to the proposal.

Arwenack Manor and House and its Listed Frontage Wall

22. Although separately listed it is logical to consider the Grade II* listed Manor/House together with the separately Grade II listed wall given that the wall forms the historic boundary to the front garden. The Manor/House is the oldest building in Falmouth, originally dating to 1385 but mostly rebuilt in 1571 when it was acquired by John Killigrew, the first Governor of Pendennis Castle. It was partially destroyed during the Civil War, rebuilt, extended in the eighteenth century and renovated in 1978 following another fire earlier in the 1970s, when Arwenack House was converted into five flats. The listed high wall in local killas rubble dates to the sixteenth century but was much rebuilt in the eighteenth century. The Killigrew Monument lies directly opposite on the other side of the street.
23. The seaward setting of Arwenack Manor/House and its wall are the same as that of the Monument, which has changed over time as described above. The Manor/House is inset about 10m from the front boundary wall and there is mature planting in the front garden. But the house is nonetheless readily visible to pedestrians and the occupants of passing vehicles and seen within its historic context including the Monument. There are clear views of the appeal site from the Manor, which is viewed in the same context as the Monument.
24. The higher buildings on the reclaimed waterfront land, notably Maritime House and the NMM are visible in the background in views from the Manor/House as are the car parks. But although the car parks including that on the appeal site are functional and uniform in appearance they at least provide an open setting to this Grade II* building, which is an asset not only of great architectural and historic significance to Falmouth but is a prominent part of the street scene.
25. Pendennis Castle is still visible from the Manor and this visible link is important contextually because of the historical association between the Manor/House

and the Castle. Although the proposed development would not block this view it would lie within its frame of reference and would adversely affect the perception of its context by intruding into the outward views from the Manor.

26. The five storey hotel would be a prominent and high building which would dominate views eastwards from and adjacent to the two storey Manor and the street next to the listed wall. Its height, massing and bulk would not be as great as that of the NMM. However, it would still be considerable. It would be higher than Maritime House and the buildings in its immediate context and, more importantly, would have a much greater impact on the setting of the Manor/House because it is much closer than the higher buildings at Discovery Quay.
27. For these reasons I conclude that the setting of both the Grade II* listed Arwenanck Manor/House and the Grade II listed wall and their significance would be harmed. Again, as per the harm to the Monument such harm would be 'less than substantial' in terms of NPPF paragraph 134.

Falmouth Conservation Area

28. The CA is large in area and encompasses all the historic parts of the town so its character is mixed. The *CA Appraisal* (1998), which predates the NMM but not the 1980s Port Pendennis development, notes that the character of this part of Falmouth's waterfront depends heavily on its historic buildings specifically referring to the above listed buildings and 1-7 Grove Place, which it says is one of the best terraces of stuccoed townhouses in Cornwall.³
29. The NMM and Events Square developments have altered the setting of the CA since the Appraisal was written, particularly in terms of the relationship of these historic buildings with the harbour and the docks. Whilst the more recent *Cornwall and Scilly Urban Survey* of Falmouth (2005) acknowledges the large scale of these developments it also highlights that the area remains particularly notable for the fine grain, diversity and charm of its historic components. In particular it notes, concerning the more recent development: "*While to date such development has – arguably – been absorbed without catastrophically diminishing the area's distinctive sense of place and significance, there must be very substantial doubt whether any further large-scale, high-visibility developments could be inserted without such consequences.*"⁴
30. The proposed hotel would clearly not be on such a large scale as the NMM and Maritime House but it would be a high building – actually higher than Maritime House – of considerable mass in a prominent position almost abutting the boundary of the CA, whereas the NMM is considerably further away next to the present waterfront. I have already explained above how it would impact on the settings and the significance of the above listed buildings.
31. The Manor/House, its front wall and the Monument, prominent historic buildings in this key part of the CA, are also important in terms of their group value and the harm that would be caused to their joint setting accordingly carries more weight than the harm to their individual settings. The listed terrace at 1-7 Grove Place is also appreciated by people using Arwenack Street

³ Council's appeal Statement, Appendix 5 paragraph 5.3.4

⁴ Ibid Appendix 6 page 79

to be part of this historic part of the CA, which has a direct contextual relationship with the appeal site, albeit I am not alleging harm to the significance of the listed terrace itself. The joint setting of all these listed buildings is also the setting to this part of the CA. In my view the harbour side setting of this part of the CA, including the appeal site, is an important part of its overall significance given that Falmouth is a maritime town. So whilst substantial harm would not be caused to the CA as a whole I conclude that 'less than substantial harm' would be caused to its significance because of the harm to this key element of its setting.

