



Appeal Decision

Site visit made on 30 September 2020

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2020

Appeal Ref: APP/D0840/W/20/3249081

Play Area, Comfort Wartha, Constantine, TR11 5AZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Crownmark Developments Ltd against the decision of Cornwall Council.
 - The application Ref PA18/05642, dated 13 June 2018, was refused by notice dated 24 September 2019.
 - The development proposed is construction of single dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a single dwelling on the Play Area, Comfort Wartha, Constantine, TR11 5AZ, in accordance with the terms of the application, Ref. PA18/05642, dated 13 June 2019, and subject to the conditions listed below:
 - 1) Details of the appearance, landscaping, layout and scale, (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
 - 2) An application for approval of reserved matters must be made no later than the expiration of 3 years from the date of this decision and the development hereby approved shall commence no later than 2 years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
 - 3) The development hereby permitted shall be carried and completed in strict accordance with the recommendations set out within section 4 (interpretation of results, impact assessment and recommendations) of the submitted 'Preliminary Ecological Appraisal' undertaken by Sophie Higgins, which specifies that clearance of the site should be timed to avoid the hedgehog breeding (section 4.3.1 of the submitted appraisal) and bird hibernation periods (section 4.3.2 of the submitted appraisal).

Procedural Matters

2. Various references have been made in the appeal submissions to the section 52 Agreement that accompanied the September 1985 planning permission for eight dwellings and open space (ref. W2/84/00297/O). However, this appeal has been made against the Council's decision to refuse planning permission for a new dwelling on the appeal site. The validity and/or enforceability of the

section 52 Agreement is not the subject of this appeal and is not, therefore, a matter that is before me to determine.

3. A draft 106 Agreement (Deed), with an obligation to pay a financial contribution to offset the loss of the existing open space, was submitted by the Appellant in conjunction with the appeal. This Deed was executed and completed by the Appellant and the Council on 3 November 2020. I have determined the appeal on this basis.

Main Issue

4. The main issue is whether the loss of open space resulting from the proposed development would be satisfactorily replaced by a financial contribution towards the improvement/upgrading of the nearby Constantine Recreational Ground.

Reasons

5. The appeal site comprises a partly open and partly overgrown parcel of land located at the eastern end of the existing cul-de-sac of eight houses. The September 1985 planning permission and accompanying section 52 Agreement for this development, required the owner to layout the appeal site as open space (to include a play area), following which the open space would be dedicated and maintained by the Council (which at the time was Kerrier District Council). I understand that a sum of money was also paid by the owner to the Council to maintain the open space. To date, none of these requirements have come to fruition. The land has not been formally laid out or maintained as public open space. As a consequence, the appeal site remains in private ownership and any access to it has been on an informal basis and at the discretion of the landowner.
6. In March 1999 an appeal to construct a dwelling on the appeal site was dismissed (ref. T/APP/Y0815/A/98/1014538/P7). That proposal sought to relocate the open space to land north-east of the appeal site, which the Appellant also controlled. In paragraph 9 of that decision the Inspector found that the location of the replacement open space, at the rear of the proposed dwelling and out of sight of the estate road, was inappropriate given the security implications that would arise. However, in paragraph 11 the Inspector stated that there may well be advantages in a proposal that sought to make a financial contribution towards the provision of a play area in a location that was more accessible to the village as a whole.
7. Paragraph 97 of the National Planning Policy Framework (February 2019) (Framework) states that existing open space should not be built on unless one of the three exceptions listed at a), b) or c) are met. Policy 13 of the Cornwall Local Plan Strategic Policies 2010 – 2030 (CLP) states that whilst the new development should seek to accommodate open space provision on site, if access to alternative facilities in the area is available a contribution to the ongoing maintenance and management of those facilities may be appropriate in lieu of a reduced requirement on site. Policy 16 of the CLP also seeks to improve health and well-being through maximising access to and the use of open space.
8. In relation to paragraph 97 a), no assessment has been undertaken to show that the existing open space is surplus to requirements. Similarly, paragraph

- 97 c) does not apply in that the proposed development is not for alternative sport and recreation provision. With regard to paragraph 97 b), the Appellant contends that a financial contribution towards the improvement or upgrade of the Constantine Recreation Ground would provide an appropriate replacement to mitigate for the loss of the open space on the appeal site. This financial contribution would be secured by the completed Deed.
9. The completed Deed includes a financial contribution of £10,000.00 (index linked) to be payable prior to the occupation of the proposed dwelling, to be utilised towards the upgrade/improvement of the Constantine Recreation Ground. I am satisfied that the obligations within this Deed are reasonable and effective. The Council have confirmed that this financial contribution would be distributed on receipt of an application from Constantine Parish Council (CPC) (the Managing Trustees for the Constantine Recreation Ground) for those funds. CPC have, in turn, confirmed that there are proposed projects to improve Constantine Recreation Ground towards which those funds could be utilised.
 10. Based on the history of the appeal site and the associated factors set out above, I consider that the financial contribution included within the Deed would secure an appropriate level of replacement provision for the loss of the existing open space. I also find that the obligations within the Deed are: necessary so as to make the appeal proposal acceptable in planning terms (mitigating for the loss of the existing open space); they are directly related to the proposed development; and, fairly and reasonably related in scale and kind to the development. As such, all three tests set out in paragraph 56 of the Framework are met, and all the three statutory tests in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 are similarly met.
 11. The proposed financial contribution has been calculated using the Open Space Planning Toolkit, reproduced in Appendix 5 to the Appellant's Statement. The contribution has been based on the original development of eight houses, and then been rounded-up. The Council have not challenged this calculation or the proposed sum, and there is no evidence before me to suggest that this sum would not represent an appropriate level of funding to mitigate for the loss of the existing open space.
 12. Furthermore, I note from the Planning Committee Report that the Council's Open Spaces Team advised that had the original 1985 development been promoted now the proximity of Constantine Recreation Ground would have negated the requirement for on-site open space provision (in line with Policy 13.2 of the CLP). Instead, those requirements would now be met by an off-site contribution. As a consequence, the Open Spaces Team concluded that a contribution to improving or upgrading the recreation ground "*would seem the most pragmatic approach.*" This supports my findings on this issue.
 13. Reference has been made to the definition of open space within Annex 2 of the Framework, specifically the ability of such areas to "*act as a visual amenity*". The Council contend that the appeal proposal would result in the loss of an open area that is valued by residents and provides visual links to the open countryside beyond. Whilst I accept that some views would be lost, the resulting harm would not in my view be significant. Moreover, I see no reason at to why, at the reserved matters stage, a new dwelling could not be

