



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: 27 August 2024

Appeal Ref: APP/D0840/W/23/3333661

Viaduct Works, Frog Hill, Ponsanooth, Cornwall, TR3 7JW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr and Mrs Cox against Cornwall Council.
 - The application Ref is PA22/08613.
 - The development proposed is the Demolition of Redundant Industrial Building, Dwelling and Small-Scale Mixed Business Units and Construction of 13 no. Mixed Use Business Units Including 1 no. Live/Work Unit.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of Redundant Industrial Building, Dwelling and Small-Scale Mixed Business Units and Construction of 13 no. Mixed Use Business Units Including 1 no. Live/Work Unit at Viaduct Works, Frog Hill, Ponsanooth, Cornwall, TR3 7JW in accordance with the terms of the application, Ref PA22/08613, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr and Mrs Cox against Cornwall Council (the Council). That application is the subject of a separate decision.

Background and Main Issue

3. The Appellants have submitted this appeals on the basis of non-determination of the planning application. Following the submission of the appeal against non-determination, the Council has outlined the reasons the local planning authority would have given to refuse consent. The Appellants have seen these details and have had the opportunity to respond.
4. In light of the submissions before me, the main issue in this appeal is the effect of the proposed development on highway safety.

Reasons

The Appeal Site

5. The appeal site comprises land and buildings used for employment, industrial and commercial purposes, and which also includes a single two storey detached dwelling, located east of Ponsanooth. The site is situated on a valley floor with the sloping valley sides to the north and south being heavily wooded. Adjacent to and northeast of the site is a water treatment works, with a railway viaduct being located to the west of the site.

Highway Safety

6. Access to the appeal site is obtained from Frog Hill and which links Ponsanooth with the A39 highway which is located east of the site. Frog Hill is subject to the national speed limit where it passes the appeal site.
7. The Council has put it to me that the failure of the appeal scheme to secure a financial contribution towards a public consultation for a Traffic Regulation Order (TRO) and in respect of a 40mph speed limit along Frog Hill, means that the proposed development would fail to ensure that safe and suitable access to the site can be achieved for all. The Council maintains that the requirement for the TRO would need to be secured via a planning condition.
8. Policy 27 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan) concerns transport and accessibility, and reflects paragraph 114 of the National planning Policy Framework (December 2023) (the Framework) in that it requires that development provides safe and suitable access to the site for all people and not cause a significantly adverse impact on the local or strategic road network that cannot be managed or mitigated.
9. In their consultation response to the planning application, the Highways Officer did not raise any objections regarding the accessibility of the site by pedestrians or cyclists. However, the Highways Officer commented that the appeal site currently comprises a number of business units and that, by reason of only a very marginal increase in business unit space that would result from the appeal scheme, it is *"unlikely that the additional trip generation would be significant over the existing consented development"*. However, the Highways Officer went on to support a recommendation that a 40mph speed limit be imposed along Frog Hill and that a contribution for a TRO consultation be secured and, if accepted, the works be completed. The evidence before me indicates that the Council subsequently sought to obtain funding for that TRO, amounting to £5000.00.
10. No details have been provided for how the amount of £5000.00 for the TRO consultation has been calculated. It is also noted that the wording of the suggested planning condition refers to the requirement that the appeal scheme not be brought into use until a TRO securing a 40mph speed limit on Frog Hill has been *"promoted"* by the Local Highway Authority. In that regard, the wording of the suggested condition would result in the occupation of the development being dependent upon an indeterminate event.
11. Nonetheless, as I observed on my site visit, Frog Hill is narrow, winding and, in places, steeply inclined. Whilst I acknowledge that my observations represent only a snapshot in time, I saw a variety of vehicle types passing the site and whilst I observed numerous vehicles passing by the site during that time, I found that the highway was relatively lightly trafficked and that, by reason of the narrow and winding nature of the road, vehicle speeds did not appear to be excessive. The submissions before me indicate that there have been no reported collisions in the last twenty three years at the access from the appeal site and its junction with Frog Hill.
12. Both Policy 27 of the Local Plan and paragraph 114 of the Framework note that a need for mitigation arises where there would be significant impacts on the road network. Given that the appeal scheme would not give rise to significant different additional number of trips, there would be no significant effects that

require mitigation. As such, and in light of the above, the appeal proposal would not conflict with Policy 27 of the Local Plan nor would fail to accord with paragraphs 89, 114 or 116 of the Framework.

