

Appeal Decision

Inquiry opened on 14 March 2017

Site visit made on 17 March 2017

by Paul Griffiths BSc(Hons) BArch IHBC

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

Decision date: 31 July 2017

Appeal Ref: APP/D0840/W/16/3162355

Land North of Mountlea Drive, Par PL24 2EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Wain Homes Holdings (SW) Ltd against the decision of Cornwall Council.
 - The application Ref.PA16/04955, dated 31 May 2016, was refused by notice dated 22 September 2016.
 - The development proposed is described as a hybrid planning application comprising: outline planning application (all matters reserved apart from access) for 5.44ha of land for approximately 103 dwellings, extension to Kingdom Hall for additional parking, 2,500 square metres of allotments, provision of school drop off with turning facilities including additional parking for allotments, in addition to footpath/cycle connection from Mountside Road to Lamellyn Road; and detailed application for 86 no residential dwellings with associated access roads, foot ways, parking, landscaping, drainage and open spaces.
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Preliminary Matters

1. The Inquiry opened on 14 March 2017 and sat that day, along with 15, 16 and 17 March, when it was closed.
2. I carried out an accompanied visit to the appeal site and its surroundings on the afternoon of 17 March 2017. After the accompanied element was completed, I visited other salient locations¹ on an unaccompanied basis.
3. The originating application was a hybrid with full planning permission sought for one element and outline for another. In terms of the outline element, means of access is before me but appearance, landscaping, layout, and scale were reserved for future determination. On that basis, I have treated some of the details on the submitted plans as illustrative.
4. Given the nature of the evidence, it was put to me that matters relating to housing land supply and drainage were best dealt with on a round table basis rather than through cross-examination of the various witnesses. I agreed and the Inquiry proceeded on that basis. For my part, I found that method to be a much better way of examining the evidence before me, on these matters.
5. After the Inquiry closed, the decision of the Supreme Court in *Suffolk Coastal DC v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East BC* was handed down.

¹ As suggested by the main parties and others (Inquiry Document 26 refers)

6. I asked both main parties to address how this decision affected the cases presented to the Inquiry and I have taken the resulting submissions² into account in reaching my decision.
7. Well after the Inquiry closed, the Council drew my attention to two decisions made by the Secretary of State, dated 6 July 2017, relating to proposals on broadly similar sites at Carbis Bay³. I have taken these decisions, the comments received from both main parties about them, and their implications for an assessment of whether the Council can demonstrate a five year supply of deliverable housing sites, in particular, into account in arriving at my decision.

Decision

8. The appeal is allowed and planning permission is granted for a hybrid planning application comprising: outline planning application (all matters reserved apart from access) for 5.44ha of land for approximately 103 dwellings, extension to Kingdom Hall for additional parking, 2,500 square metres of allotments, provision of school drop off with turning facilities including additional parking for allotments, in addition to footpath/cycle connection from Mountside Road to Lamellyn Road; and detailed application for 86 no residential dwellings with associated access roads, foot ways, parking, landscaping, drainage and open spaces on Land North of Mountlea Drive, Par PL24 2EL in accordance with the terms of the application, Ref.PA16/04955, dated 31 May 2016, subject to the conditions set out in Annex 1 to this decision.

Main Issues

9. Notwithstanding a positive recommendation from Officers, Council Members resolved to refuse planning permission on the basis that, put simply, it had not been shown that the proposal could perform adequately in terms of surface water drainage, bearing in mind existing difficulties in the area in this regard. In their submissions on the appeal, the Council raised other concerns in relation to the impact on the landscape, and the settings of designated heritage assets, in particular. Local residents who spoke at the Inquiry also raised other issues, notably in terms of traffic. The overall situation is complicated further by the adoption of the Cornwall Local Plan⁴ in November 2016, two months after the Council made its decision, and, having regard to the National Planning Policy Framework⁵, the potential need to assess whether the Council can demonstrate a five-year supply of deliverable housing sites.
10. Against that overall background the main issues are (1) whether the proposal accords with the approach of the development plan to the role and function of places; (2) the effect of the proposal on the character and appearance of the area; (3) the effect of the proposal on the setting and thereby the significance of a number of designated heritage assets; (4) whether the proposal is acceptable in terms of flood risk; (5) whether the proposal is acceptable in terms of access and highway safety; and, depending on the conclusions drawn on the foregoing, (6) whether the Council can demonstrate a five-year supply of deliverable housing sites and the impact of any conclusion on that on the decision-making process.

