



# Appeal Decision

Site visit made on 7 August 2023

**by Nick Davies BSc(Hons) BTP MRTPI**

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

**Decision date: 06 September 2023**

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## **Appeal Ref: APP/D0840/W/23/3316917**

### **Llanover, Pink Moors, St. Day TR16 5NL**

- 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 Ms S Archer against the decision of Cornwall Council.
  - The application Ref PA22/00816, dated 28 January 2022, was refused by notice dated 18 August 2022.
  - The development proposed is the construction of one self build dwelling and two affordable dwellings.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the construction of one self build dwelling and two affordable dwellings at Llanover, Pink Moors, St Day TR16 5NL in accordance with the terms of the application, Ref PA22/00816, dated 28 January 2022, and the plans submitted with it, subject to the following conditions:
  - 1) Details of the access, appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
  - 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
  - 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
  - 4) The development hereby permitted shall be carried out in accordance with the following approved plan: D04 – Existing Location, Block & Site Plans.

### **Preliminary Matters**

2. The proposal has been made in outline, with all matters reserved for future consideration. Plans that accompanied the application show details of a layout, access arrangements, and areas for landscaping. However, layout, access, and landscaping are all reserved matters, therefore, although they are not marked as such, I have considered these drawings solely on the basis that they have been submitted for illustrative purposes.

3. I have used the description of the development given on the Council's decision notice, rather than on the application form, as it was agreed with the appellant, and more accurately describes the proposal.
4. During the appeal, the appellant submitted a Unilateral Undertaking dated 1 August 2023 (the UU) made in pursuance of section 106 of the Town and Country Planning Act 1990 (the Act). It contains obligations that would require two of the dwellings to be affordable, and would secure a financial contribution towards mitigation of the impact of the development on the Fal and Helford Special Area of Conservation (the SAC). The Council was given the opportunity to comment on the UU.

### **Main Issues**

5. The main issues are:
  - a) Whether the site is suitable for the proposal, bearing in mind the settlement policies of the development plan and the effect of the development on the character and appearance of the area;
  - b) Whether an appropriate mechanism is provided to secure the provision of affordable housing; and,
  - c) The impact of the development on the integrity of the SAC.

### **Reasons**

#### *Settlement policies and effect on character and appearance*

6. Policies 2 and 3 of the Cornwall Local Plan Strategic Policies 2010 – 2030 (adopted 2016) (the Local Plan) are the main settlement policies of the development plan. Policy 2 sets out a strategy of maintaining the dispersed development pattern of Cornwall, and providing 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. It is common ground that the site is not within one of these main towns.
7. Policy 3 says that outside the main towns, 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 Plan, and it is not previously developed land. The Council contends that the proposal would not constitute rounding off or infill, and this is not disputed by the appellant. Consequently, under the settlement strategy, the site would only be suitable for housing if the proposal meets the criteria for a rural exception site, as set out in Policy 9 of the Local Plan.
8. 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 clearly affordable housing led and would be well related to the physical form of the settlement and appropriate in scale, character, and appearance. The inclusion of up to 50% market housing is

- supported where financial appraisal demonstrates that it is essential for the successful delivery of the development.
9. It is not disputed that the site lies outside the current built envelope of St Day. The Council's evidence states that the western extent of the settlement is marked by the carpark of the Star Inn. The appeal site is only separated from this carpark by a narrow lane, which gives access to a cluster of dwellings to the north. Two of these recently constructed houses lie to the west of the access lane, so it does not represent a definite or distinct edge to the wider settlement. To the south of the site, on the opposite side of St Day Road, development also extends further west than the line of the access lane. Consequently, although the site is part of an undeveloped field, it occupies an enclave between built development to the north and south that extends further westwards.
  10. It is contended that the openness of the carpark results in the site being distant from the other buildings to the north of the village road, and therefore being visually detached from the settlement. However, the carpark is hard-surfaced, and has a utilitarian timber fence along its northern boundary, beyond which storage containers, outbuildings and a large marquee were clearly visible. Together with the parked vehicles, this results in the carpark having a very urban appearance, which makes it physically, and visually, an integral element of the built-up part of the settlement.
  11. The appeal site is, therefore, adjacent to the western edge of the settlement, with existing buildings extending further westwards to the north and south. Consequently, the proposal would be well-related to the physical form of the settlement in accordance with Policy 9 of the Local Plan. Furthermore, it is not disputed that occupants of the proposed dwelling would have good access to the facilities and services within St Day, so the development would also be functionally well-related to the settlement.
  12. The proposal is for two of the dwellings to be affordable, and the UU contains an obligation to secure these in perpetuity. The development would, therefore, be clearly affordable housing led. The Council's evidence indicates that, at the time of the application, there were 49 households seeking affordable accommodation in the Parish of St Day, and planning permission existed for only two affordable dwellings. Furthermore, no new affordable housing has been delivered in the parish since 2018/19. The proposal for two affordable dwellings would, therefore, be of an appropriate scale in relation to the level of identified local need.
  13. The proposal is in outline, so the scale of the dwellings is not for consideration under this appeal. However, the UU requires the submission of an Affordable Housing Scheme, setting out the arrangements for the provision of the affordable housing including, amongst other things, the unit size and the tenure mix. The Council, in considering the detailed scheme, could, therefore, ensure that the development met local needs. In summary, 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 were of an appropriate character and appearance.
  14. The appeal site is part of a grass field that slopes up away from the pub carpark, providing a pleasant green setting to the edge of the village. The

introduction of dwellings onto the site would, inevitably, erode its natural character. Given the rising nature of the ground, the dwellings would not be easily concealed by existing or proposed planting, so they would assume a degree of prominence. There would, therefore, be some harm to the character and appearance of the countryside, and the rural setting of the settlement, resulting in conflict with Policy 23 of the Local Plan, which seeks to protect and where possible enhance Cornwall's natural environment.

15. However, the land continues to slope up away from the western boundary of the appeal site, to a hedgerow on the ridge. The field is, therefore, contained by the topography from the wider countryside to the north and west. As a result, the impact of the development would be limited to localised viewpoints. When approaching from the east along the main village road, the site is hidden by the frontage buildings until arriving at the junction with Tolcarne Road. From here, the development would be seen between the Star Inn and the bungalows opposite, in close association with the pub car park, and contained by rising land beyond. It would, therefore, appear as an integral part of the settlement, rather than as a piecemeal intrusion into the countryside.
16. When approaching from the west, the site is hidden by the roadside hedge banks until close to the access point. From here, the dwellings would be seen against the backdrop of the built form of the settlement, so would not appear as an incongruous encroachment into open countryside. The dwellings would, of course, be very apparent from close viewpoints, such as from the road junction opposite the pub carpark. From here, though, they would still be seen in juxtaposition with the carpark and its attendant outbuildings, and with one of the new houses to the north, which is also apparent beyond. Therefore, in all of these localised viewpoints, the dwellings would have a close visual relationship with the existing built form of the settlement. Consequently, the harm they would have on the character and appearance of the area would be limited. This harm could be minimised by securing sensitive scale, siting, design, and landscaping through the subsequent consideration of the reserved matters.
17. Policy 9 is specifically aimed at securing affordable housing on sites outside the built-up area of smaller settlements that would not satisfy the tests for rounding off under Policy 3, or for the use of previously developed land under Policy 21. It is, therefore, inevitable that such proposals will involve some encroachment into the countryside, and a degree of conflict with Policy 23. However, as is made clear in its Introduction, the Local Plan must be read as a whole, and all policies should be considered together in decision making. In this case, for the reasons given above, the harm to the character and appearance of the area would be limited, and no greater than would be expected in the context of a rural exception site. Consequently, I conclude that the proposal accords with the policies of the Local Plan, when read as a whole, which support the provision of affordable housing outside, but adjacent to settlements, within an overall strategy that also seeks to maintain Cornwall's distinctive natural character.

*Mechanism to secure the provision of affordable housing*

18. The UU has been entered into as a deed pursuant to section 106 of the Act, and states that it is a planning obligation for the purposes of that section. It identifies the land, the person entering into the obligation, and their interest in the land, and it identifies the local planning authority by whom the obligation is

enforceable. It therefore meets all of the requirements of section 106(9) of the Act.

