



Department for  
Communities and  
Local Government

Our Ref: APP/D0840/W/153002925

Des Dunlop  
D2 Planning Limited  
Suites 3 & 4, Westbury Court  
Church Road  
Westbury on Trym  
Bristol  
BS9 3EF

6 July 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY MICHAEL WODSKU OF GONWIN DEVELOPMENTS LTD  
LAND AT LAND AT GONWIN FARM, CARBIS BAY, CORNWALL  
APPLICATION REF: PA/13/09107**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Aidan McCooley, BA, MSc, MRTPI, who held a public local inquiry on 30 November to 3 December 2015 into your client's appeal against the decision of Cornwall Council ('the Council') to refuse planning permission for an urban extension to St Ives/ Carbis Bay. Consisting of housing, and employment (Use Classes – A1 Shops, A2 Financial and Professional, A3 Restaurant/ Café, A4 Drinking Establishments, B1a Office, B1b Research & Development, B1c Light Industrial appropriate to residential areas, C3 Dwelling Houses, D1 Non Residential Institution). Including gardens, landscaped spaces, sports field, village square, parking, site access roads, and infrastructure. All matters reserved except for access to the site, in accordance with application ref: PA13/09107 dated 3 October 2013.
2. On 16 November 2015, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involved proposals for residential development of over 10 units in areas 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.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

#### **Matters arising since the close of the inquiry**

5. On 16 June 2016 the Secretary of State referred back to the parties to invite representations on the implications, if any, of the following matters for the above appeal:  
the Court of appeal judgment in the cases of *Suffolk District Council v Hopkins Homes Ltd* and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168 (<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2016/168.html&query=suffolk+and+district&method=boolean>).  
  
The referendum on the St Ives Neighbourhood Plan.
6. Parties were also invited to comment on this matter and any other material change in circumstances since the close of the inquiry.
7. On 4 August 2016 the Secretary of State referred back to the parties to invite representations on the implications, if any, of representations from the Council about its 5 year housing land supply position.
8. On 22 December 2016 the Secretary of State referred back to the parties to invite representations on the implications, if any, of:
  - the adoption by Cornwall Council of the Cornwall Local Plan on 22 November 2016, and to comment on how the relevant policies of the Local Plan should be approached, bearing in mind paragraph 215 of the NPFF.
  - the making of the Neighbourhood Plan and approach to the relevant policies contained therein.
  - the Written Ministerial Statement ("WMS") made on 12 December 2016 on Neighbourhood Plans
  - In addition to the above, parties were also given a further opportunity to comment on the extent of the Council's housing land supply.
9. The Secretary of State has taken this correspondence into account but as it was circulated to the parties does not consider it necessary to reprint them here. Correspondence received is listed at Annex A of this letter. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.
10. The Cornwall Local Plan was adopted on 22 November 2016, replacing the saved policies of the Penwith Local Plan. The St Ives Neighbourhood Development Plan passed referendum on 5 May 2016.
11. An application for a full award of costs was made by your client against the Council (IR1). This application is the subject of a separate decision letter.

## **Policy and statutory considerations**

12. In reaching his decision, 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.
13. In this case the development plan consists of the Cornwall Local Plan Strategic Policies 2010-2030 (CLP) and the St Ives Neighbourhood Development Plan (NDP). The Secretary of State has given careful consideration to the Inspector's reasoning at IR80-83, but as the CLP and the NDP have now been adopted he gives them full weight in the planning system. As the proposal includes some land beyond that allocated by development by the NDP, the Secretary of State finds that it is not compliant with policy AM4 of the NDP, and gives significant weight to this conflict.
14. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

## **Main issues**

15. The Secretary of State agrees with the Inspector that the main issues are those set out at IR79.

### *Five year housing land supply (HLS)*

16. As part of his reference back exercise (paragraphs 5-9 above), the Secretary of State has had regard to the representations made by all the parties on the issue. He has also had regard to the Cornwall Local Plan Cornwall 5 year Housing Land Supply Statement (September 2016) and the Cornwall Local Plan. He has taken the above evidence into consideration in his assessment of the HLS position.

### *Housing Requirement*

17. The Council has recently adopted its Local Plan. The Secretary of State considers that this provides a robust housing requirement figure of 52,500 dwellings, or 2,625 dwelling per annum (dpa), noting that these figures are in line with the Full Objectively Assessed Need (FOAN), which has passed examination, and agreed by your client. This would give a five year requirement of 13,125 (5 x 2,625).

### *Addressing shortfall*

18. The Council has an accumulated shortfall of 1,759. There is a need for this shortfall to be met in addition to the on-going requirement for housing in the area. There are two commonly used methods for addressing an accumulated shortfall. The 'Liverpool approach' apportions the shortfall across the remaining years of the plan period, while the 'Sedgefield approach' seeks to make up the shortfall during the next five years. The Secretary of State has had regard to the Guidance which advocates the 'Sedgefield approach' stating that Local Planning Authorities should aim to deal with any undersupply within the first 5 years of the plan where possible. As such the Secretary of State concludes that the 'Sedgefield approach' should be adopted. The Secretary of State therefore finds that addressing the shortfall over the next five years would give a requirement of 14, 884 (13,125 + 1759) over the 5 year period, or an annual requirement

of 2,977. From this the Secretary of State has deducted 235 dwellings to take into account unlawful dwellings where it has been decided that no enforcement action will be taken, giving a five year requirement of 14,649.

### *Buffer*

19. Paragraph 47 of the Framework required that an additional buffer of 5% be added to this figure (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent underdelivery, it states the buffer should be increased to 20% for the same reason, and to provide a realistic prospect of achieving the planned supply. Having carefully considered the parties' submissions on the issue, the Secretary of State notes that when considering the completion rates over the past 15 years, when only 6 years did not meet the local plan requirement, and that while there has been a shortfall in recent years given that delivery has now returned to pre-recession levels there has not been a persistent record of underdelivery. He has also had regard to the fact that the Council is taking ongoing action to address its need through the work of its empty homes team. The Secretary of State further notes the view of the Cornwall Local Plan Inspector (paragraph 142 Appendix 4) that the implementation strategy is evidence that delivery is credible over the plan period. As such the Secretary of State considers that a 5% buffer is appropriate in this case. This leads to a 5 year requirement of 15,381 or 3,076 dpa.

### *Supply*

20. Having regard to footnote 11 to paragraph 47 of the Framework and the relevant paragraphs of the PPG, the Secretary of State has gone on to consider the deliverability of the sites necessary to achieve housing supply. The Secretary of State has had regard to the representations of your client on the disputed sites. However, he notes that these estimates of likely delivery times are necessarily speculative, and that a very large proportion of sites that the Council cites have an extant planning permission. As such he finds it is reasonable to apply an average lead in and delivery rate to these sites, further noting that average rates were adopted by the Council in response to claims that previous estimates were too optimistic. He thus applies a deduction of 10% to reflect potential underdelivery. As such he does not find it necessary to make further deductions in respect of the specific sites upon which D2 Planning has made representations.

21. The Secretary of State notes that planning permissions exist for 4,465 dwellings on sites of fewer than 10 dwellings. The Secretary of State has deducted 10% from this to allow for non delivery, and as such concludes that 4,018 dwellings will be deliverable over the five year period.

22. The Secretary of State has had regard to the fact that there are planning permissions for 10,988 dwellings on larger sites.

## *Delivery*

23. Applying average lead in and delivery rates, the Secretary of State has gone on to deduct 1,458 units from the supply of planning permissions on sites of 10 or more dwellings, to reflect the fact that some sites may not deliver, or may not deliver within the five year period. The Secretary of State considers that this is likely to reflect the overall rate of non-delivery.
24. The Secretary of State has gone on to consider sites where it has been resolved to grant planning permission but were awaiting the signing of a s106 agreement. The Secretary of State concludes that a resolution to grant planning permission is evidence that these are suitable and available, and further notes that in 11 cases s106 agreements have now been signed. As such he concludes that it is reasonable to assume that 861 additional units will be delivered at such sites, having applied a 10% deduction for average lead in and delivery rates.
25. The Secretary of State has gone on to add an additional 40 dwellings to reflect planning permissions granted after April 2016 but before the publication of the 5 Year Supply Statement.
26. The Secretary of State also adds 160 dwellings in respect of Cornwall Land Initiative sites. He concludes that as there is developer commitment it is reasonable to assume that these are deliverable.
27. The Secretary of State has had regard to representations on the sites proposed in the emerging Site Allocations DPD. While he has considered your client's comments on delivery in the final year of the five year period, given that the consultation has begun on the draft DPD, that the draft submission DPD will be consulted on in May 2017, and that a number of sites are proceeding in advance of the Local Plan, the Secretary of State concludes that it is reasonable to add 340 to the total of deliverable sites.
28. The Secretary of State has taken into account the new sites granted planning permission since April 2016. He notes that 2,181 dwellings have been granted planning permission since April 2016 on sites not previously included in the 5 year supply statement. The Secretary of State has applied average lead in time and delivery rates to conclude that 1,026 are deliverable over the 5 year period.
29. The Secretary of State notes that permissions relating to 96 units have expired since April 2016. He deducts a further 96 dwellings to reflect the losses that would ensure if recent (post April 2016) planning permissions are implemented.

### *Conclusions on 5 year HLS*

30. The Secretary of State concludes that an annual target of 2,625 dpa leads to a 5 year requirement of 13,125. Addressing the shortfall of 1,795 dwellings over the next 5 years gives an annual requirement of 2,997 dpa, or 14,884 over the 5 year period. From this the Secretary of State has deducted 235 dwellings to take into account unlawful dwellings where it has been decided that no enforcement action will be taken, giving a five year requirement of 14,649.
31. To this the Secretary of State has applied a 5% buffer, including the shortfall, for the reasons set out above, thus finding a total housing requirement of 15,381 over the five year period, or 3,076 dpa.
32. Against this the Secretary of State finds 17,286 net deliverable capacity in the 5 year period. As such the Secretary of State finds that there is a surplus of 1,903 dwellings, or a 5.62 years housing land supply.
33. For the reasons set out above the Secretary of State disagrees with the Inspector and concludes that in his judgement that the local planning authority can now demonstrate a 5 year supply of deliverable housing sites. Therefore the application of paragraph 14 of the Framework is not triggered.
34. Given his findings as to housing land supply the Secretary of State also concludes that his Written Ministerial Statement of 12 December 2016 is not engaged.

### *Landscape and Visual Impact on the Character of the area*

35. The Secretary of State has given careful consideration to the Inspector's analysis at IR84-89. For the reasons given the Secretary of State agrees that the impact on the local landscape would be major and adverse as green fields would be replaced by buildings (IR87). He further agrees that the Landscape and Visual Impact Assessment (LVIA) states that the visual impact of the proposals would be moderate or severe adverse in close views. However, for the reasons given at IR87 he agrees that the detailed design and landscaping proposed would reduce most landscape and visual impacts to neutral at year 15. He further agrees that the development would have a major impact on existing dwellings around Hendra Vean and Church Lane, and that the proposal would extend development along Church Lane, thus causing an impact in that area.
36. For the reasons given, the Secretary of State agrees that the adverse impacts would be limited to the locations and views identified at IR87-88. He further agrees that some of these adverse effects would be limited by the detailed design and layout of the proposals, and, over time, by the proposed landscaping (IR89). He also agrees that the allocation of part of the site in the BDP and St Ives and the assessment in the Carbis Bay Town Urban Area Assessment (UAE) are important considerations. He further notes (IR89) that planning permission was granted for some development on the site near Gonwin Farm. For these reasons the Secretary of State finds moderate conflict with CLP policies 2.1.b and 23.

### *Heritage Assets*

37. For the reasons set out by the Inspector at IR90-93 the Secretary of State agrees that there is no convincing evidence of any harm to heritage assets as a result of the proposal. He further agrees that any archaeological remains that might be discovered

during construction could be addressed by a condition requiring further archaeological work including a written scheme of investigation. He agrees with the Inspector (IR90) that such a condition would comply with Historic England and Government guidance.

#### *Impact on public footpaths*

38. For the reasons given at IR94 the Secretary of State agrees that there would be a minor adverse effect for users of footpaths as a result of this proposal. As such he finds some conflict with Policy OS7 of the NDP in that part of the route would be less attractive. He agrees with the Inspector that any increased security would not be a significant benefit for users.

#### *The gap between Carbis Bay and Lelant*

39. The Secretary of State agrees with the Inspector, for the reasons given at IR95, that while there will be a localised impact on landscape character, there is no substantive argument that an important gap would be lost or significantly reduced as a result of the proposal. He therefore finds that it complies with Policy OS5 of the NDP in this respect.

#### *Highways and Access*

40. The Secretary of State has given careful consideration to the Inspector's analysis at IR96-99. He agrees that no data or scientific evidence was submitted to indicate that air quality or noise limits or standards in Lelant would be exceeded were this proposal to go ahead (IR99). He further notes that the highway authorities had no objection to the proposals subject to contributions towards the traffic measures listed at IR97 (IR98). He agrees (IR99) that, given the need for St Ives/Carbis Bay to expand, it is inevitable that there will be increased traffic on the A3074, with consequent effects on air quality and noise. He agrees, for the reasons given by the Inspector, that the refusal of this proposal on the basis of traffic generation or highway safety would not be warranted.

#### *Sewerage and drainage*

41. For the reasons set out by the Inspector the Secretary of State agrees that the proposal would not exacerbate existing sewage and drainage problems, and that as such sewerage and drainage matters would not justify the refusal of planning permission. He further agrees (IR101) that sewerage and drainage matters could be addressed by suitable conditions, supplemented by the s106 obligations.

#### *Agricultural land quality*

42. The Secretary of State agrees with the Inspector, for the reasons given at IR102, that the limited loss of best and most versatile agricultural land would not be significant, and he therefore concludes that the proposal would meet the policy requirements OS8 of the NDP and Policy 21.d of the CLP.

#### *Other matters*

43. For the reasons given at IR103 the Secretary of State agrees that the impact of the proposals on facilities such as hospitals and schools would be similar wherever new development is proposed in the area, and must be considered in the context of the necessary expansion of the settlement. He agrees that the developer would make a fair and reasonable contribution to address the shortfall in school places as a result of the

proposals. He further agrees that the proposed medical practice would have to be sanctioned by the relevant authorities.

44. The Secretary of State agrees, for the reasons given at IR104, that there is little evidence that there would be any significant adverse impact on tourism as a result of the proposal. He has noted the Inspector's observations on appeal decisions put forward by the Council and Carbis Bay and Lelant Opposing Urbanisation Together, but given his conclusions on 5 year housing land supply does not consider them relevant. He agrees that there is no requirement to demonstrate a need for the retail and employment facilities of the scale proposed as part of the development, for the reasons given at IR104.

### **Planning conditions**

45. The Secretary of State has given consideration to the Inspector's analysis at IR105-109 the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

### **Planning obligations**

46. Having had regard to the Inspector's analysis at IR110-115, the planning obligation dated 3 December 2015, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR115 that the obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and are necessary to make the development acceptable in planning terms, directly related to the development, and are fairly and reasonably related in scale and kind to the development, with the exception of the obligation for the funding of a ranger for the Royal Society for the Protection of Birds, for the reasons given at IR114. However, the Secretary of State does not consider that the obligation overcomes his reasons for deciding that the appeal should be dismissed.

### **Planning balance and overall conclusion**

47. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies OS7 and AM3 of the NDP or 2.1.b and 2.2.d of the CLP, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

48. In favour of the proposal the Secretary of State finds that the site is a sustainable location for new housing development, for the reasons given at IR118. He finds that the increase of the supply of housing is a significant benefit. While he finds that the Council can demonstrate a 5 year HLS, he finds the provision of 50% affordable housing in an area of acute need to be a very significant benefit. The Secretary of State also finds that the planning obligations would provide a significant contribution to improve transport infrastructure, educational facilities, open space and towards nature conservation actions in the local area.

49. While the Secretary of State gives less weight to the provision of market housing than the Inspector, given his findings on a 5 year housing land supply, he agrees that the proposal



would comply with the economic and social elements of sustainable development, and, with the exception of the landscape impacts, would comply with the environmental element of sustainable development. He gives significant weight to the economic benefits of the proposal, significant weight to the social benefits, given his findings on 5 year HLS, and moderate weight to the positive environmental impacts.

50. Against this the Secretary of State weighs the substantial incursion into the countryside, which would not be warranted by the additional benefits of development or recreational facilities that would be provided. He considers that the woodland planting to provide a better development boundary would not be required if there were no development in this area. He gives further significant weight against the proposal to the conflict with the CDP and additional significant weight to the conflict with the NDP. He therefore concludes that the benefits of the proposal do not outweigh its adverse impacts.
51. The Secretary of State therefore concludes that there are no material considerations sufficient to indicate that the proposal should be determined other than in accordance with the development plan. He thus concludes that the appeal should be dismissed.

### **Formal decision**

52. 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 planning permission for an urban extension to St Ives/ Carbis Bay. Consisting of housing, and employment (Use Classes – A1 Shops, A2 Financial and Professional, A3 Restaurant/ Café, A4 Drinking Establishments, B1a Office, B1b Research & Development, B1c Light Industrial appropriate to residential areas, C3 Dwelling Houses, D1 Non Residential Institution). Including gardens, landscaped spaces, sports field, village square, parking, site access roads, and infrastructure. All matters reserved except for access to the site, in accordance with application ref: PA13/09107 dated 3 October 2013.

### **Right to challenge the decision**

53. 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 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
54. A copy of this letter has been sent to Cornwall Council and CLOUT and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Philip Barber*

Authorised by Secretary of State to sign in that behalf

## SCHEDULE OF REPRESENTATIONS

### General representations

<b>Party</b>	<b>Date</b>
D2 Planning	4 May 16
Chris Smith	6 May 16
Cornwall Council	11 May 16
Cornwall Council	8 July 16
Cornwall Council	15 November 16
Derek Thomas MP	24 November 16

### Representations received in response to the Secretary of State's letter of 16 June 2016

<b>Party</b>	<b>Date</b>
D2 Planning	20 June 16
CLOUT	30 June 16
Cornwall Council	1 July 16
D2 Planning	6 July 16
CLOUT	11 July 16
Cornwall Council	16 July 16

### Representations received in response to the Secretary of State's letter of 4 August 2016

<b>Party</b>	<b>Date</b>
D2 Planning	8 August 16
CLOUT	17 August 16
CLOUT	24 August 16

### Representations received in response to the Secretary of State's letter of 22 December 2017

<b>Party</b>	<b>Date</b>
D2 Planning	13 January 17
CLOUT	13 January 17
Cornwall Council	17 January 17
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D2 Planning	23 January 17
D2 Planning	7 February 17
Cornwall Council	10 February 17
D2 Planning	15 February 17



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Our Ref: APP/D0840/W/153005068

Des Dunlop  
D2 Planning Limited  
Suites 3 & 4, Westbury Court  
Church Road  
Westbury on Trym  
Bristol  
BS9 3EF

6 July 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY MICHAEL WODSKU OF GONWIN DEVELOPMENTS LTD  
LAND AT LAND AT GONWIN FARM, CARBIS BAY, CORNWALL  
APPLICATION REF: PA14/10452**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Aidan McCooley, BA, MSc, MRTPI, who held a public local inquiry on 30 November to 3 December 2015 into your client's appeal against the decision of Cornwall Council ('the Council') to refuse planning permission for an urban extension to St Ives/ Carbis Bay. Consisting of employment and housing (Use Classes – A1 Shops, A2 Financial and Professional, A3 Restaurant/ Café, A4 Drinking Establishments, B1a Office, B1c Light Industrial appropriate to residential areas, C3 Dwelling Houses, D1 Non Residential Institution). Including gardens, landscaped spaces, MUGA, village square, parking, site access roads, infrastructure and a No Left Turn restriction into Church Lane when leaving the site. All matters reserved except for access to the site, in accordance with application ref: PA14/10452 dated 31 October 2014.
2. On 16 November 2015, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involved proposals for residential development of over 10 units in areas 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 allowed, subject to conditions.

4. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions, and disagrees with his recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

#### **Matters arising since the close of the inquiry**

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  - In addition to the above, parties were also given a further opportunity to comment on the extent of the Council's housing land supply.
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### *Five year housing land supply (HLS)*

16. As part of his reference back exercise (paragraphs 5-9 above), the Secretary of State has had regard to the representations made by all the parties on the issue. He has also had regard to the Cornwall Local Plan Cornwall 5 year Housing Land Supply Statement (September 2016) and the Cornwall Local Plan. He has taken the above evidence into consideration in his assessment of the HLS position.

### *Housing Requirement*

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22. The Secretary of State has had regard to the fact that there are planning permissions for 10,988 dwellings on larger sites.

