



Appeal Decision

Site visit made on 16 July 2024

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 14 August 2024

Appeal Ref: APP/D0840/W/23/3328316

Boquio Vean Crelly, Trenear, Helston, TR13 0EX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr S Truen against the decision of Cornwall Council.
 - The application Ref is: PA22/05956.
 - The application sought planning permission for the change of use to camping, erection of reception plus toilet/shower block, access improvements, laying of aggregate hard standing without complying with a condition attached to planning permission Ref: PA21/08492, dated 17 May 2022.
 - The condition in dispute is No 5 which states that: *"The development hereby permitted shall not be commenced until the Local Planning Authority has approved, in writing, a scheme to secure mitigation of the additional recreational pressures to the Fal and Helford SAC, together with an appropriate mechanism to secure delivery of the mitigation"*.
 - The reason given for the condition is: *"The development lies in a zone of influence of Fal and Helford SAC where it is considered there would be a likely significant effect, when taken in combination with other plans or projects, upon this European designated site. To ensure that the proposal may proceed as sustainable development, there is a duty upon the Local Planning Authority to provide sufficient mitigation for any recreational impacts which might arise upon the European designated site. In coming to this decision, the Council has had regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017 and the requirements of Policy 22 of the Cornwall Local Strategic Policies 2010 - 2030. A pre-commencement condition is required in this case because it is essential to ensure that the necessary mitigation to address the recreational impacts of the development upon the Fal and Helford SAC is secured at the earliest opportunity"*.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr S Truen against Cornwall Council. This application is the subject of a separate Decision.

Background and Main Issue

3. As noted in the banner heading above, planning permission was granted by the Council in May 2022 for the change of use of the site to camping with the erection of buildings associated with that proposed use. That planning permission was subject to a number of conditions including the disputed condition which requires that a scheme to secure mitigation to the Fal and

Helford Special Area of Conservation (the SAC) be approved by the Council, together with a mechanism to secure delivery of that mitigation, prior to commencement of the development.

4. Permission is now sought for the development to no longer comply with the disputed condition. The Council has refused the application because it considers that without such a condition there would be no means by which to secure a financial contribution towards recreational impact mitigation measures for the SAC.
5. Taking the above into account, the main issue is whether or not the condition is necessary and reasonable, having particular regard to the effect of the development on the SAC.

Reasons

6. There is no dispute between the main parties that the site lies within the zone of influence for the SAC. The SAC is designated for its saltmarsh, intertidal mudflats, subtidal sandbanks, large shallow inlets and bays, estuaries and reefs. Policy 22 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan) provides that, for tourism accommodation, mitigation measures for recreational impacts on the SAC will be required where development is proposed within the zone of influence of the SAC.
7. The Council has adopted a strategic approach to the mitigation and monitoring of the effects of development on the SAC within its European Sites Mitigation Supplementary Planning Document (July 2021) (the SPD). The SPD sets out a strategic approach to the provision of mitigation for an increase in potentially harmful recreational impacts arising from new housing and tourism growth. It sets out mitigation strategies through strategic access management and monitoring (SAMM). SAMM is to be funded by contributions from new development and such is said to allow adverse impacts on the integrity of the sites to be avoided.
8. In respect of mitigation for harmful recreational impacts arising from tourism growth, the SPD provides that mitigation applies to all new housing, student accommodation and tourism accommodation of one or more units. The SPD continues to provide that such types of development include - amongst other things - hotels, guest houses, B&Bs, lodges, static caravans and touring pitches. In this instance the relevant development includes tented pitches and, as such, would represent use of space at a campsite. Consequently, in my view, the term "*touring pitches*" used within the SPD includes tented pitches.
9. I have further been referred to the Council's document entitled "*Guidance on types of development requiring mitigation*" which whilst being informal guidance, provides some clarity on the approach to be adopted in relation to such matters, and as such I have had regard to this advice. That document provides details of mitigation requirements in terms of camping sites. By reason of the details contained within the SPD and within the informal guidance, I conclude that the mitigation requirements apply to this development.
10. Under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), Appropriate Assessment of the implications of the project for the designated site in view of its conservation objectives is required. As such, I

consulted with Natural England on this matter. Natural England has confirmed that due to the proximity of the proposal to the SAC, there would be potential for an in-combination effect from visitor trampling, erosion and dog fouling. Natural England refers to the SPD which outlines the types of development that need to contribute to the mitigation strategy, and goes on to confirm that proposals which result in a net gain of tourism accommodation would be liable to make a contribution to the strategic mitigation strategy to prevent harmful effects from occurring as a result of the proposed development.

11. In light of the above and by reason of the details contained within the SPD and within the informal guidance, I therefore conclude that in order to comply with the requirements of Policy 22 of the Local Plan and the SPD, the mitigation requirements apply to this development. Consequently, the removal of the disputed condition would be in conflict with those requirements.
12. The disputed condition has been drafted as a pre-commencement condition. I note the Appellant's submissions that, in respect of that disputed condition, the Appellant questioned the wording and need for such a condition and that, subsequently, the Council did not obtain the Appellant's acceptance of the pre-commencement condition as required under the relevant regulations. Whilst I acknowledge the significant frustration felt by the Appellant in that regard, in the event that the appeal was allowed and the disputed condition was removed, then there would be no means of securing the required mitigation as set out in Policy 22 of the Local Plan and the SPD.
13. In respect of the above and in accordance with paragraph 56 of the National Planning Policy Framework (December 2023) (the Framework), the disputed condition is necessary in order to accord with the requirements of the development plan, and relevant to planning and to the development permitted given the site's location within the zone of influence and by reason of the type of development. The disputed condition is enforceable with the wording of the disputed condition being sufficiently precise, and is reasonable given the requirement to provide mitigation in this instance. A pre-commencement planning condition is necessary to make the development acceptable in relation to its effect on the SAC and ensure that the required mitigation is secured and delivered prior to any potential harmful recreational impacts arising.
14. The disputed condition is therefore reasonable and necessary in its current form. For the reasons given above, without the disputed condition, the development would conflict with Policy 22 of the Local Plan and would fail to accord with the Habitats Regulations, paragraph 188 of the Framework and the aims and objectives of the SPD. As such the appeal should be dismissed.
15. I have carefully considered the Appellant's submissions that if the Council considers that the impact on the SAC is significant, then in the absence of agreement for the pre-commencement condition, it should be for the Council to make the contribution towards the strategic mitigation strategy. However, for the reasons given above I have found that the disputed condition is necessary to make the development at this site acceptable in planning terms. Whilst I again acknowledge the Appellant's frustrations in that regard, disputes concerning who would be liable for such contributions, is outside the scope of this appeal decision.

Conclusion

16. For the reasons given above the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR