



## Appeal Decision

Site visit made on 17 December 2015

**by Terry G Phillimore MA MCD MRTPI**

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

**Decision date: 25 January 2016**

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**Appeal Ref: APP/D0840/W/15/3012830**

**Land north west of Trevithick Manor, between A392 and Trevemper Road, Newquay, Cornwall TR7 2HS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by R J Walker (Newquay) Ltd against Cornwall Council.
  - The application Ref PA14/03927 is dated 27 April 2014.
  - The development proposed is demolition of existing structures and site development to provide up to 330 residential units, restaurant/public house, hotel, open space, play space, new routing for the A392 to Trevemper Road, associated infrastructure (including retaining structures and works to the public highway), access, parking, servicing and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of existing structures and site development to provide up to 330 residential units, restaurant/public house, hotel, open space, play space, new routing for the A392 to Trevemper Road, associated infrastructure (including retaining structures and works to the public highway), access, parking, servicing and landscaping at Land north west of Trevithick Manor, between A392 and Trevemper Road, Newquay, Cornwall TR7 2HS in accordance with the terms of the application, Ref PA14/03927, dated 27 April 2014, subject to the conditions set out in the attached Schedule.

### Procedural Matters

2. Following the submission of the appeal, the Council on 4 June 2015 resolved that it would have refused permission for two reasons. These reasons related to, firstly, a contention that the highway works included in the scheme represented an unacceptable highways solution to the traffic movements that the development would generate, when an alternative option could make greater provision towards affordable homes and the Newquay Transport Strategy; and, secondly, the absence of a mechanism to secure affordable housing and other infrastructure provision.
  3. As part of the appeal the appellant submitted additional evidence relating to the proposed highway works and the justification for these. Based on this evidence the Council has subsequently advised that it wishes to formally withdraw the first putative reason for refusal.
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4. In addition, a unilateral undertaking dated 27 July 2015 containing planning obligations pursuant to section 106 of the Act has been submitted by the appellant. The Council has advised that it accepts this undertaking as meeting its requirements.
5. As a result there are no matters arising from the proposal that are in dispute between the main parties.
6. On 5 August 2015 the Planning Inspectorate had advised the parties that the appeal was to be determined by way of a hearing. After the later submissions by both parties relating to the above matters this was changed to determination by written representations, and the arrangements made for the hearing were cancelled.
7. The appeal relates to an outline application, with all matters reserved other than means of access.
8. The application was supported by an Environmental Statement, and the proposal is Environmental Impact Assessment development under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Together with other material information and comments from statutory consultees, these items form the environmental information which I have taken into account in making my decision.

### **Main Issues**

9. Having regard to the above, the main issues are:
  - a) the acceptability in principle of the development in this location having regard to the development plan, the housing land supply position in the area and sustainable development considerations;
  - b) the planning obligations and conditions that are required with respect to mitigation of impacts on infrastructure and the environment.

### **Reasons**

10. The site comprises 12.4ha of agricultural land adjacent to part of the southern edge of the town of Newquay, some 2km from the town centre. It is bounded to the west by Trevemper Road and to the south by the A392. To the north and east are residential and retail development. The site is mainly semi-improved grassland with some enclosure provided by hedgerows and trees, and contains a small number of agricultural structures. It is currently used for horse grazing.
11. The relevant development plan comprises the Restormel Local Plan 2001. Under this the site is undeveloped land in rural use outside the development envelope of Newquay, and not allocated for development. There is no dispute that the proposal for extensive new development on the site is not in accordance with the development plan.
12. The National Planning Policy Framework sets out an aim in paragraph 47 to boost significantly the supply of housing. It requires that local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework. They should identify and update annually a supply of specific

- deliverable sites sufficient to provide five years worth of housing against their housing requirements, with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. The Framework indicates that the buffer should be increased to 20% where there has been a record of persistent under delivery of housing.
13. According to paragraph 49 of the Framework, relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. In this case, the Council advises that it is unable to establish the existence of a five-year housing land supply, and in consequence regards its policies for the supply of housing as being out-of-date. This applies to the restraint of the Local Plan on housing development at the appeal site.
  14. The Cornwall Local Plan is in preparation. There is agreement that at this stage it carries limited weight, but the emerging Plan anticipates substantial development at Newquay.
  15. The Framework sets out a presumption in favour of sustainable development. Paragraph 14 indicates that, for decision-taking, this means, where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.
  16. Paragraph 7 sets out that there are three dimensions to sustainable development: economic, social and environmental.
  17. The Council's officer report of 4 June 2015 contained a full assessment of all the issues raised by the proposal. In conclusion on the overall balance of considerations, the report identified that the proposal would help bring forward a choice of new homes by including a mix of house types to address identified needs and market demand and to support mixed communities. It was also noted that the development includes provision for open space, a 32% proportion of affordable housing, and contributions towards educational infrastructure, off site open space and the early delivery of improved highway infrastructure. The latter was referred to as being part of the Newquay strategy and listed as a scheme to be funded directly by the developer.
  18. The proposed access arrangements were found in the report to be acceptable subject to being secured. The new section of road included in the scheme seeks to address the acknowledged capacity constraint of Trevemper Roundabout. The Council's withdrawal of its earlier highway objection has had regard to the modelling undertaken by the appellant of an alternative improvement solution that it suggested. There is no evidence to indicate that the appellant's assertion that the appeal scheme is the only deliverable means to achieve the transport benefit is not soundly based. Policy 80 of the Local Plan on highways impact would be met by the proposal.
  19. In terms of the historic environment, impacts on ecology, foul/surface water and residential amenities, it was considered in the report that any harm from the proposal could be adequately mitigated against through the imposition of appropriate planning conditions.

20. The report also identified negative aspects to the proposed development. Specifically, these are that there would inevitably be some increase in visual impact by way of the introduction of significant built form onto agricultural fields, which would be visually more prominent in views from across the Gannel estuary to the south. However, it was assessed that when taking into account proposed mitigation the development would not result in any significant potential landscape or visual impact. It was also noted that the proposal would result in the loss of 6ha of the best and most versatile agricultural land.
21. Overall the conclusion of the report was that the merits of the proposal, including having regard to the need to provide housing and affordable housing, outweighed the negative impacts. It was found that the scheme promoted sustainable mixed use development in accordance with the Framework, and that the extent of the harm associated with the development could be controlled through the imposition of conditions and planning obligations which would secure mitigation.
22. I similarly consider that concerns which have been raised by third parties, including with respect to the relationship of the development to neighbouring properties, could satisfactorily be addressed in this way and especially through the reserved matters. With the formal position now reached by the Council, I have no reason to disagree that the proposal represents a sustainable development. While it does not accord with the development plan, the support given to sustainable development by the Framework outweighs the conflict with the plan in this case. There would be no adverse impacts from the development that would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework taken as a whole.

### ***Obligations and conditions***

23. As set out above, there are a number of aspects of the proposed development that require mitigation to be secured, and obligations and conditions provide the means for this.

#### *Obligations*

24. The unilateral undertaking contains a number of obligations. These cover affordable housing, education provision, on and off-site public open space, drainage and off-site highway works. The Framework sets out policy tests for the seeking of planning obligations, and there are similar statutory tests contained in Regulation 122 of the Community Infrastructure Levy Regulations (2010) which must be met for obligations to be given weight.
25. Affordable housing provision is sought under national policy and Local Plan policy 74, and the obligation on this would ensure that it is secured in an appropriate form. The other obligations would address needs that can be anticipated would arise as a result of the new development and ensure the provision of appropriate new infrastructure to support this, in accordance with policy 7 of the Local Plan. The Council's officer report explicitly states that the pooling restrictions on obligations under Regulation 123 are complied with. I am satisfied that the obligations all meet the relevant policy and statutory tests of being necessary, directly related to the development and fairly and reasonably related to it, and can be accorded weight in support of the proposal.

### *Conditions*

26. A list of suggested conditions has been put forward. No disagreements have been raised between the parties with respect to these.
27. Appropriate conditions are needed on timescales and reserved matters to reflect the outline nature of the application. Phasing should also be approved to ensure an orderly development. The development should be in accordance with the submitted plans so far as these relate to matters that are not reserved for the avoidance of doubt and in the interests of proper planning.
28. Various requirements relating to access and transport are needed to ensure that satisfactory highway provision and movement infrastructure to serve the development are secured. The circumstances of the development are sufficiently complex and strategically important to warrant securing delivery of the road proposals by way of necessary agreements.
29. Flooding and drainage measures should be implemented in accordance with the submitted assessment and further details to ensure a safe development and safeguard the environment.
30. The development should be implemented in accordance with an approved construction management plan in the interests of amenity and the environment.
31. A number of requirements relating to landscape and ecology are necessary to provide biodiversity protection and enhancement and safeguard visual amenity, and to meet statutory requirements.
32. Archaeological measures are needed to safeguard the identified potential interest. External lighting should be controlled for visual and ecological reasons. Requirements on contamination are needed to safeguard the environment and the well being of future occupiers.

### **Conclusion**

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

*T G Phillimore*

INSPECTOR

### **Schedule of Conditions**

#### *Timescales/reserved matters/plans*

- 1) Details of the 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) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.

- 3) The development hereby permitted shall be begun either before the expiration of three years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 4) The development shall not commence until a phasing scheme for the development which sets out the sequence in which the various elements of the development will be constructed and brought into use has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved phasing scheme.
- 5) The development hereby permitted shall be carried out in accordance with the following plans except with respect to details of the reserved matters that are subsequently approved: Site Location Plan Ref: 1884\_001; Red Line Plan SJS\_TRE\_OSR\_001 C; Topographical Survey Ref: SJS-NEW-TDP-001 A; 'Illustrative Master Plan' Ref: 1884-007 Rev B; Building Heights Plan Ref: 1884\_004\_D; Tree & Hedge Removal Plan Ref: 1884\_006\_C; Land Use Plan; Phasing Plan Ref: SJS-NEW-PHS-001 A; Services Plan Ref: SJS-TRE-SER-001 Landscape/Proposed Site Plan Ref: 1884\_003; Proposed Site Sections Ref: 1884\_005 D.

*Access and transport*

- 6) No development shall take place until detailed plans have been submitted to and approved in writing by the Local Planning Authority (in conjunction with the Highway Authority) relating to line, level and layout of the new section of A392, the new roundabout junction on Trevemper Road, the new access north of the new roundabout, the 2 amended junctions for the redundant section of the existing A392 and the access into the site. These works shall be laid out and constructed in accordance with the requirements of a Section 278 Agreement under the provisions of the Highways Act 1980 and all the works completed prior to the first occupation of any part of the development.
- 7) Before development is commenced on any phase of the development, details of estate roads and their junctions, cycle ways and footpaths, surface water drainage, street lighting and means of access to the proposed buildings, shall be submitted to and approved in writing by the Local Planning Authority. The estate roads and accesses shall be constructed in accordance with the approved plans and shall be retained as such thereafter.
- 8) Before development is commenced on site details of a footpath and cycle link to Polwhele Road from the land shown as Public Open Space (2) on drawing no. 1884-002 rev G shall be submitted to and approved in writing by the Local Planning Authority. The footpath and cycle link shall be constructed in accordance with the approved plans and shall be retained as such thereafter. The works shall be completed prior to the first occupation of any part of the development.
- 9) No dwellings in any phase shall be occupied until the estate road carriageways and footways to be constructed in association with that phase of the development hereby permitted are laid out and constructed in accordance with Cornwall Council's specification for housing estate roads, including street lighting, except for the application of the final wearing

course, over such lengths as are necessary to provide access from a County Road to that particular dwelling.

- 10) Within three months of the occupation of the penultimate dwelling in each phase of development subject of this permission, the road works shall be completed in accordance with Cornwall Council's Current Requirements and Specification for Housing and Industrial Estates (or any document that amends these specifications over the period of implementing this permission).
- 11) The development hereby permitted shall not be commenced until a detailed Residential Travel Plan has been submitted to and approved in writing by the Local Planning Authority in line with Cornwall Council guidance: 'Travel Plans - Advice for Developers in Cornwall'. No part of the new development shall be occupied prior to implementation of those parts identified in the Approved Travel Plan as capable of being implemented prior to occupation. Those parts of the Approved Travel Plan that are identified therein as capable of implementation after occupation shall be implemented in accordance with the timetable contained therein and shall continue to be implemented as long as any part of the development is occupied unless variations are approved in writing by the Local Planning Authority.

#### *Flooding and drainage*

- 12) Notwithstanding the layout shown on drawing 3001 Rev. A, no building shall be erected within Flood Zones 3 and 2 as delineated on figure 3.0 in the Flood Risk Assessment (Ref. J-4748- CFM) / below the 5mAOD contour.
- 13) Ground floor levels of the development hereby permitted shall be set no lower than 6.3mAOD unless otherwise agreed in writing by the Local Planning Authority. Prior to occupation of the development it shall be demonstrated to the written satisfaction of the Local Planning Authority that relevant parts of the scheme have been completed in accordance with the details agreed.
- 14) Prior to the commencement of development a scheme for surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The details shall include:
  - i) detailed ground investigation to assess the appropriateness of infiltration drainage;
  - ii) details of the final drainage scheme;
  - iii) construction quality control procedure;
  - iv) provision for overland exceedance flow routes from surface water.
- 15) Prior to occupation of any part of the development it shall be demonstrated to the written satisfaction of the Local Planning Authority that relevant parts of the surface water drainage scheme have been completed in accordance with the details agreed. The surface water drainage scheme shall thereafter be managed and maintained in accordance with the approved details unless otherwise approved in writing by the Local Planning Authority.
- 16) No phase of the development shall be commenced until a scheme for the disposal of sewage and foul drainage for that phase has been submitted to and approved in writing by the Local Planning Authority. The scheme shall thereafter be managed and maintained in accordance with the approved details.

- 17) There shall be no discharge of foul or contaminated drainage or trade effluent from the site into either groundwater or any surface waters, whether direct or via soakaways.

*Construction management*

- 18) No development shall commence until a Construction Environmental Management Plan (CEMP) has been submitted and approved in writing by the Local Planning Authority. The approved CEMP shall be adhered to throughout the construction of the development and shall provide for the following: (i) means of access for construction vehicles including routes to and from the site; (ii) on site construction worker, visitor and site operative parking; (iii) a scheme to encourage the use of public transport for contractors; (iv) loading and unloading of plant and materials; (v) storage of plant and materials used in constructing the development; (vi) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate; (vii) wheel washing facilities; (viii) measures to control the emission of dust and dirt during construction; (ix) a scheme for recycling/disposing of waste resulting from demolition and construction works; (x) the operation of plant and machinery associated with engineering operations; (xi) site security; (xii) fuel, oil and chemicals storage, bunding, delivery and use; (xiii) how both minor and major spillage will be dealt with; (xiv) containment of silt/soil contaminated run-off; (xv) disposal of contaminated drainage, including water pumped from excavations; (xvi) site induction for workforce highlighting pollution prevention and awareness; (xvii) a scheme to dispose of surface water run off during the construction phase; (xviii) anticipated number, frequency and size of construction vehicles entering/exiting the site; (xix) delivery times of construction materials; (xx) construction operating hours; and (xxi) a scheme for the remediation and management of invasive plant species on/in proximity to the site.

*Landscape and ecology*

- 19) No part of the development hereby permitted shall commence until a written Landscape and Ecology Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. The LEMP shall include details of: landscape and ecological mitigation, compensation and nature conservation measures; Green Infrastructure; the management and monitoring of landscape and ecological mitigation, compensation and nature conservation measures. The development shall be undertaken in accordance with the approved details and timing of the LEMP unless otherwise agreed in writing by the Local Planning Authority.
- 20) Before the development hereby permitted is commenced in any phase, details of the form and position of fencing for the protection of trees in that phase on the site shall be submitted to and approved in writing by the Local Planning Authority and such fencing shall be erected in accordance with BS5837 (or its successor) in the positions approved before the development is commenced and thereafter retained until completion of the development. Nothing shall be stored or placed in any fenced area, nor shall the ground levels within those areas be altered, without the prior written approval of the Local Planning Authority.
- 21) No development shall commence within any phase of development until full details of both hard and soft landscape works for that phase have been submitted to and approved in writing by the Local Planning Authority and



these works shall be carried out as approved in the first planting season following the occupation of the building, or the completion of the development hereby permitted, whichever is the sooner. All hard and soft landscape works shall be carried out in full accordance with the approved details. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

- 22) No development shall take place in any phase (including site clearance) until an Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. All works shall be undertaken in strict accordance with the approved Arboricultural Method Statement.
- 23) The development hereby permitted shall incorporate all ecological mitigation measures in the Environmental Statement dated February 2014. The mitigation measures set out therein shall be completed in accordance with a detailed mitigation management strategy including a timetable for the mitigation works and their future management that shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. All the mitigation measures shall be completed before occupation of the penultimate open market dwelling or commercial building in the phase to which the mitigation measures relate.

#### *Archaeology*

- 24) No development shall take place on the site until the applicant has secured the implementation of a programme of archaeological recording based on a written scheme of investigation submitted to and approved in writing by the Local Planning Authority.

#### *Lighting*

- 25) Before each phase of the development hereby permitted is commenced, a scheme of external lighting, including plans and technical lighting information for that phase, shall be submitted to and approved in writing by the Local Planning Authority. The external lighting scheme shall be completed in each phase of development subject to this permission in accordance with the approved lighting scheme and not altered thereafter.

#### *Contamination*

- 26) Unless otherwise agreed in writing by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation shall not commence until criteria 1 and 2 have been complied with. If unexpected contamination is found after development has begun, development shall be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until criterion 3 has been complied with in relation to that contamination.
- i) Criterion 1: Submission of Remediation Scheme. A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be prepared which shall be approved in writing by the Local Planning

Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

- ii) Criterion 2: Implementation of Approved Remediation Scheme. The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (sometimes referred to as a validation report) that demonstrates the effectiveness of the remediation carried out shall be produced which shall be approved in writing by the Local Planning Authority.
- iii) Criterion 3: Reporting of Unexpected Contamination. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be undertaken in accordance with best practice and where remediation is necessary, a remediation scheme shall be prepared in accordance with the requirements of criterion 1, which includes the approval, in writing, of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared which shall be approved in writing by the Local Planning Authority in accordance with criterion 2.

Richborough Estates