

## Appeal Decision

Site visit made on 20 March 2017

**by Andrew Owen BA(Hons) MA MRTPI**

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

**Decision date: 13 April 2017**

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**Appeal Ref: APP/D0840/W/16/3155280**

**Phase 2, Land off St Martins Road, Looe, Cornwall**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of an outline planning permission.
  - The appeal is made by Barratt David Wilson Homes against the decision of Cornwall Council.
  - The application Ref PA14/10838, dated 13 November 2014, sought approval of details pursuant to condition No 27 of outline planning permission Ref PA10/03413, granted on 25 November 2011.
  - The application was refused by notice dated 3 March 2016.
  - The development proposed is the construction of 85 dwellings (market and affordable homes), including estate road and drainage infrastructure, parking and landscaping.
  - The details for which approval is sought are: access, appearance, landscaping, layout and scale.
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### Decision

1. The appeal is allowed and the reserved matters are approved, namely access, appearance, landscaping, layout and scale details submitted in pursuance of condition No 27 attached to planning permission Ref PA10/03413 dated 25 November 2011, subject to the conditions in the attached Schedule.

### Application for costs

2. An application for costs was made by Barratt David Wilson Homes against Cornwall Council. This application is the subject of a separate Decision.

### Preliminary matters

3. Since the time of the Council's decision, the Cornwall Local Plan (CLP) has been adopted. As such Policies ALT4 and ALT5 of the Caradon District Plan referred to in the Council's decision are no longer in effect. Policy 26 of the CLP relates to flood risk management so is particularly relevant to this appeal, and the appellant has had the opportunity to comment on it.

### Main Issue

4. The main issue is whether surface water from the development would drain satisfactorily.
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## **Reasons**

5. The application was refused because the Council considered sufficient information had not been submitted to demonstrate satisfactorily that the proposal would not result in unacceptable surface water flooding. However the Environment Agency, the Council's Estate Adoption Team and the Council's Flood Drainage Team have all advised that they have no objection to the proposal subject to suitably worded and robust conditions to secure further details.
6. I note the criticisms, from some local residents, of the appellant's Flood Risk Assessment and the data it is based upon. However, no concerns were raised by the regulatory bodies regarding the methodologies employed, the results gained from it or the principles of the drainage strategy, and I have no conclusive evidence to lead me to a contrary view. In particular, the size of the proposed soakaways has been calculated based on likely run off rates, taking account of a 1 in 100 year event +30% for climate change and infiltration rates, and trial pits were dug and soakaway tests conducted within the Phase 2 area in spring 2015.
7. Accordingly the Council have confirmed that, coupled with a suitably worded condition, it does have sufficient information to address surface water drainage and therefore it will not be defending this reason for refusal. The National Planning Policy Framework (the 'Framework') advises that consideration should be given to whether unacceptable development can be made acceptable through the use of conditions. The Council's position is therefore consistent with this advice.
8. I recognise the strength of public opposition to the proposal, particularly in light of the death of a local woman as a result of a landslide. I have been provided with a copy of the record of the coroner's inquest which concluded that the landslide was caused, or more than minimally contributed to, by surface water moving from St Martins Road on to the rear of the woman's house. Local topography is such that St Martins Road runs up the side of a steep hill with houses on its west side below it and land on its east side above it. The proposed houses would be some distance from the east side of St Martins Road and there is a green field and dense woodland between them and the road. The surface water drainage strategy concludes that there would be no run-off from the proposal on to St Martins Road. The Council have confirmed that their Estate Adoption Team, their Flood Drainage Team and the Environment Agency all commented that they did not wish to amend their position following the outcome of the inquest.
9. The concerns regarding the adequacy of the surface water drainage system for Phase 1 is not a matter before me.
10. In summary I consider surface water from the development would drain satisfactorily and therefore the proposal would accord with Policy 26 of the CLP which supports development that minimises, and where possible, eliminates flood risk in the area.

## **Other Matters**

11. I note the comments from local residents regarding the pressure the development would place on local infrastructure including schools, roads and

medical services. Also there are concerns with respect to noise, effect on ecology, linkages to the town centre and the extent to which the development would meet local housing demand. However such issues would have been considered at the outline stage and are not for my consideration at this stage.

12. The appearance of the houses is a reserved matter and so is for my determination. However I consider the design of the buildings, and the development generally, would be complimentary to those dwellings already constructed in Phase 1.
13. The neighbour at 16 Sunrising Bungalows has concerns of overlooking towards their house. However it appears that at there is some mature vegetation on the common boundary which would provide some mitigation. Also the rear garden at this particular property is long and therefore the distance between the existing and proposed dwellings would be sufficient enough to not result in an overlooking impact such that their privacy would be adversely affected.
14. A signed deed of variation to the extant Section 106 agreement has been submitted. This seeks to ensure 30% of the housing on Phase 2 is affordable, reflecting Policy 8 of the CLP. I consider this obligation is necessary to make the development acceptable, directly related to the development and is fairly and reasonably related in scale and kind to the proposal. As such this obligation meets the criteria in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and I can take it into account.
15. The deed of variation also includes an obligation to provide a contribution of £125,000 towards a catchment wide Surface Water Management Plan for the East Looe Catchment Area which would identify sources, flow paths, geological conditions and identify solutions. However, I do not consider it has been demonstrated that this is necessary to make the development acceptable in planning terms. The Council's Sustainable Drainage Lead officer commented at the planning committee on 29 February 2016 that a full appraisal of the area in geological terms was not necessary as part of the proposal, and this supports my view. Moreover I have no evidence to demonstrate that the figure is fairly or reasonably related in scale to the development. As such this obligation would not accord with Regulation 122 of the CIL Regulations 2010 and I cannot take it into account.

## **Conditions**

16. A Statement of Common Ground has been prepared which contains four conditions. I have considered those conditions against the requirements of the Planning Practise Guidance (PPG) and the Framework. The first two, which relate to the relevant plans and a lighting scheme for the parking courts serving some of the dwellings, are agreed between the parties. I consider the first condition is necessary in order to provide certainty, and the second is necessary to ensure the character and appearance of the development is acceptable.
17. Conditions three and four relate to surface water management, and are disputed. Condition three, as proposed by the Council, requires:
  - i) Details of a surface water management plan during construction of Phase 2;
  - ii) A timetable of construction including the phasing to include details of the drainage delivery programme and associated inspections; and

- iii) a plan and schedule of the future management and maintenance requirements and responsibilities of the foul and surface water drainage systems, exceedance and overland flow routes and flow containment measures.
18. In respect of the first requirement, drawing No 13613-C016 Rev A shows the provision of the site compound, soakaway trench and a 0.5 metres high bund. However there are no details of the bund's construction. As such, I consider this part of the condition is necessary and reasonable.
19. The second requirement is related to condition 4, as suggested by the Council, which requires surveys of the whole surface water drainage system to be undertaken within 3 months of completion of construction. It is not disputed by the appellant that such inspections need to be carried out, but that inspections carried out after construction, to provide an as built survey, would be unnecessary and may be disruptive to the occupiers of the dwellings. I consider that a carefully planned programme of inspections throughout construction would ensure the drainage system is built satisfactorily without disrupting future occupiers. Therefore this part of the condition is necessary and reasonable and would also achieve the aims of the suggested condition 4 which is therefore not necessary.
20. With regard to the third requirement, I have been directed to the Technical Note which comprehensively details the maintenance and management regimes for the private, communal, and overland flow soakaways and the lined trenches, and shows how the highway soakaway can be accessed for maintenance by the Council. In particular the details on drawing No 13613-C017 Rev G provide details of the position, profile and construction materials of the bunds. Also the establishment of a management company, of which residents are members, provides sufficient security that the maintenance of the communal and overland flow surface water drainage measures will be ensured. The draft transfer document provided in an appendix to the Technical Note demonstrates how occupiers would be made aware of their responsibilities in general accordance with the advice in CIRIA SuDS Manual. As such I have imposed a separate condition to ensure the development is constructed, maintained and managed in accordance with the details in this Technical Note.
21. Consequently, conditions 3 and 4 are necessary to ensure the satisfactory drainage of the site.

### **Conclusion**

22. For the reasons given above, and taking account of all other considerations, I conclude that the appeal should be allowed.

*Andrew Owen*

INSPECTOR

### **CONDITIONS**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:

102 Rev J,	300 Rev F
103 Rev K,	301 Rev F
105 Rev G,	302 Rev D
106 Rev G,	13613-C002
107 Rev W,	13613-C003 Rev B
108 Rev N	13613-C004 Rev B
120-2 Rev L	13613-C005 Rev B
121-1 Rev K	13613-C009 Rev B
122-1 Rev L	13613-C010
123-1 Rev J	13613-C011 Rev B
123-2 Rev G	13613-C012
124-1 Rev N	13613-C013
124-2 Rev L	13613-C014
125-1 Rev K	13613-C016 Rev A
125-2 Rev L	13613-C017 Rev G
126-1 Rev L	13613-C018 Rev B
126-2 Rev L	13613-C019 Rev A
127-1 Rev L	13613-C020 Rev A
127-2 Rev H	13613-C023 Rev B
129-1 Rev M	13613-C025 Rev D
130-1 Rev N	13613-SKC001 Rev J
134-1	13613-SKC004 Rev H
135-1 Rev G	13613-SKC006 Rev G
135-2 Rev G	13613-SKC010 Rev J
207-2 Rev A	1204/PDL/01 Rev F
	1204/PDL/02 Rev M
- 2) Prior to the first occupation of the development a lighting scheme for the parking courts serving dwellings numbered 139 to 149 inclusive and 157 to 164 inclusive as detailed on drawing no. 107 Rev W, shall be submitted to and approved in writing by the local planning authority. The approved lighting scheme shall be implemented in full before the occupation of any dwelling listed above and maintained in accordance with the scheme thereafter.
- 3) No development approved by this permission shall be commenced until the following provisions for surface water management have been submitted to and approved in writing by the local planning authority:
  - Details for the management of surface water runoff from phase 2 during the construction of the development
  - A programme of works for the delivery of the onsite drainage features to include the notification process for associated inspections of the drainage works throughout the construction period.
- 4) The surface water drainage scheme shall be implemented, and provision for its future management and maintenance shall be provided, in accordance with the approved drawings and as set out within the Technical Note Ref R/13613/001 Issue 5 dated December 2015.