## *Delivery*

23. Applying average lead in and delivery rates, the Secretary of State has gone on to deduct 1,458 units from the supply of planning permissions on sites of 10 or more dwellings, to reflect the fact that some sites may not deliver, or may not deliver within the five year period. The Secretary of State considers that this is likely to reflect the overall rate of non-delivery.
24. The Secretary of State has gone on to consider sites where it has been resolved to grant planning permission but were awaiting the signing of a s106 agreement. The Secretary of State concludes that a resolution to grant planning permission is evidence that these are suitable and available, and further notes that in 11 cases s106 agreements have now been signed. As such he concludes that it is reasonable to assume that 861 additional units will be delivered at such sites, having applied a 10% deduction for average lead in and delivery rates.
25. The Secretary of State has gone on to add an additional 40 dwellings to reflect planning permissions granted after April 2016 but before the publication of the 5 Year Supply Statement.
26. The Secretary of State also adds 160 dwellings in respect of Cornwall Land Initiative sites. He concludes that as there is developer commitment it is reasonable to assume that these are deliverable.
27. The Secretary of State has had regard to representations on the sites proposed in the emerging Site Allocations DPD. While he has considered your client's comments on delivery in the final year of the five year period, given that the consultation has begun on the draft DPD, that the draft submission DPD will be consulted on in May 2017, and that a number of sites are proceeding in advance of the Local Plan, the Secretary of State concludes that it is reasonable to add 340 to the total of deliverable sites.
28. The Secretary of State has taken into account the new sites granted planning permission since April 2016. He notes that 2,181 dwellings have been granted planning permission since April 2016 on sites not previously included in the 5 year supply statement. The Secretary of State has applied average lead in time and delivery rates to conclude that 1,026 are deliverable over the 5 year period.
29. The Secretary of State notes that permissions relating to 96 units have expired since April 2016. He deducts a further 96 dwellings to reflect the losses that would ensure if recent (post April 2016) planning permissions are implemented.

### *Conclusions on 5 year HLS*

30. The Secretary of State concludes that an annual target of 2,625 dpa leads to a 5 year requirement of 13,125. Addressing the shortfall of 1,795 dwellings over the next 5 years gives an annual requirement of 2,997 dpa, or 14,884 over the 5 year period. From this the Secretary of State has deducted 235 dwellings to take into account unlawful dwellings where it has been decided that no enforcement action will be taken, giving a five year requirement of 14,649.
31. To this the Secretary of State has applied a 5% buffer, including the shortfall, for the reasons set out above, thus finding a total housing requirement of 15,381 over the five year period, or 3,076 dpa.
32. Against this the Secretary of State finds 17,286 net deliverable capacity in the 5 year period. As such the Secretary of State finds that there is a surplus of 1,903 dwellings, or a 5.62 years housing land supply.
33. For the reasons set out above the Secretary of State disagrees with the Inspector and concludes that in his judgement that the local planning authority can now demonstrate a 5 year supply of deliverable housing sites. Therefore the application of paragraph 14 of the Framework is not triggered.
34. Given his findings as to housing land supply the Secretary of State also concludes that his Written Ministerial Statement of 12 December 2016 is not engaged.

### *Landscape and Visual Impact on the Character of the area*

35. The Secretary of State has given careful consideration to the Inspector's analysis at IR84-89. For the reasons given the Secretary of State agrees that the impact on the local landscape would be major and adverse as green fields would be replaced by buildings (IR87). He further agrees that the Landscape and Visual Impact Assessment (LVIA) states that the visual impact of the proposals would be moderate or severe adverse in close views. However, for the reasons given at IR87 he agrees that the detailed design and landscaping proposed would reduce most landscape and visual impacts to neutral at year 15. He further agrees that the development would have a major impact on existing dwellings around Hendra Veau and Church Lane.
36. For the reasons given, the Secretary of State agrees that the adverse impacts would be limited to the locations and views identified at IR87-88. He further agrees that some of these adverse effects would be limited by the detailed design and layout of the proposals, and, over time, by the proposed landscaping (IR89). He also agrees that the allocation of part of the site in the BDP and St Ives and the assessment in the Carbis Bay Town Urban Area Assessment (UAE) are important considerations. He further notes (IR89) that planning permission was granted for some development on the site near Gonwin Farm. For these reasons the Secretary of State finds a relatively minor conflict with CLP policies 2.1.b and 23.

### *Heritage Assets*

37. For the reasons set out by the Inspector at IR90-93 the Secretary of State agrees that there is no convincing evidence of any harm to heritage assets as a result of the proposal. He further agrees that any archaeological remains that might be discovered during construction could be addressed by a condition requiring further archaeological



work including a written scheme of investigation. He agrees with the Inspector (IR90) that such a condition would comply with Historic England and Government guidance.

#### *Impact on public footpaths*

38. For the reasons given at IR94 the Secretary of State agrees that there would be a minor adverse effect for users of footpaths as a result of this proposal. As such he finds some conflict with Policy OS7 of the NDP in that part of the route would be less attractive. He agrees with the Inspector that any increased security would not be a significant benefit for users.

#### *The gap between Carbis Bay and Lelant*

39. The Secretary of State agrees with the Inspector, for the reasons given at IR95, that while there will be a localised impact on landscape character, there is no substantive argument that an important gap would be lost or significantly reduced as a result of the proposal. He further agrees that permitting this appeal would not prevent the Council from resisting development that would have an unacceptable impact on the gap. He therefore finds that it complies with Policy OS5 of the NDP in this respect.

#### *Highways and Access*

40. The Secretary of State has given careful consideration to the Inspector's analysis at IR96-99. He agrees that no data or scientific evidence was submitted to indicate that air quality or noise limits or standards in Lelant would be exceeded were this proposal to go ahead (IR99). He further notes that the highway authorities had no objection to the proposals subject to contributions towards the traffic measures listed at IR97 (IR98). He agrees (IR99) that, given the need for St Ives/Carbis Bay to expand, it is inevitable that there will be increased traffic on the A3074, with consequent effects on air quality and noise. He agrees, for the reasons given by the Inspector, that the refusal of this proposal on the basis of traffic generation or highway safety would not be warranted.

#### *Sewerage and drainage*

41. For the reasons set out by the Inspector the Secretary of State agrees that the proposal would not exacerbate existing sewage and drainage problems, and that as such sewerage and drainage matters would not justify the refusal of planning permission. He further agrees (IR101) that sewerage and drainage matters could be addressed by suitable conditions, supplemented by the s106 obligations.

#### *Agricultural land quality*

42. The Secretary of State agrees with the Inspector, for the reasons given at IR102, that the limited loss of best and most versatile agricultural land would not be significant, and he therefore concludes that the proposal would meet the policy requirements OS8 of the NDP and Policy 21.d of the CLP.

#### *Other matters*

43. For the reasons given at IR103 the Secretary of State agrees that the impact of the proposals on facilities such as hospitals and schools would be similar wherever new development is proposed in the area, and must be considered in the context of the necessary expansion of the settlement. He agrees that the developer would make a fair and reasonable contribution to address the shortfall in school places as a result of the

proposals. He further agrees that the proposed medical practice would have to be sanctioned by the relevant authorities.

