



Appeal Decision

Site Visit made on 1 December 2020

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

an Inspector appointed by the Secretary of State

Decision date: 30 December 2020

Appeal Ref: APP/D0840/W/20/3257271

Land East of Mawgan Porth, Mawgan Porth, Newquay

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Richard Curtis of Mawgan Vale Railway against Cornwall Council.
 - The application Ref PA18/11583, is dated 7 December 2018.
 - The development proposed is the construction of miniature railway attraction, including indoor and outdoor attractions and amusements, and associated development.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of miniature railway attraction, including indoor and outdoor attractions and amusements, and associated development at Land East of Mawgan Porth, Mawgan Porth, Newquay in accordance with the terms of the application, Ref PA18/11583, dated 7 December 2018, subject to the conditions in the attached schedule.

Applications for costs

1. An application for costs was made by Mr Richard Curtis of Mawgan Vale Railway against Cornwall Council. This application is the subject of a separate Decision.

Background and Main Issue

2. The Appellant has submitted this appeal on the basis of non-determination of the planning application. Following the submission of the appeal against non-determination, Cornwall Council (the Council) has identified the reason the local planning authority would have given to refuse consent. The Appellant has seen these details and has had the opportunity to respond.
3. In light of the submissions made by the main parties, the main issue is the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

4. The development plan comprises the Cornwall Local Plan Strategic Policies 2010-2031 (the Local Plan) and Saved Policy 14 of the Restormel Local Plan. Whilst I am informed that St Mawgan in Pydar is a designated area for a Neighbourhood Plan, such a plan is at a very early stage and consequently I

have attached very limited weight to this consideration in the determination of this appeal.

5. The appeal site comprises a roughly triangular shaped grassed field which is located on a valley bottom outside of and adjacent to the settlement at Mawgan Porth. A road connecting Mawgan Porth to St Mawgan is located adjacent to the northern and eastern boundaries of the site, with rivers forming boundaries to the site on its northern and southern sides. Predominately, the built up area of Mawgan Porth is located west of the site, with residential buildings being located on steep hillsides and with commercial enterprises including holiday parks being located on the valley floor close to the beach.
6. The site forms part of the Landscape Character Area LCA15, Newquay and Perranporth Coast. The Cornwall & Isles of Scilly Landscape Character Study (the CISLCS) identifies the distinctive features of the area as including west facing surf beaches, cliffs, coastal rough ground, dunes and holiday parks. The CISLCS further provides that, in relation to land cover, vegetation is low lying and windswept by prevailing sea winds, and hedgerows contain few trees. The appeal site is also situated at the northern edge, but within, the Watergate and Lanherne Area of Great Landscape Value (the AGLV).
7. The appeal scheme includes provision of a station building, associated railway track and car parking area. The station building would be positioned relatively central within the site, with track looping around the periphery of the site. By reason of the steeply rising land to the south and north, the site would be visible from vantage points located on the surrounding hillsides. Whilst the undeveloped nature of the site would be, in part, altered by the proposal, the appeal scheme would be located adjacent to the built up area of the settlement and would be largely seen against the backdrop of the adjacent holiday parks.
8. The appeal scheme proposes additional planting and landscaping which would assist in partially screening the station building and associated infrastructure from views obtained from close to the site. In this regard, the Council maintains that the proposed planting and landscaping would not be in keeping with the area which is described as being an open and exposed floodplain and which, as part of the CISLCS, has vegetation which is windswept and low lying, containing few trees.
9. However, the CISLCS confirms that inland there are sheltered valleys with narrow woodlands. In this respect, the site is located inland from the sea within a part of the valley which is sheltered by the steep hillsides, and there is woodland in close proximity to the northeast of the site and which appears to follow a tributary of the River Menalhyl and which then forms the northern boundary of the site. In this regard, I therefore find that the introduction of the proposed additional planting and landscaping would not be at odds with the prevailing character or appearance of the surrounding area.
10. Notwithstanding the above, the appeal scheme would be visible to those travelling along the coastline cliffs and hillsides that surround the site. Whilst the proposal would be somewhat seen in the context of nearby tourism parks and accommodation and could be partially screened from views, it would extend the settlement out into the countryside and would, in part, occupy a valley bottom flood plain which contributes to the setting of the village and the beach.

11. From vantage points surrounding the site both on high ground and from valley floor area, the eye is drawn to the dramatic steep sided cliffs which frame the beach. However, the nature and scale of the proposed station building sited centrally and somewhat separated from the nearby built form, and the presence of railway tracks, would form part of the view from the surrounding area east of the site, appearing as somewhat isolated features within the largely undeveloped valley bottom.
12. Whilst I acknowledge the conclusions of the Appellant's Visual Impact Assessment, for the above reasons there would be some harm to the character and appearance of the surrounding area including the AGLV, albeit that harm would be limited given that the site would be largely seen from within the wider surrounding area in the context of nearby tourism development and would include additional landscaping and planting that would help the scheme integrate with nearby development.
13. Accordingly, the appeal proposal would be contrary to Policies 12 and 23 of the Local Plan which, amongst other things, seek to ensure that the local distinctiveness and character of the area is protected, and that development responds appropriately to its landscape setting. Whilst the harm to the character and appearance of the area, and to the AGLV, can be described as limited, the proposal would not protect and enhance the valued landscape and, consequently, the proposal would fail to accord with Saved Policy 14 of the Restormel Local Plan and paragraph 170 a) of the National Planning Policy Framework (the Framework).
14. Policy 5 of the Local Plan sets out the approach to business and tourism development across the plan area. In respect of the provision of new tourism facilities, the policy provides that proposals will be supported where they would be of an appropriate scale to their location and to their accessibility by a range of transport modes and that proposals should provide a well balanced mix of economic, social and environmental benefits.
15. By reason of the location of the appeal site adjacent to the built form of Mawgan Porth and given the site's close proximity to substantially sized holiday parks, the appeal proposal would be of an appropriate scale to its location. It has not been put to me that the site or the settlement is not suitably located with regards to accessibility by a range of transport modes and, consequently, the proposal complies with these particular provisions of Policy 5 of the Local Plan.
16. Policy 2 of the Local Plan seeks that the spatial strategy maintains the dispersed development pattern of Cornwall and provides homes and jobs based on the role and function of each place. Given that I have found that the scale of the proposal is appropriate to its location and that, by reason of the nature of the proposal, economic benefits would be likely to follow with the use of the land as proposed in a way that accords with Policy 5 of the Local Plan, I do not consider that there would be any conflict with Policy 2 of the Local Plan.
17. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise.

18. In terms of the benefits associated with the proposal, the economic benefits would arise from employment opportunities during the construction phase and in relation to employment opportunities at the tourist attraction itself. Whilst it has been questioned as to whether the scheme would provide the number of jobs at the attraction as maintained by the Appellant, in my view such an enterprise would be likely to generate the need for such additional staff and this weighs in favour of the scheme. Furthermore, it is likely that additional specialist contractors will be required to maintain the attraction and visitors will also help support the local economy through future spend within other local businesses within Mawgan Porth. The weight to be afforded to these benefits would not, in my view, be reduced by the presence of other railway attractions within Cornwall.
19. With regards to environmental benefits, the proposed scheme would provide potential for biodiversity enhancement through additional planting and landscaping. The requirement for biodiversity net gain can be controlled by condition which would require approval of a Biodiversity Management Plan. In terms of social benefits, the attraction would be located in close proximity to the settlement and would appear to be in an accessible location close to a number of holiday parks. Furthermore, the proposed scheme would provide educational benefits in terms of the history of railways within the area and county.
20. In light of the above, the appeal scheme would provide a well balanced mix of economic, social and environmental benefits. Furthermore, the proposal would comply with Policies 2 and 5 of the Local Plan. By reason of their scale and scope, I attach significant weight to the benefits described above in the determination of this appeal.
21. The conflict with Policies 12 and 23 of the Local Plan and conflict with Saved Policy 14 of the Restormel Local Plan weighs against the scheme. However, in respect of these policies which seek to protect the natural environment and local distinctiveness, the harm can be described as limited, by reason of the appeal site's location adjacent to the built form of Mawgan Porth and the proposed additional planting that would reflect the character and appearance of this part of the landscape area. As a consequence of these factors, I attach moderate weight to the conflict with Policies 12 and 23 of the Local Plan and to the conflict with Saved Policy 14 of the Restormel Local Plan.
22. Drawing these matters together, the weight I have attached to the proposal's compliance with Policies 2 and 5 of the Local Plan, outweighs the conflict with the other policies that I have described above, such that the appeal scheme complies with the Development Plan when taken as a whole. The proposal would provide a well balanced mix of benefits and would accord with paragraph 83 of the Framework which concerns supporting a prosperous rural economy.
23. Whilst I have carefully considered the submissions of the Council and interested parties, there are no other considerations of such weight that would outweigh the appeal scheme's compliance with the Development Plan when taken as a whole.

Other Matters

24. Interested parties have raised concerns regarding the potential for flooding of the appeal site. However, in respect of this matter, it has been proposed that concerns could be adequately controlled by conditions, firstly by requiring that surface water and sewage disposal works are carried out in accordance with approved details and secondly that an emergency flood plan be agreed with the Council to ensure the safety of visitors to the attraction in the event of a flood. Consequently, subject to conditions which I will return to below, I find that the proposal would provide adequate arrangements for the disposal of surface water from the site.
25. It has been further put to me that the approval of this proposed scheme would set a precedent with regards to potential fallback positions for future development of the site. However, in these regards and subject to the attached conditions described in the below section, any future proposals would have to be considered and determined on their individual merits. In any event, as I have not found any reasons to withhold planning permission it could not set an unacceptable precedent in planning terms for other forms of development.

Conditions

26. I have considered the planning conditions suggested by the Council in light of paragraph 55 of the Framework and the advice in the Planning Policy Guidance. It is necessary, in the interest of certainty and precision, to define the plans with which the appeal scheme should accord. I further find it reasonable to include conditions requiring details of any external materials on the proposed station building and a cut and fill plan, be approved by the Local Planning Authority in the interests of preserving the character and appearance of the surrounding area.
27. In addition to the above, it is necessary to include a condition which limits the operating hours of the tourist attraction in the interests of the living conditions of nearby residents. Furthermore, in the interests of the environment, I find it reasonable and necessary to include conditions requiring surface water and sewage disposal works, and parking areas, are completed prior to use of the attraction and that an emergency flood plan, a biodiversity management plan and hard and soft landscaping matters be approved by the Local Planning Authority.
28. Notwithstanding the above, I have not imposed the condition suggested by the Council regarding the restoration of land in the event of the cessation of the enterprise. I have not been provided with any detailed explanation of why such a condition would be required in this instance. In any event, for the reasons given above the proposal would comply with the development plan when taken as a whole and therefore application of the suggested condition would not be necessary to make the development acceptable.
29. Where necessary, and in the interests of clarity and precision, I have altered the wording of the conditions suggested by the Council in order to better reflect the relevant guidance. The Appellant has been provided with the opportunity to comment on the wording of the Council's suggested pre-commencement conditions and these have been agreed by the Appellant.

Conclusion

30. For the reasons given above, the appeal succeeds and planning permission is granted subject to the conditions identified.

