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## Appeal Decision

Hearing Held on 26 March 2019

Site visit made on 26 March 2019

**by Andrew Dawe BSc(Hons) MSc MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 April 2019**

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**Appeal Ref: APP/D0840/W/17/3190636**

**Land off Valley Lane, Valley Lane, Carnon Downs TR3 6LN**

- 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 Oceans Reach (Carnon Downs) Ltd against the decision of Cornwall Council.
  - The application Ref PA16/08980, dated 26 September 2016, was refused by notice dated 24 October 2017.
  - The development proposed is provision of 38 dwellings including 15 affordable.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application was submitted in outline, with all matters, comprising appearance, scale, landscaping, access and layout, reserved for future consideration. The submissions nevertheless include an indicative site plan (Dwg 2299.D.003 revision F) which shows how the proposed dwellings and access could be set out on the site, including a break-down of the number of each house type and their respective floor areas. I have determined the appeal on that basis.
3. The description of development in the fourth bullet point of the above header is taken from the original planning application form. However, the amount of proposed affordable housing was amended during the application process, such that the Council's decision notice relates to provision of 19 affordable dwellings within the overall total of 38. That figure of 19 affordable dwellings is also reflected on the appeal form and is common ground between the parties. I have therefore determined the appeal on the basis of the proposed development of 38 dwellings including 19 affordable, albeit that it was agreed by the parties at the Hearing that were I to allow the appeal, having concluded that the proposal represented a rural exception site under policy 9 of the Cornwall Local Plan (the Local Plan), then it would be at least 19 affordable dwellings.
4. Since the submission of the appeal, the Feock Neighbourhood Development Plan (the NDP) has been made and so now forms part of the development plan. Furthermore, again since the submission of the appeal, the new revised National Planning Policy Framework (July 2018) (the Framework) has been published which replaces the first version published in 2012. The Council and

appellant have had the opportunity to comment on both the NDP and Framework during the appeal process. I have determined the appeal taking account of those documents.

5. The Council's Chief Planning Officer's Advice Note: Infill/Rounding Off (the CPOAN), has been included and referred to in the submissions and at the Hearing. As that document provides up-to-date guidance in relation to relevant policies of the development plan I have afforded it some weight.

### **Application for costs**

6. At the Hearing applications for costs were made by Oceans Reach (Carnon Downs) Ltd against Cornwall Council and by the Council against Oceans Reach (Carnon Downs) Ltd. These applications are the subject of separate Decisions.

### **Main Issues**

7. The main issues are:

- i) whether or not the proposal would be in a suitable location for the dwellings concerned, having regard to the Council's development plan spatial strategy policies, including whether or not the scheme would represent rounding off, appropriate development of previously developed land, infill development, or a rural exception site.
- ii) the effect of the proposed development on the Fal and Helford Special Area of Conservation (the SAC).

### **Reasons**

#### *Suitability of location*

8. Policy 2 of the Local Plan sets out the spatial strategy relating to new development such that the dispersed development pattern of Cornwall is maintained, and that homes and jobs based on the role and function of each place are provided. Importantly, having regard to policy 3 of the Local Plan, housing other than at the main towns identified in the Local Plan, as is the case in this instance, will be delivered through identification of sites where required through Neighbourhood Plans; rounding off of settlements and development of previously developed land within or immediately adjoining that settlement of a scale appropriate to its size and role; infill schemes; or rural exception sites.
9. The site is located to the west of a bridleway/footpath that separates it from existing dwellings relating to West Corner. That bridleway/footpath forms a distinctive and clear boundary to the settlement, particularly in terms of its associated Cornish hedge and line of small trees and other vegetation alongside it. Those trees also provide varying degrees of screening or softening of the West Corner properties which either back onto or side face the site and also have associated garden boundary treatment, including trees and other vegetation. That bridleway/footpath therefore represents a clear physical feature that defines the edge of the settlement. It is also reflected in the NDP as forming part of the settlement boundary.
10. The site itself is partially previously developed in terms of infrastructure, including a small number of raised manholes covers, relating to an underground drainage sewer linking the housing development to the south of the site with the pumping station at its northern end, the latter being outside of

the site boundary. However, the majority of the site remains undeveloped and as a whole, whilst currently very overgrown, comprises a field which, like others in the vicinity, is characteristically bordered, particularly to the east, west and north by Cornish hedges and small trees. Furthermore, on the approach to the site along Valley Lane, the northern part of the site contributes to a distinctly open direct outlook to the countryside, dominated by various trees and other vegetation.

