



Appeal Decision

Site visit made on 14 April 2015

by **Mike Robins MSc BSc(Hons) MRTPI**

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

Decision date: 16 June 2015

Appeal Ref: APP/D0840/A/14/2228721

Land adjacent to Tower Meadows, St Buryan, Penzance, Cornwall TR19 6AJ

- 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 Mr William Richardson against the decision of Cornwall Council.
 - The application Ref PA14/04328, dated 8 May 2014, was refused by notice dated 14 August 2014.
 - The development proposed is an affordable housing mix development totalling 48 dwellings of mixed tenure local needs housing and open market housing, including amenity land and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for an affordable housing mix development totalling 48 dwellings of mixed tenure local needs housing and open market housing, including amenity land and associated works on land adjacent to Tower Meadows, St Buryan, Penzance, Cornwall TR19 6AJ in accordance with the terms of the application, Ref PA14/04328, dated 8 May 2014, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr William Richardson against Cornwall Council. This application is the subject of a separate Decision.

Procedural Matter

3. A set of Unilateral Undertakings, signed and dated 11 April 2015, were submitted by the appellant, under the provisions of the Town and Country Planning Act 1990, just prior to my site visit. Drafts had been made available previously and the completed undertakings were provided to the Council, who were given opportunity to respond or comment. These were to address affordable housing and contributions for transport and education sought by the Council.
4. After the site visit both main parties were consulted on the implications of the Community Infrastructure Levy Regulations 2010, Regulation 123(3) as amended, on the contributions sought in the undertakings. I have taken the response into account and have considered the undertakings later in my decision.

Main Issue

5. Whether, taking account of the development plan and other material considerations, including the five year supply of deliverable housing land and the need for affordable housing, the proposal represents a sustainable and appropriate location for a development of this scale.

Reasons

6. The appeal site is located just to the northwest of the village of St Buryan. It would adjoin dwellings on Tower Meadows, a relatively recent development, and would be on currently open, agricultural land. The proposed housing would occupy Field 1, which adjoins a coach business comprising an embanked area of hardstanding and a large shed, and would extend into part of a second field, Field 2, to the south, to a line level with a row of detached houses on Parc-An-Peath.
7. A public footpath crosses from the existing farm entrance in the corner of Field 1 heading towards a group of farm buildings and dwellings visible to the west of the site. A second footpath leaving the village skirts the edge of Field 2.
8. The village of St Buryan is dominated by its central church with its substantial tower; it is a Grade 1 listed building. Around this lies the traditional village centre, which is a Conservation Area, with predominantly granite cottages and villas. However, the village has expanded over recent years with clear phases of development in estates, predominantly to the south and east, but including the Tower Meadows development.
9. The village presents a good range of facilities, including shops and a post office, pubs, a primary school, village hall and public transport links. The site would be a short walk from these facilities on a road that lacks a formal footway, albeit alternative routes would be available.
10. The approach roads to St Buryan are narrow in places, and the village stands within expansive countryside with the church forming a distinct and important landmark feature. The surrounding countryside is identified as an Area of Great Landscape Value (AGLV). Part of the Cornwall Area of Outstanding Natural Beauty (AONB) lies nearby.
11. Planning permission was granted in July 2012 for 31 affordable dwellings and associated works¹ on Field 1. The appellant was the applicant in that case and work has commenced on the site entrance, hence that permission has been implemented. The appellant has stated that while the extant scheme is currently unviable, it would be his intention to deliver it in the medium to long term, subject to the outcome of the proposal before me, which would necessarily replace it. This scheme represents a legitimate fallback option in my view. The proposal subject to this appeal, therefore, represents an increase of 17 dwellings, a reduction in the delivery of affordable housing by 7 units and the expansion of the developed land into Field 2.

Policy Context

12. The development plan comprises the policies of Penwith Local Plan (the Local Plan), adopted in 2004. It drew on Regional and Structure Plans, which are now revoked.
13. While the Local Plan may be considered to be time-expired, this does not necessarily render the policies out-of-date, as they were formally saved. Instead the development plan policies must be considered in light of the position set out in the National Planning Policy Framework, (the Framework).
14. Section 70(2) of the Town and Country Planning Act 1990 provides that in dealing with planning applications the planning authority shall have regard to the

¹ W1/08-1704

provisions of the development plan, so far as material to the application, and to other material considerations. This is reflected in section 38(6) of the Planning and Compulsory Purchase Act 2004, which provides that determination must be made in accordance with the development plan unless material considerations indicate otherwise. One such consideration is the Framework. Therefore, while the starting point for determination of any appeal remains the development plan, the Framework, paragraph 215, indicates the importance of consistency with the policies in that document.

