



Department for
Communities and
Local Government

Our Ref: APP/D0840/W/153005068

Des Dunlop
D2 Planning Limited
Suites 3 & 4, Westbury Court
Church Road
Westbury on Trym
Bristol
BS9 3EF

6 July 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY MICHAEL WODSKU OF GONWIN DEVELOPMENTS LTD
LAND AT LAND AT GONWIN FARM, CARBIS BAY, CORNWALL
APPLICATION REF: PA14/10452**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Aidan McCooey, BA, MSc, MRTPI, who held a public local inquiry on 30 November to 3 December 2015 into your client's appeal against the decision of Cornwall Council ('the Council') to refuse planning permission for an urban extension to St Ives/Carbis Bay. Consisting of employment and housing (Use Classes – A1 Shops, A2 Financial and Professional, A3 Restaurant/ Café, A4 Drinking Establishments, B1a Office, B1c Light Industrial appropriate to residential areas, C3 Dwelling Houses, D1 Non Residential Institution). Including gardens, landscaped spaces, MUGA, village square, parking, site access roads, infrastructure and a No Left Turn restriction into Church Lane when leaving the site. All matters reserved except for access to the site, in accordance with application ref: PA14/10452 dated 31 October 2014.
2. On 16 November 2015, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involved proposals for residential development of over 10 units in areas where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority: or where a neighbourhood plan has been made.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed, subject to conditions.

4. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions, and disagrees with his recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

5. On 16 June 2016 the Secretary of State referred back to the parties to invite representations on the implications, if any, of the following matters for the above appeal:
the Court of appeal judgment in the cases of *Suffolk District Council v Hopkins Homes Ltd* and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168 (<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2016/168.html&query=suffolk+and+district&method=boolean>).

The referendum on the St Ives Neighbourhood Plan.
6. Parties were also invited to comment on this matter and any other material change in circumstances since the close of the inquiry.
7. On 4 August 2016 the Secretary of State referred back to the parties to invite representations on the implications, if any, of representations from the Council about its 5 year housing land supply position.
8. On 22 December 2016 the Secretary of State referred back to the parties to invite representations on the implications, if any, of:
 - the adoption by Cornwall Council of the Cornwall Local Plan on 22 November 2016, and to comment on how the relevant policies of the Local Plan should be approached, bearing in mind paragraph 215 of the NPF.
 - the making of the Neighbourhood Plan and approach to the relevant policies contained therein.
 - the Written Ministerial Statement ("WMS") made on 12 December 2016 on Neighbourhood Plans
 - In addition to the above, parties were also given a further opportunity to comment on the extent of the Council's housing land supply.
9. The Secretary of State has taken this correspondence into account but as it was circulated to the parties does not consider it necessary to reprint them here. Correspondence received is listed at Annex A of this letter. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.
10. The Cornwall Local Plan was adopted on 22 November 2016, replacing the saved policies of the Penwith Local Plan. The St Ives Neighbourhood Development Plan passed referendum on 5 May 2016.
11. An application for a full award of costs was made by your client against the Council (IR1). This application is the subject of a separate decision letter.

Policy and statutory considerations

12. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
13. In this case the development plan consists of the Cornwall Local Plan Strategic Policies 2010-2030 (CLP) and the St Ives Neighbourhood Development Plan (NDP). The Secretary of State has given careful consideration to the Inspector's reasoning at IR80-83, but as the CLP and the NDP have now been adopted he gives them full weight in the planning system. As the proposal includes some land beyond that allocated by development by the NDP, the Secretary of State finds that it is not compliant with policy AM4 of the NDP, and gives moderate weight to this conflict.
14. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

Main issues

15. The Secretary of State agrees with the Inspector that the main issues are those set out at IR79.

Five year housing land supply (HLS)

16. As part of his reference back exercise (paragraphs 5-9 above), the Secretary of State has had regard to the representations made by all the parties on the issue. He has also had regard to the Cornwall Local Plan Cornwall 5 year Housing Land Supply Statement (September 2016) and the Cornwall Local Plan. He has taken the above evidence into consideration in his assessment of the HLS position.

Housing Requirement

17. The Council has recently adopted its Local Plan. The Secretary of State considers that this provides a robust housing requirement figure of 52,500 dwellings, or 2,625 dwelling per annum (dpa), noting that these figures are in line with the Full Objectively Assessed Need (FOAN), which has passed examination, and agreed by your client. This would give a five year requirement of 13,125 (5 x 2,625).

Addressing shortfall

18. The Council has an accumulated shortfall of 1,759. There is a need for this shortfall to be met in addition to the on-going requirement for housing in the area. There are two commonly used methods for addressing an accumulated shortfall. The 'Liverpool approach' apportions the shortfall across the remaining years of the plan period, while the 'Sedgefield approach' seeks to make up the shortfall during the next five years. The Secretary of State has had regard to the Guidance which advocates the 'Sedgefield approach' stating that Local Planning Authorities should aim to deal with any undersupply within the first 5 years of the plan where possible. As such the Secretary of State concludes that the 'Sedgefield approach' should be adopted. The Secretary of State therefore finds that addressing the shortfall over the next five years would give a requirement of 14, 884 (13,125 + 1759) over the 5 year period, or an annual requirement

of 2,977. From this the Secretary of State has deducted 235 dwellings to take into account unlawful dwellings where it has been decided that no enforcement action will be taken, giving a five year requirement of 14,649.

Buffer

19. Paragraph 47 of the Framework required that an additional buffer of 5% be added to this figure (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent underdelivery, it states the buffer should be increased to 20% for the same reason, and to provide a realistic prospect of achieving the planned supply. Having carefully considered the parties' submissions on the issue, the Secretary of State notes that when considering the completion rates over the past 15 years, when only 6 years did not meet the local plan requirement, and that while there has been a shortfall in recent years given that delivery has now returned to pre-recession levels there has not been a persistent record of underdelivery. He has also had regard to the fact that the Council is taking ongoing action to address its need through the work of its empty homes team. The Secretary of State further notes the view of the Cornwall Local Plan Inspector (paragraph 142 Appendix 4) that the implementation strategy is evidence that delivery is credible over the plan period. As such the Secretary of State considers that a 5% buffer is appropriate in this case. This leads to a 5 year requirement of 15,381 or 3,076 dpa.

Supply

20. Having regard to footnote 11 to paragraph 47 of the Framework and the relevant paragraphs of the PPG, the Secretary of State has gone on to consider the deliverability of the sites necessary to achieve housing supply. The Secretary of State has had regard to the representations of your client on the disputed sites. However, he notes that these estimates of likely delivery times are necessarily speculative, and that a very large proportion of sites that the Council cites have an extant planning permission. As such he finds it is reasonable to apply an average lead in and delivery rate to these sites, further noting that average rates were adopted by the Council in response to claims that previous estimates were too optimistic. He thus applies a deduction of 10% to reflect potential underdelivery. As such he does not find it necessary to make further deductions in respect of the specific sites upon which D2 Planning has made representations.
21. The Secretary of State notes that planning permissions exist for 4,465 dwellings on sites of fewer than 10 dwellings. The Secretary of State has deducted 10% from this to allow for non delivery, and as such concludes that 4,018 dwellings will be deliverable over the five year period.
22. The Secretary of State has had regard to the fact that there are planning permissions for 10,988 dwellings on larger sites.

Delivery

23. Applying average lead in and delivery rates, the Secretary of State has gone on to deduct 1,458 units from the supply of planning permissions on sites of 10 or more dwellings, to reflect the fact that some sites may not deliver, or may not deliver within the five year period. The Secretary of State considers that this is likely to reflect the overall rate of non-delivery.
24. The Secretary of State has gone on to consider sites where it has been resolved to grant planning permission but were awaiting the signing of a s106 agreement. The Secretary of State concludes that a resolution to grant planning permission is evidence that these are suitable and available, and further notes that in 11 cases s106 agreements have now been signed. As such he concludes that it is reasonable to assume that 861 additional units will be delivered at such sites, having applied a 10% deduction for average lead in and delivery rates.
25. The Secretary of State has gone on to add an additional 40 dwellings to reflect planning permissions granted after April 2016 but before the publication of the 5 Year Supply Statement.
26. The Secretary of State also adds 160 dwellings in respect of Cornwall Land Initiative sites. He concludes that as there is developer commitment it is reasonable to assume that these are deliverable.
27. The Secretary of State has had regard to representations on the sites proposed in the emerging Site Allocations DPD. While he has considered your client's comments on delivery in the final year of the five year period, given that the consultation has begun on the draft DPD, that the draft submission DPD will be consulted on in May 2017, and that a number of sites are proceeding in advance of the Local Plan, the Secretary of State concludes that it is reasonable to add 340 to the total of deliverable sites.
28. The Secretary of State has taken into account the new sites granted planning permission since April 2016. He notes that 2,181 dwellings have been granted planning permission since April 2016 on sites not previously included in the 5 year supply statement. The Secretary of State has applied average lead in time and delivery rates to conclude that 1,026 are deliverable over the 5 year period.
29. The Secretary of State notes that permissions relating to 96 units have expired since April 2016. He deducts a further 96 dwellings to reflect the losses that would ensure if recent (post April 2016) planning permissions are implemented.

Conclusions on 5 year HLS

30. The Secretary of State concludes that an annual target of 2,625 dpa leads to a 5 year requirement of 13,125. Addressing the shortfall of 1,795 dwellings over the next 5 years gives an annual requirement of 2,997 dpa, or 14,884 over the 5 year period. From this the Secretary of State has deducted 235 dwellings to take into account unlawful dwellings where it has been decided that no enforcement action will be taken, giving a five year requirement of 14,649.
31. To this the Secretary of State has applied a 5% buffer, including the shortfall, for the reasons set out above, thus finding a total housing requirement of 15,381 over the five year period, or 3,076 dpa.
32. Against this the Secretary of State finds 17,286 net deliverable capacity in the 5 year period. As such the Secretary of State finds that there is a surplus of 1,903 dwellings, or a 5.62 years housing land supply.
33. For the reasons set out above the Secretary of State disagrees with the Inspector and concludes that in his judgement that the local planning authority can now demonstrate a 5 year supply of deliverable housing sites. Therefore the application of paragraph 14 of the Framework is not triggered.
34. Given his findings as to housing land supply the Secretary of State also concludes that his Written Ministerial Statement of 12 December 2016 is not engaged.

Landscape and Visual Impact on the Character of the area

35. The Secretary of State has given careful consideration to the Inspector's analysis at IR84-89. For the reasons given the Secretary of State agrees that the impact on the local landscape would be major and adverse as green fields would be replaced by buildings (IR87). He further agrees that the Landscape and Visual Impact Assessment (LVIA) states that the visual impact of the proposals would be moderate or severe adverse in close views. However, for the reasons given at IR87 he agrees that the detailed design and landscaping proposed would reduce most landscape and visual impacts to neutral at year 15. He further agrees that the development would have a major impact on existing dwellings around Hendra Vein and Church Lane.
36. For the reasons given, the Secretary of State agrees that the adverse impacts would be limited to the locations and views identified at IR87-88. He further agrees that some of these adverse effects would be limited by the detailed design and layout of the proposals, and, over time, by the proposed landscaping (IR89). He also agrees that the allocation of part of the site in the BDP and St Ives and the assessment in the Carbis Bay Town Urban Area Assessment (UAE) are important considerations. He further notes (IR89) that planning permission was granted for some development on the site near Gonwin Farm. For these reasons the Secretary of State finds a relatively minor conflict with CLP policies 2.1.b and 23.

Heritage Assets

37. For the reasons set out by the Inspector at IR90-93 the Secretary of State agrees that there is no convincing evidence of any harm to heritage assets as a result of the proposal. He further agrees that any archaeological remains that might be discovered during construction could be addressed by a condition requiring further archaeological

work including a written scheme of investigation. He agrees with the Inspector (IR90) that such a condition would comply with Historic England and Government guidance.

Impact on public footpaths

38. For the reasons given at IR94 the Secretary of State agrees that there would be a minor adverse effect for users of footpaths as a result of this proposal. As such he finds some conflict with Policy OS7 of the NDP in that part of the route would be less attractive. He agrees with the Inspector that any increased security would not be a significant benefit for users.

The gap between Carbis Bay and Lelant

39. The Secretary of State agrees with the Inspector, for the reasons given at IR95, that while there will be a localised impact on landscape character, there is no substantive argument that an important gap would be lost or significantly reduced as a result of the proposal. He further agrees that permitting this appeal would not prevent the Council from resisting development that would have an unacceptable impact on the gap. He therefore finds that it complies with Policy OS5 of the NDP in this respect.

Highways and Access

40. The Secretary of State has given careful consideration to the Inspector's analysis at IR96-99. He agrees that no data or scientific evidence was submitted to indicate that air quality or noise limits or standards in Lelant would be exceeded were this proposal to go ahead (IR99). He further notes that the highway authorities had no objection to the proposals subject to contributions towards the traffic measures listed at IR97 (IR98). He agrees (IR99) that, given the need for St Ives/Carbis Bay to expand, it is inevitable that there will be increased traffic on the A3074, with consequent effects on air quality and noise. He agrees, for the reasons given by the Inspector, that the refusal of this proposal on the basis of traffic generation or highway safety would not be warranted.

Sewerage and drainage

41. For the reasons set out by the Inspector the Secretary of State agrees that the proposal would not exacerbate existing sewage and drainage problems, and that as such sewerage and drainage matters would not justify the refusal of planning permission. He further agrees (IR101) that sewerage and drainage matters could be addressed by suitable conditions, supplemented by the s106 obligations.

Agricultural land quality

42. The Secretary of State agrees with the Inspector, for the reasons given at IR102, that the limited loss of best and most versatile agricultural land would not be significant, and he therefore concludes that the proposal would meet the policy requirements OS8 of the NDP and Policy 21.d of the CLP.

Other matters

43. For the reasons given at IR103 the Secretary of State agrees that the impact of the proposals on facilities such as hospitals and schools would be similar wherever new development is proposed in the area, and must be considered in the context of the necessary expansion of the settlement. He agrees that the developer would make a fair and reasonable contribution to address the shortfall in school places as a result of the

proposals. He further agrees that the proposed medical practice would have to be sanctioned by the relevant authorities.

44. The Secretary of State agrees, for the reasons given at IR104, that there is little evidence that there would be any significant adverse impact on tourism as a result of the proposal. He has noted the Inspector's observations on appeal decisions put forward by the Council and Carbis Bay and Lelant Opposing Urbanisation Together, but given his conclusions on 5 year housing land supply does not consider them relevant. He agrees that there is no requirement to demonstrate a need for the retail and employment facilities of the scale proposed as part of the development, for the reasons given at IR104.

Planning conditions

45. The Secretary of State has given consideration to the Inspector's analysis at IR105-109 the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

Planning obligations

46. Having had regard to the Inspector's analysis at IR110-115, the planning obligation dated 3 December 2015, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR115 that the obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and are necessary to make the development acceptable in planning terms, directly related to the development, and are fairly and reasonably related in scale and kind to the development, with the exception of the obligation for the funding of a ranger for the Royal Society for the Protection of Birds, for the reasons given at IR114. However, the Secretary of State does not consider that the obligation overcomes his reasons for deciding that the appeal should be dismissed.

Planning balance and overall conclusion

47. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies OS7 and AM4 of the NDP or 2.1.b and 2.2.d of the CLP, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

48. In favour of the proposal the Secretary of State finds that the site is a sustainable location for new housing development, for the reasons given at IR118. He finds that the increase of the supply of housing is a significant benefit. While he finds that the Council can demonstrate a 5 year HLS, he finds the provision of 50% affordable housing in an area of acute need to be a very significant benefit. The Secretary of State also finds that the planning obligations would provide a significant contribution to improve transport infrastructure, educational facilities, open space and towards nature conservation actions in the local area.

49. While the Secretary of State gives less weight to the provision of market housing than the Inspector, given his findings on a 5 year housing land supply, he agrees that the proposal

would comply with the economic and social elements of sustainable development, and, with the exception of the landscape impacts, would comply with the environmental element of sustainable development. He gives significant weight to the economic benefits of the proposal, significant weight to the social benefits, given his findings on 5 year HLS, and moderate weight to the positive environmental impacts.

50. Against this the Secretary of State weighs the Landscape and Visual Impact on the Character of the area, to which he gives moderate weight for the reasons at paragraph 35-36 above, and the impact on footpaths, to which he gives limited weight. The Secretary of State agrees that the new development would to an extent improve the current approach to the town. He gives further significant weight against the proposal to the conflict with the CDP and additional moderate weight to the conflict with the NDP, disagreeing with the Inspector given his findings on 5 year HLS and the change in the development plan position since the inquiry. He therefore concludes that the benefits of the proposal do not outweigh its adverse impacts.

51. The Secretary of State therefore concludes that there are no material considerations sufficient to indicate that the proposal should be determined other than in accordance with the development plan. He thus concludes that the appeal should be dismissed.

Formal decision

52. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for Consisting of employment and housing (Use Classes – A1 Shops, A2 Financial and Professional, A3 Restaurant/ Café, A4 Drinking Establishments, B1a Office, B1c Light Industrial appropriate to residential areas, C3 Dwelling Houses, D1 Non Residential Institution). Including gardens, landscaped spaces, MUGA, village square, parking, site access roads, infrastructure and a No Left Turn restriction into Church Lane when leaving the site. All matters reserved except for access to the site, in accordance with application ref. PA14/10452 dated 31 October 2014.

Right to challenge the decision

53. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

54. A copy of this letter has been sent to Cornwall Council and CLOUT and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by Secretary of State to sign in that behalf

SCHEDULE OF REPRESENTATIONS

General representations

Party	Date
D2 Planning	4 May 16
Chris Smith	6 May 16
Cornwall Council	11 May 16
Cornwall Council	8 July 16
Cornwall Council	15 November 16
Derek Thomas MP	24 November 16

Representations received in response to the Secretary of State's letter of 16 June 2016

Party	Date
D2 Planning	20 June 16
CLOUT	30 June 16
Cornwall Council	1 July 16
D2 Planning	6 July 16
CLOUT	11 July 16
Cornwall Council	16 July 16

Representations received in response to the Secretary of State's letter of 4 August 2016

Party	Date
D2 Planning	8 August 16
CLOUT	17 August 16
CLOUT	24 August 16

Representations received in response to the Secretary of State's letter of 22 December 2017

Party	Date
D2 Planning	13 January 17
CLOUT	13 January 17
Cornwall Council	17 January 17
Cornwall Council	18 January 17
D2 Planning	23 January 17
D2 Planning	7 February 17
Cornwall Council	10 February 17
D2 Planning	15 February 17