
Appeal Decision

Site visit made on 21 July 2020

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2020

Appeal Ref: APP/D0840/W/20/3248274

Land bordered by East Hill, Dudnance Lane and Kerrier Way, Pool, Cornwall

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission on a part full and part outline application.
 - The appeal is made by Mr Alan Shoesmith (Crofty Developments Ltd) against the decision of Cornwall Council.
 - The application Ref PA18/07631, dated 14 August 2018, was refused by notice dated 24 September 2019.
 - The development proposed is 99 residential dwellings and an internal residential access road.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The development proposed is a hybrid scheme for full and outline planning permission. Full planning permission is sought for the internal residential access road. Outline planning permission is sought for 99 dwellings, with all matters reserved except access. A drawing has been submitted showing an indicative site layout. As all matters apart from access are reserved, I have considered this plan solely on the basis that it has been submitted for illustrative purposes.

Main Issue

3. The main issue is the effect of the development on the future operation of South Crofty Mine, bearing in mind that planning conditions limiting noise levels arising from mining activities are to be measured within the curtilage of any existing dwelling.

Reasons

4. The appeal site lies in a built-up area between Pool and Camborne, where there has been a significant level of recent development activity. It comprises a portion of a large expanse of derelict land, which was formerly part of South Crofty Mine. The overall area of land is contained by Kerrier Way to the south; Dudnance Lane to the east; and East Hill to the north. There is a mixture of land uses in the surrounding area, including commercial uses on the opposite sides of Dudnance Lane and East Hill; established terraced houses to the west; and new flats, housing and public open space to the east.

5. The remaining part of South Crofty Mine lies on the opposite side of Kerrier Way to the south, where there is a range of buildings. Amongst these is the winding house and mechanism for the New Cook's Kitchen Shaft (NCKS). The headframe of this structure stands approximately 40 metres high, and it is an imposing feature that is visible from a wide area, including most parts of the appeal site.
6. The indicative plans show that the 99 dwellings would comprise a mixture of 1 and 2-bed flats and 2, 3 and 4-bed houses arranged around a central open space. Access would be via a new road junction off Kerrier Way, to the south. In view of the considerable abnormal costs involved in the remediation and preparation of this former mining site, a viability report was submitted, which demonstrates that the scheme would not be commercially viable if any affordable housing were included. Furthermore, scheme viability could not support financial contributions to offset the identified impact of the development on outdoor sports provision, education facilities and transport improvements. The Council does not contest the findings of the viability report, and the lack of affordable housing and infrastructure contributions do not form part of the reason for refusal.
7. Paragraph 118 of the National Planning Policy Framework (the Framework) says that substantial weight should be given to the value of using suitable brownfield land within settlements for homes and other identified needs, and appropriate opportunities to remediate despoiled, degraded, derelict, or contaminated land should be supported. The appeal site is allocated for housing, business and mixed-use development in the Dudnance Lane and South Crofty Framework Document (2010). However, limited weight can be attached to that document, as it is not part of the Development Plan. Notwithstanding the main issue, however, the Council does not contest that the proposal to develop the site, solely for housing, accords with the general sustainable development policies of the Cornwall Local Plan Strategic Policies 2010-2030 (adopted 2016) (the Local Plan)¹.
8. It is common ground between the parties, therefore, that, subject to consideration of the main issue, there would be no conflict with the settlement policies of the Local Plan. Therefore, I conclude that the proposal would accord with the overall aims of local and national policy, insofar as they relate to the provision of housing.
9. South Crofty Mine contains a nationally important tin resource. The evidence indicates that it has been ranked the third largest tin reserve in the world. Although the mine has not operated since 1998, there has been significant investment in a project to redevelop and reopen it, and extant planning permissions² allow for the underground and surface operations required to exploit the resource. Paragraph 204 of the Framework says that mineral resources should be safeguarded by defining Mineral Safeguarding Areas (MSAs), and by adopting appropriate policies, so that known locations of specific mineral resources of local and national importance, are not sterilised by non-mineral development.
10. The appeal site lies within the South Crofty Mine MSA, as defined by Cornwall Council's Minerals Safeguarding Development Plan Document (2018) (the

¹ Paragraph 43 West Sub-Area Planning Committee Report, 23 September 2019

² LPA references PA06/01298, PA10/04564 and PA10/05145

MSDPD). Policy MS1 of the MSDPD says that planning permission for non-mineral development will only be permitted within MSAs where it can be demonstrated that, amongst other things, the mineral resource or infrastructure will not be subject to unacceptable detrimental effects, and the proposed development would not suffer unacceptable impacts as a result of the mineral operations. Paragraph 205 of the Framework advises that, when determining planning applications, great weight should be given to the benefits of mineral extraction, including to the economy.