11. Although the northern site boundary is bordered by a lane, that feature bisects fields either side and is bordered by Cornish hedges and trees. It is also narrow, clearly running out of the settlement and serving sporadic dwellings, including that relating to the farm to the west of the site, that are clearly visually separated from the main settlement. That lane is therefore not an unexpected feature of the open countryside setting to the village, provided partly by the appeal site. The same applies to the farm building and land to the west of the site, the dwelling itself also being set away from the site boundary, with open fields dominating that edge to the site.
12. In these respects, the site is clearly seen, albeit mainly from closer vantage points, as forming part of the open countryside, despite being enclosed on two of its sides by existing development, and notwithstanding extant planning permission for development of the site to the south-west. The distinctive settlement boundary along the eastern edge of the site, together with the open outlook to the countryside seen from along Valley Lane, as referred to above, would cause the proposed development to visually extend development into the open countryside. This is taking account of the definition of rounding off in both the Local Plan supporting text to policy 3 and the CPOAN. The latter also highlights that NDPs can define development limits subject to meeting Local Plan housing targets, which may formalise the opportunities to round off.
13. In respect of the matter of rounding off, the appellant draws attention to the effect of the garden centre to the north-east of the site. However, that development is clearly visually separated from the rest of the settlement, including the appeal site, by intervening fields and woodland. As such I do not consider this lends itself to contributing to the natural edge of the settlement. It too is also outside of the defined settlement boundary of the NDP.
14. For these reasons, the proposed development would not represent rounding off of the village. It would therefore also be contrary to policy 7 of the Local Plan which restricts development in the open countryside to certain types of development, none of which would apply to the appeal proposal. The supporting text to that policy clarifies that Neighbourhood Plans may, if felt to be appropriate, look to identify specific settlement boundaries consistent with the approach whereby the focus for rural settlements is to meet local need while reflecting and respecting the character of settlements. Importantly, the NDP housing policies are set in that context, such that policy H1 focusses on infill and rounding off development within the settlement boundary. The supporting text to that policy highlights the control provided by policy 7 of the Local Plan in respect of development outside existing settlement boundaries in the open countryside.
15. In relation to policy 3, I have also had regard to matters concerning the scale of the proposal in relation to the existing settlement. However, even if the appellant is correct in concluding that it would be of a scale appropriate to the

size and role of Carnon Downs, I have found that fundamentally it would not represent a rounding off of the village. Furthermore, the significant size of the site and amount of proposed development, not filling a small gap in an otherwise continuous built frontage, and the location at the edge of the settlement in open countryside, would preclude it from being considered as infill.

16. It therefore remains to consider whether the proposal would comprise a rural exception site. Under policy 9 of the Local Plan, the primary purpose of such sites is to provide affordable housing to meet local needs, and that they should be clearly affordable housing led with market housing not representing more than 50% of the total number of homes or 50% of the land take. In terms of ensuring the maximum amount of affordable housing that would be viable above the 50% level, the appellant has submitted a planning obligation to allow for this, subject to a viability assessment at the reserved matters stage.
17. However, fundamentally, in terms of local need within Feock Parish, the Council has provided evidence to indicate that only 14 affordable dwellings are required, which would be met by existing commitments for 15 such dwellings. The use of the 14 figure is disputed by the appellant. However, even based on the Council's original figures within its Affordable Housing Statement, the total of 35 could be accounted for by a combination of those existing commitments and the construction of others utilising financial contributions secured by planning obligations. Although the latter is not a precise figure, stated by the Council to be around 15-20, the upper end of that estimate would be sufficient to achieve the needed 35 dwellings. I have also received insufficient substantive evidence to indicate that such dwellings could not be accommodated within the settlement boundaries on non-allocated sites.
18. Policy 9 also requires exception site proposals to be, amongst other things, appropriate in scale. In this respect, policy H2 of the NDP sets out that proposals for small-scale affordable housing led schemes will be supported provided that, amongst other things, there are no more than 15 dwellings on individual development sites. That policy is consistent with the National Planning Policy Framework (the Framework) which defines rural exception sites as being small sites. Policy H2 provides clarity as to what the term 'small' should comprise in this local context. In this respect, the proposed development would therefore not be categorised as being small.
19. I note that the housing development to the south of the site is also outside of the defined settlement boundary. However, the Council confirmed at the Hearing that that was approved under different circumstances, including at a time when the Council was unable to demonstrate a five-year supply, as well as prior to the making of the NDP and the adoption of the Local Plan. I have therefore afforded little weight to this factor.
20. The appellant draws my attention to another appeal decision at Par, Ref APP/D0840/W/16/3162355, for a larger scheme including approximately 103 dwellings, considered by my colleague to represent rounding off. However, I do not have the full details of that case before me to enable a full and proper comparison of the circumstances. Nevertheless, my colleague does refer to the site as being substantially enclosed with reference to development on three sides and a road on the other, and it also clearly relates to a different

