



Appeal Decision

Site visit made on 26 February 2025

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2025

Appeal Ref: APP/D0840/W/24/3351090

Prow Park Business Village, Treloggan Industrial Estate, Newquay, Cornwall TR7 2SX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Baylor Julian (R T Julian & Son Ltd) against the decision of Cornwall Council.
 - The application Ref is PA22/05334.
 - The development proposed is described as Parking and storage.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of land for parking, storage and the siting of storage containers at Prow Park Business Village, Treloggan Industrial Estate, Newquay, Cornwall TR7 2SX in accordance with the terms of the application, Ref PA22/05334, and subject to the conditions set out in the schedule to this decision.

Application for costs

2. An application for costs was made by Mr Baylor Julian (R T Julian & Son Ltd) against Cornwall Council. This application is the subject of a separate Decision.

Preliminary Matters

3. With the proposed development having already been partially constructed, I was able to observe it on my site visit. I have dealt with the appeal on this basis.
4. The description of development in the banner heading above has been taken from the planning application form. However, the appeal form includes different wording which better captures the scope of the development and reflects the description in the Council's decision notice. I have therefore used this revised description in my decision, although I have omitted words which do not describe acts of development.

Main Issue

5. The main issue is the effect of the proposed development on the character of the surrounding area.

Reasons

6. Prior to the clearance works and partial construction of the development proposed, the available evidence indicates that the appeal site was an undeveloped area of land containing extensive mature trees and other vegetation. On this basis, and given its edge of settlement position, its verdant nature would have related to the

adjoining undeveloped land and positively contributed to the surrounding area's remaining natural character and sense of place, which includes housing and industrial-type development, agricultural land and fragmented woodland. As per the submitted evidence, the site's vegetation also screened part of Prow Park and provided a green buffer between it and some of the nearby houses.

7. Whilst the available evidence indicates that the clearing of trees and other vegetation from the site did not need planning permission, it seems to me that the clearance that has taken place would have been unlikely to have occurred – at least to the same degree – if the site was not proposed to be developed. The site cannot therefore reasonably be described as being of limited value simply because it has been cleared and (on an unauthorised basis) already partially developed.
8. However, prior to the clearance works and the development commencing, the relatively small site would have nonetheless formed a rather isolated limb on the extremity of the adjoining undeveloped land. Covering an area enclosed by the business park on two sides and with the railway line and adjoining housing bounding the site's northern boundary, it also clearly has a more built-up situation, sandwiched within the settlement's urban form rather than forming part of the countryside. Consequently, it seems to me that the site, prior to being cleared of most of its trees and other vegetation, would have read as being somewhat distinct from the adjoining undeveloped land and having a more built-up context.
9. I recognise that various parts of Prow Park have only become lawful via numerous certificates of lawfulness for existing uses/development. However, the available evidence indicates that the extent and amount of development at Prow Park is, excluding the appeal site, now largely lawful. Irrespective of its planning history, Prow Park (and the adjoining industrial estate) therefore form part of the character of the surrounding area and the context within which to judge the appeal proposal.
10. With the clearance of much of the site and the laying of a hard surface for parking and the siting of containers, the development proposed has clearly negatively affected the natural character of the site. From nearby views, such as from the (gold priority) public right of way to the east, the adjoining railway line and adjacent housing, the visual impact is, as I observed on my site visit, stark and striking. The effect of the site clearance and works is therefore also clearly very noticeable in the immediate area.
11. However, the site could have been cleared without the need for planning permission. Due to topography and existing built form, the development is also not particularly apparent in the wider area. In addition, the harm is tempered by the site's largely urban situation, stemming from its enclosure by development on three sides and its position adjacent to the settlement's built-up area.
12. In this context, the development, once finished as per the submitted plans, would read as essentially completing the business park and not being unacceptably prominent in the landscape. Furthermore, the size of the site relative to the extent of surrounding built form and undeveloped land means that the completed development would not significantly affect the overall character of the surrounding area. Whilst the proposed planting would not offset the overall loss of vegetation, it would also help to re-green the site to some extent and soften its edge with the undeveloped land, and partly screen the containers.

13. As the site's vegetation could have been cleared at any point without the need for planning permission, the proposed planting not being secured in perpetuity does not lead me to a different conclusion. In coming to this view, I have also taken account of the size of the strips available for planting, that plants would take some time to establish and the suggestion that the area's coastal weather would stunt growth. In addition, the landscaping condition provides the Council with the ability to ensure suitable plants are proposed and that any which die or are removed within five years of the completion of the landscaping scheme are replaced.
14. Irrespective of the landscaping areas provided, the proposed parking area and storage containers cannot reasonably be described as involving high quality design or using materials that enhance local character. However, given the site's context and the conventional design of business parks and industrial estates, the functional appearance of the development proposed is acceptable. The future weathering effects on the materials does not lead me to a different conclusion. The scale and layout of the appeal proposal is also appropriate to its location. In addition, the degree of separation, combined with the proposed planting, means that the double stacked containers would neither dominate nor enclose the nearby public right of way.
15. Consequently, whilst the site's character has changed significantly and this is currently very perceptible in the immediate locality, the overall harm to the character of the surrounding area from the development proposed would be limited and not significant, particularly once the planting has established. The site could also have been cleared without the need for planning permission in any event. With the effect of the development being relatively localised, the appeal proposal would not harm the wider landscape or character area. In coming to this view, I have taken account of the visualisation (which does not appear to have a scale) provided by a third party and the lack of elevations (or similar) from the appellant.
16. Nevertheless, for the above reasons, I conclude that there would be some harm to the sense of place and natural character of the site and immediate surrounding area. I therefore find that it conflicts with Policies 2, 12 and 23 of the Cornwall Local Plan Strategic Policies 2010 - 2030 (CLP) and Policy D1 of the Newquay Neighbourhood Plan (NNP). Amongst other aspects, these expect development to develop or reinforce sense of place, sustain local distinctiveness, maintain and enhance the locality's natural character, and respect and enhance quality of place. However, given my above findings, the proposed development does not conflict with NNP Policy LE1 which supports development where there would be no significant adverse impact on the character of landscape areas.

Other matters

17. Given the long planning history of Prow Park, it seems to me that the appellant should have known of the need to obtain planning permission before the development commenced. However, the submitted evidence does not sufficiently substantiate that the development proposed should, as alleged, be considered as intentional unauthorised development. In coming to this view, I have taken into account the number of retrospective planning applications and lawful development certificates for existing uses/development that have been brought to my attention.
18. Extensive submissions have been made regarding past and current ownership of the site, the Council's approach to the sale of land which makes up part of the site,

and potential trespass issues regarding the site's clearance and the unauthorised works. However, such matters and whether the Council has contravened legislation and guidance relevant to land sales are not determinative as to the acceptability of the appeal proposal, which I have considered on its planning merits.

19. The submitted ecological appraisal (EA, dated September 2022) sets out that, both before and after the clearance works, the on-site habitats, such as scrub and mature broad leaved woodland, are common and neither protected nor defined as notable (priority) habitats. However, it identifies that the development proposed would result in a substantial loss of on-site habitat, and that various animals (including protected species) were likely to be present/have used the site prior to the clearance works.
20. With only a small amount of woodland remaining, the clearance and unauthorised works done to date have clearly therefore resulted in extensive habitat loss and the obvious potential for wildlife to have been harmed. However, with the site having already been cleared and planning permission not required for that, any offences that could have occurred relating to, for example, protected species (particularly regarding clearance during the nesting season) or tree felling would be a matter for the appropriate authority.
21. Based on the site after it was cleared, the EA identifies that the potential for protected species is, with the exception of reptiles, now (not surprisingly) low or negligible; and that mitigation (during further construction works and the subsequent operation of the development) would sufficiently reduce and avoid harm to protected species and the remaining woodland habitat. These measures can be secured by condition.
22. With regards to compensation and enhancement/biodiversity net gain (BNG), the baseline in the EA appropriately seeks to apply the site's pre-clearance state. Although the EA refers to providing all compensation measures and achieving BNG solely off-site, the later document by Environmental solutions consultant (dated June 2023) proposes some on-site measures. This includes a living wall and the creation of open mosaic habitats bordering the retained woodland. Although I share the concerns raised by third parties regarding the alleged area available for the latter, the proposed site plan does show space for some habitat creation along the site's northern and eastern boundaries. Planting in these (albeit relatively narrow) corridors would also help to re-connect existing habitats.
23. Subject to further details being secured by condition, it seems to me that the habitat creation necessary to offset the losses and achieve a net gain can be realised. The extent, range and type of habitats provided (or improved) to offset the loss and achieve a net gain can be confirmed through the details secured by condition. In this instance, a legal agreement is therefore not necessary.
24. I recognise that local residents do not wish to see the loss of trees and other habitat from the site and its replacement elsewhere. However, the approach is an accepted means of securing compensation and net gain with regards to relevant policy and guidance. Whilst I also note the various queries relating to the extent and type of inputs included in the biodiversity metric calculations, the Council's ecologist reviewed the details and did not raise concerns with the approach; and

the available evidence does not lead me to conclude otherwise. In addition, I am mindful that the appeal proposal is not subject to mandatory BNG.

25. Significant concern has been raised with regards to drainage and flooding, with the removal of much of the 'wet woodland' on the site and other vegetation and the laying of a large area of impermeable hard surfacing resulting in loss of a natural flood protection and drainage. The submitted evidence includes details of flooding and drainage issues in residential areas and on paths since the site – known locally as a wetland – was cleared and the development began; and on my site visit I observed how wet parts of the site and surrounding area were. Given the area's topography, surface water is also likely to run down towards the site and adjoining housing from surrounding land.
26. However, whilst the surrounding area is said to be noted for flooding, the site is not identified as being in a critical drainage area, the Lead Local Flood Authority did not object and the Council has not identified the issue as a reason for refusal. The proposed drainage scheme was also based on percolation tests for example and was accompanied by calculations on infiltration rates and the extent of impermeable areas proposed. Consequently, subject to a condition securing provision of the proposed drainage scheme and details regarding its management and maintenance, sufficient drainage would be provided for the proposed development and it would thus not increase the risk of flooding in the locality. The erroneous references to dwellings in the drainage strategy plan do not lead me to a different conclusion.
27. A number of other matters have been raised by various parties and I have taken them all into account. This includes: the significant objection and lack of support from the local community for the proposed development, who wish the land to be kept in public ownership, returned to its previous condition and be for public use; nearby houses, only some 10-20 metres away, having an unobscured view of the development and Prow park; the effect on the living conditions of existing residents (some of whom have health conditions), including in relation to privacy, mental health and wellbeing, noise and visual intrusion, light pollution and odours, and significant changes to outlook; impact on house prices; potential future (non-storage) uses of the containers; lack of evidence demonstrating demand for further storage, and what will be stored in the containers; the site used to be protected as a nature reserve and area of screening under previous local policies; the site not being landlocked; the submission of incorrect/inconsistent information, including in the application form; lack of assessments covering landscape and visual impacts and sound; alleged conflicts of interest, favourable treatment of the appellant by Council Officers and pre-determination at senior officer level; questioning the Council's appetite to take enforcement action; the Council's lack of responses to residents' questions on the documents accompanying the planning application; the amount of consultation by the Council on the planning application; allegations of conflict with other local planning policies, objectives and guidance; the development would harm rather than improve the environment due to the loss a green corridor and green infrastructure, including hedges and a pond on the site; contamination of surface water run-off; questioning the veracity of the ecology and contamination reports; the lack of structural engineering details; loss of agricultural land; highway safety; and the accessibility of the site, with customers being likely to choose to drive rather than use the other available methods of transport.

28. However, whilst I take these representations seriously and I recognise the strength of local concern, particularly regarding the environmental harm arising from the site's clearance and residents' view of the much-changed site, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters. Various consultees to the planning application, such as the Council's Environmental Protection team, also raised no objections. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed. Some of the issues raised, such as regarding light pollution, noise and the site's use can also be covered by planning conditions.

Planning Balance

29. Inconsistent with the provisions in the National Planning Policy Framework (Framework) in relation to achieving well-designed places and conserving and enhancing the natural environment, the development would harm the natural character of the site and immediate locality. Although this attracts significant weight, and I recognise that the site was of great visual value to local residents before it was cleared, the harm would be relatively localised and not significant, and would reduce over time as the (replacement) planting establishes. Nevertheless, whilst the appeal proposal would not harm the wider landscape, the conflict I have identified with CLP and NNP policies in relation to the main issue leads me to conclude that it conflicts with the development plan as a whole.
30. However, the development proposed would provide various benefits, including the provision of increased storage space in an accessible area and close to existing businesses and residents. Although the storage may be used by domestic customers, it would also be available for use by businesses, including in Prow Park and the wider industrial estate. The development would therefore provide additional infrastructure that would help businesses to grow and operate more efficiently. This aligns with the CLP Policy 2 objective to generate and sustain economic activity and the provisions in the Framework in relation to building a strong, competitive economy.
31. Despite the details in the submitted application form, the appeal proposal would also generate some employment from construction works and the landscaping of the site, and the subsequent need to manage and maintain it. Consequently, there would be various economic benefits arising from the scheme. In addition, whilst the clearance and subsequent development have clearly resulted in a significant net loss in habitats and biodiversity on the site to date, some on-site habitat and the improvement of off-site habitat can be secured by condition to offset the losses and achieve an overall net gain.
32. Although the site does not form part of the employment site, with it being adjacent to an employment area, as defined by the NNP, the appellant's position that the development is a logical extension of it is also not an unreasonable contention. Furthermore, the NNP settlement boundary includes part of the site within Newquay, and NNP Policy E2 supports employment schemes within the settlement which do not adversely impact on the landscape and the living conditions of existing residents. In addition, CLP Policy 5 supports new employment land and neither the submitted evidence nor my above findings indicate the proposed development would be contrary to it. Whilst the Council's monitoring report shows a surplus of industrial employment space for the Newquay

and St Columb area in relation to CLP table 3, the 30,250m² floorspace figure is a target rather than a cap. Much of the supply identified in the submitted monitoring data is also based on commitments which may not necessarily progress to completions.

33. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. In this instance, the above matters outweigh the localised and limited harm that would arise and the resulting conflict with development plan policies and the Framework. Consequently, material considerations indicate that the proposed development should be permitted notwithstanding the conflict with the development plan as a whole.

Conditions

34. I have had regard to the various suggested planning conditions and considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents, for clarity and consistency, and to ensure that details are submitted for the Council's approval where relevant.
35. I have imposed a condition requiring the carrying out of the development in accordance with the approved plans in the interests of certainty. The condition relating to ground and floor levels is necessary in the interests of character and appearance and the living conditions of adjoining occupiers. Conditions relating to landscaping, biodiversity net gain, drainage and noise management are necessary in the interests of character and appearance, biodiversity, flood risk and the living conditions of neighbours respectively. However, I have amended these conditions (Nos 2-6) and their timing clauses because I observed on my site visit that the parking area and some containers on the site are already in use. I have also added additional requirements where necessary to ensure sufficient clarity and, where required, further details are provided.
36. A condition relating to the use of the containers is necessary in the interests of the living conditions of adjoining occupiers. A condition relating to external lighting is necessary for the same reason and in the interests of wildlife. A condition securing compliance with the recommendations in the EA is also necessary in the interests of wildlife and ecology. However, as I have imposed a condition securing full details of how BNG will be delivered, I have not included reference to section 7 (biodiversity enhancement) of the EA. The BNG condition I have imposed also includes relevant parts of the BNG-related conditions suggested by the Council and appellant. The condition relating to contamination is necessary in the interests of the environment and the health and safety of users of the site and locality.

Conclusion

37. For the above reasons, the appeal is therefore allowed.

T Gethin

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Existing location plan (Drawing No SD-001, Rev P1); Existing block/site plan (Drawing No SD-002, Rev P1); Proposed site plan (Drawing No PL-001, Rev P3); Proposed shipping containers (Drawing No PL-002, Rev P1); and New land groundworks/drainage strategy plan (Drawing No 100, Rev C).

- 2) Prior to any further clearance and construction works on site, details of the finished floor levels above ordnance datum for the proposed development in relation to existing ground levels shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved levels.

In the event that:

- no details in accordance with this condition are submitted within three months of the date of this decision, or
- no scheme in accordance with this condition is approved within nine months of the date of this decision,

the use of the site shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed, until such time as a scheme approved by the local planning authority is implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) Prior to any further clearance and construction works on site, a landscaping scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include: details of all remaining trees and hedgerows on the land, showing those to be retained and measures for their protection to be used in the course of development; planting plans with written specifications including full schedule of proposed plants, details of the mix, size, distribution and density of all proposed trees/shrubs/hedges; and cultivation proposals for the maintenance and management of the soft landscaping.

The approved protection measures shall be implemented in accordance with the approved scheme before any further clearance and construction works on site proceed and shall thereafter be retained until the works are completed.

All planting, seeding or turfing comprised in the approved landscaping scheme shall be carried out in the first planting season following the local planning authority's written approval of the landscaping scheme.

Notice shall be given to the Local Planning Authority when the approved scheme has been completed. Any trees or plants which die, are removed or become seriously damaged or diseased within a period of five years from being planted shall be replaced in the next planting season with others of a similar size and species as those originally planted.

In the event that:

- no details in accordance with this condition are submitted within three months of the date of this decision, or
- no scheme in accordance with this condition is approved within nine months of the date of this decision, or
- any approved scheme is not implemented within the first planting season following its written approval,

the use of the site shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed, until such time as a scheme approved by the local planning authority is implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) Unless within three months of the date of this decision, a Biodiversity Management Plan (BMP) is submitted in writing to the local planning authority for approval, and unless the approved BMP is implemented and carried out at all times in accordance with the approved details, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented. The BMP shall ensure that there is a minimum 10% net gain in biodiversity within a 30-year period as a result of the development and shall include full details of all on-site and off-site measures required to achieve this, a timetable for provision of the measures and how they are to be secured, and a maintenance and monitoring plan.

If no BMP in accordance with this condition is approved within nine months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a BMP approved by the local planning authority is implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) Unless within three months of the date of this decision, details confirming that the scheme for the disposal of surface water has been completed in accordance with Drawing No 100, Rev C (New land groundworks/drainage strategy plan) and a management and maintenance schedule are submitted in writing to the local planning authority for approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a drainage scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained and maintained in accordance with the approved details.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 6) Unless within three months of the date of this decision, a scheme for the management of noise is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within one month of the local planning authority's approval, the use of the site shall cease and all equipment

and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented. The site shall be operated in accordance with the approved scheme at all times. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 7) The containers shall be used for storage purposes only and for no other purpose (including any other purpose within Class B of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking or reenacting that Order with or without modification).
- 8) No external lighting shall be installed on the site until a detailed external lighting strategy has been submitted to and approved in writing by the local planning authority. The external lighting shall thereafter be installed and maintained in accordance with the approved details and no additional external lighting shall be installed.
- 9) The works hereby permitted shall be carried out in strict accordance with the recommendations made in section 5 of the submitted Ecological Appraisal (version 2, by Dr Steve Holloway and John Blackburn, dated 30 September 2022).
- 10) Any contamination that is found during the course of construction of the development hereby permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, the development shall not resume or continue until remediation and verification schemes have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.

END OF SCHEDULE