11. The extant permissions all carry planning conditions stating that the total noise levels arising from mining and ancillary operations at the site shall not exceed the following, within the curtilage of any existing dwelling:

- between 0700 and 1900 hours the level of 45dB(A) Leq (1 hour)
- between 1900 and 2300 hours the level of 35dB(A) Leq (1 hour)
- between 2300 and 0700 hours the level of 30dB(A) Leq (5 minutes)

The proposal would result in housing being located closer to South Crofty Mine than any existing dwelling. It would therefore have the potential to reduce the level of noise that could be generated by the mine without breaching the planning conditions, thereby placing increased limitations on its operation.

12. Two Noise Impact Assessments (NIAs) have been submitted in support of the proposal. The first, dated July 2018, considered the impact of traffic noise from adjacent roads, together with the continued use, for maintenance and ventilation purposes, of Mayne's Shaft (within the appeal site). The NIA concluded that with mitigation measures, such as acoustic glazing, window vents and fencing, noise within the dwellings would be noticeable but not intrusive. No evidence has been submitted to cast doubt on these findings. Consequently, I conclude that noise from these sources would not be harmful to the living conditions of occupants of the development.
13. The second NIA, dated July 2019, demonstrated that, during the period 10 to 16 May 2019, existing noise on the appeal site already exceeded the levels permitted for mining operations by the extant planning permissions. It then sought to demonstrate the additional impact of noise from South Crofty Mine's future operations at NCKS on the proposed housing. As the shaft and winding gear are not yet in operation, it was not possible to measure the actual noise levels. Therefore, a noise model was set up, with a representative noise source centred at the NCKS headframe at a height of 2 metres. The representative noise was gradually increased so that the permitted mining noise levels were just achieved at the nearest residential building (the recently constructed flats at Trevenson Park South).
14. Based on this model, the NIA concluded that adding the permitted noise level from the mine to existing noise levels, would result in a predicted increase, for a second floor flat directly opposite NCKS, of 1.7dB during the day, and 1dB at night³. This would place the impact in the No Observed Adverse Effect category of the Noise Exposure Hierarchy Table in the Planning Practice Guidance. Therefore, on the basis of the model, and assuming that the new flats at Trevenson Park South already place a constraint on permitted mining noise

³ Proposed Residential Development at South Crofty, Dudnace Lane, Pool Noise Impact Assessment – Addendum June 2019

levels, the impact on the occupants of the new dwellings could be satisfactorily mitigated in accordance with measures identified in the earlier NIA.

15. It is argued by the future operators of the mine that the appellant's approach to modelling the NIA is flawed, as the actual noise generated by the mining operations should be used, rather than a "reversed engineering" approach based on the constraints imposed by the presence of the recently constructed flats. It is contended that the impact on mining operations was not taken into account when planning permission was granted, and that if the flats represent a difficulty in operating the mine in the future, the owner has the ability to make an application under the Mines (Working Facilities and Support) Acts to, in effect, compulsorily purchase those properties. However, there is no evidence to suggest that such action has been instigated, or that it would be viable for the mining business to purchase the flats and take them out of residential use. Consequently, the noise levels that can be generated by the mining operations are constrained by them, and are likely to remain so. The approach used in the model is therefore appropriate in considering whether the appeal scheme would place an additional constraint on the mining operations.
16. However, other aspects of the NIA modelling may have underestimated the noise impact on the proposed dwellings, and, therefore, the additional limitations that the proposal would place on future mining operations. The point source for the representative noise was set at a height of 2 metres. There are currently two buildings close to Kerrier Way, between the appeal site and the point source. The noise contours produced by the model show that these buildings have a significant shielding effect on noise levels on the appeal site. The buildings are in the control of the appellants, so, had I been minded to allow the appeal, I could have imposed a condition requiring their retention. However, whilst these buildings may provide protection from the appeal site for noise generated at a height of 2 metres, the same would not be the case for a source of noise at a higher level.
17. The headframe of the winding mechanism for NCKS is 40 metres high, and its operation will generate noise. The existing frontage buildings would not act as a barrier to this noise reaching the appeal site. Whilst implementation of the more recent mineral planning permissions may alter the longer-term operation of the mine, the evidence indicates that the existing Review of Minerals Permission has not yet been surrendered, so remains extant. I cannot, therefore, discount the use of the headframe to hoist ore when the mine is initially re-opened. The NIA does not take account of the noise that would be generated by the operation of the winding mechanism, which would be likely to result in noise travelling to the appeal site over the frontage buildings. It does not, therefore, provide a robust basis for assessing whether the development would introduce a greater constraint on the operation of the mine than is already imposed by the recently constructed flats.
18. The noise contour plans in the NIA do not include the recently constructed homeless centre to the east of NCKS. This is a substantial two-storey stone building, located between the representative noise source used in the modelling, and the recently constructed flats. It is likely to provide some acoustic shielding of noise from mining operations reaching the flats. It is, therefore, possible that the representative noise could have been increased further, without exceeding the permitted noise levels at the newly constructed

flats. If so, this would, in turn, increase the predicted noise levels on the appeal site.

19. For these reasons, the NIA may understate the level of noise from mining operations that would reach the appeal site. Despite this, the noise contours produced by the NIA model⁴ show that parts of the appeal site would experience levels of noise higher than permitted by the planning conditions, at all times of the day and night. The appeal proposal would, therefore, reduce the level of noise that could be generated by mining activities, as the planning conditions would require the permitted noise levels to be measured in the curtilages of the new dwellings. So, even though the NIA may underrepresent the impact of noise on the appeal site, it still demonstrates that the development would place a greater constraint on the mining operations than is currently imposed by the flats at Trevenson Park South.
20. It may be possible, through the design and construction of the buildings, to mitigate the impact of mining noise, so that the occupants of the dwellings would have acceptable living conditions. However, the mine operators would still be restricted, by the terms of the planning conditions, to limit their operations to adhere to the permitted noise levels in the residential curtilages. Therefore, unless the planning conditions were varied, the development would still place an additional restriction on mining operations at South Crofty Mine, which could harm the efficient exploitation of the mineral resource.
21. My attention has been drawn to the grant of outline planning permission for housing development on adjoining land to the southwest of the appeal site. However, in the absence of an approval of reserved matters, I am unable to assess whether this development would result in a similar restriction on mining operations as the appeal proposal would. The site itself is further away from the mining operations, so on the evidence before me, this outline permission does not alter my conclusion that the appeal proposal would place a greater restriction on mining operations than is currently the case.
22. In summary, the development would result in residential development being located closer to South Crofty Mine than any existing housing. Noise levels currently permitted by the planning conditions for mining operations would be exceeded on parts of the appeal site. The development would therefore place additional restrictions on mining operations, which would hinder the exploitation of the nationally significant resource. The proposal would therefore be contrary to Policy MS1 of the MSDPD, which seeks to safeguard mineral resources in MSAs from sterilisation.

Planning Balance

23. The proposal would impose constraints on the exploitation of a nationally important mineral reserve, so would be in conflict with development plan policy. The appeal should be determined in accordance with the development plan unless material considerations indicate otherwise.
24. The proposal would support the government's aims of significantly boosting the supply of homes, as set out in Section 5 of the Framework. This benefit is a significant material consideration. However, the lack of provision for affordable housing, in an area of very high need, reduces the weight that I give to this

⁴ Appendix B - Proposed Residential Development at South Crofty, Dudnace Lane, Pool Noise Impact Assessment – Addendum June 2019

benefit. Nevertheless, the proposal would make effective use of disused land, which is currently in a derelict and unattractive condition. In accordance with paragraph 118 of the Framework, the benefit of re-using the site for housing carries substantial weight.

25. Overall, however, I conclude that the benefits of providing housing on disused land do not outweigh the conflict with the development plan, or the great weight that Paragraph 205 of the Framework places on the benefits of mineral extraction.

Conclusion

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

Nick Davies

INSPECTOR