



Department for  
Communities and  
Local Government

Mr Russell Dodge  
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TRURO  
Cornwall TR1 2XN

Our Ref: APP/D0840/W/15/3003036

Your ref: RED/SMc

3 February 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
PLANNING APPEAL BY WESTCOUNTRY LAND (ST JUST IN ROSELAND) LTD  
AT ST JUST IN ROSELAND, TRURO**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Chris Preston BA (Hons) BPI MRTPI, who held a hearing on 17 June 2015 into your client's appeal against the refusal by Cornwall Council ("the Council") to grant planning permission for a cross-subsidy residential development comprising 18 dwellings (10 affordable and 8 open market) on land at St Just in Roseland, Truro, TR2 5JN in accordance with application ref PA14/03614, dated 15 April 2014.
2. On 27 May 2015, the Secretary of State recovered the appeal for his own decision because it involves a proposal for residential development of over 10 dwellings in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority; or where a neighbourhood plan has been made.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation. A copy of the Inspector's Report (IR) is enclosed, and all references to paragraph numbers, unless otherwise stated, are to that report.

**Procedural matters**

4. Applications for costs were submitted by the appellants and the Council against each other at the hearing (IR1). These applications are the subjects of separate decision letters.
5. For the reasons given by the Inspector at IR12-16, the Secretary of State shares his view that no party would be prejudiced by his taking account of the revised plans submitted by the appellant. He has determined the appeal on the basis of the revised plans.

## **Matters following the closure of the hearing**

6. Representations not seen by the Inspector are listed at Annex A. In reaching his decision on this appeal, the Secretary of State has taken account of all this correspondence, copies of which may be obtained on request to the address at the foot of the first page of this letter. The Secretary of State is satisfied that these representations do not raise any matters that would affect his decision or require him to refer back to parties on their contents prior to reaching his decision.

## **Policy considerations**

7. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In the case of this appeal, the development plan consists of the saved policies of the Carrick District Wide Local Area Plan (1998) (the LP) and the Roseland Neighbourhood Development Plan (made in December 2015) (RNDP). The Secretary of State agrees with the Inspector that the policies most relevant to this appeal are those referred to at IR19 and IR26.
8. Having had regard to the Inspector's remarks at IR24 and IR192-3, the Secretary of State agrees with the Inspector and the parties that policies in the emerging Cornwall Local Plan (ELP) should be afforded limited weight in the context of paragraph 216 of the Framework (IR24 and IR193).
9. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (The Framework), 2012 and the subsequent planning guidance (2014); as well as the *Community Infrastructure Levy (CIL) Regulations 2010* as amended. He has also considered the Cornwall Area of Outstanding Natural Beauty Management Plan 2011-2016 (the AONB Management Plan) which, like the Inspector (IR32), he considers is a relevant material consideration to which he gives substantial weight.

## **Main issues**

10. For the reasons given at IR173-178, the Secretary of State agrees with the Inspector that the scheme constitutes major development in the AONB (IR174). He further agrees that the main issues relevant to this appeal are those listed at IR179 and, in addition, the extent to which the scheme complies with the development plan.

## **Planning Policy Context**

11. The Secretary of State agrees with the Inspector at IR181 that, in relation to paragraph 49 of the Framework, relevant LP policies for the supply of housing should not be considered up-to-date. He further agrees with the Inspector, for the reasons given at IR182-5, that LP policies 6E and 6H should not be considered up-to-date and he attaches little weight to them. Having had regard to the Inspector's remarks at IR186-7 and paragraph 215 of the Framework, the Secretary of State shares his view that the terms of LP policy 3A are not fully consistent with the Framework and he affords it reduced weight. Like the Inspector, and for the reasons he gives, the Secretary of State considers that LP policy 3D is consistent with national policy and he attributes it full weight (IR188). The Secretary of State agrees with the Inspector's reasoning at IR189 and, having considered paragraph 215 of the Framework, he considers that LP policy 4O is not fully consistent with national policy. Accordingly, the Secretary of State shares the Inspector's view that whilst LP policy 4O still carries some weight, paragraphs 115 and 116 of the Framework represent up-to-date national policy on AONBs and are a

material consideration in the determination of this appeal. The Secretary of State endorses the Inspector's views at IR190-1 and he too attaches full weight to LP policies 10B and 13K and limited weight to LP policy 13L.

12. With regard to the Inspector's remarks at IR194-8, the Secretary of State observes that the Inspector wrote his report at a time when the RNDP had been passed at referendum but had not been made by the Council. However, the Council has now made the RNDP and the Secretary of State has considered whether there is a need for him to refer back to parties on this development prior to reaching his decision on this case. However, he does not consider that to be necessary given that, at the time of the Inspector's report, the RNDP had reached an advanced stage of preparation, and had been subjected to independent examination and a referendum.
13. The Secretary of State shares the Inspector's view (IR199) that RNDP policies HO1 to HO8, GP2 and GP3 are all relevant policies for the supply of housing. He has given careful consideration to the Inspector's remarks at IR194-206 and he too concludes that there can be little certainty that the relevant housing policies contained within the RNDP will deliver sufficient housing to meet the needs of the area over the period of the plan (IR204) and that they fail to reflect the aims of the Framework as a whole (IR205). In common with the Inspector, and having applied paragraphs 49 and 215 of the Framework, the Secretary of State attributes little weight to the relevant housing policies of the RNDP (IR206).
14. The Secretary of State agrees with the Inspector that RNDP policies LA1, LA2, LA5, CV1, SF2 and GP1 should not be considered as policies relevant to the supply of housing and that they comply with the Framework (IR207) and he attaches full weight to them.

*The weight that should be afforded to the benefits of the proposal with regard to housing provision, including affordable housing*

15. The Secretary of State has considered the Inspector's discussion at IR208-216 about the weight that should be afforded to the benefits of the proposal with regard to housing provision. The Secretary of State agrees (IR217) that the Council cannot demonstrate a five-year supply of housing and there is a clear need for housing within the housing market area, including an acute need for affordable housing. For these reasons and those given by the Inspector at IR208-216, he agrees with the Inspector that the benefits to the supply of housing represent a significant material consideration in favour of the proposed development (IR217).

*The effect of the proposal on the character and appearance of the Cornwall AONB*

16. For the reasons given by the Inspector at IR218-231, the Secretary of State agrees that the proposal would cause harm to the character and appearance of the area and the landscape of the AONB (IR232). Like the Inspector (IR270) he considers that the harm which the scheme would cause to the landscape and scenic beauty of the AONB is significant. He further agrees with the Inspector that, because the harm would not be fully mitigated by the proposed measures incorporated within the scheme, the proposal would be contrary to the requirements of both saved policies 3D and 4O of the LP (IR232), policies LA1 and LA2 within the RNDP and policy PD8 of the AONB Management Plan (IR233).

*Whether the need for the proposal could be met through the delivery of alternative sites that would have less harm on the character and appearance of the AONB*

17. The Secretary of State has given careful consideration to Inspector's reasoning at IR234-238 and agrees with him that the information presented to the hearing demonstrates a local need for affordable housing and that the proposal would go some

way towards meeting that need (IR239). He agrees too that the cross-subsidisation of affordable units with market housing has been justified through evidence on financial viability that was not contested by the Council (IR239). The Secretary of State endorses the Inspector's view that the exercise undertaken by the appellant is not conclusive as to whether alternative sites could accommodate local housing need with less impact upon the AONB (IR238). He further agrees with the Inspector that no clear evidence has been submitted to demonstrate that the need for affordable housing could be met outside of the AONB or in some other way that would result in less harm to the AONB (IR239).

*The effect of the proposed development on the Fal and Helford Special Area of Conservation (SAC) and the Falmouth Bay to St Austell Bay potential Special Protection Area (pSPA)*

18. The Secretary of State has considered the Inspector's discussion of the effect of the proposal on the Fal and Helford SAC and the Falmouth Bay to St Austell Bay pSPA at IR240-252. He is satisfied that, taken individually, the proposal would not be likely to have any significant effect on the SAC and pSPA. For the reasons given at IR247-9, the Secretary of State also concludes that he cannot be certain that the proposal, in combination with other plans or projects, would not cause harm to the SAC and pSPA. The Secretary of State observes that Natural England objected to the proposed development on the grounds that insufficient information had been provided to determine whether significant effects were likely (IR241). However, as the Secretary of State has decided to dismiss the appeal for reasons other than any potential effect on the SAC and pSPA, he does not consider it necessary to seek further information on this matter.

*Whether the proposal would represent sustainable development*

19. Setting aside his remarks about harm to the SAC and pSPA (IR258), for the reasons given by the Inspector at IR253-259, the Secretary of State considers that the environmental harm that would result from the proposal in respect of the AONB is such that the scheme would not represent sustainable development.

**Planning conditions**

20. The Secretary of State has considered the Inspector's assessment of the proposed planning conditions at IR160-166 and 263. He is satisfied that the conditions proposed by the Inspector at Appendix B to the IR meet the tests of paragraph 206 in the Framework and comply with the planning practice guidance. However, he does not consider that they would overcome his reasons for dismissing this appeal.

**S106 Agreement**

21. The Secretary of State has carefully considered the s.106 planning obligation, the Inspector's analysis at IR167-171, national policy set out at paragraphs 203-205 of the Framework; the relevant planning guidance; the CIL Regulations 2010 as amended, and the post-hearing correspondence referred to in paragraph 6 above.

22. For the reasons given by the Inspector at IR168, the Secretary of State agrees that the obligations in respect of affordable housing and on-site public open space would comply with the requirements of Regulations 122 and 123 of the CIL Regulations and paragraph 204 of the Framework. Turning to the education contribution, the Secretary of State accepts the Inspector's analysis at IR169-171 and for the reasons given by the Inspector in those paragraphs, agrees that the contribution is not necessary to make the development acceptable in planning terms (IR171). Accordingly he has not taken the education contribution into account in his decision.

## **Planning balance and conclusion**

23. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out in this letter, the Secretary of State considers that the appeal scheme conflicts with the development plan taken as a whole. He has gone on to consider whether there are material considerations which would justify him determining the appeal other than in accordance with the development plan.
24. The Secretary of State considers that the lack of a 5-year housing land supply and the provision of housing to meet local needs, both in terms of market and affordable provision is a significant and important consideration in the scheme's favour. He gives this consideration substantial weight. Set against those considerations is the great weight to be afforded to the harm to the AONB. The Secretary of State has had regard to paragraphs 115 and 116 of the Framework and he does not consider that exceptional circumstances exist in this case and he is not satisfied that this major development in the AONB is in the public interest. He considers that while there is a pressing need for local and affordable housing, and an absence of any clearly identified alternative sites, there would be significant harm to the landscape and scenic beauty of the AONB and conflict with local and national policy in this regard. Overall, and for the reasons given above, he considers that the harm to the AONB outweighs the local benefit to the supply of housing and affordable housing.
25. The Secretary of State concludes overall that the benefits that would arise from the proposal do not amount to material considerations that would outweigh the conflict with the development plan.

## **Formal Decision**

26. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses to grant planning permission for a cross-subsidy residential development comprising 18 dwellings (10 affordable and 8 open market) on land at St Just in Roseland, in accordance with application ref PA14/03614, dated 15 April 2014.

## **Right to challenge the decision**

27. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
28. A copy of this letter has been sent to Cornwall Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Christine Symes*

**Christine Symes**

Authorised by Secretary of State to sign in that behalf

**Correspondence not seen by the Inspector**

<b>Name</b>	<b>Date</b>
Julian German	26 June 2015 & 10 August 2015
D H Smith	3 July 2015
Sarah Newton MP	13 August 2015

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# Report to the Secretary of State for Communities and Local Government

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 1 October 2015

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TOWN AND COUNTRY PLANNING ACT 1990

**CORNWALL COUNCIL**

APPEAL MADE BY

**WESTCOUNTRY LAND (ST JUST IN ROSELAND) LTD**

Hearing held on 17 June 2015

St Just in Roseland, Truro TR2 5JN

File Ref(s): APP/D0840/W/15/3003036

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## **GLOSSARY**

RNDP	Roseland Neighbourhood Development Plan (May 2015)
SoS	Secretary of State for Communities and Local Government
SAC	Special Area of Conservation
pSPA	potential Special Protection Area
SCG	Statement of Common Ground
LP	Local Plan (Carrick District Wide Local Area Plan, 1998)
ELP	Emerging Local Plan (Cornwall Local Plan 2010-2030)
EiP	Examination in Public
AONB	Area of Outstanding Natural Beauty
NPPF	National Planning Policy Framework
PPG	Planning Practice Guidance
BMV	Best and Most Versatile (Agricultural Land)
LVIA	Landscape and Visual Impact Assessment
ZTV	Zone of Theoretical Visibility
SHLAA	Strategic Housing Land Availability Assessment
SUDS	Sustainable Drainage System
LPA	Local Planning Authority (Cornwall Council)
RTPI	Royal Town Planning Institute
NPIERS	Neighbourhood Planning Independent Examiner Referral Service

**File Ref: APP/D0840/W/15/3003036**

**St Just in Roseland, Truro TR2 5JN**

- 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 Just in Roseland) Ltd against the decision of Cornwall Council.
- The application Ref PA14/03614, dated 15 April 2014, was refused by notice dated 25 July 2014.
- The development proposed is described on the application form as: Full detailed application for a cross-subsidy residential development comprising 18 dwellings (10 affordable and 8 open market).

**Summary of Recommendation: That the appeal be dismissed**

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**Costs**

1. At the Hearing an application for costs was made by Westcountry Land (St Just in Roseland) Ltd against Cornwall Council. An application for an award of costs was also made by Cornwall Council against Westcountry Land (St Just in Roseland) Ltd. These applications are the subject of separate Reports.

**Appeal Recovery**

2. The Hearing was held on 17 June 2015. I made an unaccompanied visit to the site and the surrounding area on 16 June and a formal, accompanied, visit on 17 June.
3. By letter dated 27 May 2015 the Secretary of State indicated that he would determine the appeal. The reason is that the proposal involves residential development of over 10 dwellings in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority: or where a neighbourhood plan has been made. In this case St Just in Roseland Parish Council, the qualifying body, has submitted the RNDP to Cornwall Council and the RNDP has subsequently been subject of an independent examination. The Independent Examiner's report was issued on 15 May 2015 with a recommendation that the plan proceed to referendum subject to a number of minor modifications.
4. The referendum regarding the RNDP was held on 20 August 2015 and the result was that 74.89% of those voting considered that the RNDP should be used by Cornwall Council to help it determine planning applications in the neighbourhood area, with 25.10% considering that it should not. The turn out was 40.75% of the electorate.

**Procedural Matters**

5. The Council's decision was issued on 25 July 2014, with four reasons for refusal cited in the decision notice. Whilst interested parties had referred to the RNDP in their submissions to the Council prior to the decision being made, the reasons for refusal do not make reference to the RNDP. Similarly, the initial appeal statements submitted by the appellant and the Council made no reference to the RNDP. Having noted the reasons given by the SoS in his decision to recover the

appeal, the appellants submitted further information, shortly in advance of the Hearing, setting out their views on the relevant policies of the RNDP<sup>1</sup>.

6. I accepted those submissions on the basis that the information was likely to be relevant to the appeal and that there appeared to be good reason why the information wasn't submitted with the appellant's initial statement; when the appeal was submitted, any alleged conflict with the RNDP wasn't identified in the reason for refusal, and the Independent Examiner's report into the RNDP had not been issued. Moreover, I felt it helpful to understand the appellant's views in relation to the RNDP in order to provide a full report to the SoS, particularly bearing in mind the reason for recovery.
7. However, in the interests of fairness, I was mindful that the Council and other interested parties would have a reasonable expectation of being able to respond to the information submitted. Insufficient time was available to allow that exercise to be carried out in advance of the Hearing. In addition to the information submitted in advance of the Hearing, further evidence was submitted by the appellant at the event with regard to their views on the weight that should be attached to the RNDP<sup>2</sup>. Having discussed the matter with those present at the event, I agreed to leave the Hearing open to allow a further period within which written comments could be submitted in response to the information provided by the appellant. Consequently, the information was subsequently published on the Council's website and the Council wrote to interested parties to notify them of the opportunity to send comments to the Planning Inspectorate within an agreed timescale.
8. The Council, and a number of interested parties, have responded to that consultation, and the appellant has provided a response to the issues raised. I have taken account of those representations in making my recommendation. Following the period of consultation, the Hearing was closed in writing on 31 July 2015.
9. Further to the close of the Hearing, the referendum regarding the RNDP was held on 20 August 2015. The Council wrote to the Inspectorate, via email, on 24 August to bring attention to the results of the referendum. The appellant considered that the information should not be brought to my attention on the basis that the Hearing had closed. However, I considered that the results of the referendum were a material consideration that could have implications for the determination of the appeal and that the information should be brought to the attention of the SoS, particularly having regard to the reasons why the appeal was recovered. Thus, I accepted the information and provided the opportunity for the appellant to respond to the updated position.
10. Following the consultation exercise carried out by the Council on the planning application an objection to the proposal was submitted by Natural England. In summary, that objection was made on the grounds that insufficient information had been submitted to determine the likely effect of the proposal on the integrity

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<sup>1</sup> Undated document submitted by Laurence Associates entitled 'The Roseland neighbourhood Development Plan' and letter, dated 25<sup>th</sup> March 2015, from Business Location Services Limited to Ms Sue Wagstaff, containing objections to the RNDP; submitted as appendices 3 and 6 to the Summary of the Statement of Case of Mr Laurence Philip Osborne

<sup>2</sup> Appeal documents 1 and 2

of the Fal and Helford SAC and the Falmouth Bay to St Austell pSPA. From the information presented to me, it appeared that no further information had been submitted to the Council in between that objection being received and the Council issuing its decision. Furthermore, there was no information before me with regard to the precise location of the designated areas and their relationship to the site, or the conservation objectives of those designated areas. Consequently, whilst noting that the effect on the SAC and pSPA did not form part of the stated reason for refusal, it was not clear how the objection from Natural England had been assessed in the decision making process.

