

Appeal Decision

Site visit made on 19 July 2016

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 05 August 2016

Appeal Ref: APP/D0840/W/16/3147376

Land off Bickland Water Road, Falmouth, Cornwall TR11 4SD

- 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 PA15/07631, dated 14 August 2015, was refused by notice dated 12 January 2016.
 - The development proposed is described as an outline planning application for the erection of 94 residential dwellings (33 affordable), estate roads, open space and landscaping to include access, layout, scale and landscaping with design and appearance reserved.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 94 residential dwellings (33 affordable), estate roads, open space and landscaping to include access, layout, scale and landscaping with design and appearance reserved at land off Bickland Water Road, Falmouth, Cornwall TR11 4SD in accordance with the terms of the application, Ref PA15/07631, dated 14 August 2015, subject to the conditions in the Schedule below.

Procedural Matter

2. The appellant has submitted a S106 unilateral undertaking (UU) signed and dated by the current owners of the land. I address this in detail below.

Main Issue

3. The main issue is the effect of the proposed development on the setting of the grade II* listed St Budock Church, including its wider rural setting and network of historic routes.

Reasons

4. S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, when considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
5. A previous development scheme was dismissed at appeal in January 2015¹. The Inspector concluded that there would be a harmful effect on the setting of the listed church, churchyard, lych gate, wall and railings, and because the gap

¹ APP/D0840/A/14/2221806 (LPA Ref PA13/09608)

between Falmouth and Budock Water would be significantly reduced causing harm to the character and appearance of the area. That scheme was for a larger development of 154 dwellings and the site included the field to the west of the current site and south of the cross site path (CSP) linking the church to Bickland Water Road (BWR).

6. In this proposal that field as well as the larger field to the north would be transferred to the Council for the nominal sum of £1 via an obligation in the UU in order that both fields can be used to provide additional cemetery space required by the expansion of Falmouth. The appeal development also proposes a wide landscaped bund, the existing hedgerow enhanced with additional tree planting to the western boundary of the site and the layout of the residential development revised to include an open landscaped area either side of the CSP in order to try and maintain a view of the church tower from BWR. In essence the main issue is therefore whether these alterations are sufficient to negate the harm that the Inspector identified in the previous appeal decision.
7. As the previous Inspector (PI) states, 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. The detailed listing description for the church states that parts of the chancel and south transept are thirteenth century and the west tower is fifteenth century in its entirety. Paragraphs 9-11 of the previous appeal decision elucidate the importance of the church's setting including historic views of its tower and its centre at a network of historic routes. I agree that its significance arises in part from its setting as stated in paragraph 9 of that decision.
8. The application was accompanied by a Landscape and Visual Impact Assessment (LVIA), just as the scheme dismissed on appeal was. I agree with the PI that the greatest sense of the church's commanding position over the landscape towards Falmouth and the estuary to the south-east is experienced from the 19th century churchyard. This view is demonstrated on Viewpoint (VP) 04 in the LVIA. The PI found that the roofs of the nearest houses in the previous scheme would have been visible from this view and the impact on the church and churchyard significant.
9. However, the nearest dwellings would now be separated by the intervening field, which would remain undeveloped. The edge of the site is approximately 5m lower than the level of the 19th century cemetery². The western boundary hedgerow of the site would be strengthened with additional tree planting and with a wide landscaped bund. Under these circumstances the nearest proposed houses would not be visible from this VP and so it would be unaffected. The church and churchyard would also retain its open setting because it would be separated from the development by an open field, albeit that this field may well one day be used as an extension to the church's cemetery.
10. The Council argues that the landscaped bunds either side of the CSP would themselves be an alien feature having an unacceptable enclosing effect on the church and its setting. I disagree. These planted bunds would read in the

² As shown on the Topographic Survey - Plan Ref 1001 Rev A

landscape as simply another belt of trees, such tree belts being common in the area including that on the ridge where the church is sited.

11. LVIA VP 01 shows the existing view looking west towards the church tower from the eastern end of the CSP. The PI noted that the illustrative masterplan in that scheme showed the line of the CSP to be along the 'Primary Street' enclosed by housing on each side and as such would have destroyed the important historic rural character of the path.
12. The appeal scheme gives careful consideration to views of the church tower from this VP and to the CSP itself as a historic route by not only retaining it but also a generous open green sward running through the site alongside this primary vista. I consider this would be sufficient to retain the important view of the church tower, noting that the tower is likely to be more visible in winter when there are no leaves on the intervening trees than it was during my visit in mid-summer. The lower level of the site compared to the location of the church would also mean that the church tower would remain visible from BWR above the roofs of the new two-storey dwellings.
13. This would be notwithstanding the fact that the new houses would be within the periphery of this view and in its foreground, the access road would bisect the CSR and as a result there would be a clear impact on the rural setting of the church tower by the residential development of this field, as acknowledged by the Council in its original Committee report. It is also notwithstanding that St Budock Church is a fine example of a medieval church typical of the Landscape Character Area within which it falls³.
14. VP 02 shows the view towards the church across Eglos field. This view would be affected by the approved industrial development to the north of the site but, as in the previous scheme, the appeal development would not worsen that impact and so is unobjectionable in this respect.
15. The development would be seen from the eastern part of the footpath to the south of the site but it would not be seen from the grade II listed Menehay House and because the south-western field would not now be developed views of the church tower and cemetery from the western part of this footpath would be retained in their totality.
16. The development would be partially seen from VP 11 (the middle distance view from Falmouth Hospital) but the north-western field allocated for the cemetery extension is more prominent from this view and the church tower would visually remain within its open setting. It is the trees on the ridge line and the church tower which dominate the distant view from this location and they would continue to do so.
17. Although the church tower can just be made out in the distant views from Pendennis Point and Pendennis Castle (VPs 09 and 10) so also can the two wind turbines situated at Nangitha Farm to the north-west. The proposed residential development would not be as high as the tower or these turbines and I doubt whether it would be able to be made out against the foreground of the urban development of the town. None of the other VPs in the LVIA would be significantly impacted by the development.

³ CA13 - Fal Ria, Truro and Falmouth of the Cornwall and Isles of Scilly Landscape Character Study 2008

18. Other than its tower, the church cannot be seen from the site (including the CSP), the footpath to the site's southern boundary or across Eglos field. Its main form and immediate setting is only visible from the footpaths close to it and from Churchtown. The church is separated from the appeal site and the wider footpath network by the topography and the mature trees that are located on the ridge on which it sits. Even the two wind turbines, which are relatively close to it, have minimal impact on its principal and most important setting because they are shielded by the buildings in Churchtown. The proposed residential development would not impact on this immediate setting of the church.
19. But, for the reasons set out above I conclude that it would fail to preserve the setting of St Budock Church, albeit that the harm arising would be less than substantial. I give considerable weight and importance to this harm as required by statute, paragraphs 131-134 of the National Planning Policy Framework (NPPF) and recent relevant court cases⁴.
20. In such cases NPPF paragraph 134 requires me to weigh the harm against the public benefits of the proposal. Although the Council said in its appeal statement (in May) that it could not demonstrate a five year supply of deliverable housing sites (5YHLS), it now believes it can, against the full objectively assessed need in the emerging Local Plan⁵. However, I have seen no evidence to demonstrate that this is conclusively the case. I therefore attribute little weight to this belief.
21. The public benefits of the proposal are that it would provide 94 dwellings in an area which appears not to have a 5YHLS, or where at best this is open to reasonable doubt. That it would do so on the edge of one of the County's largest towns with a full range of facilities near at hand lends considerable weight to such a benefit. The NPPF seeks to boost significantly the supply of housing and this development would partly help to do so in Cornwall and certainly in Falmouth.
22. Furthermore, 33 or 35% of the proposed dwellings would be affordable in an area which has an unfulfilled need much greater than that number of units. These are significant benefits. Set against what would be, at worst, a modest level of harm to the setting of this designated heritage asset, which would not affect its significance as a listed building, I conclude that the public benefit of providing additional dwellings and especially affordable homes would outweigh the harm identified. In concluding this I have taken full account of the objections expressed by Historic England in its letter of 6 October 2015, as well as similar objections from Budock Parish Council and local residents.
23. Policy 4D of the Carrick District Local Plan 1998 states that proposals which would have a significant adverse impact upon the setting of a listed building will not be approved. For the above reasons the proposed development would not have a significant adverse impact on the setting of St Budock Church and this Policy would be complied with.

⁴ Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage, National Trust and SSCLG [2014] EWCA Civ 137 & Jones v Mordue, SSCLG & South Northamptonshire Council [2015] EWCA Civ 1243, 03 December 2015

⁵ Email from Council of 8 July

Other Matters

24. The UU dated 19 July 2016 would deliver the affordable housing at an appropriate mix of 70% rented homes and 30% intermediate homes; a transport contribution of £88,839 towards wider strategic pedestrian, cycle and public transport improvements in the area funded by proportionate contributions from developments contributing to expanding Falmouth via a S278 agreement⁶; the delivery of specific off-site pedestrian and cycle improvements in BWR of at least £73,116 prior to first occupation of any of the dwellings; the provision of on-site public open space including a sustainable surface water drainage scheme through a management plan and maintenance sum to be implemented by an appropriate management body; the agreement and implementation of a travel plan in order to maximise the use of sustainable modes of transport; and the transfer of the two western fields in the current owners' possession to the Council for the nominal sum of £1 for future cemetery expansion; all obligations to be delivered at appropriate timings in relation to the construction and occupation of the dwellings.
25. In its appeal statement the Council has justified these obligations by reference to various appended documents and confirmed that each of the above matters regulates the development and mitigates its effects. It considers the requirements of the UU are necessary to make the development acceptable in planning terms as they will mitigate effects of the development on those matters identified, those effects are as a direct result of the proposal and the requirements are proportionate. As such it considers that these obligations would comply with Regulations 122 of the *Community Infrastructure Levy Regulations 2010*. I have no reason to doubt that this would be the case, or that they would not comply with Regulation 123 because the highway works would be delivered via a S278 agreement due to S106 'pooling' restrictions.
26. The Council, in its letter of 28 July commenting on the UU, has made a series of detailed and specific objections to the phrasing of the UU in respect of the appellant's obligation to deliver affordable housing. Most of these amount to desired tightening up or clearer explanation of the terms of the obligation but in my view the current wording of the UU in this respect is still acceptable because it would still deliver the desired amount of affordable housing. Whilst I appreciate that the Council would prefer the definition of 'local connection' to include the whole of the County it is clear that Falmouth and Budock Parish have need for well in excess of 33 affordable dwellings themselves and so I do not see that this is fatal to the success of the UU.

Conditions

27. The Council has suggested 17 conditions, as set out in its Committee Report. Most of these are necessary but I have amended some of the wording, further split the two suggested contaminated land conditions and amalgamated others in the interests of clarity and brevity and to reflect Planning Policy Guidance. A condition relating to the Travel Plan is unnecessary because this

⁶ As set out in the Falmouth Town Framework: Transport Strategy 2030 & the Cornwall Infrastructure Needs Assessment – Falmouth and Penryn Schedule attached as appendices to the Council's appeal statement

is covered in the UU, as is one relating to the details of foul drainage because this is covered by the other regulatory regimes.

28. A condition setting out the approved drawings is necessary to provide certainty over the development that has been allowed. A Construction Method Statement condition is required in order to minimise environmental impacts including on BWR and to nearby residents. A Landscape and Ecology Management Plan is necessary to ensure habitats and species are safeguarded and enhanced where appropriate. Conditions are necessary to deal with any contamination on the site in a structured and effective way.
29. Details of estate roads, junctions, crossing points and pedestrian/cycle links are necessary prior to development commencing in the interests of highway safety, and parking must be provided as indicated so that residents do not park on busy BWR and lead to congestion. A condition secures the implementation of the SUDS surface water drainage proposals and this ensures that the development will be suitably drained and it and surrounding land is not at risk of flooding. A condition secures the implementation of the approved landscaping scheme and that no development shall commence prior to the submission and approval of an Arboricultural Method Statement, to ensure that the development is suitably landscaped and important trees are retained and protected during construction work.

Conclusion

30. For the reasons given above I conclude that the appeal should be allowed, subject to the conditions below.

Nick Fagan

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved drawings: CSA Architects drawings S-01 Rev A, L-01 Rev A, PL-01 Rev F, PL-02 Rev F, PL-03 Rev B, PL-04 Rev A, PL-201; WSP drawing 31413-PHL-04 Rev A; Nijhuis Industries/H2OK drawings 3101 Rev A, 3001 Rev A, 3002 Rev A, 3003 Rev A; MeiLoc landscape drawings 02.01 Rev (a), 02.02 Rev (a), 02.03 Rev (a), 02.04 Rev (a) & 02.05 Rev (*).

- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii) delivery, demolition and construction working hours;
 - ix) details of roles and responsibilities, monitoring and reporting, emergency responses, community and stakeholder relations and training.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 6) Prior to any development commencing a Landscape and Ecology Management Plan (LEMP) shall be submitted to the Local Planning Authority that will address the following: implementation, improvement and mitigation of ecology in accordance with the Design and Access Statement and Ecology Reports submitted with the application.
- 7) No development shall take place until a Written Scheme of Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions - and if indicated by the Desk Top Study submitted with the application:
- i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 8) No development 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 Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:

- i) a survey of the extent, scale and nature of contamination;
 - ii) 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; and
 - archaeological sites and ancient monuments.
- 9) 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. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 10) Any contamination that is found during the course of construction of the approved development 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 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 is resumed or continued.
- 11) No development shall take place until a monitoring and maintenance scheme to demonstrate the effectiveness of the proposed remediation shall have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented, and the reports produced as a result, shall be submitted to the local planning authority within 14 days of the report being completed and approved in writing within 14 days of receipt. If any of these reports identifies any discrepancy with the verification report then a protocol, including timescale, for the necessary remediation shall be submitted to the local planning authority within a further 14 days and approved in writing within 14 days of receipt. Thereafter, any necessary remediation and verification shall be carried out in accordance with the approved protocol.

- 12) No development shall take place until detailed plans have been submitted to and approved in writing by the Local Planning Authority (in conjunction with the Highway Authority) relating to line, level and layout of the access road junctions including the pedestrian crossing and pedestrian/cycle links and access points and their visibility splays, means of construction and surface water drainage (in accordance with drawing number 31413-PHL-04 Rev A). The approved junction and ancillary works shall be laid out and constructed in accordance with the requirements of a Section 278 Agreement under the provisions of the Highways Act 1980 as set out in the Unilateral Obligation dated 19 July 2016.
- 13) No development shall take place until details of the standards to which the estate roads are to be constructed shall have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the roads have been constructed in accordance with the approved details.
- 14) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. PL-02 Rev F for cars to be parked and for the loading and unloading of vehicles and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.
- 15) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with the submitted details as shown on the Nijhuis Industries/H2OK drawings 3101 Rev A, 3001 Rev A, 3002 Rev A, & 3003 Rev A.
- 16) The approved landscaping scheme shall be carried out in accordance with the approved plans.

The tree and hedge protection measures shall be completed in accordance with the approved scheme before the development commences and shall be retained until it is complete. Notice shall be given to the Local Planning Authority when the approved scheme has been completed.

All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in accordance with a programme of works that shall have been submitted to the Local Planning Authority within one month of the works starting on site.

Any trees or plants which within a period of 5 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.
- 17) No development shall commence (including site clearance) until an Arboricultural Method Statement has been submitted to and approved by the Local Planning Authority. All works shall be undertaken in strict accordance with the approved Statement.

End of Conditions Schedule