



Appeal Decision

Hearing Held on 13 August 2019

Site visit made on 13 August 2019

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

an Inspector appointed by the Secretary of State

Decision date: 12 November 2019

Appeal Ref: APP/D0840/W/19/3225996

83-85 Sea Road, Carlyon Bay, St Austell, Cornwall PL25 3SQ

- 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 Acorn Blue against the decision of Cornwall Council.
 - The application Ref PA18/06739, dated 19 July 2018, was refused by notice dated 27 November 2018.
 - The development proposed is described as demolition of Nos 83 and 85 Sea Road and erection of 23 residential apartment building with access, car parking and landscaping.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is that used on the planning application form. Whilst this describes a single apartment building, the proposal is in fact for 2 apartment buildings. I have therefore considered the appeal on this basis having first canvassed the views of the parties at the Hearing.
3. Whilst it was clarified at the Hearing that the Carlyon Neighbourhood Plan (the CNP) is now draft form, and awaiting public consultation, the date at which it will be submitted for examination remains unknown. Given the still relatively early stage of plan production the CNP therefore attracts limited weight. This is similarly true of background materials produced to inform the CNP, including the Village Design Statement. These documents nonetheless remain material considerations, to which I have had regard in reaching my decision.

Main Issues

4. The main issues are:
 - the effect of the development on the character and appearance of the area;
 - whether the proposal makes adequate provision for affordable housing; and
 - whether the proposal makes adequate provision for any additional need for open space and education arising from the development.

Reasons

Character and appearance

5. The appeal site consists of 83 and 85 Sea Road; 2 detached 2-storey dwellings of reasonably large size, set within spacious plots, with generous front gardens. These dwellings fall at the end of a sequence of 2-storey dwellings, also set well back from the frontage, on similarly sized plots. These dwellings are of varied footprint and mass, but generally consistent height and form, with hipped roofs a repeated feature. This provides a generally harmonious and gently staggered building arrangement appreciable as the ground level rises, or falls, depending on the direction of travel, but most apparent looking west along Sea Road, and from the open green space and South West Coast Path (SWCP) towards the south of the site.
6. Ocean House, a 4-storey apartment block, with 2-storey wings, stands adjacent to No 85. Opposite and towards the south-west of this stands the Carlyon Bay Hotel, also a 4-storey building. Each has a flat roof. These two buildings are distinctly different in both their character and appearance to the sequence of 2-storey dwellings located along the north side of Sea Road, and to other 2-storey dwellings located towards the north and east. The hotel furthermore stands detached on the south side of Sea Road, where it forms a distinct and separate feature within the street scene. Indeed, it is only viewed in relation to Ocean House and development on the north side of Sea Road in very limited perspectives from the west. Therefore, and notwithstanding the fact that some other apartment buildings can be seen in the distance towards the west, neither the hotel nor Ocean House can be considered consistent with the prevailing character of the area.
7. The proposed apartment blocks would be spaced more closely than Nos 83 and 85, but nonetheless within the range seen between dwellings along Sea Road. They would also be set well back from the road frontage, maintaining a large landscaped front garden space, as at present.
8. The depth, and 3-4-storey height of the blocks, combined with their rectilinear forms, would however produce buildings whose overall scale, mass and perceived bulk was considerably greater than that of 2-storey dwellings to the west. The lack of harmony would be accentuated the fact that the height of the blocks would rise as the ground level falls, inconsistent with the general pattern seen along the north side of Sea Road. The increased physical presence of development would also be particularly apparent from the green space and SWCP opposite the site, where in each case it would impinge on the openness of their cliff-top setting.
9. The apartment blocks would share some general characteristics with Ocean House, however the 3-storey wings of the closest proposed block would nonetheless be significantly greater in height than the adjacent 2-storey wings of Ocean House. This would be emphasised by the differing ground levels. Whilst the difference in height would be no greater than that which occurs between the 2-storey wings and 4-storey core of Ocean House itself, the latter is a feature of the spreading composition of Ocean House. In this regard, the more compact design of the closest proposed block would provide it with a considerably more bulky and prominent appearance within the street scene than adjacent parts of Ocean House. The contrast would not appear harmonious.

10. The lack of visual harmony between the proposed development and Ocean House, combined with its lack of harmony with the prevailing pattern to the west would provide little sense of 'visual transition', and would indeed cause considerable harm to the character and appearance of the street scene. This would not be relieved by the considerable scale and mass of the Carlyon Bay Hotel given that the proposed development would not be generally viewed directly in relation to the hotel.
11. I appreciate that Ocean House has a contemporary design. I also acknowledge that examples of both new and old rectilinear building forms can be found further to the west along Sea Road, some of which also feature Art Deco style. This does not however alter the fact that the scale and mass of the proposed blocks would be visually at odds with their context, and that the adverse effects would in each regard be partly a product of the rectilinear building forms proposed.
12. The South West Design Review Panel provided advice during the design process, and the Council confirmed at the Hearing that such engagement is encouraged. The submitted comments do not however relate to the finished design, do not therefore provide any clear endorsement of it, or for that matter, previous iterations, and do not purport to indicate the acceptability of any given design in planning terms. I therefore attach limited weight to the submitted comments, and these have not altered my view of the appeal scheme.
13. The site does not lie within a designated area. This does not however alter the fact that the development would cause unacceptable harm to the character and appearance of the area.
14. For the reasons outlined above I conclude that the proposed design would cause unacceptable harm to the character and appearance of the area. It would therefore be contrary to Policy 2 of the Cornwall Local Plan 2010-2030 (2016) (the Local Plan) which states that proposals should maintain and respect the special character of Cornwall; Policy 12 of the Local Plan, which states the Council's commitment to high quality design and emphasises the principle of providing continuity with existing built form; and related design guidance within the National Planning Policy Framework (the Framework). Though Policy 13 of the Local Plan is also cited on the decision notice, as this relates to matters including provision of open space it appears more relevant to the Council's second reason for refusal. As such I have considered it within the context of my third main issue as outlined above.

Affordable housing

15. Policy 8 of the Local Plan sets out the requirement for developments involving a net increase in 10 or more dwellings to contribute towards affordable housing need. The rate is set at 35% within the zone applicable to the appeal site. Policy 8 accepts scope for contributions towards off-site provision in lieu of on-site provision, and this is also listed as a means of managing viability in Policy 10 of the Local Plan. Policy 8 sets a further requirement that off-site contributions must be broadly equivalent in value to on-site provision. In the above regards Policies 8 and 10 are consistent with paragraphs 62 and 64 of the Framework.

16. The Council calculated the off-site contribution using rates set out in the draft Cornwall Affordable Housing Supplementary Planning Document 2015 (the 2015 AHSPD). This document has been superseded by the more recent Housing Supplementary Planning Document Consultation Draft 2018 (the 2018 AHSPD). The latter sets higher rates which the Council indicates are more compliant with the equivalence requirements of Policy 8 and paragraph 62 of the Framework than the 2015 AHSPD. Neither the 2015 AHSPH nor the 2018 AHSPD has however been adopted.
17. The 35% affordable housing requirement is nonetheless set out within the adopted development plan, and the 2015 AHSPD indicates that it was produced in the context of the plan's preparation. In this regard, the Council considers that application of the rate set out in the 2015 AHSPD is appropriate, and the appellant has not challenged the level of the rate. I therefore accept use of the 2015 AHSPD for the purposes of interpreting Policy 8 of the Local Plan.
18. Prior to the Council's determination of the planning application, the appellant indicated that it would be possible to provide a policy-compliant affordable housing contribution. This was, notwithstanding the viability assessment (VA) dated August 2018, submitted in support of the application, which indicated the opposite. A more recent VA dated March 2019 has been submitted in support of the appeal. This once again indicates that a policy-compliant contribution towards affordable housing cannot be made. As this offers £112,464, the contribution offered is substantially less than the £418,950 policy-compliant requirement.
19. The Planning Practice Guidance (the PPG) indicates that the role of VA is primarily at plan making stage, and where a viability assessment is submitted to accompany a planning application this should be based upon and refer back to the VA that informed the plan, providing evidence of what has changed since then.
20. In view of this the appellant has drawn attention to the Council's introduction of Community Infrastructure Levy (CIL) at the beginning of 2019, and states that the viability assumptions underpinning Council policy and CIL are based on the costs of developing greenfield sites rather than brownfield sites, or sites with abnormal costs.
21. The Inspector responsible for the Report on the Examination of the Draft Cornwall Community Infrastructure Levy Charging Schedule 2018 (the CIL Examination Report), however identified no fundamental conflict between affordable housing provision and CIL, and agreed with the Council that there is no evidence to suggest that brownfield sites or previously developed land are as a whole subject to poorer viability. I see no reason to disagree with these recent findings, and no site-specific reasons for coming to a different view have been set before me in this case. This includes with regard to site contamination, given that the mining report submitted with the planning application arrived at no conclusion one way or the other.
22. I note that paragraph 63 of the Framework provides for the reduction in affordable housing contributions to support reuse of brownfield land. However, this is only relevant where vacant buildings are being reused or redeveloped, which is not applicable in this instance, as Nos 83 and 85 are not vacant.

