



Appeal Decision

Site visit made on 27 June 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2023

Appeal Ref: APP/D0840/W/22/3304654

Boslowick Inn, Prislow Lane, Falmouth TR11 4PZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by OPO Development (Cornwall) Ltd against the decision of Cornwall Council.
 - The application Ref PA21/09322, dated 24 July 2021, was refused by notice dated 12 April 2022.
 - The development proposed is demolition of existing public house enabling a residential development of up to 10 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application was made in outline with all matters, except access, reserved for future determination. I have dealt with the appeal on that basis, treating any details shown on the plans or mentioned in the description of development as being illustrative only.

Main Issue

3. The main issue is whether the existing building is a non-designated heritage asset and, if so, whether any harm resulting from its demolition would be outweighed by public benefits in the context of the policies of the development plan.

Reasons

4. The appeal concerns a large detached two-storey building within a substantial plot facing onto Prislow Lane. The site is bordered on its southern and western sides by well-established trees and is predominately surrounded by modern housing development, which gives emphasis to the traditional materials, appearance and proportions of the appeal building. Despite being vacant since last being used as a public house, it nonetheless remains a distinctive feature in this part of the street.
5. Planning Practice Guidance (PPG)¹ says that non-designated heritage assets (NDHAs) are buildings, monuments, sites, places, areas or landscapes identified by plan-making bodies as having a degree of heritage significance meriting consideration in planning decisions, but which do not meet the criteria for designated heritage assets.

¹ Paragraph: 039 Reference ID: 18a-039-20190723

6. I am informed the building is not listed on the Historic Environment Record or identified in the Falmouth Neighbourhood Development Plan 2021-2030 (NDP). The appellant, within their statement, disputes whether or not the building is a NDHA.
7. There are a number of processes through which NDHAs may be identified, including the local and neighbourhood plan-making processes and conservation area appraisals and reviews. However, the PPG² sets out that in some cases local planning authorities may also identify NDHAs as part of the decision-making process on planning applications. Additionally, the National Planning Policy Framework 2021 (the Framework) Glossary confirms that a Heritage asset includes assets identified by the local planning authority but is not limited to those which are listed locally.
8. The submitted Heritage Statement and Heritage Impact Assessment (HIA) identifies the building as a surviving example of a series of country houses and estates scattered around the mercantile centre of Falmouth during the late C18 and C19. The evidence suggests the building was completed by the Falmouth lawyer, James Bull. He was a son of the famous Packet captain, John Bull. Whilst the building has undergone considerable change during the interwar period and more recent changes and alterations have been undertaken to convert the building to a public house, the appellant's HIA considers the building holds appropriate values to be considered a NDHA.
9. The building's significance includes its age, materials, traditional appearance, proportions, and the strong association with the Bull family. There is some suggestion that the internal features may contain panelling from the famous Duke of Marlborough Packet ship. Despite there being little evidence to verify this the appellants report indicates that the panelling is worthy of reuse elsewhere. Even though the building has fallen into a state of disrepair and has been subject of persistent vandalism and anti-social behaviour, the building retains its traditional character and appearance. For the above reasons, although the building is not special enough to be listed and notwithstanding its location outside of a conservation area, it is of relatively substantial heritage interest and is an important heritage feature in the local area. Due to this historic significance and appearance, the Council regard it as a NDHA.
10. As a NDHA, paragraph 203 of the Framework advises that in weighing applications that directly or indirectly affect a NDHA, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
11. Moreover, Policy 24 of the Cornwall Local Plan Strategic Policies 2010-2030 (the CLP) requires that any harm to the significance of a non-designated heritage asset must be justified. The policy requires proposals causing harm to be weighed against the substantial public, not private, benefits of the proposal and whether it has been demonstrated that all reasonable efforts have been made to sustain the existing use, find new uses, or mitigate the extent of harm to the significance of the asset, and whether the works proposed are the minimum required to secure the long-term use of the asset. This Policy reaches further than the Framework which requires an assessment against public benefits in relation to designated assets (paragraph 202) but not in relation to NDHAs.

² Paragraph: 040 Reference ID: 18a-040-20190723

12. Policy DG6 of the NDP refers to identified heritage assets, which it qualifies are both listed and unlisted. It therefore applies to NDHAs. The policy, amongst other things, advises proposals that do not adequately justify any negative impact on the historic environment will not be supported.
13. Whilst changes to the building during the interwar period and more recent changes have somewhat diminished its heritage value, the appeal scheme would result in the demolition of the building. As such, the harm to the significance of the building would be great, as the whole building would be lost.
14. I noticed during my site visit that the poor state of the building was clearly detracting from its appearance. I also appreciate that the removal of internal features of interest could be carried out without planning permission, but this is not justification for demolition. Moreover, I have been given little compelling evidence that demonstrates there are no other, less harmful, means of securing the property.
15. I acknowledge the main parties do not dispute that the use of the building as a public house is unviable. However, little substantive evidence has been presented to demonstrate that the building is structurally unsound or that it would not be viable to renovate the existing structure and bring the building back into a use, including as a residential conversion, either in its current form or with sympathetic alterations.
16. There would be small economic advantages in construction of the proposal, which would be short term and a further modest benefit from occupation of the proposed dwellings and associated spending in the locality. An element of affordable housing would also be provided on previously developed land with good access to local services and facilities. Having regard to the scale of the proposal, these public benefits are of moderate weight in favour of the scheme.
17. Conversely, it is not necessarily the only way to provide housing on the site with the associated public benefit flowing from an active use of the heritage asset and the site. A Historic Building Record of the building could be secured via a planning condition, were planning permission to be granted, however, the traditional appearance and proportions of the existing building also contributes to its overall significance, and recording alone would be insufficient to justify the loss of the whole building.
18. For the above reasons, the appeal scheme would cause great harm to the significance of the non-designated heritage asset through its demolition. On the strength of the evidence presented, and as required by Policy 24 of the CLP, it has not been convincingly demonstrated that the public benefits of the proposal would be of sufficient magnitude to justify the total loss of the building. Consequently, substantial harm would be caused to a NDHA, which is of substantial local significance.
19. The development would therefore conflict with Policy 24 of the CLP, which requires all reasonable effort to have been made to find new uses or to mitigate the extent of harm to the significance of the asset, and ensure the works proposed are the minimum required to secure the long-term use of the asset. The proposal would also conflict with Policy DG6 of the NDP and the principles of the Framework which together seek to protect heritage assets and secure their long-term future.

Other Matters

20. The appeal site lies within the Falmouth and Helford Special Area of Conservation (SPA) zone of influence. However, there is no need to consider the implications upon the SPA because the scheme is unacceptable for other reasons.
21. A certified copy of a completed unilateral undertaking signed and dated 14 April 2023, was submitted by the appellants on 25 April 2023. This includes provisions for three affordable First Homes in the event that the dwellings on the land in total quantify over 1000sqm being provided, and a requirement for an 'Affordable Housing Scheme' to be submitted to the Council for approval, an additional contribution towards affordable housing and also financial contributions towards education, transport, health care and mitigation of recreational pressure on the SPA. The requirements of the legal agreement would be necessary to mitigate the effects of the development on those matters identified. However, whilst the scheme may deliver benefits through such an agreement these must be balanced against the harms which have been identified in relation to the main issue.
22. The appellant has identified that the Council has not found harm with regard to flood risk, drainage or access and considers that potential impact on biodiversity could be mitigated. However, these are ordinary requirements for new development, and these do not represent a positive benefit that weighs in favour of the appeal scheme. Other matters relating to contributing to local education provision, transport and health care, as purported to be addressed by the unilateral undertaking are neutral considerations in my decision.
23. The appellant refers to pre-application discussions and that the proposal was recommended for approval by Council officers. However, such discussions and recommendation are undertaken without prejudice to the decision that the Council may make on a planning application and this does not alter my conclusions which I have reached with regard to the planning merits of the development.
24. The appellant has provided details of a range of benefits associated with the development. These include that the appeal site is located in an area with good accessibility to a range of goods and services and would comply with the strategy for the delivery of housing across the development plan area. The appeal scheme would make a positive contribution towards meeting the housing needs of the area, on a previously developed site. I am aware that the Council has set out a number of objectives and interventions in response to what it has termed Cornwall's Housing Crisis. However, there is no indication in this submission that the development would address the specific threads identified by the Council in respect of homelessness prevention, homes for local residents or other locally based solutions.
25. My attention has been drawn to case law in 'Corbett v Cornwall Council' [2020] EWCA Civ 508 - Case No: C1/2019/2179 from April 2020, in which it was found that conflict with a single policy did not mean that a proposal fails to accord with the development plan as a whole. I recognise that the aims of policies in a development plan can conflict with one another, as was the case in Corbett. However, for the above reasons, there is clear conflict with Policy 24 of the CLP and DG6 of the NDP, even allowing for the need for new housing recognised

elsewhere in the plan. I attribute significant weight to the conflict with the development plan.

26. Whilst not referred to in its reason for refusal, the Council in its statement has drawn my attention to the Climate Emergency Development Plan Document – February 2023 (DPD). This document adds support to the re-use of buildings and in Policy C1 advises that development should conserve and enhance the historic environment and cultural heritage. As such, there would be conflict with the DPD.
27. The Council indicates that it has a sufficient supply of homes against its five-year target, and this is not disputed. The proposed scheme would undoubtedly result in some benefits, including the provision of housing with good access to facilities and services to serve the day to day needs of prospective residents, on previously developed land within the context of what has been termed Cornwall's Housing Crisis. Additional dwellings would add to the stock of housing and would help with the wider housing supply. There would be benefits arising from the construction period and future spend of occupants giving support to local services and facilities. Given the scale of the development, the benefits would be moderate.

Planning Balance and Conclusion

28. The starting point for any planning decision is Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise.
29. Despite the acknowledged benefits identified by the appellant, the proposal would result in the total loss of a NDHA and therefore loss of its significance, which the Framework indicates requires a balanced judgement having regard to the scale of the loss. As the loss would be total and there is little substantive evidence that demonstrates the building is structurally unsound or that it would not be viable to renovate the existing building and bring it back into use, the case for the removal of the building has not been justified. The positive factors considered cumulatively, even if an element of affordable housing would be provided, would be outweighed by the great harm to the significance of this NDHA which coupled with the aims and objectives of the CLP and the NDP leads me to conclude that, on the evidence before me, the case made for demolition is not convincing.
30. The appeal scheme would fundamentally conflict with the development plan and the Framework when taken as a whole, including the made NDP. There are no material considerations identified, individually or cumulatively, which are of such weight to indicate a decision should be made other than in accordance with the development plan. Therefore, for the reasons given above, the appeal should be dismissed.

J White

INSPECTOR