settlement. The circumstances of that other proposal are therefore different, and I have in any case determined this appeal on its own merits.

21. I have also had regard to another scheme for two dwellings, fairly recently granted outline planning permission, Ref PA18/09338, at a site at Old Carnon Hill, Carnon Downs, despite being outside of the settlement boundary. However, I note that the circumstances are again different whereby that site comprises land associated with an existing residential property, and the proposal was a re-submission of an identical planning application that was granted planning permission. Furthermore, although the officer report for the later application refers to it as according with the relevant current policies, I do not have the full details relating to the former permission to enable a proper understanding of the background. Another case referred to at the Hearing, relating to a proposal for up to 45 units at Carnon Downs, Ref PA18/10932, remained to be determined and I have not been provided with evidence to the contrary. Without the knowledge of planning permission being in place, it cannot provide a useful basis for comparison with the appeal scheme. I have in any case determined this appeal on its own merits.
22. Another case referred to by the appellant, comprising planning permission for 46 dwellings at Fowey, Ref PA18/03857, includes residential development, including curtilage land, on two sides and a significant through road with housing opposite on another. The circumstances are therefore again different to the current case. In relation to other cases cited, that concerning elderly persons dwellings on the site to the south-west of the site differs in respect of the nature of the proposed occupancy, clarified by the Council as having weighed in favour of the proposal. In relation to a site referred to at Perranporth, relating to 18 dwellings and associated pre-application advice, it is made clear that at the application stage sufficient evidence to demonstrate rounding off would be necessary. Notwithstanding these other proposals, I have in any case again determined this appeal on its own merits.
23. For the above reasons, and whilst acknowledging that the site is not shown in the NDP as being at a sensitive settlement edge, I conclude on this issue that the proposed development would not be in a suitable location for the dwellings concerned, having regard to the Council's development plan spatial strategy policies, and would not represent a rural exception site. As such, it would be contrary to policies 2, 3, 7 and 9 of the Local Plan and policy H2 of the NDP.

#### *Effect on the SAC*

24. This issue relates to the Council's concern relating to potential recreational pressures from prospective residents on the SAC, due to the site being located within the SAC's buffer zone. I have not received a copy of the emerging SAC supplementary planning document, and the Council has confirmed that it is at a stage whereby it carries no weight in relation to this appeal. Despite the limited evidence provided, and notwithstanding the submission of a planning obligation relating to the payment of a financial contribution intended to mitigate the harmful impacts of the development, it would ordinarily be necessary for me to undertake an Appropriate Assessment (AA) under the Habitats Regulations. This would be in order to determine whether the proposal would have a significant effect on the SAC. However, as I am dismissing the appeal for other reasons, it is unnecessary for me to undertake the AA in this case.



*Other matter*

25. The appellant has submitted planning obligations under section 106 of the Town and Country Planning Act 1990. They include the provision for affordable housing on the site, covering both scenarios relating to whether or not the site is considered a rural exception site. That provision would represent a benefit in terms of addressing a general need for such housing in Cornwall which I have considered further in the planning balance. In respect of the other matters relating to financial contributions towards local education and public open space provision, as I have found there to be unacceptable harm in relation to the first main issue, it has not been necessary for me to consider them in any further detail.

*Planning balance*

26. The proposal would have the benefit of providing additional dwellings to the supply of housing in the area, acknowledging that housing delivery figures set out in policy 2A of the Local Plan are a minimum. However, there is no substantive evidence to indicate that the Council's housing targets will not be met without the appeal scheme. Importantly, the Council is able to demonstrate a 5 year HLS. Although its delivery is called into question by the appellant, I have received insufficient substantive evidence in support of that position. Furthermore, and particularly in light of there being a 5 year HLS, I have no substantive basis to consider the NDP settlement boundary to be inappropriately restrictive. The weight that I attach to the addition of 38 dwellings to the local supply is therefore not substantial.
27. I note that there is a general identified need for affordable housing in Cornwall. This proposal would contribute towards that by providing at least 19 affordable dwellings, secured through a planning obligation. I have applied some additional weight to that social benefit, albeit lessened by there not being a clear need in the Parish over and above that which could already be provided. The appellant drew attention at the Hearing to a need also for non-socially rented forms of affordable housing. Whilst that may be the case, insufficient substantive evidence of such need has been provided and so I have afforded little weight to this factor.
28. Furthermore, the proposal would be likely to provide some local economic and social benefits in terms of employment relating to its construction in the short term and then from future residents supporting village services and facilities. Being on the edge of the settlement, those residents would also have fairly good access to those local services and facilities, albeit lessened to some extent by the peripheral location.
29. Despite the above benefits, these factors would be insufficient to outweigh my findings that the proposed development would not be in a suitable location for the dwellings concerned, having regard to the Council's development plan spatial strategy policies and would not represent a rural exception site. Furthermore, despite the Local Plan and NDP having respectively been adopted and made prior to the publication of the current Framework, they remain broadly consistent with it. The proposal also differs from that appeal scheme referred to by the appellant in Farnham, Ref APP/N1730/W/17/3185513, in that there was no made Neighbourhood Plan in place to influence the outcome of that appeal. For these reasons, it would not be a sustainable form of development.

**Conclusion**

30. For the above reasons, and taking account of all other matters raised, I conclude that the appeal should be dismissed.

*Andrew Dawe*

INSPECTOR

Richborough Estates

## APPEARANCES

### FOR THE APPELLANT:

Paul Bateman	Influence Planning
Dan Mitchell	Influence Planning
Rachel Bateman	Influence Planning

### FOR THE LOCAL PLANNING AUTHORITY:

Tim Marsh	Planning Case Officer
Chris Rose	Principal Development Officer in Affordable Housing
Cllr Martyn Alvey	Elected Cornwall Divisional Member for Feock and Playing Place Division

### INTERESTED PERSONS:

Mr Surridge	Local Resident
Simon Hendra	Local Resident
Cathy Kemp	Parish Councillor
Mike Kemp	Local Resident
Richard Brickell	Local Resident and Parish Councillor
Paul Nightingale	Local Resident (also appearing on behalf of Brian Ingram)
David Nightingale	Local Resident
Chris Booker	Local Resident
Hannah McCauley	Local Resident
Penny Brickell	Local Resident
C Mantle	Local Resident

### DOCUMENTS SUBMITTED AT THE HEARING:

1. Site location plan and application response from Senior Development Officer concerning affordable housing, relating to outline planning application for residential development on land east of Quenchwell Road, Carnon Downs Ref PA18/10932.
2. Updated affordable housing need figures for the Parish of Feock submitted by the Council.
3. Photographs submitted by Mr Surridge.



4. Copy of policy 7 of the Local Plan.
5. Officer report, decision notice and location plan relating to outline planning permission for the erection of two dwellings at land west of Bosbigal, Carnon Downs, Ref PA18/09338.
6. Unilateral Planning Obligation, dated 26 March 2019 relating to the SAC.
7. Representation entitled 'Site activities prior to the submission of this planning application' submitted by David Nightingale.
8. Copy of appellant's closing statement.
9. Copy of appellant's costs application.
10. Resubmitted original Unilateral Planning Obligation with one additional signatory, dated 26 March 2019.

DOCUMENT SUBMITTED AFTER THE HEARING:

1. Unilateral Planning Obligation, dated 2 April 2019, to allow for the percentage of affordable housing to be agreed subject to viability assessment at reserved matters stage should the site be considered a local plan policy 9 rural exception site.