
Appeal Decision

Site visit made on 18 July 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2023

Appeal Ref: APP/D0840/W/22/3295146

Lean's Field, Trevarian Hill, Newquay TR8 4AD

- 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 Linley Lewis of Wavelength Media Ltd against the decision of Cornwall Council.
 - The application Ref PA21/06058, dated 10 June 2021, was refused by notice dated 10 November 2021.
 - The development proposed is the temporary change of use of land for a drive-in cinema.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application covering letter referred to the drive-in cinema use taking place from mid-July to early September 2021. The submitted information confirmed that the development subsequently took place during that period, four days a week, notwithstanding that planning permission had not been secured. The appellant has confirmed that the proposal is not confined to that one-off period, rather they propose the temporary use to recur for no more than 57 days per calendar year. I have made my determination on that basis.

Main Issues

3. The main issues are:
 - The effect of the proposal on the character and appearance of the area having regard to the Area of Great Landscape Value.
 - Whether the site is a suitable location for the use having regard to local and national planning policies and accessibility.
 - The effect of the proposal on bats.

Reasons

Character and appearance

4. The appeal site is within the Watergate and Lanherne Area of Great Landscape Value (AGLV) designated by saved policy 14 of the Restormel Local Plan 2001 (RLP). Policy 14 of the RLP and policy 23 of the Cornwall Local Plan Strategic

Policies 2010-2030, November 2016 (CLP) broadly seek to protect and maintain the character and distinctive qualities of the AGLV.

5. The Cornwall and Isles of Scilly Landscape Character Study¹ assists in identifying the key landscape characteristics of the area. The appeal site lies within the Newquay and Perranporth Coast character area which comprises an exposed northwest facing coastline with numerous surfing beaches and small sandy coves, backed by dramatic cliffs in the east. Amongst the key characteristics listed are the open and exposed landscape, high cliffs and small to medium scale field pattern.
6. These elements resonated with my observations of the appeal site and surrounding area, and hence, contribute towards the landscape value of the AGLV. The appeal site is a medium scale pastoral field, perched on top of cliffs and close to the coastline. It possesses an open, exposed nature resulting in a strong rural character and a notable absence of built form.
7. The south-west coastal path lies to the west and a further public right of way cuts diagonally across the site itself. From both recreational routes expansive views of the surrounding coastal area are possible. As such, the site possesses key landscape characteristics that make a positive contribution towards the natural scenic beauty of the surroundings. Moreover, the presence of the public rights of way allows users to appreciate the relative tranquillity, sounds and smells of the sea intrinsic to this section of coastal countryside. Accordingly, the appeal site forms part of a valued and visually sensitive landscape.
8. The proposal for the drive-in cinema would be most likely to occupy the land between July and September each year to coincide with the busiest part of the tourist season and warmer weather. The planning application form indicates it would open to the public during the afternoons and evenings. As a result, equipment would probably be stationed on the land throughout that time, including various marquees, stage, refreshment facilities, temporary toilets, rigging, generators and a screen structure attaining approximately 10.8m in height². These physical structures have an obvious manmade utilitarian appearance that would adversely contrast with the predominantly natural surroundings.
9. In addition, when operational in the order of up to 200 vehicles could be parked across the site, and around 700 people could be present mostly in vehicles, a picnic area or gathered near to refreshment areas on the land. Floodlights would be positioned across the site, and in wetter conditions a temporary trackway would be utilised.
10. Cumulatively, the physical paraphernalia and considerable amount of associated activity and vehicular movement would dramatically and detrimentally undermine the rural, scenic qualities of the appeal site. Owing to the associated lighting, including the cinema screen itself, this would not only be the case during daylight hours but also during darkness, given the proposed end time of 23.45.
11. The degree of harm would be exacerbated by the prominent, exposed and open topography of the rural surroundings. Consequently, the effects of the development would be particularly obvious from the proximate public rights of

¹ Appendix 1, Statement of Cornwall Council

² Drawing no, PA21/06058-02

way. In addition, it would be visible from a considerable distance along the coast, with some equipment seen against the skyline.

12. Therefore, the proposed development would appear and feel particularly intrusive within the AGLV. Accordingly, it would fail to protect or enhance a valued landscape as required by paragraph 174 of the National Planning Policy Framework (the Framework). Moreover, it is not successfully shown that the proposal would respect the sensitivity of this section of the otherwise relatively undisturbed coastline, as stipulated by policy 23 of the CLP.
13. The appellant highlights that the proposed use would be temporary in duration, which I recognise would limit the extent of harm. Furthermore, photographic evidence is provided to show that the land returned to a pastoral field following the 2021 activity. This was consistent with my observations at my site visit. Therefore, the effects of the development are likely to be reversible. Even so, I do not accept that this amounts to a strong justification as it would do little to negate the harm I have identified when the use takes place.
14. Moreover, the temporary period when the harmful effects would be most apparent would be likely to coincide with the peak of the summer tourism season. It follows that during this time, an increased number of visitors to the area are likely to seek to use the recreational routes to access and appreciate the character and appearance of the coastline. Paragraph 2.8 of the CLP explains that the quality of Cornwall's landscapes and seascapes are amongst the factors that enable tourism.
15. Accordingly, I find that the proposal would cause unacceptable harm to the character and appearance of the area, which would be detrimental to the scenic landscape qualities of the AGLV. Therefore, it would be contrary to policies 2 and 23 of the CLP and saved policy 14 of the RLP which when read together, amongst other things, seek to protect and enhance landscape character, and avoid harm to AGLV's.

Location and accessibility

16. Amongst other things, paragraph 87 of the Framework states that local planning authorities should apply a sequential test to planning applications for main town centre uses. This is part of the government's approach to supporting the role of town centres at the heart of local communities. Hence, such uses should be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. Paragraph 88 makes it clear that preference should be given to accessible sites when considering edge of centre and out of centre proposals. The Framework clearly states that where an application fails to satisfy the sequential test it should be refused.
17. Policy 4 of the CLP aligns with national policy in this respect and confirms that retail and other main town centre uses outside defined town centres must demonstrate the application of a sequential approach to site selection. This is reinforced by the accessibility approach in policy 27 of the CLP whereby the location of major development should seek to minimise the need to travel, and the use of sustainable transport modes maximised by prioritising safe access by walking, cycling and public transport to minimise car travel. It goes on to state that larger developments which attract a proportionally larger number of people ought to be located in the city, main towns or locations highly accessible

by public transport. Similar objectives are included in the Council's Climate Emergency Development Plan Document, which the evidence before me indicates has reached an advanced stage.

18. The appellant contends that the proposed temporary drive-in cinema use is not a main town centre use, and therefore, it should not be subject to the sequential test in national and local policies. However, the glossary to the Framework provides a definition of main town centre uses, and so there is no need to look for alternative definitions. This explicitly includes leisure, entertainment and more intensive sport and recreation uses including cinemas within the definition. The definition is not qualified to exclude temporary development nor development that does not take place within a building. As such, there is little compelling evidence to support the appellant's assertion. Consequently, I find that the proposed use is a main town centre use within the meaning of the Framework.
19. Planning Practice Guidance (PPG)³ confirms that it is for the applicant to demonstrate compliance with the sequential test. The appellant states that a formal sequential test has not been undertaken. Hence, insufficient substantive evidence has been provided to persuade me that a more central location is neither available nor suitable.
20. Two appeal decisions⁴ are drawn to my attention whereby the respective Inspectors allowed development notwithstanding a conflict with the sequential test for main town centre uses. Nevertheless, in both instances the nature of the proposed use (which pertained to an existing building), scale and policy context are considerably different to the scheme before me. Hence, it is not shown that either are directly comparable. Other than generally illustrating that Inspectors may, depending on the specific circumstances of a case, exceptionally depart from the sequential test in the development plan and national policy, they have little bearing on my determination. I do not consider that exceptional circumstances have been shown in this case.
21. Furthermore, the appeal site is located some distance from a main town, and the information provided shows it is not well served by public transport. The nearest bus stops are some distance away with pedestrian routes along the highway being unlit and with no footway. Additionally, the bus services are infrequent, with timings ill-suited to evening film showings. These factors are likely to deter rather than maximise the use of public transport. Similarly, the topography and limited carriageway width would provide challenging conditions for many cyclists. Overall, the accessibility of the appeal site by means other than the car would be limited, and hence, it is probable that customers would be heavily reliant on the private car to access the site.
22. This falls considerably short of the hierarchy advocated in paragraph 112 of the Framework whereby development should promote sustainable transport by giving first priority to pedestrian and cycle movements, and thereafter to facilitating access and encouragement to public transport.
23. My attention is drawn to policy 5(3) of the CLP which supports the development of new tourism facilities provided they would be of an appropriate scale to their

³ Paragraph 011: Reference ID: 2b-011-20190722

⁴ Appeal references APP/R3650/A/14/2224837 and APP/K0235/W/15/3137708, Appendices F and G, Appellant's Appeal Statement

location and accessible by a range of transport modes. However, given my findings in relation to the first main issue, the drive-in cinema would not be of an appropriate scale to the location and accessibility would be poor. As such, I do not consider that support for the proposal is derived from this policy.