15. Local Plan Policy H-15 is relied on by the Council. This sets out exceptions to other policies for the provision of housing in allowing for small sites for affordable housing, where they would otherwise not be permitted. The appellant does not promote the site as an exception site, but instead notes the Council's position on housing land supply and, with reference to the Framework, promotes it as a rural housing scheme presenting a mix of affordable and open market housing, which would meet a pressing need in the locality.
16. At the heart of the Framework is a presumption in favour of sustainable development and it seeks to guide new and emerging development plans in this approach. However, the Framework also provides a context for planning decisions, particularly in areas where development plans are older or do not respond to recent pressures and are potentially out-of-date. In relation to housing, the direction is clear; paragraph 47 explicitly seeks to significantly boost the supply of housing. It goes further to identify, in paragraph 49, that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. There is no contention between the parties on the five year housing land supply position, it is accepted that this currently cannot be demonstrated.
17. The proposal would result in the change from open agricultural land to housing. It would be a relatively large development adjacent to a rural village. Although there is some containment as a result of housing on the opposite side of the road, the coach business to one side and the adjacent housing development, this would nonetheless represent harm to the countryside, which Local Plan policies have sought to avoid, including Policy CC-5, relating to the AGLV, and general strategic housing policies, directing development to settlements.
18. In this case, the scale of the proposal and the inclusion of open market housing would, on its face, be contrary to Policy H-15. However, while this policy may in part address the protection of the countryside, a protection recognised in the Framework, it is clearly stated to be relevant to the provision of housing. The Council suggest that it is consistent with paragraph 54 of the Framework. This explicitly recognises the need to consider rural housing as part of the local needs housing delivery. It includes reference to rural exception sites, where appropriate, but is not solely concerned with such sites, and is accepting of open market housing to facilitate the provision of affordable housing.
19. The appellant refers me to another appeal², in which the Inspector concluded that Policy H-15, and other principal policies for housing in the Local Plan, were out of date. That decision concluded that these policies formed no basis for considering that development would not normally be permitted on the site, and the proposal should be considered in light of the presumption in favour of sustainable development.

² APP/D0840/A/14/2217749

20. I concur, in so far as the policies for housing delivery in the Local Plan should be considered out of date, although the plan itself cannot be considered irrelevant. Policy H-15 seeks to support the delivery of rural housing to meet local needs and to that extent it finds some resonance in the policies of the Framework, albeit its focus is solely on exception sites. The critical matter is the weight to be given to material considerations, which in this case is the approach within the Framework and its stated aim to boost significantly the supply of housing through the presumption in favour of sustainable development and the approach set out in paragraph 14.
21. The Council have published a pre-submission version of their emerging Cornwall Local Plan (the eLP). However, while the policies may give an indication of the Council's future approach to development, in light of its progress, I can afford them only limited weight.
22. It is therefore necessary to consider whether the harm and benefits arising from this proposal, and accordingly assess these against the policies and, in particular, any material considerations, principally as set out in the Framework.

The Need for Housing

23. As set out above the Council's statement explicitly acknowledges the lack of a five year housing land supply and that there is a pressing need for affordable housing in the locality. The appellant has reviewed the current delivery of affordable housing across the wider district and drawn on the affordable housing team's position that there were 61 households on the HomeChoice register. I am satisfied that, when the removal of the permitted 31 units are factored in, the delivery of 24 affordable units here would not represent oversupply but would represent a viable scheme likely to deliver much needed affordable dwellings within a relatively short timescale.
24. Furthermore, the 24 open market homes would represent a positive benefit in terms of meeting the need for housing generally, subject to the location being considered as a sustainable one.

Sustainable Development

25. Whether a development can be considered to be sustainable needs to reflect the policies of the Framework as a whole, and the three principal dimensions forming the definition in paragraph 7; social, economic and environmental.
26. In social terms, the scheme would deliver much needed housing and affordable housing, but this dimension also requires consideration of the resulting built environment, and accessible services that meet the community's needs. St Buryan is approximately five miles from the town of Penzance. It is set in a rural location and roads are of limited width in places on approach. Nonetheless, there are a range of facilities provided in the village, which would receive a positive boost from the additional households the scheme would introduce. Therefore, although the proposal would not be as accessible as a scheme located within a larger settlement, it would provide reasonable access to facilities and services alongside appropriate public transport provision.
27. In economic terms, in addition to the support for rural businesses, the scheme would deliver short term benefits through the construction phase. Environmentally, I have identified harm related to the loss of open countryside on the edge of what is a rural village in an area identified as being an AGLV. Although

this harm would be limited somewhat by the scale of the proposal being within some containing elements in the existing built fabric, this visual change would be experienced by those travelling into St Buryan and those using the footpaths on and near the site. I am satisfied that the landscaping proposals and the overall design ethos and layout, identify and seek to maintain a positive footpath link; nonetheless harm would arise.