Mr A Spencer-Peet

INSPECTOR

Schedule of Conditions

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.
- 2) The development hereby approved shall in all respects accord strictly with drawing numbers: Foul Drainage Diagram MP003A, Proposed Site Plan MPR001D, Plans and Elevation Station Building 2017 CMR01 Rev D, Bin Store MP006A, Play Area Details MP007A, Topographical Survey DG17132-3-1, Site Location Plan Plan 1, Pond Details MP005A and Track and Path Section MP008 received by the Local Planning Authority on 7 December 2018 and drawing numbers: Indicative Bridge Details MP004A, Station and Play Area MP009A and Track Layout MP010B received by the Local Planning Authority on 21 December 2018 and drawing numbers: Minimum Distance from Track to Perimeter Fence MPR001D MARKUP, Proposed Site Plan MP001E and Station Building Detailed Plan MP009B received by the Local Planning Authority on 28 January 2019.
- 3) The premises shall only be operated as a miniature railway tourist facility and shall not be open for visitors outside the following hours: 09.00 – 1800. The trains shall only be operated/run between the hours of 08.30 and 18.30.
- 4) The development hereby permitted shall not be occupied until surface water and sewage disposal works serving the development have been completed in accordance with details that have been submitted to and approved in writing by the local planning authority. These works shall be implemented in accordance with the approved details and shall not thereafter be altered or removed.
- 5) No development shall commence until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved in the first planting season following the occupation of the building, or the completion of the development hereby approved, whichever is the sooner. The hard landscaping details shall include proposed finished ground levels or contours; means of enclosure; car parking layout; other vehicle and pedestrian access, including the proposed bridge, the railway track and track bed and hard surfacing materials. The soft landscape works details shall include planting plans, written specifications, schedules of plants noting species, plant sizes and proposed numbers/densities. All hard and soft landscape works shall be carried out in full accordance with the approved details. Any trees or plants which within a period of five years from the completion of the development die are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

- 6) No development shall commence until a Biodiversity Management Plan to ensure that there is a minimum 10% net gain in biodiversity within a 30 year period as a result of the development has been submitted to and agreed in writing by the local planning authority. The net biodiversity impact of the development shall be measured in accordance with the DEFRA biodiversity metric as applied in the area in which the site is situated at the relevant time and the Biodiversity Management Plan shall include:
- a) Proposals for on-site biodiversity net gain (full details of which will be provided in relation to each phase of development and/or for off-site offsetting;
 - b) A management and monitoring plan for any onsite and offsite biodiversity net gain including 30 year objectives, management responsibilities, maintenance schedules and a methodology to ensure the submission of monitoring reports in years 2,5,10,15,20,25 and 30 from commencement of development, demonstrating how the Biodiversity Management Plan is progressing towards achieving its objectives, evidence of arrangements and any rectifying measures needed.
 - c) A methodology for the identification of any site(s) to be used for offsetting measures; The identification of any such offsetting site(s).
 - d) Details of any payments for offsetting measures including the biodiversity unit cost and the agreed payment mechanism. The development shall be implemented in full accordance with the requirements of the approved Biodiversity Management Plan or any variation so approved by the local planning authority in writing.
- 7) Prior to their use within the development, details/samples of the materials of the external surfaces of the station building hereby permitted shall have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details/samples and thereafter retained as such.
- 8) Before any of the development hereby permitted is brought into use, parking and turning areas shall be provided in accordance with a detailed scheme which shall have been submitted to and approved in writing by the local planning authority. The parking and turning areas shall not thereafter be obstructed or used for any other purpose.
- 9) No external lighting shall be installed on site unless details of such lighting, including the intensity of illumination and predicted lighting contours, have been first submitted to, and approved in writing by, the Local Planning Authority prior to first use of the site. Any external lighting that is installed shall accord with the details so approved.
- 10) The development hereby permitted must not be commenced until such time as a detailed cut and fill plan has been submitted to, and approved in writing by, the local planning authority. After the cut and fill work has been completed, a detailed survey must be carried out to check that the cut and fill has been completed to the drawing plans prior to the use of the land.

- 11) Before any of the development hereby permitted is brought into use, an Emergency Flood Plan shall be provided to and approved in writing by the Local Planning Authority. The owner(s) of the site shall be responsible for the maintenance of the approved Emergency Flood Plan for the lifetime of the development.