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## Appeal Decision

Site Visit made on 25 August 2021

**by Nick Davies BSc(Hons) BTP MRTPI**

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

**Decision date: 29<sup>th</sup> October 2021**

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**Appeal Ref: APP/D0840/W/21/3274538**

**Hembal Lane Farm, Hembal Road, Trewoon PL25 5TD**

- 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 Mr T Lansdowne (Cory Lansdowne Estates) against the decision of Cornwall Council.
  - The application Ref PA20/03907, dated 6 May 2020, was refused by notice dated 9 November 2020.
  - The development proposed is mixed residential development, affordable and open market.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr T Lansdowne (Cory Lansdowne Estates) against Cornwall Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. The proposal has been made in outline, with landscaping reserved for future consideration. The submitted plans include details of some retained and proposed landscaping. I have considered these landscape details solely on the basis that they have been submitted for illustrative purposes.
4. During the appeal, on 20 July 2021, the Government published its revised National Planning Policy Framework (the Framework). The Framework represents the Government's up-to-date planning policies for England and how they should be applied. Both parties have been given the opportunity to make comments relating to the updated Framework.
5. A Highways Technical Note and a Stage 1 Road Safety Audit have been submitted with the appeal. These did not form part of the application that was determined by the Council. The Highways Technical Note includes drawings numbered C21022-TP003 A, C21022-TP001 B, and C21022-TP002 B, which show an amended scheme for the internal road layout within the development, and two options for improvements to the access from the site to the A3058. The latter two drawings show access proposals that are significantly different to those on which the Council made its decision.
6. The amended proposals would involve development on land outside the red line that denotes the extent of the application site, or the blue line that denotes land within the applicant's ownership or control. Whilst the submitted evidence

indicates that some of the work would be within the highway, the Highways Technical Note acknowledges that confirmation of land ownership along the verges to the north and south of The Green is required. The amended plans differ substantially to those which were the subject of public consultation. Consequently, my consideration of them would deprive those who should have been consulted on the changed development of the opportunity of such consultation. I have therefore determined the appeal on the basis of the plans submitted to the Council.

## **Main Issues**

7. During the appeal, the appellant submitted a Unilateral Undertaking (the UU) dated 24 August 2021 pursuant to section 106 of the 1990 Act. The Council has confirmed that the UU overcomes the fourth reason for refusal on the decision notice. Consequently, the main issues are:
  - a) Whether the site is suitable for the development, bearing in mind the settlement policies of the development plan and the effect of the proposal on the character and appearance of the area;
  - b) Whether safe and suitable access to the development could be provided; and,
  - c) The effect of the development on foraging and commuting bats.

## **Reasons**

### *Settlement policies and character and appearance*

8. The main settlement policies of the development plan are Policies 2 and 3 of the Cornwall Local Plan Strategic Policies 2010 – 2030 (adopted 2016) (the Local Plan). The strategy set out in Policy 2 seeks to maintain the dispersed development pattern of Cornwall, and provide housing based on the role and function of each place. Policy 3 defines how development will be accommodated, based on this hierarchy, with growth focussed on identified main towns. Trewoon is not one of the main towns listed in Policy 3.
9. Outside the main towns, Policy 3 says housing growth is to be delivered through the identification of sites through Neighbourhood Plans; rounding off of settlements and development of previously developed land within or immediately adjoining settlements; infill schemes; or rural exception sites. The site lies outside the Settlement Boundary defined by the St Mewan Parish Neighbourhood Development Plan 2016-2030 (the Neighbourhood Plan), and is not identified for development. Furthermore, the appellant does not argue that the proposal would constitute rounding off or infill. Consequently, it is not disputed that the suitability of the site for housing is dependent on it meeting the policy criteria for a rural exception site, which are set out in Policy 9 of the Local Plan and Policy 2 of the Neighbourhood Plan.
10. Both policies support exception schemes that would provide affordable housing to meet local needs. The level of evidenced local need is a matter of some dispute. The delegated report indicates that, at the time of the application, there were 30 applicants registered as being in need of affordable housing with a local connection to the Parish. Bearing in mind other approved schemes in

the settlement, it was concluded that there would still be an unmet need, although the level of need was described as “not particularly high”.

11. The appellant’s evidence indicates that there are now 65 registered applicants and that, even taking account of approved schemes and the appeal proposal, there would still be an unmet need of 25. In its statement the Council calculates that the unmet need would amount to 7 households after the existing schemes and the appeal proposal are discounted. Even if I were to take this lower figure, it still demonstrates that the proposal would not exceed the local need for affordable housing. Whilst the level of need may be comparatively low, that does not reduce the importance of accessing suitable housing for those households that are registered. The proposal would, therefore, meet an identified local need for affordable housing.
12. The proposal would deliver 50% affordable housing, which is the minimum level that is supported by Policy 9. The Policy says that the inclusion of market housing will only be supported where it is essential for the successful delivery of the development based on a detailed financial appraisal. The evidence indicates that the Council has assessed the viability alongside industry benchmark parameters. As the scheme proposes a number of bungalows and larger 4 bed properties, which have increased costs, the delegated report concludes that a maximum of 50% affordable housing is deliverable on site. No contrary evidence has been provided. The Council has raised concerns that the additional cost associated with the revised access proposals may threaten the ability to deliver the scheme. However, I have determined the appeal on the basis of the submitted scheme. The evidence indicates that the level of affordable housing proposed is the maximum viable amount, and is deliverable.
13. In terms of the criteria set out in Policy 2 of the Neighbourhood Plan, the proposal would be (a) for less than 20 dwellings; (b) adjacent to the settlement boundary; and (e) outside the buffer zone between Trewoon and St Austell. The proposals would provide car-parking to the level required by criterion (d). The Environment Agency and Lead Local Flood Authority have not objected to the proposal on flood risk grounds (g); there would be no loss of protected trees (h); and the Police Designing Out Crime Officer raised no issues that could not be overcome through suitably worded planning conditions (i). Consequently, compliance with Policy 2 is only dependent on the proposal being responsive to the Settlement Boundary Character Assessment (f). Policy 9 of the Local Plan also requires the development to be well related to the physical form of the settlement and appropriate in scale, character, and appearance.
14. Although the site only directly borders the settlement boundary at its north-eastern corner, it is, nevertheless, closely associated with the built form of the village. The housing on the opposite side of the public by-way to the east, is only separated from the site by a small area of land that would be set aside for biodiversity. The access to the proposed development would be within a few metres of the right-angle bend in The Green that serves these dwellings. Although beyond the railway line, the housing within the village to the north is also evident from the appeal site. The physical and visual proximity of residential development to the north and east therefore leads me to the conclusion that, for the purposes of Policy 9 of the Local Plan, the site is well-related to the physical form of the settlement.

15. The appeal site is a fairly level horse paddock, surrounded to the north, west and south by low hedges, except in the northeast corner, where post and rail fences separate it from the rear gardens of the houses within the settlement boundary. The eastern boundary is also a post and rail fence, which divides a small area of lower paddock land in the same ownership. Beyond this is the public by-way, which is screened by a hedge and a row of trees. The topography of the site and its surroundings, and the level of enclosure means that the site is not prominent in public viewpoints, and it is not, in itself, a significant landscape feature. It is, however, part of a patchwork of fields just beyond the urban edge, which provide the rural setting for this part of the village.
16. The site forms part of the Trewoon Southern Blue Striped Area in the Settlement Boundary Character Assessment (the SBCA). This area is described as still having its medieval field pattern, and being very tranquil compared to the village, which has the A3058 dissecting it. It goes on to say that it is a standalone land parcel which sits seamlessly in its surroundings, and has a 'cut off' feel from the other land parcels and the village of Trewoon to its north. The SBCA says that the whole character of this land parcel would change with the acceptance of housing growth, because if the area was filled with development, the new settlement edge would have a totally different character and would be open farmland.
17. The site is only readily visible as part of the settlement edge in distant views from higher land to the north and east. However, in these views the development would be seen in close association with the existing urban form, and would still be set within a patchwork of smaller fields. From the east it would be viewed against the backdrop of the village, and from the north the village would be in the foreground. Consequently, it would not appear as an isolated intrusion into the wider countryside from either vantage point, so its impact on the landscape setting of the village would be limited.
18. The development would be visible from closer quarters from the footpath to the south of the site, which runs between the by-way and Hembal Lane. However, the hedge on the southern boundary of the site would be an effective screen for the lower parts of the buildings. As most of the dwellings would be bungalows, only their natural slate roofs would be visible above the hedge. From the eastern end of the footpath, the two-storey side elevation of Plot 6 would be seen alongside that of The Copse, which is already visible beyond. The group of houses adjacent to the northeast corner of the site are already seen through gaps in the hedge from various points along the path. From the western part of the path the roofs of the dwellings would be viewed against the roofscape of the village beyond. Consequently, the development would not appear isolated or incongruous, and its impact on the character and appearance of the countryside would be limited.
19. The proposed access, across the by-way, and over the land to the east of the site, would involve the removal of part of a hedgebank. I saw that the trees on this section of bank had already been reduced to hedge level and, although there had been some regrowth, the site is already visible over the remaining vegetation. Removal of the remainder of the hedgebank would open the site up, and the development would be readily visible. However, views into the site, through the access point, would be from the already built-up context of The Green. The rest of the by-way would retain its semi-natural character, as the

existing dense hedgerow boundary would screen the development along the rest of the route. The impact of the access works on the character and appearance of the area would, therefore, be very localised.

20. The construction of 18 dwellings, on what is currently a green field, would inevitably have some impact on the character of the site and its immediate surroundings. However, for the above reasons I have found that the impacts on the landscape character and appearance of the area would be limited and localised. Nevertheless, they would result in conflict with Policies 2(f) and 11 of the Neighbourhood Plan and Policy 23 of the Local Plan, which seek to protect landscape character.

#### Access

21. Access to the development would be provided at the north-eastern corner of the site onto the existing by-way, which would be realigned to connect with the new access road. Access to the wider road network would be achieved via The Green, which has a priority junction with the A3058 approximately 45 metres to the northeast. The Green is a short cul de sac, with a narrow carriageway, and only has a segregated footpath along part of one side. The parties' evidence regarding the number of existing dwellings served by The Green and the by-way varies between 13 and 16. However, even taking the higher number, the 18 dwellings proposed would represent a substantial increase in the level of use.
22. The Highway Authority's evidence indicates that observed traffic speeds on the A3058 are in the range of 35 – 38 mph. From my own observations, I have no reason to doubt this. The Green is not wide enough to allow two-way vehicle movements at its junction. Consequently, a vehicle waiting to exit The Green would prevent vehicles from entering the junction. In the case of traffic turning left off the A3058, drivers would not have forward visibility of a vehicle in The Green approaching the junction. This vehicle may only come into view as the driver on the A3058 is making the turn into the junction, resulting in the driver of the vehicle on the A3058 having to stop sharply. Bearing in mind the speed of traffic, this sudden braking could lead to conflict with a following vehicle or vehicles. The increased use of the junction would result in more of these manoeuvres and, consequently, an increase in highway danger.
23. The appellant's evidence demonstrates that there have been four traffic accidents in the vicinity resulting in slight or serious injuries in a 5-year period. None of these were caused by movements at the junction with The Green, and it is therefore contended that the highway network near the site operates in a low-risk manner. However, I note that the accident data does not include damage-only accidents. Furthermore, the 18 dwellings would more than double the number of properties that would use the junction. The appellant's evidence indicates that the development would result in an additional movement into or out of the junction every 5 minutes during the morning and evening peak. Over the course of time this would amount to a significant increase in potentially hazardous vehicle conflicts associated with the narrow junction. The accident data demonstrates that traffic speeds in the area are sufficient to result in driver injuries in the event of a collision. On the evidence, therefore, I conclude that the substantial increase in vehicles using the junction would result in a significant increase in highway danger.

24. The proposed road within the site would have a carriageway width of 4.8 metres, which would allow two cars to pass. However, The Green is substantially narrower than the 4.1 metres that Manual for Streets<sup>1</sup> indicates is the minimum width for two cars to pass. The submitted plans show that the proposed 1.2 metre footpath within the site would extend beyond the site boundary, but it would not link to the existing footpath in The Green, which only extends a short distance up from the junction with the A3058. Consequently, pedestrians from the proposed dwellings would have to walk within the carriageway to access the village services. This would not prioritise safe access by walking, as advised by paragraph 112 of the Framework.
25. The unsuitability of the access proposals for pedestrians would be exacerbated by the narrowness and alignment of the road leading to the site. Vehicles leaving the development would have to negotiate a sharp bend before joining The Green. Consequently, drivers would not have forward visibility of vehicles entering the cul de sac from the A3058. There is, therefore, a significant likelihood of vehicles meeting in the stretch of road between the site and the junction, where there is insufficient room for two vehicles to pass. A driver would be unlikely to reverse back onto the A3058, so the conflict could only be resolved by the oncoming driver reversing uphill back into the site. This manoeuvre would involve passing the complicated arrangement of access points around the entrance to the allotments, and the junction with the by-way, where there is the likelihood of pedestrian activity, resulting in potential conflict and danger.
26. The existing width of the by-way just outside the site is particularly narrow. The submitted plans show the provision of a carriageway of only about 3 metres. This would be just wide enough for the passage of a commercial vehicle. Reversing manoeuvres are likely at this pinch point, as it is on the bend where vehicles are most likely to come face to face. Whilst a 1.2 metre footpath is proposed alongside the carriageway, it would be on land that is outside the application site or the control of the appellant. If this footpath could not be provided, pedestrians would have to share a narrow carriageway with all vehicles. The lack of any refuge space, at such a narrow point, and where reversing manoeuvres are likely, would result in dangerous conditions for pedestrians and cyclists.
27. The appellant's highway evidence is not based on the submitted scheme. Instead, it seeks to demonstrate that an alternative access arrangement could be provided that would be safe and suitable. It is suggested that this could be secured through my imposition of a Grampian condition. However, for the reasons given, I have concluded that my consideration of the amended proposals would be prejudicial to those who should have been consulted on them. Furthermore, there is dispute regarding the extent of the public highway, and the appellant's own evidence indicates that land ownership requires clarification. It has not, therefore, been demonstrated that the amended scheme could be delivered within the normal time-limit of an outline planning permission. In these circumstances a condition would fail the test of reasonableness.
28. For these reasons, I conclude that the provision of safe and suitable access to the development has not been demonstrated. The proposals would, therefore,

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/341513/pdf\\_manforstreets.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/341513/pdf_manforstreets.pdf)

be contrary to Policy 27 of the Local Plan and the advice at paragraph 110 of the Framework.

### *Bats*

29. The application was accompanied by a Preliminary Ecological Survey, prepared by a suitably qualified expert. It concluded that the site's improved grassland and bordering hedges may provide part of a larger foraging area for light-tolerant species of bat including Pipistrelle. Light sensitive species including Lesser Horseshoe may use the habitats to the north and west of the site, but are unlikely to forage exclusively over the site and surrounding paddocks.
30. All species of bat are protected under the Habitat Regulations<sup>2</sup>, and are therefore European Protected Species (EPS). Paragraph 116 of Circular 06/2005<sup>3</sup> requires that when effects on EPS are being considered, decision-makers should have regard to the tests set out in the Habitat Regulations.
31. In this regard, the provision of housing, and particularly affordable housing to meet an identified local need, represents an overriding public interest. Whilst the Council's delegated report indicates that there are alternative sites that could accommodate the development, no such sites have been brought to my attention. Therefore, provided adequate compensation could be provided to maintain the favourable conservation status of the population of the EPS, the Habitat Regulations tests could be met. Paragraph 99 of Circular 06/2005 says that any necessary measures to protect the species should be in place, through conditions and/or planning obligations, before the permission is granted.
32. The Ecological Survey identifies a number of recommendations and mitigation measures to offset the impact of the development on biodiversity. These could be secured through suitably worded planning conditions. The Council does not dispute that these measures would ensure that the favourable conservation status of the EPS would be maintained. Consequently, having regard to the tests set out in the Habitat Regulations, I conclude that the development would not result in harm to foraging and commuting bats. The proposal would, therefore, accord with Policy 23 of the Local Plan and Policy 3 of the Neighbourhood Plan, which seek to protect and where possible enhance biodiversity. It would also be in accordance with the Framework's aim to conserve and enhance the natural environment.

### **Planning Balance**

33. Paragraph 60 of the Framework says that, to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, and that the needs of groups with specific housing requirements are addressed. Paragraph 78 says that, in rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs. Furthermore, opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs, should be supported and consideration should be given to whether allowing some market housing on these sites would help to facilitate this.

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<sup>2</sup> The Conservation of Habitats and Species Regulations 2017

<sup>3</sup> ODPM Circular 06/2005 - Biodiversity And Geological Conservation – Statutory Obligations And Their Impact Within The Planning System - 16 August 2005

34. The development would contribute to these aims by providing 18 new homes, nine of which would be affordable to meet an identified local need. Subject to the provision of safe and suitable access for all users, public services and facilities within the village would be readily available to occupants. There would also be economic benefits through the creation of employment during construction, and the ongoing spend of residents in the local shops and businesses. There would, therefore, be substantial social and economic benefits associated with the development, which carry significant weight in my decision.
35. These benefits must be weighed against the harm that I have found to the landscape setting of the village, and the consequent conflict with development plan policies in this regard. Proposals that come forward as rural exception sites, in accordance with Policy 9 of the Local Plan, must be outside of but adjacent to the existing built-up area. By definition, therefore, they will be outside the settlement, so will involve development in the countryside, which will inevitably have some impact on its character and appearance. In this case, I have found that the impact would be limited and localised. Consequently, the substantial benefits of the proposal, particularly in the provision of affordable housing to meet an identified local need, outweigh the limited harm to the character and appearance of the area.
36. However, I have found that safe and suitable access to the development has not been demonstrated, which places the development in conflict with Policy 27 of the Local Plan and the advice at paragraph 110 of the Framework. The shortcomings of the proposed access would result in an increase in highway danger to drivers, pedestrians, and cyclists. Consequently, although the social and economic benefits of the housing and affordable housing outweigh the limited harm to the character and appearance of the area, they do not outweigh the highway danger that would result from the development.

### **Conclusion**

37. For the reasons given above, I conclude that the appeal should be dismissed.

*Nick Davies*

INSPECTOR