Conclusion regarding Effect on Nearby Designated Heritage Assets

32. I conclude that the harm to the joint setting of the above designated heritage assets would harm their overall significance. Whilst this harm would be less than substantial considerable importance and weight should be given to it, as per *Barnwell*.
33. In reaching this conclusion I have taken into account specifically the consultation response of Historic England on the application and I agree with it for the above reasons. I have also had regard to the views of my colleague Inspector regarding his decision in relation to an earlier hotel proposal on the site.⁵
34. In particular I note that in paragraph 15 of his decision he had no character or design concerns as to the part five storey height of that proposed hotel nor to its effect on the settings of the above designated heritage assets. However, I note that the main issue in that case was the effect of the hotel on the living conditions of neighbours and that the appeal decision not unsurprisingly therefore concentrated on assessing that issue, on which the appeal was dismissed. There was no in-depth analysis of the effect on heritage assets. Given that is the main issue in this appeal, I have assessed the proposal's effect on those assets in detail and the reasons for my conclusion speak for themselves.
35. Paragraph 132 of the NPPF states that great weight should be given to designated heritage assets' conservation. Paragraph 131 states that account should be taken of the desirability of new development making a positive contribution to local character and distinctiveness. Paragraph 137 encourages new development within the setting of heritage assets to enhance or better reveal their significance. Paragraph 17 (bullet point 10) states that planning should conserve heritage assets in a manner appropriate to their significance. For the above reasons the proposed hotel building would fail to comply with this relevant national policy.
36. NPPF paragraph 134 states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. The new hotel would provide a number of public benefits: it would widen the choice of hotel accommodation in Falmouth, be likely to attract more tourist visitors to spend more time in the town and area and provide local jobs, as well as additional supply chain and expenditure effects. But much of this benefit could be achieved by building a hotel here that respects the setting of the above

⁵ APP/D0840/A/12/2189642, dismissed 9 August 2013

heritage assets. Consequently I conclude that the harm to the settings of these heritage assets outweighs the benefits.

37. Policy 2 (d) of the Cornwall Local Plan (CLP) requires proposals to maintain and respect the special character of Cornwall by protecting, conserving and enhancing the natural and historic environment. Policy 12 states that development must ensure Cornwall's enduring distinctiveness and maintain and enhance its distinctive natural and historic character, and be of an appropriate scale, density, layout, height and mass with a clear understanding and response to its landscape, seascape and townscape setting. Policy 24 states: *'Development proposals will be permitted where they would sustain the cultural distinctiveness and significance of Cornwall's historic rural, urban and coastal environment by protecting, conserving and where appropriate enhancing the significance of designated and non-designated assets and their settings'*. For the above reasons the proposed hotel would fail to meet the requirements of all three of these development plan policies.
38. Policy 1 incorporates into the CLP the presumption in favour of sustainable development contained in paragraph 14 of the NPPF. This states that development that accords with the development plan should be approved without delay. In this case the development would fail to accord with the development plan and would also be contrary to relevant NPPF policies as set out above. By definition it would not therefore be sustainable development and would not comply with CLP Policy 1.

Other Matters

39. Local residents have raised a number of other matters and two in principle that I wish to address. First, the effect of the proposed hotel on the living conditions of the adjacent flat holders in Fisher Court, especially those closest to it at Nos 3, 4 and 5. The building at its nearest point would be only about 8.5m from these flats although its roof would slope up away from them unlike previous design solutions. But the hotel's height and bulk would still have a considerable effect on the outlook from the windows of these flats facing towards the appeal site and this could be significantly ameliorated if it was lowered in height. As such the concerns of these neighbours add to my concerns about the height, bulk and massing of the proposed building.
40. Concern has also been raised at the loss of all the public car parking spaces currently on the site. I note the concerns raised including references to other parking studies in the town. But these concerns have been comprehensively addressed by the Council in its capacity as Local Highway Authority. In particular the highway comments have effectively updated the comments of the 2013 Inspector on this issue, who explains in paragraph 17 of his decision why the loss of such public parking spaces would be acceptable. For these reasons their loss would not constitute an additional ground for dismissing this appeal.

Overall Conclusion

41. For the reasons given above I conclude that the appeal should be dismissed.

Nick Fagan

INSPECTOR