11. Therefore, in advance of the Hearing I brought the matter to the attention of the main parties to make clear that I would seek further information with regard to the likely effect on the SAC and pSPA, with reference to the requirements of the Conservation of Habitats and Species Regulations (2010) (the Habitat Regulations). I also identified the matter as a main issue at the opening of the Hearing. Following discussion at the Hearing, I agreed to allow the main parties to submit further written evidence with regard to the effect on the SAC and pSPA in response to my questions. The Council subsequently provided a written response, together with attachments including maps showing the location of the designated assets, and details of the conservation objectives<sup>3</sup>. The appellant provided written evidence at the Hearing and further written submissions following the event<sup>4</sup>. I have taken those representations into account in making my recommendation.
12. Revised plans were submitted to the Council prior to the application being determined, showing amended details of the proposed entrance into the site, details of a proposed pavement between the site and the village, and suggested traffic calming measures within the public highway<sup>5</sup>. Those revisions followed discussions between the appellant and the highways department of the Council. However, the planning department refused to take the plans into consideration. The application was subsequently refused with pedestrian safety forming one element of the reasons for refusal.
13. The appellant has submitted the revised plans with the appeal and wishes for them to be taken into account in the determination of the proposal. Notwithstanding that it refused to consider the plans prior to determining the application the Council now accepts that the amendments would overcome their concerns regarding pedestrian and highway safety. Furthermore, they are satisfied that the plans should be taken into account as part of the consideration of the appeal. The Council made clear in correspondence with the appellant that those matters would not be contested by them at appeal, a position that was verified within their subsequent appeal statement and the SCG<sup>6</sup>.
14. A number of interested parties raised concern at the Hearing, regarding the proposed pavement and traffic calming measures and the fact that there had not

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<sup>3</sup> Appeal document 7

<sup>4</sup> Appeal document 3 (submitted at the Hearing), and appeal documents 9, 10 and 11 (submitted following the Hearing)

<sup>5</sup> Plan numbers 547-0001 revision A, 01756-PHL-03 revision A, 1756-ATR-02 revision A, 2638 PL03 revision C, 268 PL04 revision C, and 2638 P31.

<sup>6</sup> Email correspondence produced at Appendix LO7 to the proof of Mr Laurence Osborne; paragraph 1.2 of the Council's appeal statement; and page 8 of the SCG.

been consultation on the proposed measures. No specific consultation exercise was undertaken in relation to the proposed amendments because the Council had refused to accept them prior to determining the application. However, whilst I note the concerns in that regard, a very similar proposal was put forward by the appellant with the original application, with a pedestrian link shown on plans appended to the Transport Statement<sup>7</sup>.

15. The Council confirmed that those plans formed part of the original application and were publicised as part of the original consultation. Consequently, interested parties were provided with the opportunity to comment on the proposed pedestrian link from the site to the village. Due to the large volume of information submitted with the application and the location of the plan, appended to the Transport Statement, it may be that a number of interested parties were unaware of its content or failed to realise that the proposal was part of the application. Nonetheless, it is clear that the proposal formed part of the original application.
16. There is broad similarity between the proposal, as determined by the Council, and the revised proposals. Both include a pavement of varying width on the northern side of the carriageway and measures to reduce the carriageway to a single vehicle width at the pinch-point between Rose Cottage and Meadow Cottage. Unlike the original proposal, the revised scheme incorporates proposals for road signs to indicate that westbound vehicles would have priority on the single width stretch of highway. In view of the relatively minor alterations, the fact that the Council is satisfied that the proposals should be taken into account, and the fact that consultation was carried out on the original scheme, I consider that no party would be prejudiced if the revised plans are taken into account in the determination of the appeal. Therefore, I have referred to them in making my recommendation.

### **The Site and Surroundings**

17. The site is located on agricultural land to the east of St Just in Roseland; a small coastal village on the Roseland Peninsula. The western and north-western boundary of the site abuts the edge of the settlement, running alongside the rear gardens of houses at The Bowling Green and Harbour View. The western edge represents the high-point of the site in topographical terms and the land falls gradually in an easterly direction but more severely to the south, adjacent to the A3078 – the main road on the Peninsula, leading to St Mawes. For the most part, the Cornish hedge adjacent to the carriageway is overgrown with trees and hedgerows although sections of the hedge have been damaged and are now free from significant vegetation following the winter storms of 2014.
18. The site forms one of a number of enclosed fields that provide separation between St Just in Roseland and Trethowell, a small hamlet to the east. The village of St Just in Roseland is a small rural settlement containing a limited range of facilities including a church and recreation ground. The closest shops and school are situated in St Mawes, the largest settlement on the Peninsula, approximately 2km to the south. The site is within the Cornwall AONB.

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<sup>7</sup> Plan numbers 01756-PHL-01 rev C and 01756-GA-001 rev A.

## **Planning Policy**

### *The Local Plan*

19. The statutory Development Plan for the area constitutes the saved policies of the Carrick District Wide Local Area Plan (1998) (the LP). The Plan was adopted in 1998 and the plan period ran from 1981 to 2001. However, a number of policies were 'saved' following a direction from the SoS. Relevant saved policies are 3A, 3D, 3F, 3H, 4O, 6E, 6H, 10B, 13K, 13L, and 13I.
20. Policy 3A seeks to protect the countryside, for its own sake, and states that permission will be refused for development that would have a significant and adverse impact upon its biodiversity, its beauty, its landscape, the character and setting of settlements, the wealth of its natural resources, its nature conservation and agricultural, historic and recreational value. Policy 3D sets criteria against which any proposal close to or adjacent to a settlement will be assessed, noting the importance of areas that provide a green foreground or background important to the character of a settlement; views of towns or villages from surrounding countryside and views of the countryside from within settlements; and the importance of green gaps between settlements that are close to each other.
21. Policy 3F states that proposals should seek to include new tree planting and retain and incorporate existing trees, hedgerows and Cornish hedges where they make an important contribution towards the local landscape. Policy 3H seeks to protect regionally and locally important nature conservation sites and refers directly to the Fal Estuary Complex and the nature conservation value of The Roseland, noting its importance for rare plant species and migrant birds.
22. Policy 4O relates to development within AONB and seeks to ensure that development is sited and designed to respect the distinctive character of the area, with particular regard to building styles, local features, materials, finishes and colour, settlement patterns and degree of prominence. Policy 6H sets criteria for the consideration of exceptional local needs housing schemes on small sites in rural areas. In addition to a number of design related criteria, the policy states that cross-subsidisation of market and affordable housing on sites will not be permitted.
23. Policies 10B and 13K provide requirements in terms of the provision of open space provision and infrastructure. Policy 13L seeks to ensure that new development is accessible by a range of transport modes and will not have an unacceptable impact upon the overall highway network. Policy 13I seeks to ensure that development would not be adversely affected by flooding and that it would not add to flood risk off-site by virtue of increased run-off.

### *Emerging Local Plan*

24. It is common ground between the main parties that the ELP should be afforded limited weight in the context of paragraph 216 of the NPPF. The reasons for refusal do not make reference to any emerging policies and the Council did not seek to rely upon any emerging policies as part of its appeal submission. The ELP was submitted to the SoS for examination in February 2015 and the EIP

commenced in May 2015. The examining Inspector wrote to the Council on 06 June 2015 to set out his preliminary findings<sup>8</sup>. On a broad level, these were that he would not be able to recommend adoption of the plan without the Council undertaking further work and consulting on possible changes to the plan.

#### *The RNDP*

25. As set out above, the RNDP has passed a referendum following independent examination.
26. The Council did not refer to any policies within the RNDP in setting out their reasons for refusal, or as part of their subsequent appeal statement. However, a number of interested parties have referred to the RNDP, including St Just in Roseland Parish Council, The Roseland Plan Steering Group, and the Cornwall AONB Management Unit. From these submissions, and the response of the appellant, the relevant policies of the RNDP are GP1, GP2, GP3, HO4, LA1, LA2, CV1, and SF2.
27. Policy GP1 sets out the vision of the RNDP in terms of delivering sustainable development. In order to achieve that aim, development will be expected to meet the social and economic needs of the community; conserve the special environment of the area; and ensure that development is resistant to climate change and energy efficiency whilst reflecting local distinctiveness and character.
28. Policy GP2 sets a number of detailed criteria for new development, relating to scale, design, impact on landscape character, loss of good quality agricultural land, flood risk, highway safety, and the loss of important green gaps between settlements. Amongst other things, this policy states that development must be of an appropriate scale for the area, noting that an 'indicative maximum size of 5 units' will be supported. Further, proposals will be supported where they do not involve developing on greenfield sites, unless there are no suitable, available, or deliverable brownfield sites.
29. Policy GP3 identifies settlement boundaries for villages on the peninsula, including St Just, noting that development outside of those boundaries will be treated as an exception. Policy HO4 relates to the provision of new affordable housing, stating that planning permission will be granted for proposals on infill sites within defined settlement boundaries, subject to meeting a defined local need and specified design criteria. Any proposals for dwellings outside of settlement boundaries would be treated as an exception and should comprise 100% affordable housing only.
30. Policy LA1 states that proposals for development will be supported where they have demonstrated that they will comply with the objectives of the Cornwall AONB Management Plan, with regard to the need to conserve and enhance the landscape qualities and natural beauty of the AONB. Policy LA2 seeks to ensure that new development has regard to local landscape character. Policy CV1 states that developments will be supported in or adjacent to villages where they have demonstrated that they have integrated with the character of the village, do not

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<sup>8</sup> Preliminary Findings Following the Hearings in May 2015, issued by Inspector Simon Emerson, 06 June 2015; submitted as Appendix 4 to the Executive Summary of the Statement of Mr Laurence Philip Osborne.

have an adverse effect on neighbouring amenity, and have no adverse effect on services and facilities that support the vitality of the community.

31. Policy SF2 states that proposals will be supported where they provide for sustainable transport use, including public transport, cycling or walking.

#### *Other Material Considerations*

32. The main parties, and other representations have referred to the Cornwall AONB Management Plan 2011-2016 (the AONB Management Plan). The AONB Management Plan has been adopted by the Council as a guide to decision making although is not referred to as a supplementary planning document and the extent of any consultation carried out by the Council before deciding to adopt the document is not clear. However, the document is referred to within policy LA1 of the RNDP. The pre-ambles to that policy notes local community support for the principles within the AONB Management Plan and that its contents should be taken as a material consideration in the determination of planning applications. Thus, it is clear that the document has been considered as part of the evolution of the RNDP and interested parties have had the opportunity to comment on the content of policy LA1 as part of that process. Accordingly, I am satisfied that the AONB Management Plan is a relevant material consideration to which substantial weight can be given.

#### *National Planning Policy*

33. The NPPF, published by the Government in March 2012, sets out the Government's planning policies which are relevant to the appeal. The Framework is augmented by the on-line guidance suite of the PPG.

### **The Proposals**

34. The proposal comprises a full planning application for a 'cross-subsidy' scheme of 18 dwellings of which 10 would be affordable. The dwellings would be a mix of one and two storey units, with a range of sizes. Entry to the site would come from a new access onto the A3078, and details of a new pavement from the point of access to the centre of the village forms part of the proposals. In order to create the access to the site, and provide visibility splays at the point of access onto the A3078, a section of the existing Cornish hedge and embankment would be removed and replaced with a new embankment and hedge at the back edge of the proposed bell-mouth junction.

### **Statement of Common Ground**

35. A SCG, signed by both parties, was submitted with the appeal. The document confirms the areas on which the parties agree, including the following:
- The site is located within the Cornwall AONB within the South Coast Central section. The appeal proposal constitutes 'major' development for the purposes of paragraph 116 of the NPPF and, therefore, it is necessary to demonstrate 'exceptional circumstances' for the development to be acceptable within the AONB.
  - There is no up-to-date adopted development plan housing requirement for Cornwall. Until the OAN for the area has been established following the EiP into the ELP it is not possible to conclude whether the Council can



demonstrate a five-year supply of housing land, as required by paragraph 47 of the NPPF.

- In relation to paragraph 49 of the Framework, development plan policies relating to housing supply are out of date.
  - The ELP policies should be afforded limited weight in the context of paragraph 216 of the NPPF.
  - The delivery of affordable housing is a top priority of Cornwall Council. The appeal proposal would deliver 10 affordable units against the Council's acknowledged requirement, at the time the application was determined, of 63 households with a local connection to Roseland Parish.
  - Any expansion of St Just in Roseland must be located within the AONB, as would be the case for St Mawes. The appeal site was originally identified by the Council's Affordable Housing Enabling Officer as a suitable site for an affordable led housing scheme and positive pre-application advice was given in that regard
  - The highway safety aspects of the second reason for refusal are capable of being addressed by a scheme that could be secured by planning condition. The Council will not contest the reason for refusal with regard to pedestrian and highway safety in the appeal.
  - In addition to affordable housing, other benefits of the scheme are highway improvement works, including a pedestrian link to the bus stop, provision of on site public open space, a contribution towards education provision.
  - Following a detailed investigation by specialist consultants, the land is considered to fall within Agricultural Land Classification 3b, thereby falling outside the definition of BMV agricultural land.
  - There are no issues in principle with regard to the provision of satisfactory foul and surface water discharge.
  - The proposal is not at risk from flooding and would not increase the risk of flooding elsewhere, subject to suitable sustainable drainage systems.
  - There are no unacceptable impacts in terms of the effect upon neighbouring residents.
  - There are no known features of archaeological interest within the appeal site and any contamination found would be capable of remediation through the imposition of conditions. Any potential mining features could be identified through a mining search that could be a requirement of a condition.
  - Suitable ecological mitigation could be employed to mitigate any effect on protected species.
36. As set out within the SCG, the Council has not contested the highway safety aspects of the second reason for refusal as part of its appeal submissions. In addition, the Council is now satisfied that the site does not fall within BMV agricultural land and the submission of the s.106 agreement has off-set their concerns with regard to affordable housing, education provision, and open space

contributions. Consequently, they confirmed within their appeal statement that they would not contest the third and fourth reasons for refusal.

### **The Case for the Council**

37. The main issues are considered to be the effect of the proposal on the character and appearance of the local landscape and the Cornwall AONB; and whether the proposal would amount to sustainable development in the terms of the NPPF.
38. It is a statutory requirement to determine applications in accordance with the development plan unless material considerations indicate otherwise. In this case, the countryside policies of the development plan will be to the fore, subject to the degree of compliance with the NPPF. The sustainable development objectives encourage development within settlements and the protection of the countryside (NPPF, paragraph 17), with conservation and enhancement of the AONB given great weight (NPPF, paragraph 115).
39. Major development within the AONB is only permitted in exceptional circumstances, bearing in mind criteria of the need for the development, scope and cost of alternatives and any detrimental environmental effects (NPPF, paragraph 116). Clearly, there needs to be considerable justification for the development on this site.
40. St Just in Roseland is comprised of two parts. One is a coastal location containing a church, a group of houses and the quay, the other is concentrated at the junction of the A3078 and B3289. The appeal site is at the latter. Development adjacent to the junction comprises short terraces of older cottage properties of vernacular style and materials. This part of the settlement has grown in a sporadic manner north along the B3289, with a range of buildings, including the small estate at Bowling Green, a more modern development that adjoins the appeal site to the west.
41. The site has a frontage to the A3078 and rises upwards in a northerly direction from the road. Aside from the field gate in the south west corner of the site the continuous mature hedge along the roadside boundary is uninterrupted. It is mirrored by a similar hedge on the opposite side of the road which gives this part of the road a sense of shelter and enclosure. The major part of the development would be located on the higher plateau land upon which most of this part of the village stands. Due to the enclosure of the road, little of this upper part of the road is to be seen, with the exception of some views from the east (Viewpoint 1 in the appellant's LVIA). From that aspect, roof lines will clearly be noticeable above the hedgerows.
42. It is acknowledged that due to the nature of the surrounding landscape the effects of the proposal would be limited to areas close to the site. However, to achieve an appropriate and safe means of access into the proposal would entail removing much of the bank and mature hedge over the entirety of the site's frontage; a distance of some 115m. The works would open up views into the site and remove the sense of enclosure along this length of the road, introducing an engineered urban element into a strongly rural approach to the village. The proposals include planting on the inner margins of the new retaining banks but such planting would take time to mature and would not replace the current sense of enclosure. The proposal would also clearly extend the built form of St Just in Roseland in an easterly direction along the A3078. This would not preserve the

character and appearance of the locality and would be detrimental to this part of the AONB.

43. One fundamental question is whether St Just in Roseland contains a sufficient range of facilities. This is acknowledged by the appellant. The village does not contain a range of facilities to meet day to day needs and is located on a bus route where the frequency of service is every two hours. Shops, schools and services could only realistically be reached by private vehicle. On this basis, the location is not sustainable.
44. The Council acknowledges that it cannot demonstrate a five-year supply of deliverable housing sites, having regard to paragraph 47 of the NPPF. The development of the site would go some way towards meeting housing requirements, particularly for affordable housing for which there is an identified need. Whilst in general terms economic benefits are likely to be associated with housing, no evidence has been submitted to demonstrate that the impact of approving or refusing planning permission for the proposal on the local economy would be significant. Therefore, limited weight can be given to the economic benefits of the scheme.
45. The preferred location for alternative sites is in the village of St Mawes which has a wider range of shops and services. The appellant has suggested that alternative sites around St Just have been explored. Only one site was identified in the SHLAA and that was the appeal site. However, inclusion within a SHLAA does not determine whether a site should be allocated for housing but is part of the evidence base supporting the need for housing land.
46. In summary, the NPPF requires that three aspects of sustainable development (social, economic and environmental) are applied equally. The proposal would cause harm to the character and appearance of the countryside and remove a section of hedge and embankment that is characteristic of the rural landscape. This harm would be contrary to the policies of the AONB Management Plan and the NPPF. Furthermore, the village does not contain a range of services and facilities to meet day to day needs and the proposal would encourage the need to travel to access such facilities. Therefore, despite the acknowledged benefits to the local supply of housing, the effect of the development on the landscape would be unacceptable.
47. The Council has considered the appellant's representations with regard to the RNDP. Having regard to paragraph 216 of the NPPF weight can be afforded to emerging policies depending upon the stage in preparation of the plan, the extent to which there are unresolved objections and the degree of conformity with the NPPF. In the *Woodcock Holdings* case referred to by the appellant the NP had not been subject to examination at the time the SoS reached his decision. In this case, the RNDP has been subject to examination and the Independent Examiner recommended that the plan proceed to referendum.
48. The RNDP went through a period of consultation prior to the examination and the appellant sent a letter of objection. The Examining Inspector would have considered that objection but found that the plan was in accordance with the NPPF. In terms of content, the RNDP does not contain any housing allocation policies in terms of numbers or identified sites. There is no issue with prematurity. Therefore, the RNDP is a material consideration of significant weight but does not, as yet, form part of the development plan.

49. At its closest point, the site is 500m from the SAC and pSPA. With regard to the effect on the designated sites, the Council's view was that an appropriate assessment was not required because planning permission was going to be refused. In any event, given the amount of housing proposed, the element of affordable housing which would be likely to be occupied by people already living on the Roseland, and the possibility that planning conditions could ensure that any effects from surface water run-off could be mitigated, it was considered that the designated sites would not be adversely affected by increased recreation pressure and water quality contamination.