accommodated on the appeal site whilst still retaining some of the views of the countryside beyond.

14. The Council contend that the nearest area of equipped play space (LEAP) is at the Constantine Recreation Ground, which they say is almost 400 metres distance from the appeal site, at the very limit of the Fields in Trust guidelines (Guidance for Outdoor Sport and Play: Beyond the Six Acre Standard). Whilst the Appellant's financial contribution may, therefore, improve the standard of equipment on the recreation ground, the Council contend that it would not facilitate the provision of another LEAP closer to the appeal site. No further details of the Fields in Trust guidelines have been provided.
15. I note that the Appellant contends that the distance from the appeal site to the recreation ground is 240 metres, a finding supported by Council's Planning Committee Report. The Appellant also contends that the appeal site is too small for a LEAP. Even so, as I observed on my site visit, the recreation ground is within easy walking distance of the appeal site. Whilst this walk would involve crossing a main road, that is not uncommon. Indeed, a large proportion of the villages residents already have to cross a main road to access the recreation ground. Furthermore, there is no evidence before me to suggest that this route would be unsafe or would act as a deterrent.
16. Interested parties have raised concerns over the precedent that would arise from the grant of planning permission. However, I have considered the appeal proposal on its individual merits, having regard to the particular circumstances of this case. It has also been suggested that conveyancing details for properties sold on the estate have referred to the appeal site being set aside as open space only. That may be so, but it does not affect the findings I have reached.
17. The Council have referred to the longstanding use and maintenance of the appeal site by local residents. However, as I confirmed above, the land has not been formally laid out or maintained as public open space, and any access to it has been informal. There are no formal proposals before me to take over the land as public open space. These factors, combined with the close proximity of the Constantine Recreation Ground, lead me to conclude that, on balance, the proposed financial contribution, to offset the loss of the existing open space, would be acceptable and appropriate, and would secure wider community benefits for the village as whole.
18. For the above reasons, I find that the appeal proposal would not be at variance with the aims and objectives of Policies 13 and 16 of the CLP, and that it would also be compliant with the advice of and would meet the tests set out in paragraphs 56 and 97 of the Framework, as well as the statutory tests in the CIL Regulations.

Other Matters

19. Concerns have been raised regarding the noise and disturbance from construction work, the impact of the new dwelling on living conditions, impact on protected species and inadequacy of local infrastructure. There is no detailed evidence before me to suggest that any of these concerns would result in material harm or are matters that could not be satisfactorily addressed at the reserved matters stage. I also note that these are matters which the Planning Committee Report addressed in detail, and are not issues that the

Council have raised in relation to this appeal. I am satisfied, therefore, that none of these issues would give rise to any significant harm.

20. I have also had regard to the fact that the appeal site is located within the Fal and Helford Special Areas of Conservation (SAC). I concur with the Council's findings in this respect, that the proposal for a single dwelling on the appeal site would not have a significant adverse effect on the SAC. The proposed development would not, therefore, be at variance with paragraphs 174 – 177 (inclusive) of the Framework.
21. There are a number of benefits to the appeal scheme. The proposed development would secure the more efficient use of the appeal site and maximise the potential it offers to contribute towards housing need, within a sustainable location. All of these are benefits that are supported by other development plan policies, as well as those of the Framework. These benefits add further support to the findings I have reached above.

Conditions

22. The Council has suggested a number of conditions which I have considered against the advice in the Framework and the Planning Practice Guidance, on the use of planning conditions.
23. Conditions relating to the submission of reserved matters reflect the requirements of, in particular, section 92 of the Town and Country Planning Act 1990. A condition requiring compliance with the recommendations of the submitted 'Preliminary Ecological Appraisal' is necessary and reasonable in the order to safeguard biodiversity interests and ensure appropriate mitigation during construction work.
24. A condition that requires details of off-site open space provision to be provided before any development commences on site is not necessary, given that the completed Deed will now secure this provision.

Conclusion

25. For the reasons given above and having taken all the matters raised into account, I conclude that the appeal should be allowed.

G Roberts

INSPECTOR