



Appeal Decision

Hearing Held on 24 September 2019

Site visit made on 24 September 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 31 October 2019

Appeal Ref: APP/D0840/W/19/3229257

Prospect House, St Anns Chapel, Gunnislake, Cornwall PL18 9HD

- 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 Prospect Land & Developments Ltd against the decision of Cornwall Council.
 - The application Ref PA18/09303, dated 3 October 2018, was refused by notice dated 30 April 2019.
 - The development proposed is construction of 18 dwellings (6 affordable), site access, service roads and infrastructure.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The address used in the banner heading above is that used by Council as it more clearly describes the site location than that on the application form. Except with regard to reference to Cornwall, this is also the address used on the appeal form.
3. A draft Section 106 agreement (S106) was presented at the Hearing. This had been prepared by the Council in association with the appellant. The parties indicated that further time was required for completion. Five working days was provided. No completed S106 was however received.

Main Issues

4. The main issues are:
 - whether the development would make adequate provision of affordable housing;
 - whether the development would make adequate provision for public open space; and
 - whether the site is an appropriate location for development with regard to flood risk.

Reasons

Affordable housing

5. Policy 8 of the Cornwall Local Plan Strategic Policies 2010-2030 (adopted 2016) (the Local Plan), sets out the requirement for developments involving a net

increase of more than 10 dwellings to contribute towards affordable housing need. Within the part of Cornwall in question Policy 8 sets out a 30% rate of provision and also identifies the mix applicable.

6. A local need for affordable housing is further confirmed by entries in the Cornwall Homechoice register. As such, I am satisfied that a planning obligation securing the provision of affordable housing is necessary, and that this would meet the tests set out in paragraph 56 of the Framework, and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations).
7. The absence of a legal agreement securing provision of affordable housing was a reason for refusal of planning permission. However, neither the need for provision, nor need for an agreement has been disputed by the appellant. To this end the development proposes a policy compliant level of affordable housing, which the appellant had indicated would be secured by S106 agreement. As no completed S106 has been submitted, the provision of affordable housing has not been secured.
8. The Planning Practice Guidance (PPG) states that the use of a negatively worded condition to require an applicant to enter into a planning obligation or other agreement is unlikely to be appropriate except in exceptional circumstances. In this instance, no exceptional circumstances have been shown to exist that would justify use of such a condition in relation to affordable housing provision.
9. Given that the provision of affordable housing has not been secured, there is no certainty that it would actually be provided were the appeal to be allowed. Even if it was provided, there would be no certainty that the housing would retain its affordable status into the future. In view of local need, the failure of the development to make secure provision of affordable housing would cause unacceptable harm.
10. For the reasons outlined above I conclude that the development would not make adequate provision of affordable housing. It would therefore conflict with Policy 8 of the Local Plan, whose terms are outlined above, and relevant provisions of the National Planning Policy Framework (the Framework).

Open space

11. Policy 13 of the Local Plan sets out the requirement for developments to provide on-site public open space in proportion to the scale of the development. Where this would not be achieved the basis for seeking contributions towards off-site provision is set out in Policy 28 of the Local Plan. These policies are informed by the Open Space Strategy for Larger Towns in Cornwall 2014 (the OSS), which is referenced in the supporting text of Policy 13.
12. The OSS does not provide specific guidance in relation to the area in question, but it nonetheless sets out general space standards and costings. These have helped to inform the Calstock Parish Open Space Study (the POSS), which has been prepared in relation to the emerging Calstock Neighbourhood Plan (the NP). Though the NP remains at an early stage in its production, and thus currently attracts limited weight, I nonetheless consider that the POSS provides relevant guidance in interpreting Policy 13 given its relationship to the OSS.

13. On the above basis, the public open space provided within the development would not, taken alone, be of a size sufficient to cater for the demands likely to be generated by the development. This would include for equipped play space, of which there is an identified local shortage, given that the minimum area for such a space is set at 500m² by the OSS. Furthermore, the value of the space provided would be limited by its peripheral position within the site layout, and slope. I am therefore satisfied that a requirement exists for a contribution towards off-site open space provision.
14. The Council has however indicated that the requested contribution would be spent on St Anns Playing Field. This is despite its acknowledgement that St Anns Playing Field lacks any direct means of pedestrian access from the site. Whilst access can be gained by car, pedestrians would be required to walk part of the journey along lanes and/or footpaths featuring steep gradients and lacking any proper footway or lighting. In the absence of safe or easy means of pedestrian access to St Anns Playing Field, there is little reason to believe that future occupants of the development would make regular use of it.
15. I am therefore not convinced that the contribution sought would be spent in a way that would be directly related to the development. As such, the contribution would not meet the tests set out in paragraph 56 of the Framework, or Regulation 122 of the CIL Regulations.
16. The absence of a legal agreement securing the provision of the contribution was a reason for refusal of planning permission. Again, neither the provision of a contribution, nor the need for an agreement securing this, has been disputed by the appellant. The appellant indeed indicated that a contribution would be secured by S106 agreement; however no completed S106 has been submitted. In view of my findings above, even had a S106 agreement been submitted, a contribution along the lines above would not have met the relevant tests, and thus could not have been a reason for granting planning permission.
17. Given the value of public open space in supporting the health, well-being, quality of life and cultural well-being of communities, inadequate provision in the absence of mitigation would cause unacceptable harm in each regard.
18. For the reasons outlined above I conclude that the development would fail to make adequate provision for public open space. As such it would conflict with Policy 13 of the Local Plan, whose terms are outlined above, and relevant provisions of the Framework.

