



Appeal Decision

Site visit made on 25 April 2023

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2023

Appeal Ref: APP/D0840/W/22/3295228

Land east of Wellington Place, Wellington Place, Old Carnon Hill, Carnon Downs, Cornwall TR3 6LF.

- 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 Mr C Wells against the decision of Cornwall Council.
 - The application Ref PA21/09018, dated 3 September 2021, was refused by notice dated 11 February 2022.
 - The development proposed is an outline planning permission for the erection of up to five dwellings, to include the approval of the site access (all other matters reserved).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr C Wells against Cornwall Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application has been made in outline with access for consideration at this stage. Matters of appearance, landscaping, layout and scale have been reserved for future determination. A plan showing the siting of five dwellings across the site has been submitted and I have treated this as illustrative of what the appellant has in mind as one potential layout for the site.

Main Issues

4. The main issues are:
 - whether or not the development plan would support the proposed development in this location,
 - the effect of the proposal on the character and appearance of the area, and
 - whether or not the public byway¹ would provide a safe and suitable access to and from the site for all users.

Reasons

Location

5. Policy 3 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan) sets out the locational strategy for the delivery of housing across the plan area

¹ The Transportation Advisory Note (22 November 2021) confirms that this is a Byway Open to All Traffic.

based on the role and function of each place. Most development is to be directed to the main towns. Outside these areas, in summary, housing is to be delivered through rounding off of settlements and development of previously developed land within or immediately adjoining that settlement, infill schemes which fill a small gap in an otherwise continuous built frontage and do not extend the settlement into open countryside, rural exception sites, and the identification of sites through neighbourhood plans.

6. In this case, the site has not been proposed as a rural exception site nor identified in a neighbourhood plan. There is no clear evidence that the site should be considered as previously developed land. The site would not constitute a small gap in an otherwise continuous built frontage because of the fairly sizeable gap to the two properties, The Old School House and Springwood, broadly to the south east and because the development would, in all likelihood, extend back into the fields. This outline proposal would not, therefore, constitute in-fill development.
7. The development is advanced on the basis that the new dwelling would constitute rounding off. Policy 3 of the Local Plan requires that rounding off is within or immediately adjoining a settlement and the scheme is of a scale appropriate to its size and role.
8. In this respect, the Chief Planning Officer's Advice Note: Infill/Rounding Off (December 2017) (the Advice Note) provides additional advice on the interpretation of Policy 3 of the Local Plan, including the approach to consider whether a scheme would meet the requirements of rounding off. I attribute the Advice Note substantial weight.
9. The development plan also includes the Feock Neighbourhood Development Plan 2017-2030 (Feock NDP), which was made on 18 April 2018. This plan sets out housing policies for the Parish and has maps which identify settlements and settlement boundaries. Policy H1 of the Feock NDP sets out the approach to small scale infill and rounding off housing development. In these respects, Policy H1 of the Feock NDP is similar to Policy 3 of the Local Plan, although it includes the requirement in the policy itself that rounding off should not visually extend development into the open countryside.
10. The appellant argues that the Feock NDP housing policy is out of date. This includes because the settlement boundary is too tightly drawn, does not extend to areas where some housing developments had taken place at the time of the referendum and others that have since been permitted. Furthermore, it is argued the NDP is also out of date because the NDP has not been reviewed despite the text of the NDP explaining that the Parish Council has resolved to review the Plan on a four yearly basis in line with electoral changes to respond to any changes in national or local policy or issues raised by parties regarding the operation of the Plan.
11. However, the associated housing policies set out in the Local Plan, which appear to form the basis for the NDP approach, have not changed since the NDP was made and any permissions or development on the ground are a matter of fact that can be taken into account in any application of the NDP policy (and Policy 3 of the Local Plan which can allow development outside the settlement boundary in specified circumstances). Furthermore, I do not consider that the NDP policy approach to housing development, including a settlement boundary, is inconsistent with the National Planning Policy

Framework (the Framework) in such a way that could affect its operation or would render Policy H1 of the NDP out of date.

12. The Planning Practice Guidance provides information on this issue and advises that neighbourhood plan policies remain in force until the plan policy is replaced and there is no requirement to review or update a neighbourhood plan. In all these circumstances, I do not consider that Policy H1 of the Feock NDP should be considered out of date, and even if it was, Policy 3 of the Local Plan would still apply. Taking all these considerations into account, the basket of policies which are most important to the determination of the appeal on this main issue should not be judged to be out of date.
13. In terms of the appeal proposal, the site consists of three connecting fields, with the land accessed from the byway along the broadly south western boundary. These three fields are located to the very generally south of the main part of this settlement and form, with others, a stretch of fields that are positioned between this edge of Carnon Downs and the A39.
14. When entering the byway from Old Carnon Hill, the dwellings and associated gardens of the properties within Wellington Place are evident. However, the narrow and unsurfaced byway, with the well vegetated boundary on one side, provide a contrast with the more built-up feel of the road frontages within some of the adjoining parts of Old Carnon Hill. Further along the byway, where it divides, there is a further character change to more rural surroundings, including with the presence of hedgebanks and some mature trees. A little further down the byway there is a position that allows a partial view through the gate into the appeal site and parts of the undeveloped land. Continuing along the byway, past the appeal site frontage, are the two properties of The Old School House and Springwood. These properties directly adjoin the byway and provide a built presence, but they are built outliers along the byway and disconnected visually and in plan form from the buildings within and adjoining Old Carnon Hill.
15. Within the site, the three fields have a reasonably self-contained feel because of the topography and boundary planting. The boundary with the residential property Sunset provides a good screen from most of the buildings within that part of Carnon Downs with only a limited number partially visible from the appeal fields. Sunset is generally the most apparent but the boundary planting along this boundary also helps to obscure much of the ability to view into the garden area. This boundary marks a clear and distinct character difference between the residential area of this part of the settlement and the rural, undeveloped character of the nearby appeal fields.
16. Within the top sections of the two furthest fields from the access there are some limited views into the adjacent fields, and this provides a visual link with this stretch of grassed land that separates Carnon Downs from the A39 in this area. The Old School House is clearly visible from the appeal fields and provides a built character to the adjoining, broadly southern corner area of the appeal site. However, within the fields the two properties in this generally southern area appear visually separate from the built form of Carnon Downs and are fairly self-contained within their plots.
17. There are some very limited, longer distance views, predominantly from parts of the most eastern field, to more open and distant countryside. This provides

an element of visual connection to the more open countryside and consolidates the sense that there is some association of the site with the wider rural area.

18. Drawing all these observations together, the three appeal fields are visually distinct from the built form of Carnon Downs and have a generally rural appearance. The boundary with Sunset provides a clear and well-established boundary that marks on the ground that change in character. While the appellant argues that the appeal land is not open countryside, the three fields form part of a stretch of fields between the settlement area and the A39 and are not especially visually associated with the built form of Carnon Downs. I consider that they have an open aspect and a greater affinity with a countryside type area and with the other adjoining fields, than with the built-up form.
19. My findings in respect of these fields and their relationship with the built-up area are reinforced by the settlement boundary identified in the Feock NDP. This follows the broadly eastern edge of Sunset and excludes the two dwellings further down the byway. The NDP settlement plan shows the adjoining fields both to the generally north east and south west of the appeal fields as also outside the settlement. This part of the settlement boundary has therefore been defined in the NDP in a position, in this area, that relates well to the situation on the ground. The appeal site land is outside the physical boundaries of the existing settlement. In this location the settlement edge has a clear form and shape, and therefore, in accordance with paragraph 2.33 of the Local Plan, the appeal fields should be defined as open countryside.
20. The illustrative plan for the scheme shows five dwellings sited across the three fields. One dwelling is positioned in the first, south-west field, and would broadly be positioned adjoining The Old School House. The other dwellings would be set back from the byway in the rear fields. The development of these three fields would extend development away from the settlement boundary into land that is not visually well related to the built form of Carnon Downs. Even at the low density as proposed, the development would appear as a visual extension into land that has an open, undeveloped and rural character, and which in planning terms is considered to be countryside.
21. The Old School House would abut a reasonably small part of the boundaries of the appeal site and the majority of the broadly north-east, south-east and south-west boundaries would have undeveloped land beyond them. Consequently, the majority of the appeal site is predominantly only bounded by development on the one side with Sunset. I accept that the south west boundary adjoins a steeply sloping woodland area which drops down and forms the embankment to the A39, but this woodland area still provides a reasonable separation from the road.
22. The appeal site would extend development potentially up to the existing boundaries of the fields and these are clear edging features in themselves. However, the field boundaries along the broadly north-east side are little different from some other field boundaries in this general area and the limits of the appeal site in this broadly north eastern area do not in themselves form a logical limit of the settlement. Indeed, it could lead to a further area to the broadly north east to be considered for rounding off if permission was to be granted and therefore these broadly north eastern existing boundaries may not act as a barrier to further growth.

23. The scale of the development, with up to five dwellings, would be appropriate in size and role for the settlement of Carnon Downs, however, the development of these fields would not produce a symmetry or completion of this part of the built-up area.
24. For these reasons, while two of the fields would immediately adjoin part of the settlement, the development of the appeal land would not accord with the requirements of a rounding off site as set out in the supporting text to Policy 3 of the Local Plan, including paragraph 1.68, and the Advice Note. Accordingly, there would be conflict with Policy 3 of the Local Plan in terms of the provision of additional residential development at settlements such as Carnon Downs. It follows that the proposed residential development would also fail Policy H1 of the Feock NDP because it would not meet with the requirements for infill or rounding off as set out in this policy.
25. With this identified policy conflict, the scheme would, therefore, not comply with the approach to the distribution of new housing as set out in the spatial strategy of the Local Plan, in particular, Policy 2 of the Local Plan.
26. In coming to this judgement, I have taken into account the appellant's case, including the drawing, 2020 – 93 – Boundary, which shows the permissions that have been granted around Carnon Downs and the appellant's view of where the settlement boundary should be drawn and suitable rounding off land. I make no comment in terms of other areas identified as potentially suitable for development around the settlement. However, in the immediate vicinity of the site, as I have explained, I consider that the settlement boundary is appropriately identified and that the scheme would not meet the requirements for rounding off in relation to the policy approach.
27. At my site visit I saw the two new houses which are accessed off the other limb of the byway. The layout plan shows that this development adjoins residential development on two sides and could be said to complete the settlement in plan form in this area. This development is outside the settlement boundary in the Feock NDP, as are the adjoining properties. However, the Council has explained that the permission for the two houses² was a resubmission of an identical application approved on 8 July 2016, and which the Council argue provided a strong fallback position. The 2016 decision predated the adoption of both the Local Plan and the Feock NDP and was also at a time when the Council could not demonstrate a five-year supply of housing. The policy situation and planning balance was therefore different to the present time, and therefore while I note the effect of the constructed dwellings on the character of the area and the related use of the byway, it has limited weight in terms of the considerations regarding the issue as to whether the appeal site would comply with the terms of the development plan.
28. The appellant also draws attention to an appeal decision at Highgate Hill, Indian Queens³. This site was described by the Inspector as a small discrete parcel of land marooned between existing development and that the proposed development would not physically extend the settlement into the open countryside. The Inspector concluded that the scheme for five dwellings would constitute small-scale infill and would comply with the Local Plan policy approach in that respect. From the information in the appeal decision and that

² PA18/09338

³ APP/D0840/W/21/3275410 - Land to the East of the Stables, Highgate Hill, Higher Fraddon, St Columb TR9 6LG

provided in the appeal statements, I am satisfied that the scheme at Indian Queens, although adjoining the A30, was materially different in site size, relationship to adjoining buildings and open land, and site characteristics such that it is not a comparable example that influences my assessment of the merits of the present appeal scheme. I attribute the Indian Queens decision limited weight in this appeal.

29. In the light of the above assessment, I conclude that the principle of up to five dwellings on the appeal land would not be supported by the development plan in this location and, in particular, would conflict with Policies 2 and 3 of the Local Plan and Policy H1 of the Feock NDP which, amongst other things, sets out the spatial strategy for the delivery of housing development.

Character and appearance

30. The appeal site forms part of a collection of fields that lie between this part of the settlement of Carnon Downs and the A39. I have already described the character change which occurs when passing down the byway from Old Carnon Hill towards and beyond the entrance to the appeal site and generally the increasing rural character that results, until the two dwellings and the A39 is reached.
31. In terms of the site itself, the fields do not directly connect to extensive areas of wider open countryside because they are separated by the A39. However, they have a reasonably self-contained, verdant and rural quality that is distinct from the adjoining settlement, and which adds positively to the character of the immediate surroundings.
32. The appeal site is located within Landscape Character Area 11 as defined in the Cornwall and Isles of Scilly Landscape Character Study. These fields and the surroundings outside the built form display some of the key landscape characteristics of this character area, including the pastoral landscape of improved and rough grazing, strong field patterns enclosing small-medium scale fields and narrow lanes and with trees occurring in hedges, valleys and corners of fields.
33. The scheme is an outline proposal and details, including landscaping and layout, would need to be the subject of further submissions. However, even at this stage, and having regard to the illustrative layout that the appellant has in mind, it is likely that the site would have up to five dwellings which could be spread across much of the three fields. There would be, in all likelihood, an access from the byway that would need to accommodate two-way vehicle movements, connecting drives through the site, gardens and the associated domestic paraphernalia in addition to the built presence of the properties themselves. This development and the associated activities would result in a substantial change to the character of these fields and undermine some of the key landscape qualities that the appeal site contributes to this section of Landscape Character Area 11.
34. The Visual Impact Assessment shows that there would be very limited views into the site. Nevertheless, parts of the development with up to five dwellings across the site are likely to be perceptible through the access from the byway, from some private land and buildings in the vicinity of the site, and in some very limited mid and longer distance views. The scheme would be experienced on the ground as a visual incursion of residential development beyond the built

form of this part of Carnon Downs and which would erode its present undeveloped and rural character. I do not consider that a well designed and implemented landscaping and layout scheme submitted at the reserved matters stage would overcome the likely visual intrusion and erosion of the rural character of these fields.

35. The Feock NDP identifies the boundary with the settlement in this area, including with the appeal site, as a Sensitive Edge because this land helps with the separation of Carnon Downs from Devoran. The development of these three fields would erode to a modest extent this separation bringing the built form of the two settlements closer together and would undermine one of the aims of the Feock NDP.
36. Because of the reasonably contained nature of the site, the likely visual harm and adverse character effects of the development would be modest and fairly localised in terms of the wider landscape. Nevertheless, notwithstanding details that could be submitted at the reserved matters stage, I conclude that the scheme would likely cause unacceptable harm to the character and appearance of the area. In particular, based on my assessment, the scheme would not meet with the requirements of Policy 23 of the Local Plan that development proposals sustain local distinctiveness and character, and protect and where possible enhance Cornwall's natural environment. Furthermore, because of its effect, the development would not meet with the Framework policy that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Highway issues

37. The Council's Highway Development Management Team response to the application proposal highlighted, in its judgement, a number of unsatisfactory aspects of the scheme from a highway point of view. The Planning Section supported this response, and it forms the second reason for refusal. The Highway Development Management Team maintained its objection despite the details and commentary set out in the appellant's Transportation Advisory Note (22 November 2021).
38. Access is a matter for consideration at this outline stage and is not a reserved matter. Firstly, concerns have been raised because of the effect on the byway of the additional traffic that would be generated by the development. These objections are raised by a number of parties, including local residents, the Parish Council, the Highway Development Management Team and the Ramblers Association. The scheme with up to five dwellings would lead to more vehicle movements, and given the fairly limited number of existing dwellings with associated car parking spaces and garages which are presently accessed from sections of the byway, I consider the development would lead to a noticeable increase in local traffic movements along the byway.
39. In terms of the surface of the byway, it is generally in adequate repair although sections of this unmade track would benefit from improvements to its surfacing. The increased traffic could potentially add wear to the surface and a requirement for the scheme, through a Grampian condition, to provide for the improvement and then maintenance of the surface could be a requirement of any approval to help to address this matter.

40. In terms of potential conflicts between users, the byway is also legally available to use by those on foot, bicycle and horseback. The byway is single width with hedgebanks and vegetation on both sides in places. This restricts the ability for other users to pass motorised vehicles. There would, therefore, be a potential conflict between users. However, the narrowness and curvature of the byway in places, as well as the unmade surface, would routinely reduce the speed of vehicles and thereby would decrease the likelihood of any collision.
41. There are also some informal passing places, such as at the junction of the two byways, where two vehicles could pass. There are other refuge areas where walkers, cyclists and riders would be able to wait to allow a vehicle to pass. It may also be possible to add other passing areas because of the width of the designated highway in places, especially near to the junction with Old Carnon Hill. There may at times be a need for drivers to reverse if on occasion two vehicles were to meet, and for other users to find a refuge, and while this would be inconvenient at that time it would not lead to an unacceptable safety issue. In these circumstances, while accepting the likely reasonable level of increase in vehicle movements resulting from the development along the byway, I do not consider that those movements resulting from an additional five dwellings would lead to an unacceptable level of conflict with other users of the byway or there would be unacceptable and adverse safety implications.
42. Drawing together these particular highway issues, I conclude that the access to and from the proposed housing could satisfactorily use the byway surface itself and the associated vehicles would not cause unacceptable harm and conflict with other users. In this way the scheme would not conflict with Policies 12 and 16 of the Local Plan nor Policy GA2 of the Feock NDP which concern, amongst other things, protecting walking and cycling routes.
43. In terms of the safety at the two road junctions, I am satisfied that sight lines and road conditions at the junction of the byway with Old Carnon Hill are sufficient and that the additional vehicles using this access would not cause an unacceptable impact on highway safety.
44. The byway passes from Old Carnon Hill across to a junction with the A39. Because of the central barrier of the dual carriageway, it is only possible for vehicles to enter the A39 and travel north east up the slope. Future occupants, their visitors and deliveries, leaving the development by vehicle would be likely to use the byway to Old Carnon Hill if they were seeking to access Carnon Downs or wishing to travel south west along the A39. However, the most direct route to locations such as Truro would be along the byway to join with the A39. While not every driver may choose this more direct route, I consider that the development would be likely to increase traffic using the junction onto the A39 to travel north east.
45. There are already properties that are reasonably close to this junction with the A39, and these residents are likely to use this route because it is direct and convenient. This access onto the A39 is lawful and was not closed when the dual carriageway was built some decades ago. Also there have been other permissions in the vicinity, including at Springwood, that have increased the number of residential units nearby. The evidence indicates that the Highway Development Management Team, at those times, did not object on highway safety grounds to their location close to the A39 and the likely use of the access onto the dual carriageway. The Transportation Advisory Note explains

that there are no records of accidents at this junction in the past decades. Nevertheless, the Highway Development Management Team has still objected to the scheme including concerns with the access onto the A39.

46. At the access from the byway onto the dual carriageway the speed limit is 50mph and, a little way further up the hill, the speed limit increases to the national limit. I was able to see the passing traffic on the A39 at my site visit, and while only a snap shot in time, I have no reason to believe that this was not typical of the traffic situation more generally. Traffic moving up the hill from the Carnon Gate Roundabout seemed to be generally accelerating and often, it appeared to me, to be moving at or near the speed limit for this section of road. There was a fairly steady flow of traffic and, at times, vehicles were side by side on this part of the dual carriageway coming up the hill.
47. Vehicles entering the A39 from the byway would be likely to do so from a standing start and would then have to accelerate up the slope of this part of the A39. There is visibility of approaching traffic down the A39, but this is affected by the curvature of the road and the boundary planting and fence. There could be situations where approaching traffic, which could be side by side on the dual carriageway and therefore vehicles may not be able to easily change lane, would come fairly rapidly upon a recently emerged and much slower moving vehicle that had entered from the byway. This situation would likely to lead to an adverse effect on highway safety.
48. With the proposed increase in the number of dwellings along this section of the byway, and the convenience of the byway route onto the A39 to travel north east, I consider that the development would likely lead to a material increase in vehicle movements from the byway onto the A39 and thereby increase the highway safety concern that I have identified.
49. I have carefully considered all the evidence on this issue and fully taken into account the appellant's technical highway submissions, including information that there is no recorded accidents in association with the use of this access. On the other hand, the Highway Development Management Team has maintained its position that exiting onto the dual carriageway with the approach speeds has the potential to impact on highway safety.
50. The extent and detail of the highway evidence does not demonstrate to my satisfaction that the increased vehicle movements that are likely to take place through the junction with the A39 would not cause an unacceptable impact on highway safety. I therefore agree with the views of the Highway Development Management Team and Council on this issue. I consider that I need to take a precautionary approach because of the speed of the approaching traffic along this section of the A39 and therefore I conclude, on the evidence available to me, that the scheme would not, in this respect, provide a safe and suitable access for all users and would lead to an unacceptable impact on highway safety. This adverse impact of the scheme would conflict with Policy 27 of the Local Plan and the Framework in this highway safety respect.

Other Matters

51. I have taken into account the public representations both for and against the scheme, as well as the other comments, including from the Cornwall CPRE, the Ramblers Association and Feock Parish Council. I have considered the key planning issues raised in these comments under the main issues above.

52. At the appeal stage the Council has highlighted that the appeal site falls within the recreational zone of influence of the Fal and Helford Special Area of Conservation (SAC). In accordance with the Cornwall Council European Sites Mitigation Supplementary Planning Document July 2021, a payment is required for each additional dwelling to mitigate the recreational impacts on the SAC. Neither the application or appeal is accompanied by a formal and completed agreement that has paid or undertakes to pay the required sum to provide the mitigation. However, this did not form a reason for refusal and the Council indicate that a condition could be attached to any approval that could secure the payment and thereby the mitigation. If I was minded to allow the appeal, I would need to give further consideration as to whether a condition would provide sufficient certainty to secure the required mitigation and would comply with guidance in the Planning Practice Guidance. However, given my overall conclusion I have not needed to consider this matter further.

Planning Balance and Conclusion

53. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise⁴. I am satisfied that the policies most important to the consideration of the appeal are not out of date and the Council is able to demonstrate a five-year supply of housing land. In these circumstances, the presumption in favour of sustainable development, as set out in paragraph 11d of the Framework, is not engaged and the decision should be made on the basis of a normal planning balance.
54. The scheme would provide a boost to housing supply with the development of up to five additional dwellings and on a windfall site. The scheme would make effective use of an underutilised area of agricultural land. The dwellings would be located so occupants would be able to access by foot and bicycle local services and facilities in Carnon Downs, and with the ability to use bus services to access local towns. In this respect the site should be considered accessibly located. There would be economic and social benefits to the area during construction and in subsequent occupation. The evidence indicates that the site could be developed to deliver a meaningful increase in biodiversity net gain, both in terms of habitat and hedgerow units.
55. Taken together, the scheme would deliver some worthwhile benefits. However, as only up to five additional dwellings would be delivered, and in a Council area that can demonstrate a Framework compliant supply of housing land, I attribute the cumulative benefits of the scheme limited weight.
56. On the other hand, I accord substantial weight against the scheme due to the site not meeting with the locational requirements for new housing in the development plan. There would be likely harm to the character and appearance of the area from the development, despite details that could be submitted at the reserved matters stage, although this harm would likely be localised and modest. I afford this likely harm moderate weight against the scheme. The adverse impact on highway safety at the junction of the byway with the A39 is a matter that should be afforded substantial weight.

⁴ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

57. Collectively, these identified harms and policy conflicts should afford substantial weight against the proposal. It is such that the scheme would conflict with the development plan when considered as a whole. Planning conditions attached to any approval and/or details at the reserved matters stage could not overcome these harms.
58. It follows that the limited weight attributed to the benefits of the scheme would not outweigh the substantial weight that should be afforded to the harm and policy conflict that would occur. Even if the appellant's argument that the presumption under Paragraph 11d of the Framework was to be engaged, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
59. For the reasons given above, the scheme would not comply with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict. I therefore conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR