
Appeal Decision

Hearing held on 18 October 2023

Site visit made on 18 October 2023

by J Wilde CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 10th November 2023

Appeal Ref: APP/D0840/W/22/3304379

Sheldon House Nursing Home, Sea View Road, Falmouth, Cornwall TR11 4EF

- 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 Investin Sheldon Falmouth Developments Ltd against the decision of Cornwall Council.
 - The application Ref PA20/09821, dated 10 November 2020, was refused by notice dated 7 June 2022.
 - The development proposed is demolition of the existing building and development of 28 residential apartments (Use Class C3) with external landscaping, access, car parking and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing building and development of 28 residential apartments (Use Class C3) with external landscaping, access, car parking and associated works at Sheldon House Nursing Home, Sea View Road, Falmouth, Cornwall TR11 4EF in accordance with the terms of the application, Ref PA20/09821, dated 10 November 2020, subject to the conditions contained within the attached schedule.

Procedural matters

2. The appeal was originally a written representations case. In respect of this I conducted a site visit on 18 April 2023. During this site visit I observed the appeal site from the property known as The New House as requested by the owner of that property. This, and the evidence submitted on behalf of the owner, persuaded me that a face to face Hearing was necessary in order for me to fully understand and assess the evidence from all parties, and thereby arrive at a balanced and fair decision. The Hearing therefore took place on 18 October 2023, and I undertook an accompanied site visit on the same day.
3. During the appeal process I was supplied with a signed and dated Planning Obligation by Agreement under Section 106 of the Town and Country Planning Act 1990. This agreement would result in contributions towards, amongst other things, education, healthcare, and public open space. The Council confirmed at the Hearing that this agreement removed their objection in respect of reason for refusal 2. Taking this into account and also taking into account the evidence

submitted on behalf of the owner of The New House, the main issues are as given below.

Main Issues

4. The main issues are whether or not:-

- a) The proposed development would preserve or enhance the character or appearance of the Falmouth Conservation Area,
- b) The proposed development would have an unacceptable impact on the daylight and sunlight received by The New House.

Reasons

Character and appearance

- 5. The appeal site comprises a disused nursing home and its grounds, with the nursing home located towards the west of the site, the eastern portion being taken up with a driveway and garden area. The site lies between a large complex of apartment blocks to the south and a further apartment block to the north-west. There are further smaller properties directly to the north.
- 6. Opposite the site in Sea View Road is Sea View Court, a large, rendered property with hanging tiles and a turret feature to the front. Within the immediate area there are also two storey semi-detached houses, large town houses set within extensive plots, as well as guest houses and hotels. The area benefits from an abundance of large trees and hedges that give it a green and verdant appearance.
- 7. The site, which falls from west to east by about 9m, lies within the 'Seafront' section of the large Falmouth Conservation Area (CA). The Falmouth Conservation Area Appraisal (CAA) indicates that the significance of this section of the CA derives from a piecemeal and organic development of small, high quality early twentieth century villas, guest houses and hotels. Many of these buildings lie in good sized plots and the verdant nature of the area is one of its features.
- 8. Sheldon House has suffered from unsympathetic alterations and has a somewhat hard frontage with Pennance Road, and its grounds are somewhat overgrown and unkempt. Nonetheless, overall, the site as a whole makes a positive contribution to the significance to the CA.
- 9. The proposed development would include the total demolition of Sheldon House and its replacement with 28 residential apartments spread over 5 flat roofed blocks. Amenity space would be provided either by private gardens, terraces or balconies. The blocks would be of contemporary and innovative design with an angled floorplate, with white render, black metal balustrades and slate plinths.
- 10. The current scheme results from a lengthy process involving the appellant, the Council and the Cornwall Design Review Panel that has gradually seen the proposed development diminish from an original proposal of about 40 apartments to the currently proposed 28.
- 11. The Inspector who dismissed an appeal for a similar but larger scheme on the site in July 2021 considered that the buildings of the then scheme would exhibit high quality architectural detailing with a calm, simple approach. I also note

that the Cornwall Design Review Panel (CDRP) supported the current scheme, noting that the design would represent a rational and coherent approach that has integrity and concluding that the innovative typology would invigorate the urban setting. I agree with these assessments.