13. I therefore conclude that it has not been shown why a TRO, or indeed the need for a public consultation on a TRO, would be necessary to make the development acceptable in planning terms. Consequently, no such mitigation is necessary and therefore it would not be necessary to impose a planning condition requiring that the development not be brought into use until such time as a TRO has been promoted.

Conditions

14. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance and the Framework. Where necessary, and in the interests of clarity and precision, I have altered the wording of the conditions suggested by the Council in order to better reflect the relevant guidance.
15. In addition to the standard three year period implementation condition, which is a statutory requirement, it is necessary, in the interest of certainty and precision, to define the plans with which the appeal scheme should accord.
16. In the interests of the environment, maintaining a safe and efficient highway network and in the interests of protecting existing residents' amenity, it is reasonable and necessary to include conditions requiring the submission and approval of a Construction and Environmental Management Plan, a Landscape and Ecological Management Plan, and a Biodiversity Management Plan. Further conditions requiring that signage, visibility splays, parking areas for bicycles and business floor space in the live work unit are set out prior to the development being brought into use are necessary.
17. A condition is also necessary to ensure details of surface water drainage is agreed in the interests of flood prevention and the amenities of the area. In the interest of living conditions of existing residents, it is also necessary and appropriate to include conditions which control noise and which restricts works to certain hours and days.
18. In the interests of public health and the environment, it is reasonable to include conditions requiring investigation and remediation of potential contaminated land. The Appellants have not objected to pre-commencement conditions in that regard, and I have noted the Appellants' submissions that the application was supported by ground investigation reports. However, the Appellants' subsequent supplementary letter regarding contamination notes that concentrations of contaminants are below screening criteria representative of residential use aside from arsenic. Further information is therefore required to be submitted and given that such matters require approval, I find that the suggested pre-commencement planning conditions in this regard are necessary and appropriate.
19. A condition requiring that a scheme for the protection of trees during the course of the development be submitted and approved is necessary in the interests of ecology. In that regard, whilst noting that a tree constraints plan has been submitted, there do not appear to be any details of protection measures included within the associated report. Furthermore, and again whilst

noting the details provided by the Appellants, a planning condition requiring details of foundations for certain proposed units at the site be submitted and approved, is necessary to ensure that the proposal does not result in destabilisation of a nearby riverbank.

20. It is also necessary and reasonable to include a condition which requires that the recommendations of the ecological report that was submitted in support of the proposal, be implemented. Furthermore, a planning condition requiring a scheme for the incorporation of bat boxes, bird boxes and bee bricks be submitted and approved is also reasonable and necessary in the interests of biodiversity and ecology and for compliance with Policy G1(10) of the Climate Emergency Development Plan (2023).
21. In order to ensure compliance with the aims of Policies 4 and 5 of the Local Plan, a condition which restricts use of units only for the purposes falling within classes B2 and E(g) as contained within the Town and Country Planning (Use Classes) Order 1987 (as amended), is necessary so that the site remains appropriate for the setting, safeguarding the site for suitable employment purposes and to ensure that use of the site does not impact on town centres.

Conclusion

22. For the reasons given above the appeal should be allowed.

Mr A Spencer-Peet

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
2. The development hereby approved shall in all respects accord strictly with drawing numbers: Site/location Plan C/FP/22/024, Topographical Survey Plan T01, Existing Site Plan C/FP/22/027, Existing Site Sections C/FP/22/025, Proposed C/FP/22/001 Rev G, Proposed C/FP/22/002 Rev E, Proposed C/FP/22/003 Rev E, Proposed C/FP/22/004 Rev E, Proposed Block A Floor Plan & Elevations C/FP/22/020, Proposed Block B Floor Plan & Elevations C/FP/22/021, Proposed Block C1-C6 Floor Plans & Elevations C/FP/22/0222, Proposed Block C7-C9 Floor Plans & Elevations C/FP/22/020, Proposed Site Sections C/FP/22/026, Visibility Splays JP01 and Landscape Strategy Plan 10842L.LSP.001 Rev A.
3. No development shall commence (including any works of demolition, site clearance or ground works) until a Construction and Environmental Management Plan (CEMP) has been submitted to, and approved in writing by, the Local Planning Authority. The CEMP shall include:
 - Construction vehicle details (number, size and type).
 - Vehicular routes and delivery hours.
 - Means of access and parking of vehicles of site operatives and visitors.
 - Loading and unloading of plant and materials.
 - Storage of plant and materials.
 - Location of site compound and welfare facilities.
 - The erection and maintenance of security hoardings.
 - Wheel washing facilities.
 - Measures to control the emission of dust and dirt during demolition, site clearance and construction works.
 - Measures to control noise during demolition, site clearance and construction works.
 - A scheme for recycling/disposing of waste resulting from demolition, site clearance and construction works.
 - Details of any lighting, which shall be designed to avoid impacts upon biodiversity (e.g. bats) during demolition, site clearance and construction works.
 - Hours of working.
 - Management of surface water for the avoidance of pollution.
 - Procedures to avoid pollution incidents, e.g. from fuel spills or site run-off, based on an understanding of the wildlife interest at risk.
 - Contingency/emergency measures for accidents and unexpected events, including pollution incidents (e.g. use of spill kits with machinery).
 - Measures to prevent adverse impacts to the river and riverbank during demolition, site clearance and construction works.
 - Risk assessments of potentially ecologically damaging construction activities.
 - The location and timing of sensitive works to avoid harm to biodiversity features.

- If necessary, the times during construction when specialist ecologists need to be present on site to oversee works.
 - Responsible persons and lines of communication.
 - The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
 - Use of protective fences, exclusion barriers and warning signs.
 - The development shall be carried out strictly in accordance with the approved CEMP, which shall be adhered to and implemented throughout the demolition, site clearance and construction periods.
4. 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 Land contamination risk management (LCRM), (or equivalent British Standard and Land contamination risk management if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
- survey of the extent, scale and nature of contamination.
 - 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.
 - archaeological sites and ancient monuments.
5. 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.
6. The approved remediation scheme in condition 5 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.
7. 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.

8. Prior to the commencement of any works associated with the development a scheme depicting the method by which trees shall be protected during the course of the development shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall identify a Root Protection Area (RPA) that will be enclosed by tree protection fencing which will be erected in accordance with the specification given in the British Standard BS 5837. The tree protection fencing will be erected 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.
9. Prior to the commencement of construction of Units A1-A3 (highlighted in blue on modified plan ref. C/FP/22/002-E) the detailed design of the foundations of Units A1-A3 and the detailed design of all works to the section of river as indicated in orange on the modified plan ref. C/FP/22/002-E shall be submitted to and approved in writing by the Local Planning Authority. This includes the car parking spaces within the orange area. This additional information shall include:
 - Detailed design of proposed foundations with accompanying commentary on the methods of working.
 - Cross sections of existing and proposed bank profile and foundations with plans to reinstate the riverbank where necessary.
 - Details of vegetation and trees to be removed from the bank.
 - A scheme to replace any lost vegetation with appropriate planting to secure the stabilisation of the bank.

The scheme shall be fully implemented and subsequently maintained, in accordance with the scheme's timing/phasing arrangements, or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

10. The development hereby permitted shall be carried out in accordance with the submitted Biodiversity Net Gain Report prepared by Cove Ecological Surveys and dated 30 November 2022 to ensure that there is a minimum 10% net gain in biodiversity within a 30-year period as a result of the development and the Plan shall be implemented in full. No development shall commence until a Biodiversity Management Plan to ensure that there is a minimum 10% net gain in biodiversity within a 30-year period as a result of the development has been submitted to and approved in writing by the Local Planning Authority. The Biodiversity Management Plan shall include 30-year objectives, management responsibilities, maintenance schedules and a methodology to ensure the submission of monitoring reports.