23. The PPG states that the cost implications of all relevant policy requirements, including planning obligations and CIL, should be taken into account in establishing a benchmark land value for the purposes of VA. The PPG thus clearly anticipates that costs should be accounted for and covered within the uplift in land value that would arise from a grant of planning permission.
24. In this regard, relative to the August 2018 VA, the March 2019 VA includes projected increased construction costs based upon assumed future rates of inflation, and a larger marketing budget. The combined total of these additions both exceeds the CIL charge, and exceeds the reduction in the level of affordable housing contribution. It is apparent therefore that increased projected costs, combined with a lack of corresponding increase in projected development value is the primary reason for reduction in the scheme's viability as presented. This indeed is further highlighted by the fact that contribution rates towards open space and education are reduced between the 2 VAs to take account of the existing dwellings on site.
25. The reason for increased marketing budget is unclear, and whilst I accept the existence of potential inflationary effects, both these, and market conditions are necessarily factors of risk. Such risk may have potentially positive or negative outcomes over time, and will be applicable to any scheme. Risk is generally accounted for in the assumed return. In this regard I note that the level of developer profit shown in the March 2019 VA is lower than that shown in the August 2018 VA, and at the lowest level the appellant considers acceptable. This nonetheless represents a realisation of potential risk rather than demonstrating the viability of the scheme at the time of the VA.
26. Even if I was to accept that it was reasonable to include inflationary costs, I share the Council's view that the assumption of static future development values is not based on any robust up-to-date evidence on market trends. As such the March 2019 VA may disproportionately emphasise the potentially adverse effects of future risk.
27. Policy 8 of the Local Plan seeks to address affordable housing needs across the county, however the Council confirmed at the Hearing that both the Homechoice and Homes to Buy registers each record 5 households in current need of affordable housing within Carlyon Parish itself. Though it is unclear whether these 5 households are the same in each case, in the context of the broader need for affordable housing, demand within the immediate area is nonetheless demonstrated. A policy compliant scheme could make a significant contribution to meeting these needs, delivering a substantial public benefit.
28. The affordable housing contribution offered would equate to a little over a quarter of the required amount. It would thus provide only around a quarter of the benefit of a policy-complaint contribution. This would be a benefit nonetheless. In this context I consider that contributions towards affordable housing should generally be given great weight. However, given the fact that in this case the contribution offered would fall substantially below a policy-compliant level, and this would not be justified by the submitted VA, I attach limited weight to the benefit.
29. The appellant emphasises that Policy 10 of the Local Plan indicates that the Council will consider various means to manage viability where it is satisfied that evidence shows that scheme cannot deliver the full quota of affordable housing. In this case however the Council was not satisfied, and furthermore,

neither am I. Policy 10 of the Local Plan does not therefore support the level of contribution offered.

30. The scheme would not deliver the required level of contribution, and thus I conclude that the development would not make adequate provision for affordable housing. It would therefore conflict with Policy 8 of the Local Plan, which seeks a 35% contribution towards affordable housing.

Open space and education

31. Provision for the requested open space and education contributions has been made within the submitted Section 106 agreement. These are based on the net increase in dwellings, and thus at a lower level than set out in the 2018 VA.
32. Shortly after the Hearing, Regulation 123 of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) was omitted by the Community Infrastructure Levy (Amendment)(England)(No2) Regulations 2019. The fact that this was likely to occur was raised by the Council at the Hearing.
33. In consequence of this, the same items of infrastructure can now be funded by both planning obligations and CIL, and no pooling limit applies. Even had Regulation 123 of the CIL Regulations not been omitted however, I would have been satisfied that the contributions sought by the Council would not have overlapped with items specified in the Council's Regulation 123 list of infrastructure, and would not have breached the former pooling restriction.
34. The basis for seeking contributions for open space is set out in Policies 13 and 28 of the Local Plan, informed by the Open Space Strategy for Larger Towns in Cornwall 2014. The basis for seeking contributions towards education is also set out in Policy 28 of the Local Plan, informed by Section 106 Planning Obligations Guidance for Education Provision v.2.1 2018.
35. The development would provide limited outdoor space for use by future occupants. Future occupants would however have direct access to open space along the coastal strip, on which the contribution would be spent.
36. Notwithstanding some suggestion at the Hearing that the development would appeal to retired people, no age-related restriction on occupancy is proposed. The potential therefore exists for occupation of the development by households containing school age children with resultant pressure being generated on the local primary school, on which the education contribution would be spent.
37. For the above reasons I find that the contributions sought are fairly and reasonably related in scale and kind to the development, directly related to the development, and necessary to make the development acceptable in planning terms. The contributions sought are therefore in accordance with paragraph 56 of the Framework and Regulation 122(2) of the CIL Regulations. As the contributions have been secured by the submitted Section 106 agreement I therefore conclude that the development would comply with Policies 13 and 28 of the Local Plan which each seek contributions towards open space where this is not provided on-site, and with further regard to Policy 28 of the Local Plan, provide a basis for seeking contributions towards education.

Other Matters

38. The Council emphasises that it has a demonstrable supply of deliverable housing land sufficient for a period in excess of 5-years (5YHLS). In this regard I note the comments of the Inspector in a recent appeal, reference APP/D0840/3218388, relating to a site in a different part of Sea Road. Though the Inspector in that appeal found that the development in question would accord with the Local Plan, I agree with his view that the objective to significantly boost the supply of homes set out in paragraph 59 of the Framework is generally applicable. Nonetheless, the fact that the Council has a 5YHLS means that the 'tilted balance' set out in paragraph 11 of the Framework is not engaged.
39. The Council has furthermore drawn attention to the Cornwall Local Plan Housing Implementation Strategy 2018 (the HIS), and the fact that the minimum 300 dwellings apportioned to the St Austell and Mevagissey Community Network Area (the CNA) has been met, and substantially exceeded. Despite the fact that 300 is a minimum figure, and substantially less than the 900 stated by the appellant, oversupply of market dwellings within the CNA would not help to deliver the strategic distribution of development across Cornwall set out in the Local Plan. For these reasons, and given the fact that the development would additionally fail to make adequate provision for affordable housing for which there remains a demonstrable local need, the net addition of 21 market dwellings is a benefit to which I attach limited weight in this instance. This is insufficient to outweigh the harm otherwise identified in relation to the appeal scheme.
40. The site comprises previously developed land, would involve windfall and would be located within an existing built-up area with good access to services and facilities. Paragraph 118(c) states that substantial weight should be given to the benefit of using suitable brownfield land within settlements for homes, and Paragraph 68(c) similarly states that with regard to windfall, great weight should be given to using suitable sites within settlements for homes. On account of the adverse effect the proposed development would have on the character and appearance of the area however, it would not be suited to the site. As such in my view the site cannot be considered 'suitable' in the context of paragraphs 68(c) and 118(c) of the Framework; thus neither lends weight in favour of the scheme. In a more general sense, any benefit derived from the sustainability of the location would be outweighed by the harm caused by the development.
41. The proposed development would make more efficient use of land than the existing development. Para 122 of the Framework states that decisions should support such developments, but nonetheless draws attention in bullet (d) to the desirability of maintaining an area's prevailing character and setting. The terms of Policy 21 of the Local Plan are broadly similar. As the appeal scheme would again cause harm to the character and appearance of the area, neither paragraph 122 nor Policy 21 lend weight in favour of the scheme.
42. The appellant indicates that the contributions towards open space and education, together with the projected CIL payment, should be considered as benefits of the development. However, as contributions towards open space, education and payment of CIL are required to mitigate the increased demands of the development on local infrastructure, the benefit would be neutral. As

such these contributions and payment do not attract weight in favour of the scheme.

43. The development would provide some economic benefits related to construction and ongoing use of local shops and services by residents. Such benefits are common to all residential developments, and in this instance would not be of a magnitude sufficient to outweigh the harm otherwise identified in relation to the appeal scheme.
44. I note the record of pre-application engagement with the Council, and that planning permission was refused by Council members against the recommendation of their Officer. However, Council members are not bound by the recommendations of their Officers and are free to arrive at their own conclusions.
45. I further note the appellant's reference to a number of Chief Planning Officer's Advice Notes produced by the Council. These notes do not form part of development plan, and are not otherwise adopted by the Council. They are primarily published to assist planning officers, as opposed to providing advice to the public at large. As such I consider that they attract little weight, and they have not altered my view on the planning merits of the appeal scheme.
46. The development would lead to the loss of a bat roost located at No 85. Mitigation has been proposed. Given my findings in relation to the main issues however, this is not a matter I need to consider further.

Conclusion

47. 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

Neil Baker	Clarke Wilmott LLP
Stuart Brereton	Acorn Blue
Russell Dodge BSc (Hons) MRTPI	Chartered Town Planner
Peter Owens	Chartered Surveyor; Taylor Lewis
Duncan Powell	Acorn Blue
Jon Vernon-Smith	Chartered Architect and Urban Designer

FOR THE LOCAL PLANNING AUTHORITY

James Holman MRICS MRTPI FAAV	Cornwall Council
Chris Rose	Cornwall Council

INTERESTED PARTIES

Hazel Blissett	Neighbour
Bill Collings	Neighbour
Mike Ford	Local Resident
Elizabeth Hunkin	Neighbour
Richard Hunkin	Chartered Electrical Engineer; Neighbour
Cynthia Lloyd	Neighbour
Brian Lord	Neighbour
Irene Lord	Neighbour
Alan Moore	Carlyon Parish Council
Ian Ravenscroft	Neighbour
Keith Redfern	Chartered Surveyor; Neighbour

Documents

Section 106 Agreement (signed and dated) 13 August 2019

Statement of Common Ground (signed) 13 August 2019