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## Appeal Decision

Site visit made on 25 March 2019

**by David Wyborn BSc(Hons), MPhil, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3 June 2019

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### Appeal Ref: APP/D0840/W/18/3215936

### Carvynick Resort, Pencorse Lane From Pencawn Farm To Beacon Road, Summercourt TR8 5AF

- 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 Kingsley Developments (SW) Ltd against the decision of Cornwall Council.
  - The application Ref PA18/04360, dated 9 May 2018, was refused by notice dated 20 August 2018.
  - The development proposed is an outline planning application for 38 residential dwellings and the erection of a Leisure/Office building with access, layout and scale with appearance and landscaping reserved.
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### Decision

1. The appeal is allowed and planning permission is granted outline planning application for 38 residential dwellings and the erection of a Leisure/Office building with access, layout and scale with appearance and landscaping reserved at Carvynick Resort, Pencorse Lane From Pencawn Farm To Beacon Road, Summercourt TR8 5AF in accordance with the terms of the application, Ref PA18/04360, dated 9 May 2018, and subject to the conditions in the attached schedule.

### Costs

2. An application for costs was made by Kingsley Developments (SW) Ltd against Cornwall Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. The appellant has confirmed that the Council was asked to amend the description of the development during the consideration of the application. On the basis of the appellant's statement and the approach the Council took when considering the application, I have dealt with the scheme as entirely in outline. I have used the description of the development from the planning report and as confirmed on the appeal form and matters of access, layout, scale, appearance and landscaping are reserved for future consideration. I have, nevertheless, used the detail of the plans as an indication of what the appellant has in mind for the proposal.
4. The proposal was determined by the Council in August 2018 and the related planning report sets out the main issues for consideration. The application proposes 38 dwellings and seeks the units without occupancy restrictions. The application was refused for two reasons. The first reason related to a lack of

provision for affordable housing and off-site contributions towards education infrastructure. The second reason concerned the lack of mitigation in relation to the Penhale Dunes Special Area of Conservation. This appeal has been submitted with a completed Unilateral Undertaking (UU), dated 18 March 2019, which seeks to address these matters.

5. The appellant following the refusal of planning permission also submitted a further application to the Council. Application PA18/10844 was for essentially the same development and sought to address the two reasons for refusal with contributions in the form of a Unilateral Undertaking. The information indicates that the Council in their report would have found the obligation contributions acceptable, however, the application was approved with a condition requiring the units to be restricted to holiday letting accommodation, not the unrestricted accommodation that the appellant had sought. In such a case no contributions were necessary.
6. The Council in their appeal statement have explained that the holiday occupation requirement was necessary with Application PA18/10844 because, in summary, open market housing on the appeal site would not be located in a sustainable location and therefore would fail relevant policies of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan). The Council has adopted this argument with the present appeal.
7. Given the circumstances of the Council decision on application PA18/10844 and the Council's subsequent evidence, the appellant was afforded a further opportunity to make submissions. The Council was allowed to respond and then the appellant to have a final opportunity to make any comments. Accordingly, I am satisfied that both main parties have been afforded the ability to make their case on the planning issues.

### **Main Issues**

8. In the light of the above, I consider that the main issues are:
  - whether the site is an acceptable location for open market housing having regard to the policies of the development plan, and
  - whether there is a policy requirement for planning obligations to provide contributions and, if so, whether the requirement is met by the proposal with particular regard to education, affordable housing and mitigation of the impacts on the Penhale Dunes Special Area of Conservation (SAC).

### **Reasons**

#### *Location*

9. Policy 2 of the Local Plan sets out the spatial strategy and that new development should provide a sustainable approach to accommodating growth, providing a well balanced mix of economic, social and environmental benefits. The strategy indicates that this should maintain the dispersed development pattern of Cornwall and provide homes and jobs based on the role and function of each place.
10. Policy 3 of the Local Plan sets out a hierarchy of delivery based on the larger towns and cities with a criteria based approach for housing and employment for the other settlements.

11. In this case, Summercourt is a reasonable sized settlement with a range of facilities including a convenience store and post office, primary school, nursery school and public house. The settlement is located broadly south of the A30.
12. The appeal site is located broadly north of the A30 and is predominantly a holiday park. The landscaped grounds include pitches for touring caravans, static caravans, a series of terrace properties, sports hall, public house and admin building. The development of the 38 dwellings, as shown on the indicative plans, would predominantly be on the spaces of the touring caravan pitches although some of the static caravans would be replaced and some of the proposed units would extend onto other grassed areas.
13. In terms of the criteria under Policy 3 of the Local Plan it is not within or immediately adjoining the settlement of Summercourt and I am not persuaded that the holiday park forms a settlement in its own right. In these circumstances, the scheme would not fulfil the requirements of Policy 3, in particular in respect of rounding off.
14. In terms of the connection between the site and Summercourt, Beacon Road (A3058) has a footpath from the village that, with the occasional gap where there is a grass verge, passes up to and over the A30 bridge and then there is a reasonably wide grass verge to the junction with the lane that goes down to the holiday park. There are proposals within earlier permissions to provide a footway from the bridge to the junction with the lane. This would make this section of the route more convenient and usable. The lane has no street lighting or footway; however, the Highway Authority has not raised objection to the use of this section of the route from the village to the site for pedestrians and I have no substantive evidence that the lane would provide a safety hazard for walkers or cyclists.
15. Although the evidence indicates that the footway alongside Beacon Road is likely to be provided in any case as part of the previous approvals the additional footway along the road could be secured as part of this permission. The route to and from Summercourt is reasonably level and, in all these circumstances, I consider that future occupiers of the site would have the ability to walk or cycle to the services and facilities at Summercourt, and this would not be an unreasonable distance. There would also be the public house and, if permitted and constructed, the sports facilities on the site itself. Taking all these matters into account, future occupiers of the development would be acceptably located in relation to Summercourt to be able to access the facilities and services.
16. In coming to this view, I have noted the previous decisions of the Council to allow holiday let units to become permanent dwellings on the site. A number of permissions have been granted, partly I understand, on the basis that the location is a sustainable one. I do note the justifications for these permissions which is set out by the Council and in other submissions, including that they were existing buildings that were in need of repair. Nevertheless, those applications are reasonably recent, would have been assessed against the policies of the present Local Plan and in total there are now 32 dwellings on the site without occupancy restrictions.
17. Policy 21 of the Local Plan seeks to ensure the best use of land and advises that encouragement will be given to sustainably located proposals that use previously developed land and buildings provided that they are not of high

environmental or historic value. Policy 21 sets the test that the land should be sustainably located but does not require it to be within or adjoining a settlement.

18. In this case, I have no robust evidence that the site is of high environmental or historic value, other than the listed building which I consider later and find would not be harmed by the proposal. The main parties agree that the site is previously developed land and I have found that the site is sustainably located. In these circumstances, the proposal is compliant with Policy 21 of the Local Plan. I have found no substantive reason why the scale of the development would not be appropriate to the scale and role of the nearby settlement and, therefore, would be compliant in this aspect with the approach in Policy 2 of the Local Plan.
19. The appellant indicates that the site would be operated by a management agreement such that the dwellings would in any event be occupied as holiday lets. While this may deliver the intended approach to the use of the site, I attribute this matter little weight in my considerations as the effect of a permission, without a condition restricting occupation to holiday accommodation, would be to allow open market housing. However, for the reasons set out above I find that this would comply with the development plan. Similarly, that the Council can demonstrate a 5 year housing land supply does not alter my view on the acceptability of the proposal.
20. I note the comments regarding the importance of holiday accommodation to the local economy. However, the evidence indicates that the site has struggled financially over past years and that with a location away from the coast is less attractive to some holiday makers. Again, these comments regarding the financial issues and viability of the site do not outweigh my view on the main issue in this case. Furthermore, because I have found that the scheme complies with Policy 21 of the Local Plan there is no demonstrable conflict with the approach set out in the Chief Planning Officer's Advice Note regarding lifting holiday occupancy conditions.
21. The previous sports and leisure building was destroyed by fire and a replacement gymnasium has now been constructed. The indicative plans show an extension to the gymnasium and sports hall as well as offices. The Council do not raise objection to these aspects of the proposal subject to a condition requiring the office accommodation to be used in association with the use of the main site. This would be necessary to limit traffic movements. There would be benefits to the local community to be able to use the sports facilities and the significant local support for the proposals are noted. Furthermore, the ability for the existing and future residents on the site itself to use the facilities would make the site a more sustainable location in that respect.
22. The emerging St Enoder Parish Neighbourhood Plan 2018-2030 has been drawn to my attention in relation to the issues with the location of development which indicates that the site falls outside the proposed settlement boundary. However, the evidence indicates that the Plan is at an emerging stage in the process. Consequently, even if I was to attribute the Plan moderate weight it would not alter my view on the main issue which is based on the compliance with Policy 21 of the Local Plan rather than the site forming part of the settlement. Additionally, I note that the Parish Council support the proposal in this case.

