
Appeal Decision

Site visit made on 13 March 2017

by Thomas Bristow BA MSc MRTPI

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

Decision date: 6 April 2017

Appeal Ref: APP/D0840/W/16/3166117
Land at Moss Side, Callington PL17 7DU

- 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 P Cuming against the decision of Cornwall Council.
 - The application Ref PA16/04340, dated 13 September 2016, was refused by notice dated 5 December 2016.
 - The development proposed is residential development of up to 46 dwellings and associated infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for up to 46 dwelling and associated infrastructure at land at Moss Side, Callington PL17 7DU in accordance with the terms of the application Ref PA16/04340, dated 13 September 2016, subject to the schedule of conditions in this decision.

Preliminary matters

2. The application was made in outline with details of appearance, landscaping, layout and scale reserved (the 'reserved matters'). As such, other than in so far as they relate to access and to the current features of the appeal site, the plans supporting the application are illustrative of the development proposed.
3. Amended plans related to access were submitted during the Council's determination of the application. Consequently the access arrangements shown on the illustrative site layout plan have been superseded.¹

Main issue

4. The main issue is the effect of the proposal on the future provision of appropriate employment space.

Reasons

5. The appeal site is an agricultural field towards the north-east of Callington. Various services and facilities fall within a convenient walking distance. It is bounded by embankments, hedgerows and mature trees, including alongside the A390 and Florence Road. Currently access is via Florence Road, access

¹ The appellant has confirmed that plans 15344.01 Rev: A and 15344.06 Rev: B supersede plan 15344.SK01 Rev: B (the latter being an indicative sketch layout).

proposed via the A390 (which would entail the removal of a stretch of hedgerow).²

6. Although there are views of the undulating countryside beyond the appeal site with reference to it, the appeal site is relatively distinct on account of its boundary features. The A390 and Florence Road in my view act as clear physical markers of the extent of the main built form of Callington in this location. A scattering of dwellings falls opposite the appeal site across the A390, as does Monmouth House on the other side of Florence Road. The Moss Side industrial estate is close by (the 'MSIE'), however is separated from the appeal site by substantial hedgerows.
7. The proposal is for the erection of up to 46 homes and associated infrastructure, the application form specifying that 32 would be market homes and 14 affordable as defined in Annex 2 of the National Planning Policy Framework (the 'Framework'). A signed agreement dated 17 March 2017 pursuant to Section 106 of the Town and Country Planning Act 1990 as amended has been submitted at appeal (the 'Section 106 agreement'). Amongst other things, this establishes that, in the event that permission is granted, 30 per cent of the homes proposed would be affordable.

Provision of employment space

8. Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.³ The appeal site was initially allocated for employment use via saved policy CA1 of the former Caradon District Local Plan adopted originally in December 1999 (the 'CDLP').
9. The CDLP was revised via a first alteration version adopted in 2007 (the 'CDLPA'). Policy ALT22 of the CDLPA proposed a 3.4 hectare extension to the MSIE towards the north which did not include the appeal site. This was described in the CDLPA as 'the most sustainable site' for expanding the MSIE.
10. However the CDLP and CDLPA have been superseded by the Council's adoption of the Cornwall Local Plan Strategic Policies 2010-2030 on 22 November 2016 (the 'Local Plan'). Policy 2a 'Key targets' of the Local Plan sets as a target the provision of 704,000 square metres of additional employment floorspace across Cornwall over the plan period. Callington is identified as a focus for economic and housing growth via policy 3 'Role and function of places' of the Local Plan.
11. Policy 5 'Business and tourism' of the Local Plan establishes how the Council will seek to ensure that there is a continued supply of appropriate business space. It sets a target level of employment floorspace provision for the Caradon Community Network Area ('CNA'), of which Callington is the principal settlement, of 14,750 square metres over the plan period.⁴

² Notwithstanding the representations made by a number of nearby residents, there is nothing in the information before me nor reason apparent from my site visit to lead me to a different conclusion than that of the Council in respect of the access arrangements proposed, namely that they would be acceptable with regard to the safe and efficient operation of the highway network.

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004.

⁴ A figure combining both office and industrial space.

12. Criterion (2)(i) of policy 5 requires that 'proposals that would result in the loss of business space' must 'demonstrate that there is no market demand through active and continued marketing for at least a period of 9 months'. The Local Plan also seeks to enhance employment opportunities in Callington.⁵
13. However no targets for employment floorspace provision are set for Callington itself via the Local Plan as opposed to for the wider CNA. No specific reference is made to the MSIE or to the appeal site in the Local Plan. Therefore notwithstanding the policy history above, and the general encouragement given to the provision appropriate employment space through the Local Plan, the site is not presently allocated for employment use via the development plan.
14. Therefore, although evidence related to the marketing of the appeal site for business use is material, in the absence of an established or allocated business use at the appeal site, the approach in criterion (2)(i) of policy 5 of the Local Plan cannot be said to be directly applicable to the development proposed. Consequently I now turn to the weight that can be accorded to the benefits of seeking to limit the future use of the site to employment purposes.
15. The appeal site is included within the boundary of the MSIE Strategically Important Employment Site as proposed via policy C-E7 of the Council's emerging Site Allocations Development Plan Document (the 'emerging DPD').⁶ Whilst the emerging DPD has progressed some way in its preparation, it has not yet been examined, a process which will consider its consistency with the Framework.⁷
16. The Framework is strongly supportive of appropriate economic development in general terms.⁸ However it also sets out that the long term protection of sites allocated for employment use should be avoided where there is no reasonable prospect of a site being used for that purposes. Moreover the Framework must be read as a whole, and no one element thereof automatically outweighs any other.
17. The boundary of the MSIE Strategically Important Employment Site set in the emerging DPD also includes land other than the appeal site which I observed during my site visit does not presently accommodate employment uses (towards the north and north-west of established uses).
18. The Council place some importance upon the inclusion of the appeal site within the boundary of the MSIE set via the CDLP in respect of the benefits of maintaining it for employment purposes in the future. However the northern extension to the MSIE proposed via policy ALT22 of the CDLPA, as referred to above, has not been carried forward within the boundary set in the emerging DPD. This qualifies the extent to which the planning history of the appeal site can be said to be determinative of future allocations.
19. The Council's appendix 14 of their statement of case is a summary table relating to the delivery of business floorspace within the CNA. Discounting development completed, commenced or permitted, a net target of 5,027

⁵ As established via section PP16 'Caradon Community Network Area' of the Local Plan.

⁶ The emerging DPD being brought forward with reference to Section 4 of policy 5 of the Local Plan.

⁷ With reference to paragraph 182 of the Framework.

⁸ Including at paragraphs 18 to 22 of the Framework.

square metres of employment floorspace remains for the plan period (approximately 34 per cent of the target set by policy 5).⁹ Whilst this indicates that further development will be needed, there is significantly more time left within the plan period than has yet elapsed since its adoption.

20. My attention has also been directed to the Council's Employment Land Review dated November 2010 (ELR). This advocates a cautious approach to 'managing competing pressures on employment sites within the County to ensure that there is sufficient deliverable employment land'. However this approach is in the context of an overall surplus of employment land, and the ELR elsewhere states that given this oversupply there may be 'scope to release some existing employment land to other uses or reduce undeveloped allocations'.¹⁰
21. There is relatively limited information before me as to the method, duration and specifics of the marketing activity undertaken in relation to securing a business use for the appeal site.¹¹ Nevertheless the appellant has explained, and the Council has not disputed, that since 1999 only two substantive proposals for new businesses uses related to the MSIE have come forward: an unimplemented 2012 scheme, and the use of a parcel of land to the north of the appeal site for storage. This indicates that there is a limited level of demand for business uses in this particular location, as indeed does the presence of a number of apparently vacant units within the MSIE which I observed during my site visit.
22. I accept, with reference to the Local Plan, emerging DPD, and to the current situation in respect of employment land delivery within the CNA, that there is some need for appropriately located employment floorspace within the area. In this context development of the site for business purposes would accord with policies 2a, 3 and 5 of the Local Plan.
23. However the emerging DPD has yet to be tested at examination. The MSIE Strategically Important Employment Site Boundary that the emerging DPD proposes contains undeveloped land other than the appeal site. Furthermore the northern extension of the MSIE proposed via the CDLPA has not been carried forward into the emerging DPD. Moreover, taking account of the ELR and previous planning history of the MSIE, it appears that there is an oversupply of employment land within Cornwall and a qualified level of demand for business uses in this specific location.
24. For the above reasons I conclude that enabling residential development at the appeal site would have only a highly limited effect in reducing the future provision of appropriate employment space. Accordingly I cannot concur with the Council's position that allowing residential development here would undermine the emerging DPD with reference to the approach set out in the Planning Practice Guidance (the 'Guidance').¹² I now turn to consider the

⁹ As with the target in policy 5 of the Local Plan, this figure combines both office and industrial space.

¹⁰ Paragraph 13.26.

¹¹ Notwithstanding the reference to marketing activities undertaken at paragraph 8.1.4 of the appellant's appeal statement. I would note here that in both appeals Ref APP/L3815/W/15/3004707 and APP/M1710/W/15/3049357 which the Council have brought to my attention in this context, the development proposed would have resulted in the loss of an established or permitted business use, which is not the case in this appeal. Therefore direct parallels cannot be drawn between the circumstances relevant to those appeals and this case.

¹² Reference ID: 21b-014-20140306.

benefits of the proposal in order to determine whether, considered as a whole, it is appropriate.

Planning balance

25. The Framework sets out local planning authorities should maintain a five year housing land supply of deliverable sites against requirements. The Council's document entitled 5 Year Housing Supply Statement, dated September 2016, explains how the Council has calculated in excess of a 5 year land supply of deliverable sites. The examining inspector's report in respect of the Local Plan, dated 23 September 2016, explains that housing 'delivery is credible' over the plan period based on the information before him at examination. There is therefore no information before me to conclude other than that the Council are presently able to demonstrate a five year land supply.¹³
26. Nevertheless the Council's Housing Implementation Strategy, dated October 2016, has been brought to my attention. The Council's officer report associated with the application to which this appeal relates explains that this document shows, discounting completions and permissions, that 'there is therefore a requirement for a further 115 dwellings to meet the Local Plan target for Callington; a target that should be seen as a minimum.' The Council's officer report furthermore refers to a significant local need for affordable housing within the Parish of Callington, with 195 households registered with the Council in this context.
27. As set out above, policy 3 of the Local Plan identifies Callington as a focus for future housing delivery in line with the minimum housing target of 52,500 homes over the plan period. The appeal site is furthermore closely related to the existing built form of Callington and would not lead to the settlement extending into the surrounding countryside. Policy 8 'Affordable housing' establishes as a baseline that relevant development within geographic zone 4, as is the case here, should provide for 30 per cent affordable housing. The Framework seeks to boost significantly the supply of housing and to ensure that housing is of a suitable mix and appropriately located.¹⁴
28. The proposal would result in the delivery of a significant number of homes in an appropriate location, and in an area with an acknowledged need for market and affordable housing to meet Local Plan targets. Moreover the appeal site has previously been identified as suitable for development (albeit employment use). The Section 106 agreement would bind the appellant to implement an affordable housing scheme with the Council where 30% of homes would be affordable and of a type agreed by the Council reflective of local need. The Council have confirmed via correspondence at appeal that the Section 106 agreement brings the proposal into compliance with the requirements of policy 8 of the Local Plan,¹⁵ and there is nothing in the evidence before me to lead me to a different assessment in this regard.

¹³ Which is consistent with the finding of the inspector in appeal Ref APP/D0840/W/16/3142806, which has been brought to my attention by the Council.

¹⁴ Including at paragraphs 47, 50 and 17 of the Framework.

¹⁵ And no objection is maintained by the Council with regard to the provision of the emerging Cornwall Affordable Housing Supplementary Planning Document.

29. For the above reasons, taking account of the need for market and affordable homes in this area, I accord the benefits of the proposal in respect of housing supply substantial weight. As such they clearly outweigh the highly limited effect of the proposal in relation to reducing the future provision of appropriate employment space.

Other Matters

30. I understand that the Parish of Callington was designated for the purposes of preparing a neighbourhood plan on 31 May 2016. As a consequence neighbourhood planning work is at a relatively early stage, and no policies of an emerging neighbourhood plan have brought to my attention with a bearing on the appeal site.
31. The site is near to the Cornish Mining World Heritage Site and the Tamar Valley Area of Outstanding Natural Beauty. However, as set out above, the appeal site has previously been allocated for development and is closely connected with the existing built form of Callington. Matters of appearance, landscaping, layout and scale are also reserved for future applications. There is therefore nothing inherent in the proposal before me to indicate that adverse effects would arise in respect of the character or appearance of the area, including in relation to those areas covered by landscape designations.
32. I have considered all the representations before me, including those in which concerns have been raised regarding the potential effect of the proposal on highway safety, trees, crime and safety, pedestrian access, ecology and the storage of refuse. Some of these matters are addressed via conditions, such as the effects in respect of trees. Others fall primarily for consideration via reserved matters applications, such as pedestrian access and refuse storage. Several are also addressed via the provisions of the Section 106 agreement. Consequently neither these matters, nor any others, are of such significance so as to outweigh or alter my conclusion in respect of the main issue in this case.

Conditions

33. It is necessary to impose conditions limiting the life of the planning permission and setting out requirements for the reserved matters in accordance with relevant legislation, and requiring compliance with the relevant plans in the interests of certainty.
34. I have imposed a condition safeguarding the wellbeing of trees and hedgerows that may be affected by development to protect the character and appearance of the area pursuant to the duty placed upon me by Section 197 of the Town and Country Planning Act 1990 as amended (condition 4).¹⁶ In order to ensure that the ecological effects of the development are suitably managed, I have imposed a condition requiring compliance with an agreed approach here pursuant to the appellant's Preliminary Ecological Appraisal (condition 5).¹⁷
35. For the same reasons as imposing conditions 4 and 5, I have imposed a further condition requiring that an agreed landscape and ecology management plan is

¹⁶ This condition incorporates condition 19 proposed by the Council, which is essentially that underground service or utility provision should not adversely affect trees or hedgerows on site.

¹⁷ Prepared by DA Ecology, Ref AJB01_01, dated April 2016.

implemented to ensure that the effect of the development in these respects remains appropriate in the future (condition 6). Conditions 4, 5 and 6 must necessarily apply before any development is commenced as any works have the potential to affect trees, hedgerows or ecology.

36. To ensure that the public open spaces proposed are attractive and function well, I agree with the Council that it is necessary to impose a condition requiring that an agreed open space scheme is implemented and maintained. Given the presences of nearby homes and businesses, and in order to address the effects of the implementation phase of the development, I have imposed conditions related to a construction management plan, dust management, and restricting hours of work (the first two of which must apply before any development is commenced as any works may entail effects in these respects).
37. I have also imposed conditions requiring adherence to an agreed drainage plan to ensure that the development does not give rise to adverse effects in this respect (condition 11),¹⁸ related to contamination in order to avoid adverse effects if contamination is present (condition 13), and that an appropriate noise assessment be carried out to safeguard the living conditions of future occupants of the dwellings proposed.¹⁹ Conditions 11 and 13 must apply before any development is commenced to avoid adverse effects resulting from any stage of the development proposed.
38. To ensure that the dwellings proposed are served by appropriate vehicular and pedestrian access, and have appropriate parking and turning space provision, I have imposed a condition requiring the implementation of such before any dwelling hereby permitted is first occupied (and maintained thereafter). I have also imposed a condition requiring that a travel plan is established in order to promote the use of sustainable modes of transport. As appearance is a reserved matter, however, it is unnecessary to impose a condition related to the external materials to be used as the Council have proposed.
39. In imposing conditions I have had regard to the tests within the Framework, the Guidance and relevant statute.²⁰ Accordingly I have amended the wording of certain conditions proposed without altering their aim.

Section 106 agreement

40. Alongside affordable housing referred to earlier, the Section 106 agreement before me contains obligations including in relation to mitigating the effects of the development on nearby sites protected via European environmental legislation, towards education provision at Callington Community College, and to the upgrading of the Saltash Road Recreational Ground. I have had regard to the policy context and evidence before me in respect of the Section 106

¹⁸ It is unnecessary in this condition to include the reference to requiring the approval of South West Water that the foul sewerage network has sufficient capacity to cater for this development given that they have commented on this application and confirmed that 'there are no foul drainage capacity concerns in relation to this application' at paragraph 102 of the Council's officer report dated 5 December 2016.

¹⁹ Notwithstanding that the area has potential contamination resulting from historic mining, as set out in the appellant's Contaminated Land Survey Phase 1, prepared by consultants ASI, Ref A1171/P1/JW dated 5 May 2016, there is no indication in the information before me that, subject to further investigation and appropriate measures, that the risks associated therewith could not be suitably addressed.

²⁰ Including paragraph 206 of the Framework, Guidance Reference ID: 21a-004-20140306 and Article 35(1)(a) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

agreement as a whole.²¹ There is nothing before me to lead me to conclude that the Section 106 agreement is anything other than compliant with the relevant requirements of policy and legislation, and would serve to give effect to the obligations that it sets out.

Conclusion

41. For the above reasons, and having taken all other matters raised into account, the proposal accords with the development plan taken as a whole and with the approach in the Framework. The proposal represents sustainable development, and I conclude that the appeal should be allowed subject to the Section 106 agreement proposed and to the conditions set out below.

Thomas Bristow

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout and scale of the development proposed (the 'reserved matters') shall be submitted to and approved in writing by the local planning authority before any development takes place, 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 decision, and the development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: 15344.01 Rev: A and 15344.06 Rev: B.
- 4) No development hereby permitted shall take place until a scheme for the protection of trees and hedgerows has been agreed in writing by the local planning authority (which shall include, with reference to British Standard 5837: 2012 Trees in relation to design, demolition and construction-recommendations, an arboricultural method statement, details of the provision of any underground utilities and services, alongside the form and position of fencing to protect trees and hedgerows that may be affected by development, details of protective fencing installation and retention, and notification arrangements in relation to that fencing). Development shall be carried out in accordance with the scheme thus agreed.
- 5) No development hereby permitted shall take place until an Ecological Constraints and Opportunities Plan (ECOP) has been agreed in writing by the

²¹ In particular that referenced within the Council's appeal statement and the detailed discussion within the Council's reports to committee dated 5 December 2016, and with reference to paragraph 204 of the Framework and the relevant provisions of the Community Infrastructure Levy Regulations 2010 as amended.

local planning authority (which shall be in accordance with the Preliminary Ecological Appraisal supporting the application prepared by DA Ecology, Ref AJB01_01, dated April 2016). Development shall be carried out in accordance with the ECOP thus agreed.

- 6) No development hereby permitted shall take place until a Landscape and Ecology Management Plan (LEMP) has been agreed in writing by the local planning authority (which shall include a programme for its implementation and details of the proposed management responsibility and maintenance details for all landscape areas other than domestic gardens). Development shall be carried out in accordance with the LEMP thus agreed, and maintained as such thereafter.
- 7) No dwelling hereby permitted shall be occupied as such until an open space layout scheme has been agreed in writing by the local planning authority (which shall include details as necessary of any means of enclosure, landscaping, seating, bins and play equipment). Development shall be carried out in accordance with the scheme thus agreed, and maintained as such thereafter.
- 8) No development hereby permitted shall take place until a Construction Environment Management Plan (CEMP) has been agreed in writing by the local planning authority (which shall include details of the location of all machinery and tool storage, site office, material storage, vehicular parking associated with construction, spaces for loading and unloading, and routes for all vehicles to, from and within the appeal site for the duration of the construction process, wheel cleaning measures for vehicles exiting the site, and measures to control the risk of pollution, protection of biodiversity, management of waste during construction). Development shall be carried out in accordance with the CEMP thus agreed.
- 9) Demolition or construction works shall take place only between 08:00 to 18:00 on Mondays to Fridays and between 08:00 to 13:00 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 10) No development hereby permitted shall take place until a dust management plan has been agreed in writing by the local planning authority (which shall include details of monitoring and reporting, roles and responsibilities for implementation, and emergency response contact details). Development shall be carried out in accordance with the dust management plan thus agreed.
- 11) No development hereby permitted shall take place until a drainage scheme has been agreed in writing by the local planning authority (which shall include details of the provision of surface water management measures, foul water treatment, drainage system operation, layout, calculation, details and timetable of provision, provision for exceedance pathways and overland flow routes, a construction quality control procedure, arrangements and responsibilities for future maintenance including for making such information available to the local planning authority). Development shall be carried out in accordance with the drainage scheme thus agreed, and maintained as such thereafter.

- 12) Before an application for approval of the reserved matters is made a noise assessment report related to the appeal site shall be undertaken and submitted to the local planning authority (which shall include details of the potential level of noise exposure of external amenity areas and internal areas of the dwellings hereby permitted with reference to relevant elements of British Standard 4142:2014 Methods for Rating and of Assessing Industrial and Commercial Sound and of British Standard 8233:2014 Guidance on Sound Insulation and Noise Reduction for Building, and a statements as to how the noise assessment has informed applications for reserved matters).
- 13) No development hereby permitted, other than remediation works expressly enabled by this condition, shall take place until a land contamination and remediation scheme has been approved in writing by the local planning authority and completed in accordance with the scheme thus agreed (which shall include details of contamination investigation, risk assessment, and remediation options in accordance with the Government's Model Procedures for the Management of Land Contamination CLR11 and in order to ensure that the land as remediated is not contaminated land with reference to Part IIA of the Environmental Protection Act 1990 as amended, the timing of remediation works and notification procedures in respect of completion thereof, a validation report of the remediation undertaken, and arrangements for halting any development hereby permitted in the event that any unexpected contamination is identified during construction and the reporting, assessing, remediating and producing a validation report in relation thereto). Development shall be carried out in accordance with the land contamination and remediation scheme thus agreed.
- 14) No dwelling hereby permitted shall be occupied as such until any carriageways, footways, parking and turning areas proposed as part of the development hereby permitted have been laid out and constructed in accordance with a scheme agreed in writing by the local planning authority (which shall include details of layout geometry and measurements, surfacing materials and properties, lighting, a timetable for implementation and arrangements for future maintenance). The carriageways, footways, parking and turning areas shall thereafter be retained in line with the agreed scheme, and maintained as such thereafter.
- 15) No dwelling hereby permitted shall be occupied as such until a travel plan has been approved in writing by the local planning authority (which shall include details of targets for reduction in private vehicular movements, encouragement of use of public transport, and incentives for the occupants of the dwellings hereby permitted to use public transport, walk or cycle). The agreed travel plan shall be brought into effect on the date when any dwelling hereby permitted is first occupied, and shall continue to be implemented as such thereafter.