## **The Case for the Appellant**

### *The Need for Affordable Housing*

50. The need for affordable housing in St Just in Roseland was identified as long ago as 2004 in the St Just in Roseland Parish Plan (2004) as of being a high priority to the local community. In 2011 Cornwall Council undertook an affordable housing-led process to identify a site in the village of St Just in Roseland, to help meet the identified need in the parish. The appeal site was selected as the second preferred site; the first choice site has not been brought forward and is undeliverable on the basis that it cannot be satisfactorily accessed. The scale of development envisaged by the Council, at "12 – 15 dwellings", is marginally smaller than the 18 dwellings now proposed, of which 10 would be affordable.
51. St Just in Roseland Parish is one of the highest value areas in Cornwall and given the level of disparity between the values of open market and affordable housing there is a proven and demonstrable need for affordable housing in the Parish. There are 63 households registered on the Cornwall Council HomeChoice Register with a need for accommodation in the Parish, with 28 households having stated a preference for living in St Just in Roseland village. Therefore, contrary to the ambiguous reason cited by the Local Planning Authority in the second paragraph of Reason for Refusal 2 there is a clear and demonstrable need for affordable housing in St Just in Roseland village.
52. The appeal application was submitted with a robust financial viability assessment supported by independent professional advice provided by qualified chartered surveyors in respect of construction costs/professional fees and completed property values. This evidence on viability was not supported by the Council's affordable housing officer, despite the absence of any professional evidence to the contrary. In any event, the Council did not cite viability within its reason for refusal with regard to the proportion of market and affordable units.
53. The demonstrable need for the appeal proposal in terms of the scale and mix of open market and affordable housing has been evidenced and the appeal proposal meets the "exceptional circumstances" test for major developments in the AONB, as set out in paragraph 116 of the NPPF. The Local Planning Authority, in making its decision to refuse planning permission for the appeal proposal on grounds that the appeal proposal did not meet the "exceptional test", did so in light of the Affordable Housing Officer's objection to the appeal proposal at the time of making their decision. With the Affordable Housing Officer's objection not being sustainable it is considered the Local Planning Authority's position that there was no clear or demonstrable need for the appeal proposal is untenable.

54. It has been demonstrated that there is established need in St Just in Roseland Parish now and it is acknowledged by the Local Planning Authority that not all the need can be met in the larger village of St Mawes and that provision has to be made within St Just in Roseland village. The appeal site was identified as being potentially suitable for housing development to meet the housing need by the Local Planning Authority in conjunction with the St Just in Roseland Parish Council.
55. It has been demonstrated that there is sufficient affordable housing need to warrant significantly more affordable housing that the appeal application will deliver. In this context, the viability of the appeal proposal in delivering 10 affordable dwellings cross subsidised by 8 open market dwellings provides full justification of the need for the scale of the appeal proposal.

#### *Landscape and Visual Impact*

56. The appeal site is located on an east facing slope, which steepens towards the southern periphery, where it abuts the A3078, with a steep embankment and a retaining Cornish hedge. There is a 10m change in level across the appeal site. Therefore, principal views are restricted to the east and northeast, across farmland bordering Trethem Creek, extending to the head of the valley at Tregaire Barton. Sections of the southern roadside hedgerow have been damaged and removed, so it no longer forms a cohesive and continuous landscape element.
57. The housing development is located on the upper, gentler slopes to the north, the southern steeper part of the appeal site will provide for the new access road, public open space and natural vegetation, to maintain the green buffer and rural approach to St. Just in Roseland from the east and maintain separation between the site and the hamlet of Trethewell, which lies approximately 200m to its centre from the eastern edge of St. Just in Roseland.
58. Hedgerow trees along the northern boundary will be retained. Additionally, there will be new sections of Cornish hedgerow, and associated native hedge planting, increasing the extent of the native hedgerows, enhancing the landscape elements on the appeal site. This is in accordance with the AONB Management Plan GP09.13.
59. The ZTV indicates a relatively limited area of potential intervisibility, the majority of which falls on areas without unrestricted public access. The restricted actual intervisibility of the development from the surrounding landscape; confirmed in the field, ensures that the scale of visual effects on sensitive visual receptors, within the AONB, would not be significant. Viewpoints with a brief glimpse are located within a limited arc of 85° from north to east. Therefore, the visual effects of the proposed development within the wider context of the designated landscape are extremely restricted. Extensive landscape planting, between the A3078 and the residential development and percolating through the development will, as it matures, continue to provide a green buffer reducing urbanising effects to an acceptable level that would not have a significantly adverse effect on the wider AONB landscape.
60. The surrounding roads and lanes have high Cornish hedges, restricting long, open views. Longer duration views experienced by walkers from the footpaths to the north and north-east are seen in the context of the village of St. Just in

Roseland and would not appear as a disparate extension to the village. The extent of the development would also appear appropriate in scale, as it is clustered and would be set against the backdrop of the retained, existing Monterey Pine trees in the south-west corner.

61. Glimpses of the south-western extent of the development from the A3078 on the edge of Trethewell will be visually separated from Trethewell by the intervening field and proposed hedgerow. Such glimpses would be barely discernible as the section of road from which this part of the development would be glimpsed is very short and, the view would not be open and unobstructed.
62. The access road, located close to the edge of the village, is not visible within the wider landscape, due to the enclosed nature of the landscape at this point, ensures that there would not be significant harm to the character and appearance of the AONB or the rural approach to St. Just in Roseland. The change to the current roadside setting, would be robustly mitigated – the development would be set back sufficiently from the road, and the re-aligned Cornish hedge would tie in with the considerable length of unaffected Cornish hedge leading to Trethewell, so that a significant green gap would be maintained and reinstated along the appeal site frontage, thus respecting the separate identities of the village and hamlet by road users.
63. The LVIA concludes that the proposal would not cause unacceptable visual impacts. The visual effects within the wider AONB landscape are also of slight to negligible significance, due to the very limited vantage points and the relative distance from the appeal site of these. Overall, it is considered that the resulting magnitude of impacts would not be sufficient to effect harm on the AONB. Changes brought about as a result of the development would be in context with the immediate proximity to St. Just in Roseland. Therefore, it is considered that the proposed development does not conflict with Saved Policy 3D of the LP or policy PD8 of the AONB Management Plan.
64. Ten potential housing sites were identified by Cornwall Council and assessed around the village of St. Just in Roseland, all within the AONB. Eight of these were considered to have “low suitability for development” so were not assessed in greater detail other than key landscape and visual observations. The two remaining sites included the appeal site and an area of land immediately adjacent to the north of the appeal site. Aside from having no direct road access this site would extend closer to outlying barns of Trethewell and is situated on the ridgeline, making development more prominent in views from the north, particularly footpath 322/6/1.
65. No specific sites have been identified in St Mawes so an assessment of potential areas for housing has been undertaken; land to the west of Upper Castle Road on the western edge of the village; land to the east, off a short stretch of Newton Road; and land to the east of Polvarth Road, north of Pen Brea Close. All three sites would have a greater impact upon the AONB, local character areas and skylines than the appeal site.
66. The sensitivity of the landscape surrounding St. Mawes and higher prominence from a wide and highly sensitive area within the AONB, and potentially greater numbers of highly sensitive visual receptors, indicates that most prospective sites have the potential for greater adverse landscape and visual impact on the AONB.

Alternative sites within St. Just in Roseland are extremely limited, having greater potential impacts on the AONB landscape and the character of the village.

67. Therefore, the proposal is acceptable from a landscape character and visual impact perspective when assessed against all material planning considerations, in particular the NPPF and PPG, particularly also given the lack of better suited alternative sites within the AONB.

#### *The Planning Balance*

68. In terms of the policy context, with the appeal site being located within the former Carrick District, the development plan is "out-of-date" (NPPF paragraph 14). Similarly, the weight to be attached to the emerging Cornwall Local Plan is likewise very limited, particularly given the recent delay in the process and the cancellation of the second part of the examination in public to enable changes to be made, not least to housing targets. The NPPF is therefore the most appropriate basis for decision making.
69. The first part of refusal reason 1 indicates that the appeal proposal constitutes 'major development' and that the exceptional circumstances that would warrant approval as set out in paragraph 116 of the NPPF are not demonstrated. It is argued that the provision of affordable housing in an area of acute need, where there are limited alternatives, does constitute exceptional circumstances sufficient to allow the appeal. Recent appeal decisions have confirmed that housing need can constitute exceptional circumstances. In addition, the proposal will assist in achieving the objectives of paragraph 47 of the NPPF to 'boost significantly the supply of housing' in circumstances where it has been demonstrated that the Council cannot demonstrate a five-year supply of deliverable housing sites.
70. There are currently 63 individuals/families on the housing register with a connection to St Just in Roseland parish, of which 28 cite a preference for living in the village of St Just in Roseland. Whilst the Council may prefer to see a larger affordable led housing scheme come forward in St Mawes (ostensibly in conflict with the RNDP), the appeal proposal should not be seen as precluding other proposals in the parish for an affordable-led housing scheme.
71. The appeal proposal will only satisfy a small proportion of the current identified need for affordable housing in the parish. Both the appeal development and any potential additional proposal at St Mawes are fully capable of sustaining and attracting additional local services and facilities, making a positive contribution to the continued viability of settlements. There is justification for developments in both villages given the demonstrable, and as yet unmet, affordable housing need.
72. The development is capable of preserving the character of the AONB, with only very localised visual impacts arising, with sufficient opportunities for mitigating these through the use of planning conditions for landscaping works to be undertaken. The roadside boundary hedge where the proposed access will be located has collapsed in any event.
73. Refusal reason 2 suggests that the appeal proposal is not considered to be sustainable due to the lack of facilities in St Just in Roseland itself and reliance on private vehicles for occupiers to travel to the nearest amenities. It is argued that

the appeal proposal is in an area where the Council was originally content to see new housing development (for 12 – 15 dwellings) and that the location of the site is sustainable in the context of paragraph 55 of the NPPF, which seeks to enhance or maintain the vitality of rural communities by siting development in a small settlement that may help to support services in a village nearby.

74. The Council now accept that there are no highway safety grounds on which to sustain a reason for refusal. In relation to the third reason for refusal a S106 Legal Obligation has been submitted in line with heads of terms agreed with the Council to secure the provision of affordable housing, education contributions and the management of open space, in line with relevant policies. The fourth reason for refusal regarding loss of BMV agricultural land is unjustified and is not being pursued by the Council.
75. The appellant concurs with the view of the Council with regard to the effect of the proposal on the SAC and pSPA. The recreational impacts related to a scheme of 18 dwellings would be negligible in terms of the overall population of the Penryn, Truro and Falmouth area. There is potential for water borne pollution of the Trethern Creek, which runs into the Percuil River. However, this can be controlled through conditions in relation to the construction phase, through a Construction Environment Management Plan, and the occupational phase, through the creation of a SUDS system.
76. In terms of cumulative impacts with other wider development proposals in the Truro and Roseland CNA and the Falmouth/ Penryn CNA it is considered that this matter should be addressed by the sustainability appraisal required as part of the ELP. The examining Inspector has commented on this requirement in his preliminary findings. Further to those findings, Cornwall Council have agreed that visitor surveys need to be undertaken in 2015 and a detailed mitigation strategy will be derived from that evidence, including the distance from the designated assets where development is likely to give rise to in-combination effects. That information is not yet available. The potential effects of the development itself on the SAC and pSPA are assessed as negligible and, accordingly, an appropriate assessment is not required.
77. Therefore, the proposal is satisfactory when assessed against all material planning considerations, in particular the NPPF and PPG, and, when applying the planning balance, the appeal should be allowed.

*Comments Regarding The Roseland Neighbourhood Development Plan (Submitted Prior to the Referendum)*

78. The RNDP passed its test of conformity and was submitted to the SoS. The Examiner, Clare Wright, produced a Report to Cornwall Council of the Examination into the Roseland Neighbourhood Development Plan which is dated 15 May 2015. The examination report indicates that subject to slight modifications, the RNDP should proceed to referendum. The RNDP website advertises these changes as having been made. The date for a referendum is not yet known.
79. The comments focus on the policies in the submitted version of the RNDP. It is evident that the saved policies of the LP have been used as the basis for the RNDP. In the context of housing delivery in particular, the LP, adopted in 1998 and with a Plan period to 2001, has been considered 'out-of-date' by many



Inspectors. The Council is still incapable of demonstrating a five year supply which will continue to render the LP policies in relation to the supply of housing ineffective. Policy 14 of the NPPF will therefore be engaged in most cases.

80. Comments are not offered in respect of the majority of policies in the RNDP, although they are considered to be overly-prescriptive in many cases. Comments are, however, offered in respect of the following policies, which are considered germane to the assessment of the appeal: GP3, HO1, HO2, HO3, and HO4. The settlement boundaries defined by proposals maps referred to within Policy GP3 are almost identical replicas of those adopted in 1998 for the LP which is outdated. Undoubtedly, settlement boundaries will have been formulated several years prior to the adoption of the LP. The only minor differences in the RNDP settlement boundaries being the inclusion of development which has taken place since the LP boundaries were drawn up. These restrictive boundary plans do not allow for the opportunities to positively deliver sites to meet the development needs in the Roseland Plan area which is required by paragraph 14 of the NPPF.
81. Policy HO1 (Change of Use of Holiday Lets) seeks to support proposals for the removal of planning restrictions on holiday lets only where the resultant dwelling is for affordable housing purposes for people with a Roseland connection (defined by policy HO5). It is presumed that this is intended for holiday lets which are considered to be within the open countryside as if it were within a village boundary then it would be in conflict with the Government's own guidance in the PPG. The policy, if intended to relate to holiday lets in the countryside, is in conflict with paragraph 55 of the NPPF which allows for the reuse of buildings in the countryside for unfettered residential purposes as part of a suite of measures to promote sustainable development in rural areas.
82. Policy HO2 (Conversions of Hotels and Guest Houses) seeks to support proposals for the removal of planning restrictions on hotels and guest houses only where the resultant dwelling is for affordable housing purposes for people with a Roseland connection (defined by policy HO5). In common with policy HO1, if this is intended to relate to hotels and guest houses in the countryside, it may directly conflict with paragraph 55 of the NPPF which allows for the reuse of buildings in the countryside for unfettered residential purposes as part of a suite of measures to promote sustainable development in rural areas. It would also result in conflict with national policy guidance contained in PPG.
83. Policy HO3 (Reuse of Redundant Buildings) seeks to support proposals for the re-use of redundant buildings generally (i.e. on sites "within and outside settlements") for residential use provided that the accommodation provided is exclusively to deliver affordable housing. Within a settlement this would conflict with PPG, which would allow a development of five dwellings without any affordable housing provision or payment of commuted sums towards the delivery of affordable housing. Outside of settlements, in circumstances where any proposal was considered to be an "exceptions" site, Cornwall Council's policy stance is that the starting point would be an aspiration to deliver 100% affordable housing, but, subject to a robust viability exercise, market housing can be provided to cross-subsidise the delivery of affordable housing, with an expectation that the quantum of affordable dwellings should not be less than 50% of the total. The requirement of the policy to deliver 100% affordable

housing is manifestly unreasonable and unrealistic. It is extremely unlikely that it would deliver any affordable housing at all.

84. Further, this policy does not comply with paragraph 54 of the NPPF which deals with rural exception sites and the possibility of the inclusion of some open market housing to cross subsidise the delivery of affordable housing on exceptions schemes.
85. Policy HO4 (New Affordable Housing) indicates that proposals for new affordable housing-led proposals will be supported where they are within the defined settlement boundaries for the villages. The term 'affordable housing-led' is not defined in the Plan. The policy of providing affordable housing led proposals within a sustainable settlement is in direct conflict with the Government's guidance in the PPG, which only requires affordable housing for schemes of over ten units, with a proportionate contribution being paid for the units between 6 and 10. However, this threshold is reduced to 5 in, inter alia, an AONB. The policy will not allow for any affordable housing-led proposals to be supported as any sites within the development boundaries which provide not more than 5 dwellings will not be required, under PPG, to deliver any affordable housing or make any commuted sum payments<sup>9</sup>.
86. The policy goes on to say that proposals for dwellings outside the defined settlement boundaries will be an exception to this policy and should comprise 100% affordable housing. This policy does not comply with paragraph 54 of the NPPF which deals with rural exception sites and the possibility of the inclusion of some open market housing to cross subsidise the delivery of affordable housing on exceptions schemes. Further, in the case of "exceptions" sites, Cornwall Council's policy stance is that the starting point would be an aspiration to deliver 100% affordable housing, but, subject to a robust viability exercise, market housing can be provided to cross-subsidise the delivery of affordable housing, with an expectation that the quantum of affordable dwellings should not be less than 50% of the total.
87. It would appear that the intention of the unreasonably restrictive housing policies in the RNDP is to ensure that any affordable housing schemes within the area are economically unviable. In other words, rather than enhancing the delivery of affordable housing, for which there is an acute need, there is every likelihood that, if this policies are determinative, no affordable housing will be delivered at all. It is also abundantly clear, notwithstanding the issues identified in the ELP that the policies in the RNDP will be in conflict with policies contained in the ELP when eventually adopted, and with the NPPF and PPG now.

*Further Comments Regarding the RNDP Following Confirmation of the Result of the Referendum*

88. The appellant would seek to point out the fact that while the RNDP has now been subject to a referendum and may attract weight in decision making, it is

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<sup>9</sup> The appellant's comments in this regard were made prior to the High Court judgement in relation to West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government [2015] EWHC 2222 (Admin). Further to that judgement, paragraphs 12-23 of the PPG with regard to planning obligations have been removed.

fundamentally flawed in that it fails to objectively plan and identify specific sites to meeting the housing need. In this context the RNDP cannot possibly be compliant with the policy guidance in the NPPF, PPG and ELP. As stated at the Hearing by the representative of the RNDP, the RNDP was drafted to be compliant with the LP, which had an end date of 2001, and is, therefore, very considerably out of date, particularly in the context of housing policies.

89. Even if the RNDP was considered to be compliant with the emerging Draft Cornwall Local Plan (which it is clearly not) the ELP has been found to be unsound by the Inspector following the examination and consequently should be accorded very limited weight. This position is covered in a recent appeal decision in respect of an urban extension, land west of Trewennack, Helston<sup>10</sup>, where the appeal was allowed and great weight was placed on the Examining Inspector's preliminary findings into the ELP. Based on those preliminary findings and the issues raised, particularly in relation to housing provision, the housing need provision is likely to be significantly increased to meet the very significant need to deliver affordable housing, together with an allowance for second homes.
90. In these circumstances, even if the RNDP was compliant with the pre-examination ELP (which it is not), it is most certainly totally non-compliant with the Inspector's findings which now must carry considerable weight. Therefore, it is the appellant's clear position that even if the RNDP is finally adopted it will require an early fundamental review as it fails in every respect to plan for and meet the demonstrable need for housing, particularly affordable housing.
91. In addition to the above, in August 2015 George Osborne and Elizabeth Truss published *Towards A One Nation Economy: A 10 – Point Plan For Boosting Productivity in Rural Areas* (Towards a One Nation Economy)<sup>11</sup>. This document follows the *Fixing the Foundation: Creating A More Prosperous Nation* (Fixing the Foundation)<sup>12</sup> statement which followed George Osborne's July 2015 Budget. Paragraphs 45 – 48, of that document highlight the fact that the UK has been incapable of building enough houses and that the "excessively strict planning system can prevent land and other resources from being used effectively". The Statement also highlights the need to release more land for the houses people need and specifically refers to the need to take steps to ensure that local plans are more responsive to meet the housing need.
92. In this context the RNDP, in not objectively identifying suitable sites for housing development, is wholly in conflict with the main thrust of Government policy for housing delivery.
93. Turning to Towards A One Nation Economy statement, the 10 Point Plan in Section 8 "More Housing" provides a clear Government statement that it will increase the availability of housing in rural areas allowing rural towns and villages to thrive. While the principal reference in this Statement relates to starter homes it does specifically state that in addition to carrying out a review of planning constraints in rural areas that the Government will help villages to thrive by making it easier for them to establish a neighbourhood plan and allocate land for new houses, including the use of rural exception sites to deliver starter homes.