² Inquiry Document 30

³ APP/D0840/W/15/3002925 and APP/D0840/W/15/3005068 – Inquiry Document 31

⁴ Referred to hereafter as LP

⁵ Referred to hereafter as the Framework

Reasons

The role and function of places

11. LP Policy 3 sets out the approach of the development plan to the role and function of places. New development (up to 2030) is to be accommodated in accordance with a hierarchy that has major settlements at the top, followed by eco-communities at West Carclaze/Baal and Par Docks.
12. Other than in the identified main settlements, we are told that housing and employment growth will be delivered for the remainder of the Community Network Area housing requirement through, of relevance to the proposal before me, rounding off of settlements and development of previously-developed land within or immediately adjoining that settlement of a scale appropriate to its size and role.
13. LP paragraph 1.68 gives us a definition of rounding off: *This applies to development on land that is substantially enclosed but outside of the urban form of a settlement and where its edge is clearly defined by a physical feature that also acts as a barrier to further growth (such as a road). It should not visually extend building into the open countryside.*
14. The appeal site is predominantly pasture but is bounded to the north and east by existing housing and to the west by the existing Kingdom Hall. To the south, the site fronts on to Mountlea Drive, behind substantial hedge banks, interrupted by the built form of the Trenovissick Farm complex. On that basis, the site, while currently undeveloped, is substantially enclosed, and its southern edge is clearly defined by Mountlea Drive.
15. LP paragraph 2.33 defines open countryside as the area outside of the physical boundaries of existing settlements (where they have a clear form and shape). From what I saw, because of the presence of development on three sides, the substantial physical presence of Trenovissick Farm, and the nature of Mountlea Drive and the boundary treatment the appeal site presents to it, the appeal site has the appearance of being within the physical boundaries of the existing settlement. It is not open countryside in the way the LP defines it, therefore. On that basis, development of the appeal site would not visually extend building into the open countryside.
16. Turning back to LP Policy 3, while the proposal is relatively significant in terms of house numbers, and the size of the site, it lies adjacent to a substantial settlement, and there is nothing convincing before me to suggest that the proposal is not appropriate to the size and role of that settlement.
17. On that overall basis, it is my conclusion that the proposal comes under the ambit of rounding off and, as a consequence, complies with LP Policy 3.

Character and Appearance

18. LP Policy 23 deals with the natural environment. Part 1 says that development proposals will need to sustain local distinctiveness and character and protect and where possible enhance Cornwall's natural environment and assets according to their significance. Part 2 of the policy requires development to be of an appropriate scale, mass and design that respects the landscape character of both designated and undesignated landscapes.

19. One of the core principles of the Framework is that we should recognise the intrinsic character and beauty of the countryside. The Council also refers to paragraph 109 which sets out that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes. The Council suggests that there would be harm as a result of the proposal to the intrinsic character and beauty of the countryside and make the point that the landscape should be regarded as one that is valued.
20. In relation to the latter point, I note that the Landscape and Visual Impact Assessment prepared on behalf of the appellant⁶ does say that the *Trenovissick Farmland is likely to be locally valued as part of the wider 'rural landscape', as being undeveloped it contrasts with the adjoining urbanised context to the north, west and east*. However, I do not take that to mean that the site should be considered to be 'valued' in the sense the Framework intends. The Courts have held that to be considered valued, in that way, the site has to be more than popular; it needs to have some distinct physical quality or attribute in order to qualify. In my view, it does not.
21. The passage in the LVIA that follows that set out above is informative: *Although the site is currently farmland and is physically separated from the adjoining residential developments within Manor View and Fortune Drive by the presence of mature trees and hedgerows, it cannot be described as distinctly rural due to its proximity to the built edge of St Blazey, St Blazey Gate, Biscovey and Par. It is essentially a remnant of farmland within an urban context*. As I have set out above, in my analysis of whether the proposal can be described as 'rounding off', I concur with that description entirely.
22. Of course, the development of what are currently open fields would cause a degree of harm to the character and appearance of the area. However, given that the fields are read as part of the adjoining settlement rather than part of the wider landscape to the south, the proposal would not appear incongruous and the harm that would result from it would be limited. Importantly, LP Policy 3, in permitting rounding off of settlements, must foresee some harm of that kind. In that context, I see no telling departure from Part 1 of LP Policy 23 or the core principle of the Framework referred to. On top of that, with good design that makes use of existing trees and hedgerows, the open space proposed, and new planting, the proposal would assimilate itself effectively, relatively quickly. As such, there would be accord with Part 2 of LP Policy 23.

Designated Heritage Assets

23. The Council highlights that the Built Heritage Statement prepared to accompany the originating application concludes that the proposal would have something of an impact on the setting, and thereby the significance, of three listed buildings. These are the Church of St Mary, the Church of St Andrew, and the former Count House that served the Par Consols Mine. The conclusion of the Built Heritage Statement, that the Council adopts, is that the impact on the setting of the designated heritage assets would result in a minor adverse impact on the significance of the Church of St Mary and a negligible impact on the significance of both the Church of St Andrew and the former Count House. The conclusion is that in each case, this would equate to a low degree of less than substantial harm.

⁶ Referred to hereafter as LVIA (the version dated 26 May 2016)

24. LP Policy 24 deals with the historic environment and is permissive of development proposals that would sustain the cultural distinctiveness and significance of Cornwall's historic and coastal environment by protecting, conserving, and where appropriate enhancing the significance of designated and non-designated assets, and their settings. We are told that great weight will be given to the conservation of Cornwall's heritage assets and any harm to significance must be justified. Proposals that cause harm will be weighed against public benefits.
25. Broadly, this approach accords with that of the Framework. Paragraph 132 makes it clear that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Paragraph 134 says that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
26. Given that the assets said to be affected by the proposal are listed buildings, section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990⁷ is brought into play. Naturally, I am aware of recent conclusions of the Courts in relation to how Section 66(1) is to be applied, in practice.
27. Turning to the listed buildings themselves, the Church of St Mary, a Grade II* listed building, dates from 1848, and is the work of the Architect, George Edmund Street. It is located about 750 metres north-west of the appeal site, set away from, and above, St Austell Road.
28. The spire of the Church is visible from the appeal site but because of the mature trees therein, the appeal site is not readily visible from the churchyard. The Built Heritage Statement records that the development of the site will alter the nature of views of the spire of the Church from it. I can agree with that but what I find difficult to accept is the conclusion then drawn - that there will be a minor adverse impact on the significance of the Church as a result.
29. While the spire has a landmark quality, the sight of it from the appeal site is incidental rather than designed. Some incidental views would remain after development and there would be no diminution of the landmark quality of the spire as a result of views of it from the appeal site changing. On my analysis, there is nothing in the views of the spire of the Church from the appeal site that adds to the significance of the designated heritage asset. On that basis, while the setting of the Church would change as a consequence of the proposal, that change would not be harmful, and there would be no resulting loss of significance.
30. The Church of St Andrew, a Grade II* listed building that dates back to the 14th Century but much of what survives today dates from the late 19th Century. It is located about 1.6 kilometres north-east of the appeal site, set within a modest churchyard on the southern edge of Tywardreath.
31. The appeal site is visible from the churchyard, and the Church, and in particular its relatively tall tower, are visible from the appeal site. Again, the Built Heritage Statement suggests that because views of the asset from the

⁷ Referred to hereafter as the Act

- appeal site, and vice versa, would change, as a result of the development, there would be a loss of significance.
32. However, once again, views of the appeal site from the churchyard, and views of the Church from the appeal site are incidental. Their presence makes no contribution to the significance of the asset. As a result, while development of the site would lead to a change in the setting of the listed building, there would be nothing harmful about that change, and no consequent loss of significance.
33. I might add at this point that concerns were raised at the Inquiry about the impact of the proposal on the setting of the Tywardreath Conservation Area. I saw that views of the appeal site are readily available from within the conservation area but, while pleasant, these views add nothing to the significance of the asset. While the proposal would lead to a relatively small change in the setting of the conservation area, the change would not be detrimental, and there would be no loss of significance as a result.
34. The former Count House for the old copper mine at Par Consols is a Grade II listed building that dates from 1835-1840. It sits about 10 metres south east of the site. There is an historic link between the building and the appeal site, where mining activities associated with it took place. That historic link contributes positively to the significance of the asset. Having said that, there is little outward sign remaining of those mining activities, and there is nothing about the currently undeveloped nature of the appeal site that underlines the historic link. Neither, given that the former Count House is all but surrounded by mobile homes, is there anything about the currently undeveloped nature of the appeal site that contributes positively to the setting and thereby the significance of the listed building.
35. In that overall context, it seems to me that development of the site, in the manner proposed, would have no harmful impact on the setting of the listed building. The historic link between the site and the building would remain intact. As a result, the proposal would not lead to any loss of significance.
36. Bringing those points together, it is my conclusion that while the proposal would lead to changes in the settings of listed buildings (and the affected conservation area), these changes would not be harmful, and there would be no loss of significance as a result. On that basis, the settings of the listed buildings (and conservation area), and their significance, would be preserved, or conserved. Section 66(1) would not be offended therefore, and neither would there be any departure from LP Policy 24, or the approach of the Framework to conserving and enhancing the historic environment.

Flood Risk

37. LP Policy 26 deals with flood risk management and coastal change and requires development to be located where it first of all increases the flood resilience of the area, taking account of the area's vulnerability to the impacts of climate change and coastal change and the need to avoid areas of flood risk, in the first instance, taking into account the vulnerability of the use proposed; and minimises, or reduces and where possible, eliminates flood risk on site and in the area. Criterion 2f seeks to ensure that development does not create avoidable future liability for maintenance for public bodies and communities and 3 requires development proposals like that at issue to provide a long-term management plan.

38. Paragraph 100 of the Framework sets out that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing risk elsewhere. The Council has highlighted the latter point; that development should not exacerbate existing flooding issues in other areas.
39. Whilst the appeal site is within Flood Zone 1, it is located in an area that the Environment Agency⁸ has classified as a Critical Drainage Area⁹.
40. It is clear from the Council's evidence, and the representations of the EA, and local residents, that there is an existing issue with flooding in the area, partly linked to the existing surface water drainage system. This has manifested itself most seriously in flooding at Brooks Corner, to the north-east of the appeal site. This is acknowledged by the appellant.
41. A flood risk management scheme for the Par and St Blazey area is under development. The project group is known as StARR¹⁰ and is a partnership that includes South West Water and Cornwall Council amongst others. The project is in the process of seeking funding for an innovative £31.5 million scheme aiming to work across the whole of the Par and Sandy river catchments to reduce flood risk to communities living and working in the St Austell Bay Area, particularly the people of Par and St Blazey.
42. Against that background, and bearing in mind the mining history of the appeal site, and the uncertainty around the funding for StARR as a result, in part, of BREXIT, I can understand the anxiety local residents, the EA, and the Council, feel. However, it does not necessarily follow that development of the appeal site will increase flood risk. Notwithstanding the nature of the appeal site, it is possible that a drainage scheme for the site, based around infiltration, could be arrived at, that mirrored, or possibly improved on, existing run-off rates.
43. The central question, as the Council's evidence acknowledges, is whether conditions can be applied that could secure the necessary investigations, design and implementation, of such a scheme, or whether that information should be before the decision-maker at this stage. As set out, there is no technical reason why a drainage solution that did not exacerbate existing problems elsewhere could not be arrived at. In that context, it seems to me that despite the risks involved, conditions could reasonably be used to secure the necessary investigations, the design and implementation of a scheme, and its ongoing management and maintenance.
44. Indeed, the Council has put forward two such conditions that seem to me fit for purpose. I recognise the concerns expressed by the Council about their exercise of control over what comes forward but it seems to me that if a scheme is prepared that does not meet the Council's requirements, they need not approve it, and development could not then proceed. I do not regard the ability of the appellant to lodge an appeal against the refusal of the Council to approve any details submitted in pursuance of the conditions as a difficulty. Any such an appeal would be considered with all necessary diligence and, based on my experience of these matters, any scheme that was shown to be inadequate, would not be approved.

⁸ Referred to hereafter as EA

⁹ In other words, an area that needs to be considered as one with critical drainage problems

¹⁰ The St Austell Bay Resilient Regeneration Project

45. Bringing those points together, I am of the view that the conditions suggested by the Council are more than sufficient to ensure that the proposal would not exacerbate existing flooding issues in the area, and the proposal complies with LP Policy 26 and the Framework, therefore.

Other Matters

46. Local residents raised issues around the access to the site and traffic generation. I took in conditions on Lamellyn Road, Manor View and Mountside Road in advance of the Inquiry, and as part of my site visit.
47. The proposal would generate traffic but it seems to me that the accesses proposed are acceptable in design terms. Moreover, notwithstanding existing parking habits along Manor View and Mountside Road in particular, from what I saw, this traffic would not cause any significant impact in terms of free-flow, or because existing road conditions are very likely to depress vehicle speeds, highway safety.
48. I observed how busy it is around the school at the head of Lamellyn Road at the end of the school day. I am sure conditions are similar at the start. Nevertheless, I do not consider that the proposal would make that situation worse because given the proximity of the school to the site, not many children would be driven to school from the appeal site. On top of that, the proposal includes a drop-off point for the school.
49. Overall, the proposal would accord with LP Policy 27 that deals with transport and accessibility and similar advice in the Framework

Conclusion

50. Bringing those points together, it is my conclusion that the proposal would accord with the approach of the development plan to the role and function of places in LP Policy 3 because it would qualify as the rounding off of a settlement. It would achieve that without any undue impact on the character and appearance of the area, in accordance with LP Policy 23, and without causing harm to the setting or the significance of designated heritage assets, as required by LP Policy 24. In terms of LP Policy 26, flood risk could be adequately managed by condition. Access and highway safety raise no significant concerns so there is accord with LP Policy 27.
51. On that overall basis, the proposal must thereby accord with LP Policy 1 that presumes in favour of sustainable development, and LP Policy 2 that sets out the spatial strategy for Cornwall, and, as a consequence, the development plan as a whole. For much the same reasons, the proposal is in general accord with the Framework too. In that context, there are no other material considerations to indicate that the obvious benefits of the proposal, in terms of the provision of market and affordable housing, in particular, should not be brought forward.
52. Not unexpectedly, the main parties put forward evidence to deal with whether the Council can demonstrate a five-year supply of deliverable housing sites and this matter was examined in some detail at the Inquiry. Moreover, the Council drew my attention to the conclusions of the SoS in this regard in dealing with proposals on sites at Carbis Bay, after the event. However, given my conclusions set out above, this is not a matter that has any bearing on my decision, and is not something that it would be helpful for me to conclude upon. I deal with the matter no further, therefore.

Conditions and the Agreement under Section 106

53. I have considered the suggested conditions in the light of advice in paragraph 206 of the Framework. Given the hybrid nature of the proposal, there are site-wide conditions, conditions that relate to the part of the scheme for which full planning permission is sought, and conditions that relate to that part of the scheme for which outline planning permission is sought.
54. In terms of the site-wide conditions, the first suggested which requires details pursuant to any condition to be submitted and approved in writing and to be implemented as approved is clearly unnecessary as these requirements are inevitably incorporated into the wording of individual conditions.
55. A condition is clearly necessary to deal with foul drainage but that promulgated is unnecessary given the nature of the condition suggested to deal with surface water and foul water treatment referred to below. Given the proximity of the appeal site to existing housing, conditions securing a Construction Environment Management Plan, and a Construction Traffic Management Plan, are reasonable impositions. For the same reasons, a condition is necessary to set out the times when work on site can take place.
56. Conditions are required to secure the proposed ecological mitigation measures and recommendations and a Landscape and Ecology Management Plan. Another is necessary to ensure protection for trees and hedge-banks that are intended to be retained as part of the scheme.
57. The scheme as proposed includes a pedestrian and cycle link between Mountside Road and Lamellyn Road. A condition is required to secure it. Based on the submitted Transport Assessment, and LP Policy 27, a Travel Plan is required, through a condition, to reduce trips and encourage modal shift, amongst other things. Conditions are also justified in respect of the provision of the estate road(s) and car parking spaces, and to deal with external lighting.
58. Given previous uses on and under the site, a condition dealing with potential contamination is a reasonable imposition as is, for the same reason, another to address ground stability. As discussed at the Inquiry, a (site-wide) condition setting out the approved plans is a necessity. I have used the list of drawings in the Statement of Common Ground as the basis for the condition.
59. Given the potential for finds, an archaeology condition is necessary. Again, this needs to be site-wide. I have modified that suggested in the interests of precision. As indicated above, in my consideration of the flooding issue, site-wide conditions are necessary to deal with the drainage of the site.
60. In terms of the element for which full planning permission is sought, there is clearly a need for a commencement condition. It is suggested that this be composed to require commencement within 1 year. Bearing in mind my conclusions on the merits of the proposal, set out above, that is unnecessarily restrictive and there is no good reason not to adopt the standard 3 year period.
61. The suggested condition relating to parking provision is unnecessary as this has been dealt with on a site-wide basis. There is no good reason to impose a condition requiring a Public Open Space Delivery Plan because this is dealt with in the completed Agreement. The same is true of the allotments.

62. A condition is required to secure samples of materials but this is best done on a site-wide basis. The same applies to the suggested condition relating to what is termed as the 'undergrounding of services'.
63. In terms of the outline planning permission, many of the suggested conditions have been dealt with on a site-wide basis, or removed as unnecessary. All that remains are conditions to address the reserved matters and commencement.
64. In terms of the Agreement, paragraph 204 of the Framework tells us that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. These tests are repeated in Regulation 122 of the CIL Regulations 2010 (as amended).
65. The Agreement makes clear that each of the Owner's obligations shall not have effect unless the decision-maker states expressly that it meets these tests.
66. The first of the obligations deals with the provision of affordable housing in a policy compliant manner. Given the workings of LP Policy 8, this is clearly necessary to make the development acceptable in planning terms. It is directly related to the development and fairly and reasonably related in scale and kind to the development.
67. The Education Contribution is £2,736 per qualifying dwelling directed towards an increase in teaching accommodation at Biscovey Academy so as to increase pupil places. In the light of the relevant consultation response, the Council's Guidance on Section 106 Planning Obligations for Education Provision, I am satisfied that the contribution is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.
68. The Off-Site Public Open Space Contribution of £210,850 is directed towards the provision of the Off-Site Public Open Space Facility¹¹. Based on the Council's Open Space Strategy for Larger Towns in Cornwall, and the consultation response from the Council's Open Space Officer, it is evident that this contribution is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.
69. The Transport Infrastructure Scheme Contribution is £471,900, directed towards the Transport Infrastructure Scheme. This scheme is defined as route 4 (Mount Charles Roundabout to Par Moor Road via Charlestown) and route 6 (A391 to St Blazey) of the St Austell Cycle Network Feasibility Report. The contribution has been directed in this way because there is a pooling restriction on the funding of schemes in the St Austell Transport Strategy. Nevertheless, it is felt that the improvements the contribution would secure would encourage residents from the development to walk and cycle which is a main aim of the Local Transport Plan.
70. It may well be that the contribution sought would encourage residents from the development to walk and cycle in accordance with the aims of the Local Transport Plan. However, bearing in mind that there is a suggested condition relating to a Travel Plan, which seeks to achieve modal shift, there is nothing

¹¹ Defined as the existing Par Running Track Pitches and Par Skatepark

convincing before me to suggest that, without that encouragement, the development would be unacceptable in planning terms. On that basis, the contribution sought does not meet the tests for obligations set out in paragraph 204 of the Framework, repeated in Regulation 122 of the CIL Regulations 2010 (as amended).

71. The Flood Management Scheme Contribution is £400,000 towards the Par and St Blazey Management Scheme in accordance with two plans entitled St Austell Bay Resilient Regeneration Project (November 2016), and the StARR Project Area Map. Given the difficulties with flooding that have been experienced in the area, and the uncertainty around funding for improvements, I can understand why the contribution is sought.
72. However, it is a matter that I need to approach with rigour. The basis of the approach taken to drainage in considering the scheme is that it should not exacerbate existing flooding problems. If that is the case, then there is no impact that the scheme would need to mitigate through the contribution. In simple terms, the contribution is not necessary to make the development acceptable in planning terms. Neither is it directly related to the development – it relates to an existing problem that, subject to conditions, the development would have no impact upon. Moreover, it appears that the sum of £400,000 has been arrived at in order to make good an identified shortfall. It cannot be said therefore, that the contribution sought is reasonably related in scale and kind to the development.
73. All in all, the Flood Management Scheme Contribution clearly fails the tests for obligations set out in paragraph 204 of the Framework, and repeated in Regulation 122 of the CIL Regulations 2010 (as amended).
74. Given the need for mechanisms to secure the on-site open space, and its ongoing management, and the proposed allotments, I am content that the approach of the Agreement to these elements meets the tests for obligations set out in paragraph 204 of the Framework, and repeated in Regulation 122 of the CIL Regulations 2010 (as amended).

Final Conclusion

75. For the reasons given above I conclude that the appeal should be allowed.

Paul Griffiths

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

David Lintott of Counsel	Instructed by Cornwall Council
He called James Holman	Principal Planning Officer, Cornwall Council
Martin Cookman ¹²	Local Planning Group Leader, Cornwall Council
Jackie Smith ¹³	Sustainable Drainage Lead Officer, Cornwall Council
David Hughes ¹⁴	Cornwall Councillor
Frank Newell ¹⁵	Environment Agency
Howard Simpson ¹⁶	Environment Agency

FOR THE APPELLANT:

Sasha White QC Assisted by Anjoli Foster	Instructed by Emery Planning
He called Stephen Harris	Director, Emery Planning
Ian Awcock ¹⁷	AWP
Brian Poole ¹⁸	Senior Geologist, Mining Searches UK

INTERESTED PERSONS

Tania Watkins	Local Resident
Steve Bowler	Local Resident
Christopher Yeo	Local Resident
Shirley Penrose	Local Resident
Alan Randall	Local Resident
Danny Wright	Local Resident
Nicola Quinn	Local Resident
Kenneth Wait	Local Resident
Sarah Kristo	Local Resident
Geoff Gibbons	Local Resident

¹² Took part in the discussion on HLS

¹³ Took part in the discussion on drainage issues

¹⁴ Took part in the discussion on drainage issues

¹⁵ Took part in the discussion on drainage issues

¹⁶ Took part in the discussion on drainage issues

¹⁷ Took part in the discussion on drainage issues

¹⁸ Took part in the discussion on drainage issues

Douglas Scrafton
Roy Taylor
Malcolm Harris
Jordan Rowse
David Thomas

Local Councillor
Local Councillor
Local Councillor
On behalf of Steve Double MP
Local Resident

INQUIRY DOCUMENTS

1. Council's letters of notification
2. Statement of Common Ground on Housing Land Supply
3. Report to Strategic Planning Committee on Land at Binhamy Farm, Bude
4. Housing Land Supply Statement (Update) of March 2017 (Wiltshire Council)
5. Table of Completions
6. Chronology of Events in relation to the appeal
7. Ministerial Meeting note (EA)
8. E-mail regarding loss of dwellings due to enforcement action
9. Opening statement on behalf of appellant
10. Opening statement on behalf of the Council
11. Submission by Mr Yeo
12. Submission by Mr Trodd
13. Agenda for HLS round-table session
14. Cornwall Site Allocations DPD March 2017
15. Table relating to affordable housing
16. Details of banding scheme for Cornwall Home Choice
17. Submission of Mr Bird
18. Copy of Cornwall Local Plan
19. Submission of Councillor Roy Taylor
20. Submission of Steve Double MP
21. Chronology of Events (2)
22. Submission of Councillor Doug Scafton
23. Details of Council's Delegation Scheme and associated e-mails
24. Agreement under S.106
25. Submission of Miss Kerrie White and John Adams
26. Suggested viewpoints for site visits
27. Updated Table 3.4 for Statement of Common Ground on HLS
28. Council's Closing Statement
29. Appellant's Closing Statement
30. Post-Event correspondence on the decision of the Supreme Court in *Suffolk Coastal DC v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East BC*
31. SoS Decisions on APP/D0840/W/15/3002925 and APP/D0840/W/15/3005068, Inspector's Report and related correspondence

