



Appeal Decision

Site visit made on 4 June 2019

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2019

Appeal Ref: APP/D0840/W/19/3221862

Land East of Treloweth Lane, St Erth, Cornwall

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by South West Strategic Developments and the St Aubyn Estate against the decision of Cornwall Council.
 - The application Ref PA17/12089, dated 19 December 2017, was refused by notice dated 2 October 2018.
 - The development proposed is the erection of up to 44 dwellings, provision of access, allotments and ancillary works.
-

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 44 dwellings, provision of access, allotments and ancillary works at Land East of Treloweth Lane, St Erth, Cornwall in accordance with the terms of the application, Ref PA17/12089, dated 19 December 2017, subject to the conditions contained in the attached schedule.

Procedural Matters

2. The application form only described the site address as '*Fields east of Treloweth Lane*'. However, both the appeal form and the Council's decision notice refer to St Erth and Cornwall. I have included them for the sake of clarity and precision.
3. The development description within the planning application form reads for the '*erection of up to 55 dwellings, provision of access, allotments, village green, community orchard and ancillary works*'. Prior to determination of the planning application the scheme was revised to lower the quantum of housing and this was reflected within a revised description of development. Given that this was the development ultimately subject to the Council's refusal to grant planning permission, I have used the revised description of development in my decision.
4. The application was in outline with all matters reserved except for access. I assessed the appeal on this basis, having regard to all elements of plan Refs 141003 L 02 01 H and 0305-SK-102-B as indicative, aside from those which relate to the site vehicular access.
5. During the appeal the appellant produced a completed Unilateral Undertaking (UU). This UU would secure the provision of affordable housing and various financial contributions which I return to later in this decision.

Main Issue

6. The main issue is whether or not the proposed development would conflict with the approach to housing delivery set out within the development plan.

Reasons

7. The appeal site is a small field and part of a larger, adjacent field on the edge of the settlement of St Erth. Treloweth Lane bounds the site to the west and field boundaries separate it from the houses within St Erth to the south.
8. The site falls within the area for the St Erth Neighbourhood Plan 2017-2030 (the SENP). This is a new part of the development plan which was only made in June last year. It sets out the visions and aims of the community over the plan period, including the proactive allocation of land for housing, the need for which was identified through the SENP's evidence base.
9. This approach is compliant with Policy 3 of the Cornwall Local Plan Strategic Policies 2010–2030 (adopted 2017) (CLP), which requires housing sites in rural areas such as this to be identified through neighbourhood plans. The quantum of housing the SENP seeks to provide surpasses the minimum allocation for the area set out within the CLP, which has already been met in any case. It is also undisputed that Cornwall Council can demonstrate at least a five-year supply of deliverable housing sites.
10. The SENP allocates residential land over two sites (Sites A and B), which are located within the St Erth settlement boundary on either side of the village. Combined, they are intended to deliver approximately 54 homes. The SENP recognises that additional housing may be needed during the plan period to meet local housing needs beyond these sites. In the event that this were to occur, further exception sites (Sites C, D and E) are allocated outside the settlement boundary.
11. I note the appellant's view that the SENP does not obligate this sequential approach to the delivery of the sites, in that the wording of Policy HT 1 does not itself refer to phasing. However, it is clear and unambiguous that the SENP intends to deliver its housing provision in such a way, with the development of Sites C, D and E delayed until after the delivery of Sites A and B. Furthermore, Policy HT1 is itself titled 'Phasing development'. Given such, I cannot reach any conclusion other than that there is a policy requirement within the SENP to secure the phasing of its sites, under its terms.
12. The appeal scheme seeks to deliver housing within Site B and around half of Site C, which is on adjacent land to the north. Consequently, as the proposal would bring forward Site C simultaneously with Site B, and before Site A, it would conflict with Policy HT 1 in this regard.
13. Policy HI 1 sets out the more detailed requirements of development within the allocated sites. It states that Sites A and B shall both deliver at least 25% affordable housing (AH). The appeal scheme would provide 25% AH within Site A. Policy HI 1 requires proposals within Sites C, D and E to be majority AH led, starting at 100%, subject to viability. This approach is consistent with Policy 9 of the CLP, which deals with the delivery of exception sites. The proposed AH within Site C would up to 100%, subject to viability assessment, but would comprise at least 10 of the 19 dwellings therein.
14. As such, whilst I acknowledge that the community's first preference is for Site C to deliver a guaranteed 100% level of AH, the respective levels of AH provided by the scheme within Sites B and C would be policy compliant. Furthermore, I note the evidence of an interested party that other sites within

St Erth with comparatively more challenging access and development constraints have, within recent years, been developed with 100% AH provision. This suggests to me that the part of the scheme within Site C would deliver a clear majority of AH.

15. There is no dispute between the main parties that the masterplan which accompanies this appeal indicates that the housing would be well integrated with the character and appearance of the area. Although some hedgerow would be lost, replacement planting can be incorporated into the site layout. With regard to village amenities and infrastructure, the education authority (EA) has indicated that, when taken with other allocated development, the capacity at St Erth CP School would exceed 90%. However, the EA has also identified that additional places at the school can be funded. These matters would be secured at the reserved matters stage and/or are captured within the UU.
16. I appreciate that the scale of development in relation to St Erth would be considerable. However, development of the site with a larger quantum of housing is already a potential consequence of the approach to housing delivery adopted within the SENP, albeit on a phased basis. There is no substantive evidence to indicate that this number of houses, brought forward within one single proposal, would unacceptably change the character of the village or prejudice its infrastructure, including the safe use of the highway network. Instead, I agree that the scheme is more likely to increase footfall and therefore the vitality of village amenities, such as the pub and shop. I am particularly mindful of the evidence that these facilities may be under threat.
17. The Council is concerned that the scheme may influence the delivery of Site A. However, there is no evidence before me that that may be the case. Whilst the scheme would deliver a large quantum of the SENP's initial housing allocation, a significant amount would be AH within Site C. As such, it seems unlikely to me that the appeal scheme would prejudice delivery of the open market led housing allocation at Site A. Indeed, the Council has drawn my attention to an undetermined planning application for residential development of that site.
18. Drawing my findings together on this issue, although I find no conflict with Policies 3 and 9 of the CLP, and no outright conflict with Policy HI 1, there would be conflict with the phasing of development set out by the SENP and required by Policy HT 1. Consequently, I conclude that there would be a limited conflict with the approach to housing delivery within the development plan.

Other Considerations

19. Paragraph 77 of the National Planning Policy Framework (the Framework) identifies that, in rural areas, decisions should be responsive to local circumstances and support housing developments that reflect local needs. It goes on to say that local planning authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs and consider whether allowing some market housing on these sites would help to facilitate this.
20. It is undisputed by the main parties that the Homechoice Housing Register, which is SENP's intended source for such information, shows an AH need in the area of 50 units, with 21 households in critical need. There is also a need for 8 immediate homes identified within the Help to Buy scheme.

21. Of those on the Homechoice Housing Register, 8 individuals are within Band A, 1 is within Band B and 12 are within Band C. The 8 people within Band A are in the most urgent and immediate need, potentially based on, amongst other things, immediate threat to life or risk of injury. The high priority individual within Band B may be homeless, faced with homelessness or lacking in multiple numbers of bedrooms within their home. The registered people within Band C may be homeless, in accommodation with inadequate numbers of bedrooms, or in private sector accommodation which is environmentally substandard.
22. Given such, although the Council makes the point that less than half of those on the Homechoice Housing Register are in a critical situation, this does little to alter my view that there is an acute shortage of urgently needed AH in the locality. This is to such an extent that, even if the expected quantum of housing at Sites A and B could be delivered, and even if all homes were to be affordable, the AH need in the area would still not be met. It is therefore logical that, notwithstanding the phasing requirements of the SENP, there is an evidenced and established AH need in the area which would justify the delivery of Site C as soon as possible.
23. The level of AH proposed within the scheme is set by the UU and beholden to viability. Whilst the scheme could deliver 25 AH units, it could equally deliver 16. Although I appreciate that this approach is consistent with Policy 9 of the CLP and Policy HI 1 of the SENP, it reduces the level of AH that I can be certain would be delivered. Even so, given the degree and circumstances of the evidenced AH need in the area, I find that even the minimum potential delivery of 16 AH homes would still constitute a significant public benefit.
24. I note that interested parties have questioned the ultimate recipients of the AH, and the SENP requires that the AH will go to those with a genuine need to live in the area. In this case, the submitted UU contains mechanisms to ensure, so far as reasonable, that the AH would be onsite, tailored to local needs, and allocated to those registered, with a local connection, in the first instance.
25. In addition, the proposal would create pedestrian and bicycle access through Trehayes Meadow and safe vehicular access from Treloweth Road, preventing the need for any vehicular traffic through Trehayes Meadow, construction or otherwise. This goes further than the SENP, which concedes that, as a consequence of its phased approach, a less satisfactory vehicular access would have to be provided from Site B through Trehayes Meadow as an interim measure. To my mind, this is also a significant benefit of the proposal which weighs in its favour. I shall return to these considerations in the planning balance.

Unilateral Undertaking

26. Community Infrastructure Levy (CIL) regulation 122 makes clear that it is unlawful for a planning obligation to be taken into account in a planning decision on a development that does not meet all of the following tests. These are that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.
27. The UU would serve to provide the affordable housing. It also sets out the provision of open space and allotments to enable the scheme to comply with Policy 23 of the CLP. Education contributions would be made to prevent St Erth

CP School from exceeding its capacity. It secures a contribution to a Traffic Regulation Order with regard to pedestrian and cycle improvements required along Treloweth Road as a consequence of the development. The UU is therefore in compliance with regulation 122 and I can take it into account in my decision.

Other Matters

28. The ecological surveys indicate that bats are using the trees and hedgerows for foraging and commuting. Although I note that the scheme would remove one such hedgerow, this would be mitigated elsewhere and there is no evidence that the work would constitute a breach of the Habitats Regulations¹. As such, I am satisfied that the ecological effects of the development can be mitigated, and enhancements delivered pursuant to a planning condition.
29. As a small section of the site is within Flood Zone 3, there is a requirement for the sequential test to be carried out. The appellant has indicated that the section of the site that falls within Flood Zone 3 would contain no houses or gardens, set out instead as open space. The Environment Agency has considered this and is satisfied that a sequential test has been favourably completed. I have no reason to reach a different conclusion.
30. I note the Parish Council's concerns with regard to the procedural suitability of outline planning applications, particularly for exception sites, and also concerns which have been raised about the loss of agricultural land. However, in this case the land has already been allocated, albeit on a sequential basis. It follows that the principle of the long-term loss of the agricultural land through this scale of housing development has already been established to be acceptable by the SENP.
31. Matters raised by interested parties with regard to the integrity of boundary walls and property values are dealt with under separate legislation or are not material, and therefore have not been determinative in my assessment.

Planning Balance

32. Neighbourhood development plans are a vital and integral component of the planning system. This is reflected within national policy and the Planning Practice Guidance (PPG) which highlight the importance of neighbourhood planning in giving communities the power to develop a shared vision for their area and enable people to shape, direct and help to deliver sustainable development. I have also taken into account a Written Ministerial Statement which sets out that where a planning application conflicts with a made neighbourhood plan, planning permission should not normally be granted².
33. The SENP has completed the neighbourhood development plan making process, forms part of the development plan and has the full weight of development plan policy. I have found that the scheme would conflict with its phased and sequential approach to the delivery of housing in the village. Given the predication of the SENP on this approach, I find that the scheme would conflict with the development plan when read as a whole.

¹ Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017

² Written Ministerial Statement HCWS346

34. Planning law and the Framework require proposals to be determined against the development plan unless material considerations indicate otherwise³. Although I appreciate that the SENP is a very new and important document which is well founded in the democracy and considerable application of its local community, it is not immune to this legal test.
35. It is evident that there is a clear imperative for Site C to provide AH to meet the acute needs of the area now, a need that could not possibly be met by the phasing proposed by the SENP in the first instance. The scheme would provide between 16 and 25 affordable homes, aimed towards registered local people. As such, it would make a substantial contribution towards addressing this local AH need. It would also provide the community's ultimate access solution for Sites B and C.
36. Given the circumstances, these are material considerations which attract significant weight in the balance. Taken together, they outweigh the harm I have identified, and therefore constitute an exceptional justification for making a decision which is not in accordance with the development plan. As this decision is based on the individual circumstances of the case, it should not be considered prejudicial to the integrity of the SENP, nor to set a precedent for future development within the village.

Conditions

37. In the event that I was minded to allow the appeal, the Council requested conditions to be applied, which I have assessed with regard to the tests set out in the Framework and the advice of the PPG. I have amended them where appropriate for the sake of clarity and precision.
38. In addition to the standard time condition, conditions are needed to define the approved plans in the interest of certainty, including in relation to the site access. For the same reason, it is also required to set out those matters that are reserved for future consideration. It is necessary to ensure that the housing will be delivered in appropriate phases and adhere to the standards set within Policy 13 of the CLP. The drainage evidence demonstrates that foul and surface water can be adequately managed and dealt with. However, a condition will need to ensure that the such a scheme would be delivered and retained.
39. A condition is essential to deliver the ecological mitigation and enhancements within a Landscape and Ecology Management Plan, as is a condition which will protect retained landscape features. To safeguard the social and environmental interests of the area, it is necessary for a Construction Environment Management Plan to be agreed before work starts. Lastly, a condition is required to facilitate the additional archaeological work pursuant to the results of the appellant's archaeological evaluation.

Conclusion

40. For the reasons outlined above, and taking all matters raised into account, I shall allow the appeal.

Matthew Jones

INSPECTOR

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

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout and scale (the reserved matters) shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
- 2) An application for approval of reserved matters must be made no later than the expiration of 3 years from the date of this decision and the development hereby approved shall commence no later than 2 years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plan: 141003 L 01 01 Rev B.
- 4) No development shall take place until details of the vehicular access to Treloweth Lane have been submitted to and approved in writing by the Local Planning Authority. Details shall be in general accordance with drawing Ref 0305-SK-102-B. The development shall be carried out in accordance with the approved details and the access as approved shall be completed before any dwelling hereby permitted is first occupied.
- 5) The first reserved matters application shall be accompanied by a phasing plan identifying each phase of the construction of the development. The development shall be carried out in accordance with the provisions of the approved phasing plan and/or any subsequent amendments to it that have been agreed in writing by the Local Planning Authority.
- 6) The first reserved matters application shall be accompanied by a site-wide plan and housing standards schedule that shall be submitted to and approved in writing by the Local Planning Authority identifying 25% of the dwellings to be delivered as accessible homes to be split equitably between open market housing and affordable housing (including the split between specific tenures of affordable housing). Once agreed the identified accessible homes shall be completed as per Building Regulations 'Approved Document M4(2): Accessible and adaptable dwellings' or successor documents and shall not be occupied until written confirmation of compliance with this standard from an Approved Inspector / or LABC has been submitted to the Local Planning Authority.
- 7) No development approved by this permission shall be commenced until the following details are provided to and agreed in writing by the Local Planning Authority:
 - a) finalised details of the foul and surface water drainage schemes including calculations and layout;
 - b) confirmation from South West Water Ltd that the foul network has sufficient capacity to cater for this development;
 - c) a Construction Surface Water Management Plan;
 - d) a Construction Quality Control Plan;
 - e) a plan indicating the provisions for exceedance pathways, overland flow routes and proposed detention features;
 - f) a timetable of construction;

- g) confirmation of who will maintain the drainage systems and a plan for the future maintenance and management, including responsibilities for the drainage systems and overland flow routes.

The approved scheme shall be implemented in accordance with the timetable so agreed and retained in accordance with the approved details for the lifetime of the development. Details of the maintenance schedule shall be kept up to date and be made available to the Local Planning Authority within 28 days of the receipt of a written request.

- 8) Foul drainage from the development hereby approved (and no other drainage) shall be connected to the public foul or combined sewer.
- 9) No development hereby permitted shall be commenced until a Landscape and Ecology Management Plan (LEMP) has been submitted to and approved in writing by the relevant planning authority. The LEMP must include details of:
 - a) landscape and ecological mitigation, compensation and nature conservation measures;
 - b) a sensitive lighting plan for the periphery of the development;
 - c) Green Infrastructure;
 - d) hard and soft landscaping;
 - e) the implementation timetable, management and monitoring of landscape and ecological mitigation, compensation and nature conservation measures.

The development will be undertaken in accordance with the approved details and timing of the LEMP.

- 10) The landscaping details submitted pursuant to condition 1 shall include details of the form and position of fencing for the protection of trees and hedgerows on the site and such fencing shall be erected in accordance with BS5837 (or its successor) in the positions approved before the development is commenced and thereafter retained until completion of the development. Nothing shall be stored or placed in any fenced area, nor shall the ground levels within those areas be altered, without the prior written approval of the Local Planning Authority.
- 11) No development shall commence until a Construction Environmental Management Plan (CEMP) has been submitted and approved in writing by the Local Planning Authority. The approved CEMP shall be adhered to throughout the construction of the development and shall provide for the following:
 - a) means of access for construction vehicles including routes to and from the site;
 - b) onsite parking;
 - c) loading and unloading storage of plant and materials used in constructing the development;
 - d) wheel washing facilities;
 - e) measures to control the emission of dust and dirt during construction;
 - f) a scheme for recycling/disposing of waste resulting from demolition and construction works;

- g) how both minor and major spillage and runoff will be dealt with;
- h) disposal of contaminated drainage, including water pumped from excavations;
- i) a scheme to dispose of surface water run off during the construction phase;
- j) the anticipated number, frequency and size of construction vehicles entering / exiting the site;
- k) delivery times of construction materials;
- l) construction operating hours; and,
- m) a scheme for the remediation and management of invasive plant species on / in proximity to the site.

12) No development shall take place until a Written Scheme of Investigation has been submitted to and agreed in writing by the Local Planning Authority. It shall include a strip-map-sample exercise in relation to the area (c.60m x 35m) encompassing all of the eastern part of Trench 02 and the associated geophysical anomalies, as set out within the 'Results of an Archaeological Evaluation, dated 30 January 2019, by South West Archaeology Ltd. The scheme shall include:

- a) an assessment of significance;
- b) the programme and methodology of site investigation and recording;
- c) the programme for post investigation assessment;
- d) the provision to be made for analysis of the site investigation and recording;
- e) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
- f) the provision to be made for archive deposition of the analysis and records of the site investigation;

The scheme of investigation shall be carried out in accordance with the approved details prior to the commencement of construction works.