24. Likewise, paragraph 84c of the Framework encourages sustainable rural tourism and leisure developments subject to them respecting the character of the countryside. As the proposal would fall short of this provision, it would not benefit from the support given in national policy to such developments.
25. The appellant considers that visitors to the site would already be likely to be in the area, and that the location of the proposal would avoid causing congestion in towns. However, there is little substantive evidence to demonstrate that the benefits asserted would be so advantageous that they would justify setting aside the approach advocated in local and national policies which seek to support town centres and widen the choice of transport mode.
26. My attention is drawn to planning application reference PA19/09719 which permitted a 5 year temporary use to host the Boardmasters Festival over a 5 day period each year. The appellant contends there are similarities with the appeal proposal and states that a sequential test was not requested in that case. Be that as it may, that proposal related to a music festival rather than a drive-in cinema and concerned a different site which falls within the jurisdiction of a neighbourhood plan⁵ containing a policy relating to supporting the visitor economy. Hence, there are notable differences with the nature, location and policy context which prevent it from being directly comparable with the appeal proposal. As such, it attracts limited weight in favour of allowing the proposal.
27. Accordingly, I find that the appeal site would fail to provide a suitable location for the use having regard to local and national planning policies and accessibility. Consequently, the proposal would be contrary to policies 4, 5 and 27 of the CLP.

Bats

28. Policy 23(3d) of the CLP stipulates that adverse impacts on protected species must be avoided wherever possible. PPG⁶ reinforces that planning authorities need to consider the potential impacts of development on protected and priority species, and the scope to avoid or mitigate any impacts when considering planning applications.
29. The application was accompanied by ecological information and surveys that showed the site was used by two species of bat for foraging and commuting activity. All bat species are protected in the UK.
30. However, there is broad consensus between the parties that the mitigation measures identified, including the careful control of lighting, would limit the impact such that there would be negligible harm to bats. The Council's Ecologist accepted that planning conditions could be used to secure the mitigation⁷. I have not seen substantive evidence that undermines those findings.

⁵ Appendix 6, Statement of Cornwall Council

⁶ Paragraph 016 Reference ID: 8-016-20190721

⁷ Pages 3 & 11, Cornwall Council – Officer Report – delegated

31. On that basis, in the event of an approval the proposal would avoid adverse impact on bats such that it would accord with the development plan requirements and advice in PPG. Moreover, the approach would align with advice contained in paragraphs 98 and 99 of Circular 6/2005⁸ which confirms that the presence and extent of effect on protected species must be established prior to the grant of any planning permission. It goes on to say that any necessary measures to protect the species should be in place, using planning conditions or planning obligations.
32. The Council refer to derogation tests and assert that the appellant would be unlikely to obtain a mitigation licence from Natural England because the proposal is contrary to the development plan as a whole, with no overriding public interest justification. Specific government guidance⁹ does state that local planning authorities must be satisfied that, if a licence is needed, it is likely to be granted before giving planning permission. It goes on to set out the three relevant licensing tests. This is to avoid circumstances where a developer obtains planning permission but is unable to implement it, as a licence is not forthcoming.
33. However, it does not say that failure to meet the licencing tests of itself amounts to a planning refusal reason. Indeed, the conflicts with the development plan of concern to the Council have already been considered under the first two main issues.
34. On that basis, given that the evidence indicates adequate mitigation could otherwise be secured to avoid harm to bats, I find no further conflict with policy 23 of the CLP.

Other matters

35. The proposal would generate economic activity both directly and potentially to local businesses by attracting visitors. This is reinforced by letters in support of the proposal which include some from local suppliers and traders¹⁰ who benefitted from the 2021 event. It would also provide some jobs. Paragraph 81 of the Framework states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
36. In addition, the evidence provided shows the event was well managed overall and enjoyed by many visitors which amounts to a social benefit that would be likely to recur. Furthermore, the appellant proposes a permissive path along the southern edge of the site to allow an alternative route to the coastal path.
37. Cumulatively, I attribute significant weight to these benefits in favour of the proposal.

Planning balance and conclusion

38. Planning law requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise¹¹. I have found that the

⁸ Biodiversity and Geological Conservation 16.8.2005

⁹ Protected Species and development: advice for local planning authorities from Natural England and Department for Environment, Food and Rural Affairs, published 6.10.14 updated 8.9.22

¹⁰ Appendix E, Appellant's Appeal Statement

¹¹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70 (2) of the Town and Country Planning Act 1990.

proposal is incompatible with policies in the development plan that seek to direct main town centre uses to more accessible locations and which better support the vitality of town centres, as well as those policies that seek to protect landscape character. The proposal would also conflict with national policy in those regards. These are important matters and the conflict with the respective development plan policies carries full weight.

39. There are benefits which weigh in favour of the proposal, which taken cumulatively attract significant weight. Nevertheless, I am not persuaded that these would justify departing from the consistent application of the development plan policies, or provisions of the Framework.
40. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector