



Appeal Decision

Site visit made on 18 July 2024

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Appeal Ref: APP/D0840/W/24/3337842

Land adjacent to St Day Road, Sandy Lane, Redruth TR15 2DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr A Nuciforo, Warmstar Properties, against the decision of Cornwall Council.
 - The application Ref is PA22/05181.
 - The development proposed is described as Affordable Led Housing Scheme on Land Adjacent to the Town of Redruth.
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Decision

1. The appeal is allowed and planning permission is granted for Affordable Led Housing Scheme at Land adjacent to St Day Road, Sandy Lane, Redruth TR15 2DW in accordance with the terms of the application, Ref PA22/05181, and subject to the conditions set out in the schedule to this decision.

Application for costs

2. An application for costs was made by Mr A Nuciforo, Warmstar Properties, against Cornwall Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal is made in outline with all matters reserved for future consideration. I have therefore assessed the submitted drawings as merely illustrative insofar as they relate to the reserved matters.
4. I have referred to the description of development within my decision only insofar as it relates to the development proposed.
5. During the appeal, the appellant submitted a Unilateral Planning Obligation by Agreement, made as a Deed on 21 May 2024, pursuant to section 106 of the 1990 Act and imposing obligations on the site. Following comments from the Council on it, the appellant submitted a revised Unilateral Undertaking (UU), dated 4 June 2024. I have had regard to that version in reaching my decision.

Main Issues

6. The main issues are:
 - whether the proposed development would be in an appropriate location, having particular regard to the character and appearance of the surrounding area and development plan policies;
 - whether the affordable housing provision is sufficiently secured;

- whether the proposed development is acceptable in relation to highway matters;
- the effect of the proposed development on biodiversity on the appeal site; and
- the effect of the proposed development on designated nature conservation sites.

Reasons

Location

7. The appeal site is an open scrubland field within the rolling countryside. With its undeveloped agricultural character, the site does not therefore form part of the physical form of Redruth. However, despite the cemetery opposite, the site reads as being adjacent to the settlement's built-up area, and the draft development/settlement boundary in the emerging Redruth Neighbourhood Development Plan supports this. Furthermore, the site is bounded by highway on two sides, whilst the vicinity contains several clusters of buildings adjacent and close to Sandy Lane. On the same side of Sandy Lane, the extent of built form also increases a short distance to the north, with linear development beginning before the roundabout. The site is therefore seen in the context of housing and other development in and adjoining the built-up area of Redruth.
8. Combined with its position adjacent to the double roundabout (and its associated paraphernalia, including signage and streetlighting) and Sandy Lane's urban nature, the site adjoins an area with a suburban character, with the settlement edge reading as gradually opening-up to more rural landscape beyond the site, to the east. The urban form of the adjoining highway also serves, despite the topography, to connect the site to the built-up area rather than provide a clear break from it; and with footways and the various nearby bus stops, the site is positioned in a more suburban, accessible location rather than a clearly rural situation.
9. The main parties agree that the appeal proposal would not constitute rounding off or in-fill development. However, Policy 3 of the Cornwall Local Plan Strategic Policies 2010 - 2030 (CLP) identifies the delivery of new housing by several means, including rural exception sites under CLP Policy 9. That policy supports affordable housing developments outside of but adjacent to existing built up areas where they would be well related to the physical form of the settlement and appropriate in scale, character and appearance.
10. The proposed development would change the site's character to a developed, suburban form, and the encroachment of built form into the currently undeveloped field would be clearly visible in various public views from the surrounding area. However, given the extent of built form on the eastern side of Sandy Lane, the development, rather than appearing as a prominent, piecemeal intrusion into the countryside, would read as a congruous continuation of the discrete pockets of built form along the highway and on the edge of the settlement's built-up area. Given its context and position adjacent to the existing built-up area of Redruth, the development would also, subject to detailed design at reserved matters stage, be well related to the physical form of the settlement and be appropriate in scale, character and appearance. In coming to this view, I have taken account of the Cornwall Landscape Character

Assessment identifying pressures on the character area including residential development sprawling into the landscape around existing settlements. The area's topography, the site's size and lack of information regarding its agricultural classification, and the presence of the cemetery opposite – which is not devoid of development – do also not lead me to a different conclusion.

11. For the above reasons, I conclude that the proposed development would be in an appropriate location, having particular regard to the character and appearance of the surrounding area and development plan policies. I therefore find that it accords with CLP Policies 2, 3, 9, 12, 21 and 23, and Policy C1 of the Climate Emergency Development Plan Document. Amongst other aspects, these set out the Council's spatial strategy and approach to delivering new housing, including in relation to rural exception sites; encourage sustainably located proposals that increase building density where appropriate and seek use of poor quality land in preference to higher quality farmland; require proposals to use land efficiently, be of a high-quality design which has considered the context, respect the landscape setting, conserve the natural environment, and maintain and respect the area's character.
12. The proposal would also be consistent with the National Planning Policy Framework (Framework) in relation to making effective use of land, achieving well-designed and beautiful places, and conserving and enhancing the natural environment; and the guidance on identity in the Cornwall Design Guide. However, whilst the Council also alleges a conflict with CLP Policy 1, my attention has not been drawn to any words in it that are relevant to this main issue. It has therefore not been determinative in my decision.

Affordable housing

13. The submitted UU secures the provision of affordable housing, with full details of the number, type and tenure of affordable dwellings to be confirmed later, via the submission to the Council of the Affordable Housing Scheme at reserved matters stage. Although the UU links the final number of affordable dwellings to a financial viability assessment, and the minimum affordable housing provision and mix is not specified, the UU prevents commencement of development until the Council has approved the Affordable Housing Scheme.
14. Accordingly, the Council can ensure that the scheme provides at least the minimum required provision of 50% and that the type, size and tenure of the affordable dwellings proposed would reflect identified local needs, in accordance with CLP Policies 3 and 9. The proposal would also therefore be consistent with the Framework's provisions which seek the provision of affordable housing and securing this by appropriate means.

Highway matters

15. The indicative layout shows that the existing site access would be utilised and parking provided within the site. The Council's Highways department raised no concerns with this; and with access reserved for future consideration, full details of the access and visibility splays can be secured at reserved matters.
16. The Highways department's recommendations for a pedestrian connection point in the south-west part of the site and a refuge area in the north-west corner relate to the reserved matters of access and layout. Accordingly, these aspects could be considered at reserved matters stage. In addition, although I

observed on my site visit the presence of a pedestrian island at the adjacent roundabout and dropped kerbs either side (providing step free access across Sandy Lane), the department's suggested condition relating to a pedestrian crossing point and dropped kerbs could, if found to be necessary, also be secured at reserved matters stage. All of these aspects do not therefore need to be secured now.

17. The Council seeks a highway contribution from the appeal proposal towards the Cambourne, Pool and Redruth transport strategy for each open market dwelling provided on the site. However, the appeal proposal is for an affordable housing scheme, with no open-market houses proposed at this stage, as per the submitted indicative layout and Planning Statement.
18. On this basis, no highways contributions would be required. However, the Affordable Housing Scheme in the UU makes provision for the level of affordable dwellings to be subject to financial viability assessment. As such, the inclusion of any open market dwellings due to viability reasons could trigger the need for relevant highway contributions. Although the UU does not include an obligation to cover any such eventuality, it has been put to me that should the scheme not deliver 100% affordable housing, any subsequently required highways contributions could be secured at reserved matters stage. Based on the available evidence, and given that the appeal proposal is for outline permission with all matters reserved, I have no reason to disagree.
19. For the above reasons, I conclude that the proposed development would be acceptable in relation to highway matters. I therefore find that it accords with CLP Policy 27. Amongst other aspects, this requires developments to provide safe and suitable access; and major developments to contribute to the delivery of Cornwall's Local Transport Plan, which seeks planning contributions for transport infrastructure improvements where appropriate.

On-site biodiversity

20. No information relating to on-site biodiversity, including in relation to protected species and habitats, was provided with the planning application submitted to the Council. However, in response to the reason for refusal and the Council's concerns on this matter, the appellant's appeal submissions include details from a walkover survey of the site carried out in 2022. That survey found no protected or important species or habitats.
21. The available evidence indicates that much of the site is also cleared annually, and I observed on my visit that it is surrounded by urban form and more intensively used, managed farmland. It seems to me that the site is therefore unlikely to provide suitable habitat for protected species, and I have little substantive evidence to the contrary. In addition, I note that the Council's ecologist consulted on the planning application did not respond or object.
22. The details provided by the appellant of the 2022 walkover survey do however show that the site's hedges were identified as having some foraging potential; and it was recommended that those areas be retained and a full ecological survey be carried out when the scheme's layout is defined at reserved matters stage. On the basis of the available evidence not indicating any protected species or important habitats are present on the site, and given that layout is a reserved matter, a full ecological survey can be appropriately secured by condition in this instance. This would ensure that the final layout could be

designed to ensure any areas important for biodiversity, such as foraging habitat in the site's boundary hedges, could be retained and suitable on-site biodiversity enhancements also identified.

23. For the above reasons, I conclude that the proposed development would not harm biodiversity on the site. I therefore find that it accords with CLP Policy 23 which, amongst other aspects, requires development to ensure that the importance of habitats are taken into account and to conserve, protect and where possible enhance biodiversity. The proposal would also be consistent with the provisions in the Framework in relation to making effective use of land and conserving and enhancing the natural environment.

Designated sites

24. The appeal site is within the zone of influence of the Fal and Helford Special Area of Conservation (SAC). The submitted evidence, including the Council's European Sites Mitigation Supplementary Planning Document (SPD, July 2021), indicates that certain types of development, including all new housing, within 12.5 kilometres of the SAC add to increasing recreational impact at the designated site, which has been identified as vulnerable to such threats. Alone and/or in-combination with other relevant development in the area, the proposed development would therefore be likely to have a significant effect on it. Accordingly, under the Conservation of Habitats and Species Regulations 2017, Appropriate Assessment of the implications of the project for the designated sites in view of their conservation objectives is required. In accordance with CLP Policy 22, appropriate mitigation would, where necessary, also need to be secured.
25. The qualifying features of the SAC include saltmarsh, intertidal mudflats and sandflats, subtidal sandbanks, large shallow inlets and bays including habitats such as reefs and rocky shores, estuaries, and Atlantic salt meadows and shore dock. The conservation objectives for the designated site seek to ensure that its integrity is maintained or restored and that the site contributes to achieving the Favourable Conservation Status of the Qualifying Features by maintaining or restoring the: extent and distribution of qualifying habitats and habitats of qualifying species; structure and function of qualifying natural habitats and the habitats of qualifying species; supporting processes on which qualifying natural habitats and the habitats of qualifying species rely; and the populations and distribution of qualifying species. The SAC also has a Site Improvement Plan which, amongst other things, details the current and predicted issues affecting the condition of its features, which includes public access/disturbance, and the actions required to improve the condition of the features.
26. The available evidence indicates that without mitigation it would not be possible to ascertain that the development proposed would not adversely affect the integrity of the SAC through the effects of increased recreational impacts on its interest features. However, the SPD sets out that the adverse effects of development can be mitigated by managing access to or within the SAC, managing visitor behaviour near and within it, and making the designated site more resilient to recreational pressure. Collectively, these are known as Strategic Access Management and Monitoring (SAMM).
27. Unless developers choose to provide their own mitigation measures, the SPD indicates that such mitigation can be strategically led through a SAMM plan, which has been drawn up and costed for the Fal and Helford SAC, is funded by

financial contributions from relevant development, and is delivered by the Council. The SPD identifies that developers can make use of the strategic mitigation by providing a financial contribution towards SAMM.

28. Based on the submitted evidence, the securing of the necessary mitigation would be sufficient to mitigate the effects of the development on the designated site. In this instance, the submitted UU includes an obligation for the SAC contribution (as defined in the UU, and in-line with the relevant per dwelling figure in the SPD) to be paid to the Council prior to commencement of development. The evidence before me also indicates that the contribution would be used for the intended purpose and that the mitigation would be implemented in a timely manner via the SAMM plans and in-line with the measures set out in the SPD.
29. Accordingly, I am satisfied that the SAC contribution, the total of which will depend on the actual number of units to be provided on the site as finalised at reserved matters stage, would be sufficient to mitigate the effects of the development on the designated site. Confirming this, Natural England indicate that the mitigation would ensure the development would not adversely affect the integrity of the European Site and its relevant features.
30. On this basis and following consultation with Natural England, I am able to ascertain, as the competent authority undertaking Appropriate Assessment, that the integrity of the designated site would not be adversely affected by the proposed development. Consequently, I find that the appeal proposal accords with CLP Policy 22. The proposal would also be consistent with the provisions in the Framework in relation to conserving and enhancing the natural environment.

Other matters

31. The revised UU (dated 4 June 2024) submitted with the appeal and which I have had regard to includes obligations related to affordable housing provision and SAC mitigation, as set out above. The available evidence indicates that these accord with the development plan and are necessary to make the development acceptable in planning terms; are directly related to the development; and are fairly and reasonably related in scale and kind to it. Accordingly, I find that the obligations in the Deed meet the tests set out in the Framework and the Community Infrastructure Levy (CIL) Regulations 2010 (as amended). Collectively, they therefore constitute a reason for granting planning permission in accordance with Regulation 122 of the CIL Regulations.
32. I note that the Council still has some concerns with the UU, despite the revisions from the earlier (21 May 2024) version. However, how financial viability would be assessed can be discussed and agreed directly between the parties at a later point; and should the Council have concerns about any viability assessment contained in the Affordable Housing Scheme, the UU prevents commencement of the development until the Council has approved the Affordable Housing Scheme. As set out above, the Council can also secure the provision of the minimum affordable housing requirement and a suitable mix through its role in approving the Affordable Housing Scheme. The UU's lack of detail relating to these matters, and that it does not follow the Council's template for affordable housing schemes, does not therefore indicate that it is inadequate, invalid or fundamentally flawed. I have therefore placed significant weight on the UU.

Conditions

33. I have had regard to the various suggested planning conditions and considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents and for clarity and consistency.
34. The conditions covering reserved matters are necessary to secure details of the outstanding matters prior to the development proceeding. I have however split the Council's first suggested condition into two for clarity. In the interests of certainty, I have also imposed an additional condition requiring that the development is carried out in accordance with the approved plans.
35. A biodiversity gain condition is necessary to ensure net gain in accordance with CLP Policy 23 and the provisions in the Framework in relation to conserving and enhancing the natural environment. To establish the site's pre-development biodiversity value, the required biodiversity gain plan would need to be supported by sufficient ecological survey data. In this respect, the Council's suggested condition effectively also secures the provision of further detailed on-site biodiversity information. However, for clarity, I have amended the condition to ensure that a full Preliminary Ecological Appraisal, informed by a Phase 1 habitat survey, is submitted alongside the biodiversity gain plan.
36. Due to the position of the site and the size of the proposed development, condition 6 is necessary and reasonable in the interests of the safe and efficient operation of the highway. Condition 7 is necessary to ensure ground stability in the interests of health and safety. Condition 8 is necessary with regards to water quality and preventing flooding.
37. The Council suggested two other conditions relating to affordable housing and SAC mitigation. However, as the UU secures these and includes the details sought by the conditions, neither condition is necessary. I have therefore declined to impose them. For the reasons covered in the main issue on highway matters, I have also declined to impose the conditions suggested by the Highways department.

Conclusion

38. For the above reasons, and having had regard to all other matters raised, I conclude that the proposed development accords with the development plan as a whole. The appeal is therefore allowed.

T Gethin

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, access, landscaping, layout and scale ("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 take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (Drawing No 1100); and Block Plan (Drawing No 1101).
- 5) An application for approval of reserved matters which includes "layout" shall include a full Preliminary Ecological Appraisal, informed by a Phase 1 habitat survey of the site, and a Biodiversity Gain Plan and Management Plan to ensure that there is a minimum 10% net gain in biodiversity within a 30 year period as a result of the development. The net biodiversity impact of the development shall be measured in accordance with the DEFRA biodiversity metric as applied in the area in which the site is situated at the relevant time. The Biodiversity Management Plan shall include 30 year objectives, management responsibilities, maintenance schedules and a methodology to ensure the submission of monitoring reports.
- 6) No development shall take place until a Construction Traffic Management Plan and programme of works has been submitted to and approved in writing by the local planning authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for: construction vehicle details (number, size and type); vehicular routes and delivery hours; the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials used in constructing of the development; wheel washing facilities; and measures to control the emission of dust and dirt during construction.
- 7) No development shall take place until an assessment of the site to identify any ground instability has been submitted to and approved in writing by the local planning authority. If instability is identified on the site, a scheme for on-site investigations, an assessment to identify the extent of unstable ground and the measures to be taken to avoid risk to buildings when the site is developed, shall also be submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented and completed before the development hereby permitted is first occupied.
- 8) The development hereby permitted shall not be occupied until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. The system shall be retained and maintained thereafter in accordance with the approved details.

END OF SCHEDULE



Costs Decision

Site visit made on 18 July 2024

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Costs application in relation to Appeal Ref: APP/D0840/W/24/3337842
Land adjacent to St Day Road, Sandy Lane, Redruth TR15 2DW

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr A Nuciforo, Warmstar Properties, for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for Affordable Led Housing Scheme on Land Adjacent to the Town of Redruth.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The applicant considers that the Council acted unreasonably, in substantive terms, by not determining similar cases in a consistent manner and ignoring appeal decisions for similar schemes, and ultimately prevented/delayed development which should clearly be permitted.
3. The Council's Decision Notice sets out the reasons for refusal, which are complete, precise, specific and relevant to the development proposed, and detail the alleged harm and relevant planning policies. The Council's Officer Report and appeal statement elaborate on the refusal reasons and include sufficient detail in relation to its concerns and the alleged harm. This is also balanced against the proposal's benefits, including in relation to the declared housing crisis and the need for additional accommodation, especially affordable housing.
4. Even though I have come to a different view to the Council, its submissions therefore include sufficient detail and evidence to substantiate its position on the refusal reasons. The second, third and fourth reasons for refusal also required further detail and/or a legal agreement in order for me to conclude that there would be no conflict with relevant development plan policies in relation to those matters.
5. The declared housing crisis and related documents are a material consideration. Amongst other aspects, they highlight the importance of rural exception sites to delivering affordable housing and the need to balance any harms and/or conflicts with development plan policies with the pressing need for new homes. Be that as it may, they do not change the status of the development plan, irrespective of its age; and it is for the decision maker to

decide what weight is to be given to the material considerations in each case. Any expectation that there may have been as to how the Council may interpret its permissive policies and act on its own published advice notes, in light of the housing crisis, does not change this.

6. Although the other affordable housing scheme granted planning permission by the Council was on the edge of Redruth, the available evidence indicates that the context of the appeal site is not the same. Unlike the Council's position on the appeal proposal, Council Officers also considered that scheme was immediately adjacent to the settlement edge and ultimately concluded that it met the requirements of CLP Policy 9, including being well related to the physical form of the settlement. The approved scheme and the appeal proposal are therefore not so similar that approving the former should have resulted in the latter being approved, irrespective of the levels of objection to the former. With the cited appeal schemes involving significantly fewer units and being located in other locations with different contexts, the Inspectors' findings in those cases do also not indicate that the appeal proposal should have been granted permission or that the Council erred in its decision making and balancing of the appeal proposal.
7. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated and an award of costs is not warranted.

T Gethin

INSPECTOR