



Appeal Decision

Hearing held and site visit made on 18 July 2017

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 August 2017

Appeal Ref: APP/D0840/W/17/3166419

Land at Melvill Road, Falmouth, Cornwall TR11 4AS

- 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 Jagtah Singh (Marble Homes Leicester Limited) against the decision of Cornwall Council.
 - The application Ref PA15/08897, dated 21 September 2015, was refused by notice dated 12 August 2016.
 - The development proposed is described on the application form as 'the construction of 14, 2 bedroom apartments, on site parking and garden'.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The Council are now of the view that the drainage implications of the development proposed could be adequately addressed via suitably-worded conditions.¹ Therefore the Council no longer maintain the second reason for refusal given within their decision notice.
3. There is correspondence before me between the appellant and Council regarding an obligation related to affordable housing provision pursuant to section 106 of the Town and Country Planning Act 1990 as amended.² Nevertheless the proposal before me is accompanied by no obligations.
4. In refusing permission the Council stated that the proposal would conflict with policies 3F, 10B and 13K of the Carrick District Wide Local Plan (adopted April 1998). These policies are no longer part of the development plan, having been superseded by the Cornwall Local Plan Strategic Policies 2010-2030 (adopted November 2016, the 'Local Plan'). All parties have had the opportunity to comment on this changing policy context.
5. The appellant does not aver that the Council are unable to demonstrate a five year land supply of deliverable housing sites, or by consequence that relevant policies for the supply of housing should be considered out-of-date.³

¹ As confirmed in correspondence reproduced in appendix 10 of the Council's statement of case and with regard to the appellant's Flood Risk Assessment, Surface Water Drainage Statement and Drainage Strategy.

² This refers to the former intention of the appellant to provide an obligation of £10,000.00 towards affordable housing provision or, alternatively, a contribution equating to 35% of the units proposed.

³ With regard to paragraphs 47, 49 and 14 of the National Planning Policy Framework.

Accordingly the proposal falls to be determined in accordance with the development plan, unless material considerations indicate otherwise.

6. The proposal is supported by an Arboricultural Impact Assessment of 16 December 2016 (the 'AIA'),⁴ which supersedes an earlier Tree Survey.⁵ The main parties agree that the AIA does not alter the proposal, rather it provides additional detail based on more recent investigations. I have therefore had regard to the AIA.
7. In respect of viability, before me is a Statement of Economic Viability dated February 2016, an undated addendum which the appellant clarified at the hearing was submitted on 11 April 2016, and a further addendum dated December 2016. These documents, all prepared by consultancy Intali, are hereafter referred to for brevity as the first, second and third viability reports respectively. The Council reached a decision on application Ref PA15/08897 with regard to the first and second viability reports, and commented on the third at appeal. I have considered all in reaching a decision.
8. Nearby residents have expressed concern regarding the adequacy of the notification served by the Council of the proposal. The Council demonstrated at the hearing, however, that appropriate notice was served, and there is no robust evidence before me to the contrary.⁶
9. The appeal site is within an area designated for the purposes of preparing a neighbourhood plan. However, being at an early stage of development, the Falmouth neighbourhood plan cannot yet be accorded material weight.⁷ No specific policies thereof have been brought to my attention.

Main issues

10. The main issues are:
 - i. whether or not the development proposed would preserve or enhance the character or appearance of the Falmouth Conservation Area, and
 - ii. whether or not the development proposed makes appropriate provision for affordable housing and towards public open space.

Reasons

Falmouth Conservation Area

11. The site is within the Falmouth Conservation Area (the 'FCA'). Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas. This requirement is essentially reiterated in policy 24 'Historic environment' of the Local Plan.

⁴ Prepared by Aspect Tree Consultancy, which includes a Tree Constraints Plan and Tree Survey data sheets, both entitled 04733 TCP.

⁵ Prepared by Evolve Tree & Landscape Consultancy, dated August 2013.

⁶ Pursuant to the relevant provisions of the Town and Country Planning (Development Management Procedure) (England) Order 2015 at application stage. The Council's notification letter of the appeal is dated 4 May 2017 and that related to the hearing dated 20 June 2017, the details of both being correct.

⁷ Having yet to reach Regulation 14 of the Neighbourhood Planning (General) Regulations 2012 as amended.

12. Similarly the National Planning Policy Framework (the 'Framework') sets out that 'great weight' should be given to the conservation of designated heritage assets.⁸ The Framework further explains that any harm to the significance of heritage assets resulting from development should be balanced against the public benefits that would arise.⁹
13. The appeal site is a parcel of land adjacent to Melvill Road and the railway track running between Falmouth Town and Falmouth Docks stations. It is sandwiched between a site to the east where planning permission has been granted in the past by the Council for 12 apartments (the 'adjacent permission'),¹⁰ and a modern apartment block named Holm Oaks to the west. Formerly part of a railway siding, at some point the appeal site has passed into private ownership and has been left largely untended for some time.
14. The topography of the site steps down significantly from Melvill Road towards the railway track. Notwithstanding the relatively poor soil quality resulting from the site's former use,¹¹ it is presently overgrown with vegetation and a significant number of self-seeded trees of varying degrees of maturity are present. Given the essentially natural character of the appeal site, any remains of permanent structures or fixed surface infrastructure, if formerly present, have blended into the landscape in the process of time. As such I do not consider the site to be previously developed land as defined in the Framework.
15. The Falmouth Conservation Area Appraisal published in October 1998 (the 'CAA') explains that the FCA is characterised predominantly by grand properties set within landscaped grounds featuring formal, often exotic, planting as opposed to organic greenery. The Council confirmed during the hearing that on 3 November 1998 the boundary of the FCA was expanded to include the appeal site, pursuant to the recommendations of the CAA.
16. Paragraph 5.7.3 of the CAA explains that 'the wooded nature of Falmouth is also seen to advantage in many of the roads just outside the present conservation area', an accurate description of the appeal site which fell just outside of the FCA as it stood in October 1998. Therefore whilst there is limited specific reference to the appeal site in the CAA, the wooded nature of this area is nonetheless referred to therein as a positive feature.
17. The Cornwall & Scilly Urban Survey: Historic characterisation for regeneration, published in May 2005, has also been brought to my attention (the 'Urban Survey'). Whilst this is an evidence-based document as opposed to planning guidance, the Urban Survey further refers to the 'strong 'green' and 'wooded element' to the character of the surrounding area, and to the 'long linear 'plantation' of trees and greenery' alongside the railway.¹²
18. I acknowledge that the majority of trees present on site are sycamore or ash, species common in Cornwall, and that the particular constraints of the site may serve to limit the growth of some. Nevertheless the appeal site has emerged as

⁸ Paragraph 132.

⁹ Paragraphs 133 and 134.

¹⁰ Ref PA12/00329.

¹¹ As set out in paragraph 7.44 of the AIA.

¹² At pages 97 to 98.

such organically,¹³ and there is nothing to indicate that its woodland character would be affected other than by active intervention. Its character results from the density of trees present, rather than from the presence of individual specimens.

19. I accept that the surrounding area is characterised predominantly by grand properties set within landscaped grounds. Nevertheless natural and wooded areas are identified in the CAA and Urban Survey as positive aspects of the character and appearance of the area. The natural wooded character of the appeal site is readily apparent from Melvill Road adjacent, and Bar Lane on the opposite side of the railway tracks. Melvill Road is a central route through Falmouth close to the docks and nearby hotels and guesthouses, and as such is regularly used by motorists and pedestrians.
20. In this context, the appeal site presently contributes positively to the character and appearance of the Conservation Area. It lends a semi-natural character to the urban environment and is readily apparent from a number of nearby vantage points. It also serves as a visual reminder of the historic character of the area as a wooded headland, as described in the CAA.
21. The Council state that, were the development to proceed, of 70 recorded trees on the site 52 would be felled, 14 of which the appellant contends would require removal in any event.¹⁴ Notwithstanding the challenges of establishing exact figures, the appellant accepts the broad proportions that these figures represent. It is therefore not disputed that the proposal would result in the felling of a significant number of trees, nor that the existing woodland character of the site 'makes some contribution to the conservation area'.¹⁵ Certain specimens within tree group TG2, which would be removed in its entirety, are furthermore identified in the AIA as trees with 'material conservation value'.¹⁶
22. Tree Protection Plan 04733 TPP shows which trees are proposed for retention or felling. Aside from a handful of trees proposed for removal to enable vehicular access, the other trees closest to Melvill Road are intended to be retained. This approach intends to limit the visual effects of the proposal. However plan 04733 TPP shows that protective fencing designed to ensure the wellbeing of retained trees during construction would transgress the theoretical root protection of several further trees close to Melvill Road.¹⁷
23. I accept that sycamore and ash are moderately tolerant of root pruning,¹⁸ and that roots of trees on the site may extend predominantly towards Melvill Road as the soil depth in this direction is greater than towards the railway tracks. However the appellant clarified during the hearing that the AIA is not based on site investigations to establish the extent of tree roots. Moreover given the relatively poor quality of soil at the appeal site, it may be the case that tree roots have extended beyond theoretical root protection areas in order to source nutrients. I am therefore not satisfied that the evidence before me necessarily

¹³ The AIA describes the appeal site as representing a 'pioneer woodland'.

¹⁴ Council statement of case, paragraph 5.20.

¹⁵ Appellant statement of case, paragraph 2.10.

¹⁶ Comparing the AIA Tree Constraints Plan 04733 TCP and the associated Tree Survey.

¹⁷ With reference to British Standard 5837:2012.

¹⁸ Matheny, N., and Clark, J. R. (1998) *Trees and Development: a Technical Guide to Preservation of Trees During Land Development*, International Society of Arboriculture.

reflects the true extent of site clearance that would occur were the development to proceed.

24. I acknowledge that the principal outlook from the apartments proposed would be towards the railway track, rather than towards Melvill Road, and that this would limit the potentially enclosing presence of trees nearby for future occupants. Nevertheless, it is intended that various retained trees, or those planted in compensation for loss, would be in close proximity to the building proposed. The appellant accepts, in this regard, that this close inter-relationship would be likely to require further pruning, for example on safety grounds, to avoid nuisance from falling debris (which would be difficult to resist). Such works would further reduce the dense wooded quality of the site.
25. I have established that the appeal site contributes positively to the character and appearance of the FCA. This contribution results from its dense natural wooded character, which would be substantially eroded by the development proposed. I am furthermore not satisfied that the evidence before me reflects the true extent of site clearance that would result. I therefore conclude that there would be material harm in this regard and thus that the proposal would not preserve or enhance the character or appearance of the Falmouth Conservation Area in conflict with the approach in policy 24 of the Local Plan and relevant elements of the Framework.
26. Given that the appeal site represents a modest element of the FCA, which is more commonly characterised by grand properties with formal landscaping, the harm arising can fairly be described as less than substantial in the terms of the Framework. There would however, still be real and serious harm, a consideration to which I am required to afford considerable importance and weight to. That harm needs to be balanced against the public benefits of the proposal, a matter to which I return later.

Affordable housing and open space provision

27. In summary, policy 8 'Affordable housing' of the Local Plan establishes that relevant proposals for development in Falmouth should provide for 35% affordable housing. This approach seeks to respond to high levels of affordable housing need; the Council explain in their statement of case that presently 754 households are registered in Falmouth as being in need of affordable housing. Based on the approach set out in the Council's emerging Affordable Housing Supplementary Planning Document (the 'SPD'), it is common ground between the main parties that an off-site contribution of 35% in this instance would be £279,300.
28. Policy 10 'Managing Viability' of the Local Plan explains that where 'appropriate evidence' shows that the target proportion of affordable housing set by policy 8 cannot be met on viability grounds, a flexible approach may be taken. 'Appropriate evidence' is defined in no greater detail in the Local Plan, and the approach in the SPD in this respect can only be accorded limited weight on account of its current stage of development. Paragraph 173 of the Framework broadly reiterates the approach in policy 10, namely that the costs of any requirements applied to development should not undermine 'competitive returns' or compromise deliverability.

29. The appellant's viability evidence is based primarily on a comparison of the estimated land value of the site at present, benchmark land value ('BLV'), against the land value that would be achieved were permission granted. The former is subtracted from the latter to arrive at a residual land value ('RLV'), which establishes viability.¹⁹ BLV has been established based on information from one local estate agent, Laskowski & Company. That valuation is reproduced at appendix III to the first viability report. There is no evidence in the valuation as to how figures of £30,000 per 'plot' or £420,000 for the site have been calculated, they are simply stated to be thus. Whilst there is an indication that these values have been established with reference to completed apartments in the Holm Oaks building neighbouring the site, no further details are given in this regard.
30. In the first viability report, based on the Laskowski & Company valuation and applying a 20% reduction accounting for risks in securing planning consent, the appellant's estimate of BLV is £336,000. In the second and third viability report the appellant adopted instead a 25% reduction accounting for risks in securing consent, resulting in a revised BLV of £315,000. Whilst securing planning permission is inherently subject to a degree of uncertainty, the evidence before me does not specify what factors have resulted in a revised approach to accounting for risk; the explanation given in this respect is simply 'in order to try and reach agreement'.²⁰
31. In the first and second viability reports, returns predicted to arise from the development proposed are forecast with reference to seven examples of flats elsewhere in Falmouth.²¹ Of these examples, Nos 3, 4 and 5 are at a significant distance from the appeal site, which qualifies the extent to which they are directly comparable with the returns that would result from the development proposed. Example No 7 is a flat within adjacent Holm Oaks. As established above, the Holm Oaks development informed the appellant's BLV calculation.
32. The value of example No 7 is given as £5,768.90 in terms of pounds per-square-metre. This is higher than any other example in the first viability report. It is also significantly greater than the returns forecast by the appellant of £3,884.74 per-square-metre in either the first viability report or of £3,938 in the third viability report. The appellant's viability evidence is, therefore, self-contradictory in using neighbouring Holm Oaks as the basis for calculating BLV, whilst using different examples for forecast returns from development.
33. I accept that several elements of the appellant's viability calculations are drawn from the benchmark figures established in the Council's Housing Strategic Viability Appraisal dated September 2012 supporting the Local Plan, including a profit margin of 20%, professional fees of 10% and a contingency sum for unforeseen expenses of 5%. However the Council's Viability Appraisal was undertaken at a strategic rather than site-specific level. There is limited evidence before me to substantiate the use of benchmark figures in this instance, notably evidence related to the buoyancy of the local housing market which may indicate that an alternative profit margin is acceptable.

¹⁹ Paragraph 22 of the first viability report.

²⁰ Paragraph 11 of the second viability report.

²¹ Paragraph 16 of the second viability report.

34. Moreover, based on the methodology in the Council's Viability Appraisal, adjusted with reference to subsequent changes in house price indices, the Council calculate the BLV as approximately £140,000. There is insufficient evidence before me to reconcile the BLV figures advanced by the appellant with this figure, particularly as a number of elements of the appellant's viability calculations are drawn directly from those in the Council's Viability Appraisal.
35. I am furthermore not satisfied that the change in RLV valuation from £315,000 in the first viability report, to £234,000 in the third, is supported by appropriately robust evidence. The appellant explains that this results from the misallocation of revenue funding in the first viability report. However there is little evidence before me in relation to financing arrangements in support of either position. The principal references to development finance in paragraphs 72 and 73 of the first viability report are solely to finance at an interest rate of 6.25%. This appears to be taken directly from the Council's Viability Appraisal without adjustment for the specifics of development finance available in this particular instance, or the nature of the local housing market (which may affect finance availability, terms and repayment timescales).
36. Whilst I accept that assessing viability is reliant on judgement rather than absolutes, the shortcomings in the appellant's evidence before me, explained above, mean that it is not an appropriate basis upon which to justify an exemption from the affordable housing provision target set in policy 8 of the Local Plan. I therefore conclude that the proposal fails to make appropriate provision for affordable housing in conflict with policies 8 and 10 of the Local Plan. For the same reasons I am not satisfied that the evidence before me is sufficient to justify the lack of a contribution towards associated public open space provision as is required by policy 28 'Infrastructure' of the Local Plan.

Other matters

37. I have considered the concerns raised by residents nearby including in relation to the ecological and environmental effects of the development proposed, design quality, the living conditions of future occupants and those nearby, road safety, and the potential effects of development on the structural integrity of neighbouring properties. Some of these matters would be capable of resolution through suitably-worded conditions were the development otherwise appropriate. On the evidence before me,²² and with regard to the nature of the development proposed and its surroundings, I am not of the view that unacceptable effects would result in respect of these issues (a position consistent with that of the Council). Accordingly these matters remain neutral in my consideration of the case.
38. Nearby residents have queried how the proposal would relate to the adjacent permission, specifically as part of the appeal site is annotated on plan 1442-3 supporting the adjacent permission as 'treed area to remain as existing subject to an agreed management plan'. Given my conclusions on the main issues as

²² Including with regard to the supporting Extended Phase One Habitat Survey prepared by Spalding Associates, Design and Access Statement, Environmental Impact Report – Noise prepared by Eddie Jewell Acoustics, as the main parties agree that the separation distance between habitable rooms within the building proposed and properties along Bar Lane at approximately 55metres substantially exceeds the recommended minimum separation distance in the Cornwall Design Guide adopted on 12 March 2013, and access arrangements as shown on plan 1985.D.201 Revision A.

set out above, there is no need to look in detail at this matter, being mindful that the relationship between the two developments was not a reason for refusal.

Overall planning balance and conclusion

39. As set out earlier, there is no suggestion that the Council is unable to demonstrate a five year supply of housing land. As such relevant policies for the supply of housing are not out of date having regard to paragraph 49 of the Framework. Moreover, since I find no conflict between the relevant policies of the development plan and the Framework, the policies are not otherwise out of date. On that basis, the appeal falls to be determined in accordance with the development plan, unless material considerations indicate otherwise.
40. I have found that there would be material harm to the character and appearance of the FCA. There is also harm in terms of the absence of any contribution towards affordable housing or open space provision. Those harms bring the development proposed into conflict with the development plan as a whole, and with the approach in the Framework.
41. I recognise that there would be some benefits of the scheme, including the provision of additional homes in Cornwall in a sustainable location, in supporting employment during construction, and as future occupants would make use of and support nearby services and facilities. Furthermore, notwithstanding the confines of the site which provides only limited opportunity for compensatory planting to offset the visual effects of the development proposed, or for the felling of certain trees to enable others to achieve greater maturity than would have been possible in the absence of the proposal,²³ I recognise that there may be some, albeit modest, benefit in actively managing the woodland here.
42. Overall, however, the benefits associated with the erection of 14 new homes would be limited, particularly when compared against the minimum housing target of 2,800 for Falmouth-Penryn, established via the Local Plan. Moreover the support accorded in general terms to enabling housing delivery in the Local Plan and Framework is not at the expense of character and appearance.
43. In my view, the public benefits of the proposal do not outweigh the harm to the FCA that would result from the development proposed. The combined benefits of the scheme do not justify making a decision in this instance that is contrary to requirements of the development plan. In the absence of sufficient material considerations to indicate otherwise I therefore conclude that the appeal should not succeed.

Thomas Bristow

INSPECTOR

²³ As the appellant contends would result in paragraph 2.27 of his statement of case.

APPEARANCES

FOR THE APPELLANTS:

Mr Jagtah Singh
Mr J Kiely
Mr Adam Burdett
Mr Iestyn John

Marble Homes
Aspect Tree Consultancy
Intali
Bell Cornwell

FOR THE LOCAL PLANNING AUTHORITY

Mr Chris Rose
Mr Mark Ball
Mr Alan Rowe

Cornwall Council
Cornwall Council
Cornwall Council

INTERESTED PERSONS

Ms Belinda Whiting
Dr Richard Cranage

Local resident
Local resident

Richborough Estates

DOCUMENTS

1. Transcript of Ms Belinda Whiting's hearing statement.
2. Table comparing appellant and Council figures for existing site value and forecast valuation in the event that the development proposed is permitted.
3. Cornwall Council decision notice for application Ref PA12/00329 (including associated Tree Protection Plan prepared by Evolve Tree & Landscape Consultancy and supporting plan No 1442 – 3).

Richborough Estates