



Appeal Decision

Site visit made on 10 November 2020

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 25 November 2020

Appeal Ref: APP/D0840/W/20/3257017

Land at Fish Strand Hill, Fish Strand Hill, Falmouth, Cornwall TR11 3BD

- 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 Jon Burgwin of Falmouth Property Investments Ltd against the decision of Cornwall Council.
 - The application Ref PA20/00220, dated 2 January 2020, was refused by notice dated 27 May 2020.
 - The application sought planning permission for a purpose-built student hostel with a mixture of studio rooms/cluster rooms and town house rooms, associated amenities spaces and staff office without complying with a condition attached to planning permission Ref PA16/10836, dated 13 December 2017.
 - The condition in dispute is No 5 which states that: *"The development hereby permitted shall remain in single ownership and the development shall be residentially occupied solely by persons who are registered students with Falmouth and Exeter Universities. The names of the occupiers of the development shall be kept on a register on site along with proof of their registration. Residential occupation shall be managed by a single management company fully in accordance with a detailed Management Plan to be submitted to and approved in writing by the local planning authority before the development is first occupied. The Management Plan shall include provision for a manager to be present on-site at all times over a 24 period while the student accommodation hereby approved is occupied"*.
 - The reason given for the condition is: *"Conditions (5), (7) and (8) are to limit disturbance to the living conditions of neighbouring residents"*.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's statement cites *Finney v Welsh Ministers & Others* [2019] EWCA Civ 1868. In that case, the Court of Appeal held that an application under Section 73 may not be used to obtain a permission that would require a variation to the terms of the 'operative' part of the planning permission, in other words the description of the development for which planning permission was originally granted.
3. It follows from the *Finney* judgement that where amending a condition would result in a conflict between the new condition and the description of development, that particular amendment is beyond the powers under Section 73 and cannot be made (a fresh planning application would be required). The corollary to this is that an amendment can only be made

provided the new condition does not fundamentally alter the original planning proposal for which permission had been granted.

4. In this instance, the proposed variation to the disputed condition would not prohibit the building's principal use for student accommodation all year round if required. The proposal does not therefore seek to amend the operative part of the planning permission and I am content that the proposals can be considered under Section 73.

Background and Main Issue

5. Planning permission was granted on 13 December 2017 under appeal¹ (the Previous Appeal) for a purpose-built student hostel with a mixture of studio rooms/cluster rooms and town house rooms, associated amenities spaces and staff office.
6. Condition 5 of that planning permission states that, 'The development hereby permitted shall remain in single ownership and the development shall be residentially occupied solely by persons who are registered students with Falmouth and Exeter Universities. The names of the occupiers of the development shall be kept on a register on site along with proof of their registration. Residential occupation shall be managed by a single management company fully in accordance with a detailed Management Plan to be submitted to and approved in writing by the local planning authority before the development is first occupied. The Management Plan shall include provision for a manager to be present on-site at all times over a 24 period while the student accommodation hereby approved is occupied'.
7. The Inspector in the Previous Appeal concluded that the condition was necessary and reasonable in order to limit disturbance to the living conditions of neighbouring residents.
8. The appeal before me seeks to vary the said condition. The Council are concerned that by varying the condition, the proposed development would lead to additional demand for limited car parking spaces in the surrounding area and would be harmful to residents' amenity.
9. Taking the above into account, the main issue is whether or not the condition is necessary and reasonable, having particular regard to the living conditions of residents.

Reasons

10. The appeal site is located within Falmouth town centre and is accessed from Fish Strand Hill, being a no-through road. Further pedestrian access to Fish Strand Hill is obtained via steps which connect with Smithick Hill. The approved accommodation comprises 112 rooms served by 2 disabled parking spaces and a single loading bay.
11. From observations made on my site visit and from the evidence before me, the surrounding area already suffers from a degree of parking stress. I noted that on street parking demands within Smithick Hill, Vernon Place and Clare Terrace were high, with vehicles being parked within dedicated parking bays as well as vehicles being parked overhanging sections of footways and yellow lines.

¹ Appeal Reference: APP/D0840/W/17/3177902

Smithick Hill is a no-through road which is extremely narrow in places and, at the time of my visit I observed that there was insufficient space for a delivery vehicle to park without overhanging the footway.

