



Appeal Decision

Site visit made on 16 December 2019

by **Matthew Jones BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 1 May 2020

Appeal Ref: APP/D0840/W/19/3234584

Land at Swanpool Road, Falmouth, Cornwall

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Andy West of Linden Homes South West against the decision of Cornwall Council.
- The application Ref PA19/00858, dated 23 January 2019, was refused by notice dated 18 June 2019.
- The application sought planning permission for residential development of 28 dwellings (including 11 affordable homes), provision of access, landscaping and associated works without complying with a condition attached to planning permission Ref APP/D0840/W/15/3129840, dated 19 May 2016.
- The condition in dispute is No 2 which states that: *'The development shall be carried out in accordance with the following approved plans: PL01 P1 (Location Plan), PL03 P5 (Proposed Site Plan), PL04 P4 (Site Elevations North and East), PL05 P4 (Site Elevations South and West), PL06 P3 (House Type A Plans), PL07 P2 (House Type A Elevations), PL08 P1 (House Type B Floor Plans), PL09 P1 (House Type B Elevations), PL10 P1 (House Type C Floor Plans), PL11 P1 (House Type C Elevations), PL12 P2 (Apartment Building D Floor Plans – Sheet 1), PL13 P2 (Apartment Building D Floor Plans – Sheet 2), PL15 P2 (Apartment Building D Elevations – Sheet 1), PL16 P2 (Apartment Building D Elevations – Sheet 2), PL17 P2 (Apartment Building D Elevations – Sheet 3), PL18 P3 (House Type E Floor Plans), PL19 P3 (House Type E Elevations), PL20 P1 (House Type F Floor Plans), PL21 P1 (House Type F Elevations), PL22 P1 (House Type G Floor Plans), PL23 P1 (House Type G Elevations), PL27 P3 (Site Layout Detail of Plot 1), PL28 P2 (Shading Analysis of Units 1 and 2), PL29 P3 (Section Through South Boundary - Section BB), PL30 P3 (Section Through South Boundary - Section CC), PL31 P2 (House Type H Floor Plans), PL32 P1 (House Type H Elevation), 1938/P10G (Landscape Strategy).*
- The reason given for the condition is: *'to ensure the development is undertaken in accordance with the approved plans to secure certainty.'*

Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. In 2016 planning permission was granted at the site for 28 dwellings, including 11 affordable homes, provision of access, landscaping and associated works (the Original Permission)¹. On my visit I observed that development has begun, and I understand that the affordable housing is delivered and in the possession of the Registered Provider (the RP). I made my assessment on this basis.

¹ Appeal Ref: APP/D0840/W/15/3129840

3. The Original Permission is subject to an agreement under section 106 of the Town and Country Planning Act 1990. It secures affordable housing, drainage arrangements, and contributions towards off-site open space, sports, transport and the recreational management of the Fal and Helford Special Area of Conservation (the SAC). A supplemental agreement (the SA) and an alternative Unilateral Undertaking (the UU) are submitted with the appeal with the purpose of replicating these planning obligations. I return to them later in my decision.
4. Condition No 2 of the Original Permission identified the approved plans to secure certainty. It is proposed to vary this condition to allow alterations to the massing and appearance of the open market dwellings Units 16 to 22.
5. Subsequent to the lodging of this appeal, the Council granted planning permission to vary the Original Permission under Ref PA19/05521. This sought the same alterations as this appeal in relation to Units 18 to 22 but not Units 16 and 17. I have therefore focused my assessment of this appeal on the proposed alterations to Units 16 and 17, as shown within plans Ref 1327 PL06 Rev P6, 1327 PL07 Rev P6 and 11537/P03 Rev B.

Main Issues

6. The main issues are:

- the effect of varying the condition on the character and appearance of the area, with particular regard to the Cornwall Area of Outstanding Natural Beauty (the AONB) and the Falmouth Conservation Area (the FCA); and,
- whether or not a legal agreement is necessary to make the development as a whole acceptable in planning terms.

Reasons

Character and appearance

7. The appeal site is at the edge of the town of Falmouth, adjacent to the AONB, within the setting of the FCA, and within influence of the SAC. To the north east is the Swanpool, which is a Site of Special Scientific Interest.
8. The ridges of Units 16 and 17 would each be turned 90 degrees and the architectural treatment of the dwellings altered, maintaining a contemporary approach but incorporating increased glazing. The plan of each dwelling would be enlarged, and physical links would attach them to individual double garages. The land would be further excavated to allow for lower ground floors.
9. Whilst Units 16 and 17 would have a greater scale, their ridge heights would be no higher. As such, the effect on the skyline would not be significant. The lower ground floors would be finished in natural stone and adequately hidden within the topography and by landscaping. The double garages and link would be largely obscured by the main parts of the dwellings when seen from the east and north east. When viewed through the site access, Units 16 and 17 would be experienced as an integral part of the wider development. The increase in glazing would be modest, with negligible additional effect.
10. The massing of the top floors and roofs of Units 16 and 17 would be perceptibly larger when viewed from along the Public Rights of Way (the PROWs) within the AONB directly to the south, including the South West Coastal Path. However, in close views the dwellings would appear set against the urbanised

backdrop of Falmouth. From more elevated positions further along the PROWs the amended roof profiles would further obstruct scenic views of the Swanpool. However, at the distances involved the practical effect of such limited alterations would be so minor as to be inconsequential in my view.

11. Consequently, the proposed alterations would not have a materially greater effect on the area, and the purposes of the AONB designation would not be harmed. Moreover, given the modest scale of the alterations, and the long distance between the FCA and the appeal site, the scheme would not harm the significance of the FCA derived from its setting.
12. I therefore conclude on this issue that varying the condition would not harm the character and appearance of the area, with particular regard to the AONB and the FCA. The scheme would accord with the visual aims of Policies 2 and 12 of the Cornwall Local Plan Strategic Policies 2010-2030 (adopted 2016) (CLP) and the National Planning Policy Framework (the Framework). I also find no conflict with the Cornwall Design Guide (adopted 2013) and the Cornwall AONB Management Plan 2016-2021. Given its stage of preparation, the Falmouth Neighbourhood Plan has not been determinative in my assessment.

Planning Obligations

13. The Council has substantiated that the obligations agreed in relation to the Original Permission are still necessary under Policies 8, 13, 22 and 27 of the CLP. This has not been disputed by the appellant and I have no reason to disagree. I am therefore satisfied, on the evidence before me, of the continued necessity for the planning obligations, pursuant to the CIL Regulations 2010.
14. The SA intends to secure the obligations, but it is unsigned by the RP, is therefore incomplete and would have no effect. Whilst the RP cannot execute the UU, the appellant considers this unnecessary as the proposed alterations relate only to the open market housing, and the affordable housing is delivered in any event. However, if I were to allow this appeal a new permission would be created, which would encompass the entire development as described, and the appellant could elect between it and the Original Permission. Normally all parties with an interest in the land must sign the obligation². In this case, as the RP is not party to the UU, it is not certain that the UU would bind the RP or any successor in title to the necessary perpetual planning obligations.
15. It is suggested that a condition could be used to require the future completion of a SA. However, the Planning Practice Guidance is clear that such an approach is unlikely to be appropriate in most cases. It may be appropriate in exceptional circumstances with clear evidence that the delivery of the scheme would otherwise be at serious risk, but there is no evidence of this before me³. Similarly, although the appellant has suggested that my decision could be delayed to allow for the SA to be completed, I am guided that this should only occur in very exceptional circumstances, which are not present here⁴.
16. I therefore conclude on this issue that a legal agreement is necessary to make the development as a whole acceptable in planning terms. In the absence of such a mechanism to secure the affordable housing in perpetuity, suitable drainage arrangements and contributions towards open space, sports,

² N.5.1 of the Procedural Guide Planning appeals - England

³ Paragraph: 010 Reference ID: 21a-010-20190723

⁴ N.2.2 of the Procedural Guide Planning appeals - England

transport and the recreational management of the Fal and Helford SAC, the scheme would conflict with Policies 8, 13, 22 and 27 of the CLP.

Conclusion

17. I have concluded that the altered design of Units 16 and 17 would not be harmful. However, for the development as a whole to be acceptable, it is essential to secure the necessary planning obligations. As the means before me to do so are flawed, I am obliged to find that the proposal would conflict with the development plan when read as a whole. There are no other considerations, including the Framework, which outweigh this conflict.
18. I therefore conclude on this basis that I have no alternative other than to dismiss the appeal.

Matthew Jones

INSPECTOR