Flood risk

19. The site occupies sloping ground, most of which currently forms the garden of Prospect House. Environment Agency (EA) mapping places the site within Flood Zone 1, and indicates that it is at very low risk of surface water flooding. The EA has not otherwise given any indication that the site has critical drainage problems. This appears to be reflected in Cornwall Council's Strategic Flood Risk Assessment (SFRA), which does not identify a flood risk affecting the site.
20. Whilst EA mapping and the SFRA provide the principal sources for establishing flood risk for planning purposes, it is not unreasonable to take evidence into account which might indicate that these sources are inaccurate.

21. In this regard the Council and interested parties have drawn attention to recent recorded incidents of surface water flooding of the A390 and properties to the south of the site. These include Prospect House, which is cut into the slope.
22. Whilst run-off from the site may have played a contributory role in these flooding events, the main parties agree that the source of flood water is principally run-off from fields to the north of the site. This is directed into the site along field boundaries lined by Cornish hedges, and is then channelled in a ditch along the western edge of the site towards the boundary with 1 River View. Beyond this point the ditch is either blocked, obstructed or significantly narrower and shallower in dimension. This, in combination with a further ditch dug to the rear of adjacent plots, encourages the diversion of water from its direct downhill course, to enter properties through gaps in the boundaries. Beyond this the A390 acts as a further barrier along which water is then channelled. Flooding is therefore chiefly symptomatic of a failure of the existing drainage infrastructure, and, except at the immediate interface between the site and existing development, occurs off-site. In neither regard does this indicate that the site as a whole is at current risk of flooding.
23. The risk of flooding related to run-off from the north will clearly continue to exist unless the drainage infrastructure is improved. In this regard the appellant has outlined potential off-site improvements to both the south and north of the site. An inability to implement these works given that the land in question falls outside the appellant's control, formed a basis for the Council's objection. However, given that the flood risk exists, and would exist whether or not the development took place, these works are not demonstrably required to make the appeal scheme acceptable in planning terms.
24. In the absence of the current ditch the site would be wetter, as water from the north would run downhill across it in a less direct manner. The ditch however exists, and, improved and properly maintained, should prevent this from occurring. Whilst the potential for a breach of the Cornish hedge along the north side of the site has been identified as a risk factor, no evidence has been presented which shows that this has occurred in the past, that it would be likely in the future, or that any water flowing over the hedge would thence overflow the ditch. Water passing through the site from the north does not therefore constitute a general flood risk across the site as a whole.
25. The Council has indicated that the area is susceptible to groundwater flooding. If indeed applicable to the site, this might increase the level of surface water run-off within it. Whilst some negative testing has been undertaken by the appellant, groundwater remains to be fully investigated. Either way, run-off, with or without the contribution of groundwater, is again a factor currently contributing to flood risk downhill rather than across the site.
26. Two drainage schemes have been presented. Whilst that contained within the Addendum to the Flood Risk Assessment (the AFRA) represents the most up to date scheme, it was confirmed at the Hearing that elements of the 2 schemes are potentially interchangeable, indicating the potential for flexibility in the design of the drainage scheme.
27. The drainage scheme proposed within the AFRA would combine surface drainage into a tank, discharged at an attenuated rate into the sewer, and infiltration, including soakaways and swales. The combination of these measures would both avoid any increased run-off as a result of the