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<sup>10</sup> Appeal Document 18

<sup>11</sup> Appeal Document 16

<sup>12</sup> Appeal Document 17

94. The RNDP completely “flies in the face” of the Government key objectives and in fact if adopted would only perpetuate the constraints in delivering much needed housing in this area. Not only does the RNDP not allocate land for new houses, it has chosen to conveniently ignore NPPF, PPG and ELP policy guidance in not planning for rural exception sites. Therefore, the RNDP, even if it now carries weight in planning decision making, is entirely not compliant with the NPPF, PPG and ELP and “flies in the face” of the Government’s very recently reinforced stated objectives for meeting the urgent need to boost housing supply in rural areas. In the event that any weight can be given to the RNDP this will only perpetuate the housing crisis that exists in rural areas, particularly in the Parish of St Just in Roseland.

### **The Case for Interested Parties**

95. A number of interested parties attended the Hearing and took part in the discussion regarding the appeal proposal. These included Mr Evans of the Cornwall AONB Unit; Mr Adams, vice-chair of the RNDP Steering Group; Mr Hubbard, Planning Secretary of the St Mawes and St Just Society; Mr Warren, parish councillor for St Just in Roseland; and Mr Chenoweth, a resident of St Just in Roseland.
96. The comments raised in discussion at the Hearing were consistent with the written submissions that had been submitted to the Planning Inspectorate in advance of the Hearing. A number of groups and individuals also submitted comments following the Hearing, during the consultation period which was provided to enable responses to the appellant’s submissions in relation to the RNDP. Some of those submissions raised issues that fell beyond the intended scope of the consultation exercise but the appellant has responded to the responses received and, as such, they would not be prejudiced if those consultation responses were taken into account. Consequently, I have summarised all of the written submissions received by the Planning Inspectorate below.

### **Written Representations Submitted to the Planning Inspectorate**

#### *St Mawes and St Just in Roseland Society*

97. The two public meetings organised by the appellant were events to appraise local feelings with regard to the proposal. The reaction of local people was made clear when the Parish Council convened an open meeting for the public to voice their concerns. This led to a no vote from the public with 47 people voting against and one in support.
98. The Localism Act gave encouragement to those concerned about the increase in unsustainable proposals being made to urbanise the five parishes of the Roseland AONB against the wishes of the community. Subsequently, the RNDP was drawn up with community support. Due to the advanced stage of that document, due weight should be afforded to the relevant policies. The proposal is contrary to policies LA1, LA2, CV1, GP1, GP2, GP3, HO4, and HO6. Therefore, the objections made by the Society to the Council in June 2014 still stand.
99. The appellant deems that narrowing the A road to one lane controlled by a voluntary stop line for eastbound traffic, together with a footpath, will overcome the reason for refusal on highway grounds. This is accepted by the LPA.

However, at no time has there been any attempt to make public the proposed highway alterations. The proposal would make traffic conditions intolerable and must be subject to community consultation. The Transport Statement was not provided to interested parties at the Hearing and the Inspector appeared to accept that the amended plans had been handed to the Council prior to their refusal. The Society requests that the SoS be appraised of these concerns and trust that he will find the failure to consult with the community on these critical issues will enable him to quash the appeal.

#### *St Just in Roseland Parish Council*

100. It is most concerning that proper scrutiny of plans for changes to the highway have been denied to the Parish Council and this is considered to be undemocratic. The Parish Council disputes the agreed position between the LPA and the appellant that the highway safety reasons for refusal are capable of being addressed by planning condition. The Parish Council does not agree that the changes between plan numbered 01756-PHL-001 (as originally submitted) and 01756-PHL-003 (as amended) are minor amendments. These amendments have not been subject to consultation. Furthermore, there are concerns over the deliverability of the footpath in terms of land ownership. What is the nature of the surface and road markings? Would the footpath have a raised kerb?
101. There are concerns that the traffic will back up behind the single width restriction with gridlock a distinct possibility. Clarification of the proposal at the appeal site visit convinced Parish Councillors that visibility from the Trethewell direction would be impaired.
102. The timetable for bus services has not been considered. Since the transport statement was published, the timetable has changed. At the time the document was written, the timetable provided the possibility that those working a standard 0900 to 1700 day in Truro could use the bus. The current timetable is St Mawes 07:03 – 08:18 Truro. The last return is 17:45. The Parish Council believes that this change reinforces their view that people could not rely on the bus service as a mode of travel to work or shopping.
103. The RNDP should be given appropriate weight in decision making. The plan has been through independent examination and conforms with the NPPF and the ELP. The Parish Council would refer to the consultation response from the RNDP Steering Group and fully endorse its policies. The Parish Council feels the appeal should be quashed due to the effect on the character of this rural village in the AONB and to ensure proper consultation on critical changes to the A3078.

#### *Roseland Plan Steering Group*

104. The Steering Group find the comments of the appellant with regard to the status of the RNDP disconcerting given that the Steering Group has followed all recommended processes for production of the RNDP, including extensive consultation; involvement of the RTPI, through Planning Aid England; use of NPIERS; and advice from Cornwall Council planners, the AONB Unit, and other qualified planners with links to the Roseland Peninsula.
105. The Independent Examiner considered the RNDP against the saved policies of the LP whilst being mindful of the intent of the ELP. The Independent Examiner also concluded that the plan had regard to the policies of the NPPF and concluded

that it met the 'basic conditions' as set out in the Localism Act. Therefore, having passed examination, the plan has considerable weight. With regard to recent High Court challenges, the issues appear to have been the weight to be applied to plans (often before examination), set against the tests of the NPPF, especially where development would be suitable and sustainable. In this case, the development was not considered to represent sustainable development by the decision maker.

106. Whatever detailed arguments are being presented, the policy imperative to protect the AONB has not lessened. With regard to concerns of Natural England, the housing policies of the RNDP were tightened to reduce overall housing and the recreational impact on the SAC.
107. In terms of housing, the key issue on the Peninsula is regarding affordability. There is strong community support for providing affordable housing for those with a local connection. This explains the focus in the RNDP on affordable housing. The overwhelming desire to conserve and enhance the landscape fed directly into the preference for small scale development of 5 units or less within the RNDP, with high proportions of affordable units. Consultation responses have not suggested that delivering a high proportion of affordable housing is unrealistic on viability grounds and the Steering group is in the process of establishing a Community Land Trust as a delivery tool. There is not considered to be a need for additional market housing which, experience has shown, leads to higher proportions of second homes and holiday lets.
108. In terms of sustainability, the Roseland is the least sustainable location in the whole of the Truro and Roseland Network Area and this implies that the minimum essential new building should take place.
109. Settlement boundaries in the RNDP are based on plans provided by the planning department at the Council and were presented as part of the consultation event. Policy HO4 refers to 'exception' sites outside those boundaries and the Independent Examiner was satisfied that this policy had appropriate regard to the policies of the NPPF. Whilst policy HO4 is stricter than policy 9 of the ELP (with regard to the proportion of affordable housing on exceptions sites) the current draft policy 9 requires developers to work backwards from 100% and demonstrate that 100% provision cannot be achieved. The Steering Group consider that 100% affordable housing delivery is possible using a Community Land Trust approach.
110. Whilst the LP may be considered to be out of date, the RNRP is based on saved policies that remain in conformity with the NPPF. Therefore, considerable weight should be afforded to the RNDP. The proposal would be contrary to policies LA1, LA2, CV1, SF2, GP2, GP3, and HO4. The proposal does not represent sustainable development and, as such, the appeal should be refused.
111. In relation to the SAC discussions with Natural England identified any increase in recreational use as being a threat. To address those concerns, a slight tightening of the Plan's housing policies was required.

#### *Cornwall AONB Unit*

112. Object to the proposals on the grounds that they would harm the landscape character and natural beauty of the AONB. The site is on the edge of the village

and, due to its elevated location is visible from the village of Gerrans to the east. The proposed access road and creation of visibility splays would have an adverse effect on the approach to the village. The access would be on the inside of a bend and would require the removal of long lengths of attractive natural hedge, including trees that would have to be removed. Such work would have an urbanising impact on the attractive rural approach to the village.

113. In addition, there are concerns about the apparent merging of St Just with the hamlet of Trethewell as the closest houses would clearly be visible on the skyline when viewed from the road as it leaves the hamlet. Therefore, the proposal would cause harm and fail to conserve or protect the rural character and attractive rural setting of St Just.

114. Recommend that the proposal should be refused as it would be contrary to Section 85 of the Countryside and Rights of Way Act 2000 which places a statutory duty on relevant authorities to have regard to preserving and enhancing natural beauty when discharging any function affecting land within an AONB. The proposal would also fail to accord with paragraphs 115 and 116 of the NPPF, and policies PD4 and PD8 of the Cornwall AONB Management Plan. Footnote 9 to paragraph 14 of the NPPF makes clear that the presumption in favour of sustainable development does not apply where specific policies in the NPPF dictate that development should be restricted. That is the case in this instance.

115. The proposal would also be contrary to policies GP2, GP3, HO4, LA1 and LA2 of the RNDP.

*Sarah Newton MP*

116. Wrote on behalf of her constituent, Cllr Julian German, to highlight concerns that have been expressed with regard to conformity with the RNDP and highway safety issues. With regard to highway proposals, issues of consultation with landowners regarding access to land and the detrimental effect of the proposals on the character and appearance of the area have been raised. Wishes to ensure that Cllr German's concerns are fully considered in the determination of the case.

*Adjacent Land Owner*

117. Comments were submitted on behalf of the landowner of land immediately to the north of the site to make clear that a footpath link to the village shown on initial plans passed over land outside the application site. Whilst they understand that this proposed link had since been removed, they wish to make clear that they have no intention of permitting such a link across their land.

*Comments in Relation to the Proposed Highway Alterations*

118. Further to the adjournment of the Hearing, comments were received from a number of local residents regarding the proposals for off-site highway alterations, as shown on drawing number 01756-PHL-003, submitted with the appeal. These comments were received from Mr David Chenoweth, Dr Thomsit, Chris and Steve Pearce, Andrew and Olive George, and Mr M Tutt. The concerns cover the same issues and I have summarised these below.

- Concerned at the lack of consultation with regard to the proposed plans

- Making a single carriageway 50m long on a blind corner will cause endless queues of traffic, especially approaching from Trethewell.
- Potential problems for emergency services getting through any traffic.
- Large vehicles currently have difficulty in getting through various points on the road and this could make the situation worse
- The proposed footpath uses private property, is compulsory purchase required for this? It is not clear from the drawings whether the proposed footpath would impinge on the boundary of Bluebell Cottage
- Water from the proposed access will run onto A3078, exacerbating flooding.
- Forward visibility for vehicles passing through the proposed single width carriageway section would be restricted which will result in vehicles meeting in the middle section and having to mount the proposed pavement.
- The traffic flow measurements provided in the Transport Assessment were taken in January. This does not reflect the level of traffic, particularly in the summer months.

### **Written Representations Submitted to the Council Prior to the Application Being Determined**

119. A number of responses were also provided to the Council, following the consultation exercise undertaken prior to the determination of the application, including 28 letters of support from those living outside the Parish and 13 objections from nearby residents. The delegated officer report<sup>13</sup> accurately summarises these comments and I have repeated that summary below:

#### *Letters of Support*

- High house prices and high local need for affordable dwellings for local people
- Large amount of second homes in the locality
- Need to retain young local people in the community
- Appropriate location for the dwellings as only two settlements in the Parish; St Just in Roseland being one of them
- Parish Council and Cornwall Council have identified the site as being suitable for affordable housing
- Local Materials
- Traditional Design
- Good Size Plots
- On site parking
- Cornwall Housing will manage the affordable dwellings ensuring they remain affordable for local people

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<sup>13</sup> Appendix L01 to the statement of Mr Laurence Philip Osborne



### *Letters of Opposition*

- Increase in surface water and flooding for the settlement of Trethewel
  - Highway Safety – existing highway is too narrow and access would be located on a bend. Highways congestion through traffic calming
  - Pedestrian access would be unsafe
  - Scale of development – too many units. Urban density. Visual
  - Impact on the AONB. Should be no more than 10 units in an AONB.
  - Lack of housing need in the village
  - Lack of facilities in the village; lack of employment in the locality; only a church, telephone box and institute in the village.
  - Loss of grade 3a agricultural land.
  - Reduction in the separation of the village of St Just in Roseland and the settlement of Trethewell.
  - Loss of trees and hedges
  - Cross subsidy concerns. Large detached open market units proposed are obvious in size and design from the smaller affordable units
  - Sewerage capacity – odours from Klargester
  - Too many second homes in the area. Open market units will add to this
  - School and doctors capacity issue.
  - Concern over bus frequency every two hours only and concerns over its future.
  - St Mawes is more sustainable because of access to facilities.
  - Overlooking from Plot 18 into 11 Bowling Green
120. The written responses of statutory consultees and other local organisations are summarised below:

### *St Just in Roseland Parish Council*

121. The Parish Council and local community are fully supportive of affordable housing; this is evidenced by the many meetings and on-going dialogue the Parish Council has with officers from Cornwall Council and the community, and the proactive approach of assessing sites for development. The favoured approach would be for 100% affordable housing. At present there are two willing land owners and a developer who could achieve 100% affordable.
122. However, the main issue why this has not been brought forward is the sustainability of creating new homes in St Just village. As evidenced from Homechoice register and the Parish Council survey, the majority in housing need want to live in St Mawes where there is local employment, services and amenities, which would reduce the need to travel. This is in line with ELP Policy 6 which seeks to locate development where it would reduce the need to travel.

123. Paragraph 7 of the NPPF identifies three dimensions of sustainable development. In terms of the social role the community feels strongly that new homes, especially for young families in housing need, should be situated where there are facilities such as a school, and employment as well as shops, local surgery and amenities. If the proposal went ahead, those housed would need to travel for the most basic of services.
124. The proposal would cause harm to the character of the AONB, contrary to paragraphs 115 and 116 of the Framework. The proposed site is outside of the settlement boundary and will link two very different settlements - St Just village and the hamlet of Trethewel, contrary to saved policy 3D of the LP which states that permission will not be granted for development where it has a significant adverse impact upon areas that provide a green foreground or background important to the character of the settlement; or an important green gap between two or more settlements which are close to each other and in danger of losing their separate identity. It is also contrary to policy 3 of the ELP.
125. Accessibility and impact on rural approach to village were key concerns identified at the pre-application stage. The Parish Council is not satisfied that the application has adequately addressed the principal issue of how the application will maintain a rural approach to the village. There is limited information regarding the materials to be used in the planting scheme when important hedgerows will be lost. Significant works are required to create the entrance to the development with its associated visibility splays. The visibility splays required on this bend in the road only serve to highlight the amount of work, and intrusion into the landscape, required to create the entrance. The volume of work required will result in the over urbanisation of the rural approach to the village, contrary to policy 40 of the LP.
126. Regarding the proposed changes to the A3078 and introduction of a new pedestrian link to the centre of the village, the plans as presented were deemed unsafe and inappropriate. This included the narrowing of the road to include a footpath with informal one way working. The Highways Consultant at the recent Planning Committee meeting produced new plans for a formal priority passing of vehicles. The Planning Committee did look at the one drawing presented and were concerned that the build-outs required to implement the scheme would create an urban street scene and that the boundary treatments of any new path must be carefully considered.
127. This is at present a 30mph country road outside the settlement boundary. Much of the verge here banks up to adjoining private gardens, no detail of how works required to create the path and finish appropriate to the setting were given. The principle seems incompatible with a country road. These are much more intrusive features associated with our main towns and larger villages. There is a build-out upon entering St Mawes. It is not appropriate in this context.
128. It is difficult, without much greater detail and consultation, to see how a rural approach could be maintained given the limitations of the width of the road, the available verge, and the amount of work being considered. If these measures are proposed as traffic calming then the proposal must be consulted upon before being determined. You must also consider the needs of emergency services including the routes they use and the impact on their response times.

129. At present the access proposals are contrary to paragraph 69 of the NPPF which states that planning decisions should promote accessible developments, containing clear and legible pedestrian routes. It is also contrary to ELP policy 27 which states the use of sustainable transport modes can be maximised by prioritising safe access by walking, cycling, and public transport, and saved policy 13L of the LP which states that planning permission will not be granted for development which is not fully accessible by public transport, pedestrians and cyclists or which creates an unacceptable impact upon the overall highway network.
130. The applicants have not demonstrated that they are aware of local flooding issues adjacent to the site, nor given valid evidence that demonstrate the proposed development would improve the current problems associated with flooding. Therefore, the proposal would be contrary to saved policy 13L of the LP.
131. The current use of this land is BMV agricultural land, Grade 3a. The presence of best and most versatile agricultural land should be taken into account. Where significant development of agricultural land is unavoidable, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality, except where this would be inconsistent with other sustainability considerations.
132. At present the local need for housing is low for St Just village. The Homechoice register gives a headline figure of 63 households being in housing need in this Parish, yet 63.5% of those households are not classified as having a high, medium or low need, having been given the Band E category which states they are adequately housed. Also 30 % of those households do not want to live in this Parish and 25% are already council/housing association tenants. Therefore, the evidence supplied by Homechoice is misleading, it does not represent the true figure of those in housing need as defined by the Government, only 7 of the 63 households chose St Just village as an area where they would want to live as their first preference. The tenure split of 70% affordable for rent and 30% for part buy does not reflect local need, as currently there is only one household that is eligible and/or wants to part buy and they can only do so on a two-bed house.
133. St Just in Roseland Parish Council is not privy to the information on the viability assessment, but are aware that planning policy states that homes can only be built in an AONB if it meets an identified local need, and that open market housing may be included if it is necessary.
134. As local residents object to this scheme (as evidenced from the vote at a Public meeting and letters of objection), and the village has 38% second homes, the amount of proposed open market homes is a concern, given that it is unlikely local people would be able to afford to purchase an open market property.
135. Paragraph 2.31 of the ELP states regarding rural affordable housing that proposals must satisfy a number of criteria, including their relationship with the rest of the village or hamlet and in terms of character, appearance and landscape setting, and to facilities and amenities. Paragraph 2.32 states that normally the Council would expect proposals that come forward as affordable housing led schemes all to be restricted for occupation as local needs housing in perpetuity. However we accept that limited public subsidy can provide justification for an element of normal market housing to be included. However, paragraph 2.35 notes that the Council will need to be satisfied that the development had

community support and reflected local need in terms of scale, dwelling type and tenure mix.

