



Appeal Decision

Site visit made on 20 March 2023

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th April 2023

Appeal Ref: APP/D0840/W/22/3292034

Land off Swanpool Road, Falmouth TR11 5BG

- 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 H & H Developments against the decision of Cornwall Council.
 - The application Ref PA21/06822, dated 28 June 2021, was refused by notice dated 13 January 2022.
 - The development proposed is construction of 2 detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal included an update to the Extended Phase One Habitat Survey that was submitted with the planning application. The Council has confirmed that, if all the recommendations in the updated report (dated November 2021) are followed, any impacts on protected species could be satisfactorily mitigated through suitably worded planning conditions. Consequently, reason for refusal numbered 4 on the decision notice has been overcome.

Main Issues

3. Therefore, the main issues are:
 - a) The effect of the development, including any impact on trees on and near the site, on the character and appearance of the area;
 - b) The effect of the development on the condition of Swanpool Site of Special Scientific Interest (SSSI);
 - c) Whether the site would provide a safe location for human habitation, with regard to land contamination; and,
 - d) The impact of the development on the integrity of the Falmouth and Helford Special Area of Conservation (the SAC).

Reasons

Character and appearance

4. The appeal site is a former quarry and landfill site, which is now disused. Much of the surface of the site is screened from public view by the tree-lined roadside bank. However, the land rises away from the road, so the trees within the site, and on its southern and eastern boundaries, are evident when passing along Swanpool Road, which borders the site to the west. On the opposite side of the road is Swanpool, which is an area of still water encircled by footpaths, providing significant visual amenity value to the area, as well as its importance

to biodiversity as a SSSI. The appeal site, together with the woodland and cemetery to the north, form a swathe of undeveloped land that rises up from Swanpool Road, and provides the SSSI with a verdant setting. This is mirrored, to some extent, on the other side of the water, and at its northern end. Consequently, although the wider area is encircled by the urban form of Falmouth, Swanpool has a relatively tranquil, semi-natural setting, where the water and surrounding trees are more visually predominant than buildings.

5. The previous uses of the site are apparent through the steep escarpments, cleared areas of level land, and scrub growth. However, these elements are only evident on relatively close inspection through the site access. I saw that, from Swanpool Road to the north, the conifers on the southern boundary of the site, and the protected trees on the site frontage, visually merge with the overall canopy of the wider woodland. Similarly, from a viewpoint at the entrance to the carpark to the south, the appeal site was not visually distinguishable from the general hillside canopy rising up from Swanpool Road. In more south-westerly views, from within the carpark, the less dense tree cover on the appeal site is more evident, but it nevertheless still appears to be part of the continuous, undeveloped green swathe of woodland. Consequently, the appeal site makes a positive contribution to the character and appearance of the locality, as part of a wider area of wooded slope that provides a natural setting for the SSSI.
6. It is not disputed that the site falls within the settlement of Falmouth, and that the modest scale of the development would accord with the settlement strategy set out in Policies 2 and 3 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan). However, the development plan must be read as a whole and, in this case, this includes other policies in the Local Plan, and those in the Falmouth Neighbourhood Development Plan 2021 – 2030 (the Neighbourhood Plan).
7. In broad accordance with the approach set out at paragraphs 101–103 of the National Planning Policy Framework (the Framework), the Neighbourhood Plan seeks to protect and enhance valued open spaces that contribute to the town's reputation and to community well-being. The Falmouth Local Landscape Character Assessment study awards the wider woodland, including the appeal site, a high value rating. Policy FOS1 of the Neighbourhood Plan says that development of any open spaces recorded as having a high value will not be supported.
8. Swanpool is also designated by the Neighbourhood Plan as part of the Green Corridor and Gardens Walk, which is a largely continuous ribbon of green spaces running all the way through the settlement to the coast. Although the appeal site and woodland on the opposite side of Swanpool Road is not covered by this designation, Policy FOS4 says that development within or close to the proposed Green Corridor and Gardens Walk which would harm or lead to the loss of built environment, public realm, green space, biodiversity and heritage assets, and links between them, will not be supported without appropriate mitigation.
9. The two dwellings would be of a substantial scale, rising to three storeys in height and, cumulatively, extending across most of the width of the site. Although they would be seen against the slope of the land, and would not break the skyline, they would, nevertheless be a very prominent addition to the

otherwise undeveloped hillside. The articulated form of the buildings, and the use of recessive natural materials, would help to reduce their apparent scale, but only to a limited extent. They would still be a very dominant presence, that would significantly diminish the contribution that the wider swathe of woodland makes to the setting of Swanpool, and to the overall character and appearance of the area.

