



Appeal Decision

Site Visit made on 19 October 2021

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 December 2021

Appeal Ref: APP/D0840/W/21/3277614

Domestic Curtilage/Garden South of 'Stansville', Boscawen Road, Falmouth TR11 4EN

- 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 Mr Paul Harvey against the decision of Cornwall Council.
 - The application Ref PA21/01946, dated 23 February 2021, was refused by notice dated 13 May 2021.
 - The development proposed is Erection of dwellinghouse and garage and associated landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for Erection of dwellinghouse and garage and associated landscaping at Domestic Curtilage/Garden South of 'Stansville', Boscawen Road, Falmouth TR11 4EN in accordance with the terms of the application, Ref PA21/01946, dated 23 February 2021, and subject to the conditions set out in the schedule to this decision.

Application for costs

2. An application for costs was made by Mr Paul Harvey against Cornwall Council. This application is the subject of a separate Decision.

Preliminary Matters

3. In August 2021, after the Council issued its Decision Notice, the Falmouth Neighbourhood Development Plan 2021 - 2031 Post Examination Version (NDP) passed referendum stage and the submitted evidence indicates that it has therefore become part of the development plan for the area. I have determined the appeal on this basis. A revised version of the National Planning Policy Framework (the Framework) was also published in July. However, the main parties submitted appeal documents after this and therefore had the opportunity to comment on the relevance to the appeal proposal of the made NDP and the revised Framework. Consequently, no parties will have been prejudiced by my having regard to them in reaching my decision.
4. As the proposal is in a conservation area (CA), I have paid special attention to the desirability of preserving or enhancing the character or appearance of that area, as set out in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issues

5. The main issues are:

- whether the proposed development would preserve or enhance the character or appearance of the Falmouth CA; and
- the effect of the proposed development on designated nature conservation sites.

Reasons

Falmouth CA

6. Situated adjacent to the well-used public open space known as Boscawen Fields, the appeal site forms part of the residential garden area of a property which was under construction at the time of my site visit. Allowing views of the sea and Falmouth Bay, it has an open nature and, given its use and position, contributes positively to the open character and verdant appearance of the adjoining public open space. However, boundary treatment clearly separates the site from the valued public space of Boscawen Fields. With development extending up to the site along the eastern side of Boscawen Road and continuing beyond it on the other side, there is also – as identified by the Council – residential development to the west, north and east. The site is therefore within a relatively built-up environment, which is described as a polite green suburban and seaside area within the NDP's Falmouth Character Area descriptions. Built form in the locality consists of relatively large properties set in spacious plots. In addition, although many have a traditional design and date from the mid- to late- 20th century, I observed on my site visit that there is some variety, with several properties containing some modern features and some others reading as more recent additions.
7. The Falmouth CA covers a relatively large part of the town and is split into character areas by the Conservation Area Appraisal, with the site falling within the Seafront Area. Amongst other aspects, the Appraisal sets out that this area, as much a part of the real character of Falmouth as the main shopping street or Custom House Quay, makes the link from older seafront Falmouth to its later reputation as a seafront of quality, and identifies that the inter-war and architect designed houses on Boscawen Road are all different to each other but with a strong sense of quality and well-integrated by their particular period flavour. The significance of the CA stems from these aspects, as well as the open character of Boscawen Fields and, as identified in the Appraisal, the historic boundaries of the town. In addition to the duty with respect to conservation areas in the exercise of planning functions under section 72 of the Act, I am also mindful that the Framework sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
8. The proposed development would be well set down into the site and screened by boundary treatment. It would be finished with green roofs and an extensive part of the site would be soft landscaped. Despite topography, the appeal proposal would therefore not be particularly visible in near or longer distance public views, including from the adjacent highway, Boscawen Fields, the coast path and Gyllyngvase beach. Nor would it significantly disrupt views of the sea or surrounding area. For the above reasons, the proposal would also not

notably affect the site's open nature, which would continue to reflect its green suburban context and sympathetically blend with Boscawen Fields. Accordingly, the positive relationship with the adjoining open public space would be maintained and the proposed development would not read as visually encroaching into it.

9. The appeal proposal would extend beyond existing development on the eastern side of Boscawen Road. However, the proposed dwelling would read as providing continuity with existing built form given its sensitive, high-quality design, its position in a suitably sized plot, and the proximity, layout, size and varied design of existing development. In addition, I have little substantive evidence that the appeal proposal would affect the town's historic boundaries.
10. It is alleged that the appeal proposal would urbanise the area through, for example, intensification of the site's use and an increase in domestic paraphernalia. However, the site is situated in a relatively built-up residential setting and forms part of the garden area of the new dwelling to the north. The submitted evidence also indicates that the permitted development rights of that property remain intact. Accordingly, I am not persuaded that the proposed development, situated on the edge of but nevertheless within the urban area of Falmouth, would lead to a significant intensification of the site's use. Due to the presence of existing residential uses in the locality, the discreet position of the proposed dwelling and its design that respects and responds to its context, the proposed use of the site for an additional dwelling would neither unacceptably urbanise the locality nor harm the character and appearance of the CA.
11. The Falmouth Local Landscape Character Assessment of Open Spaces identifies the site as having a high value. The proposed development is therefore not supported by NDP Policy FOS 1 because it would result in development of an identified high value open space. However, given my above findings, the appeal proposal would neither unacceptably harm the site's open nature nor its positive relationship with Boscawen Fields. Accordingly, it would, as set out in the supporting text to NDP Policy FOS 1, protect the valued open space and would thus accord with the policy's intent to protect key open spaces from inappropriate development. In coming to this view, I have taken into account that protection of local green spaces was identified during the early part of the emerging NDP as the most important benefit the NDP could bring to Falmouth and that NDP Policy FOS 1 – informed by, amongst other aspects, the above Local Landscape Character Assessment – was found by the independent examiner to be appropriate to the circumstances and evidence-based. The references to avoiding further sub-division of plots within the regeneration opportunities for Character Area 6 in the NDP and the southern half of the site remaining undeveloped in the Green Space Assessment Report do not lead me to a different conclusion.
12. For the above reasons, I conclude that the proposed development would preserve the character and appearance of the Falmouth CA and its significance as a designated heritage asset. I therefore find that it does not conflict with Policies 12 and 24 of the Cornwall Local Plan Strategic Policies 2010 - 2030 (CLP) and NDP Policies FOS 1, DG 4, DG 6 and DG 7. Amongst other aspects, these seek high-quality design and to protect key open spaces, require proposals to consider their impact on the historic environment, and set out that development should demonstrate a design process that clearly considers the context and has been informed by the surroundings, reinforce sense of place,

reflect local distinctiveness and maintain the special character and appearance of Conservation Areas.

13. Furthermore, the proposed development would not conflict with NDP Policy DG3 because it would be located outside of the historic core while my above findings in relation to views indicate that it would also not conflict with NDP Policy DG 11. In addition, the proposal would be consistent with the provisions in the Framework in relation to making effective use of land, achieving well-designed places and conserving and enhancing the historic environment.

Designated wildlife sites

14. The appeal site is within the zone of influence of the Fal and Helford Special Area of Conservation (SAC). The submitted evidence, including the Council's recently adopted European Sites Mitigation Supplementary Planning Document (SPD, July 2021), indicates that certain types of development, including all new housing, within 12.5 kilometres of the SAC add to increasing recreational impact at the designated site, which has been identified as vulnerable to such threats. Alone and/or in-combination with other relevant development in the area, the proposed development would therefore be likely to have a significant effect on it. Accordingly, under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), Appropriate Assessment of the implications of the project for the designated site in view of its conservation objectives is required. In accordance with CLP Policy 22, appropriate mitigation would, where necessary, also need to be secured.
15. The qualifying features of the Fal and Helford SAC include saltmarsh, intertidal mudflats and sandflats, subtidal sandbanks, large shallow inlets and bays including habitats such as reefs and rocky shores, estuaries, and reefs, Atlantic salt meadows and Shore dock. The conservation objectives for the site seek to ensure that its integrity is maintained or restored as appropriate and that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features by maintaining or restoring the: extent and distribution of qualifying habitats and habitats of qualifying species; structure and function of qualifying natural habitats and the habitats of qualifying species; supporting processes on which qualifying natural habitats and the habitats of qualifying species rely; and the populations and distribution of the site's qualifying species. The SAC also has a Site Improvement Plan which, amongst other things, details the current and predicted issues affecting the condition of the site's features, which includes public access/disturbance, and the actions required to improve the condition of the features.
16. The available evidence indicates that without mitigation it would not be possible to ascertain that the residential accommodation proposed would not adversely affect the integrity of the designated site through the indirect effects of increased recreational impacts on its interest features. However, the SPD sets out that the adverse effects of development can be mitigated by managing access to or within the SAC, managing visitor behaviour near and within it, and making the designated site more resilient to recreational pressure. Collectively, these are known as Strategic Access Management and Monitoring (SAMM).
17. Unless developers choose to provide their own mitigation measures, the SPD indicates that such mitigation can be strategically led through a SAMM plan, which has been drawn up and costed for the Fal and Helford SAC, would be funded by financial contributions from relevant development, and would be

delivered by the Council. The SPD, produced with input from Natural England, identifies that the securing of a financial contribution can be achieved through either the submission of a legal agreement or through the imposition of a planning condition.