12. The current scheme is of similar design but lesser mass than that previously dismissed by the Inspector, and would be of a maximum of four storeys in height, down from a maximum of six in the previous iteration and similar or slightly lower than the large apartment blocks that border the site. The number of elevated walkways would also be less than in the previous iteration and their height would be reduced, resulting in them being far less prominent.
13. Nonetheless, the Council still have concerns regarding the massing and design aspects of the proposed scheme. However, the scheme has been designed so as to have only a two storey element facing Pennance Road and a three storey element (one of which would be the undercroft parking) facing Sea View Road, with the four storey elements in the middle of the site, where they would be barely visible from adjacent viewpoints. Whilst I accept that the two large adjacent apartment blocks do not contribute to the significance of the CA, the fact remains that they exist, and the appeal site has to be viewed within that context in terms of the height and massing of proposed schemes.
14. The Council also take issue with the design, in that it would not mimic the pitched roofs, hipped ends and dormers of some of the adjacent buildings within the CA. However, I have agreed with the previous Inspector and the CDRP that the proposed scheme would be of innovative design, and it seems to me that there has to be a place for such designs even in CAs, and that slavish adherence to previous design palettes should not necessarily be seen as the de rigueur approach, particularly if an innovative and appropriate alternative presents itself, in a suitable location. In arriving at this conclusion I note that the significance of the CA partly derives from piecemeal and organic growth, albeit of high quality early twentieth century villas. It seems to me that the proposed development to an extent fits in with the description of high quality piecemeal and organic growth.
15. At the Hearing the Council considered that whilst the actual design of the proposed development could be considered of high quality, that did not necessarily mean that it was right for its proposed setting. I disagree with this, and in doing so note that the Cornwall Design Panel commented that *the project now exhibits an appropriate public presence within the streetscape*.
16. I acknowledge that the proposed development would result in the loss of some vegetation. However, the same number of trees that would be removed would be replaced, and the majority of the boundary planting would be retained. Furthermore, the proposed landscaping scheme would be subject to a planning condition and therefore the Council would have control of the resulting scheme. Overall, I consider that the proposed development would preserve the character and appearance of the CA.
17. Consequently there would be no conflict with policies 2, 12 or 24 of the Cornwall Local Plan (CLP) or with policy DG7 of the Falmouth Neighbourhood Development Plan 2019-2030. Policies 2 and 12 require, amongst other things, that design is of high quality and demonstrates a cultural, physical and aesthetic understanding of its location. Policy 24 requires, amongst other things, that development proposals maintain the special character and

appearance of Conservation Areas. Policy DG7 requires that new development proposals be informed by and consistent with the scale, design and character of the surroundings.

Daylight and sunlight

18. The proposed development would be directly to the south of The New House, an existing two storey property which is set at a lower level than the appeal site. Concern has been expressed that the development will unacceptably affect the amenity of the occupiers of this property in a number of ways, these being the reduction in daylight and sunlight, overshadowing and privacy. I will deal with each in turn.
19. I have been supplied with a Daylight and Sunlight Effects Report (DSEF) on Neighbouring Properties prepared by Delva Patman Redler on behalf of the appellant. I have also been made aware of the publication by the Building Research Establishment entitled *site layout planning for daylight and sunlight: a guide to good practice (3rd edition, 2022)* (BRE report). This latter document makes clear that to assess the impact of development on daylight to a neighbouring building there are two recommended tests.
20. The first of these is the vertical sky component (VSC). If, following development, the VSC to a neighbouring window would be greater than 27% then enough skylight should still be reaching the window. Any reduction below this level should be kept to a minimum. If the VSC would be less than 27% and less than 0.8 times its former value occupants of the existing building would notice the reduction in the amount of skylight. These figures are however, purely advisory, and each case must be judged on its own merits taking all other factors into account.
21. In terms of the DSEF there are eight windows of The New House that face the proposed development, although in practice there are 6 windows, as one of the windows to the kitchen is a bay window where each of the three faces of the window is treated separately in the DSEF report. All of these windows would have a VSC of less than 27% and would be less than 0.8 times their previous value following the proposed development. However, all of the first floor bedroom windows and one of the kitchen windows would be only marginally below the 0.8 figure, with the worst example being one of the side faces to the bay window in the kitchen which would have a reduction of 0.61.
22. The BRE Report contains a flow chart concerning the application of the daylight assessments. This indicates that if the VSC would be less than 27% and would be less than 0.8 times before, then daylighting would be likely to be significantly affected.
23. However, there is a further complication in that the boundary between the proposed development and The New House has a considerable number of trees and shrubs that already have an effect on daylight and sunlight. The figures quoted above assume that The New House currently benefits from a completely open aspect across the appeal site, which is not the case. The DSEF records that, with the trees included, all of the windows of The New House facing the appeal site currently have a VSC of less than 27% and that with the proposed development in place, these values would reduce, in the worst case scenario, by a factor of only 0.81. I was informed at the Hearing that the figures for 'trees included' apply an appropriate transparency value based on the tree

types and I have been given no significant evidence to show that these figures are in any way flawed.

24. I will now address each room of the New House in turn. What is shown as a kitchen on the plans is in fact a large kitchen diner and it not unreasonable to assume that the occupants spend a considerable amount of time in the room. The main large window affected by the proposed scheme would retain a 26.3% VSC and would reduce by a factor of 0.74. According to the categorisation of magnitudes this would experience a low impact. Two faces of the bay window serving the room would experience a medium impact whilst the third would experience a low impact. However, one of these faces has a very low VSC to begin with. Furthermore, the kitchen/diner benefits from a large patio style window to the east and a smaller window to the north, both of which would retain a VSC of over 30%.
25. The lounge is dual aspect, with the main window facing the site being a large patio style window. The VSC of this window would be reduced by a factor of 0.66, and whilst its actual retained VSC would be 19.5%, this window is already compromised by the existing trees. Indeed, if these are taken into account then the existing VSC would only be 14.3%. There are however two other windows which face west and these would have their VSC reduced by a factor of only 0.93.
26. The three upstairs bedrooms each have a window facing the appeal site, and in each case the VSC for each of these windows would be reduced by a factor of 0.77. However, the main bedroom is double aspect and the secondary window facing east would retain a VSC of well over 30%.
27. The second test involves the no-sky line calculation. If, following development, the No-sky line moves so that the area of the existing room that can receive direct sunlight would be reduced to less than 0.8 times its former value, this would be noticeable to the occupants and more of the room would appear gloomy. In the case of The New House, none of the rooms would have a reduction of anything approaching 0.8 of their former value.

Conclusion on daylight and sunlight

28. I will now summarise my findings regarding the effects of the proposed development on the sunlight and daylight received by The New House. The New House is situated to the north of the proposed development and at a slightly lower level. The amount of sunlight and daylight received by the property is already compromised by the existence of trees and shrubs on the boundary with the proposed development. These are generally but not exclusively situated on the appeal site, and are stipulated as remaining post any development.
29. Whilst the DSEF shows that there would be a number of cases where the remaining VSC of a window would be below 27% and less than a factor of 0.8 compared to the existing, indicating that daylighting would be likely to be significantly affected, these figures do not take into account the existing vegetation. If that is taken into account then the proposed development would not have a significant affect. Furthermore, three of the principal rooms (lounge/kitchen diner/main bedroom) all have at least a dual aspect. Also the DSEF shows that all of the rooms pass the no-sky line test. In light of this I conclude that there would not be an unacceptable impact on the amount of

daylight and sunlight received by The New House due to the presence of the proposed development.

Other amenity issues

30. The proposed development would be to the south of The New House, the minimum distance between elevations being about 16.5m, and Blocks c d and e of the proposed development would be visible through or over the existing boundary trees. However, the design of the blocks, with the set back and lowered walkways connecting them, means that they would not be seen as a contiguous presence. They would also, to an extent, be screened by the retained and proposed foliage. I therefore do not consider that the proposed development would appear overbearing or cause significant overshadowing to the occupants of The New House.
31. I also note that there would be no windows that directly look over The New House. The elevations of blocks e and b that would be nearest to The New House have no windows, these being situated in the west and east elevations of the blocks. Whilst there could potentially be overlooking from residents walking along the connecting walkways, and from the stairwell, these would be transient. Furthermore the appellant suggested at the Hearing that he would be happy to accept further conditions that would result in obscure glazing being fitted to the stairwells and privacy screens being fitted to the walkways. In light of this there would therefore be no conflict with Policy 12 of the CLP which requires, amongst other things, that development proposals should protect individuals from overshadowing, overbearing impacts, overlooking and unreasonable loss of privacy.

Other matters

32. The property to the immediate south of the appeal site, Melvill Court, is set at a lower level and there is a existing vegetation that already compromises the levels of daylight received by residents. The proposed development would just be visible above the existing vegetation. However, given the separation distance, existing vegetation and orientation, I do not consider that the effect of the proposed development would be of such magnitude as to justify dismissing the appeal on that basis.

Conditions

33. The conditions that I have imposed were contained within the statement of common ground and discussed at the Hearing, with a further three being suggested at the Hearing. In the interests of the safety and health of future residents I have imposed several conditions relating to the identification and remediation of possible contamination within the site. To aid biodiversity and the local ecology I have imposed conditions requiring that work is carried out in accordance with the previously published Ecology report and that, prior to any work being carried out, a Biodiversity Management and Monitoring Plan shall be submitted and approved by the Council. For the same reason I have imposed a condition requiring an up to date bat survey.
34. In the interests of the final appearance of the scheme I have imposed a condition requiring that the materials to be used in the external surfaces of the scheme are approved by the Council. To ensure that adequate parking and

turning facilities are provided I have imposed a condition requiring that further details of these are submitted to, and approved by, the Council.

35. To promote sustainability I have imposed a condition requiring the submission of a detailed Travel Plan. To prevent an increased risk of flooding and minimise the risk of pollution of surface water I have imposed a condition requiring the submission and approval of a scheme for the provision of surface water management and foul water treatment.
36. As mentioned previously, I have also imposed conditions requiring obscure glazing to the stairwell windows and privacy screens to the raised walkways.
37. To reduce the impact of the development on the occupiers of neighbouring properties I have imposed a condition requiring the submission and approval of a Construction Method Statement. Finally, I have imposed a condition relating to the protection of trees within the site. In this instance I have favoured the condition suggested by the agent representing the occupiers of The New House as being more thorough than that put forward by the two main parties.

Conclusion

38. In light of my above reasoning and having regard to all other matters raised, 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 E0001B, Existing E0002A, Existing E1018-934-001, Existing E0160, Existing E1161A, Existing E0162, Existing E0163, Proposed P0001D, Proposed P002E, Proposed P0100D, Proposed P0101C, Proposed P0102D, Proposed P0103E, Proposed P0104F, Proposed P0105E, Proposed P0150E, Proposed P0151E, Proposed P0152D, Proposed P0153D, Proposed P0160E, Proposed P0161D, Proposed P0162E, Proposed P0163E.
- 3) No development, other than demolition of any buildings or structures, shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites -Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - a) survey of the extent, scale and nature of contamination;
 - b) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland
 - and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 4) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.
- 5) The approved remediation scheme in condition 4 shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner that demonstrates the effectiveness of the remediation

- shall be submitted to and approved in writing by the local planning authority before the development or relevant phase of development is occupied.
- 6) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported in writing immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development (or relevant phase of development) is resumed or continued.
 - 7) The development hereby approved shall be carried out in accordance with the recommendations set out in BSG ecology's report referenced P18-876 and dated 5th August 2019 submitted as part of the application.
 - 8) No development above ground floor slab level shall commence until details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and shall be retained as such thereafter.
 - 9) Before any of the development hereby permitted is brought into use, parking and turning areas shall be provided in accordance with a detailed scheme which shall have been submitted to and approved in writing by the Local Planning Authority. The parking and turning areas shall not thereafter be obstructed or used for any other purpose.
 - 10) No development above ground floor slab level shall take place until a detailed Travel Plan has been submitted to and approved in writing by the Local Planning Authority in line with Cornwall Council guidance: 'Travel Plans - Advice for Developers in Cornwall'. 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.
 - 11) No development approved by this permission shall be commenced until details of a scheme for the provision of surface water management and foul water treatment has been submitted to and approved in writing by the Local Planning Authority. The details shall include:
 - i. A description of the foul and surface water drainage systems operation;
 - ii. Details of the final drainage schemes including calculations and layout;
 - iii. A Construction Surface Water Management Plan;
 - iv. A Construction Quality Control Plan;

- v. A plan indicating the provisions for exceedance pathways, overland flow routes and proposed detention features;
- vi. A timetable of construction;
- vii. Confirmation of who will maintain the drainage systems and a plan for the future maintenance and management, including responsibilities for the drainage systems and overland flow routes.

