



Appeal Decision

Site visit made on 16 August 2022

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 03 November 2022

Appeal Ref: APP/D0840/W/22/3292433

Land South West of Penwinnick Farm, Penwinnick Road, St Agnes, Truro, Cornwall.

- 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 Westcountry Land (St Agnes) Ltd against the decision of Cornwall Council.
 - The application Ref PA20/07522, dated 3 September 2020, was refused by notice dated 25 October 2021.
 - The development proposed is the residential development comprising 39 dwellings (22 affordable), access roads and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the residential development comprising 39 dwellings (22affordable), access roads and landscaping at Land South West of Penwinnick Farm, Penwinnick Road, St Agnes, Truro, Cornwall, in accordance with the terms of the application, Ref: PA20/07522, dated 3 September 2020, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Westcountry Land (St Agnes) Ltd against Cornwall Council (the Council). That costs application is the subject of a separate decision.

Preliminary Matters

3. In the interests of accuracy, I have in the banner heading above used the description of development as included on the Appeal Form and Decision Notice. However, I have not included the term 'full detailed application for a cross subsidy exception site' as this is not a form of development.
4. Whilst not forming part of the Council's reasons for refusal, reference to the appeal site's location in respect of the Fal and Helford Special Area of Conservation and the Penhale Dunes Special Area of Conservation has been made within the Officer's report and within the Council's statement of case. It is incumbent upon me as the competent authority to consider the impact of the appeal scheme on those Special Areas of Conservation and as such, it is necessary to consider that matter as a main issue in this appeal. Accordingly, I have sought comments from the Appellant, the Council and Natural England on that matter.

Main Issues

5. The main issues in this appeal are:

- The effect of the proposed development on heritage assets, in particular on the Outstanding Universal Value of the Cornwall and West Devon Mining Landscape World Heritage Site (the WHS),
- Whether the proposed development would provide future occupants with satisfactory pedestrian access to services and facilities; and,
- The effect of the proposed development on protected habitats.

Reasons

Heritage Assets

6. The appeal site comprises agricultural land located on the western side of Penwinnick Road and at the southern edge of St Agnes. The site is enclosed to the south and west by agricultural fields, with residential development bordering the site to the north. Further residential development is located east of the site and nearby on the eastern side of Penwinnick Road.
7. The St Agnes Parish Neighbourhood Development Plan (the NP) provides that the appeal site is predominately located outside of, but adjacent to the settlement boundary for St Agnes. The appeal proposal would extend the built form of St Agnes into the surrounding countryside. The appeal proposal is for 39 dwellings, of which 22 would be affordable homes to be secured by planning obligation. Whilst I acknowledge the Council's submissions with regards to the percentage provision of affordable housing and land take, the evidence indicates that the proposed development would meet an identified need and would represent a rural exceptions scheme in accordance with Policy 9 of the Cornwall Local Plan Strategic Policies (2010-2030) (the Local Plan).
8. The appeal site is located within the Cornwall and West Devon Mining Landscape World Heritage Site (the WHS). Paragraph 189 of the National Planning Policy Framework (the Framework) states that World Heritage Sites are a designated heritage asset which are an irreplaceable resource, and which should be conserved in a manner appropriate to their significance.
9. Amongst other matters, Policy 11 of the NP and Policy 24 of the Local Plan provides that development within the WHS will be restricted in accordance with the Cornwall and West Devon Mining Landscape World Heritage Site Management Plan (the WHSMP). Whilst the WHSMP does not attract the same weight as the Development Plan Policies, it is reflective of the Framework in terms of seeking to conserve such heritage assets and, consequently, the WHSMP is an important material consideration that can be given moderate weight.
10. The WHSMP sets out the attributes of Outstanding Universal Value (OUV) and provides that these attributes, and their component features, embody the OUV and impart the distinctive character of the Cornish mining landscape. The WHSMP specifically lists mineworkers' smallholdings and mining settlements as some of the attributes of the WHS. The appeal site is located within Area 7

within the WHSMP which describes the area as an ancient coastal mining district including a number of important tin and copper mines, the mining settlement of St Agnes and extensive areas of mineworkers' smallholdings.

11. The proposed development would represent an extension to the built form of St Agnes into the countryside and would be visible from within the wider surrounding area including from St Agnes Beacon. Whilst I acknowledge the Council's submissions with regards to the character and appearance of buildings within St Agnes, the appeal proposal would be seen in the context of the nearby and neighbouring residential developments and would not appear as an incongruous addition to the settlement.
12. In terms of design and materials, the Council has referred me to other nearby residential development. Whilst noting the Council's statements and acknowledging that some of the proposed materials for use within the appeal scheme were not common within the surrounding area, I do not find that the use of dark coloured bricks and burnt timber cladding would look out of place or would necessarily draw the eye but rather would assist in softening the appearance of the proposed dwellings. The use of materials and the design of the individual buildings, including the proposed pitch of roofs, would not in my view have a harmful effect on the OUV of this part of the WHS.
13. For the above reasons and in terms of its design, scale, materials and location, I conclude that the appeal scheme would not adversely affect the OUV of the WHS. Accordingly, the scheme would not conflict with Policies 2 and 24 of the Local Plan, nor would be contrary to Policies 10 and 11 of the NP, Policies P3, C2, C8 and C9 of the WHSMP or the Framework which, together and amongst other matters, require that development accords with the provisions of the WHSMP which seeks to ensure that development maintains the historic character and distinctiveness of the Cornwall and West Devon Mining Landscape.
14. Notwithstanding the above, the Council contend that the proposed development in conjunction with the adjacent development at Fordh Tobmen would swamp the buildings located at Penwinnick Farm and Penwinnick Court, and would remove the remaining visual and physical link of Penwinnick Farm to the agricultural land around St Agnes. The evidence indicates that these buildings are Grade II Listed.
15. However, based on my observations, the buildings at Penwinnick Farm and Penwinnick Court were predominately surrounded by built development such that these buildings appear to form part of the settlement with any visual and physical link to the agricultural hinterland having been already significantly affected. The proposed development would be separated from Penwinnick Farm and Penwinnick Court by garden land and would provide a Cornish hedge at the boundary with the garden land associated with Penwinnick Farm.
16. Whilst I note that the Council has not referred to the impact of the proposal on listed buildings within their reasons for refusal, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. In that regard, whilst the proposed development would not significantly adversely affect the nearby listed

buildings, the scheme would further change the setting of these heritage assets to a small degree. In terms of the Framework, the harm to these heritage assets may fairly be described as less than substantial.

17. Nevertheless, less than substantial harm does not equate to less than a substantial objection. Moreover, the Framework makes clear that any harm to the significance of a designated heritage asset should require clear and convincing justification. Accordingly, and in line with the provisions of paragraph 202 of the Framework, this harm should be weighed against the public benefits of the scheme.
18. In terms of benefits, whilst noting the housing land supply position, there is an identified need for affordable housing within St Agnes and the proposal would contribute twenty two units towards that identified need. Furthermore, there would be economic benefits associated with the proposal in terms of employment opportunities during the construction phase and through the spend of future occupants within local businesses. In my view, cumulatively the public benefits of the appeal proposal would be substantial and outweigh the harm that would be caused to the identified listed buildings to which I attach great weight in accordance with the provisions of the Framework.

Access to services and facilities

19. As noted above, the appeal site is located at the edge of St Agnes. The proposed development would be accessed from Penwinnick Road with some hedgerow being removed to provide sufficient visibility splays for vehicles exiting the site. A short section footway and pedestrian crossing with refuge island is proposed which would link with an existing pedestrian footway located on the eastern side of Penwinnick Road.
20. It is acknowledged that the proposed pedestrian crossing would be located near to a bend in Penwinnick Road. However, the proposal would provide for a pedestrian refuge island that would result in good level of visibility, in both directions, for pedestrians crossing the road. Access along Penwinnick Road into the core of St Agnes is not steeply inclined and whilst noting on my visit that traffic along that stretch of road was not light, I do not agree that pedestrians using the wide footway would feel unduly intimidated by traffic.
21. By reason of the short distance and safely connected footways, access to local shops contained within St Agnes would be convenient for those on foot and by bicycle. In respect of such facilities, I find that the location of the site, nor the condition of the footways giving access into St Agnes, would result in unsatisfactory pedestrian access for future residents of the scheme.
22. However, concerns have also been raised by the Council with regards to access for future occupants to access equipped areas of public open space. In that respect, I was able to visit a number of areas within St Agnes as referred to me by the main parties.
23. Whilst noting the very limited equipped public open space nearby within the nearby Miners Way development, access on foot to other areas of equipped open space within St Agnes would require travelling at distances which, in my view, would be towards the upper limit of what would be acceptable. The level of equipment and space at Beaconsfield Place is limited, whilst access to a greater level of such facilities and open space at Goonown playing fields would

require travelling along roads which were relatively steeply inclined in places and with sections of highway which did not benefit from pedestrian footways, and which was narrow in certain sections.

24. As such, it could be said that access to equipped open space would not be convenient for all. However, the facilities at Goonown are located at the periphery of the settlement and access for a majority of the settlement to that space would also not be convenient for most residents. It was noted on my visit that there are other areas of open unequipped space, such as at the park located centrally within St Agnes at Vicarage Road. On balance and noting that the scheme would include a financial contribution towards improvements at Goonown, I do not find harm in respect of access to public areas of open space and that, overall, future occupants of the proposed scheme would have satisfactory access to a range of services and facilities to meet everyday needs.
25. In light of the above, I conclude that the proposed development would not conflict with the aims and provisions of Policy 27 of the Local Plan nor would be contrary to Policy 13 of the NP which, together and amongst other things, seeks to ensure that development includes suitable access providing good pedestrian and cycle connections to village centres. For the same reasons I find no conflict with paragraph 92 of the Framework with regards to achieving healthy and safe places.

Protected Habitats

26. As noted above, the Council's submissions make reference to the location of the site with regards to the Fal and Helford Special Area of Conservation and the Penhale Dunes Special Area of Conservation.
27. The Cornwall European Sites Mitigation Supplementary Planning Document (the SPD) 2021 sets out that increases in population are placing greater pressure from recreational activity on the features of interest for which the Habitats sites are designated. It sets out mitigation strategies through strategic access management and monitoring (SAMM). SAMM is to be funded by contributions from new residential development and such is said to allow adverse impacts on the integrity of the sites to be avoided.
28. During the course of the appeal, a signed planning obligation under Section 106 of the Town and Country Planning Act 1990 has been submitted which, amongst other matters, includes provision of financial contributions towards mitigation measures for recreational pressures in respect of the Penhale Dunes Special Area of Conservation. No provision of financial contributions towards mitigation measures for recreational pressures in respect of the Fal and Helford Special Area of Conservation were included within that planning obligation.
29. An Appropriate Assessment was completed with Natural England confirming that, in accordance with the SPD, the qualifying criteria for contributions as outlined in the SPD is sufficient to ensure that an adverse impact on the integrity of the Special Areas of Conservation, and their relevant features, can be avoided. In this regard, Natural England have confirmed that proposals which result in a net gain of residential units would be liable to make a contribution to the strategic mitigation strategy.

30. Natural England have confirmed that the appeal site is located within the zone of influence of both the identified Special Areas of Conservation. As such, whilst confirming that the submitted planning obligation provides the necessary financial contributions towards the Penhale Dunes Special Area of Conservation, Natural England have confirmed that mitigation would also be required for the Fal and Helford Special Area of Conservation, in accordance with the SPD, to ensure that an adverse impact on the integrity of that protected site, and its qualifying features, can be avoided.
31. In respect of the necessary financial contributions towards mitigation measures for recreational pressures in respect of the Fal and Helford Special Area of Conservation, a Unilateral Undertaking was submitted to the Planning Inspectorate during the course of determining this appeal. That Undertaking secures the necessary financial contribution towards mitigation as confirmed by Natural England.
32. I am therefore satisfied that the financial contributions, as provided within the Section 106 Planning Obligation and within the Unilateral Undertaking, would be sufficient to ensure that adverse impacts on the integrity of the Special Areas of Conservation, and their relevant features, can be avoided. Confirming this, Natural England indicate that they are content that it adequately secures the deliverability of mitigation measures to prevent the harmful effects of recreational disturbance from occurring as a result of the appeal proposal.
33. On that basis, I am able to ascertain, as the competent authority undertaking Appropriate Assessment, that the integrity of the designated sites would not be adversely affected by the proposed development.

Other Matters

34. Interested parties raise additional objections to the appeal scheme on the grounds of impact on biodiversity, impact on local infrastructure, parking provision, highway safety, and drainage.
35. The planning application was supported by Ecological Assessment and the development proposes new hedge banks and additional planting. From the evidence submitted, planning conditions in respect of a Construction Environment Management Plan to minimise impacts during construction, and a condition that requires the submission and approval of scheme of lighting would be sufficient to minimise impacts on biodiversity including bats.
36. Financial contributions towards education and off site public open space, thereby helping to support local infrastructure, would be secured by planning obligation.
37. In terms of parking spaces, given the scale of the proposal, the appeal scheme provides sufficient provision and accordingly the development would be unlikely to increase pressure for spaces off-site. With regards to highway safety, it is noted that the proposed pedestrian island would be located on a bend within the highway. However, as observed on my visit, visibility in both directions for pedestrians would be sufficient. I therefore find no harm in respect of highway safety.
38. With respect to drainage, the evidence before me indicates that the site is located within Flood Zone 1 and outside of any Critical Drainage Area. Surface water drainage would be managed using soakaways and a planning condition

could be included that requires details for maintaining that system. In terms of foul drainage, there is no substantive evidence before me which indicates that the main sewer infrastructure would be incapable of accommodating the additional flows from the proposed development.

Conditions

39. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance and the Framework. In addition to the standard three year period implementation condition, which is a statutory requirement, it is necessary, in the interest of certainty and precision, to define the plans with which the appeal scheme should accord.
40. In the interests of the environment, maintaining a safe and efficient highway network and the interests of protecting existing residents' amenity, it is reasonable and necessary to include pre-commencement conditions requiring the submission and approval of a Construction Environment Management Plan and a Landscape Environment Management Plan. Conditions are also necessary to ensure details of foul and surface water drainage is agreed and implemented in the interests of flood prevention and the amenities of the area.
41. Given the evidence of mining heritage within the site, in line with paragraph 205 of the Framework and Policy 24 of the Local Plan, I have imposed a condition specifying that a programme of archaeological investigation and recording, to be approved by the Council, is undertaken.
42. Conditions that require details of the proposed use of external materials and landscaping be provided to and agreed by the Council are reasonable to ensure that the scheme does not adversely affect the character and appearance of the area. In light of matters described above in respect of protection of biodiversity and bats, I have included a condition relating to the approval of external lighting. Furthermore, in view of the potential for contamination of the site, it is necessary to include a condition requiring that any contamination found during construction shall be reported to the Council and that any required remediation scheme is approved by the Council.
43. To address the housing requirements within St Agnes, and pursuant to the policies of the NP, it is necessary to restrict the dwellings to use as principal residences. In the interests of highway and pedestrian safety, it is reasonable and necessary to include conditions regarding provision of visibility splays, parking and turning areas, footway, crossing and pedestrian refuge, prior to occupation.
44. Where necessary, and also in the interests of clarity and precision, I have altered the wording of conditions to better reflect the relevant guidance. The wording of the pre-commencement conditions have been agreed by the Appellant.

Conclusion

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

Mr A Spencer-Peet

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
2. The development hereby approved shall in all respects accord strictly with drawing numbers: Existing DG18155-1-1, Proposed EV-3543-A-TCP-04-20 A and Proposed EV-3543-TCP-04-20 received by the Local Planning Authority on 3 September 2020, and drawing number: Site/location Plan WCL-151-L-01 received by the Local Planning Authority on 29 October 2020, and drawing numbers: Proposed WCL-151-PL-105 A, Proposed WCL-151-PL-107 B, Proposed WCL-151-PL-108 B, Proposed WCL-151-PL-109 B, Proposed WCL-151-PL-110 B, Proposed WCL-151-PL-111 B, Proposed WCL-151-PL-112 B, Proposed WCL-151-PL-113 C, Proposed WCL-151-PL-115 B, Proposed WCL-151-PL-116 A, Proposed WCL-151-PL-101 B, Proposed WCL-151-PL-102 A, Proposed WCL-151-PL-104 B and Proposed WCL-151-PL-103 B received by the Local Planning Authority on 1 February 2021, and drawing numbers: Proposed C-20018-C001 E, Proposed 20018_SPA-001 D and Proposed 20018_SPA-002 B received by the Local Planning Authority on 3 February 2021, and drawing numbers: Proposed J-1430 and Proposed J-1430 3001C received by the Local Planning Authority on 17 February 2021, and drawing numbers: Proposed WCL-151-PL-114 D and Proposed WCL-151-PL-117 D received by the Local Planning Authority on 4 March 2021, and drawing number: Proposed C-20018/SK001 D received by the Local Planning Authority on 8 March 2021, and drawing number: Proposed WCL-151-PL-106 D received by the Local Planning Authority on 17 March 2021, and drawing number: Proposed WCL-151-PL-01 H received by the Local Planning Authority on 24 March 2021, and drawing numbers: Proposed 0001 P1 and Proposed 30001 A received by the Local Planning Authority on 24 August 2021.
3. No development shall commence until a Construction Environment Management Plan has been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.
4. No development shall commence until a Landscape Environment Management Plan detailing species and habitat protection, enhancement, restoration and creation measures, has been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.
5. The development hereby permitted shall not be occupied until details of all external lighting have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and shall thereafter be retained without alteration. No further external lights shall thereafter be installed without the further written approval of the Local Planning Authority.

6. The development hereby permitted shall not be occupied until the installation of a system to serve the development for the disposal of sewage has been completed in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority. The details shall include a programme for maintaining the system if required. The system shall be retained and maintained thereafter in accordance with the approved details.
7. No dwelling hereby permitted shall be occupied until the installation of a system for the disposal of surface water on the site has been completed in accordance with the details which shall first have been submitted to and approved in writing by the Local Planning Authority. The details shall include a programme for maintaining the system. The system shall be retained and maintained thereafter in accordance with the approved details.
8. No work to the identified mine shaft at the south west part of the site shall commence until a programme of archaeological and historic building recording work including a Written Scheme of Investigation has been submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions, and:
 - i) The programme and methodology of site investigation and recording
 - ii) The programme for post investigation assessment
 - iii) Provision to be made for analysis of the site investigation and recording
 - iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - v) Provision to be made for archive deposition of the analysis and records of the site investigation
 - vi) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation

No demolition or development shall take place other than in accordance with the approved Written Scheme of Investigation.

The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the approved Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

9. Prior to the occupation of the 30th dwelling the landscaping work to the public open space, including the area around the identified mine shaft shall be completed in accordance with details, that shall include details of the adjacent footpath, that shall have previously been submitted to and approved in writing by the Local Planning Authority. The landscaping shall thereafter be retained.

10. Within one month of commencement of development the below details shall be submitted for approval by the Local Planning Authority:

- i) A sample panel of the proposed stonework including stone type, coursing and mortar finish.
- ii) Natural slate colour, size and method of fixing.
- iii) Section drawings of the proposed Cornish hedges.
- iv) Fences and railings.

The development shall be carried out in strict accordance with the approved details and thereafter retained.

11. The open market dwellings hereby permitted shall not be occupied otherwise than by a person as his or her Only or Principal Home. For the avoidance of doubt the dwelling shall not be occupied as a second home or holiday letting accommodation. The Occupant will supply to the Local Planning Authority (within 14 days of the Local Planning Authority's written request to do so) such information as the Authority may reasonably require in order to determine whether this condition is being complied with.

12. A Cornish hedge, no lower than 1.5 metres shall be provided at the boundary with Penwinnick Farm within 6 months of commencement of development and the Cornish hedge shall be planted at the next available planting season in accordance with a planting specification that shall have been submitted to and approved in writing by the Local Planning Authority.

13. Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported in writing immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development (or relevant phase of development) is resumed or continued.

14. Before any of the development hereby permitted is brought into use, parking and turning areas shall be laid out and constructed in accordance with approved drawing number: Proposed WCL-151-PL-01-H; and the said areas shall not thereafter be obstructed or used for any other purpose.

15. No dwelling hereby permitted shall be occupied until the footway, crossing and pedestrian refuge as indicated on drawing number: Proposed C-20018/SK001 D has been delivered in accordance with the final details the crossing as agreed through the Section 278 process with the Local Highway Authority.

16.No dwelling hereby permitted shall be occupied until the access visibility splay has been provided in accordance with drawing number: Proposed C-20018/SK001 D.