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## Appeal Decision

Hearing Held on 2 October 2019

Site visits made on 1 & 2 October 2019

**by M Bale BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 October 2019**

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**Appeal Ref: APP/D0840/W/19/3227465**

**Land to the west of Trewiston Lane (Easting 194834, Northing 76696)**

- 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 Burrington Estates (New Homes) Ltd against the decision of Cornwall Council.
  - The application Ref PA18/07035, dated 26 July 2018, was refused by notice dated 26 October 2018.
  - The development proposed is construction of 51 dwellings (Use Class C3), with associated access, highways improvements, landscaping, infrastructure, drainage and public open space.
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### Decision

1. The appeal is dismissed.

### Procedural matter

2. The application, as considered by the Council, indicated that 51% of the dwellings would be provided as affordable housing. In a statement of common ground submitted shortly before the hearing, this figure was revised to 60%. At the hearing, there was no dispute of the appellant's suggestion that if planning permission were granted, a subsequent change from open market housing to affordable housing would not require recourse to the local planning authority nor consultation with local residents. Therefore, mindful of the principles outlined in *Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]*, as no changes to the proposed design, layout or appearance of the development as a whole was proposed, I am satisfied that no injustice would arise if I were to consider the proposal on the basis of 60% affordable housing provision.

### Preliminary matters

3. At the hearing, I was provided with a Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990. The undertaking set out planning obligations in respect of affordable housing, on-site public open space and a contribution to education infrastructure.
4. In light of the undertaking, the Council confirmed at the hearing that the second reason for refusal, relating to a lack of mechanism to secure appropriate contributions to education, had been addressed.

## **Main Issue**

5. The main issue is whether the site is an appropriate location for the development, with regard to local and national planning policies.

## **Reasons**

6. The site is located at Pityme, a settlement within the parish of St Minver Lowlands. The settlement is not one identified in the Cornwall Local Plan 2010-2030 (LP) as being suitable for strategic housing growth. In such locations, LP Policy 3 permits development through the identification of sites in neighbourhood plans, rounding off of settlements and development of previously developed land within or immediately adjoining settlements, infill schemes, and at rural exceptions sites.
7. The St Minver Parishes Neighbourhood Development Plan 2017-2030 (NDP) indicates that around 150 additional residences should meet the need for the St Minver Parishes in the period 2010-2030. At the hearing, the Council confirmed that these are likely to be delivered within the existing development boundaries defined within the NDP, largely through infill development. However, given the housing demand in the locality it is unlikely that such properties would be affordable to many local people.
8. The evidence presented to me indicates that there is a pressing need for affordable housing in the locality and there has been very little delivery in recent years. The appeal proposals would make a very significant contribution towards the unmet need in a relatively short period of time.
9. The NDP indicates that in order to meet local housing needs, the release of some land outside the identified settlement limits would be required. NDP Policy STMNDP 2.2 identifies three residential Special Development Areas (SDAs) where permanent residence housing, retail, car parking, small offices, community and leisure facilities and the extension of existing business facilities may be permitted as exception sites.
10. Exception sites are defined in the glossary to the NDP as a development site that is outside of the development boundary where planning permission may be granted in accordance with existing local authority exception site guidelines. Such guidelines are set out in LP Policy 9. NDP Policy STMNDP 3.4 states that on rural exceptions sites and in the SDAs, at least 50% of additional residences should be affordable.
11. The reference in Policy STMNDP 3.4 could be taken to imply that there is a difference between rural exception sites and the SDAs. At the hearing, the appellant sought to draw distinction between them suggesting that reference to exception sites within Policy STMNDP 2.2 represented an exception to the LP as opposed to rural exceptions sites for affordable housing.
12. However, whether or not Policy STMNDP 3.4 means that other sites outside the SDAs may be permissible as exceptions should circumstances dictate, there is no compelling evidence that the wording of this policy affects the clear position of Policy STMNDP 2.2 that proposals within the SDAs should be treated as exception sites. Moreover, in terms of the SDAs, given the clear linkages back through the glossary of the NDP to LP Policy 9, I find that the SDAs do fall to be considered as rural exception sites in policy terms.

13. A large proportion of the appeal site, and most of the proposed housing, falls within an identified SDA. Around 5 of the dwellings would lie outside the SDA area, as would the public open space and surface water drainage infrastructure required to support the development.
14. At the site visit I noted that the appeal site, and associated part of the SDA, were split into two distinct areas. There is an area of land between existing dwellings that front Rock Road and a property known as Higher Weaver Barn, that is largely enclosed by surrounding development and hedgerows. A further part, itself divided by a further hedgerow, lies to the other side of Higher Weaver Barn. Given the relationship of this property with the drawn SDA boundary, two relatively small, disconnected triangles of land are formed within the SDA that have no defined boundary to the countryside beyond. Built development on these areas could present a raw urban edge if landscape mitigation were not in place, or existing intervening hedgerows may result in poor surveillance of any public open space placed in these locations.
15. By seeking to lay out the site as proposed with public open space outside the SDA, structural landscaping could mitigate any such harm as well as providing a secure long-term buffer between the built-up area and surrounding countryside. The suggested layout could allow connection of the two triangles and good surveillance of the open space. In this regard, there is no dispute between the appellant and the Council that the proposed layout responds well to site constraints and opportunities, or that there would be little, if any, resulting harm to the character and appearance of the area generally.
16. The proposal would, however, result in development beyond the SDA. In such locations, NDP Policy STMNDP 2.6 sets out that development will not be permitted other than in certain defined exceptional circumstances. The circumstance relevant to this proposal could be to allow for very exceptional circumstances where there is substantial benefit of the development to the local people that cannot be achieved in another way and that this benefit very clearly outweighs any harm to the landscape character, setting of heritage assets and sensitive biodiversity of the area.
17. For the reasons outlined previously, the delivery of affordable housing would be a substantial benefit to the local people and, in light of my findings in respect of the effect on the character and appearance of the area and the lack of technical objection in respect of the specific matters listed under Policy STMNDP 2.6, that benefit would outweigh those particular harms that fall to be considered. However, the policy also requires that the benefit cannot be achieved in another way.
18. It is evident that affordable housing has not been delivered to any great extent within St Minver Lowlands or the wider NDP area in recent years. However, whilst the appellant contended at the hearing that developing the appeal site for 60% affordable housing is challenging in viability terms, I have no rigorous evidence to support that claim. Moreover, whilst the proposal may be a sound design-led response to developing the site as a whole, there is no compelling evidence that a lesser scheme within the SDA could not deliver similar benefits.
19. My earlier policy analysis indicates that the part of the site within the SDA should be considered under LP Policy 9 which sets out a criteria-based approach to considering proposals for rural exceptions sites. There is no

- dispute that the proposal would be affordable housing led and provide a mix of housing that reflects the identified local needs.
20. It may well be that the site is well related to the physical form of the settlement and also has reasonably good accessibility to services, facilities and some employment opportunities. In that regard, the broad location may well be suitable for development and so there is a logic to the identification of part of it as an SDA. However, Policy 9 also requires development to be appropriate in terms of scale.
  21. There are no guiding principles within the policy in respect of scale and as this is the largest of the identified SDAs, the NDP clearly envisages substantial development here. However, whilst the line of the SDA in the NDP may not be the result of detailed master planning and technical studies, the NDP indicates that more land than is required has been identified in the SDAs. I, therefore, find that they serve to define a maximum appropriate scale for development under Policy 9. There is no substantive evidence that if the whole of the SDA were to be developed then it would not be possible to avoid any harm from the potential shortcomings in terms of visibility into the triangular areas beyond Higher Weaver Barn.
  22. Regardless of the sound design principles that have been presented, breaching the SDA boundary is a clear indication that the scale proposed is inappropriately large in development plan policy terms. In light of my findings in respect of the exceptional circumstances for development outside the SDA, I find that the proposal conflicts with LP Policy 9 and also NDP Policy STMNDP 2, read in its entirety. The conflict with these two fundamental locational policies bring the proposal into conflict with the development plan, considered as a whole.
  23. The NDP can be taken to imply that a preferred approach to development of the SDAs would be a gradual development of the identified sites a few dwellings at a time. Whilst this may also be the preferred approach of many local residents, the appellants suggestion that this was unrealistic was not robustly contested at the hearing. Be that as it may, for the reasons outlined above, there is no compelling evidence that the only way to deliver affordable housing within the St Minver Parishes is to develop land beyond that identified in the NDP.
  24. The proposal would bring about some benefits, not least of which would be the delivery of a very significant amount of affordable housing. Given the lack of provision in the recent past and that there is no particular evidence that other delivery is likely in the near future, I attribute this substantial weight.
  25. As all new homes would be subject to a principal home condition, there are also benefits that would arise from an additional permanently resident population in an area that has significant second home ownership. There would also be employment opportunities and associated benefits during construction and the provision of accessible and adaptable homes as part of the scheme. There is no compelling evidence that these matters should be decisive so I attribute moderate weight to them.
  26. It may be that some landscaping and biodiversity enhancements could arise. The proposal would result in New Homes Bonus and Community Infrastructure Levy receipts, some of which would be returned to the parish. There would

also be a substantial area of public open space. However, whilst the open space would be larger than that required to meet the needs of future occupiers of the development, it and these other benefits, are primarily associated with mitigation. Therefore, I attribute them only limited weight.

### **Planning balance and conclusion**

27. Decisions must be made in accordance with the development plan unless material considerations indicate otherwise. Furthermore, the National Planning Policy Framework maintains clear support for the plan-led system and indicates that where an application conflicts with an up-to-date development plan, permission should not normally be granted. I have identified a conflict with the development plan, considered as a whole.
28. There are other considerations that collectively weigh heavily in favour of granting permission. However, in the absence of compelling evidence that the benefits cannot be realised in another way, that may be policy compliant, they are not of sufficient weight as to indicate a decision otherwise than in accordance with the development plan.
29. For the reasons given above I conclude that the appeal should be dismissed.

*M Bale*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

David Norris – Planning Director, Origin3  
Chris Wilson – Architect, Design Director, Origin3  
Ros Trotman – Solicitor  
Nick Walker – Savills

### FOR THE LOCAL PLANNING AUTHORITY:

Patrick James BSc Arch MA MRTPI – Principal Planning Officer  
Jim Lee – Appeals Officer  
Chris Rose – Principal Affordable Housing Officer  
Laura Deverill – Senior Affordable Housing Officer

### INTERESTED PERSONS:

Poppy Felstead  
Keith Godfrey  
Kristian Godfrey  
Leanne Hall  
Jane Richardson  
Stuart Richardson  
John Tobin

### DOCUMENTS SUBMITTED AT THE HEARING

- 1 Unilateral Undertaking of Burrington Estates (Rock) Ltd, Francis William Hawkins, and H.W. Properties Ltd in favour of The Cornwall Council
- 2 Photograph of Trewiston Lane and explanatory comment submitted by Leanne Hall