10. There is existing residential development near to the site, to the northeast and to the south. However, due to the topography and the presence of trees, these buildings do not influence the site to any great extent, and from most viewpoints it retains a much greater visual connection with the undeveloped woodland to the north. Viewed from the south, 7 Madeira Walk is largely hidden by conifers. From the carpark to the southwest, the houses in Madeira Walk are just visible through, but not above, the trees on the hillside. It is likely that in summer, these dwellings would be less visible. Consequently, the proposed dwellings would appear as an isolated development on the wooded hillside, with little association with any other buildings. They would be a prominent addition, and a dominant presence in views of Swanpool from both of these directions.
11. Viewed from the north, the appeal site is not seen in juxtaposition with any nearby buildings, but appears as part of the wooded slope which connects, visually, with the beach and headland beyond as a continuous landscape feature. The dwellings would be an incongruous and harmful intrusion into this attractive vista.
12. It is contended that the site is well-screened, and that the proposal has been designed to avoid harm to the trees on the site. However, no Tree Survey, or expert report has been submitted to identify the trees on the site, or to assess the direct or indirect impacts of the development on their immediate health, or their long-term compatibility with the dwellings. From my own observations, it appeared that the proposed development would jeopardise the retention of many of the trees on or near the site. The proposed visibility splay would involve excavation in the rooting area of the protected sycamore (T1), as well as a hard-surfaced access drive around approximately half of its circumference. The excavations for the driveway to the southerly plot would also be close to the rooting environment of the other two protected sycamores (G1).
13. There is a large tree near the northern boundary that grows from the original ground level of the site, with excavated land to the west. It would be close to the rear elevation of the northern plot, and substantial foundations and retaining works would be necessary in the vicinity of the tree. Even if the tree could be retained in the short term, its position so close to the house, and at a higher level, could lead to longer term pressure for its removal, depending on its future growth potential.
14. There are large conifer trees close to the eastern and southern boundaries of the site, some of which are protected by the Woodland Order (W1). These are all at a higher level than the proposed houses, and at the top of steep excavated banks. It is therefore likely that they would be perceived as a safety risk by future occupants. As they would also cast shade over the proposed dwellings and their gardens, it is probable that there would be pressure for their removal in the future.

15. Consequently, in the absence of any expert evidence, I cannot safely conclude that the development would not involve the loss of trees, either as a direct result of construction works, or due to longer term incompatibility between the trees and the reasonable enjoyment of the dwellings by future occupants. The appellant has suggested this issue could be overcome by the imposition of a condition requiring tree protection measures. However, without convincing expert advice, I cannot be confident that protective measures would allow for the trees to be retained. The loss of some, or all, of the trees would exacerbate the harm caused by the development due to its intrusion into the undeveloped hillside. It would also, potentially, reduce the screening of the existing dwellings in Madeira Walk, which would further diminish the wooded setting of Swanpool.
16. For the above reasons, I conclude that the proposal would harm the character and appearance of the area. The development would, therefore, be contrary to Policies 2, 12 and 23 of the Local Plan, and Policies FOS1 and FOS4 of the Neighbourhood Plan. Taken together these policies seek, amongst other things, to protect Cornish landscapes in accordance with their local significance, protect open spaces of high value, and avoid harm to the Green Corridor and Gardens Walk. The proposal would also fail to meet the Framework's objectives of conserving and enhancing the natural environment and achieving well-designed places.

Swanpool SSSI

17. The appeal site lies in close proximity to Swanpool SSSI. The evidence indicates that the SSSI is of importance as a rare example of a brackish lagoon, a habitat that covers only 770 Hectares in Britain. It is also the only British location for a rare species of Bryozoan, the Trembling Sea-mat (*Victorella pavida*), which is listed on Schedule 5 of the Wildlife and Countryside Act, 1981. This species is vulnerable to changes in salinity and water quality within the lagoon. Given the location of the site, and its elevated position above the water, the development poses a threat to the condition of the SSSI through direct impacts during the construction phase, and through ongoing changes in the volume and quality of surface water run-off from the site following occupation.
18. The application relied on a Drainage Strategy that was prepared to accompany a previous application for three dwellings in 2017, and a Flood Risk Assessment (FRA) dated 17 March 2015. An updated FRA was submitted during the course of the application, which demonstrated that the dwellings would be safe from flooding. However, it contained little information regarding how surface water from the site would be handled, merely recommending that surface water from the site should be discharged directly to coastal waters if possible, or if this cannot be achieved, infiltration techniques should be employed, or if this is not possible, then an attenuation system limiting flow to the greenfield rate should be incorporated.
19. As the previous Drainage Strategy related to a different proposal, and was prepared six years ago, it does not provide a reliable basis for considering the current proposal. There is no evidence within the updated FRA regarding the additional volume of surface water that would be generated by the additional impermeable areas now proposed, the feasibility of infiltration techniques, or the quality of the water that may discharge to coastal waters. Consequently,

there is significant uncertainty about how the altered surface water drainage regime would affect water quality within Swanpool and, therefore, the features for which the SSSI has been notified.

20. A Construction Environmental Management Plan (CEMP) was also submitted with the application, with the aim of reducing the risk of adverse impact of construction on the condition of the SSSI. However, whilst the risks associated with the construction process are identified, the mitigating measures are often vague, and would present considerable difficulties for enforcement. For example, it is recommended that construction "*will ideally take place during summer months*", but there is no prohibition on construction outside that period. Similarly, it is stated that "*earthworks will be left exposed for the minimum amount of time possible*", without any explanation of how this would be achieved, or how it may affect the build programme. Given the close proximity and highly sensitive nature of the features of interest of the SSSI, Natural England considers more specific measures are necessary to ensure that its condition is not harmed.
21. For the above reasons, there is insufficient certainty regarding the construction and drainage arrangements for me to safely conclude that the development would not result in a deterioration of the condition of the SSSI. I have considered the appellant's contention that any remaining matters of detail could be reserved for consideration via a pre-commencement planning condition. However, given the lack of evidence on the infiltration rates of the site, there is considerable uncertainty that a SUDs system could be achieved. In the absence of evidence regarding the increase in surface water involved, the volume of any necessary attenuation system is unclear. The storage systems would need to be at the lower part of the site, and would therefore require excavations that would be likely to be near to the rooting areas of protected trees. In the absence of additional information, it is unclear whether there is a feasible solution. In these circumstances, I am not convinced that a pre-commencement condition could reasonably be imposed.
22. I therefore conclude that the proposal has the potential to have a harmful effect on the condition of the SSSI, and that insufficient detail has been provided to demonstrate that this risk could be satisfactorily mitigated. Consequently, the development would be contrary to Policies 13, 16 and 23 of the Local Plan, which seek, amongst other things, to protect the environment from pollution during and after construction, and specifically to avoid adverse impacts on SSSIs. The proposal would also be contrary to the advice at paragraph 80 of the Framework, which says that development which is likely to have an adverse effect on a SSSI should not normally be permitted.

Land contamination

23. The evidence indicates that the site lies within a historic mining area with naturally elevated levels of heavy metals and radon gas. It has also been formerly used as a quarry and a landfill site. The application was accompanied by a Report on Preliminary Investigation dated December 2014, and a Preliminary Site Risk Assessment - Tier 1 dated September 2021. Both reports recommend further investigation to assess the actual nature, presence, and extent of any contamination in the ground. It is not disputed, therefore, that a Phase 2 report is necessary to ensure that the site is suitable for its proposed

use. It is contended by the appellant that this requirement could be the subject of a pre-commencement condition.

24. The more recent report, dated September 2021, states that, where contamination is identified, a Remediation Strategy would be required to demonstrate how the site could be safely developed for residential use. The report identifies that this may involve the removal of contaminated ground from the site, and the subsequent incorporation of remedial methods (either singularly or combined) through the installation of suitable contamination break layers, such as hard standing, geotextile ground cover, gravel filtration layers and the importation of clean certified topsoil within proposed amenity areas.
25. The removal of an unknown depth of soil, and the provision of capping layers, has the potential to significantly impact on the protected trees on the site. The extent of such works would be informed by the findings of the Phase 2 report. So, if the investigation and remediation is a matter that was left to be dealt with by a pre-commencement condition, the consequent impacts on the future of the trees on the site would be unknown. The loss of protected trees would be harmful to the character and appearance of the area, so the impacts of any essential remediation would need to be known before determining the acceptability of the proposal in this regard. There is considerable uncertainty that a scheme of remediation could be achieved without harm to the trees, so a pre-commencement condition would be unreasonable, as it may not be feasible to obtain approval for its discharge.
26. For the above reasons, I conclude that the site would not provide a safe location for human habitation, and there is insufficient evidence to demonstrate that it could be made so without harm to the character and appearance of the area. The proposal would therefore be contrary to Policy 16 of the Local Plan, which aims to protect people from unsafe, unhealthy, and polluted environments. It would also be contrary to the advice at paragraph 183 of the Framework, which says planning decisions should ensure that a site is suitable for its proposed use, taking account of risks arising from contamination.

Falmouth and Helford SAC

27. The evidence indicates that the appeal site lies within the zone of influence of the SAC, which is designated for its saltmarsh, intertidal mudflats, subtidal sandbanks, large shallow inlets and bays, estuaries, and reefs. The Cornwall European Sites Mitigation Supplementary Planning Document (July 2021) (the SPD) identifies that increases in population are placing greater pressure from recreational activity on the features of interest for which the SAC is designated. It sets out mitigation strategies through strategic access management and monitoring (SAMM), which are to be funded by contributions from new residential development.
28. The SPD indicates that mitigation can be secured through a financial contribution, which may be submitted with the planning application, or via a legal agreement linked to a planning permission. Alternatively, the SPD indicates that a negatively worded condition could be imposed to prevent development from commencing until a scheme to secure mitigation of the impact has been submitted to, and approved by, the Council.
29. In this case, it is not contested that a contribution towards SAMM measures is necessary to mitigate the impact of the development, and the appellant has

stated that a planning obligation via a legal agreement would be submitted during the course of the appeal. Nevertheless, no contribution has been made and no legal agreement has been completed. In these circumstances, the Council has suggested that a planning condition is used to secure the necessary mitigation. However, the Planning Practice Guidance advises that positively worded conditions cannot be used to secure payment of money, and that negatively worded conditions to require a planning obligation are unlikely to be appropriate in the majority of cases. No exceptional circumstances have been put forward to indicate that I should depart from this advice.

30. Consequently, there is no mechanism in place to secure the necessary mitigation to avoid adverse impacts on the SAC as a result of the increase in recreational pressure from occupants of the development. I am therefore unable to conclude that the development would not affect the integrity of the internationally important site. The proposal would therefore be contrary to Policy 22 of the Local Plan, which seeks to secure mitigation measures for recreational impacts on European Sites. It would also fail to meet the Framework's aim to conserve and enhance the natural environment.

Planning Balance

31. The proposal would provide two dwellings in accordance with the settlement strategy of the Local Plan, in a location that would be accessible to community facilities and services. It would therefore contribute to the Framework's aim of delivering a sufficient supply of homes. These are factors which weigh in favour of the proposal.
32. However, I have found that there would be harm to the character and appearance of the area, and that the proposal would conflict with Policy FOS1 of the Neighbourhood Plan, which does not support the development of open spaces of high value. I have also found that there is insufficient evidence to demonstrate that there would be no harm to the Swanpool SSSI, and that the site would be safe for human habitation. Furthermore, no mitigation has been secured for the additional recreational pressure stemming from the development, which would result in harm to the integrity of the SAC. The relatively small scale of the benefits does not outweigh these harms.
33. In coming to this conclusion, I am mindful that when the site was marketed by the Council some years ago, it was identified as having development potential. However, that was prior to the preparation and making of the Neighbourhood Plan, which is now part of the development plan. The Framework makes it clear at paragraph 12, that the presumption in favour of sustainable development does not change the statutory status of the development plan, and that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted.

Conclusion

34. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Nick Davies

INSPECTOR