- development, and reduce the amount of run-off from the site compared to current levels. This would include in relation to the proposed roads, along which surface water would be directed down drains. Consequently, in the event the development took place, there should be a substantial reduction in the extent to which run-off from the site contributes to flooding downhill, compared the current situation.
28. In view of potential groundwater issues, concern has been raised over the achievability of infiltration on the north side of the site. Drainage of these areas into the attenuation tank nonetheless exists as an acknowledged fallback. In this regard, further testing and finalisation of the scheme design could be subject to condition.
29. Further concern has been raised over whether South West Water (SWW) would accept surface water originating from gardens. I have not been provided with any evidence either way. Given that an attenuated rate of discharge into the sewer has been agreed, it is reasonable to consider that measures required to ensure water entering the sewer was free from excess silt could be addressed within the scheme design, if this was indeed an issue. As noted above, this could be further refined by condition.
30. As SWW has indicated its acceptance of discharge into the sewer, and thus is presumably satisfied that the system can handle this, there is no reason to consider that drainage into the sewer would result in flooding elsewhere.
31. Whilst I accept that discharge to a sewer lies at the bottom of the drainage hierarchy set out in the PPG, it nonetheless forms a part of that hierarchy, and is thus not excluded from consideration. As such, in the absence of a proven ability to make use of infiltration on parts of the site, discharge to the sewer would not be inappropriate in this instance.
32. In an exceedance event, where the drainage system was overwhelmed, surface water would flow downhill across the site and thence onto the A390. Given the robustness of the standard to which the site drainage system would be designed, a rainfall event of this nature would be very rare. Furthermore, the amount of run-off leaving the site would still be substantially less than if the development was not present on account of the fact that a substantial amount would already have been captured by the drainage system.
33. The Council applied both the sequential test and exception test in assessing the appeal scheme. The purpose of the sequential test is to direct development to areas which are at lowest, or lower risk of flooding, whilst the exception test sets criteria which must be passed where the sequential test is failed. However, in view of my reasons above, as the site as a whole is not at risk of flooding, and there is little reason to consider that flooding would be increased elsewhere as a result of the development, use of the sequential test is not justified in this instance. Furthermore, even if it was appropriate to apply the sequential test, the PPG makes clear that the exception test should not be applied to sites within Flood Zone 1.
34. The Council states that the drainage scheme would not deliver multi-functional benefits, which is an objective set out in paragraph 165(d) of the Framework. Whilst this is not in fact a requirement of paragraph 165(d), I see no reason why some further elaboration of the scheme design could not meet this objective within the context of a revision secured by condition.

35. Interested parties indicate that a number of recent developments within the Parish have caused flooding. Whilst I have no evidence relating to these developments, or their alleged effect, in my view the proposed development would in fact provide some improvement. As such, these developments have not affected my consideration of the planning merits of the appeal scheme.
36. For the reasons outlined above I conclude that the site is an appropriate location for development with regard to flood risk. As such the development would comply with Policy 26 of the Local Plan which sets out the Council's approach to development and flood risk, and amongst other things seeks to minimise, reduce and where possible eliminate flood risk on a site and in the area, and secure the provision of sustainable drainage systems; Policy 2 of the Local Plan, which amongst other things seeks to secure development that ensures that the built environment can adapt to and be resilient to climate change; and relevant provision of the Framework and PPG.

Other Matters

37. The application was partly refused on the basis of the lack of a mitigatory payment made in relation to the Plymouth Sound and Estuaries Special Protection Area (the SAC). Given ease of access to the SAC, the Council has identified the potential for significant adverse in-combination effects on its integrity arising from increased recreational pressure. The Council has undertaken an Appropriate Assessment which has confirmed these effects and the need for mitigation, concluding that this can be addressed through a contribution towards site access management and monitoring measures (SAMMs). SAMMs are identified in materials provided at the Hearing, and contributions are calculated on the basis of dwelling size. The appellant has not contested the need for a contribution, and this would again have been covered within the S106 agreement. Had I been minded to allow the appeal, and thus circumstances existed in which planning permission could be granted, it would have been necessary for me to consult Natural England with regard to the Council's conclusions. As I am dismissing the appeal for other reasons however, I need not consider this matter any further.
38. The development would be in an accessible location and make a general contribution towards the Council's housing requirements. These considerations do not however outweigh the harm that would be caused with regard to affordable housing provision and public open space.

Conclusion

39. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR

APPEARANCES

For the Appellant

Jan Clark	Engineering and Development Solutions
Mr Karim Ladhu	Prospect Land & Developments Ltd
John Rooney	Stokes Morgan Planning
Christopher Stokes	Stokes Morgan Planning

For the Local Planning Authority

Jim Lee	Appeals Officer, Cornwall Council
Dean Mutton	Senior Development Officer, Cornwall Council
Jackie Smith	Sustainable Drainage Lead Officer, Cornwall Council

Interested Parties

Christopher Clarke	Neighbour
Mrs Dorothy Kirk	Cornwall Councillor, Calstock Parish Councillor
Terence Letchford	Calstock Parish Council
Joey Lillicrap	Previous resident of Riverview
Mr N Schemanoff	Neighbour
Mr S Schemanoff	Neighbour
Ken Trapp	Neighbour
Philip Webb	Prospect House
Mr John Wells	Calstock Parish Council
Lesley Wilgar	Neighbour

Documents submitted at the Hearing

Calstock Parish Open Space Study

Cornwall Local Plan Housing Implementation Strategy 2019

Cornwall Monitoring Report: Cornwall 5 Year Housing Land Supply Statement 2019

Draft Section 106 Agreement

Projects and Research: Plymouth Sound and Tamar Estuaries Marine Protected Area

Spread sheet with costings: Mitigation relating to Plymouth Sound and Estuaries SAC

Statement of Common Ground, part signed and dated 20 September 2019