12. As noted above, the Inspector in the Previous Appeal concluded that the condition that restricted occupation of the accommodation to registered students of Falmouth and Exeter Universities was, in part, necessary and reasonable in order to limit disturbance to the living conditions of nearby residents. It appears from that decision that the Inspector considered that the condition was proportionate given that a travel plan would also be required by condition which, amongst other matters, encouraged students not to travel by car given the local demand for spaces. Furthermore, the Management Plan required by the disputed condition provided that any on street student parking would amount to a breach of tenancy.
13. The proposed variation to the disputed condition would allow for non-student visitors to stay within the student accommodation during periods of the summer months. The Appellant maintains that prospective visitors would be made aware of local parking restrictions within an amended Travel Plan and would be provided with details of the alternative modes of transport that would be available within the area. However, whilst the proposed amended Travel Plan would provide encouragement that visitors seek alternative forms of transport than by private car, in those limited number of areas where there is no on-street parking restriction close to the site, there would be a lack of punishable control associated with parking by holiday visitors.
14. Whilst I acknowledge the Appellant's submissions regarding proposed amendments to the Travel Plan, in my view it is likely that a proportion of visitors will choose to travel by car and it is logical that most visitors who used a car to reach this destination, would at least initially seek out spaces as close as possible to the appeal building and particularly in the case where the visitor was carrying luggage. It was noted that there were car parks within the area, but these are short stay car parks and not suitable for longer periods of car parking.
15. As a consequence, the impacts of parking associated with the proposed use arising from the variation of the condition, would be most keenly felt by those residents living closest to the appeal site. In this regard, and in particular with regards to the above named residential streets close to the appeal site, the displacement of parking and potential noise disturbance as a result of additional vehicles and associated waiting and movements, would have an unreasonable effect on the living conditions of residents.
16. Given the potential numbers of additional vehicles that would be seeking parking spaces close to the site, the proposed variation would be likely to increase the demand for off-site car parking in an area which already suffers from a high degree of parking stress and, thereby, potentially adding to the inconvenience of local residents in finding a parking space. Furthermore, the proposed variation would be likely to result in additional noise disturbance from visitors' cars and the from unloading or loading of luggage. As such, the proposed variation would result in an unacceptable adverse impact on the amenity of nearby residents.
17. For the above reasons, the proposed variation of the disputed condition would be likely to increase the pressure for on-street parking close to the appeal site

and would thereby be harmful to the living conditions of nearby residents. Consequently, by varying the existing condition, there would be conflict with Policies 16 and 27 of the Cornwall Local Plan Strategic Policies (2010-2030) (the Local Plan), which, amongst other things, seek to ensure that proposals provide an effective travel plan that delivers hard and soft measures to support new occupants in adopting sustainable travel habits and that proposals avoid harmful impacts associated with noise disturbance.

18. I have paid regard to the benefits of the proposed development as set out by the Appellant, including the potential role it could play in supporting tourism in respect of supporting the viability and vitality of Falmouth and the surrounding area and, thereby, the local economy. However, the benefits when taken as a whole do not overcome the identified harm to the living conditions of nearby residents and the associated development plan conflict to which I attach significant weight.
19. It has been put to me by the Appellant that the appeal proposal would be supported by Policy 5 of the Local Plan. Policy 5 of the Local Plan concerns Business and Tourism and provides that tourism accommodation will be supported where it would be of an appropriate scale to their location and to their accessibility by a range of transport modes. However, criterion 3 of Policy 5 of the Local Plan goes on to state that proposals should provide a well balanced mix of economic, social and environmental benefits. In this regard, for the above reasons, the proposed variation would likely result in an unacceptable impact on the living conditions of nearby residents and, consequently, the appeal proposal would not accord with Policy 5 of the Local Plan when taken as a whole.
20. In support of the appeal, the Appellant has drawn my attention to an appeal decision² which concerned the Rosslyn at Falmouth. In respect of that appeal, whilst it is acknowledged that the use of the accommodation was not just restricted to students, that permission does not allow for occupation by a guest unconnected to a resident student. Consequently, there remained an element of punishable control in relation to the scheme at Rosslyn which, for the reasons given above, does not apply to the present appeal. The circumstances of the present appeal are therefore not comparable to the cited appeal decision.

Conclusions

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

A Spencer-Peet

INSPECTOR

² Appeal Reference: APP/D0840/W/17/3175637