19. Section 106(3) of the Act provides that a planning obligation is enforceable by the local planning authority against the person entering into the obligation and any person deriving title from that person. The Definitions and Interpretations contained in the UU reinforce this, so the planning obligation will 'run' with the land and will bind future owners.
20. The UU has equal legal status to a planning agreement, so, although the Council is not a party to it, the obligations can be enforced in the same way. I am therefore satisfied that it provides a robust mechanism for securing the affordable housing, in accordance with an Affordable Housing Scheme to be approved by the Council.

#### *Integrity of the SAC*

21. The appeal site lies within the 12.5km zone of influence of the SAC, which has been designated for its qualifying features, including saltmarsh, intertidal mudflats, subtidal sandbanks, large shallow inlets and bays, estuaries, and reefs. The Council's European Sites Mitigation Supplementary Planning Document (July 2021) (the SPD) demonstrates that mitigation needs to be delivered to counteract increased recreational impact from additional development within this zone, to ensure that there is no Likely Significant Effect on the SAC.
22. The survey results in the SPD indicate that the SAC is a popular destination for terrestrial and water-based outdoor leisure and recreational activities. The development would result in three new households living within its zone of influence. When considered alone or cumulatively with other schemes, I cannot rule out that the resultant increase in recreational use of the SAC would not have significant effects on its features of interest. Accordingly, under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), Appropriate Assessment (AA) of the implications of the project for the designated site is required.
23. In my AA, I may consider any conditions or other restrictions which could secure mitigation of this harm. The SPD provides a strategy to mitigate the potential in-combination impacts of new housing development on the SAC by managing access and visitor behaviour, making sites more resilient to recreational pressure, or making provision of appropriate alternative recreation locations to draw users away from it. A specific, costed set of measures is identified in the SPD, including projects and staffing.
24. 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. The submitted UU secures the required level of funding prior to commencement of development.
25. The UU does not bind the Council. However, the wording within it says that the contribution is to be paid to the Council towards Strategic Access Management and Monitoring measures in relation to the SAC, and on the basis 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 SPD are sufficient to ensure that an adverse impact on the integrity of the SAC can be avoided, and that the UU adequately secures the deliverability of the measures.

26. Consequently, I am satisfied, based on the specific evidence before me, that the UU is a sufficient mechanism to enable the delivery of proportionate and relevant mitigation pursuant to the 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 SAC. The proposal would, therefore, accord with Policy 22 of the Local Plan, which seeks to secure mitigation measures for recreational impacts on European Sites.

### **Other Matters**

27. Means of access is a reserved matter, but I saw that visibility at the junction of the access lane with the main village road had recently been improved. The evidence indicates that this was in accordance with a planning permission for the new housing further along the lane. As a result, drivers emerging from the lane would have good visibility in both directions. The Highway Authority did not object to the proposal, and I am satisfied that safe and suitable access to the site could be achieved for all users through consideration of the detailed proposals.

### **Planning Obligation**

28. The UU secures the delivery of the affordable housing in perpetuity, 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 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.
29. The UU also secures a financial contribution of £352 per dwelling towards Strategic Access Management and Monitoring measures in relation to the SAC. The evidence indicates that the funding of these measures is necessary to mitigate the impact on the SAC of the increased recreational activity that would result from the development.
30. Consequently, I find that all the obligations in the UU meet the tests set out in paragraph 57 of the National Planning Policy Framework (the Framework), and constitute a reason for granting planning permission in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

### **Conditions**

31. I have attached conditions relating to the submission of reserved matters and the associated time limits. I have also included a condition specifying the approved plan as this provides certainty.
32. I have considered whether the Council's suggested condition requiring a Construction Traffic Management Plan is necessary. Paragraph 56 of the Framework says that pre-commencement conditions should be avoided unless there is a clear justification. The development proposed is of a relatively modest scale. The construction of the dwellings is likely to result in some

temporary disturbance and inconvenience to road users, but this would be true of most development. There are no particular highway characteristics in the locality that would result in construction traffic causing any abnormal problems. Consequently, I am not persuaded that there is a clear justification for a pre-commencement condition of this nature.

**Conclusion**

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

*Nick Davies*

INSPECTOR