136. Paragraph 2.36 recognises that within the smallest rural communities where it would not normally be appropriate to develop because of a lack of immediate access to key facilities and services, there may be circumstances where the provision of housing to meet a local need outweighs these factors. Such cases would be rare and require a strong justification of why the need is best met in a specific community rather than in a more sustainable nearby settlement.
137. In conclusion, St Just in Roseland Parish Council does not consider that exceptional circumstances have been put forward to justify major development within the AONB, as required by paragraph 116 of the NPPF. They therefore object to the proposed development and consider that St Mawes would represent a more sustainable location for affordable housing due to the proximity to shops and services.

#### *Natural England*

138. Objects to the proposal. Advises that the consultation documents do not include information to demonstrate that the requirements of Regulations 61 and 62 of the Habitat Regulations have been considered, with regard to the effect of the proposal on the SAC and pSPA. The SAC is also notified at a national level as the Lower Fal and Helford Intertidal SSSI. Before deciding the application, the authority should determine whether the proposal is likely to have a significant effect on any European site, proceeding to an Appropriate Assessment where significant effects cannot be ruled out.
139. There is currently not enough information to determine whether the likelihood of significant effects can be ruled out. It recommended that a number of matters should be taken into account to inform a Habitats Regulations Assessment. This should include an assessment of recreational impacts arising from increased water based activities within the SAC/ SSSI and pSPA alone, and in combination with other proposed or existing development in the area and an assessment of potential water quality impacts from run off during and post construction. An Environmental Management Plan should be submitted outlining the construction practices and pollution control measures to be employed on site to avoid adverse effects on the interest features of the SAC.
140. From the information available Natural England is unable to advise on the potential significance of impacts on AONB. Although an LVIA has been submitted alongside this application, it is Natural England's view that this document does not properly assess the potential impacts of the development on the special qualities of the AONB. It is therefore advised that appropriate weight is given to the advice of the AONB Partnership.
141. Natural England advise the LPA with regard to the need to assess the proposal in terms of the impact upon protected species and habitats, local landscape character and local and national biodiversity priority habitats and species. It advises that reference be made to standing advice with regard to protected species.
142. This application may provide opportunities to incorporate features into the design which are beneficial to wildlife, such as the incorporation of roosting

opportunities for bats or the installation of bird nest boxes. The authority should consider securing measures to enhance the biodiversity of the site from the applicant, if it is minded to grant permission for this application. This is in accordance with Paragraph 118 of the NPPF.

143. Additionally, we would draw your attention to Section 40 of the Natural Environment and Rural Communities Act (2006) which states that every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. Section 40(3) of the same Act also states that conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.

*Environment Agency*

144. Does not object to the proposal on the basis of the revised FRA submitted with the application, subject the imposition of a condition to secure details of a scheme of surface water drainage covering the construction phase and a final drainage scheme.

*South West Water*

145. Raises no objection to the scheme, noting the presence of the public sewer and water main.

*Cornwall Council Affordable Housing Team*

146. Do not support the proposal. HomeChoice registered local housing need in St Just in Roseland parish is currently 63 households, the majority of whom are seeking affordable rented homes. This level of need supports the proposal, provided that recommendations on scale, mix and tenure are followed. Of the 63 eligible households, 28 have expressed preference for living in the village (8 x 1st choice preference).
147. Whilst the affordable housing team believe that there is evidence of local housing need to support a development and accept that, in the absence of other public subsidy, an element of market housing is necessary for its delivery, the application scheme does not have local support from the Parish Council. Furthermore Policy 9 of the ELP and the NPPF are supportive of permitting an element of market housing if it is included to facilitate a significant additional element of affordable housing. In this instance, given the scheme is located within market value zone 1 (the highest value area in the County), thus benefiting from more favourable cross subsidy arrangements than lower value areas; it is the affordable housing team's considered view that 55% on site provision does not represent a significant additional element of affordable housing. It also appears that the open market element of the scheme represents more than 60% of the land take, excluding infrastructure and services. In addition, given that the saved local plan policies have not been superseded, the LPA is also highly mindful of the views of the local community and whether a proposal is supported by the parish. Thus it is our contention that the proposal is in conflict with BHM5, the NPPF and the emerging Local Plan Policy 9.
148. The Affordable Housing Team is not in agreement with the information submitted by the applicant, and believes that a greater percentage of affordable housing could be delivered on site above the 55% proposed by the applicant. Our

evaluation concludes that a scheme delivering at least 60% affordable housing is viable in the current market. This would satisfy NPPF principles regarding viability, permitting the developer to make a competitive return. In order to provide officer support, the affordable housing team would expect to see the level of affordable housing be at least 60% of the proposed homes on the site. The LPA would then need to take into account the level of community support and balance the level of housing need and the community benefit against any objections.

149. It is recommended that the applicant's proposition that it is not viable to provide at least 60% of the scheme is not accepted. For the reasons outlined throughout this response, we are unable to recommend to the LPA that the applicant's proposed affordable housing obligations of 55% (10 no.) on site for this scheme are supportable, and therefore respectfully request that the application be refused accordingly.

#### *Cornwall Council Highways*

150. Access to the proposed development would be from the A3078 which carries all vehicular traffic to and from St Mawes. The applicant proposes a new footway along the A3078 and I have concerns as this has not been drawn on a topographical survey, is not continuous with substandard width in places and which would reduce the carriageway width to single lane traffic with an informal priority working which may increase the potential for vehicular and pedestrian conflict, I am not satisfied with this arrangement although a formal priority working scheme may be acceptable.

151. Also requested cross sections of the proposed visibility splays to show the vertical plane which do not appear to have been provided and there is no retaining wall information provided for the new access. If these principal concerns can be overcome then to mitigate the cumulative impact of the additional development related trips on the wider local and strategic network a transport contribution under saved Policy 13L of the Carrick LP would be appropriate.

#### *Cornwall Council Environmental Health*

152. The information contained within the preliminary site investigation indicates that the risk from potentially contaminated land for this development is likely to be low. Environmental Protection agrees with the consultants conclusions and therefore does not wish to make any additional comments in this respect.

#### *Cornwall Council Tree Officer*

153. There appears to be potential to retain a proportion of the tree cover on the land around the access road. However, the construction of this access road to the new development (and associated batters) and the changes in levels to create an acceptable visibility splay onto the main road will require the removal of a proportion of the woody vegetation on the site. There should be opportunities to establish replacement trees where gaps are either already present or are created.
154. I would suggest that, if new planting is considered desirable, this is agreed as a part of the approved plans. I do not have any objections to this application but the changes in the vegetation and the nature of the approach to the village should be considered as a part of the overall package when determining this application.

*Cornwall Council Public Open Space Officer*

155. Work on an up to date open space assessment of this area is yet to be undertaken. The onus is therefore on the developer to prove that the impact that new residents will have on local open space can either be accommodated by existing provision or that it will be mitigated either through on site provision, or by way of a S106 financial contribution towards improvements off-site. Guidance on standards can be found in the Fields in Trust (FiT) guidance Planning & Design for Outdoor Sports & Play 2008.

*Cornwall Council Historic Environment Officer*

156. No comments with regard to listed buildings and conservation areas and noted that there is a low likelihood of any buried archaeological remains.

*Cornwall Council Children's Services*

157. Unable to support this application without agreement of the minimum mitigation required as identified in the Education Infrastructure Needs Assessment.
158. The St Mawes CP School is operating at 86% capacity, however, the Roseland Community School is operating at 93% capacity and this triggers the essential requirement for contributions towards the provision of additional school places (operating with fewer than 10% surplus places). The amount to be secured is £2736 per qualifying dwelling (to be applied to the open market dwellings of 2 bedrooms or more).

*Devon and Cornwall Police Architectural Liaison Officer*

159. No objections and considers that the layout of the estate is sound from a designing out crime perspective. Recommends a number of detailed design measures based on the principles of Secured By Design.

## **Conditions and Obligations**

*Conditions*

160. The Council put forward a list of suggested conditions in advance of the Hearing and these were discussed at the event. I have considered whether the suggested conditions would meet the tests set out at paragraph 206 of the NPPF, making amendments, where necessary, to ensure compliance with those tests and in the interests of precision. I recommend that the schedule of conditions at Appendix B of this report should be imposed if planning permission were to be granted, notwithstanding my overall recommendation.
161. In addition to the statutory time limit for commencement, a condition is necessary to ensure that the development is carried out in accordance with the approved plans for the avoidance of doubt and in the interests of good planning. In the interests of ensuring that the external appearance of the proposed dwellings would be acceptable, a condition would be necessary to ensure that details of external facing materials were submitted to and agreed in writing by the Local Planning Authority. At the Hearing, the Parish Council put forward a condition to the effect that details of the external design of the dwellings should be secured by condition, on the basis of their view that the proposed design would not reflect the character of the surrounding area. For the reasons given

below, I am satisfied that the design of the dwellings would be acceptable and such a condition is therefore unnecessary.

162. In the interests of the character and appearance of the area conditions would be necessary to ensure the submission, agreement and implementation of a detailed scheme of hard and soft landscaping, including details of measures to protect existing trees and hedgerows that would be retained during the course of construction. A condition to prevent the installation of street-lighting, unless details are first submitted to and agreed in writing by the Local Planning Authority, is necessary to ensure that the proposed development would not have a harmful effect on bats, in accordance with the requirements of the bat activity survey that was submitted with the application.
163. In the interests of highway safety a condition would be necessary to ensure that the proposed off-site traffic calming measures and pedestrian link to the village were implemented prior to the occupation of any dwelling, in accordance with the revised scheme that has been agreed between the Council and the appellant. For the reasons set out in my procedural paragraphs (12-16), I have taken account of the revised plans which show a reduction in the width of the carriageway between Rose Cottage and Meadow cottage, the creation of a segregated pedestrian footway on the northern side of the carriageway and the provision of priority markings for traffic passing through the single width stretch of the carriageway.
164. For reasons set out within the main body of my report I am satisfied that off-site highway works would be necessary to make the development accessible for all modes of transport, including pedestrians, in the interests of highway safety. I am also satisfied that the works themselves would not be detrimental to highway safety. The appellant has discussed the proposal with the local highway authority and is satisfied that the works required to deliver the scheme are within the public highway. The Council, in its role as planning and highway authority, has provided no information to the contrary. Whilst a number of interested parties have queried whether the works would require the use of private land no firm evidence is before me that would lead me to conclude that the proposals would have no prospect of being delivered, should a Grampian condition be imposed. Therefore, having regard to advice relating to Grampian conditions within the PPG<sup>14</sup>, I am satisfied that it would be appropriate to impose a condition to secure the off-site highway works, should the SoS be minded to allow the appeal.
165. Also for reasons of highway safety, conditions would be necessary to ensure the implementation of the proposed site access works and the provision of parking and turning areas to serve dwellings within the site.
166. In the interests of preventing flood risk or the pollution of nearby water-courses, including the Percuil River, which forms part of the SAC, a condition is required to ensure that a scheme to discharge surface water drainage is implemented in accordance with details that have first been submitted to and approved by the Local Planning Authority. A construction method statement is also required, covering a number of matters including; parking and unloading arrangements, wheel washing facilities and measures to control the emission of

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<sup>14</sup> Paragraph: 009. Reference ID: 21a-009-20140306



dust and dirt, all of which are required in the interests of highway safety; measures to control surface water run-off during construction to prevent pollution of nearby water courses and the SAC; details of site security hoardings which are required in the interests of visual amenity; and details of the hours of operation, required to protect the living conditions of adjacent residents.

*s.106 Agreement*

167. A signed and executed s.106 agreement was submitted on the day of the Hearing. The obligations would require the provision of 10 affordable dwellings; 7 affordable rented properties and 3 shared ownership or intermediate homes for sale. The obligations also provide detailed arrangements to ensure that the dwellings are let and/or purchased by those who meet the detailed qualifying criteria as set out within the agreement. In addition, the agreement includes an obligation on the owner to provide and maintain an area of on-site public open space, including a local area for play, in line with a specification that would need to be approved in writing by the Council. A further obligation requires a financial contribution of £21,888 towards the construction or extension of education infrastructure at primary or secondary schools or nursery facilities 'within the catchment area of the land'.

168. The obligations in relation to affordable housing are directly related to the appeal proposal, proportionate in scale and kind and would be necessary to make the development acceptable in planning terms, having regard to the established need for affordable housing. Similarly, the on-site public open space, including the local play area, would meet the needs of future residents of the proposal, taking account of the limited alternative facilities within the village, and is therefore related to the needs of the development and necessary to make it acceptable in planning terms. I am also satisfied that the scale of the proposed public open space, as shown on the submitted plans, is commensurate with the scale of the proposed development. In view of the above, the obligations in respect of affordable housing and on-site public open space would comply with the requirements of regulations 122 and 123 of the CIL Regulations and paragraph 204 of the NPPF.

169. The agreement does not specify any particular project upon which the education contribution would be spent and there is a lack of clarity within the agreement as to the geographical area within which the contribution would be spent; the term 'within the catchment of the Land' being undefined. Therefore, as acknowledged by the Council at the Hearing, the proposed contribution would amount to general 'pooled' funding towards education infrastructure.

170. Under the terms of Regulation 123(3) of the CIL Regulations a planning obligation may not constitute a reason for granting planning permission if it provides for the provision of an infrastructure project, or type of infrastructure, and five or more obligations have previously been entered into that relate to planning permissions granted within the area of the charging authority, and provide funding or provision for that project or type of infrastructure, since 06 April 2010. The Council confirmed at the Hearing that it is likely that more than five obligations have been entered into with regard to education provision within that period. As such, the proposed contribution is not a matter that can be taken into account as a reason for granting planning permission.

171. In any event, the consultation response from the Council's children's services department identified that St Mawes CP Primary School was operating at 86% capacity and Roseland Community School at 93%. Consequently, the evidence presented would suggest that both primary and secondary schools have the capacity to accommodate the modest increase in pupil numbers that would arise from the proposed development and I am not satisfied that the contribution is necessary to make the development acceptable in planning terms.

### **Inspector's Conclusions**

172. The following conclusions are based on the oral and written evidence presented to the Hearing as well as the accompanied and unaccompanied visits made to the site and the surroundings. The numbers in square brackets [] refer back to earlier paragraph numbers.

#### *Definition of Main Issues*

173. The site is situated within the Cornwall AONB. It is common ground between the parties that the proposal would constitute 'major development' within the AONB for the purposes of paragraph 116 of the NPPF. The NPPF does not define major development in the context of paragraph 116 and whether a particular proposal falls within that description is a matter for the decision maker to determine on the facts of the given case.
174. Importing the definition of major development from the Town and Country Planning (Development Management Procedure) (England) Order 2010 has been held by the courts to be inappropriate<sup>15</sup>. The Secretary of State also considered that a proposal of 39 dwellings did not form major development<sup>16</sup>. However, that decision was taken on the merits of the case. In my view, matters of scale, character and the context of the location are relevant factors to consider. The site is on the edge of a small village within a relatively sparsely populated rural area on the Roseland Peninsula. It would represent a considerable addition to the village in terms of scale and the likely increase in population. Consequently, from the evidence before me, it would constitute major development in the context of the location and I see no reason to depart from the views of the Council and appellant in this regard.
175. In essence, the Council and the appellant dispute the relative weight that should be given to the contribution that the proposal would make to the supply of housing and affordable housing; the likely effect of the proposal on the character and appearance of the AONB; whether alternative sites are available that would meet local needs in a way that would result in less harm to the character and appearance of the AONB; and whether the proposal would represent sustainable development. In addition, for the reasons set out in the procedural note at the beginning of my report, I have identified the effect on the SAC and pSPA as a main issue in the determination of the appeal.

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<sup>15</sup> R (on the application of Aston) v Secretary of State for Communities and Local Government [2013] EWHC 1936 and R (on the application of the Forge Field Society, Martin Barraud and Robert Rees) v Sevenoaks District Council [2014] EWHC 1895 (Admin)

<sup>16</sup> APP/F1610/A/12/2173305

176. The Council, in its position as the local planning and highway authority, is satisfied that its concerns regarding highway safety could be adequately addressed through the implementation of off-site works, as shown on the revised highway plan [35]. Accordingly, the Council did not defend the highway safety reason for refusal at the appeal. Notwithstanding that point, a number of interested parties have expressed concerns regarding the proposed off-site highway works as a result of the lack of consultation; the likely effect on highway safety and traffic conditions; and the question of whether third party land would be required to implement the proposals.
177. For the reasons given in the procedural paragraphs at the outset of my report, I have taken account of the revised plans in relation to off-site highway works in reaching my recommendation and, as set out in my assessment of proposed conditions, I consider that a 'Grampian' style condition could be imposed to secure the proposed works, having regard to the information before me. Thus, whilst I am mindful of the concerns expressed by interested parties I have not identified the likely effects upon highway safety as a main issue in the determination of this appeal.
178. The Council are also satisfied that the submitted s.106 obligation is sufficient to overcome their third reason for refusal and it is common ground between the main parties that the land does not fall within the definition of BMV agricultural land [35]. No evidence has been submitted that would lead me to doubt the veracity of the agricultural land assessment that has been carried out by the appellant in that regard.
179. Therefore, based on the decision notice, the SCG, the statements submitted by the main parties and other representations, I have identified the following as the main issues on which the Secretary of State needs to be informed for the purpose of his consideration of the appeal:
1. The weight that should be afforded to the benefits of the proposal with regard to housing provision, including affordable housing;
  2. The effect of the proposal on the character and appearance of the Cornwall AONB;
  3. Whether the need for the proposal could be met through the delivery of alternative sites that would have less harm on the character and appearance of the AONB;
  4. The effect of the proposed development on the Fal and Helford Special Area of Conservation (SAC) and the Falmouth Bay to St Austell Bay potential Special Protection Area (pSPA); and
  5. Whether the proposal would represent sustainable development.

## **Planning Policy Context**

### *Carrick District Wide Local Area Plan (1998)*

180. Paragraph 215 of the NPPF identifies that weight can be attributed to relevant policies in existing plans that were adopted prior to 2004, as is the case for the LP, according to the degree of consistency with the NPPF. The LP was adopted in 1998 and is time expired. However, the relevant saved policies still constitute

the statutory development plan for the area and should therefore be afforded weight according to their degree of consistency with the NPPF.

181. The Council accepts that it cannot demonstrate a five-year supply of deliverable housing land in the absence of an OAN that has been tested through examination [35 & 44]. The examination into the ELP has commenced but the examining Inspector's preliminary findings indicate that further work is required with regard to the evidence base that underpins the Council's estimate of housing need. At the time of writing, the timetable for that work to be undertaken is not clear. Consequently, in relation to paragraph 49 of the Framework, relevant policies for the supply of housing should not be considered up-to-date [35].
182. Policy 6H of the LP is a relevant policy for the supply of housing, relating to local needs housing in rural areas, beyond established settlement boundaries. In the absence of a five-year supply of deliverable housing land, it is highly likely that further development, beyond established settlement boundaries will be required in order to meet the housing needs of the housing market area. The effect of restraining new development to land within settlement boundaries would be to restrict the supply of housing and prevent local needs being fulfilled. Those boundaries were drawn a considerable time ago, prior to the adoption of the LP to reflect the housing need as it existed at the time. They are unlikely to reflect current housing needs. Therefore, policy 6E of the LP, which identifies settlement boundaries for villages, including St Just in Roseland, should not be considered up to date.
183. A logical consequence of the above is that policy 6H must also be considered out of date. The effect of the policy is to consider new housing proposals beyond settlement boundaries as 'exceptional' housing schemes. For the reasons given, further housing is likely to be required beyond settlement boundaries in order to meet housing needs within the housing market area. If applied to all housing schemes beyond settlement boundaries, the effect of policy 6H would be to restrict the supply of housing, other than affordable housing to meet a specific local need. That would restrain the supply of housing and the policy should not be considered up-to-date.
184. The definition of a rural exception site within the Framework is: *small sites used for affordable housing in perpetuity where sites would not normally be used for housing*. In this case, the Council have referred to Policy 6H within the reason for refusal on the basis that the proposal should be considered as an exceptions site, based upon their assessment that the site would not normally be used for housing. That assessment was based upon the settlement boundaries set out within policy 6E of the LP. Those policies are no longer up-to-date.
185. In the absence of settlement boundaries based on an up to date assessment of housing needs, it appears to me that there is no sound local basis for determining whether a site should be considered as an 'exceptions' site for the purposes of decision making. Whilst paragraph 54 of the NPPF provides support for the principle of rural exception sites for affordable housing, identification of what constitutes an exceptions site could only properly be provided through an up-to-date local plan which identifies where land would or would not normally be used for housing. In the absence of up-to-date housing policies I am not satisfied that the proposal should be considered as an exceptions site. Accordingly, I attach little weight to saved policy 6H and have considered the

proposal on its merits in terms of the benefits to local housing supply from both market and affordable housing.

186. Policy 3A of the LP is a general policy of countryside protection that applies to all land defined as countryside. The policy states that planning permission will be refused for development that would have a significant adverse impact upon the countryside in terms of biodiversity, beauty, diversity of landscape, the character and setting of settlements, wealth of natural resources, nature conservation, and agricultural, historic and recreational value. The policy does not expressly prohibit residential development in the countryside and dictates that planning permission should be refused where it would result in a significant adverse impact. Therefore, a residential development that would have a less than significant impact could, under the terms of the policy, be permissible. In that sense, it is questionable whether it is a relevant policy for the supply of housing.
187. However, regardless of that point, the expression within the policy dictating that planning permission will be refused where a significant impact occurs is not fully in accordance with the balancing exercise required by the NPPF in pursuit of sustainable development, as set out at paragraphs 6, 7, 8 and 14. That process requires a balance of a number of factors, taking account of the policies of the Framework, taken as a whole. To my mind, the requirement that permission must be refused where a significant impact on the countryside occurs does not allow for other possible benefits, such as social or economic factors to be taken into account in the planning balance. Accordingly, I find that the terms of policy 3A are not fully consistent with the NPPF and consider that the policy should be afforded reduced weight as a result.
188. Unlike saved policy 3A of the LP, which applies to all areas defined as countryside, the requirements of saved policy 3D are more specific in seeking to protect the setting of towns and villages, protect important views into and out of settlements, the protection of important green spaces, and to preserve important green gaps between settlements in order to retain their individual identities. Therefore, the policy does not specifically seek to restrict housing development but aims to protect features or areas deemed to have a positive impact upon the local environment. In that sense, the policy should not be considered as a policy relevant to the supply of housing. Moreover, the aims of the policy are broadly consistent with those of the NPPF, particularly one of the core principles at paragraph 17, which is that planning should take account of the different roles and character of different areas and recognise the intrinsic value of the countryside. Accordingly, despite its age, saved policy 3D of the LP remains consistent with national policy and should be afforded weight accordingly.
189. Saved policy 40 of the LP sets criteria in relation to development within the AONB. The overarching aim of the policy is to ensure that development respects the distinctive character of the area. Those aims are consistent with paragraph 115 of the NPPF. However, the terms of the saved policy do not reflect the detailed criteria for assessing proposals for major development within AONBs, as set out at paragraph 116 of the NPPF. Therefore, whilst it remains appropriate to give some weight to saved policy 40 due to the broad compliance of its objectives with the NPPF, the detailed requirements of paragraph 116 of the NPPF represent up-to-date national policy and are therefore a significant material consideration in the determination of this appeal.

190. Saved policies 10B and 13K of the LP set the context for the provision of public open space and general infrastructure to meet the needs of new development. I am satisfied that these policies remain consistent with the aims of the NPPF which identifies, at paragraph 17, that planning should deliver sufficient community and cultural facilities and services to meet local needs. Saved policy 13L of the LP seeks to ensure that development within settlement boundaries is fully accessible by a range of transport modes, including walking and cycling, and to ensure that development does not lead to an unacceptable impact upon the local highway network. That policy is broadly consistent with the need to promote sustainable transport, and the need to secure safe and suitable access for all people, as set out at section 4 of the NPPF.
191. However, the recognition within the NPPF that opportunities to maximise sustainable transport solutions will vary from urban to rural areas is not reflected within saved policy 13L. In addition, the NPPF dictates that applications should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. That approach to decision taking sets a more severe test than saved policy 13L which states that planning permission will not be granted for development which creates an unacceptable impact upon the local highway network. Thus, the weight that should be attached to saved policy 13L is limited by virtue of its inconsistency with up-to-date national policy.

#### *Emerging Policies*

192. It is common ground between the main parties that limited weight should be attached to policies within the ELP [35]. The Council has not sought to rely upon any emerging policies as part of its case. Whilst the ELP has reached a relatively advanced stage, the preliminary findings of the examining Inspector are that he would not be in a position to recommend adoption of the ELP without the Council undertaking further work and consulting on various possible changes to the plan [24]. He also identified that possible changes to make the plan sound may also affect policies for the CNAs, including the Truro and Roseland CNA. Therefore, the Inspector postponed hearings in July 2015 that were intended to cover policies for the CNAs and a number of other matters.
193. In view of the above, I concur with the views of the main parties that limited weight can be afforded to emerging policies within the ELP.

#### *The Roseland Neighbourhood Development Plan*

194. Subject to a number of minor modifications the report of the Independent Examiner concluded that the RNDP meets the 'basic conditions' as set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990 (the Act), and should proceed to referendum. The referendum was held on 20 August 2015 and 74.89% of those voting considered that the RNDP should be used by Cornwall Council to help it determine planning applications in the neighbourhood area. Thus, the RNDP has been through six of the seven stages in preparation, the remaining step being the 'making' of the plan by the Council. Clearly, a substantial amount of work and community involvement has been required to get the RNDP to its present position.
195. With reference to paragraph 216 of the NPPF, the RNDP has reached an advanced stage and the Independent Examiner has concluded that it has regard to national policies and advice contained in guidance issued by the SoS; that

being one of the basic conditions. The Independent Examiner made clear in her report that she had scrutinised the public consultation process and taken account of representations made. Those responses included a letter of objection submitted by Mr Russell Dodge of Business Location Services Ltd, which raised concerns that the RNDP failed to meet the need for market and affordable homes, in the context of the requirements of section 6 of the NPPF<sup>17</sup>.

196. Therefore, the advanced stage in preparation, the fact that the RNDP has been subjected to independent examination and a referendum are matters that indicate that substantial weight should be apportioned to emerging policies. However, I am also mindful of the High Court judgement in the case of *Woodcock Holdings Limited* with particular regard to paragraph 49 of the NPPF and the question of whether emerging policies within NPs should be considered as not up-to-date in the absence of a five-year housing land supply [88]. The judgement made clear that the requirements of paragraph 49 apply to policies in adopted and emerging plans. It also made clear that housing supply policies in NPs are not exempted from the effect of paragraph 49 and the presumption in favour of paragraph 14 of the NPPF.
197. In this case, the statutory development plan for the area is made up of the saved policies of the LP. In assessing whether the RNDP met the basic conditions, the Independent Examiner confirmed that the RNDP was in conformity with the saved policies of the LP and that it is 'mindful of the direction of travel' of policies in the ELP. For the reasons set out above, the housing policies of the LP are not up-to-date and little weight can be given to the policies of the ELP with regard to housing provision. The Council cannot demonstrate a five year supply of housing land, as required by paragraph 47 of the NPPF, and the OAN for housing within the housing market area, as put forward within the ELP, was not considered soundly based by the examining Inspector. Consequently, at a strategic level, the Council cannot demonstrate a five-year supply of deliverable housing sites.
198. The RNDP does not seek to quantify the housing needs of the area or allocate specific sites to meet that need [48 & 88]. Consequently, the policies of the plan are not formulated on the basis of an understanding of the OAN for the housing market area or the specific housing needs of the Roseland, in numerical terms. In the absence of an understanding of the needs of the area, it is not possible to demonstrate a five-year supply of housing sites. Thus, having regard to the judgement in the *Woodcock Holdings Limited* case, and paragraph 49 of the NPPF, relevant policies for the supply of housing within the RNDP cannot be considered up-to-date.
199. That conclusion applies to emerging housing policies HO1 to HO8, all of which are relevant policies for the supply of housing. It also applies to policies GP2 and GP3. Policy GP2 sets an indicative maximum size of 5 units for residential development and is therefore relevant to the supply of housing in that it applies a presumption against development of a scale beyond that indicative level. Without an understanding of the housing needs of the area it is not clear, to my mind, whether those needs could be met through delivery on sites of 5 units or fewer. Such a restriction could have the potential to restrict the supply of

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<sup>17</sup> Appendix 6 to the Summary of the Statement of Case of Mr Laurence Philip Osborne

housing and, consequently, that element of policy GP2 is clearly a relevant policy for the supply of housing. Policy GP3 seeks to restrict development within defined settlement boundaries, stating that development outside those boundaries will be treated as an exception. For the same reasons as given in relation to saved policy 3A of the LP, such an approach has the potential to restrict the supply of housing beyond settlement boundaries and the policy is therefore relevant to the supply of housing.

200. I appreciate that such a conclusion is likely to be greeted with dismay by those involved in the lengthy process of developing the RNDP, particularly bearing in mind the recent report of the Independent Examiner. However, in that regard, I am conscious of the limitations in the scope of neighbourhood plan examinations, as summarised in the *Woodcock Holdings Limited* judgement (paragraphs 61 to 63). In particular, although a NP may include policies on the location and use of land for housing, the body responsible for a NP does not have the function of preparing strategic policies to meet the assessed development needs across a local plan area. The Examiner is not obliged to consider the wider ramifications of draft policies on the delivery of housing and the limited role of an Examiner to have regard to national policy when considering a draft policy applicable to a small geographical area should not be confused with the greater level of scrutiny required of an Inspector when considering if a draft local plan meets the tests of soundness. Further, whereas a local plan needs to be 'consistent' with national policy, an Examiner has the discretion to determine whether it is appropriate for a neighbourhood plan to proceed, 'having regard to' national policy. In addition, an Examiner does not have to consider whether a NP is justified or supported by a proportionate evidence base, as would be required of a local plan by virtue of paragraph 182 of the NPPF.
201. Therefore, the Independent Examination had a specific remit to determine whether the RNDP met the basic conditions. However, the terms of paragraph 49 of the NPPF are clear. The advanced stage of the RNDP does not alter those requirements or negate the need to apply them to the housing policies of the RNDP. The inability to demonstrate a five-year supply of housing sites, must lead to a conclusion that the relevant policies for the supply of housing are not up-to-date, having regard to established case law.
202. However, the fact that policies are not up-to-date does not, of itself, dictate the degree of weight that should be attached to them. The *Woodcock Holdings Limited* judgement (paragraphs 107 & 108) identifies that the decision maker must make a judgement as to the weight to be attached by assessing the reasons why the policies are out of date and other relevant circumstances. In this case, the LP, upon which the RNDP was assessed for the purposes of meeting the 'basic conditions', is significantly out of date [68]. It is time expired and effectively silent on the issue of the housing requirement for the area.
203. Further work is required on the ELP following the findings of the examining Inspector. As a result, the EiP has been suspended and hearing sessions into emerging policies, including policy PP6 relating to the Truro and Roseland CNA have not taken place. Policy PP6 identified a need for 900 dwellings within the CNA, beyond Truro, up to 2030. However, the examining Inspector noted that further work on the plan may have consequences for emerging policies for CNAs. Therefore, there can be no certainty that the housing numbers put forward would remain as presently suggested.



204. In view of the above, the housing policies within the RNDP are not formulated on the basis of an understanding of the strategic needs of the area, or an assessment of the specific housing needs of the Roseland Peninsula. Affordable housing is identified as a priority within the RNDP but the plan does not seek to quantify the need for affordable or market housing. Consequently, to my mind, there can be little certainty that the relevant housing policies contained within the RNDP will deliver sufficient housing to meet the needs of the area over the period of the plan. That is a factor that substantially limits the weight that should be afforded to the relevant housing policies, taking into account the requirements of section 6 of the NPPF, including paragraph 47 which seeks to boost significantly the supply of housing.
205. I am mindful that the objectives of the RNDP, set out at paragraph E9.3, are multi-faceted, including a desire to conserve and sustain the character and beauty of Roseland's landscape and the distinctive character of its villages and hamlets. However, meeting future housing needs is a key aspect of the balanced approach to sustainable development, set out at paragraph 7 of the NPPF. The absence of a full understanding of the housing needs of the area raises the possibility that the housing policies of the RNDP may result in a level of delivery that would fail to meet the needs of future generations. Such an approach would not reflect the aims of the NPPF, taken as a whole.
206. Therefore, in relation to paragraph 216 of the NPPF, the RNDP is well advanced. However, its housing policies should not be considered up-to-date in the absence of a five-year supply of deliverable housing sites. For the reasons given, taking account of conformity with the policies of the NPPF, as a whole, I conclude that little weight should be afforded to the relevant housing policies of the RNDP.
207. The RNDP contains a number of policies that should not be considered as policies relevant to the supply of housing. A number of those policies are of relevance to the current appeal, including policies LA1 (AONB Management Plan), LA2 (Local Landscape Character), LA5 (Biodiversity and Geological Conservation), CV1 (Village Character), SF2 (Sustainable Transport), and GP1 (Sustainable Development). I am satisfied that those policies are consistent with the NPPF and that the Independent Examination enabled any objections to be considered. Accordingly, having regard to paragraph 216, I consider that significant weight should be attached to the non-housing land supply based policies within the RNDP.

***First Main Issue: The weight that should be afforded to the benefits of the proposal with regard to housing provision, including affordable housing***

208. At a strategic level there is no up-to-date assessment of the OAN for the area that has been tested through examination and no local assessment of housing need was undertaken in relation to the RNDP [35]. I have not been referred to any survey or needs assessment at parish level relating to the specific needs of St Just in Roseland in terms of affordable housing. Therefore, on the evidence presented, it is difficult to conclude with any precision as to the exact nature of housing need within the village in terms of overall quantum, or the type and tenure requirements of those in need of housing.
209. Notwithstanding that point, the provision of affordable housing is a key priority of the Council, as identified within the SOCG [35]. In his preliminary findings

regarding the ELP, the Examining Inspector noted that the total affordable housing need identified in the SHMA was 30,912 households. He also noted that there was broad acceptance that the level of need had been adequately identified. In order to address that need, including the existing backlog, would require 2,240 affordable units to be delivered in each year of the plan; equating to most of the annual housing requirement in the plan.

210. The Examining Inspector concluded that expected delivery over the plan period would be less than the 22,000 units that was projected by the Council, resulting in a substantial gap between delivery and overall need. Consequently, he recommended that the Council undertake further work on the scope for narrowing the gap between identified need and expected delivery. Whilst the outcome of that process is unknown, it is clear that there is substantial need for affordable housing across the County. That need is unlikely to be met in full over the period of the ELP.
211. At a local level, there are 63 applicants on the Council's HomeChoice register with a local connection to St Just in Roseland [51, 132 & 146]. 28 of those have identified St Just as one of their preferred locations, with 8 identifying the village as their first choice. The majority of those have a need for affordable rented homes. The Council accept that there is a defined need for affordable homes within the village on the basis of the HomeChoice register [44 & 147].
212. I note the concern of St Just in Roseland Parish Council regarding the validity of the data on the register as a means of calculating the actual level of local need [132]. However, the fact that some of those on the register are already housed in accommodation elsewhere does not discount the fact that they may have a local connection, such as family or work related associations, that would support their need to live within the village. I am also mindful that the stated preferences of those on the register may be influenced by the perceived likelihood of obtaining an affordable unit in a specific location, as suggested by the appellant at the Hearing. For example, someone seeking a dwelling may be more likely to select one of the larger towns, such as Truro, as a preferred location on the basis that more dwellings are likely to be available in such a location, as opposed to St Just, where future supply may be limited.
213. On the limited information presented it is difficult to gain a complete understanding of the requirements and intentions of those with an identified local connection to St Just. However, Council's affordable housing team considers that the identified local need is sufficient to support the amount and tenure of affordable housing put forward with the application [146-149]. On the basis of the information before me, I concur with that view. The 10 units of affordable housing proposed would be capable of meeting the needs of those identified within the HomeChoice register. In the context of that local need, the significant need for affordable housing at a strategic level, and the requirements of paragraphs 7, 17, 47 and 50 of the NPPF, the proposed delivery of affordable housing is a positive factor to which substantial weight should be attached. The need to build more homes, and the benefits of housing provision to the rural economy, has also been recognised within recent Government publications; Fixing the Foundations and Towards a One Nation Economy [91-93].
214. In addition to the demonstrable need for affordable dwellings, the Council cannot demonstrate a five-year supply of housing, as required by paragraph 49

of the Framework [35]. The Framework aims to boost significantly the supply of housing and deliver a wide choice of high quality homes based on the type, tenure and range of housing that is required in particular locations. The provision of market housing would contribute towards meeting the housing needs of the area.

215. The proposal to subsidise affordable housing with an element of on-site market housing would be contrary the provisions of saved policy 6H of the LP and policy HO4 of the RNDP, both of which seek 100% provision of affordable housing on 'exceptions' sites. However, for the reasons given above, those policies should not be considered up-to-date and I am not satisfied that the site should be considered as an exceptions site in the absence of a settlement boundary that reflects a current understanding of housing need. Consequently, little weight should be given to those policies. Similarly, little weight should be given to saved policy 3A of the LP and policy GP3 of the RNDP with regard to the definition of settlement boundaries in the absence of a demonstrable five-year supply of deliverable housing sites. Thus, the fact that the proposal would sit outside settlement boundaries identified in the LP and RNDP is not a matter "per se" that weighs against the proposal to any significant degree.

216. In any event, paragraph 54 of the NPPF is supportive of the principle of allowing market housing where it would facilitate the provision of affordable units. The appellant's submissions regarding the viability of the site and the proportion of market housing required to support the delivery of 10 affordable units have not been challenged by any evidence presented by the Council or other parties. In the absence of any contrary evidence, I am satisfied that the presence of 8 market units would be necessary to facilitate the proposed level of affordable housing on the site.

217. Therefore, the Council cannot demonstrate a five-year supply of housing and there is a clear need for housing within the housing market area, including an acute need for affordable housing. At the local level there is an identified need for affordable housing within St Just in Roseland. The NPPF aims to boost significantly the supply of housing and to deliver a wide choice of high quality homes of a size, type and tenure to reflect local demand. Providing a supply of housing to meet the needs of present and future generations is a key element of the social role of sustainable development, as set out at paragraph 7 of the NPPF. Therefore, the benefits to the supply of housing represent a significant material consideration in favour of the proposed development.

***Second Main Issue: The effect of the proposal on the character and appearance of the Cornwall AONB***

218. The site is within the South Coast Western area of the Cornwall AONB, within the Roseland Coast to Porthpean section, adjacent to the Fal Ria. At a national level, the country is divided into a number of character areas, as defined in Natural England's Character Map of England. The appeal site falls within the Cornish Killas character area; a large area covering most of Cornwall. At a more local scale, the site falls within landscape character area LCA40 – Gerrans, Veryan and Mevagissey Bays – as defined within the Cornwall and Isles of Scilly Landscape Character Study.

219. Extracts from that study were not provided at the appeal but a summary of the essential characteristics of LCA40 was contained within the appellant's LVIA,

as submitted with the planning application<sup>18</sup>. That accurately describes the site as falling within a plateau behind the coast, intersected by small streams and valleys that flow to the sea in the south and the River Fal to the north. The area is a medieval and post medieval landscape of enclosed land, with variable and irregular field patterns, with a mixture of arable and pastoral farming and areas of parkland landscape. In most cases, field boundaries are enclosed by Cornish hedges. The settlement pattern is dispersed, with small farmsteads and medieval hamlets.

220. Although the site itself is described as part of an area of post medieval farmland the LVIA confirms that the majority of land around the site is of medieval origin and that the historic character of the area is reflected in its contemporary form, particularly noting the presence of winding lanes and roads, enclosed fields, separated by mature hedgerows and the prevailing settlement pattern.
221. I concur with that view and consider that the site contributes positively to the established landscape character as a result of its agricultural use and the presence of established hedgerows around its perimeter, including the steep Cornish hedge which forms an abrupt boundary running alongside the A3078. Whilst sections of hedgerow vegetation have been removed following storm damage, the steeply sided bank and remaining vegetation continue to provide a strong sense of enclosure on the roadside immediately to the east and north-east of St Just. In combination with similar means of enclosure on the opposite side of the carriageway, the bank and hedgerow create a narrow, winding lane that is typical of the landscape in this part of the peninsula.
222. The effect of this sense of enclosure is to provide a very clear definition between the urban form of the village and the rural character of the surrounding countryside. As one passes the appeal site there is a strong sense that the village has been left behind and the landscape becomes rural in character. Furthermore, the sense of enclosure and winding nature of the road creates a clear visual and physical break between St Just and the nearby hamlet of Trethewell to the north east. Although the two settlements are in close proximity, the alignment of the road, the local topography and the sense of enclosure along the highway are such that each retains its individual character and identity. The character of Trethewell as a small independent hamlet is not influenced by the proximity of the larger village of St Just and the dispersed pattern of settlement and separate identity of individual settlements is a feature of the landscape, as described above.
223. Thus, the site displays a number of characteristics that are typical of local landscape character. In that sense, it has a positive effect on the character of the area. The proposed scheme would significantly alter the existing character of the site as a result of the extension of the village in an easterly direction onto undeveloped farmland. Clearly, the construction of housing on a presently undeveloped field will result in a significant change to the landscape at a local level. Enclosed farmland is a typical feature of this part of the AONB and, in that sense, the site forms part of the intrinsic beauty of the wider landscape. The

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<sup>18</sup> Paragraphs 2.3.2 – 2.3.3, LVIA prepared by CSA Architects, dated March 2013, reference M102.D.LVIA.01

agricultural land has value, for its own sake, as part of the wider landscape but also plays a role in the setting of St Just and in providing a sense of separation between the village and Trethewell. Consequently, I consider that the loss of the agricultural field would have a harmful effect upon the character of this part of the AONB.

224. In addition to the loss of agricultural land, the proposal would involve substantial alterations to the existing boundary with the A3078 in order to create the required visibility splays either side of the point of access. Those works would involve the removal of approximately 120 metres of the Cornish hedge, including the retaining structure and associated vegetation, around a curve in the road along the frontage of the site. A new Cornish hedge would be created behind the proposed visibility splays and the contours of the land would be re-graded on either side of the access road.

225. To my mind, this would result in a significant and harmful change in the character of the local landscape at an important point on the cusp between the village and surrounding countryside. The wide, bell-mouth, junction with its curved, geometric, profile would be at odds with the enclosed, narrow and winding profile of the existing lane that is a characteristic feature of the local landscape. The attempt to soften the appearance of the junction through the creation of a new Cornish hedge would not replace the current sense of enclosure or disguise the substantial level of engineering that would be required to create the required visibility splays and create an appropriate gradient for the access road into the site.

226. The required degree of alteration would appear as a highly engineered solution that would fail to reflect the strongly rural character of the existing lane [42 & 113]. Neither would it reflect the character of the adjacent village; in my view, the proposed access arrangement would appear as a heavily urban solution that would be out of character with the rural nature of the locality. I have noted the photographic images of highway design elsewhere on the Peninsula provided by the appellant<sup>19</sup>. However, none of the examples provided are comparable to the proposed solution at the appeal site in terms of the scale of engineering operations required to widen the carriageway, straighten its alignment in order to create visibility splays and the removal of hedgerows. In my view, St Just retains a strongly rural character and the level of work required to create the proposed access would be at odds with the character of the village and the wider character of the AONB.

227. Thus, the development of the site would have a harmful effect in landscape terms, albeit that the change would affect a relatively small and localised part of the AONB. When assessing the effect of landscape change on the AONB, the LVIA describes the magnitude of change as negligible on the basis that the development will result in the minor loss of a single field on the edge of the settlement and that the overall fabric and setting of the AONB will not experience any major alterations to any of its key characteristics [59-63].

228. In the wider context of the AONB, the loss of a single field would have a limited impact and I acknowledge that the landscape effects would be mitigated to a degree by virtue of the fact that the proposed development would be closely

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<sup>19</sup> Appendix 19 to the Statement of Case of Mr Laurence Philip Osborne

related to the built form of the existing settlement [60]. However, as set out, the proposal would cause harm to a number of features that form an inherent part of the character of this part of the AONB, namely the enclosed, narrow and winding lane; the Cornish hedge; and the separation between individual settlements. Whilst the effect would be to a specific local area it would, nonetheless, cause significant harm to the intrinsic character of that area. Therefore, in my view, the landscape harm caused by the proposal would be substantially greater than suggested within the LVIA.

229. The visual effects of the proposal would be limited to the local area, as identified within the Landscape and Visual Statement of Case submitted on behalf of the appellant<sup>20</sup> [59]. Due to the prevailing topography and enclosed nature of roads and footpaths, wider views would be limited. In the local context, views of the proposed dwellings from outside the confines of the site would be limited by virtue of their position on the plateau and the screening afforded by retained and proposed trees and hedgerows. The Council has not raised any objections to the individual design of the dwellings and I concur that they would reflect the established character of the adjacent village in terms of scale and materials.
230. However, the proposed alterations to the access would be extremely prominent when viewed from the A3078, a well used highway passing the front of the site. Those alterations would be harmful to the local landscape, for the reasons set out above, and would significantly alter the character of the transition between the village and surrounding countryside. In my view, the unsympathetic alterations would cause harm to the setting of the village.
231. Furthermore, the works to re-align the bend would stretch for approximately 120 metres along the road frontage, almost half of the distance between the south-east edge of St Just and the south-west edge of Trethewell [42]. Thus, the urbanising effect of the highway alterations would extend significantly into the countryside. The existing enclosed and winding lane has the visual effect of segregating the two settlements, helping to retain the individual identity of Trethewell as a hamlet distinct from the larger village of St Just. In contrast the proposal to widen the highway across a significant portion of the distance between the two settlements would have the visual effect of bringing the two settlements much closer together, creating a degree of coalescence that would erode the individuality of each settlement. Although the visual effects would be limited to the local area they would be prominent from the A3078 as it passes the site and, as such, the adverse visual effects of the proposal would be noticed by a wide range of receptors, as they travel past the site, be they local residents of less frequent visitors.
232. In view of the above, the proposal would cause harm to the character and appearance of the area and the landscape of the AONB. That harm would not be fully mitigated by the proposed measures incorporated within the scheme. Consequently, the proposal would be contrary to the requirements of saved policy 3D of the LP which states that planning permission will not be granted for development where it has a significant adverse effect upon a green foreground or background that is important to the character of a village or an important green gap between two settlements that are close to each other and in danger of losing

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<sup>20</sup> Appendix IM1, Landscape and Visual Statement of Case of Ivor Matthew

their individual identity. It would also contravene saved policy 40 of the LP by virtue of the harm to local landscape features and patterns of settlement.

233. Furthermore, the proposal would be contrary to policy LA1 of the RNDP which states that proposals should be appropriately sited to avoid damage to the natural beauty, character and special qualities of the AONB and policy LA2 which requires proposals to have regard to local character and reflect the identity of local surroundings. It would also fail to comply with the aims of policy PD8 of the AONB Management Plan with regard to the effect on landscape character and sensitivity.

***Third Main Issue: Whether the need for the proposal could be met through the delivery of alternative sites that would have less harm on the character and appearance of the AONB***

234. As set out above, I have not been referred to any detailed local housing needs survey and no assessment of local need is provided within the RNDP. The only information presented which provides an indication of local affordable housing need is reference to the Council's Homechoice register which contains 63 applicants with an identified local connection to the Parish. The Council accept that there is a demonstrable need for affordable housing and, in the absence of any substantive information to the contrary, I concur with that view [35, 44 & 147].
235. The entirety of the Roseland Peninsula is located within the AONB. Consequently, if affordable housing is to be provided on the Peninsula to meet the specific need for those with a local connection to St Just in Roseland Parish it would need to be located within the AONB [35]. It is common ground between the main parties that any expansion of St Just or St Mawes – the two largest settlements in St Just in Roseland Parish – would need to be located within the AONB. The appeal site was the only site within St Just that came forward through the SHLAA process, although, I accept the Council's position that inclusion within a SHLAA is not necessarily indicative that a site is suitable to be allocated for housing.
236. The Council considers that the preferred location for meeting local affordable housing need is in St Mawes, on the grounds that it is a larger village with a greater range of shops and services [45]. However, they have not identified any specific sites that would cater for the needs of those with a local connection to the Parish [65].
237. The RNDP does not allocate specific sites to meet local housing need and does not attempt to define that need. In the absence of an assessment of the housing needs of the area it is unclear whether the approach to the delivery of affordable housing within the RNDP would deliver sufficient housing to meet local housing needs and it is not clear if the need identified through the HomeChoice register is capable of being met through the policies of the RNDP.
238. In the absence of any suggested alternative sites the appellant has conducted a high level assessment of the development potential of three broad locations in St Mawes [65]. At the request of the appellant, I observed the three locations on an unaccompanied visit following the accompanied site visit. However, on the information presented, and in the absence of any input from interested parties and statutory consultees, it is difficult to draw any firm conclusions as to the

suitability of the sites for residential development. Consequently, I find that the exercise undertaken by the appellant is not conclusive as to whether alternative sites could accommodate local housing need with less impact upon the AONB. That is not to criticise the appellant; in the absence of any suggested alternative sites it is difficult, within the scope of a planning application for 18 dwellings, to undertake a full and rigorous assessment of all possible alternatives.

239. Therefore, the information presented to the Hearing demonstrates a local need for affordable housing. The proposal would go some way towards meeting that need and the cross-subsidisation of affordable units with market housing has been justified through evidence on financial viability that has not been contested by the Council. No clear evidence has been submitted to demonstrate that the need for affordable housing could be met outside of the AONB or in some other way that would result in less harm to the AONB.

***Fourth Main Issue: The effect of the proposed development on the Fal and Helford Special Area of Conservation (SAC) and the Falmouth Bay to St Austell Bay potential Special Protection Area (pSPA)***

240. The appeal site is within 500m of the SAC and pSPA [49]. The SAC covers over 6000 hectares of coastal habitat, including sea inlets, mud flats, sand flats, lagoons, salt marshes, sea pastures, salt steppes, coastal sand dunes, machair, shingle, sea cliffs and islets. The habitats that are a primary reason for the designation are sandbanks, mudflats, large shallow inlets and bays and Atlantic salt meadows. The species identified as a primary reason for selection of the site is the Shore dock. The pSPA is also a coastal and marine designation, stretching from Falmouth Bay to St Austell. The area includes part of the tidal Helford River and Carrick Roads; an estuarine area situated between Falmouth and St Mawes. The site qualifies as a pSPA because it is used by significant proportions of the British population of Black Throated Divers, Great Northern Divers and the Slavonian Grebe.

241. In line with the requirements of Regulation 61 of the Habitat Regulations before deciding to give permission for a plan or project a competent authority (in this instance the SoS) is required to consider whether the proposal is likely to have a significant effect on any European site, either alone or in combination with other plans or projects, proceeding to an Appropriate Assessment where significant effects cannot be ruled out. Natural England objected to the proposed development on the grounds that insufficient information had been provided to determine whether significant effects were likely [138 & 139]. In particular, they identified the need for an assessment of the recreational impacts arising from the development as a result of increased use of water based activities within the SAC/pSPA, either alone, or in combination with other proposed or existing development. They also requested an assessment of the potential water quality impacts from run-off from the site during and post construction.

242. The Council did not undertake an appropriate assessment prior to determining the application on the basis that they intended to refuse the application and therefore deemed an assessment to be unnecessary [49]. Consequently, the SoS, as the decision maker in relation to the appeal represents the competent authority for the purposes of the Habitat Regulations and the requirement to undertake an appropriate assessment rests with him. Regulation 61(5) of the Habitat Regulations states that, in the light of the conclusions of that



assessment, and subject to regulation 62 (considerations of overriding public interest), the competent authority may only agree to the plan or project after having ascertained that it will not adversely affect the integrity of the European site.

243. Regulation 61(3) of the Habitat Regulations requires the competent authority to consult with the appropriate nature conservation body, in this case Natural England, and have regard to any representations made by them. In that context, the objection by Natural England represents an important material consideration. I concur with the appellant and the Council that it would be possible to impose suitably worded conditions to secure measures that would prevent any pollution as a result of surface water run-off during the construction and post construction phases (suggested conditions 10 and 11) [49 & 75].
244. Furthermore, the number of residents residing within the scheme would be small when compared to the existing population within the Penryn, Falmouth and Truro area within the vicinity of the SAC and pSPA or when compared to the population of the Roseland and the number of visitors to the area. Consequently, any increase in recreational pressure on the designated assets resulting from the development itself is likely to be negligible [75]. In that sense, the proposal, taken individually, would not be likely to have any significant effect on the integrity of the SAC and pSPA.
245. However, the Habitat Regulations also require an assessment of the combined effects with other plans or projects. No other planning applications with regard to residential development within the area have been brought to my attention. As set out above, the RNDP does not propose a specific quantum of residential development and the RNDP Steering Group have stated that the housing policies of the RNDP were made tighter in response to concerns raised by Natural England [111]. In the absence of an understanding of the likely numbers of residential units that are envisaged within the RNDP it is difficult to assess the cumulative effect of the proposal in combination with the aims of that plan. That is not an exercise that has been carried out by either of the main parties.
246. In the wider context, the ELP currently proposes an additional 3,900 dwellings within the Truro and Roseland CNA over the lifetime of the plan up to 2030; 3,000 in Truro and 900 elsewhere within the CNA. That quantum may change following the conclusion of the EiP but, nonetheless, it is clear that the ELP is a plan or project that has potentially significant impacts upon the SAC and pSPA. In his preliminary findings, the Examining Inspector concluded that the evidence base was not sufficient to provide certainty as to the likely effects of development proposed within the plan as a result of recreational pressure on the seven SACs/SPAs within the County. The Council and NE agreed that recreational visitor surveys needed to be undertaken in the summer of 2015 and a detailed mitigation strategy derived from that evidence, including the distance from SACs where development is likely to have in combination effects [76].
247. Therefore, from the interim findings of the Examining Inspector it is clear that the proposed development within the ELP has the potential to have significant, in combination effects on SACs/ SPAs within the area that would need to be mitigated through a strategy that has yet to be determined. That raises the question as to whether the appeal proposal should be assessed 'in combination' with other planned development within the ELP.

248. The rationale for the proposal, as put forward by the appellant, is related to the need for housing within the wider area, and the specific needs for affordable housing in the locality of the appeal site [50, 51, 55, 69, 70, 71 & 89]. On the basis of the HomeChoice register, the appellant concludes that there is a much greater need than would be met by the proposed development [71]. Those circumstances, the appellant contends, are sufficient to demonstrate 'exceptional circumstances' to warrant the approval of the proposal in the context of paragraph 116 of the NPPF [69].
249. If the SoS were to accept that argument, the basis for allowing the proposal would be substantially related to the wider housing needs of the area. In that sense, the proposal, and the planned housing growth within the ELP, would be intended to meet the same end of providing for the housing needs of the area. An approach whereby individual developments were brought forward, and justified, based on the housing needs of the area, in advance of any mitigation strategy identified through the ELP process would run the risk of cumulative harm to the SAC and pSPA as a result of increased recreational pressure. In such circumstances, it appears to me that the need for a mitigation strategy, as identified by the Examining Inspector, applies equally to the proposed development as it does to wider housing growth within the area; the proposal would be an individual component of a wider need to deliver housing growth.
250. Consequently, applying the precautionary principle, I cannot be certain that the proposal, in combination with other plans or projects, would not cause harm to the integrity of the SAC and pSPA. Regulation 61(5) of the Habitats Regulations identifies that the competent authority may only agree to a plan or project after having ascertained that it will not adversely affect the integrity of a European site, subject to regulation 62, regarding considerations of over-riding public interest. That approach is reflected in paragraph 118 of the Framework which advises that planning permission should be refused where significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or compensated for.
251. Any residential development to meet the specific local needs of the parish would be located on the Peninsula and would therefore be in close proximity to the designated assets. Therefore, it is unlikely that the likely harm could be avoided by locating the development elsewhere. Whilst any potential harm resulting from surface water run off could be adequately mitigated through the imposition of conditions, no mechanism is before me that would provide mitigation for the increased recreational pressure, in combination with other plans and projects. It appears likely that a mitigation strategy to off-set the effects of further housing growth will emerge as a result of the ELP process but there are no proposals before me in the current case [76].
252. However, even if no alternative solution exists, I am not satisfied that the provision of a relatively modest level of housing and affordable housing would represent an imperative reason of over-riding public interest, of a social or economic nature, that would outweigh the harm to the SAC/pSPA, having regard to Regulation 62 of the Habitat Regulations. As such, to grant planning permission for the proposed developments would be contrary to the aims of The Habitats Regulations, paragraph 118 of the Framework, and saved policy 3H of the LP.

### ***Fifth Main Issue: Whether the proposal would represent sustainable development***

253. Paragraph 7 of the NPPF identifies three dimensions of sustainable development, based on economic, social and environmental factors [46]. Paragraph 8 identifies that these roles are mutually dependent and should not be considered in isolation. Paragraph 6 of the NPPF identifies that paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development means in practice.
254. The provision of housing to meet future needs is a key element of the social dimension of sustainable development. There is a significant local need for affordable housing within the parish and no evidence has been presented to show that those needs could be met by developing sites that fall outside of the AONB, or in an alternative way within the local area. The market and affordable housing in both proposals would bring benefits in that regard when set against the need for housing in the district and more defined local needs within the parish. I consider that significant weight should be attached to the benefits in that regard.
255. In economic terms, the provision of housing would have short-term benefits to the local economy during the construction phase, in terms of employment and associated spending and longer term economic benefits as a result of increased spending within the local economy. I am also mindful of paragraph 55 of the Framework which states that, where there are smaller settlements, development in one village may support services in nearby villages [73]. To my mind that advice can aptly be applied to St Just due to its close relationship with St Mawes. However, the scale of development proposed is such that the short term and longer term economic benefits would be of a moderate scale.
256. St Just in Roseland does not contain any shops or services, with the exception of the Church and recreation area, and is located on a remote Peninsula with limited access to public transport. Accordingly, future residents would be largely reliant upon the private car. That reliance would not foster a move towards a low carbon economy and would be contrary to the environmental dimension of sustainable development. Notwithstanding that point, I am mindful of advice within the PPG which acknowledges the importance of rural housing and notes that all settlements can play a role in delivering sustainable development in rural areas, with a recognition that sustainable transport solutions will vary between urban and rural areas<sup>21</sup>. The site is relatively close to facilities available within St Mawes and, given the scale of development proposed, environmental effects resulting from travel patterns would not, of themselves, render the proposal unsustainable.
257. For those without a car, the limited alternative means of transport may result in difficulty accessing a full range of services, including health and education. This could affect the social well-being of any residents who rely upon alternative means of travel. However, there is also evidence of a strong community within the area, as shown through the commitment and engagement in producing the RNDP and, in terms of the social role of sustainable development, future residents would have the opportunity to live in an attractive setting as part of a

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<sup>21</sup> Paragraph: 001. Reference ID: 50-001-20140306

village community. Thus, the proposal would have social benefits and disadvantages.

258. In environmental terms, the proposal would cause significant harm to the local landscape and the character and appearance of the AONB and would be likely to result in harm to the SAC and pSPA as a result of increased recreational pressure, in combination with other planned housing growth. Paragraph 115 of the NPPF notes that great weight should be given to conserving AONBs which have the highest status of protection with regard to landscape and scenic beauty. The SAC and pSPA are European designations which attract significant protection through the Habitat Regulations and the requirements of paragraph 118 of the NPPF.

259. Although matters of housing delivery represent a significant material consideration in the determination of the appeal they represent matters of local significance. Any economic benefits would be of a moderate scale. Set against those considerations is the weight to be afforded to the harm to the AONB, the SAC and pSPA; designations of national significance or European significance. I feed these conclusions into the balancing exercise within my overall conclusion below.

### ***Other Matters***

260. For the reasons given within the procedural paragraphs above, I recommend that consideration is given to the revised plan showing off-site highway improvements. The appellant has discussed the proposal with the highway authority and considers that all of the land required to deliver the scheme is within the public highway. In their view, the proposals are therefore capable of being delivered through the imposition of a 'Grampian' condition. The Council, in its remit as local highway authority, has considered the proposals and has raised no objection to the work identified on the revised drawings. Consequently, on the information before me I am satisfied that there is a reasonable prospect that the scheme could be implemented, including the narrowing of the highway, creation of segregated pedestrian pavements, and any associated traffic regulation orders to identify vehicle priority at the proposed single width 'pinch-point'.

261. Having viewed the proposals at my accompanied site visit I am satisfied that the proposed measures would provide adequate segregation between pedestrians and vehicular traffic and adequate visibility for on-coming traffic on the approach to the single lane restriction such that implementation of the scheme would provide for safe pedestrian access without being detrimental to highway safety for other road users. Traffic may occasionally be required to wait within the carriageway to give way to traffic passing through the single width restriction. However, the road is of a rural character and was not heavily trafficked at the time of my visit. The level of traffic would no doubt be significantly greater during the peak of the holiday season. However, whilst drivers may be inconvenienced by slight delays as a result of waiting for on-coming traffic, there is nothing to suggest that this would be detrimental to highway safety. Therefore, I consider that the proposals are acceptable in highway terms.

262. Moreover, if the SoS was not minded to accept the revised plans put forward by the appellant with the appeal, I consider that the original submission would also provide for safe access to the site for vehicles and pedestrians. That original

plan would provide suitable visibility splays for all vehicle users at the site access, a segregated pedestrian footpath alongside the carriageway to connect with the village, and proposals to narrow the width of the highway to a single lane. No road signs were indicated on the plan to indicate which direction of travel would have priority. Nonetheless, I consider that vehicles passing through the restriction would have adequate forward visibility to see on-coming traffic such that vehicles could give way without meeting at the narrowest point of the road. Should priority markings become necessary in future that would be a matter under the control of the local highway authority. Consequently, I am satisfied that the original proposal would provide for safe and suitable access arrangements.

263. Suitably worded conditions could be imposed to secure adequate drainage arrangements in relation to both foul and surface water drainage [164]. Sufficient distance would be maintained between existing and proposed housing to prevent any undue loss of privacy as a result of overlooking, particularly noting that plots 15 to 17 would be bungalows with no rear windows at first floor level facing housing at Bowling Green. Plot 18 would be a dormer bungalow with rear rooflights serving a storage area, landing and bathroom. Consequently, there would be no habitable rooms at first floor level overlooking the existing dwelling at 11 Bowling Green.
264. The appellant has referred to two instances where planning permission has been granted for 'major' residential development within the AONB on the basis that exceptional circumstances had been demonstrated with regard to paragraph 116 of the NPPF [69]. One of those cases was a decision made by myself following an appeal against the refusal of a proposal for 42 dwellings in the village of Mawnan Smith<sup>22</sup>. The other was a decision taken by the Council in relation to a proposed scheme of 60 dwellings in Porthleven<sup>23</sup>. A further appeal decision relating to a development within the County at Mylor Bridge<sup>24</sup> has also been brought to my attention although that proposal did not constitute major development and, therefore, the specific balancing exercise required by paragraph 116 of the NPPF did not apply and that case is not directly comparable to the current appeal.
265. The circumstances relating to the appeal decision in Mawnan Smith were not directly comparable to the proposal before me. My view in that case was that the impact upon the landscape and the AONB would be less harmful than would be the case in respect of the current appeal and the evidence in relation to local housing needs was more detailed and compelling, including an extensive survey of housing needs that preceded the production of the Mawnan Parish Plan. Thus, the balance of landscape harm and benefit of housing supply was not the same as the current proposal. In addition, the effect upon the SAC and pSPA identified above was not a matter under consideration within that case.
266. For the same reasons, I cannot be certain that the scheme approved by the Council in Porthleven is directly comparable to the current case. When assessing the landscape effects of proposals on the AONB and any local benefits in terms of

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<sup>22</sup> Appeal reference APP/D0840/A/14/2223116

<sup>23</sup> Officer report, addendum report, committee minute and decision letter produced at Appendices Lo14, 15 & 16 to the statement of Mr Laurence Philip Osborne

<sup>24</sup> Appeal reference APP/D0840/A/14/221899

housing provision, it appears to me that the balance will be significantly affected by the individual circumstances of the case involved. On the information presented it is extremely difficult to compare residential proposals of differing sizes and layouts set in different villages within different contexts, taking account of the variety and complexity of the landscape within the AONB. Therefore, reference to other decisions within the county has not affected my recommendation in this case which is based on the specific merits of the case before me.

### **Overall Conclusion**

267. The proposal would bring benefits in terms of the provision of housing to meet local needs, both in terms of market and affordable provision. That would have economic and social benefits commensurate with the scale of development proposed. In the absence of an up-to-date development plan, and the lack of identified sites for housing delivery within the RNDP, no alternative method of delivering housing to meet local needs has been identified.
268. The need for affordable housing and the lack of any clear alternative way of delivering that need makes for a finely balanced judgement. That balance is made more difficult in the absence of an understanding of the housing needs of the area at a strategic level, or a more detailed understanding through the development plan of how the settlements on the Roseland Peninsula will be expected to contribute towards meeting those needs. It appears to me that a better understanding of those points will only become possible following the resolution of issues relating to the ELP, including an assessment of the housing needs and delivery expectations for the Truro and Roseland CNA.
269. Therefore, matters of housing delivery represent a significant and important material consideration in the determination of the appeal. However, those matters are of local significance. Set against those considerations is the weight to be afforded to the harm to the AONB, the SAC and the pSPA; designations of national and European significance.
270. Paragraph 115 of the NPPF notes that great weight should be given to conserving the landscape and scenic beauty of AONBs which have the highest status of protection in that regard. Paragraph 116 notes that major developments should only be permitted within AONBs in exceptional circumstances and where it can be demonstrated that they are in the public interest. Whilst there is a pressing need for local housing, and an absence of any clearly identified alternative sites, I have concluded that there would be significant harm to the landscape and scenic beauty of the AONB and environmental harm in terms of likely effects upon the SAC and pSPA. In my view, the harm to assets of national and European significance outweighs the local benefit to the supply of housing.
271. Therefore, in the context of paragraphs 18 to 219 of the NPPF, taken as a whole, and the three dimensions of sustainable development at paragraph 7 of the NPPF, the environmental harm that would result from the proposal is such that the scheme would not represent sustainable development. In my view, the harm would significantly and demonstrably outweigh the benefits of the proposal.
272. Moreover, having considered the requirements of paragraph 116 of the NPPF, the balance of benefits and harm is such that exceptional circumstances do not

exist and approval of the scheme would not be in the public interest. In such circumstances, paragraph 116 would dictate that planning permission should be refused. In addition, taking account of the potential harm to the integrity of the SAC/pSPA, in combination with other planned development within the area, the provisions of the Habitats Regulations and paragraph 118 of the Framework indicate that planning permission should not be granted.

273. The proposal would also fail to comply with the aims of saved policies 3D and 4O of the LP with regard to the effect upon the character and appearance of the area and local landscape character and would be contrary to the aims of saved policy 3H with regard to the effect upon protected habitats. Having regard to my conclusions in terms of the scale of harm to the AONB and the potential for harm to the SAC and pSPA, and taking account of the requirements of section 38(6) of the Planning and Compulsory Purchase Act 2004, I consider that the benefits that would arise from the proposal do not amount to material considerations that would outweigh the conflict with the development plan that I have identified.

### **RECOMMENDATION**

274. Accordingly, in view of the above, I recommend that the appeal be dismissed.

275. In the event that the SoS disagrees, I recommend applying the conditions attached at Appendix B for the reasons given above [160-164]. I am also satisfied that the submitted s106 agreement is required to mitigate the effects of the proposed development, and would meet the requirements of s122 and s123 of the CIL Regulations and paragraph 204 of the Framework, insofar as it relates to affordable housing provision and public open space provision [165 & 166]. The proposed contribution towards education provision would not be necessary to make the development acceptable in planning terms and would breach the restriction in the use of pooled contributions set out within the CIL Regulations [167-169]. Accordingly, if the SoS is minded to grant planning permission, I recommend that he takes no account of the proposed financial contribution towards education provision.

*Chris Preston*

INSPECTOR

## **APPENDIX A: APPEARANCES**

### **FOR THE APPELLANT:**

Mr Laurence Osborne DipTP MRTPI	Laurence Associates
Mr Russell Dodge	Business Location Services Ltd
Mr Justin Dodge	CSA Architects
Mr Ivor Matthew Dip LA CMLI	Laurence Associates
Mrs Hollie Nicholls	Laurence Associates
Mr John Shuttkacker	Westcountry Land Ltd

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr Peter Blackshaw	Principal Development Officer
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### **INTERESTED PERSONS:**

Mr James Evans	Cornwall AONB Unit
Mr John Adams	Vice Chair, Roseland Neighbourhood Plan Steering Group
Mr David Hubbard	Planning Secretary, St Mawes and St Just Society
Mr Keith Warren	St Just in Roseland Parish Council
Mr David Chenoweth	Local resident
Mr Doug Thomsit	Local resident
Mrs Deborah Hext	Local resident



## **APPENDIX B: List of Suggested Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Job number 2638, drawing numbers PL-01 A (site location plan), PL-02 A (topographical survey), PL 03 C (proposed site plan), PL-04 C (site plan showing tenure mix), PL-10 A (unit 1), PL-11 A (unit 5), PL-12 A (unit 6), PL-13 A (unit 7), PL-14 A (unit 8), PL-15 A (unit 9), PL-16 A (unit 10), PL-17 A (unit 18), PL-18 A (garage unit 1), PL-20 A (unit 2), PL-21 A (units 2 & 3), PL-22 A (units 11 & 12), PL-23 A (units 13 & 14), PL-24 A (unit 15), PL-25 A (units 16 & 17), PL-30 (sections), PL-31 (site section/ entrance/ street elevation), and Drawing number 01756-PHL-03 rev A (proposed new footway layout).
- 3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Before any other building or engineering works are carried out on the site, the access shall be laid out and constructed in accordance with drawings numbered 2638 PL-03 revision C, and 268 PL-31, including the provision of vehicle to vehicle visibility splays, as shown on the approved drawings.
- 5) Prior to the occupation of any of the dwellings hereby approved, the pedestrian link and traffic calming measures shown on plan number 01756-PHL-03 rev A shall be completed and available for use.
- 6) No street lighting shall be installed within the proposed development unless details of such lighting have first been submitted to and approved in writing by the Local Planning Authority.
- 7) No dwelling shall be occupied until the parking and turning areas serving that dwelling have been laid out and provided in accordance with drawing number 2638 PL-03 revision C.
- 8) No development shall commence until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. That scheme shall include details of all trees and hedgerows to be retained, together with measures for their protection during the course of development, as well as details of any additional planting and means of enclosure, including details of landscaping and planting of the proposed retaining structure/ Cornish hedge at the entrance to the site and the proposed area of open space. The landscaping scheme shall also include a timetable for implementation of all hard and soft landscape works.
- 9) All hard and soft landscape works shall be carried out in accordance with the approved details and in accordance with the approved timetable for implementation. Any trees or plants that die, or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced with others of a similar size and species.
- 10) No building hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been

submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii) Include a timetable for its implementation; and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 11) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors
  - ii) loading and unloading of plant and materials
  - iii) storage of plant and materials used in constructing the development
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - v) wheel washing facilities
  - vi) measures to control the emission of dust and dirt during construction
  - vii) measures to control surface water run-off from the site during the course of construction
  - viii) hours of working.

## **APPENDIX C: LIST OF DOCUMENTS**

### ***Documents Submitted at the Hearing***

- 1 Woodcock Holdings Ltd v Secretary of State for Communities and Local Government, Mid Sussex District Council [2015] EWHC 1173 (Admin)
- 2 'High Court delivers fresh blow to Pickles over neighbourhood plans', article from Planning Resource, dated 05 May 2015
- 3 Letter to Mr Russell Dodge from Spalding Associates, dated 16 June 2015, regarding The Fal and Helford Special Area of Conservation

### ***Documents Submitted Following the Hearing by Cornwall Council***

- 4 Comments in relation to the appellant's submissions regarding the status of the RNDP
- 5 Site details regarding the Fal and Helford SAC
- 6 Details, including maps, of the Falmouth Bay to St Austell Bay pSPA
- 7 Email from Peter Blackshaw to Ms Sarah Banwell (Planning Inspectorate Case Officer), dated 02 July 2015
- 8 Declaration of result of the poll held on 20 August 2015 regarding the RNDP

### ***Documents Submitted Following the Hearing on Behalf of the Appellant***

- 9 Letter, dated 03 July 2015, from Mr Russell Dodge to Ms Sarah Banwell, in response to the email from Mr Peter Blackshaw, dated 02 July (Hearing Document 7)
- 10 Letter, dated 23<sup>rd</sup> June 2015, from Spalding Associates (Environmental) Ltd regarding the SAC & pSPA
- 11 Supplemental letter, dated 06 July 2015, from Spalding Associates (Environmental) Ltd regarding the status of the pSPA
- 12 Email, dated 22 July 2015, from Adrian Spalding to Business Location Services Ltd.
- 13 Letter, dated 10 July 2015, from Business Location Services Ltd to Ms Sarah Banwell in response to comments raised by interested parties
- 14 Email, dated 28 July 2015, from Business Location Services Ltd to Mark Boulton (Planning Inspectorate) in response to correspondence from Cllr Julian German and Sarah Newton MP
- 15 Email, dated 02 September, from Business Location Services Ltd to Mark Boulton, with reference to the result of the referendum into the RNDP
- 16 Towards a One Nation Economy: A 10 Point Plan for Boosting Productivity in Rural Areas, DEFRA, August 2015
- 17 Fixing the Foundations: Creating a More Prosperous Nation, HM Treasury, July 2015

- 18 Appeal decision reference APP/D0840/A/14/2229258 and associated costs decision

***Other Correspondence Submitted Following the Hearing***

- 19 Post Hearing letter of notification, dated 23 June 2015, regarding additional information submitted by the appellant, together with a list of those notified
- 20 Email, dated 29 June 2015, from Sarah Newton MP to Greg Clark MP, with attached correspondence from Cllr Julian German to Sarah Newton MP
- 21 Letter, dated 25 June, from the St Mawes & St Just in Roseland Society to Sarah Newton MP
- 22 Letter and attachment, dated 29 June 2015, from Mr John Adams, Vice Chairman of the Roseland Plan Steering Group
- 23 Email, dated 01 July 2015, to Ms Sarah Banwell, from Andrew and Olive George
- 24 Letter, dated 02 July 2015, to Ms Sarah Banwell from Mr David Chenoweth
- 25 Email, dated 05 July 2015, to Ms Sarah Banwell from Chris and Steve Pearce
- 26 Letter, dated 05 July 2015, to the Inspector, c/o Ms Sarah Banwell, from Dr D I Thomsit
- 27 Letter, dated 02 July, to Ms Sarah Banwell from H V Jones
- 28 Undated letter from M Tutt, received by the Planning Inspectorate 06 July 2015
- 29 Letter, dated 07 July, to the Inspector, c/o Ms Sarah Banwell, from St Just in Roseland Parish Council



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

#### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.