Annex 1: Schedule of Conditions

Site-Wide Conditions

- 1) No development shall take place until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include a programme of works, details of all permits, contingency plans and mitigation measures that will be put in place to control the risk of pollution to air, soil and/or controlled waters, protect biodiversity and avoid, minimise and manage the production of waste with particular attention to the constraints and risks of the site. The CEMP shall include, but not be limited to, details of noise control measures, roles and responsibilities, monitoring and reporting, emergency responses, community and stakeholder relations, and training. Development shall be carried out in accordance with the approved CEMP.
- 2) No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include a programme of works, details of construction vehicles (number, size and type), vehicular routes, delivery times and contractors' arrangements, details of pedestrian routes during construction times, and details of the compound, storage, parking, turning, surfacing, drainage, and wheel-wash facilities. Development shall be carried out in accordance with the approved CTMP.
- 3) Demolition or construction works shall not take place outside the hours of 0800 to 1800 on Mondays to Fridays (inclusive) and 0800 to 1300 on Saturdays. No demolition or construction works shall take place on Sundays or Public/Bank Holidays.
- 4) The development shall take place in strict accordance with the ecological mitigation measures and recommendations set out in the submitted Extended Phase 1 Habitat Survey, Phase 2 Habitat Survey Report, and the Ecological Assessment of 27 May 2016 prepared by Tyler Grange, including the installation of 20 bat and 20 bird boxes on the site.
- 5) No development shall take place until a Landscape and Ecology Management Plan (LEMP) for each phase of development has been submitted to and approved in writing by the local planning authority. The LEMP shall include an implementation programme for the mitigation measures and recommendations set out in condition 4 and details of the proposed management responsibilities and maintenance programmes for all landscape areas, other than domestic gardens and allotments. The LEMP shall be implemented in accordance with the approved details.
- 6) No development shall take place until details (including an appropriate method statement) of the form and position of fencing designed to protect retained trees and hedge-banks on the site has been submitted to and approved in writing by the local planning authority. The fencing shall be installed in accordance with the approved details before any other development on the site takes place and shall be retained until completion of the development. Nothing shall be stored or placed within the fenced areas, nor shall the ground levels within them be altered.
- 7) No development shall commence until a detailed scheme for the new pedestrian and cycle link between Mountside Road (Porth Meadows

Estate) and Lamellyn Road, including a link to the Manor View estate, proposed as part of the scheme, have been submitted to and approved in writing by the local planning authority. The scheme shall be completed in accordance with the approved details before the occupation of any of the dwellings approved herein.

- 8) No dwelling shall be occupied until a Travel Plan has been submitted to and approved in writing by the local planning authority. The Travel Plan shall include the identification of targets for trip reduction and modal shift based on the submitted Transport Assessment, and a timetable for implementation. The Travel Plan shall be operated in accordance with the approved details.
- 9) No dwelling shall be occupied until the estate road carriageways and footways have been laid out and constructed in accordance with Cornwall Council's specification for estate roads, including street lighting, except for the application of the final wearing course, over such lengths as are necessary to provide access from a County Road to the dwelling concerned. The roads serving any phase of the development should be completed upon the occupation of the penultimate dwelling in that phase. The car parking spaces associated with each dwelling shall be completed and made available for their intended purpose before occupation of that dwelling.
- 10) No dwelling shall be occupied until details of any external lighting proposed, including an installation timetable, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) No development shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site has been submitted to and approved in writing by the local planning authority: (1) A preliminary risk assessment which has identified all previous uses of the site, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors, and potentially unacceptable risks arising from contamination at the site; (2) A site investigation scheme based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site; (3) The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken; and (4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying and requirements for longer-term monitoring of pollutant linkages, maintenance, and arrangements for contingency action. Development shall be carried out in accordance with the approved details.
- 12) 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 any instability is identified, a scheme for 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 be submitted to and approved in writing

by the local planning authority. The approved scheme shall be completed in accordance with the approved details before any of the dwellings permitted herein are occupied.