Monitoring reports will be submitted to the Council during years 2, 5, 10, 20 and 30 from commencement of development unless otherwise stated in the Biodiversity Management Plan, demonstrating how the BNG is progressing towards achieving its objectives, evidence of arrangements and any rectifying measures needed.

11. No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. The LEMP shall incorporate the recommendations contained within the Biodiversity Net Gain Report prepared by Cove Ecological Surveys dated 30 November 2022. The development shall be carried out in accordance with the approved LEMP.
12. Prior to the construction of the live/work unit hereby approved, a scheme for the incorporation of bat boxes and bird boxes and bee bricks at a minimum rate of one measure per dwelling shall be submitted to and approved in writing by the Local Planning Authority. Such details shall include the location and specific details of each feature. The approved features shall be installed prior to the occupation of the live/work unit to which they relate and shall thereafter be retained and maintained as such.
13. The development shall be carried out in accordance with the guidance, recommendations and mitigation measures identified within the Preliminary Ecological Appraisal dated 17 November 2021, and the Bat Survey Report dated 19 December 2022, prepared by Cove Ecological Surveys.
14. No development approved by this permission shall be commenced until details of a scheme for the provision of surface water management has been submitted to and approved by the Local Planning Authority. The details shall include:
 - Details of the final drainage schemes including calculations and layout.
 - Details of how surface water will be managed during the construction phase.
 - A plan indicating the provisions for exceedance pathways, overland flow routes and proposed detention features.
 - Confirmation of who will maintain the drainage systems and a plan for the future management and maintenance, including responsibilities for the drainage systems and overland flow routes. The plan must include a drawing which clearly indicates the management responsibility for each drainage element, and schedule of maintenance.
 - 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.
 - Discharge from the site should not exceed 3.2 l/s for all rainfall events up to and including the 1:100 year +50% climate change event.
15. Before the development hereby permitted is first brought into use, all land within the visibility splays shown hatched on approved drawing no. JP01 shall be reduced to a height not exceeding 900mm above the adjoining

carriageway level and thereafter no obstruction shall be permitted within the approved visibility splays.

16. Before the development hereby permitted is first brought into use a scheme for signage at the site access(es) directing large vehicles to exit to the east via the A39 shall be submitted to and approved in writing by the Local Planning Authority. The approved signage shall be erected before the development is first brought into use and shall be retained thereafter.
17. No development above damp-proof course level shall begin, until details of secure and covered cycle parking to serve the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. The cycle parking shall be provided in accordance with the approved details before the development is first brought into use and shall be retained thereafter.
18. Demolition or development works shall not take place outside 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays nor at any time on Sundays or Public/Bank Holidays.
19. No development above damp-proof course level shall commence until a scheme of landscaping has been submitted to and approved in writing by the Local Planning Authority.
The landscaping scheme shall be based upon the Landscape Strategy Plan (drawing no. 10842L.LSP.001 Rev A) and shall provide planting plans with written specifications including:
 - Details of all existing trees and hedgerows on the land, showing any to be retained.
 - Full schedule of plants
 - Details of the mix, size, distribution and density of all trees/shrubs/hedges.
 - Cultivation proposals for the maintenance and management of the soft landscaping.
 - All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the development first being brought into use or the completion of the development, whichever is the sooner.
 - 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.
20. Noise arising from the development hereby permitted shall not exceed the typical background sound level during the day or night at the closest residential receptors to the site, existing at the time of the approval of this planning permission, when assessed in accordance with the methodology and principles set out in BS4142:2014+A1:2019 Methods for rating and assessing industrial and commercial sound.

21. Units A1-A3 (inclusive), Unit B1, Units C1-C5 (inclusive) and Units C7-C9 (inclusive) shall be used only for purposes falling with classes B2 and E(g) as described within the Town and Country Planning (Use Classes) Order 1987 (as amended), and not for any other use, including any use falling with class E of the aforementioned Order.
22. The business floorspace of the live/work unit (Unit C6) shall be finished ready for occupation before the residential floorspace is occupied and commencement of the residential use shall not precede commencement of the business use. The residential floorspace of the live/work unit shall not be occupied other than by a person solely or mainly employed, or last employed in the business occupying the business floorspace of that unit, a widow or widower of such a person, or any resident dependents.