
Appeal Decision

Hearing held on 9 December 2014

Site visit made on 10 December 2014

by Olivia Spencer BA BSc DipArch RIBA

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

Decision date: 28 January 2015

Appeal Ref: APP/D0840/A/14/2221806

Land of Bickland Water Road, Falmouth, Cornwall

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Midas Commercial Developments Ltd against the decision of Cornwall Council.
 - The application Ref PA13/09608, dated 18 October 2013, was refused by notice dated 11 February 2014.
 - The development proposed was described as 'construction of up to 154 dwellings, estate roads, public open space and associated infrastructure'.
-

Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Midas Commercial Developments Ltd against Cornwall Council. This application is the subject of a separate Decision.

Preliminary matters

3. The application was in outline with access to be considered at this stage and all other matters reserved for later consideration.
4. Drawing 2593 PL-10 rev B was submitted during the course of the application. This amended illustrative masterplan shows a total of 153 dwellings. The Council reached a decision on the application having regard to this amendment. Consequently I have considered the appeal on the basis that the proposal is for a development of up to 153 dwellings.
5. A section 106 agreement to provide 38.5 percent of the development as affordable dwellings and an area of land for cemetery use, and to provide contributions towards transport, highways and education facilities was submitted at the hearing.

Main Issues

6. The main issues are:
 - the effect of the proposed development on the setting of St Budock Church which is listed grade II*

- the effect on the character and appearance of the area

Reasons

7. The appeal site is agricultural land located adjacent to but outside the Falmouth settlement boundary to the west of Bickland Water Road.

Setting of St Budock Church

8. The grade II* Church of St Budock is a fine example of a late medieval parish church that sits in a small hamlet or Churchtown on a ridge above the village of Budock Water. Accompanying the church are two Celtic Crosses which are Scheduled Ancient Monuments, a number of headstones and tombs, a vestry and enclosing the churchyard a lych gate, wall and railings; all listed grade II.
9. The tower is visible from the surrounding area rising above the wooded skyline and the church has been a feature of the landscape since at least the 13th Century. There is evidence also to suggest that it occupies an ancient religious site. As noted by English Heritage and the appellant, the church is at the centre of a network of historic routes that include that running across the appeal site. Its significance lies therefore not just in its history and architecture but also in its location on the ridge and its historic role as a focal point in the rural landscape.
10. The nature of the wider landscape has changed over time. In particular the expansion of Falmouth has brought urban development as far as Bickland Water Road. To the north of the church industrial units occupy land on both sides of this road and there is planning permission to add further units to the west of the road south of this existing development. In distant views from the east, notably from Falmouth Hospital, the church tower is seen to rise above the trees and vegetation on the ridge beyond the urban sprawl of the town. However closer too, the church is experienced very differently.
11. The lanes and footpaths encircling the churchyard are narrow, largely enclosed by banks, hedges and walls and beyond them, with the exception of the Churchtown buildings and gardens, there are open fields. The churchyard was extended in the 19th Century and stands at a higher level than the land which falls away to the south and east. From here there are views to the south and south-east over what is essentially a traditional agricultural landscape of fields, hedges and mature trees with relatively little of the urban fringe of Falmouth visible. This contrasts with the view to the north-east from the churchyard where, as noted at paragraph 13 of the appeal decision relating to a proposal for industrial units further north on Bickland Water Road¹, immediately beyond the adjacent fields large commercial buildings are visible against a rising backdrop of urban development.
12. The proposed development would occupy two fields to the south-east of the church. At present these provide not only part of the immediate rural context for the church, but also a sense of spaciousness and connection to the wider rural landscape that is not available in other views from the churchyard. Viewpoints (VP) 03 and 04 in the submitted Landscape and Visual Impact Assessment (LVIA) illustrate this. In the photograph of VP 03 taken from the church, what is seen is mature vegetation and beyond that open sky. In VP 04 Falmouth is glimpsed on the far horizon but the view is predominantly of the

¹ APP/D0840/A/12/2169988 & APP/D0840/A/12/2172374

hedge and of large trees along the southern boundary of the appeal site. As a result it is from the south-east corner of the 19th Century churchyard that the greatest sense of the church's commanding position can be experienced. It is not surprising therefore that the LVIA accords both of these viewpoints high sensitivity. These are features that make a positive contribution to the heritage significance of the church and accompanying listed structures.

13. Given the number of dwellings proposed it is clear from the illustrative layout and noted in the LVIA, that even in summer when the hedges and trees are in full leaf, roofs of dwellings would be visible in these views. With regard to VP 03, the LVIA states that the extent of the development would run across the width of this view. In south-east views, the buildings would in some cases be only just beyond the 19th Century churchyard boundary and the eastern hedge of the later cemetery. Even if the extent and height of this boundary hedging was retained or supplemented, the impact would be significant. The development would bring buildings on the eastern slopes of the ridge nearer to the church and substantially nearer to the southern part of the churchyard.
14. Views to and from the church to the north and west are constrained by topography and the buildings and walls of the Churchtown. These would be unaffected by the proposed development and thus retain their existing largely rural character. This in no way lessens however the harm that would arise from the enclosing and urbanising effect the proposal would have on the more open south-east slope.
15. With regard to the industrial units allowed on appeal²; if constructed these would be visible to an extent in some eastern views from the churchyard beyond the field identified for potential expansion of the cemetery. The proposed buildings would individually be smaller in scale than any of these commercial structures however, the number of units proposed is substantially greater and, as indicated on the illustrative layout, the space between buildings would thus be considerably less. As a result the proposed development would be less visually permeable. In view of this, the more sensitive landscape context that it would occupy and the extent of the proposed development across the south-eastern slope of the ridge and up to the churchyard, no direct comparison with the adjacent appeal scheme in terms of visual impact can be made.
16. The footpaths surrounding the churchyard other than on its southern edge would, as a result of their contained and verdant nature, be largely unaffected. The housing sited beyond the eastern boundary hedge of the cemetery would detract from the rural character of the path leading south from the churchyard and houses would be visible at the western end of the footpath as it runs from Menehay House towards Bickland Water Road. However, from here views to the church are limited and the character of the footpath is largely derived from the mature vegetation and the fields to the south. For this reason I consider the verdant setting of the grade II listed Menehay House would be preserved. Further east along this path views of the church diminish and the nearby built-up area of Falmouth is more prominent. The effect on the existing character of these paths would therefore be limited.
17. The route that crosses the site from its south-east corner to the church is different in nature. Like the path that crosses the industrial unit site, it runs

² APP/D0840/A/12/2169988 & APP/D0840/A/12/2172374

through an open field to the boundary of the proposed cemetery extension field and is unenclosed by hedges or banks. The application in this case is in outline, nevertheless the appellant has indicated an intention to retain a line of sight from the south-east corner of the field to the church. The illustrative layout shows this as being along the 'Primary Street' of the development. An area of open green space in the south-east corner, if provided as indicated, would retain some characteristics of its rural origins and would have the potential to beneficially open up access to the locally listed WWII pill box adjacent to the road. However, from this point the route towards the church would essentially be a suburban street.

18. Although potentially wider than other streets in the development, as illustrated it would be enclosed on each side by housing and domestic gardens. Traffic would use the road and vehicles would be parked. Even with additional trees or planting there would be little to distinguish it from the surrounding streets of the development. As such I consider little if anything of its historic rural character and appearance, or evidence of its role within an ancient network of routes would remain readily discernable. I have seen nothing in the evidence before me to suggest that given the density proposed, the site could accommodate any significantly different layout and design that would address this concern.
19. Both the officer's report to committee and the appellant, by quoting from the earlier appeal decision, infer a direct comparison between the nature of the cross site route proposed here with that of the industrial scheme on the adjacent site. However, the retained route through the industrial scheme would pass through a gap between buildings which would be substantially wider than that indicated on the illustrative layout of the appeal proposal. And significantly it would cut across the grain of the development, passing through it as a distinct pedestrian footpath within a 'broad swathe of landscaping'³ bisected at only one point by the vehicle access road. Unlike that shown on the illustrative layout, it would not therefore be subsumed into the form and character of the modern development. For the reasons given I consider the proposed residential development would result in a loss of the distinctive identity and rural character of the path crossing the site, and as a result a diminution of its significance as a historic route.
20. In view of this I cannot agree that the proposal would give greater prominence to the historic routes or provide enhanced views of the church. The paths are evidently well used now and I have seen no evidence that they are unsafe or that the church has been subject to unusual levels of vandalism or theft. Surveillance from the proposed dwellings would not therefore provide any significant benefits in these respects. And whilst some medieval churches are experienced within a cluster of houses, this church sits within a traditional Churchtown and, as noted by the appellant, a sense of scale is provided by existing trees. There is no justification therefore in these terms to erode the historic rural setting of the church.
21. Having regard to all of this and notwithstanding limited harm in some respects, the effect on the setting of the church and churchyard lych gate, wall and railings overall would be harmful. I conclude therefore that the proposed

³ APP/D0840/A/12/2169988 & APP/D0840/A/12/2172374 decision paragraph 11.

development would fail to preserve the setting of the listed buildings contrary to Policy 4D of the Carrick District Local Plan (LP).

Character and appearance

22. The appeal site currently forms part of the rural fringe of Falmouth. Although in close proximity to commercial and residential development to the north and on the other side of Bickland Water Road to the east, the fields have an agricultural character and appearance. The proposed development would result in the site becoming part of the developed Falmouth urban area, and its character would undoubtedly change. However, approaching the town along Bickland Water Road from the south the urban context is readily apparent, and as shown on the illustrative layout existing boundary vegetation along the south and eastern edges of the site could be retained and supplemented. In this view the housing proposed would not therefore be obtrusive.
23. As described above, it is from the church and Churchtown that the adverse effect on the rural character of the site itself would be most apparent and, in terms of the setting of heritage assets, most harmful. Whilst there is agreement between the parties that Falmouth and Budock Water would remain separated by the ridge and no physical coalescence would thus occur, the gap between them would be reduced. For those walking the cross site path, and to a lesser extent the southern boundary path, the sense of moving through open countryside between the two settlements would be diminished. I conclude therefore that the proposed development would have an adverse effect on the character and appearance of the area.

Presumption in favour of sustainable development

24. The development plan for the appeal site is the Carrick District Wide Local Plan (LP) 1998. The emerging Cornwall Local Plan (eLP) is at an early stage on its progress towards adoption. The Council contend that the housing requirement set out in the eLP reflects an objective assessment of need but acknowledge that it has not been tested and that there are credible arguments that point to a higher need. It is agreed therefore that the Council is unable to demonstrate a 5 year supply of deliverable housing land and that in accordance with paragraph 49 of the National Planning Policy Framework (the Framework) relevant policies for the supply of housing should not be considered up-to-date.
25. In these circumstances paragraph 14 of the Framework states that the presumption in favour of sustainable development means that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or where specific policies indicate development should be restricted.
26. The proposal would provide up to 153 new dwellings including affordable housing for which there is an unmet need in the area. This housing would be located adjoining the existing settlement where occupiers would have access to services, facilities and public transport. In the absence of a 5 year housing land supply this is undoubtedly a benefit of the proposal.
27. The appellant has also offered, by means of the submitted unilateral undertaking, to transfer a field to the east of the churchyard to the Council or its nominee for the sum of £1 for use as cemetery land. Whilst I understand

that there is a need for additional cemetery land in the area, I was told also at the hearing that other potential cemetery sites are currently under consideration. The weight I give to this as a benefit of the proposal is therefore very limited. I give no weight to it as a means of preventing development of the field for housing, since the control of development is a function of the planning system and any such proposal would require planning permission.

28. The growth of Falmouth is constrained by topography and landscape designations with the result that future planned expansion is focused on the west of the town. I note in this respect that permission has been recently granted for 300 dwellings north of the appeal site, and west of Bickland Water Road at Kergilliack Farm. It is not surprising therefore that the appeal site is identified in the Falmouth Town Framework as part of a potential housing site. This does not however preclude proper consideration of the merits of the proposal at planning application, or appeal stage.
29. There is some dispute over the specific agricultural grade of the land, but no dispute that it falls within the category of 'best and most versatile' (BMV) agricultural land. Paragraph 112 of the Framework directs local authorities to take account of the economic and other benefits of such land and seek to use other poorer quality land for development. However, I understand that much of the land to the west of Falmouth is BMV land, including at least part of Kergilliack Farm. Given the other constraints on expansion, the designation of the site as BMV does not in this instance weigh overwhelmingly against the proposal.
30. With regard to the effect on the character and appearance of the area I have found little harm to the approach to the town from the south or the character of Bickland Water Road. There would however be an adverse effect on the site itself and the perceived gap between Budock Water and Falmouth. And as set out above the detrimental impact on the setting of the church, churchyard wall, railings and lych gate would be considerable. Paragraph 132 of the Framework notes that the significance of a heritage asset can be harmed or lost through development within its setting. It requires the decision taker in considering the impact of development on the significance of a heritage asset to give great weight to its conservation. Whilst harm to the significance of the heritage assets would be less than substantial, I consider that this is not outweighed by the benefit of the provision of market and affordable housing, the provision of open space, the opening up of access to the pill box and the marginal potential benefit of the offered cemetery land.
31. I conclude overall therefore that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, and that the appeal should be dismissed.

S106 agreement

32. In view of my conclusion that the appeal should be dismissed I have not considered further the contributions sought and offered towards transport, highways and education facilities.

Olivia Spencer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

| | |
|--------------------------|-----------------------------------|
| Mr S Head | Of Counsel |
| Mr N Worlidge | Worlidge Associates |
| Mr L Osborne DipTP MRTPI | Lawrence Associates |
| Mr I Matthew CMLI | Lawrence Associates |
| Mr R Dodge BScHons MRTPI | Business Location Services Ltd |
| Mr J Dodge | CSA Architects |
| Mr S Russell BSc MCIOB | Midas Commercial Developments Ltd |

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|---|-------------------------------|
| Mr J Holman MRICS MRTPI FAAV | Principal Development Officer |
| Miss N Paternoster BScHons PG T&CP PGCert Urban Design(Conservation) IHBC | Senior Conservation Officer |
| Cllr N Hatton | Cornwall Council Budock Ward |

INTERESTED PERSONS:

| | |
|---------------|---|
| Mr S Tribe | Local resident |
| Mr J Bastin | Local resident |
| Mr P Fairbank | Local resident |
| Cllr A Jewell | District Councillor and Town Councillor |
| Mr R Selley | Local resident |

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Costs application submitted by the appellant
- 2 Costs response submitted by the Council
- 3 Completed s106 agreement
- 4 2012 Grant of Planning Permission for cemetery use

Costs Decision

Hearing held on 9 December 2014

Site visit made on 10 December 2014

by Olivia Spencer BA BSc DipArch RIBA

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

Decision date: 28 January 2015

Costs application in relation to Appeal Ref: APP/D0840/A/14/2221806 Land of Bickland Water Road, Falmouth, Cornwall

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Midas Commercial Developments Ltd for a full award of costs against Cornwall Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for development described as 'construction of up to 154 dwellings, estate roads, public open space and associated infrastructure'.
-

Decision

1. The application for an award of costs is allowed in part in the terms set out below.

Submissions

2. The submissions for Midas Commercial Developments Ltd and the response by Cornwall Council were made in writing.

Reasons

3. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. It advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 - persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable
 - not determining similar cases in a consistent manner

Erosion of green space

4. It is noted in the appeal decision that there is agreement between the parties that the proposed development would not lead to an actual coalescence of Falmouth and Budock Water. The case put by the Council was that the development would erode the space between the two settlements. The contribution the appeal site makes to the perceived separation between them is a matter of judgement. The Committee is not obliged to accept the views of its officers. The industrial site to the north and the housing site at Kergilliack are in different locations. It cannot be assumed therefore that the role these play in the relationship between the town and Budock Water is directly equivalent to that of the appeal site and it is not unreasonable for the Council to make a case based on the specific location and nature of the appeal site. The case it made was substantiated by reference to, amongst other things, the findings of the LVIA within the submitted Environmental Statement.

Setting of St Budock Church

5. Notwithstanding the view taken of the Inspector's decision in respect of the adjacent site¹, the Council made a robust case supported by evidence. For the reasons set out in the appeal decision I have concluded that the effect of the appeal scheme would differ from that of the proposed commercial development on the site to the north. In view of these differences it is not unreasonable of the Council to reach a view that harm would result. This was the view of officer's in the report to committee. The report's conclusion that the benefits outweighed the harm was rejected by the committee. There was nothing unreasonable in this, particularly in view of the considerable weight which the Framework gives to the conservation of heritage assets and the Barnwell Manor judgement² which confirms the 'special regard' that must be had to the desirability of preserving the setting of a listed building.

Loss of high quality agricultural land

6. The Framework directs planning authorities to take account of the economic and other benefits of best and most versatile (BMV) land and to seek to use other poorer quality land for development. The officer's report to committee advises that in view of the extent of BMV land in the area it is inevitable that if Falmouth is to expand to meet the needs of future generations some of this land will be lost to some extent. That at least some of the Kergilliack site, where permission for housing was granted by the Council, is BMV land indicates that a balanced view has been reached that the provision of housing is a benefit that outweighs those of BMV land in the Falmouth area. There is no cogent or substantiated case made by the Council that this balanced view is not applicable to the appeal site. Having granted permission for housing on the Kergilliack site and in view of the conclusion reached on the adjacent appeal site for industrial development, the Council has acted unreasonably in objecting to the proposed development on this basis. This has led the appellant to incur unnecessary expense both in preparing this part of the case and in attendance at the hearing to deal with the same.

¹ APP/D0840/A/12/2169988 & APP/D0840/A/12/2172374

² Barnwell Manor Wind Energy Ltd v E Northants DC, English Heritage, National Trust and SSCLG (2014) EWA Civ 137

Costs Order

7. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Cornwall Council shall pay to Midas Commercial Developments Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing that part of the case relating to *loss of high grade agricultural land* and attendance at the hearing to deal with the same.
8. The applicant is now invited to submit to Cornwall Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Olivia Spencer

INSPECTOR