- 13) The development hereby permitted shall be carried out in accordance with the following approved plans: 0560-101-B: Location Plan; 0560-1102-A: Planning Layout; 0560-1103-A: Street Scenes; 0560-1103-1-B: Street Scenes; 0560-1104-1-A: External Works Layout Plan; 0560-1104-2-A: External Works Layout Plan; 0560-1105-A: Vehicle Tracking Layout; 0560-1106-A: External Detailing; 0560-1107-A: Adoption Plan; 0560-1108-A: Material Layout; 0560-1109-A: Garages, Bin & Cycle Store; 0560-1110-1-B: Site Section; 0560-1111-A: Phasing Plan; 0560-REPLAN-2000: Illustrative Masterplan; 0361-PHL-201-B: Preliminary Highway Road Profiles; 0560-1201: Turner Narrow – Plan and Elevations; 0560-1202: Block A Apartment Elevations; 0560-1203: Block A Apartment Side/Rear Elevations; 0560-1204: Block A Ground Floor Plan; 0560-1205: Block A First Floor Plan; 0560-1206: Block A Second Floor Plan; 0560-1209: Trevithick – Plans and Elevations; 0560-1210: Britten – Plans and Elevations; 0560-1213: Brancaster – Plans and Elevations (Plot 25); 0560-1214: Brancaster Side – Plans and Elevations; 0560-1215: Brancaster Side (Plot 1) – Plans and Elevations; 0560-1218: Edale – Plans and Elevations; 0560-1219: Edale (Plot 85); 0560-1220: Handel – Plans and Elevations; 0560-1221: Milton – Plans and Elevations; 0560-1225: Scott – Plans and Elevations; 0560-1226: Davy (Plots 14 & 26) – Plans and Elevations; 0560-1228: Wordsworth – Plans and Elevations; 0560-1229: Wordsworth – Side – Plans and Elevations; 2503/P07 Rev G: Landscaping – Planting Strategy Plan; 0361-PHL-202-D: Preliminary Highway Road profiles; 0361/PDL/100/F: Drainage Layout; 0361/PHL/101/D: Preliminary Highway Layout; 0560-2000: Illustrative Masterplan – Adoption Plan plus Mining Activity; 0560-1200-A: Bell – Plans and Elevations; 0560-1207-A: Churchill – Plans and Elevations; 0560-1207-1: Churchill – Plans and Elevations; 0560-1208-A: Churchill – Plans and Elevations; 0560-1208-1: Churchill – Plans and Elevations; 0560-1211-A: Elgar – Plans and Elevations; 0560-1212-A: Brancaster – Plans and Elevations; 0560-1216-A: Trevose – Plans and Elevations; 0560-1217-A: Trevose – Plans and Elevations; 0560-1222-A: Milton – Plans and Elevations; 0560-1223-A: Heron – Plans and Elevations; 0560-1224-A: Heron – Plans and Elevations; and 0560-1227-A: Davy – Plans and Elevations.
- 14) 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 the programme and methodology of site investigation and recording; the programme for post-investigation assessment; provision to be made for analysis of the site investigation and recording; provision to be made for publication and dissemination of the analysis and records of the site investigation; provision to be made for archive deposition of the analysis and records of the site investigation; and nomination of a competent person or persons/organisation to undertake the works set out within the WSU. No development shall take place other than in accordance with the approved WSI. No dwelling shall be occupied until the site investigation and post-investigation assessment has been completed in accordance

with the approved WSI and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

- 15) No development shall take place until the results of appropriate ground-penetrating radar and/or geophysical surveys and intrusive site investigation have been submitted to and approved in writing by the local planning authority. Intrusive surveys must be conducted to establish the position and depth of mining working adits and features; identify locations and areas of potential instability and inform remedial work design/techniques; and inform the surface water drainage design and construction techniques.
- 16) No development shall take place until a scheme for the provision of surface water management and foul water treatment has been submitted to and approved in writing by the local planning authority. The scheme shall include a description of the foul and surface water drainage systems operation proposals; details of the final drainage schemes including calculations, layout and bespoke surface water drainage solutions (based on the findings of the intrusive investigations) aimed at the management of surface water to the 1 in 100 year peak rainfall event plus an allowance of 40% for the impacts of climate change – the design safety factor for any infiltration systems must be no less than 5 for private systems and no less than 10 for all highway drainage systems – drainage design must prevent the adverse recharge of below ground mine workings, adits and associated features for the lifetime of the development and the system must also be designed to prevent the mobilisation of potential contaminants; confirmation from South West Water Ltd that the foul network has sufficient capacity to cater for the development – details of foul water network and operational site works including reinforcement and refurbishment required to enable the development must be provided; a Construction Environmental Management Plan; a Construction Quality Control Procedure; a plan indicating the provisions for exceedance pathways and overland flow routes; a timetable for construction including a plan indicating the phasing of development including the implementation of the drainage systems; and confirmation of who will maintain the drainage systems and a plan for future maintenance and management, including responsibilities for the drainage systems and any overland flow routes. The scheme shall be implemented, managed and maintained in accordance with the approved details. Details of the maintenance schedule shall be kept up to date and made available to the local planning authority within 28 days of any written request.
- 17) No development shall take place until samples of all external facing materials, windows, and doors, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved sample details.
- 18) No development shall take place until details of the routing and position of underground services, including electricity, gas, and communications cables, adjacent to trees and hedgebanks that are to be retained have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Full Planning Permission

- 19) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 20) The detailed landscaping scheme as shown on Tyler Grange drawing no. 2503/P07 Rev. G shall be fully implemented within the first available planting season from the date that development is commenced. Any trees or shrubs which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

Outline Planning Permission

- 21) Details of the 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 takes place and the development shall be carried out as approved.
- 22) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 23) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.