



Appeal Decision

Site visit made on 12 November 2024

by **Alison Fish BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 January 2025

Appeal Ref: APP/D0840/W/23/3332730

Land Between Aspen Drive and Boscoppa Road, Aspen Drive, St Austell, Cornwall PL25 3JY

- 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 Ms Ruth Allen against the decision of Cornwall Council.
 - The application Ref is PA22/09153.
 - The development proposed is described on the application form as 'proposed development of site to create fifty dwellings. A mix of open market and affordable homes'.
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Decision

1. The appeal is allowed and planning permission is granted for proposed development of site to create up to fifty dwellings. A mix of open market and affordable homes at Land Between Aspen Drive and Boscoppa Road, Aspen Drive, St Austell, Cornwall PL25 3JY in accordance with the terms of the application, Ref PA22/09153, and the plans submitted with it, subject to the conditions in the attached Schedule.

Preliminary Matters

2. I have used the site address as it appears on the Council's decision notice and the appeal form as the one on the planning application form was incomplete.
3. The planning application form indicates that the proposal was submitted in outline with all matters reserved for future consideration. I have assessed the proposal on this basis and treated the drawings, other than the submitted site location plan and block plan, as indicative only.
4. At the time the Council determined the planning application, a planning obligation to secure the on-site provision of affordable housing and open space and off-site financial contributions towards education infrastructure, public open space, transport infrastructure and health care provision was not before them. However, a signed Unilateral Undertaking (the UU) under section 106 of the Town and Country Planning Act 1990 was submitted during the appeal. I return to this later.
5. On 12 December 2024 a revised National Planning Policy Framework (the Framework) was published. The main parties have been given the opportunity to make comments on the implications of the updated Framework for this appeal and I have taken the comments into account in my considerations.

Main Issues

6. The main issues in this appeal are:

- The effect of the proposed development on the character and appearance of the area;
- Whether the proposal would result in the loss of best and most versatile land (BMV); and
- Whether the proposal would deliver social and community infrastructure including affordable housing.

Reasons

Character and Appearance

7. The appeal site consists of an area of undeveloped land adjacent to the A391. Between the road (which is located in a cutting) and the appeal site, is a substantial belt of trees protected by a Tree Preservation Order. The appeal site is enclosed on its remaining three sides by housing. The natural appearance of the appeal site gives it a distinctive character in an otherwise built-up location.
8. The St Austell Strategy Map¹ in the Cornwall Site Allocations Development Plan Document, adopted November 2019 (the DPD), identifies the appeal site as being within a 'green buffer'. Paragraph 9.69 of the DPD identifies that the green buffer represents a logical boundary to the town, is an important biodiversity buffer and that parts offer amenity value to residents. That said, there is no policy within the DPD relating to the 'green buffer'. The Council have instead referred me to Policy 25 of the Cornwall Local Plan Strategic Policies 2010-2030 (LP) which seeks to protect and enhance green infrastructure which is important to recreation, leisure, community use, townscape and landscape quality and visual amenity.
9. There is no public access to the appeal site which diminishes its importance to recreation, leisure or community uses. However, as an undeveloped piece of land it has some visual amenity and landscape quality, not least to local residents.
10. The DPD indicates that the A391 represents a logical boundary to the town. This results in a clear differentiation between the urban land of St Austell on one side of the road and the rolling landscape of the countryside beyond. The presence of existing urban development on three sides of the appeal site together with the influence of the A391 along the remaining boundary, means that the site is located within a part of the landscape which is characteristically urban. It therefore contributes little to the wider landscape setting of St Austell. For these reasons, together with the presence of the substantial tree belt on the boundary, development of the site would have no more than a negligible effect on landscape character overall.
11. However, the containment of the site by existing residential development means that the appeal site is important to visual amenity and Policy 25 of the LP requires that it is protected accordingly. The development of the appeal site would adversely impact the visual amenity of those adjacent occupiers. The

¹ Figure STA1

appellant's Landscape and Visual Impact Appraisal acknowledges that this would result in a moderate/substantial adverse effect for those occupiers located closest to the appeal site with a negligible visual impact from further away. Consequently, there would be moderate and somewhat localised harm to the character and appearance of the area. I therefore find that the appeal proposal would conflict with Policies 2, 12, 23 and 25 of the LP which, amongst other things, seek to respect and enhance quality of place, protect Cornwall's natural environment and protect green infrastructure which is important to visual amenity.

BMV Land

12. Whilst there is no dispute between the main parties that the appeal site is located on Grade 3 agricultural land, in the absence of a site-specific assessment I cannot be sure whether it is Grade 3a or 3b. I have therefore taken a precautionary approach and consider that the appeal proposal would result in the loss of Grade 3a BMV land.
13. The 3.31 hectare field has been split from the main farm at Boscoppa by the construction of the A391 adjacent to the appeal site. However, access has been maintained by the construction of a bridge over the A391 for vehicular traffic. Evidence from the former tenant of the land indicates that access to the field was difficult due to congestion along the approach roads and parked cars, that vandalism, theft and damage to crops was a problem and that the stoney soil meant it was not the most productive. That said, they were the tenant for twelve years and evidence from interested parties indicate that the land was farmed with the help of machinery until fairly recently.
14. On the basis of the evidence before me, I conclude that the appeal proposal would result in the loss of BMV land contrary to Policy 21 of the LP which acknowledges the economic and other benefits of BMV land such as local resilience and food security.

Infrastructure Provision

15. Regulation 122 of the CIL Regulations² requires that if planning obligations are to be taken into account in the grant of planning permission, those obligations must be necessary, directly related, and fairly and reasonably related in scale and kind to the development in question.
16. Turning to the provision of affordable housing, Policy 8 of the LP requires that in St Austell, residential schemes should provide 25% affordable housing. I am therefore satisfied that the requirement for 12 affordable dwellings referred to as the 'default affordable housing mix' in Annex 1 of the UU would be a 25% provision and would be necessary to ensure compliance with the development plan. However, Annex 1 also contains a 'target affordable housing mix', being a 40% affordable housing provision offered by the appellant. Whilst additional provision is undoubtedly a good thing, particularly given the high level of housing need in the Parish, the additional provision is not necessary to make the development acceptable in planning terms and cannot constitute a reason for granting planning permission. As such, I have not attached additional weight in favour of the proposal for provision beyond the policy requirement.

² Community Infrastructure Levy (CIL) Regulations 2010

17. In addition to affordable housing, the UU secures the on-site provision of open space and implementation of a Travel Plan together with financial contributions to mitigate the effect of the development on recreation facilities, health and education provision, and to facilitate the implementation of the St Austell Transport Strategy. This would enable the scheme to comply with Policies 27 and 28 of the CLP and the Council's second reason for refusal is addressed. The UU is therefore in compliance with the CIL Regulations and, with the exception of the 40% provision of affordable housing as referred to above, I can take it into account in my decision.

Other Matters

18. The appellant's submissions include a Transport Statement which indicates that the existing highway network would satisfactorily accommodate the additional traffic arising from the proposed development, and that an unacceptable impact on highway safety would not occur. The Council's Highways Officer has raised no objection. Accordingly, on the evidence before me I am satisfied that the need for additional traffic calming measures would not arise and the safety of school children would not be compromised.
19. Concerns relating to the living conditions of existing occupiers arising from overlooking, loss of privacy and crime would be addressed through the subsequent reserved matters applications relating to layout. Securing a Construction and Environmental Management Plan by a condition would address concerns relating to noise and dust during construction.
20. The appellant's submissions include a Preliminary Ecological Appraisal³ and an Arboricultural Survey. These identify that the proposed development would result in a loss of habitat and require the removal of two trees to provide vehicular access. However, conditions securing a Biodiversity Net Gain and Management Plan, Construction Ecological Management Plan and a Landscape and Ecological Management Plan, which would include proposals for the removal of invasive species, would ensure measurable net gains to biodiversity were achieved to comply with Policy 23 of the LP. A further condition would be necessary to ensure that measures were put in place for the duration of the development to protect the existing trees along the eastern boundary of the appeal site in the interests of visual amenity.
21. Concerns relating to the stability of land arising from previous mine workings could be addressed by a condition. The Statutory Undertaker has confirmed that there is capacity in the public sewer for foul drainage from the development and a scheme to deal with surface and foul water disposal could be secured by condition which would include opening up an existing culvert which runs through the site. This would prevent an increased risk of flooding and comply with the requirements of Policy 26 of the LP.

Planning Balance

22. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that the determination of a planning application must be made in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration in planning decisions.

³ Both undertaken by Ecological Surveys Ltd and dated September 2022

23. The Council have indicated that since the publication of the revised Framework in December 2024, they are no longer able to demonstrate a 5 year housing land supply. The extent of the shortfall is calculated by the Council to be circa 3.8 years. Accordingly, Paragraph 11. d) of the Framework is engaged and the policies which are most important for determining the appeal are deemed out of date.
24. Paragraph 187 of the Framework seeks to protect and enhance valued landscapes in a manner commensurate with their statutory status or identified quality in the development plan and recognise the benefits of BMV land. I have found that development of the site, identified as a green buffer would have an adverse visual impact and would result in the loss of BMV land. This weighs against the proposal. However, the weight I attribute to these harms is tempered by their localised nature and the size and functional constraints of this particular BMV land. Whilst on its own, this is an argument that could be repeated for any single parcel of BMV land, the circumstances in this particular instance relate to a single field, constrained by development around its boundaries and which has become physically separated from any other agricultural land by the construction of a major road.
25. I have identified that no harm would arise in terms of the impact on biodiversity, highway safety and the living conditions of neighbouring occupiers and that the effects on community facilities could be mitigated by financial contributions. These are all neutral factors arising from my consideration of this appeal.
26. Weighed against the harm I have identified is the need to significantly boost the supply of homes. The appeal proposal is for up to 50 dwellings and this would go some way towards boosting the supply of housing (including the provision of affordable homes) at a time when the current supply position is well below Government expectations. There would also be economic benefits arising from the construction and occupation of the dwellings. I have given these benefits significant weight.
27. In conclusion, the adverse impacts of the appeal scheme would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Accordingly on this occasion other considerations indicate that the decision should be taken otherwise than in accordance with the development plan.

Conditions

28. I have had regard to the advice in the Planning Practice Guidance and the conditions set out in the Council's committee report, together with the additional condition in the Council's appeal statement. The appellant has had sight of those conditions and has not indicated that I should not impose them. I have undertaken some minor editing of those conditions in the interests of precision and clarity without changing their overall substance.
29. In addition to those conditions I have already referred to above and to the standard time limit conditions, a condition requiring that the development is carried out in accordance with the approved plans is necessary in the interests of certainty.

30. A Construction Environmental Management Plan is necessary to protect the living conditions of nearby occupiers and in the interests of maintaining a safe and efficient highway network but the routing of vehicles along a public highway cannot be secured by condition. A condition securing a scheme of archaeological recording is necessary to ensure the proposed development does not have a detrimental impact upon the historic environment. Conditions to deal with contamination are necessary in the interests of public safety.

Conclusion

31. The proposed development would not adhere to the development plan but material considerations, namely the Framework, indicate that the appeal should be determined otherwise than in accordance with the development plan. Accordingly, the appeal should succeed.

Alison Fish

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout and scale (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Applications for the approval of 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 drawing numbers: 001 Revision D (Location Plan) and 002 Revision D (Block Plan).
- 5) An application for approval of reserved matters which includes "layout" shall include a Biodiversity Net Gain and Management Plan (BNGMP) 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 BNGMP shall include 30 year objectives, management responsibilities, maintenance schedules and a methodology to ensure the submission of monitoring reports.
- 6) No development shall commence until details of a scheme for the provision of foul and surface water management has been submitted to and approved in writing by the local planning authority. The details shall be in accordance with the principles set out in the Flood Risk Assessment and Surface Water

Drainage Strategy [Ref: J-1803-Rev. 03] dated 10 February 2023 by Engineering and Development Solutions, and shall include:

- a) A description of the foul and surface water drainage systems operation.
- b) Details of the final drainage schemes including ground investigation, groundwater monitoring and infiltration testing results, calculations and layout.
- c) A Construction Phase Surface Water Management Plan.
- d) Finished Floor Levels of all development shall be set at least 2m higher than the top of bank of the minor watercourse running through the south of the site.
- e) The culvert shown in Conceptual Surface Water Drainage Layout J-1803 3001 Rev. C dated 10 February 2022 shall be opened up and a 20m easement strip shall be provided from the top of bank.
- f) A Construction Quality Control Plan.
- g) A plan indicating the provisions for exceedance pathways, overland flow routes and proposed detention features.
- h) A timetable of construction.
- i) Confirmation of who shall maintain the drainage systems and a plan for the future management and maintenance, including responsibilities for the drainage systems and overland flow routes. The plan shall include a drawing which clearly indicates the management responsibility for each drainage element, and schedule of maintenance. The surface water drainage systems shall fully manage surface water flows resulting from the developed site up to the 1 in 100-year peak rainfall event plus a minimum allowance of 50% for the impacts of climate change.

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

- 7) No development shall commence (including any site clearance or ground works) until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by, the local planning authority. The CEMP shall include, but not be limited to:
 - a) Construction vehicle details (size and type);
 - b) Delivery hours and hours of working;
 - c) Parking of vehicles of site operatives and visitors;
 - d) Loading and unloading of plant and materials;
 - e) Storage of plant and materials;
 - f) Location of site compound and welfare facilities;
 - g) Wheel washing facilities;
 - h) Measures to control the emission of dust and dirt during site clearance and construction works in accordance with Appendix A4 of the Air Quality Assessment ref: J0711/1/F1 dated 6 February 2023 by Air Quality Assessments Ltd to include, but not be limited to, details of roles and responsibilities, monitoring and reporting, emergency responses, community and stakeholder relations and training;
 - i) Measures to control noise during site clearance and construction works;
 - j) A scheme for recycling/disposing of waste resulting from site clearance and construction works.

The approved CEMP shall be adhered to and implemented throughout the site clearance and construction period.

- 8) No development shall commence (including any site clearance or ground works) until a Construction Ecological Management Plan (CECoMP) has been submitted to and approved in writing by the local planning authority. The CECoMP shall detail measures to ensure habitat and species protection during construction and shall incorporate the avoidance, mitigation, compensation and enhancement measures contained within the Preliminary Ecological Assessment (version 2: September 2022) by Ecological Surveys Ltd, and shall include:
- a) Details of protective measures to include method statements to avoid impacts on protected species during all stages of development;
 - b) Details of the timing of works to avoid periods of work when the species could be harmed by disturbance
 - c) Measures for the retention, replacement and enhancement of habitat and places of rest for wildlife
 - d) A Landscape and Ecological Management Plan (LEMP)
 - e) Details of lighting
 - f) Arrangements to secure the presence of an Ecological Clerk of Works or a suitably qualified ecologist to oversee the development of the site including the removal of hedging.

The approved CECoMP shall be adhered to and implemented throughout the site clearance and construction period. Thereafter the resting places and agreed accesses for dormice, bats and birds shall be permanently maintained. The development shall not be occupied until the scheme for the maintenance and provision of the new dormice, bird and bat boxes and related accesses have been fully implemented.

- 9) No development shall take place until a programme of archaeological work including a Written Scheme of Investigation (WSI) has been submitted to and approved in writing by the local planning authority. The WSI shall include an assessment of significance and research questions, and:
- a) The programme and methodology of site investigation and recording;
 - b) The programme for post investigation assessment;
 - c) Provision to be made for analysis of the site investigation and recording;
 - d) Provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - e) Provision to be made for archive deposition of the analysis and records of the site investigation;
 - f) Nomination of a competent person or persons/organisation to undertake the works set out within the WSI.

No development shall take place other than in accordance with the approved WSI. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the approved WSI and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

- 10) The trees along the eastern buffer adjacent to the A391 as shown in indicative layout drawing number 004 Revision F and marked as 'Existing natural area' shall not be removed or damaged. No development shall commence (including any site clearance or ground works) until, an Arboricultural and Construction Method Statement (ACMS) depicting the method by which trees shall be protected during the course of the

development shall be submitted and approved in writing by the Local Planning Authority. The ACMS shall be based on the advice contained in appendices d. and e. of the Arboricultural Survey by ESL Ltd dated September 2022 and shall identify a Root Protection Area that shall be enclosed by tree protection fencing erected in accordance with the specification given in the British Standard BS 5837/2012 prior to commencement of any works associated with the development and be retained and maintained until the completion of the development. At no time shall any works in connection with the development, including storage, access, cement mixing, bonfires, excavations or other level changes occur within the protected area. The development shall be carried out in accordance with the approved ACMS.

- 11) No development shall commence until a scheme to deal with any instability of the ground shall be submitted to and approved in writing by the local planning authority. The scheme shall include on-site investigations and 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, together with a timetable for the works. The development of the site shall be carried out in accordance with the approved details and prior to the development hereby permitted first being occupied.
- 12) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment shall be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency Land contamination risk management (LCRM), (or equivalent British Standard and Model Procedures if replaced). The assessment shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include a survey of the extent, scale and nature of contamination and the potential risks to:
- A) human health;
 - B) property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - C) adjoining land;
 - D) ground waters and surface waters;
 - E) ecological systems; and
 - F) archaeological sites and ancient monuments.
- 13) No development shall commence where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under

Part IIA of the Environmental Protection Act 1990 in relation to its intended use.

- 14) The approved remediation scheme in condition 13 shall be carried out and upon completion, a verification report by a suitably qualified contaminated land practitioner that demonstrates the effectiveness of the remediation shall be submitted to and approved in writing by the local planning authority before the development, or relevant phase of development, is occupied.
- 15) Any contamination that is found during the course of construction of the development hereby permitted that was not previously identified shall be reported in writing immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development, or relevant phase of development, is resumed or continued.

End of Schedule