Thereafter, the approved scheme shall be implemented in accordance with the details and timetable so agreed and the scheme shall be managed and maintained in accordance with the approved details for the lifetime of the development. Details of the maintenance schedule shall be kept up to date and be made available to the Local Planning Authority within 28 days of the receipt of a written request.

- 12) 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;
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.
- 13) No development shall commence unless and until a Biodiversity Management and Monitoring plan has been submitted to and agreed in writing by the Local Planning Authority. The plan shall include measures to ensure that the net gains (of at least 10%) in biodiversity detailed in BSG ecology's Biodiversity Enhancement Statement for the site referenced P20-101 are achieved including:
- i. Proposals for on-site biodiversity net gain (full details of which will be provided in relation to each phase of development and/or for off-site offsetting);
 - ii. A management and monitoring plan for any onsite and offsite biodiversity net gain including 30 year objectives, management responsibilities, maintenance schedules and a methodology to ensure the submission of monitoring reports in years 2,5,10,15,20,25 and 30 from commencement of development, demonstrating how the BNG is progressing towards achieving its objectives, evidence of arrangements and any rectifying measures needed

- iii. A methodology for the identification of any site(s) to be used for offsetting measures;
 - a. The identification of any such offsetting site(s)
 - iv. Details of any payments for offsetting measures including the biodiversity unit cost and the agreed payment mechanism. The development shall be implemented in full accordance with the requirements of the approved Biodiversity Management and Monitoring plan or any variation so approved by the Local Planning Authority in writing.
- 14) Before the development hereby approved is commenced, including any demolition, an up-to-date Bat Survey of the buildings to be demolished, together with details of any necessary mitigation to address the presence of bats, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved mitigation.
- 15) Before the first occupation of the development hereby permitted the windows in the stairwells of north and south elevations shall be fitted with obscure glazing and remain fixed closed. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the windows are installed and once installed the windows shall be permanently retained in that condition thereafter.
- 16) Prior to the occupation of the development hereby approved, details of the form and finish of the privacy screens/metal louvres to be installed to the walkways on the north and south elevations shall be submitted to and approved by the Local Planning Authority. The privacy screens/metal louvres shall be installed in accordance with the details hereby approved prior to the occupation of the respective development and retained as such thereafter.
- 17) No development shall commence until a Detailed Arboricultural Method Statement Report with Tree Survey and Tree Protection Plan (following the recommendations contained within BS 5837:2012) has been submitted to and approved in writing by the Local Planning Authority. The arboricultural method statement report shall include details for the control of potentially harmful operations on trees, such as site preparation (including demolition, clearance and level changes); the storage, handling and mixing of materials on site, burning, location of site office, service run locations including soakaways, cables, pipelines and movement of people and machinery. The report shall incorporate a programme of works; supervision and monitoring details by an Arboricultural Consultant and provision of site visit records and certificates of completion to the local planning authority. The Tree Protection Plan must be superimposed on a layout plan, based on an up-to-date topographical survey, and exhibit root protection areas which reflect the most likely current root distribution, and reflect the guidance in the method statement report. No development or other operations shall thereafter take place except in complete accordance with the approved details and the tree protection fencing shall remain in place for the duration of the development works. Should any works including footpaths or private driveways be proposed within root protection areas,

full specifications of these works to minimise any adverse impact on trees shall be submitted to and approved by the Local Planning Authority prior to carrying out such works. All works shall be carried out in accordance with the approved details.

APPEARANCES

FOR THE APPELLANT:

Mr Paul Cairnes KC
Mr Tom Molyneaux-Wright
Mr Andrew Passmore
Mr Chris Harris
Ms Abigail Thomas

FOR THE LOCAL PLANNING AUTHORITY:

Mr James Holman

INTERESTED PERSONS:

Mr Mike Orr
Mr Dan Tapscott
Mrs Leanne Wright
Mr Wright
Ms Duckett

DOCUMENTS HANDED IN DURING THE HEARING

- 1 Cornwall Monitoring Report (5 year Housing Land Supply Statement)
- 2 Cornwall Design Review Panel – 'Desktop Review'

PLANS HANDED IN DURING THE HEARING

A P0162E, Elevation 3 – north elevation