28. Furthermore, the land has been identified as being either Grade 2 or Grade 3, and productive use of this land would be lost. The Framework seeks to promote development on areas of poorer quality land in preference to that of higher quality, and this represents weight against to the proposal.

Other Matters

29. Local residents raised concerns regarding traffic, community support and impact on the Area of Outstanding Natural Beauty (AONB). The local road is relatively narrow near to the site, as are the various approach roads to and from St Buryan. There would be a noticeable increase in traffic from this proposal, although not necessarily significantly greater than the fallback scheme. A transport statement was submitted with the proposal, and the application set out an extension to the 30mph speed restriction and the provision of street lighting. I note the Highway Development Management Team response considered that, with suitable funding support for road improvements and the inclusion of alternative footpath routes, the scheme would be acceptable. I see no reason to disagree with these findings.
30. The views of those who oppose the proposal have been noted, and while I have sympathy for those who perceive that this relatively large development would have a negative impact on the village, I have to set such views alongside the wider social, environmental or economic benefits arising from the scheme. I consider that the proposal would not harm the AONB or its setting; being an extension of the village form located some distance from the AONB itself.
31. The proposal was originally objected to by the Environment Agency as it involved development over an existing private sewage treatment works serving Tower Meadow. The application has confirmed that this scheme would be picked up by new sewerage on the proposed site and transferred to mains treatment. This can be considered as a positive benefit from the scheme.
32. The conservation area and the setting of the listed building were not raised as reasons for refusal by the Council. Despite the site being viewed in association with the church tower on approach from the northwest and there being views towards the conservation area and the church from within the proposed development, I am satisfied that it would not harm the character or appearance of the conservation area or the setting of the listed building. Therefore, the objective of preserving or enhancing the heritage assets would be met.

Unilateral Undertaking and Contributions

33. Although the lack of a mechanism to secure contributions and affordable housing was initially a reason for refusal, the Council would appear to have accepted that the submitted legal undertaking would ensure appropriate provision of the affordable housing; I see no reason to disagree. The further undertakings also address contributions to education and transport, and I have considered these matters in light of the Framework, paragraph 204, and the statutory tests

introduced by Regulation 122 of The Community Infrastructure Levy (CIL) Regulations, 2010.

34. The Council have confirmed that no other planning obligations have been entered into on or after 6 April 2010 to provide funding for the types of infrastructure addressed in these undertakings. It strikes me that there are specific measures identified in relation to the road local to the site and the primary school within the village, which will be addressed by these contributions and I consider that they therefore meet the relevant tests.

Planning Balance

35. The Framework explains, at paragraph 12, that its existence does not change the statutory status of the development plan as the starting point for decision making. This means that a determination must be made in accordance with the development plan unless material considerations indicate otherwise. Further, at the heart of the Framework is a presumption in favour of sustainable development. For decision taking, this means that, where relevant policies of the development plan are out-of-date, any adverse impacts of the development would need to significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.
36. In my consideration of this appeal, I have found that the proposal would be of significant scale in relation to the village size overall, and that there would be a reduction in the overall value of the appeal site as open countryside, and in the contribution it makes to the quality of its surroundings. I also note the loss of productive agricultural land. These are considerations which weigh against the proposal.
37. While I have found there to be reasonable levels of accessibility, the site's location, in terms of sustainable transport options, while better than some rural locations, would still result in additional transport to and from the larger centres in the area.
38. However, of considerably greater weight, in my view, are the benefits that the proposed development would have in terms of making significant contributions to addressing the clear shortfall in the Council's housing supply, and the pressing need for more affordable housing in the area. All housing cannot be directed to the larger towns, and while this would be a significant addition to St Buryan, nationally planning policy recognises the need to support villages. As well as making a contribution to the existing shortfall of housing in the County, I consider that this would represent a scheme that would assist in addressing local housing needs, and accords with paragraph 54 of the Framework in this regard.
39. Taking all of this into account, I consider that the proposal represents sustainable development and an appropriate location for a development of this scale, and the overall balance of material considerations weighs in favour of granting planning permission.

Conditions

40. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance and the Framework. In addition to the standard timescale condition (1), I have imposed conditions requiring the submission of samples of external materials (3), and specifically walling and roofing (4, 5), to protect the character and appearance of the area. Similarly, further details are required regarding windows and external lighting (6).

41. With the historic village centre nearby and the field patterns and extensive artefacts present locally, it is reasonable to seek an archaeological programme of work (7). The site is accessed on a rural road network and I have therefore imposed a condition regarding submission of a Construction Traffic Management Plan (8). To further protect highway and pedestrian safety and address the built environment, I have imposed conditions regarding the footpath (9), the provision of the site entrance (10), parking and estate roads (12, 13) and amenity areas (16).
42. The proposal will replace the existing private treatment plant for Tower Meadows, and I have imposed a condition to ensure appropriate delivery of a new sewerage scheme for this development and the appeal scheme (14). To address flood risk, it is expected that the proposal will incorporate a sustainable drainage system, and I have imposed a condition to address this (15). To further protect the character and appearance of the area I have required delivery of the landscaping scheme (11).
43. Otherwise than as set out in this decision and conditions, for the avoidance of doubt and in the interests of proper planning, it is necessary that the development shall be carried out in accordance with the approved plans (2). Where necessary and in the interests of clarity and precision I have removed duplicates or altered the conditions to better reflect the relevant guidance.

Conclusion

44. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Mike Robins

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the plans listed below:
1305-300; 1305-301 A; 1305-302 A; 1305-303 C; 1305-304C; 1305-305C; 1305-306C; 1305-307C; 1305-308C; 1305-309 A; 1305-310; 1305-311; 1305-401; 1305-402 A; 1305-403 A; 1305-404; 1305-405 A; 1305-406; 1305-407; 1305-408; 1305-409 B; 1305-410; 1305-411; 1305-412; 1305-413 A; 1305-414; 1305-415 A; 1510-1001 04; 1510-1002 04.
- 3) No development shall take place until details, including samples, of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until a sample panel of render at least one metre square, showing the proposed finish and colour, has been erected on the site and subsequently approved in writing by the local planning authority. The walls shall be constructed in the same way as the approved panel. The panel shall be retained on site until the completion of the walling.
- 5) No development shall take place until details, including a sample of the roofing slate to be used, have been submitted to and approved in writing by the local planning authority. The submitted details shall demonstrate slates that shall not exceed 300 x 200mm and shall be fixed using nails and not clips. The development shall be carried out in accordance with the approved details.
- 6) No development shall take place until details of the following have been submitted to and approved in writing by the local planning authority:
 - (a) external lighting;
 - (b) window materials, style and means of opening.Development shall be carried out in accordance with the approved details before the development hereby approved is first brought into use or is occupied.
- 7) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation and timetabling that has been first submitted to and approved in writing by the local planning authority.
- 8) No development shall take place until a Construction Traffic Management Plan has been submitted to and approved in writing by the local planning authority. The plan shall include construction vehicle details (number, size and type), vehicle routes to and from site, delivery hours and contractors' storage and parking arrangements. The development shall be carried out strictly in accordance with the approved Construction Traffic Management Plan.

- 9) No development shall take place until details of the width and surface treatment of Footpath 110/1, as well as of the adjacent Cornish hedge banks, have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved details and the footpath maintained thereafter.
- 10) Before any other building or engineering works are carried out on the site, the site access and sight lines shall be laid out and constructed in accordance with Drawing 1305-304 C.
- 11) All hard and soft landscape works shall be carried out in accordance with the approved details in plans 1510-1001 04 and 1510-1002 04. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority prior to commencement of development.

Any trees or plants which within a period of five 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.

- 12) None of the dwellings shall be occupied until areas have been provided within the site for vehicles to be parked and to enable them to enter and leave the site in forward gear in accordance with the approved plans. These areas shall not thereafter be obstructed or used for any purpose other than the parking and turning of vehicles.
- 13) None of the dwellings shall be occupied until the estate road carriageways and footways, to be constructed in association with the development hereby permitted, have been laid out and constructed in accordance with Cornwall Council's specification for estate roads, including street lighting, except for the application of the final wearing course over such lengths as are necessary to provide access from a county road to that particular dwelling.
- 14) None of the dwellings shall be occupied until the sewage disposal works have been completed in accordance with the submitted plan 1305-311 and the pumping station constructed in accordance with plan 1305-310.
- 15) None of the dwellings shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - include a timetable for its implementation; and
 - provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public

authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

- 16) The houses in Cluster A and B hereby permitted shall not be occupied until the associated amenity area shown on the plan hereby approved has been provided in accordance with details submitted to and approved by the local planning authority.