18. Based on the submitted evidence, the securing of the necessary mitigation would be sufficient to mitigate the effects of the development on the designated site. In this case, the Council has identified that a planning condition, as drafted in the SPD, would achieve this and the appellant has indicated their acceptance of the condition and understanding as to what the scheme of mitigation would involve. In this instance, I am satisfied that the proposed condition would be sufficient and would ensure that the necessary mitigation is secured and delivered. This is because: the SPD includes details of the relevant mitigation measures, their implementation and how development can take part in the strategic mitigation plan; the proposed condition – not specifically requiring the submission of a financial contribution or legal agreement – would prevent development from commencing until a scheme to secure mitigation and an appropriate mechanism to secure its delivery has been approved by the Council; and the Council's appeal statement has indicated what form the mitigation scheme for the appeal proposal could take and how it could be secured and delivered.
19. Accordingly, the proposed condition allows me to be certain that the proposed development would, in this case, not adversely affect the integrity of the designated site. Confirming this, Natural England indicate that they are content that it adequately secures the deliverability of mitigation measures to prevent the harmful effects of recreational disturbance from occurring as a result of the appeal proposal. This confirms that the mitigation measures are sufficient to ensure that an adverse impact on the integrity of the Fal and Helford SAC and its relevant features can be avoided.
20. On this basis and following consultation with Natural England, I am able to ascertain, as the competent authority undertaking Appropriate Assessment, that the integrity of the designated site would not be adversely affected by the proposed development. Consequently, I find that the proposal would accord with the Habitats Regulations and CLP Policy 22.

Other matters

21. I recognise that the proposal has generated considerable local interest. I have taken into account all of the other matters and concerns raised in the submissions, including on issues such as: the size of the adjoining dwelling currently under construction, whether the site should be classified as previously developed land and its current state despite a planning condition requiring it to be landscaped; allowing the appeal would set a precedent and, with local residents objecting to the planning application, be contrary to the wishes of the population in the neighbourhood plan area; that pre-application discussions were not favourable for this scheme and that it has been specifically stated that only one property should be built on the land adjacent to Boscawen Fields. However, whilst I take these representations seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed.

Conditions

22. I have had regard to the various planning conditions that have been suggested by the main parties. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance (PPG). I have made such amendments as necessary to comply with those documents, to ensure that details are submitted to and considered by the Council where relevant and for clarity and consistency.
23. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans in the interests of certainty. A landscaping condition is necessary in the interests of the visual amenity of the area.
24. A pre-commencement condition covering mitigation for the Fal and Helford SAC is necessary to make the development acceptable in relation to its effect on the designated site and ensure that the required mitigation is secured and delivered prior to the affect arising. A condition covering surface water drainage is also necessary given the need to manage flood risk, in line with CLP Policy 26 and in light of the site's location within a critical drainage area. It is necessary for it to be a pre-commencement condition because the submitted drainage information does not relate to the appeal proposal. However, I have amended the Council's suggested wording in the interests of clarity and because I have little substantive evidence that a drainage system on the site could not be installed while the dwelling is also being constructed. Accordingly, the condition allows for such details to be provided and for the drainage scheme to subsequently be installed at the appropriate time in accordance with the approved details.
25. The PPG indicates that conditions removing permitted development rights should only be used in exceptional circumstances. Nevertheless, the nature of the site and its position in relation to sensitive features indicates that in this instance such a condition is necessary and reasonable in the interests of the visual amenities of the area and the Falmouth CA. However, I have not included the restriction on the erection or construction of a porch (Class D) because such works could only be of a minor nature and would thus not significantly affect the size or appearance of the appeal proposal.

Conclusion

26. For the above reasons, the appeal is allowed.

T Gethin

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (Drawing No SP01); Existing site layout (Drawing No 2017 . 04); Proposed Block Plan (Drawing No SP02); Proposed Floor Plans (Drawing No GA01, Revision A); Proposed Elevations 1 (Drawing No GA02); Proposed Elevations (Drawing No GA03); and Elevations in Context (Drawing No GA04).
- 3) The development hereby permitted shall not be commenced until the local planning authority has approved, in writing, a scheme to secure mitigation of the additional recreational pressures to the Fal and Helford SAC together with an appropriate mechanism to secure delivery of the mitigation.
- 4) The development hereby permitted shall not be commenced until details for the disposal of surface water on the site have been submitted to and approved in writing by the local planning authority. The details shall include a programme for maintaining the system. The drainage system shall be completed in accordance with the approved details and no later than prior to occupation of the development hereby permitted, and shall be retained and maintained thereafter in accordance with the approved details.
- 5) Prior to occupation of the development hereby permitted, a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The landscaping scheme shall provide planting plans with written specifications including: full schedule of plants; details of the mix, size, distribution and density of all trees/shrubs/hedges; and cultivation proposals for the maintenance and management of the soft landscaping.
All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner. Notice shall be given to the local planning authority when the approved landscaping scheme has been completed. Any trees or plants which within a period of five years from the completion of the landscaping scheme 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 as those originally planted.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), no development within Classes A, B, C and E(a) of Part 1 of Schedule 2 to the said Order shall be carried out without an express grant of planning permission, namely: The enlargement, improvement or other alteration of the dwellinghouse; The enlargement of the dwellinghouse consisting of an addition or alteration to its roof; Any other alterations to the roof of the dwellinghouse; The provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure.

END OF SCHEDULE