23. In the light of the above analysis, I conclude that the site would be an acceptable location for open market housing as the development would comply with Policies 1, 2 and 21 of the Local Plan which seek, amongst other things, to provide homes based on the role and function of each place giving encouragement to sustainably located proposals.

#### *Obligations*

24. My attention has been drawn to the document "Section 106 Planning Obligations Guidance for Education Provision version 2.1 2018" which provides the justification for contributions in relation to education. The scheme would be likely to increase permanent residents in the area and thereby increase the number of children who would attend local schools. The evidence indicates that the local primary and secondary schools are both operating at over 90% capacity and therefore the requirement to make an education contribution in accordance with the guidance and Policy 28 of the Local Plan is justified.
25. The signed and dated UU agrees to pay the education contribution and the Council accept the level of provision. The evidence confirms that the limit on pooling restrictions has not been reached. I consider that this obligation would meet the 3 tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and is required to comply with the development plan.
26. In relation to affordable housing, Policy 8 of the Local Plan sets out the percentage number of units that should be delivered on sites and I am satisfied that with this scheme there is a requirement to meet an affordable housing contribution. The policy specifies that any off site contributions must be broadly equivalent in value to on site provision and secured to support the delivery of affordable housing through a planning obligation.
27. The Council's Affordable Housing Team has advised that they support an off-site affordable housing contribution. The advice specifies a sum per dwelling and the obligation in the UU meets this figure. Notwithstanding those representations that seek a higher figure because of emerging planning documents, the Council do not object to the contribution and I have found no clear evidence to disagree with the figure or the staging of the delivery in the agreement. I am satisfied that this obligation would meet the 3 tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and the requirements of the development plan.
28. In terms of impact on important habitats the Council has referred to the Terrestrial European Sites Mitigation Supplementary Planning Document (May 2017). Although a consultation version, I have been informed that the document has been prepared in collaboration with Natural England. It is a comprehensive assessment of the likely impacts resulting from new development and I have not been presented with any clear evidence why the approach to mitigation should not be applied. The site is within the zone of influence of the Penhale Dunes SAC. I consider that the additional residents, in combination with other housing projects, would be likely to have significant effects on the protected site by way of the increased recreational pressure.
29. The Mitigation Planning Document sets out a strategy to mitigate those effects. It explains that Suitable Alternative Natural Greenspace (SANG) is not required at this time, but sets out a costed approach over a period of 80 years in relation to Strategic Access Management and Monitoring (SAMM). The list of



SAMM measures are intended to provide an effective project to make the SAC more resilient to visitor pressure. The costed project requires a contribution of £330 per dwelling.

30. The signed and dated UU sets out to pay the required figure in full before any dwelling is occupied. I am satisfied that the financial contribution would be secured to meet the intended SAMM projects and the Council agree that the terms are acceptable. As the development would increase visitor pressure on the SAC, I am satisfied that the contribution is necessary to make the development acceptable in planning terms, is directly related to the development and fairly and reasonably related in scale and kind. The mitigation strategy does not comprise the provision of infrastructure and therefore the contributions would not conflict with any pooling restrictions.
31. I am required to undertake an appropriate assessment in accordance with the Conservation of Habitats and Species Regulations 2017. I am satisfied that with the secured mitigation that the scheme would not adversely affect the integrity of the habitats site. The proposal therefore complies with Policy 22 of the Local Plan which seeks to mitigate the recreational impacts from development.
32. In the light of the above analysis, I conclude that the obligations in respect of education, affordable housing, and habitat mitigation are all necessary to make the open market residential development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development. They therefore accord with the advice regarding obligations in the National Planning Policy Framework (the Framework) and are necessary to meet the requirements of the relevant Local Plan policies detailed above. The UU addresses the two reasons for refusal set out in the decision notice.

### **Other Matters**

33. The Grade II listed building, Carvynick House, is located within the grounds of the holiday park. It is significant because of its probable 17<sup>th</sup> Century origins, subsequent remodelling and the vernacular design and materials. The setting has been compromised by the surrounding built development. The proposed dwellings and sports hall would be set away from the listed building and largely screened by the existing built development. In these circumstances, with appropriate details at the reserved matters stage, the setting and therefore the significance of the listed building would not be adversely affected.
34. The Council has brought to my attention details of pre-application discussions that the appellant is having regarding the development of a holiday park site elsewhere in Cornwall. On the evidence before me it would appear that the locational characteristics and circumstances differ in a number of respects in relation to the present site and, therefore, I attribute this information limited weight.

### **Conditions**

35. I have had regard to the conditions suggested by the Council and the advice in the Planning Practice Guidance. The appellant has confirmed agreement to the conditions suggested by the Council, with the exception of the condition regarding restricting the occupation to holiday letting accommodation. Such a condition is not necessary for the reasons set out above.

36. A condition setting out the requirement for the submission of reserved matters and subsequent time periods for commencement are necessary in the interests of certainty. A condition which sets out how pedestrian and cycle connectivity would be improved to the site is necessary to ensure that the link to Summercourt is up graded in the interests of the convenience of users.
37. A condition restricting the office accommodation to the needs of the business on site and in connection with those operating the site is necessary in the interests of sustainability. I have amended the wording to refer to operator rather than applicant as this then relates to the use of the site. Conditions setting out the drainage approach and implementation on the site are necessary to minimise the potential of any increased risk of flooding and to reduce the risk of pollution.
38. Given the acknowledged archaeological potential of the site, it is necessary for a condition to require a programme of archaeological work and recording. In accordance with the recommendations of the Habitat Survey it is necessary to require the submission of a biodiversity enhancement plan. I have updated the suggested condition to ensure that the plan is submitted to the Local Planning Authority and once approved, implemented in accordance with an agreed timetable.
39. Conditions 6, 7 and 8 are necessary as pre-commencement conditions because these matters need to be resolved before works commence either as they need to be completed before building works in the case of archaeology or the details need to be integrated into the overall design with drainage and biodiversity enhancement.

### **Conclusion**

40. Having regard to the above, and taking all other matters into account including the recommended conditions and the UU, I conclude that the appeal should be allowed.

*David Wyborn*

INSPECTOR

## Schedule of Conditions

Appeal Ref: APP/D0840/W/18/3215936

Carvynick Resort, Pencorse Lane From Penscawn Farm To Beacon Road,  
Summercourt TR8 5AF

- 1) Details of the access, 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) Details of how pedestrian and cycle connectivity can be improved from the site to the settlement of Summercourt (to include a footway and additional bus stop) shall be submitted to and agreed in writing by the Local Planning Authority. The approved details shall be implemented prior to the proposal being brought into use and shall be retained thereafter.
- 4) The hereby approved office space shall only be used as office space for the operator of the site's associated businesses.
- 5) The drainage systems shall be in accordance with the principles set out in the Hydrock Flood Risk Assessment Ref C-10023-C, dated 26/07/2018.
- 6) No development approved by this permission shall be commenced until the following details are provided:
  1. A description of the final foul and surface water drainage systems operation;
  2. Results of percolation tests to BRE 365 to confirm the suitability of infiltration;
  3. Details of the final drainage schemes including calculations and layout;
  4. Confirmation from South West Water Ltd that the foul network has sufficient capacity to cater for this development;
  5. A Construction Surface Water Management Plan;
  6. A Construction Quality Control Plan;
  7. A plan indicating the provisions for exceedance pathways, overland flow routes and proposed detention features;
  8. A timetable of construction;
  9. Confirmation of who will maintain the drainage systems and a plan for the future maintenance and management, including responsibilities for the drainage systems and overland flow routes.



The Developer must inform the Local Planning Authority of any variation from the details provided and agree these in writing before such variations are undertaken.

The surface water drainage systems shall fully manage surface water flows resulting from the developed site up to the 1 in 100 year peak rainfall event plus a minimum allowance of 40% for the impact of climate change.

The approved scheme shall be implemented in accordance with the timetable so agreed and the scheme shall be managed and maintained in accordance with the approved details for the lifetime of the development.

- 7) A) No development commence until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions, and:
1. The programme and methodology of site investigation and recording
  2. The programme for post investigation assessment
  3. Provision to be made for analysis of the site investigation and recording
  4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
  5. Provision to be made for archive deposition of the analysis and records of the site investigation
  6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation
- B) No development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (A).
- C) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (A) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 8) No development shall take place until a Biodiversity Enhancement Plan, to include the mitigation measures set out within the extended Phase 1 habitat survey under taken by Spalding Associates, has been submitted and approved by the Local Planning Authority. Once approved the works shall be implemented in accordance with an agreed timetable and thereafter retained.

End of Schedule