



Appeal Decision

Site Visit made on 25 August 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th November 2021

Appeal Ref: APP/D0840/W/21/3276587

Land adjacent to Heckberry Barn, Vollards Lane, Hatt PL12 6PT

- 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 Mr & Mrs Richard Andrews against the decision of Cornwall Council.
 - The application Ref PA19/05565, dated 27 June 2019, was refused by notice dated 8 December 2020.
 - The development proposed is residential development of 8 dwellings (4 open market and 4 affordable rent).
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Decision

1. The appeal is allowed and planning permission is granted for residential development of 8 dwellings (4 open market and 4 affordable rent) at Land adjacent to Heckberry Barn, Vollards Lane, Hatt PL12 6PT in accordance with the terms of the application, Ref PA19/05565, dated 27 June 2019, and the plans submitted with it, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr & Mrs Richard Andrews against Cornwall Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The planning application form is undated. I have therefore used the date of the application that is given on the appeal form and the decision notice.
4. During the appeal, on 20 July 2021, the Government published its revised National Planning Policy Framework (the Framework). The Framework represents the Government's up-to-date planning policies for England and how they should be applied. Both parties have been given the opportunity to make comments relating to the updated Framework.
5. The appeal submission included a Unilateral Undertaking dated 3 June 2021 (the UU) made as a Deed pursuant to Section 106 of the 1990 Act. During the appeal the appellants also submitted an Undertaking dated 23 September 2021, pursuant to Section 111 of the Local Government Act 1972 (the S111 Undertaking). The Council has commented on both Undertakings, and I have made my decision based on their observations and all other evidence and submissions before me.
6. The site is within the Zone of Influence of the Plymouth Sound and Estuaries Special Area of Conservation and Tamar Estuaries Complex Special Protection Area (the SAC/SPA). This is a European Designated Site afforded protection

under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Although not an issue raised by the Council in its reasons for refusal, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the European Site. As such, it is necessary to consider this matter as a main issue.

Main Issues

7. The main issues are:

- a) Whether the site is suitable for the development, bearing in mind the settlement policies of the development plan; the composition and layout of the dwellings; and the effect of the proposal on the character and appearance of the area; and,
- b) The effect of the development on the integrity of the European Site.

Reasons

Settlement policies; layout; character and appearance

8. The main settlement policies of the development plan are Policies 2 and 3 of the Cornwall Local Plan Strategic Policies 2010 – 2030 (adopted 2016) (the Local Plan). The strategy set out in Policy 2 seeks to maintain the dispersed development pattern of Cornwall, and provide housing based on the role and function of each place. Policy 3 defines how development will be accommodated, based on this hierarchy, with growth focussed on identified main towns. Hatt is not one of the main towns listed in Policy 3.
9. Outside the main towns, Policy 3 says housing growth is to be delivered through the identification of sites through Neighbourhood Plans; rounding off of settlements; development of previously developed land within or immediately adjoining settlements; infill schemes; or rural exception sites. The site is not identified for development by a Neighbourhood Development Plan, and it is not previously developed land. Furthermore, the appellant does not argue that the proposal would constitute rounding off or infill. Consequently, the suitability of the site for housing is dependent on it meeting the criteria for a rural exception site, as set out in Policy 9 of the Local Plan.
10. Policy 9 says that development proposals on sites outside of but adjacent to the existing built-up area of smaller towns, villages and hamlets, whose primary purpose is to provide affordable housing to meet local needs, will be supported where they are well related to the physical form of the settlement; clearly affordable housing led; and would be appropriate in scale, character, and appearance. The policy allows for the inclusion of a maximum of 50% market housing where a financial appraisal demonstrates it to be essential for the successful delivery of the development.
11. The urban form of Hatt is highly nucleated, so it has a very clearly defined built edge. I am mindful that the development would protrude beyond this tight pattern of buildings into the surrounding countryside. However, Policy 9 explicitly states that exception sites will be outside the existing built-up area. The appeal site immediately adjoins the north-western edge of the settlement and would be closely associated with Heckberry Barn and the dwellings on the

opposite side of Vollards Lane. Consequently, for the purposes of Policy 9, the site is well-related to the physical form of the settlement.

12. At the time of the application, five households were registered as being in need of affordable rented homes in the Botus Fleming Parish. The development would provide four 2-bedroomed bungalows for affordable rent, so would be of an appropriate scale relative to the identified local need. Furthermore, the Council's statement highlights that the number of households on the register has now increased to seven, with three seeking 2-bedroomed accommodation and three seeking 1-bedroomed accommodation. The evidence indicates that the Council's housing allocation policies allow those with a 1-bed need to under-occupy a 2-bed property to allow for household growth. The four 2-bedroomed bungalows would, therefore, be suitable to meet the identified local need.
13. The Council raises concerns regarding the potential take up of the affordable dwellings. However, the evidence indicates that the type and tenure of the dwellings resulted from discussions with the Council's Affordable Housing Officer, who supported the proposal. The appellants' evidence also indicates that a Registered Housing Provider has already expressed an interest in purchasing the four affordable units. I am therefore satisfied that the affordable housing element of the proposed development will meet an identified local housing need.
14. The four affordable dwellings would be cross subsidised by the provision of four open market houses. The evidence indicates that the provision of 50% open market housing has been the subject of a detailed viability appraisal demonstrating that the scheme would not be viable with a higher ratio of affordable housing. No contrary evidence has been provided. The Council argues that, if the viability is marginal, delivery of the affordable dwellings may be in jeopardy. However, the evidence from the Council's Affordable Housing Officer describes the return to the developer as "very reasonable". On the evidence, therefore, I conclude that the 50% affordable housing is the optimum amount that can be delivered. The inclusion of market housing to facilitate this delivery is in accordance with Policy 9, and does not, therefore, undermine the principle that the development would be affordable housing led.
15. The Council's Housing Supplementary Planning Document (February 2020) (the Housing SPD) provides guidance on the design and distribution of affordable housing. It states that new residential developments should be designed so that affordable housing is indistinguishable from market housing, and is interspersed in small clusters amongst open market homes. It also advises that affordable homes should be of at least the same quality as the equivalent open market home and, on smaller schemes, pepper-potting in groups of two or more may be appropriate.
16. In this case, the affordable units would be bungalows, and the open market element would comprise houses. In that respect, there would be a clear distinction between the two components. However, the mix of unit types would accord with the Housing SPD guidance to develop a mixed, balanced community without an over-provision of one unit type. Although the storey heights would be different, the external design details, and the quality of the materials would be consistent across all the dwellings. Whilst the floorspace of the houses would be larger, they would be on plots of a similar size, or smaller,

than the bungalows. Consequently, although there would be a mixture of houses and bungalows, there would not be an obvious visual distinction between the affordable and market elements.

17. The layout is a logical response to the topography and the character of the area. The houses would occupy the lower part of the site, and the bungalows fronting the road would be in keeping with the prevalent character of Vollards Lane to the east. Whilst this means the affordable units would be at the front of the site and the market houses at the rear, all eight dwellings would be served by a single short cul de sac, so they would be closely grouped. The affordable units would be divided by the access road into two groups of two, which would accord with the Housing SPD guidance that on smaller schemes, pepper-potting in groups of two or more may be appropriate. Consequently, taking account of the Housing SPD guidance, the design and layout of the development would not differentiate the affordable and market housing.
18. For the above reasons, I find that the proposal would be affordable led, of a suitable scale to meet the identified local need, and on a site that is well-related to the built form of the settlement. Consequently, it would comply with Policy 9 if it would be of an appropriate character and appearance.
19. The site is currently undeveloped agricultural land beyond the edge of the settlement. The construction of eight dwellings and an access road would clearly have some impact on the natural character of the area, through encroachment into the countryside and urbanisation. However, exception sites are, by definition, on land outside of the existing built-up area, so will always result in these impacts to some degree. The effect of the development on the character and appearance of the area must, therefore, be considered in this context.
20. To the east of the site, bungalows front Vollards Lane on both sides of the road. These are set back from the road behind low walls, hedges, and fences. There are pavements on both sides of the road and the general character of this approach to the site is suburban, rather than semi-rural. Viewed from this direction, the loss of the roadside hedge and the extension of the pavement along the road frontage would be evident, but would be seen in the context of similar development in the foreground. The proposal would, therefore, appear as a natural continuation of the prevailing streetscape in Vollards Lane, rather than as an isolated encroachment into the countryside. The wider landscape on the higher land beyond would still be visible, so the impact on the rural setting of the village would be limited.
21. Viewed from the west, the replacement of the roadside hedge with a low wall and pavement would extend the urban form of the village. However, these works, and the frontage bungalows, would be seen in the context of the existing bungalows in Vollards Lane to the east, and with dwellings on higher land beyond. The houses further into the site would be set at a lower level, and would be viewed against the backdrop of higher land and trees, so would not break the skyline. Consequently, the development would have a limited impact on the character of the wider countryside from this viewpoint.
22. The development would be visible from the opposite side of the valley to the north. From here, it would be seen in the context of the main body of the village to the east, although it would appear slightly detached from this viewpoint. Nevertheless, it would be seen with higher land beyond and

expansive open countryside to the west. It would, therefore, only represent a minor encroachment into the open countryside, which, in the context of the high density built form of the village to the east, would not result in significant harm to the landscape character of the area.

23. From northerly views, the lack of enclosure of the development from the open countryside would be evident. The proposed new hedgerow to the western boundary should, therefore, be secured through a detailed landscaping scheme to ensure a suitable division between the new settlement edge and the open countryside. Whilst this hedgerow would take time to mature, there is no reason why, with suitable management arrangements, it should not successfully perform this role.
24. To conclude on this issue, the proposal would provide affordable housing at a suitable scale to meet the identified local need, on a site that is well-related to the built form of the settlement. The development would have a limited and localised impact on the natural character and appearance of the countryside, but no more than would be expected in the context of a rural exception site. Consequently, I conclude that the proposal accords with Policies 1, 2, 9, 12 and 23 of the Local Plan, which support rural exception sites within the overall strategy for the location of residential development and the maintenance of Cornwall's distinctive natural character.

Integrity of the European Site

25. The Court of Justice of the European Union has ruled¹ that, when considering the effect that a development proposal may have on a European Site, the decision maker must consider any proposed mitigation through an Appropriate Assessment (AA), rather than at the screening stage. That responsibility now falls to me in determining this appeal.
26. The Habitats Regulations require that permission for development may only be granted after it has been ascertained that it will not affect the integrity of the European Site. The SAC/SPA qualifies as a European Site in recognition of its marine conservation importance, which is associated with its wide variety of saline conditions and sedimentary and reef habitats, which are of international importance for a large number of waterbirds, including Avocet and Little Egret.
27. It is also a popular destination for outdoor sports, leisure, and recreational activities, which are identified as a threat to its integrity. The development would result in eight new households living within the Zone of Influence of the SAC/SPA. In the light of the evidence before me, when considered alone or cumulatively with other schemes, I cannot rule out that the proposal would have significant effects on its features of interest, due to the resultant increase in recreational use.
28. In my AA, I may consider any conditions or other restrictions which could secure mitigation of this harm. The Council adopted a European Sites Mitigation Supplementary Planning Document (the Mitigation SPD) in July 2021. The Mitigation SPD provides a strategy to mitigate the potential in-combination impacts of new housing development on the European Site by managing access and visitor behaviour, making sites more resilient to recreational pressure, or making provision of appropriate alternative recreation locations to draw users

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

away from it. A specific, costed set of measures is identified in the Mitigation SPD, including projects and staffing.

29. To fund the mitigation, the Council collects financial contributions from developments, using a formula based on the total cost of the mitigation divided by the expected number of new dwellings. The contributions are pooled, to be spent on the identified projects which will avoid cumulative harm resulting from development in the Zone of Influence. In this case, the S111 Undertaking submitted by the appellant secures the required level of funding prior to occupation of any of the dwellings.
30. The S111 Undertaking does not bind the land or obligate the Council. However, the wording within it says that the contribution is to be paid to the Council to avoid or mitigate against any adverse effect of the development on the SAC/SPA, and on the understanding that the Council will apply the payment solely for those purposes. Natural England has confirmed that the proposed avoidance and mitigation measures outlined in the Mitigation SPD are sufficient to ensure that an adverse impact on the integrity of the SAC/SPA can be avoided, and that the S111 Undertaking adequately secures the deliverability of the measures.
31. Consequently, I am satisfied, based on the specific evidence before me, that the S111 Undertaking is a sufficient mechanism to enable the delivery of proportionate and relevant mitigation pursuant to the Council's adopted Mitigation SPD. I therefore find within my AA that, with the provided mitigation, the proposal would not result in a significant harmful effect on the integrity of the European Site.

Planning Obligation

32. The Second Schedule of the UU secures the delivery of the affordable housing, and restricts its occupancy to local people in housing need. As I have found that the site is only acceptable for residential development based on it being an exception site, the obligations within this Schedule are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to it.
33. The UU also secures a contribution of £10,944 towards educational infrastructure. The education contribution accords with the request from the Education Authority, which is based on its Education Infrastructure Needs Assessment. I am therefore satisfied that the contribution 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 it.
34. To mitigate the impact of the development on open space and recreation provision, the UU secures a contribution of £4,233 to improve open space at Hatt Recreation Field. It also secures the provision of a landscape maintenance and management specification for the landscape areas within the development. These provisions are in accordance with the requirements set out in the consultation reply from the Council's Public Open Space Officer and Policy 28 of the Local Plan. On the evidence before me, the obligations are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to it.

35. Consequently, I find that all the obligations in the UU meet the tests set out in paragraph 57 of the Framework, and constitute a reason for granting planning permission in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
36. I am mindful that Regulation 122 allows local planning authorities to charge monitoring fees in planning obligations, and that the UU does not provide a sum for this purpose. I have been provided with the Council's standard scale of charges. However, in the circumstances of this particular case, monitoring the obligations would not seem to be particularly onerous. In the absence of specific evidence to demonstrate that the suggested fee would not exceed the cost of monitoring the development over the lifetime of the planning obligations, I am unable to conclude that it would comply with the requirements of Regulation 122.

Other Matters

37. I have considered the representations that have been made both in support of, and in opposition to the proposals, including those of the Parish Council. Reference is made to the conflict between the development and an emerging Neighbourhood Development Plan. However, the evidence indicates that the Plan has not yet advanced to a stage where it should carry any weight in my decision.
38. I am mindful that there is a limited range of services in the village. However, the availability of services is not a criterion in determining whether an exception site is acceptable under Policy 9 of the Local Plan. Indeed, the Policy refers to "*smaller towns, villages and hamlets*", so there is no expected level of service provision. However, the village does have a convenience store/post office and a playing field, and there are bus stops with services to higher order settlements within 350 metres of the site.
39. Concerns have been raised about the increase in traffic and the effect of the development on highway safety. However, the development is of a modest scale and would be served by quiet roads with low levels of slow-moving traffic. The proposals include a suitably designed access with a footpath link to the village. I note that the Highway Authority did not object to the proposals.
40. A Public Right of Way (PROW) runs alongside the northern boundary of the site. Whilst the development would be visible from the PROW, it would not be directly affected, and walkers would still be able to use it freely. There would be some influence on its countryside character for a short stretch, but this part of the route is already close to the urban form of the village, so the impact would be very limited.
41. I am mindful that an appeal relating to a proposal for residential development on the opposite side of Vollards Lane was dismissed recently². However, that proposal was not for an affordable housing led development, so was considered against the criteria in Policy 3 of the Local Plan, rather than Policy 9. The two cases are not, therefore, directly comparable.
42. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving listed buildings, or their settings, or any features of special architectural or historic

² Appeal Decision APP/D0840/W/21/3270382

interest which they possess. Reference has been made to Hatt House, which is a grade II* listed building. However, it lies approximately 450 metres away, and there is substantial intervening landscaping. Consequently, the development would have no impact on the listed building or its setting.

Conditions

43. In accordance with the legislation, I have imposed a condition limiting the period within which the development must commence. I have also included a condition specifying the relevant plans, as this provides certainty for all parties. The Council has suggested conditions to cover other matters. I have considered these against the advice in the Planning Practice Guidance. I have agreed that the conditions are necessary, but I have altered some of them, in the interests of clarity and precision, and, where possible, to avoid the need for them being pre-commencement conditions.
44. A condition requiring a scheme of landscaping and future maintenance is necessary to ensure that the development is appropriately assimilated into its rural surroundings. In view of the Lead Local Flood Authority's consultation reply, a condition is reasonable and necessary, to ensure that the development has suitable systems for foul and surface water drainage. In the interests of highways safety, I have imposed a condition requiring full details of the footways, estate road, paths, and parking areas to be submitted for approval. I have also imposed a condition requiring the development to proceed in accordance with the recommendations of the submitted ecological report, to avoid harm to nesting birds during the construction phase.

Conclusion

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

Nick Davies

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: AN_20_01.1 – Plots 1,2,3 & 4; AN_20_02 – Plots 5 & 6; AN_20_03 – Plots 7 & 8; AN_20_04.1 – Block 1:200.
- 3) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i. Details of all existing trees and hedgerows on the land, showing any to be retained;
 - ii. Full schedule of plants;

- iii. Details of the mix, size, distribution, and density of all trees/shrubs/hedges;
- iv. Proposals for the maintenance and management of the soft landscaping areas;
- v. Details of the new boundary hedgebank to the west of the site;
- vi. Details of new boundary walls and other boundary features;
- vii. An implementation programme.

The landscaping works shall be carried out in accordance with the approved details before occupation of any of the dwellings, or in accordance with the agreed implementation programme, and any trees or plants 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.

- 4) The foul and surface water drainage systems shall be in accordance with the principles set out in the CSW Drainage Strategy Revision 01 dated 21/09/20.

No development shall commence until the following details have been submitted to and approved in writing by the local planning authority:

- i. A description of the foul and surface water drainage systems operation;
- ii. Details of the final drainage schemes including calculations and layout;
- iii. Confirmation from South West Water Ltd that the foul network has sufficient capacity to cater for this development;
- iv. A Construction Surface Water Management Plan;
- v. A Construction Quality Control Plan;
- vi. A plan indicating the provisions for exceedance pathways, overland flow routes and proposed detention features;
- vii. A timetable of construction;
- viii. 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 surface water drainage systems shall fully manage surface water flows resulting from the developed site up to the 1 in 100-year peak rainfall event plus a minimum allowance of 40% for the impact of climate change.

Development shall proceed in accordance with the approved details and the systems shall be managed and maintained in accordance with the approved maintenance plan for the lifetime of the development.

- 5) Development shall not proceed above dpc level on any of the dwellings until details of the construction, surfacing, drainage and lighting of the footway connection, frontage footway, and site estate road, paths, and parking areas, have been submitted to and approved in writing by the local planning authority. Prior to occupation of any of the dwellings, the estate road, turning area, footpaths and accesses shall be constructed in

accordance with the approved details and they shall be permanently retained thereafter.

- 6) The development hereby approved shall be carried out in accordance with the recommendations for Nesting Birds within section 5.2 of the Western Ecology, Preliminary Ecological Appraisal dated November 2020.