



Appeal Decision

Inquiry held on 10, 11 and 12 February 2015

Site visit made on 12 February 2015

by William Fieldhouse BA (Hons) MA MRTPI

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

Decision date: 12 May 2015

Appeal Ref: APP/D0840/A/14/2221834

Land east of Tregony Road, Probus, Cornwall

- 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 Wainhomes (South West) Holdings Limited against the decision of Cornwall Council.
 - The application Ref PA13/09823, dated 24 October 2013, was refused by notice dated 15 April 2014.
 - The proposal is residential development of 90 dwellings including access, associated engineering works, garages, infrastructure drainage and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for residential development of 90 dwellings including access, associated engineering works, garages, infrastructure drainage and landscaping on land east of Tregony Road, Probus, Cornwall in accordance with the terms of the application, Ref PA13/09823, dated 24 October 2013, subject to the conditions set out in the schedule attached as Annex C.

Preliminary Matters

2. A number of amended and additional plans were submitted during the course of the planning application. I have dealt with the appeal on the basis of the plans that were before the Council when it made its decision; these are listed in the Statement of Common Ground (SOCG) agreed by the appellant and Cornwall Council in January 2015.
3. A further SOCG, relating specifically to highways matters, was submitted during the Inquiry¹. Probus Parish Council, who had Rule 6 status² and was duly represented at the Inquiry, was not party to these statements.
4. The Council's decision notice includes six reasons for refusal, five of which relate to the absence of a completed planning obligation at the time that the planning application was determined. A final draft planning obligation was submitted and discussed during the Inquiry³, and the Council confirmed that if

¹ Document IQ1.

² Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000.

³ Document IQ8.

this were completed it would overcome those five reasons for refusal. An executed planning obligation by agreement was submitted in accordance with the timetable agreed at the Inquiry⁴. However, in order for me to take its provisions into account in the determination of this appeal it is necessary for the legal requirements set out in the Community Infrastructure Levy Regulations (2010, as amended), including that which came into effect on 6 April 2015, to be met. I deal with this later in my decision.

Main Issue

5. The main issue is whether safe and suitable access to the site would be provided for all people.

Reasons

The Site, its Surroundings, and the Proposal

6. The appeal site comprises slightly under five hectares of mainly agricultural land, along with a smaller area of scrubland, on the edge of Probus. Native hedgerows form the boundaries, and a further hedgerow crosses the southern part of the site. There is evidence of archaeological remains beneath the land.
7. Adjoining the northern boundary is Parkengear Veau, a residential estate of around 50 dwellings. To the west is Tregony Road running northwards into the centre of the village and southwards to the A390, a non-trunk road which bypasses Probus and connects St Austell and Truro. To the south west is a detached dwelling and a vehicle sales and repair business, and to the north east is Parkengear Farm, a grade II listed building, and associated outbuildings situated on a narrow lane / bridleway.
8. The village, which comprises around 1,000 households, contains a range of local services and facilities, including shops, a primary school, doctors' surgery, community hall, playing field, tennis courts, church, public house, restaurant and petrol filling station.
9. The proposal would entail the construction of a residential access road from Tregony Road. The proposed 90 dwellings, 45 of which would be affordable, would be located to the south of the estate road, with the area to the north being provided as public open space beneath which the main archaeological remains would be retained. A number of the dwellings would have access drives to Tregony Road, and pedestrian access would be provided to the lane / bridleway to the north east of the site.
10. Off-site highway works are proposed both along Tregony Road into the centre of the village to the north⁵, and to the A390 at the Tregony Road junction to the south of the site⁶. I return to these proposed works, along with other transport measures included in the planning obligation, later in this decision.

⁴ Planning Obligation by Agreement under section 106 of the Town and Country Planning Act 1990, dated 20 February 2015.

⁵ Plan ref PHL/001 rev E dated 28 March 2014.

⁶ Plan ref PHL/002 rev B dated 28 March 2014.

The Main Issue: Whether Safe and Suitable Access Would be Provided for all People

11. I am aware that the Parish Council and many local residents are dissatisfied with the transport assessment and other information provided by the appellant, and the way in which the planning application was handled by Cornwall Council's planning and highway officers. However, I have determined this appeal having carefully considered all of the information provided to me by all parties in the context of relevant national and local policy and guidance.
12. Policy and guidance relevant to this issue includes that set out in the Carrick District Local Plan (1998); Connecting Cornwall 2030 (2011); Cornwall Design Guide (2013); General Design Considerations for Adoptable Highways (Cornwall Council 2012); the NPPF; the Design Manual for Roads and Bridges (1995, "DMRB"); Manual for Streets (2007, "MfS"); and Manual for Streets 2 (2010, "MfS2").
13. Collectively these documents seek to ensure that roads and streets are well designed and create a safe environment for all users, including pedestrians whose needs should be considered first when designing, building, retrofitting and improving streets. National guidance includes standards for visibility at road junctions, although for non-trunk roads these are not mandatory and it is advised that, unless there is evidence to the contrary, a reduction in visibility will not necessarily lead to a significant problem⁷.
14. Local plan policy 13L states that planning permission will not be granted for development which is not fully accessible by public transport, pedestrians and cyclists, or which creates an unacceptable impact upon the overall highway network. However, whilst the National Planning Policy Framework (NPPF) encourages safe and suitable access for all people, this has to be understood in the context of the specific advice that development should only be refused on transport grounds where the residual cumulative impacts would be severe⁸. In so far as local plan policy 13L is more restrictive, it is somewhat at odds with more recent national policy meaning that the weight that I attach to it is limited⁹.
15. Given the site's location between the village centre and the A390 bypass, the proposal would be likely to generate traffic movements in both directions along Tregony Road. I will therefore consider the existing conditions on Tregony Road and at the junction with the A390; the additional traffic and pedestrian movements that the proposal would generate; the off-site highway works that would be provided; and the residual cumulative effect on highway safety. I will also consider the accessibility of jobs, shops, services and facilities to the site.

Existing Conditions on Tregony Road between the Site and the Centre of the Village

16. Tregony Road between the site and the village centre is essentially an historic rural lane a few hundred metres in length that has seen development take place along it, and certain alterations to its design, over many years. It is

⁷ MfS2 paragraph 10.5.9.

⁸ NPPF paragraph 32.

⁹ NPPF paragraph 215.

currently subject to a 20 miles per hour speed limit to the north of the site, and a number of traffic calming measures have been introduced. The carriageway varies in width between around 3.6 and 5 metres, there are only limited sections of footway and highway verge, and a number of dwellings directly abut the carriageway. Informal on-street parking is prevalent. In effect, therefore, the road is of insufficient width to allow two cars to pass for much of its length, and significant parts of the carriageway are used by pedestrians. The street is clearly currently used as a "shared surface" more by necessity than by design.

17. Informal passing places for vehicles, and areas that provide some opportunity for refuge for pedestrians, including those with pushchairs, and wheelchair users exist in various places between the site and the village centre. The vast majority of vehicles adhere to the 20 miles per hour speed limit and drive sensibly¹⁰. Whilst forward visibility is restricted to some degree in certain places, for the most part oncoming vehicles and pedestrians can be seen in sufficient time to ensure that appropriate action can be taken to avoid collision or the need for lengthy reversing movements. That said, it is clear that in such an historic street environment, care needs to be taken by all road users to ensure safety. This is more likely to occur where most road users are local residents or regular visitors, such as in the centre of a village where a bypass has been provided.
18. At present, hourly traffic flows on Tregony Road between the site and the village centre are in the region of 80-100 at the busiest times of the morning and afternoon, whereas pedestrian flows can be around 40-60 per hour¹¹. It is regularly used by children going to and from the primary school, bus stops, local shops and King George's playing field, and by the elderly and those in poor health accessing the doctors' surgery which is located a short distance to the north of the appeal site on the opposite side of Tregony Road. The surgery may well attract additional trips in the future as patient numbers increase and if the building is extended and additional car parking provided as planned. A "worst case scenario" estimated by the Parish Council is that the surgery could in the future attract an additional 25 cars per hour at the busiest times.
19. Local residents who use Tregony Road on a regular basis clearly feel strongly that it is an unsafe environment, particularly for pedestrians and vulnerable users. However, accident data provided by the Parish Council shows that in the last ten years the number of incidents, including "damage only", have been limited to three in The Square at the northern end of Tregony Road, and a further three along Tregony Road¹². Cornwall Council accepts that Tregony Road currently operates safely¹³.
20. Having considered all of the above, it seems to me that whilst the layout and design of Tregony Road requires care to be taken by road users, it cannot be regarded as an unacceptably unsafe highway for the current level and nature of the use to which it is put by motorists, pedestrians and vulnerable users.

¹⁰ Mr Trethewey's Proof of Evidence paragraph 3.19.

¹¹ Mr Trethewey's Proof of Evidence paragraphs 3.20 to 3.30; Mr Egerton's evidence; and Mr Awcock's Proof of Evidence Tables 6.1 and 3.2.

¹² Mr Trethewey's Proof of Evidence Appendix 3, and email dated 5 February 2015.

¹³ Mr Pearson's Proof of Evidence paragraph 5.25.

Existing Conditions at the A390 / Tregony Road Junction

21. Tregony Road joins the busy A390 on the inside of a long, sweeping curve a short distance to the south of the site, the intervening section of the minor road being wide enough for two vehicles to pass. The junction with the A390 is of a simple "T" design and was provided when the bypass was built around twenty years ago in order to provide local access, including to the vehicle sales and repair business, rather than as a main route into the village. A layby is located on the A390 opposite the Tregony Road junction.
22. Following a number of shunt incidents involving vehicles turning into Tregony Road, a right turn lane was introduced on the bypass in 2011 for vehicles approaching from the north east. The junction is currently used by around 630 vehicles per day, a quantity that I am advised exceeds that envisaged when it was built. Notwithstanding that, the highways matters SOCG states that the junction is expected to operate with significant spare capacity at all times even if the proposal were to be allowed. This has not been seriously challenged by the Parish Council or local residents, their main concerns being about the speed of traffic on the bypass and the visibility available at the junction.
23. Whilst some vehicle speeds are greater, particularly when traffic flows are lower, it is agreed that the average speed of traffic on the bypass in the vicinity of the Tregony Road junction is around 60 miles per hour¹⁴. Based on this, the DMRB advises that visibility splays of 4.5 metres x 215 metres should be provided for drivers of vehicles emerging from side junctions to trunk roads, although highway authorities have discretion to reduce these distances if local circumstances permit¹⁵. Whilst the A390 is not a trunk road, it is a strategic inter urban route and therefore it is relevant to have regard to that standard when considering the Tregony Road junction, not least in the absence of any other recommended visibility standards applicable to a road with a large quantity of traffic travelling at 60 miles per hour. However, in so doing it is also important to bear in mind the key principles of later national guidance and take account of local context¹⁶.
24. The evidence before me presents a somewhat inconsistent picture as to the visibility currently available at the junction. The Parish Council suggests that available visibility is 4.5 metres by 130 metres in one direction and 140 metres in the other; Cornwall Council suggests 2.4 metres by 160 metres; and the appellant 2.4 metres by 180 and 187 metres.
25. Whilst a distance of 4.5 metres back from the main carriageway is clearly an appropriate location from which to assess visibility in some trunk road situations, a distance of 2.4 metres represents a reasonable maximum distance between the front of a car and the driver's eye¹⁷. I have been provided with little convincing evidence why it is necessary to achieve the 4.5 metre standard in this particular location, and given that the junction is expected to continue to operate well within capacity, I do not consider it to be essential here. Thus,

¹⁴ 85th percentile average speed referred to in Mr Pearson's Proof of Evidence paragraph 5.13; Mr Trethewey's Proof of Evidence paragraphs 3.8, 3.9 and 6.4; and Mr Awcock's Proof of Evidence appendix IDA-21 paragraph 2.26.

¹⁵ DMRB paragraphs 1.22 to 1.24.

¹⁶ MfS2 paragraph 1.3.3.

¹⁷ MfS paragraph 7.7.6.

the Parish Council's estimate of visibility along the A390, measured from 4.5 metres back along Tregony Road, is not directly relevant.

26. The difference between Cornwall Council's and the appellant's estimates of visibility along the A390 may be explained by how the vegetation on the verge had been maintained at the time that the assessments were made, but I note that both those parties' figures achieve the "next step" standard of 160 metres referred to in DMRB. Furthermore, more recent guidance advises that there is scope for using lower safe stopping distances for non-trunk roads¹⁸.
27. Importantly to my mind, it is clear that the highway authority is content that the design of the junction and the visibility available is adequate, it having designed the original layout and the more recent right turn lane improvement, and highways officers having confirmed that they have no objection to the increased use of the junction that would arise as a consequence of the proposal.
28. Furthermore, whereas accident data provided by the various parties show numerous incidents along the bypass, which I am advised is in the top 300 blackspots in Cornwall¹⁹, those involving the use of Tregony Road junction are limited in number. A car leaving Tregony Road was hit by an oncoming vehicle in 2005, and there were four personal accident injuries close to the junction between 2007 and 2012, two of which were rear shunts before the right turn lane was installed. There appear to have been no significant accidents involving the use of the junction since 2012, although there have been two overtaking collisions on the A390 nearby, one of which caused serious injury to a motorcyclist.
29. I appreciate that many local residents, and some visitors to the village, consider the junction to be so hazardous that they choose not to use it, particularly to turn right out of Tregony Road. I am also aware that the doctors' surgery website directs visitors via the centre of the village. However, there is persuasive evidence, including about the design and layout of the junction, the limited number of accidents associated with its use, and the informed opinion of the highway authority, which suggests to me that, irrespective of the fact that visibility does not meet the recommended standard for trunk roads, the junction is currently reasonably safe to use.

Additional Use of the Local Highway Network Associated with the Proposal

30. According to the highways matters SOCG, the proposal would be likely to generate 50 additional trips by car to and from the site in the morning peak hour (08.00 to 09.00), and 62 in the afternoon peak hour (17.00 to 18.00). Additional trips on foot and bicycle are estimated to be around 8 in the morning and 9 in the afternoon peak hours²⁰.
31. Whereas it is likely that most if not all journeys on foot or by bicycle from the site would be into the village, it is less clear in which direction cars would travel. Anyone wishing to drive into the village would turn right out of the site along Tregony Road, as may some drivers wishing to go to certain destinations

¹⁸ MfS paragraphs 7.5.4-7.5.6.

¹⁹ Mr Egerton's Statement (IQ11).

²⁰ Transport Assessment (AWP, October 2013) Table 5.3.

to the north. However, drivers setting off to go towards Truro or St Austell could reach the A390 either via the village or by using the junction a short distance to the south of the site.

32. Evidence suggests that around three quarters of drivers leaving the Parkengear Vean residential estate head north along Tregony Road rather than south to the bypass²¹. Given that the appeal site is slightly closer to the bypass, a 50-50 split, as suggested by the Parish Council, would seem to be a reasonable assumption to make about the behaviour of future residents if the proposal were to be allowed. However, it is important to not underestimate the potential effects in either direction. Therefore, I will assume that the proposal could increase the use of Tregony Road into the village by at least 30 (and potentially up to 62) vehicles per hour at the busiest times, and also the use of the junction with the A390 by a similar amount (notwithstanding that the higher levels of use would not be likely to occur in both directions).
33. Thus the proposal could, in purely numerical terms, lead to a significant increase in traffic on Tregony Road into the village of at least 30%, and possibly up to around 80% if all future residents chose not to use the nearby junction with the A390. Even if the Parish Council's estimate of additional traffic associated with the doctors' surgery proves to be on the high side, the overall amount of traffic using Tregony Road between the site and the village centre would be well in excess of 100 per hour at busy times.
34. Again, in numerical terms, 30 to 60 or so additional turning movements per hour at the busiest times at the A390 / Tregony Road junction would represent a significant increase in the use of that junction of potentially around 100%.

Proposed Off-Site Works to Tregony Road

35. The alterations proposed to Tregony Road are summarised in the highways matters SOCG. They include an extension of the 20 miles per hour zone to the south of the site; associated traffic signs and a replacement gateway feature at the new boundary of the zone; a footway along the site frontage and further north to link to that at the entrance to Parkengear Vean; gateway features, virtual footways, additional dropped kerbs, tactile paving, traffic regulation orders and signage along the road between the site and the village centre.
36. The planning obligation includes a financial contribution of £99,000 to be used to provide and improve sustainable transport in the vicinity of the site. This would help to fund improvements to the pedestrian route to the school, the village centre streetscape, and links to bus stops. Such measures would be in addition to the physical improvements to Tregony Road that I have already described.
37. The planning obligation would also ensure the provision of a travel plan to encourage future residents to use sustainable forms of transport. This would be likely to lead to some increase in walking, cycling and the use of public transport and thereby have some effect on the level of car use by future residents of the site.

²¹ Mr Trethewey's Proof of Evidence paragraph 3.23 and Mr Egerton's Statement (IQ11).

38. These transport measures would improve road conditions but would clearly not create a "shared surface" street environment to the standards that would be expected for a new development today in line with current policy and guidance²². Furthermore, the amount of traffic using Tregony Road at busy times each day would significantly exceed 100 vehicles per hour. However, that figure is not described in national guidance as an absolute ceiling for the amount of vehicles using shared surfaces²³. Achieving the high standards expected for new development may not be possible in relation to a significant length of an historic lane such as this within a village, but this does not necessarily mean that the environment would be unsuitable or unsafe. This is a matter that I return to later in this decision.

Proposed Improvements to the A390 / Tregony Road Junction

39. One of the revisions to the proposal made relatively late on in the planning application process was the provision of a left turn diverge lane along the A390 approaching the Tregony Road junction from the south west. However, it was agreed by the appellant, Parish Council, Cornwall Council and others who expressed an opinion on the matter at the Inquiry that this could in fact represent a disbenefit due to its location on the inside of a curve and the fact that vehicles using the lane could restrict views of fast moving traffic on the main carriageway for drivers of vehicles emerging from Tregony Road. It was therefore agreed that this particular alteration to the highway should not be implemented if the appeal were to be allowed, and I have no reason to come to a different view.
40. The issue of whether visibility along the A390 from the Tregony Road junction could or should be improved was discussed at some length during the Inquiry. It seems clear from the plans submitted by both the appellant and the Parish Council that this could indeed be achieved within the boundary of the public highway, potentially to a distance of 215 metres. Whilst improving visibility to such a degree would be likely to require engineering works to the embankments, and the loss of some trees to the south west of the junction, and detailed plans have not yet been worked up, it is almost certain that material improvements could be achieved within the highway without affecting third party land. Whilst I have concluded that the junction is currently reasonably safe, I have found that the proposal would be likely to significantly increase its use. Accordingly, it would not be unreasonable, if the appeal were to be allowed, to require visibility splays to be provided in accordance with a detailed scheme to be agreed with Cornwall Council, and thereafter retained, to enhance safety at the junction.

The Residual Cumulative Effect of the Proposal on Highway Safety

41. I have found that Tregony Road, whilst not of a layout and design that corresponds to modern standards, is not currently an unduly dangerous environment for road users. Whilst the proposal would be likely to lead to a significant increase in the use of the road, the proposed alterations would improve the layout in a number of respects, help to ensure vehicle speeds are

²² General Design Considerations for Adoptable Highways (Cornwall Council 2012) section 2.3, and MfS paragraphs 7.2.8–7.2.15.

²³ MfS paragraph 7.2.14.

low, and thereby ensure that the risk of conflict leading to damage or injury would be limited.

42. I have also found that the junction of Tregony Road with the A390, whilst not currently meeting recommended visibility standards for trunk roads, is reasonably safe and would continue to operate well within capacity if the appeal were to be allowed. The proposal would be likely to significantly increase the use of the junction, but a planning condition could ensure that visibility would be provided and maintained to the satisfaction of the highway authority.
43. On this basis, it is clear to me that the residual cumulative impacts on highway safety on Tregony Road and the A390 would be limited.

Accessibility of Jobs, Shops, Services and Facilities

44. The highways matters SOCG states that a range of local services and facilities, including the doctors' surgery, convenience store, village hall, primary school and bus stops are located within 5 to 10 minutes' walk of the site, although the Parish Council considers these estimates to be on the low side. Whilst walking times from proposed dwellings on the eastern and southern sides of the site would be greater, and certain people, including the elderly, disabled, young children, and those with pushchairs would take longer, I do not consider the location of the site to be unsuitable in terms of offering a reasonable opportunity to walk to a good range of local services in the village. Most people would be likely to walk along Tregony Road, that being the most direct route, although an alternative would be to use the lane / bridleway to the east of the site.
45. Whilst new family homes in such a location close to the A390 would no doubt be attractive to commuters to Truro and St Austell, and over two thirds of people in the area currently travel to work by car²⁴, local bus services from the village provide connections to those towns and other destinations on a reasonably frequent basis during the daytime.
46. Therefore it seems to me that future residents of the site would not be dependent on the use of private cars to meet daily needs or to access a wider range of job opportunities, shops and other facilities and services.

Conclusion on the Main Issue

47. I therefore conclude on the main issue that, as the residual cumulative transport impacts of the proposal would be limited and future residents would not be dependent on the use of private cars, access to and from the site for all people should be regarded as safe and suitable having regard to local plan policy 13L and more recent national planning policy.

Other Matters

The Planning Obligation

48. The planning obligation includes mechanisms to ensure that the 45 affordable homes proposed on the site are of a suitable mix and would be delivered and

²⁴ Transport Assessment (AWP 2013) Figure 5.1.

appropriately managed. This would help to meet identified local needs and be in accordance with policy BHM4 of the Carrick District Balancing Housing Markets Development Plan Document 2008 and paragraphs 50 and 54 of the NPPF.

49. The village primary school is currently operating at virtually full capacity, as is Roseland Community School, the secondary school that future residents of the site would be likely to use. The proposal would generate additional demand for places at these schools that could not be accommodated without capacity being increased. As well as making a financial contribution of £2,736 per market dwelling for education provision in accordance with Council guidance²⁵, the planning obligation would ensure that an area of land adjoining the primary school would be provided to the Council along with a sum of £100,000 to cover the cost of servicing this land. I am advised that the additional serviced land is necessary to allow the school to be extended as without it such a scheme would result in an inadequate amount of outdoor space at the school. Thus, whilst the provision of the serviced land would help to facilitate a greater amount of additional capacity at the primary school than required to meet the needs of future residents, I am satisfied that it, along with the financial contribution, is necessary in order to create the requisite school capacity, and that it would be fairly related in scale to the proposal.
50. The obligation would ensure that the proposed on-site public open space is provided, managed and maintained. This would create an informal area that would be used by local residents. However, there is also a need to improve youth and sports facilities in the village to ensure that the additional demands that would be made by future residents of the site could be met in accordance with local plan policies 10B and 13k. A financial contribution of £30,780 would help to ensure this, and is reasonably related in scale to the proposal.
51. A financial contribution of £18,000 would be made to improve waste management and recycling facilities in the vicinity of the site in accordance with Council guidance²⁶. This would help to ensure that the additional demand on such facilities that would arise as a result of the proposal could be met.
52. Finally, I have already found that the financial contribution of £99,000 towards providing and improving sustainable transport in the vicinity of the site would help to ensure that the residual cumulative transport impacts are limited.
53. The Council has advised that none of the financial contributions would result in the "five obligation limit" set by Regulation 123(3)(b) being exceeded²⁷, and I have no reason to come to a different conclusion.
54. For the reasons set out above, I am satisfied that all of the provisions of the planning obligation meet the necessary legal requirements. Accordingly I have taken them into account in making my decision.

²⁵ Guidance on Section 106 Planning Obligations for Education Provision (Cornwall Council 2012).

²⁶ Waste Storage and Recycling in New Developments Supplementary Planning Document (Carrick District Council 2007) policy WPD3.

²⁷ Email from Mr Holman dated 14 April 2015.

Heritage Assets

55. Evidence relating to heritage assets on and around the appeal site was provided as part of the planning application²⁸, and the design and layout of the proposal is intended to reflect the findings of those studies.
56. Parkengear Farm, comprising the main house and a number of outbuildings, lies a short distance to the east of the site. As the farmhouse is a grade II listed building, I attach considerable importance and weight to the objective of preserving its setting²⁹.
57. The two storey stone house was originally built in the 18th century and is of some architectural and historical significance. Two stone outbuildings, between the house and appeal site, are also of some historical interest although the Council has not suggested that these are themselves listed. Whilst the house and outbuildings have long ceased to be used in conjunction with agricultural activity, they are still seen within an essentially rural setting. However, the buildings are located between Parkengear Vean and the A390 which physically and visually separate them from the wider open landscape.
58. The listed farmhouse stands within a clearly defined garden with hedges and trees around it, and is on the opposite side of a narrow lane / bridleway to the outbuildings. All three of these buildings are set at a significantly lower level than the appeal site and a hedgerow provides an additional intervening physical feature between them and the site. From certain perspectives the farmhouse and outbuildings would be seen in the same vista as the proposed development, which would be in much closer proximity than Parkengear Vean. However, the immediate setting of the farmhouse (its garden) would remain unchanged, and the wider rural setting would be affected to only a limited extent. Appropriate landscaping along the north east boundary of the appeal site would reduce the impact that the proposal would have meaning that there would be less than substantial harm to the significance of Parkengear Farm.
59. Whilst the remains of an iron age round, associated enclosures and other archaeological features beneath the site do not have statutory protection, they are non-designated heritage assets of historic interest and I am therefore conscious of the need to have regard to the desirability of sustaining and enhancing their significance³⁰.
60. At present there is little visible evidence of the archaeological remains beneath the site. The proposed layout includes an extensive area of public open space on and around the site of the iron age round, which is of high significance, meaning that it and its immediate setting and associated features would be unaffected by construction works. Furthermore, appropriate landscaping and management of the open space would help to emphasise the presence and setting of the round and safeguard it in the long term.
61. Other buried archaeological remains, which are likely to be of local significance, would be affected by the development. However, the evidence indicates that

²⁸ Archaeological Desk Based Assessment (CGMS Consulting November 2012) and Heritage Statement (CGMS Consulting August 2013).

²⁹ Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

³⁰ NPPF paragraphs 131 and 135.

these are unlikely to be of such significance that they warrant preservation in situ, meaning that it would be appropriate to carry out archaeological excavation and recording prior to the construction of the proposed dwellings.

62. There are other heritage assets in the surrounding area, including an iron age round designated as a Scheduled Ancient Monument some 200 metres to the west of the site, and Trewithen grade II* registered park around 240 metres to the east on the other side of the A390. However, the topography, existing physical features, and intervening distances mean that the proposal would have only a minor impact on the wider setting of these assets.
63. For these reasons the harm to designated heritage assets would be less than substantial. I weigh this harm against the public benefits of the proposal later in my decision.

Other Concerns Raised by Interested Parties

64. It is clear that there is considerable local opposition to the proposal from a significant proportion of the population of the village and the Parish Council. In addition to the matters that I have considered above, there are various other concerns.
65. The proposal would result in the loss of grade 3a agricultural land. However, the site is just under 5 hectares and best and most versatile agricultural land is prevalent in the area³¹ meaning that the effect on that resource, and the harm caused, would be limited.
66. According to the appellant's evidence³², the hedgerows along the Tregony Road frontage and crossing the southern part of the site, which would be largely if not wholly removed, are not classified as "important" under the relevant legislation³³, and I have not been provided with any compelling information to lead me to conclude otherwise. The other boundary hedgerows would be retained and enhanced, and therefore provided that a comprehensive landscaping scheme, and other measures to enhance biodiversity, were to be carried out there would be only a limited impact on the natural quality and ecology of the area.
67. Land at Parkengear Farm, which is at a lower level, is affected by surface water run off from the site. However, there is nothing before me to indicate that there are insurmountable obstacles to providing appropriate arrangements for the disposal of foul and surface water, or that the proposal would increase the risk of flooding or pollution.
68. The vehicle repair business adjoining the south west corner of the site generates a certain amount of noise and air pollution close to the boundary. However, the existing embankment and vegetation, along with the proposed siting of the nearest dwellings some distance from the boundary, mean that future residents would be unlikely to be subject to levels of pollution or disturbance that would make living conditions in those properties unacceptable.

³¹ Agricultural Land Classification Report (R W Askew, May 2013).

³² Ecological Assessment (ACD Ecology, September 2013).

³³ Hedgerow Regulations 1997.

69. Other than with regard to the matters that I have considered in connection with the main issue and the planning obligation, there is no substantive evidence before me to indicate that local infrastructure and services could not cope with the demands associated with 90 additional households or that the character and culture of the village and surrounding area would be materially harmed by the proposal.
70. The Council is satisfied that all aspects of the design and layout of the scheme comply with relevant development plan policies and associated guidance, and nothing that I have read or heard leads me to conclude that this would not be so or that the development would not represent good design as advocated in the NPPF.
71. The proposal would deliver considerable social and economic benefits by providing 90 new homes, half of which would be affordable. The Council's evidence indicates that there is a pressing need for more affordable housing, with 76 households with a local connection to Probus currently on the waiting list³⁴. Whilst the detailed figures, and the extent of need, are questioned by third parties, it is clear that 45 new affordable homes would be of considerable benefit and help to deliver local and national planning policy objectives³⁵. Furthermore, 90 additional households would help to support local businesses and the vitality of the village. There is nothing to suggest that development would not take place if planning permission were to be granted.
72. The proposal would lead to increased capacity at the village primary school, and whilst I have found that this is necessary to make the development acceptable in planning terms it would also help to create additional school places for the wider community. The off-site open space improvements, and on-site open space, would similarly be of some wider public benefit.

Overall Assessment

73. The appellant accepts that the proposal would be contrary to local plan policy 6A by virtue of the site's location outside the defined settlement boundary of Probus³⁶ and I agree that this would be so. Planning permission should not, therefore, be granted unless material considerations indicate otherwise³⁷.
74. It is clear from the SOCG and other evidence presented at the Inquiry that the Council accepts that it cannot currently demonstrate a five year supply of deliverable housing sites. Accordingly, local plan policy 6A, which effectively rules out most forms of residential development outside settlement boundaries and is therefore relevant to the supply of housing, cannot be considered up to date³⁸. I have also found that local plan policy 13L, in so far as it sets out a more restrictive approach on transport accessibility and highway safety than the NPPF, is out of date.
75. Whilst a replacement local plan has recently been submitted for examination there are outstanding objections and the Council accepts that only limited weight can be attached to it at this stage. The policies in that draft plan have

³⁴ Mr Holman's Proof of Evidence paragraphs 5.52 to 5.54.

³⁵ BHMDPD policy BHM4 and NPPF section 6.

³⁶ Appellant's Planning Statement (Emery Planning Partnership, January 2014) paragraph 5.1.

³⁷ NPPF paragraph 11.

³⁸ NPPF paragraph 49.

not therefore had a significant bearing on my assessment of the proposal. I am advised that there is an intention to produce a neighbourhood plan, but no draft was submitted to me.

76. The NPPF advises that where relevant development plan policies are out of date, planning permission should be granted for sustainable development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole, or specific policies in the NPPF indicate development should be restricted.
77. The proposal would have some adverse impacts. There would be a limited residual cumulative impact on highway safety, and less than substantial harm to heritage assets. Best and most versatile agricultural land, and some hedgerows, would be lost. Some pollution from the vehicle repair business adjoining the site could be experienced by future residents of a number of the dwellings.
78. On the other hand, the proposal would deliver a number of significant public benefits due to the provision of a considerable number of much needed new homes, improved open space and education facilities in the village, and the support for local businesses that additional residents would bring. These benefits weigh heavily in favour of the proposal.
79. On balance, the public benefits would clearly outweigh the less than substantial harm to heritage assets. Furthermore, the totality of the adverse impacts would not significantly and demonstrably outweigh the considerable benefits, and there are no specific policies in the NPPF that indicate development should be restricted. The proposal would, therefore, represent sustainable development.
80. For these reasons, material considerations indicate that planning permission should be granted for development that is not in accordance with the development plan.

Conditions

81. The 25 conditions suggested by the Council were discussed at the Inquiry. I consider most to be necessary, subject to some alterations to improve clarity and brevity, and ensure consistency with national policy and guidance³⁹.
82. In addition to a condition relating to the timing of development, a condition is required to ensure compliance with the approved plans for the avoidance of doubt and in the interests of the proper planning of the area. This is based on the list of plans included in the SOCG that were before the Council when it determined the planning application. However, some of the plans included in that list contain survey or illustrative material that is not a formal part of the proposal. Such plans are not, therefore, referred to in condition no. 2. In addition, plan ref PHL/002B shows an option for a left turn diverge lane from the A390 which I have concluded should not be provided. Accordingly, this plan is not referred to in condition no. 2.

³⁹ NPPF paragraphs 203 and 206, and Planning Practice Guidance ID21a: *Use of Planning Conditions*.

83. A condition requiring the provision of external building materials is required in the interests of the character and appearance of the area.
84. A landscaping scheme, which shall include measures to protect and restore existing hedgerows and other means of enhancing ecology, is needed for the same reason and in the interests of the biodiversity of the area. A separate condition referring to the appellant's ecological assessment is not required as this can be adequately covered by the landscaping condition.
85. The implementation of appropriate foul and surface water drainage schemes is required to prevent pollution and flooding.
86. A scheme relating to the archaeological remains beneath all parts of the site is required in order to protect and record those heritage assets. This can be dealt with by way of one condition rather than the two suggested by the Council, although the scheme will need to include appropriate measures relating specifically to the area to be provided as open space and the part of the site that will be built on. It is also necessary to remove permitted development rights relating to the public open space in order to ensure that works are not carried out in the future that would damage the heritage assets in the ground..
87. Information submitted with the planning application indicates that the site may be affected by contamination. Further investigation, and remedial action, is therefore required in order to ensure that future users of the site and the local environment are not affected by pollution.
88. A construction management plan is needed to safeguard highway safety and the living conditions of local residents, and to prevent flooding, during the construction phase. It was agreed during the discussion at the Inquiry that one condition could cover all of the matters referred to in conditions 6, 8, 11 and 12 suggested by the Council.
89. Conditions relating to off-site highway works along Tregony Road; the provision of visibility splays at the proposed access points to Tregony Road; and the provision of the estate road and parking and turning areas are all needed in the interests of highway safety. It is also necessary, for the same reason, to require details of visibility splays to be provided at the junction of Tregony Road and the A390, and for these to be agreed by the Council, implemented before any dwellings are occupied, and thereafter retained.
90. Whilst some of the highways matters covered by my condition nos. 12 to 16 are also referred to in the planning obligation, I consider the conditions to be necessary in the interests of clarity and to ensure that appropriate details are provided before development begins, and that implementation takes place at an appropriate time. The planning obligation does, however, adequately address the provision and implementation of a travel plan, and it is not therefore necessary to cover this with a planning condition.
91. A condition relating to power lines being laid underground is required in order to safeguard existing trees and hedges and the character and appearance of the area.
92. Whilst permitted development rights should only be restricted in exceptional circumstances it is necessary, due to the relative ground levels and intervening

distances, to control the installation of additional windows and doors in the dwelling on plot no. 86 in order to prevent overlooking to Parkengear Farm and to safeguard the living conditions of the residents of that property.

Conclusion

93. For the reasons given above, I conclude that the appeal should be allowed.

William Fieldhouse

INSPECTOR

Richborough Estates

Appearances at the Inquiry

For the Appellant

Vincent Fraser	of Queen's Counsel <i>instructed by</i> Stephen Harris
<i>called:</i>	
Ian Awcock	CEng MICE MIHT MCIWEM
Stephen Harris	MRTPI

For the Local Planning Authority

Virginia Meldrum	Cornwall Council Solicitor
<i>called:</i>	
James Holman	MRICS MRTPI FAAV
Jon Pearson	MICE

For Probus Parish Council

Nicholas Berry	of Counsel <i>instructed by</i> Probus Parish Council
<i>called:</i>	
Ray Trethewey	BSc MICE MIHT

Interested Persons

Dennis Kearn	Local resident
Justine Kent	Local resident
Barry Willcox	Local resident
Pam Dodd	Local resident
Bob Egerton	Cornwall Councillor and local resident
Alex Morrison	Local resident
Armored Carlyon	Truro City Councillor

Documents Submitted at the Inquiry

- IQ1 Statement of Common Ground – Highways Matters (Cornwall Council and the appellant).
- IQ2 List of “saved” policies from Carrick District Local Plan 1998.
- IQ3 Waste Storage and Recycling in New Developments Supplementary Planning Document (Carrick District Council 2007).
- IQ4 General Design Considerations for Adoptable Highways (Cornwall Council 2012).
- IQ5 Local Transport Plan: Connecting Cornwall 2030 (Cornwall Council 2011).
- IQ6 Photographs of Tregony Road and Chapel Street / Ladock Road (Dennis Keam).
- IQ7 Statement by Justine Kent.
- IQ8 Planning Obligation by Agreement under section 106 of the Town and Country Planning Act 1990 - Final Draft (the appellant).
- IQ9 Statement by Neil Staten.
- IQ10 Statement by Pam Dodd.
- IQ11 Statement by Bob Egerton.
- IQ12 Statement by Armored Carlyon.
- IQ13 Comments on the planning obligation (Cornwall Council).
- IQ14 Closing submissions of Probus Parish Council (Nicholas Berry).
- IQ15 Closing submissions of Cornwall Council (Virginia Meldrum).
- IQ16 Closing submissions of the appellant (Vincent Fraser).

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans unless otherwise required by subsequent conditions: WAIN/PROBUS/PLAN100F; PHL/001E; PHL/100C; PHL/200A; PHL/201A; PDL/100D; PDL/102C; PDL/103A; WAIN18088-03A; WAIN18088-11B sheets 1-5; WAIN18088-13; WAIN18088-12B; WAIN/PROBUS/SECTION; WAIN/PROBUS/MATS/105C; WAIN/P1-15/A/HT/01C; WAIN/P11-14/A/HT/03C; WAIN/P30-31/A/HT/04C; WAIN/P17-19/A/HT/05C; WAIN/P20-22-23-24/AHT/06C; WAIN/P25-29/A/HT/07C; WAIN/P40-41/A/HT08C; WAIN/P42-44/A/HT/09C; WAIN/49-60/A/HT/11C; WAIN/P50-52-54/A/HT13C; WAIN/53-69/A/HT/14C; WAIN/P61-63/A/HT/16C; WAIN/70-72/A/HT/17C; WAIN/P73-84/A/HT18C; WAIN/P87-88/A/HT19C; WAIN/P86-85-89-90/A/HT/20C; WAIN/P37-38-39/A/HT/21C; WAIN/P32-36/A/HT/22C; WAIN/P55-59/A/HT12D; WAIN/P2-10/A/HT02D; WAIN/P45-48/A/HT/10D; WAIN/P64-68/A/HT/15D; and WAIN/GAR-1/A/HT/23B.
- 3) Development shall not begin until details of the materials to be used in the construction of the external surfaces of the dwellings 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) Development shall not begin until a foul water drainage scheme, which shall include an implementation programme, has been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be implemented in accordance with the agreed programme.
- 5) Development shall not begin until a surface water drainage scheme, which shall include an implementation programme, has been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be implemented in accordance with the agreed programme.
- 6) Development shall not begin until full details of both hard and soft landscape works have been submitted to, and approved in writing by, the local planning authority. Details shall include finished levels or contours; boundary treatments; car parking layouts; vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures; functional services above and below ground; retained historic landscape features, including hedgerows, and proposals for restoration and protection during construction works; measures to enhance the biodiversity of the area; schedules of plants; planting plans; written specifications; future maintenance; and an implementation programme. The approved details shall be implemented in accordance with the agreed programme.
- 7) Development shall not begin until a scheme for archaeological investigation, works, protection, assessment, reporting and archiving, along

- with an implementation programme, has been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be implemented in accordance with the agreed programme.
- 8) Development shall not begin until an investigation and risk assessment of the nature and extent of contamination affecting the site has been carried out in accordance with a scheme which shall have been submitted to, and approved in writing in advance by, the local planning authority. The results of the site investigation, along with a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted, shall be submitted to, and approved in writing by, the local planning authority before the development begins. The site shall be remediated in accordance with the approved measures before development begins. If, during the course of development, any contamination is found which has not been identified in the site investigation, the local planning authority shall be notified immediately and no further development shall be carried out until additional measures for the remediation of this source of contamination, along with an implementation programme, have been submitted to, and approved in writing by, the local planning authority. The approved additional measures shall be carried out in accordance with the approved implementation programme.
 - 9) Development shall not begin until a scheme to lay the existing, and any additional, power lines across the site underground, along with an implementation programme, has been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be implemented in accordance with the agreed programme.
 - 10) Development shall not begin until a Construction Management Plan (CMP) has been submitted to, and approved in writing by, the local planning authority. The CMP shall include details of the hours during which construction works will take place; details of construction vehicles, routes, parking / turning arrangements, and wheel washing facilities; a scheme to dispose of surface water run-off during the construction phase; details of roles and responsibilities, monitoring and reporting, emergency responses, community and stakeholder relations, and training; and an implementation programme. The approved CMP shall be implemented in accordance with the agreed programme.
 - 11) Development shall not begin until detailed plans of the line, level, construction and layout of the proposed off-site highway works to Tregony Road shown on approved plan PHL/001E have been submitted to, and approved in writing by, the local planning authority. The approved works shall be implemented in full before ten dwellings on the site are occupied.
 - 12) Development shall not begin until details of visibility splays to be provided at the junction of Tregony Road and the A390 have been submitted to, and approved in writing by, the local planning authority. The approved visibility splays shall be provided before any of the dwellings hereby approved are occupied and shall thereafter be retained in accordance with the approved details.
 - 13) Development shall not begin until details of visibility splays to be provided at the access of the estate road with Tregony Road, and at each of the other access points to Tregony Road shown on approved plan ref

WAIN/PROBUS/PLAN100F have been submitted to, and approved in writing by, the local planning authority. None of the dwellings hereby approved shall be occupied until the visibility splays at the junction of the estate road with Tregony Road have been provided, and none of the dwellings served by the other access points to Tregony Road shall be occupied until the visibility splays at the relevant access have been provided. The visibility splays shall thereafter be retained in accordance with the approved details.

- 14) No dwelling shall be occupied until the estate road carriageways and footways necessary to provide access from Tregony Road to that dwelling have been completed in accordance with details which shall have been submitted to, and approved in writing in advance by, the local planning authority.
- 15) No dwelling shall be occupied until the parking and turning spaces for that dwelling have been provided in accordance with details which shall have been submitted to, and approved in writing in advance by, the local planning authority. Those parking and turning spaces shall thereafter be retained for their intended purposes.
- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), no window or external doors, other than those shown on the approved plans, shall be constructed in the north or east elevations or north facing roof slope of the dwelling on plot 86, and none of the approved windows or door on the north elevation shall be enlarged.
- 17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), no development shall be carried out on, or within, the public open space ("village green") shown on the plans hereby approved other than any that is approved pursuant to condition no. 6 above.

End of list of conditions
