
Appeal Decision

Site visit made on 18 April 2023

by J Wilde CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 05 May 2023

Appeal Ref: APP/D0840/W/22/3309357

Land off Chywoone Hill, Newlyn, Cornwall TR18 5LL

- 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 Jennifer Hawkins, Development Officer, Cornwall CLT against the decision of Cornwall Council.
 - The application Ref PA21/03460, dated 26 March 2021, was refused by notice dated 26 July 2022.
 - The development proposed is twenty nine affordable dwellings with a mix of bungalows, flats two and three bedroom houses.
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Decision

1. The appeal is allowed and planning permission is granted for twenty nine affordable dwellings with a mix of bungalows, flats, two and three bedroom houses at Land off Chywoone Hill, Newlyn, Cornwall TR18 5LL in accordance with the terms of the application, Ref PA21/03460, dated 26 March 2021, subject to the conditions contained within the attached schedule.

Application for costs

2. An application for costs was made by Jennifer Hawkins, Development Officer, Cornwall CLT against Cornwall Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether or not the proposed development would have a severe impact on the operation of Chywoone Hill, and whether or not there would be safe and suitable access to the site for all road users.

Reasons

4. The appeal site is an open field located at the southern end of Newlyn, at the very boundary of the town. The site borders Chywoone Hill (B3315), from where it would derive its access. The hill is steep and is one of the main accesses into Newlyn from the south.

Operation of Chywoone Hill

5. The Transport Statement produced by Hydrock on behalf of the appellant informs that the proposed development of 29 dwellings would result in an extra 15 trips in the AM peak and 17 in the PM peak. This equates to only about one extra trip every 3 or 4 minutes and would equate to a maximum of an 8.8%

increase in traffic. Furthermore, the document entitled *Vissim Model Overview and Results Summary* also produced by Hydrock shows that the worst increase in average journey time would be only 7 seconds northbound in the AM peak time.

6. The appellant has confirmed that the journey time data used to validate the modelling process was from 2021 and not 2020 (a lockdown period). Whilst the Council question the accuracy of some of the data provided by the appellant, they have not provided any significant evidence that would lead me to discount it.
7. I acknowledge that there are a number of challenges regarding the use of Chywoone Hill. The carriageway width varies and includes sections where two vehicles cannot pass, resulting in reversing manoeuvres and localised intermittent congestion. I have been given anecdotal and pictorial examples of situations where tractors and other large vehicles using the hill have caused congestion, and I accept that this is worse during peak hours and the holiday season. This is not however dissimilar to many other roads in the area and indeed in many older towns throughout the country, particularly in tourist areas.
8. The National Planning Policy Framework (the Framework) makes clear at paragraph 111 that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.
9. In this case, whilst I acknowledge that there are genuine concerns regarding the traffic on Chywoone Hill, I cannot accept that the introduction of the number of vehicles described above and a worst increase in average journey time of 7 seconds can in any way be considered to be severe.

Safe and suitable access

10. The appellant's Transport Statement informs that between 2015 and 2019 inclusive there were 5 safety incidents in Chywoone Hill. Three of these were slight, and 2 were serious. The nearest incident to the site involved a vehicle colliding with a wall. Overall, the number of incidents recorded is not unusual and there is no pattern to the incidents which would lead to a conclusion that the road is inherently unsafe.
11. Furthermore, a 20mph speed limit and traffic calming is in place along Chywoone Hill. The proposed access to the development would include a 2m footway on both sides, the northern section of this footway would connect into the existing footway going towards Gurnick Road. There is then a footway on at least one side of the hill for a considerable distance down to the narrow section at Trinity church.
12. I have received a considerable volume of correspondence regarding this appeal (both in favour and against) and I accept that the position of the appeal site, its distance from the centre of Newlyn, and the lack of a complete footway between the two is not ideal. However, given the low speeds, the lack of evidence of regular incidents involving pedestrians, the traffic calming and the allowed parking, which in itself constitutes a natural form of calming, I consider that, overall, access to the site would be safe and suitable for all users.

13. In arriving at this conclusion I note that the draft Penzance and Newlyn Cycling and Walking Infrastructure Plan promotes Chywoone Hill as part of route W04 for walkers and route C05 for cyclists.

Planning Obligation

14. As the proposed development is for affordable housing the Council require a Section 106 Agreement to secure the affordable homes in perpetuity. There is also a requirement for a contribution towards open space, as the proposed development would provide less than required by policy. This contribution would be used to improve access and enhancements to the nearby Gwavas Playing Field. The appellant does not contest these requirements and I have been supplied with a signed and dated Section 106 agreement that would guarantee these provisions. This agreement meets the three tests of necessity, being directly related to the development and fairly and reasonably related in scale and kind. I can therefore take the S106 into account in my decision.

Conditions

15. I have imposed a number of conditions, as suggested by the Council. Some of these are pre-commencement conditions, and these have been accepted by the appellant. To prevent flooding I have imposed a condition requiring that the development's surface water drainage system be in accordance with the principals previously established in the Flood Risk Assessment and the Infiltration Testing Report.
16. To prevent the possible loss of historical artifacts I have imposed a condition requiring a programme of archaeological recording work, including a written scheme of investigation. In the interests of highway safety, I have imposed conditions requiring further details of the access onto the B3315, the road and footways within the proposed development, and the parking and turning areas.
17. I have imposed conditions requiring that the proposed development be built in accordance with the approved Biodiversity Management Plan and with the recommendations of the Landscape and Ecology Management Plan. These conditions are to ensure the protection and enhancement of biodiversity.
18. In the interests of the final appearance of the proposed development I have imposed conditions relating to landscaping and tree protection. To protect the amenity of nearby residents I have imposed a condition requiring a construction method statement and to promote the use of public transport I have imposed a condition requiring the development to be completed in accordance with the previously approved Travel Plan. Finally, for certainty, I have imposed a condition listing the drawings submitted with the application.

Conclusion

19. I have found that the proposed development would not have a severe impact on the operation of Chywoone Hill and that access for all users would be safe and suitable.
20. The scheme would provide 29 new affordable homes, and whilst I note some concern regarding the methodology used to arrive at the number of affordable homes needed in the immediate area, I am also aware that the document produced by the Council entitled *Securing homes for all: A plan to address*

Cornwall's housing crisis makes clear that Cornwall needs a step change in the supply of new affordable homes.

21. The provision of these new affordable homes should be given significant weight when considering the social limb of sustainability. Furthermore, the process of development would provide jobs and bring income into the area, thereby aligning with the economic limb of sustainability. The proposed development would be carried out in accordance with the approved Landscape and Ecology and Biodiversity Masterplans and would therefore contribute towards the environmental aspect of sustainability. Whilst the appeal site is some distance from the centre of Newlyn and there would not be a footway along the whole distance from the site to the centre of Newlyn, I nonetheless conclude that, on balance, the proposed development would constitute sustainable development.
22. It follows that there would be no conflict with the Framework and also no conflict with either policies 12 or 27 of the Cornwall Local Plan 2010 -2030. The first of these requires, amongst other things, that development creates a network of safe, well connected routes. The latter requires that development provides safe and suitable access to the site for all people and does not cause a significantly adverse impact on the local road network.
23. In light of the above, and having taken into account all other matters raised, including the considerable amount of correspondence I have received, both for and against the proposed development, I conclude that the appeal should be allowed.

John Wilde

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site/location Plan 2216-MAL-XX-SP-DR-A-0001-001-S2-P3, Block Plan 2216-MAL-XX-SP-DR-A-0001-002-S2-P3, Block Plan 2216-MAL-XX-SP-DR-A-0001-003-S2-P6, Landscaping 3534A-CEC-ZZ-XX-DR-L-0002_REV02, Mixed - Existing and Proposed 2216-MAL-XX-SP-DR-A-0001-004-S2-P3, Proposed 2216-MAL-XX-SP-DR-A-0001-005-S2-P1, 29/04/22 Proposed 2216-MAL-XX-SP-DR-A-0001-007-S2-P1, Proposed C-12472 - C100 (P02), Proposed C-12472 - SK001 (B), Proposed 2216-MAL-01-ZZ-DR-A-1001-001-S2-P1, Proposed 2216-MAL-02-ZZ-DR-A-1001-002-S2-P1, Proposed 2216-MAL-03-ZZ-DR-A-1001-003-S2-P1, Proposed 2216-MAL-04-ZZ-DR-A-1001-004-S2-P1, Proposed 2216-MAL-05-ZZ-DR-A-1001-005-S2-P4, Proposed 2216-MAL-06-ZZ-DR-A-1001-006-S2-P3, Proposed 2216-MAL-07-ZZ-DR-A-1001-007-S2-P3, Proposed 2216-MAL-08-ZZ-DR-A-1001-008-S2-P4, Proposed 2216-MAL-08-ZZ-DR-A-1001-008-S2-P4, Proposed 2216-MAL-10-ZZ-DR-A-1001-010-S2-P4, Proposed 2216-MAL-11-ZZ-DR-A-1001-011-S2-P2, Proposed 2216-MAL-12-ZZ-DR-A-1001-012-S2-P2.
- 3) The surface water drainage system shall be in accordance with the principals laid out in the Flood Risk Assessment, Ref 12472-HYD-PH1-XX-RP-FR-0001 dated 2nd September 2020 and the Infiltration Testing Report, 12472-HYD-XX-XX-RPGE-1000 dated 10th February 2021, both by Ramboll. No development approved by this permission shall be commenced until the following details are provided to and approved in writing by the local planning authority:
 - 1) Details of the finalised surface water drainage scheme including general arrangements, construction details, layouts, sections and calculations;
 - 2) A plan indicating the finalised provisions for exceedance pathways, overland flow routes and proposed detention features;
 - 3) A Construction Environmental Management Plan;
 - 4) A Construction Surface Water Management Plan;
 - 5) A Construction Quality Control Plan;
 - 6) A timetable or construction programme including phasing and implementation of the drainage system;
 - 7) A plan for the future maintenance and management, including responsibilities for the drainage systems and any overland flow routes. The Developer must inform the local planning authority of any variation from the details provided and agree these in writing before such variations are undertaken. The surface water drainage systems shall fully manage surface water flows resulting from the developed site up to the 1 in 100 year peak rainfall event plus a minimum allowance of 40% for the impact of climate change. A factor of safety of 5 shall be used in the calculations for infiltration and attenuation systems. Attenuation Tanks: The applicant should consider the following in relation to attenuation tanks:

- Attenuation systems come in many forms but the most common are geocellular tanks, oversized plastic pipes, oversized concrete pipes, precast or in situ cast concrete box culvert sections. These types are acceptable in Cornwall.
 - Tank floatation must be considered, and calculations may be required.
 - Attenuation tanks must be designed with suitable upstream pre-treatment systems to capture sediment and debris.
 - Attenuation tanks must not be sited under roads which are to be offered up for adoption under a Section 38 Agreement, unless the system is to accept only highway surface water flows. Advice should be sought from the Highways Adoption Team.:
 - Exceedance flow routes from the attenuation systems must be considered and managed through design and integrated in the site where possible. An allowance of 10% must be made within the drainage design for urban creep. The approved scheme shall be implemented in accordance with the construction timetable, to be agreed, and the scheme shall be managed and maintained in accordance with the details stated in the Flood Risk Assessment and Infiltration Testing Report for the lifetime of the development. Details of the maintenance schedule shall be recorded and kept up to date and should be made available to the Local Planning Authority within 28 days of the receipt of a written request.
- 4) A) No development shall take place until a programme of archaeological recording work including a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions, and:
1. The programme and methodology of site investigation and recording
 2. The programme for post investigation assessment
 3. Provision to be made for analysis of the site investigation and recording
 4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
 5. Provision to be made for archive deposition of the analysis and records of the site investigation
 6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- B) No development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (A).
- C) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (A) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- D) The archaeological recording condition will normally only be discharged when all elements of the WSI including on site works, analysis, report, publication (where applicable) and archive work has been completed.
- 5) No development shall commence until details of the access to the B3315 and associated works, pedestrian footways, estate roads and their junctions, surface water drainage, street lighting and means of access to the proposed dwellings, have been submitted to and approved in writing by the local planning authority. The vehicular access to the B3315 will be

- constructed in accordance with a timetable that shall be agreed with the local planning authority before the development commences. Prior to occupation of any unit, the pedestrian footways, estates roads and accesses shall be constructed in accordance with the approved plans and shall be retained as such thereafter.
- 6) Before the first occupation of any dwelling, the parking and turning areas serving it shall be laid out and constructed in accordance with the approved drawings, and the said areas shall not thereafter be obstructed or used for any other purpose.
 - 7) 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. It will ensure that there is a minimum 10% net gain in biodiversity within a 30 year period.
 - 8) The development shall take place in accordance with the recommendations set out in the Landscape and Ecology Management Plan dated 12th April 2022. Details of the bird and bat boxes, numbers and locations, shall be submitted to and approved in writing by the local planning authority and installed prior to the first occupation of the development. The development will be undertaken in accordance with the approved details and the necessary works undertaken before the development is first brought into use and shall be maintained for the lifetime of the development.
 - 9) All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out prior to the first occupation of the development unless an alternative timing has been previously agreed in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme. Notice shall be given to the local planning authority when the approved scheme has been completed. 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 as those originally planted.
 - 10) The approved tree protection fencing set out in the Arboricultural Report, dated September 2020 which will be erected in accordance with the specification given in the British Standard BS 5837 prior to commencement of any works associated with the development and be retained and maintained until the completion of the development. At no time shall any works in connection with the development, including storage, access, cement mixing, bonfires, excavations or other level changes occur within the protected area. The development shall be implemented in strict accordance with the agreed tree protection methods.
 - 11) No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved statement shall be adhered to throughout the construction period. The Statement shall provide for: (i) the parking of vehicles of site operatives and visitors; (ii) loading and unloading of plant and materials; (iii) storage of plant and materials used in constructing the development; (iv) the erection and

maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate; (v) wheel washing facilities; (vi) measures to control the emission of dust and dirt during construction; (vii) a scheme for recycling/disposing of waste resulting from demolition and construction works; (viii) hours of working.

- 12) The development shall take place in accordance with the Approved Travel Plan. No part of the new development shall be occupied prior to implementation of those parts identified in the Approved Travel Plan as capable of being implemented prior to occupation. Those parts of the Approved Travel Plan that are identified therein as capable of implementation after occupation shall be implemented in accordance with the timetable contained therein and shall continue to be implemented in accordance with the approved details as long as any part of the development is occupied.