44. The Secretary of State agrees, for the reasons given at IR104, that there is little evidence that there would be any significant adverse impact on tourism as a result of the proposal. He has noted the Inspector's observations on appeal decisions put forward by the Council and Carbis Bay and Lelant Opposing Urbanisation Together, but given his conclusions on 5 year housing land supply does not consider them relevant. He agrees that there is no requirement to demonstrate a need for the retail and employment facilities of the scale proposed as part of the development, for the reasons given at IR104.

### **Planning conditions**

45. The Secretary of State has given consideration to the Inspector's analysis at IR105-109 the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

### **Planning obligations**

46. Having had regard to the Inspector's analysis at IR110-115, the planning obligation dated 3 December 2015, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR115 that the obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and are necessary to make the development acceptable in planning terms, directly related to the development, and are fairly and reasonably related in scale and kind to the development, with the exception of the obligation for the funding of a ranger for the Royal Society for the Protection of Birds, for the reasons given at IR114. However, the Secretary of State does not consider that the obligation overcomes his reasons for deciding that the appeal should be dismissed.

### **Planning balance and overall conclusion**

47. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies OS7 and AM4 of the NDP or 2.1.b and 2.2.d of the CLP, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

48. In favour of the proposal the Secretary of State finds that the site is a sustainable location for new housing development, for the reasons given at IR118. He finds that the increase of the supply of housing is a significant benefit. While he finds that the Council can demonstrate a 5 year HLS, he finds the provision of 50% affordable housing in an area of acute need to be a very significant benefit. The Secretary of State also finds that the planning obligations would provide a significant contribution to improve transport infrastructure, educational facilities, open space and towards nature conservation actions in the local area.

49. While the Secretary of State gives less weight to the provision of market housing than the Inspector, given his findings on a 5 year housing land supply, he agrees that the proposal

would comply with the economic and social elements of sustainable development, and, with the exception of the landscape impacts, would comply with the environmental element of sustainable development. He gives significant weight to the economic benefits of the proposal, significant weight to the social benefits, given his findings on 5 year HLS, and moderate weight to the positive environmental impacts.

50. Against this the Secretary of State weighs the Landscape and Visual Impact on the Character of the area, to which he gives moderate weight for the reasons at paragraph 35-36 above, and the impact on footpaths, to which he gives limited weight. The Secretary of State agrees that the new development would to an extent improve the current approach to the town. He gives further significant weight against the proposal to the conflict with the CDP and additional moderate weight to the conflict with the NDP, disagreeing with the Inspector given his findings on 5 year HLS and the change in the development plan position since the inquiry. He therefore concludes that the benefits of the proposal do not outweigh its adverse impacts.
51. The Secretary of State therefore concludes that there are no material considerations sufficient to indicate that the proposal should be determined other than in accordance with the development plan. He thus concludes that the appeal should be dismissed.

### **Formal decision**

52. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for Consisting of employment and housing (Use Classes – A1 Shops, A2 Financial and Professional, A3 Restaurant/ Café, A4 Drinking Establishments, B1a Office, B1c Light Industrial appropriate to residential areas, C3 Dwelling Houses, D1 Non Residential Institution). Including gardens, landscaped spaces, MUGA, village square, parking, site access roads, infrastructure and a No Left Turn restriction into Church Lane when leaving the site. All matters reserved except for access to the site, in accordance with application ref: PA14/10452 dated 31 October 2014.

### **Right to challenge the decision**

53. 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 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
54. A copy of this letter has been sent to Cornwall Council and CLOUT and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Philip Barber*

Authorised by Secretary of State to sign in that behalf

## SCHEDULE OF REPRESENTATIONS

### General representations

<b>Party</b>	<b>Date</b>
D2 Planning	4 May 16
Chris Smith	6 May 16
Cornwall Council	11 May 16
Cornwall Council	8 July 16
Cornwall Council	15 November 16
Derek Thomas MP	24 November 16

### Representations received in response to the Secretary of State's letter of 16 June 2016

<b>Party</b>	<b>Date</b>
D2 Planning	20 June 16
CLOUT	30 June 16
Cornwall Council	1 July 16
D2 Planning	6 July 16
CLOUT	11 July 16
Cornwall Council	16 July 16

### Representations received in response to the Secretary of State's letter of 4 August 2016

<b>Party</b>	<b>Date</b>
D2 Planning	8 August 16
CLOUT	17 August 16
CLOUT	24 August 16

### Representations received in response to the Secretary of State's letter of 22 December 2017

<b>Party</b>	<b>Date</b>
D2 Planning	13 January 17
CLOUT	13 January 17
Cornwall Council	17 January 17
Cornwall Council	18 January 17
D2 Planning	23 January 17
D2 Planning	7 February 17
Cornwall Council	10 February 17
D2 Planning	15 February 17

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

by Aidan McCooey BA MSc MRTPI

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

Date: 16 March 2016

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## TOWN AND COUNTRY PLANNING ACT 1990

Appeals by Mr Michael Wodskou

of Gonwin Developments Ltd

Against the refusal of planning permission

By Cornwall Council

Land at Gonwin Farm, Carbis Bay, Cornwall

Inquiry held on 30 November to 3 December 2015

Land at Gonwin Farm, Gonwin Drive, Carbis Bay, Cornwall

File Refs: APP/D0840/W/15/3002925 & APP/D0840/W/15/3005068

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## **Abbreviations used in the Report**

The Act	Town & Country Planning Act 1990
The Council	Cornwall Council
AGLV	Area of Great Landscape Value
BMV	Best and Most Versatile
CIL Regulations	Community Infrastructure Levy Regulations 2010
CLOUT	Carbis Bay and Lelant Opposing Urbanisation Together
HLS	Housing Land Supply
LCA	Landscape Character area
LP	Penwith Local Plan
LVIA	Landscape and Visual Impact Assessment
NDP	St Ives Area Neighbourhood Development Plan
NPPF	National Planning Policy Framework
OAN	Objectively Assessed Need
RSPB	Royal Society for the Protection of Birds
SOCG	Statement of Common Ground
SSSI	Site of Special Scientific Interest
SUDS	Sustainable Urban Drainage System
SWW	South West Water
TA	Transport Assessment
TP	Travel Plan
UEA	St Ives & Carbis Bay Town Framework Urban Extension Assessment

**File Ref: APP/D0840/W/15/3002925 – APPEAL A**  
**Land at Gonwin Farm, Gonwin Drive, Carbis Bay, Cornwall**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Michael Wodskou of Gonwin Developments Ltd against the decision of Cornwall Council.
- The application Ref PA13/09107, dated 3 October 2013, was refused by notice dated 1 October 2014.
- The development proposed is an urban extension to St Ives/ Carbis Bay. Consisting of housing, and employment (Use Classes – A1 Shops, A2 Financial and Professional, A3 Restaurant/ Café, A4 Drinking Establishments, B1a Office, B1b Research & Development, B1c Light Industrial appropriate to residential areas, C3 Dwelling Houses, D1 Non Residential Institution). Including gardens, landscaped spaces, sports field, village square, parking, site access roads, and infrastructure. All matters reserved except for access to the site.

**Summary of Recommendation: that the appeal be dismissed.**

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**File Ref: APP/D0840/W/15/3005068 – APPEAL B**  
**Land at Gonwin Farm, Gonwin Drive, Carbis Bay, Cornwall**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Michael Wodskou of Gonwin Developments Ltd against the decision of Cornwall Council.
- The application Ref PA14/10452, dated 31 October 2014, was refused by notice dated 21 January 2015.
- The development proposed is an urban extension to St Ives/ Carbis Bay. Consisting of employment and housing (Use Classes – A1 Shops, A2 Financial and Professional, A3 Restaurant/ Café, A4 Drinking Establishments, B1a Office, B1c Light Industrial appropriate to residential areas, C3 Dwelling Houses, D1 Non Residential Institution). Including gardens, landscaped spaces, MUGA, village square, parking, site access roads, infrastructure and a No Left Turn restriction into Church Lane when leaving the site. All matters reserved except for access to the site.

**Summary of Recommendation: that the appeal be allowed, subject to the conditions in Appendix 1.**

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**Procedural Matters**

1. Determination of the appeals was recovered by the Secretary of State by way of a direction dated 16 November 2015. The reason for the direction is '*because the appeals involve proposals for residential development of over 10 units in areas where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority: or where a neighbourhood plan has been made*'. At the Inquiry an application for costs was made by the appellant against the Council. This application is the subject of a separate Report.
2. The two appeals relate to similar sites. The main difference was that the extent of appeal site B was reduced by around 5.5 hectares as a result of the exclusion of an area proposed to be mostly open space and playing fields. It was stated that appeal B was also amended to include measures to prevent vehicles turning left onto Church Lane when exiting the site. As the proposals are otherwise similar, this report will consider both appeals together. The Council considered the applications under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and issued a screening opinion that the proposals



did not require. The Planning Inspectorate reviewed that decision and reached the same conclusion. I have also reviewed the documentation and reached the same conclusion

3. Appeal A originally included a care home (Use Class C2 Residential Institution) within the description of the development on the application form. This element was removed from the description by agreement. As it is a reduction in the content of the proposal, I recommend that the amended proposal be considered. I am satisfied that the public were informed of the amendment during the processing of the application and that this was the proposal that was considered by the Local Planning Authority. There would be no prejudice as a result of the amendment.
4. The participants in the Inquiry included a residents' group called Carbis Bay and Lelant Opposing Urbanisation Together, with the acronym CLOUT. The group submitted representations and gave evidence to the Inquiry. Although the group did not have formal Rule 6 status, amongst their number was an experienced Solicitor, who made some submissions on behalf of the group. The three bound volumes of Appendices to Mr Dunlop's Proof of Evidence contain the majority of the documents referred to by the parties and are the Appendices cited in this report unless otherwise stated. The Appendices include various recent appeal decisions in Cornwall referred to by the appellant. The illustrative Masterplans for Appeal A and Appeal B are contained in Appendix A and B of Mr Lonsdale's Proof of Evidence. Headland Road is to the north of the site. Hendra Vean and Longstone Close are to the west. Church Lane and the A3074 are to the south.
5. Executed agreements under Section 106 of the Act in respect of each appeal were submitted at the end of the inquiry. The parties to the agreements are the landowner and the Council. I requested further information on the previous agreements in the area from the Council. This information was submitted after the inquiry closed. The appellant and CLOUT were afforded an opportunity to comment. I consider these matters against the tests in paragraph 204 of the NPPF and the CIL Regulations below.
6. I visited the site and area on several occasions between 30 November and 4 December 2015, including a night time visit to Church Lane at the request of residents. I carried out an accompanied site visit on 4 December 2015.

### **The Site and Surroundings**

7. The A3074 is the main road into St Ives from the A30, passing through Lelant and Carbis Bay first. It has streetlights from Lelant to Carbis Bay. The site lies to the east of Carbis Bay adjacent to the existing settlement edge. The site lies between the A0374 and the cliff edge above Porth Kidney sands. There is a line of dwellings along Headland Road to the north. The eastern boundary follows the settlement edge. The dwellings to the northeast are low density with mature pine trees. Hendra Vean and Longstone Close lie to the east of the site and are a 1960s development of bungalows in a suburban style. To the south of the site there is a line of development as far as the junction with Church Lane. This comprises some apartments and dwellings together with a fish and chip restaurant and some parking areas.

8. Church Lane runs from the site east into Lelant. It is a narrow, unlit road with passing places. Gonwin Farm is a modern dwelling with a spa, wedding facilities and several tourist cottages. The access lane is also a public footpath, which then circles around the cottages and links to the cliff top path to the north. The site comprises several large fields or parts of fields, which are separated by hedges and banks. The highest part of the site is adjacent to its western boundary. The site slopes down to the south and east.

### **Planning Policy**

9. Paragraph 6 of the National Planning Policy Framework (NPPF) states that the purposes of the planning system are to contribute to the achievement of sustainable development. Paragraphs 18 to 219 taken as a whole defines the meaning of sustainable development. The 3 dimensions of sustainable development are an economic role, a social role and an environmental role (paragraph 7). Paragraph 14 is critical. It states that at the heart of the NPPF is a presumption in favour of sustainable development, which should be seen as the golden thread running through both plan-making and decision-taking. For decision-taking this means (firstly) approving development proposals that accord with the development plan without delay and (secondly) where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. Paragraph 49 states that relevant policies for the supply of housing cannot be considered to be up-to-date if the Local Planning Authority cannot demonstrate a 5 year supply of deliverable housing sites. Paragraph 215 states that the weight to be given to policies in existing plans depends on the degree of consistency with the NPPF.
10. The Penwith Local Plan (LP) was adopted in 2004 and covers the period to 2011. The gist of the relevant policies is: Policy GD1 – New development should be integrated with its surroundings in terms of scale, siting and design and edge of settlement development is supported, subject to it being well integrated into form of the settlement and having no adverse amenity affect. Policy CC1 – The unique countryside that forms the Penwith Peninsula is recognised and harm to landscape character should be avoided. Policy TV1 – The main focus of development is to be in the main towns, which includes St Ives/Carbis Bay. However, development which would have a significant adverse effect on the setting or character of a town or village will not be permitted and proposals for development in or on the edge of a settlement should be well integrated into the form of the settlement, not have an adverse effect on areas of amenity, recreational or wider environmental value and be of a scale and design which is in keeping with the character of the settlement. Policy TP7 – recognises the importance of public rights of way for access and recreation. Development proposals should not result in their continued use being less safe, convenient or attractive. There is no defined settlement boundary in the Penwith Local Plan. Policy E5 seeks to prevent the loss of agricultural land of Grades 1, 2 and 3a unless there is no practicable alternative and the loss is outweighed by the importance of the development.

11. The Cornwall Local Plan will replace the extant plan when adopted. It was developed from an up-to-date evidence base. It was submitted to the Secretary of State for examination, which commenced in May 2015. The Examination was suspended to allow the Council to undertake further work in regard to the provision of housing and the employment strategy. The Council has undertaken the additional work, which it is hoped will be submitted soon with a view to the Examination re-opening in April 2016.
12. The St Ives Area Neighbourhood Development Plan (NDP) has been prepared and submitted for examination. The examination has been completed and the report concludes that the plan meets the basic tests subject to some recommended changes (see paragraph 81 below for details). The NDP will then be the subject of a local referendum yet to be arranged. The NDP policies have limited weight until after the referendum. Part of the site is allocated for mixed use development in the NDP under Policy AM4. Policy H1 requires that 50% of dwellings on allocated sites are affordable. Policy H2 seeks to restrict all other dwellings to be full-time principal residences. Policy H3 relates to Phasing of development over the Plan period. Policy H4 seeks to impose restrictions on sites unallocated for development in the NDP to 50 dwellings or less and 100% affordable dwellings, amongst other things. Policy OS5 seeks to protect the gap between Carbis Bay and Lelant. Policy OS7 refers to footpaths and is similar to Policy TP7 of the LP. Policy OS8 seeks to protect agricultural land, similar to Policy E5 of the LP. The site is not in any designated protected area in the NDP.

### **Planning History**

13. Planning permission was granted in March 2012 for a Wedding/events venue, beauty spa, three eco-cottages, access and parking. This related to land to the west of Gonwin Manor, on part of the appeal sites.

### **The Proposals**

14. The applications are in outline with all matters reserved except means of access to the site. The proposed access would be from a new roundabout on the A3074 near some dwellings on the south side of the road. The applications were accompanied by illustrative details and masterplans, which show up to 235 dwellings with a mix of types at varying densities. Low density housing is shown on the northern part of the site adjacent to Headland Road. There would be a doctor's surgery near Church Lane. The indications were that the shops would total 700 - 900 m<sup>2</sup> together with a restaurant, a pub, an A2 office and a mix of B1 uses (750 - 850 m<sup>2</sup> floorspace). The open space as part of Appeal A would contain substantial woodland planting and two sports pitches.

### **Matters Agreed between the Council and the Appellant**

15. A Statement of Common Ground (SOCG) was submitted to the Inquiry. The following are the important points contained therein.
16. It is agreed that St Ives/Carbis Bay is identified in the Council's emerging development strategy as one of the principal settlements where allocations for housing and employment will be made. There is no dispute regarding the sustainability of the site or its location in relation to services. There are no landscape designations on the site. There is no objection on heritage grounds.

Archaeological interests can be safeguarded by the imposition of suitable conditions.

17. The development site is within Flood Zone 1 where the principle of residential and employment development is acceptable. The development complies with all requirements for foul and surface water drainage subject to conditions. There was no objection to the proposals on drainage grounds from the Environment Agency, or South West Water.
18. The provision of affordable housing will help reduce the significant shortfall in affordable housing in the St Ives/Carbis Bay area. It is agreed that the access arrangements, highways and transport assessments were satisfactory subject to conditions and contributions towards transport improvements.
19. The Council cannot demonstrate a 5 year land supply of housing land because there is no fully objectively assessed need for housing that has been found to be sound through examination. In these circumstances, the housing policies in any saved policies in the Local Plan should not be considered to be up-to-date (paragraph 49 of the NPPF). A 20% buffer is required due to persistent under-delivery.
20. The Transport Assessment (TA) submitted with the applications and consultations with the highway authorities (in the Council and Highways England in respect of impacts on the A30) has established that a safe and suitable access can be provided to the development. The TA adequately analyses the likely impact on the highway network in the vicinity of the site. There was no objection to the content or conclusions of the TA by the Council Highways Department. It is agreed that there are no highway capacity issues at the site or existing junctions or roundabouts leading to the site. The submitted Travel Plan (TP) provides a range of measures to encourage the use of sustainable modes of transport as alternatives to the motor car. The TP was considered to be acceptable. It is agreed that conditions can require the submission of further details if planning permission were granted. There are existing bus stops within a 5 minute walk of the site. There are local facilities within Carbis Bay as set out in the TA. The proposals would provide the opportunity for new employment facilities and services including a Doctor's surgery. In conclusion, the proposals would not result in any severe impact on the surrounding highway network and would accord with paragraph 32 of the NPPF.
21. A further SOCG regarding the status of the NDP was submitted post-inquiry. The main points made were that: the publication of the Examiner's Report increases the weight to be given to the draft NDP. However pending the referendum the NDP can still only be given limited weight. For the purposes of this appeal the Examiner's Report does not materially alter the submission draft. In any event, in the absence of the Council being able to demonstrate a 5 year housing land supply, paragraph 49 of the NPPF applies to render the housing policies out of date whether in draft or made.

## The Case for the Appellant

22. There are two applications before the Secretary of State, both for mixed use extensions to the sustainable settlement of St Ives & Carbis Bay. This is one of the settlements identified in the emerging Cornwall Local Plan as being a key focus for growth<sup>1</sup> in the 20 year period of the Plan. The emerging Cornwall Local Plan is currently subject to a suspended examination, its examining Inspector, having found the original estimated Objectively Assessed Need (OAN) of 47,500 dwellings to be insufficient. As a result, the Council has recently identified an OAN of 52,500, with a concomitant uplift in housing for St Ives & Carbis Bay to 1,100 dwellings. It is accepted that all we can know at this stage is that the housing requirement for Cornwall as a whole will be going up significantly from 47,500, and that for St Ives & Carbis Bay it will rise from the original 1,000 dwellings.
23. In addition, it is accepted that the Council is unable to demonstrate a 5 year supply of housing land and, as such, paragraph 49 of the NPPF is engaged. Relevant policies for the supply of housing are, therefore, deemed out of date. This means both that the applicable test for determining the planning applications is that found in the second bullet of the second half of paragraph 14 of the NPPF and that the weight to be given to housing policies is to be reduced. This applies whether or not those policies are to be found in the district-wide development plan or the emerging St Ives & Carbis Bay Neighbourhood Plan<sup>2</sup>. Indeed, the case of 'CLOUT' is that the Neighbourhood Plan – and any purported conflict with it - is to be given 'nil' weight.
24. The Development Plan for the purposes of s. 38(6) of the Planning and Compulsory Purchase Act 2004 consists solely of the 2004 Penwith Local Plan. This pre-dates the NPPF. Its strategic housing policies are recognised to be out of date, and in any event are rendered so by the operation of paragraph 49 of the NPPF. Further, the tests to be found in its development control policies are drafted in the pre-NPPF style of 'drop dead' policies ('if harm, refuse permission'/'grant permission only if no harm'). As such, paragraph 215 of the NPPF operates to render these policies out of date in terms of the tests they impose, even if the topics they cover are still topics where the NPPF extends protection. The site is not identified as an important open area under Policy TV2.
25. There is an emerging Cornwall Local Plan, which in due course will replace the Penwith Local Plan. However, as just noted, its examination is currently suspended and the Council, rightly, recognise that, currently, only limited weight can be attached to it. No policies of the emerging Cornwall Local Plan are cited in the reason for refusal. Indeed, by providing additional housing at St Ives & Carbis Bay, the proposals actually foster the implementation of the draft Cornwall Local Plan spatial strategy, which seeks to direct additional housing and economic growth to the significant settlements of Cornwall, of which St Ives & Carbis Bay is one. Part of the evidence base has been the St Ives & Carbis Bay Town Framework Urban Extension Assessment<sup>3</sup> (UEA) prepared by the

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<sup>1</sup> Identified as 1,000 units in the submission draft Cornwall LP

<sup>2</sup> See Woodcock Holdings per Holgate J at paragraphs 21 and 24

<sup>3</sup> Dunlop Appendix 29

Council, which basically identified appeal site B for residential-led urban extension under the notation 'SUE1'. In addition, there is an emerging NDP on which the Examiner's report concluded that the Plan was basically sound. This works to an overall housing figure of 1,000 dwellings and proposes to allocate the field in the south-west corner of the site for a mixed use development, including residential development as site AM4. As such, the site benefits from being identified both in the evidence base of the district-wide emerging development plan, and in the text of the emerging NDP as a sustainable urban extension to this sustainable settlement. As one of the councillors appearing as a third party put it, the principle of development is established; it is not a question of 'whether?', but, rather, 'how much'?

26. A Landscape and Visual Impact Assessment was undertaken for both schemes. The results demonstrate that there would be no direct impacts on the nearby Area of Great Landscape Value and no significant impacts on its setting (now acknowledged by the Council). There will be some adverse visual impacts mainly in close views. The impact would be mitigated by retention of important hedgerows and significant new planting as well as density and building height restrictions at boundary locations. The new urban edge will be woodland planting (Appeal A) or reinforced planting along the existing access to Gonwin Farm (Appeal B). There are limited medium range views from the east of the site confined to gaps in the existing hedges. There are no views from Church Lane until one has reached the site. Views from the A3074 to the east of the site are limited by vegetation and topography to a single point near Lelant. The site is seen from long distance views to the east (including from Hayle Towns and the Hayle estuary) in the context of the existing development that surrounds the majority of the site. The site is not in a protected area but the green gap between Carbis Bay and Lelant after construction would be around 850m for Appeal A and 980m for Appeal B.
27. The schemes will integrate with their surroundings provided that the design code and parameter plans are followed. Lower density development is proposed along the northern edge of the site to match the surrounding area and offset development from the coastal path and Headland Road. A better urban edge to the settlement will be provided by means of planting around Gonwin Manor (Appeal A) or along the existing access track (Appeal B) and higher quality development along the A3074 (both schemes). Any form of development will have an effect on the local area. This would be true for the site identified in the NDP, which is next to the existing dwellings overlooking the site, or SUE1 as identified in the UEA. The proposals would not have an unacceptable impact on the local footpaths. It would make them safer by increasing natural surveillance and separating pedestrian and vehicular traffic. The linkages to the surrounding residential areas would be increased. Apart from the stretch close to the A3074, the footpath would be in an attractive landscaped section with views to the east towards the AGLV.
28. There were extensive discussions with the Council over the year prior to the submission of the first application. The proposals were presented to a planning liaison meeting, and a design review panel. They were the subject of a planning performance agreement. Both applications were recommended for approval. Specifically, there was no objection from the landscape or right of way officers. The officers' conclusions were: whilst the development would have a local impact, there would be clear benefits of the scheme and as the character and

appearance of the area would be at least preserved, planning permission should be granted. As just noted, the site had been identified as a suitable option for sustainable residential growth in the Council's own UEA as site 'SUE1'. At no time has the Council disavowed the soundness of the conclusions of that work. The Inspector in the Helston decision found that the Urban Extension Assessment, as part of the 'evidence base, must have great value'<sup>4</sup>. The Council's witness accepted that that was the case at St Ives & Carbis Bay. In addition, part of the site has recently been proposed to be allocated in the emerging St Ives and Carbis Bay Neighbourhood Plan, as site AM4<sup>5</sup>.

29. The two appeal schemes were refused by members, contrary to officers' recommendations, on grounds relating to landscape impact, agricultural land classification and financial contributions. The latter two were dropped. In addition, on 7<sup>th</sup> September 2015, the landscape objection was modified 'on review' to remove any allegation of harm to the AGLV and to accept that the landscape in question was not a 'valued landscape' for the purpose of paragraph 109 of the NPPF. As such references to paragraph 109 were removed. This was confirmed in the Statement of Common Ground and by the Council's witness orally.
30. The Council has no 5 year land supply and it is accepted, therefore, that paragraph 49 of the NPPF is engaged. As such, the relevant policies for the supply of housing in the 2004 Penwith Local Plan are accepted to be out of date. In addition, the 'drop dead' policy tests in the Penwith LP policies cited in the reason for refusal were accepted not to accord with the 'balanced' approach in the NPPF and therefore be out of date, even if their 'topics' received some support from the NPPF. Further, it is agreed that, to the extent that there is said to be a conflict with emerging Neighbourhood Plan allocation, AM4, that, too is rendered out of date by the operation of paragraph 49 of the NPPF. Notwithstanding a suggestion to the contrary at paragraph 4.5 of its proof, the Council accepted the proper test was, therefore, that contained in the second bullet of the second half of paragraph 14 of the NPPF: that permission should be granted unless the adverse impacts *significantly* and demonstrably outweigh its benefits. Paragraph 47 of the NPPF states that planning authorities should significantly boost the supply of housing in their areas. Inspectors have consistently recognised the Government's intention to boost the supply of housing and meet affordable housing needs as being important considerations in Cornwall<sup>6</sup>.
31. The schemes' benefits align with the three dimensions of sustainable development identified in paragraph 7 of the NPPF. They give rise to the need for the planning system to perform a number of roles. These are contributing to a strong economy by the provision of sufficient land in the right place at the right time (economic role), supporting strong and healthy communities by providing housing and creating a high quality built environment (social role) and protecting and enhancing our natural, built and historic environment (environmental role). The economic benefits were identified as: the timely provision of new housing in a sustainable location, construction and permanent

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<sup>4</sup> Appeal Decision Dunlop Appendix 22, para. 5

<sup>5</sup> Dunlop Appendix 25

<sup>6</sup> Appeal Decisions in Dunlop Appendices 17 & 19-22.

jobs and additional expenditure in the area. The submitted obligations address the infrastructure issues identified by the Council. The social role would be related to the provision of 118 affordable housing units, significant open space and contributions towards off-site open space and transport infrastructure. There is a very high level of housing need in the St Ives area as outlined in the Council's reports to Committee. In terms of the environmental role – the Council accepts the need for the release of greenfield land in its area if housing needs are to be met. The proposals would have minor adverse impacts on the landscape, but benefits in terms of ecology in the medium to long term through habitat creation.

32. The Council had not quantified the weight given to the benefits, but orally accepted that the economic benefits should be given 'significant weight', that the social benefits should be given 'substantial or great weight' and that further positive weight could be attributed to the environmental factors (absent impact on landscape). Further, it was accepted that for permission to be refused, the harms had to be 'significantly' more weighty than the sum of these accepted benefits: i.e. significantly more weighty than the sum of 'significant', 'substantial/great' and 'some'. Nowhere in the Council's evidence to the Inquiry was such a claim made. The Council's witness was not re-examined on the point. Indeed, such a claim, in respect of the identified landscape impact, could not rationally be asserted given the concessions made: such harm as there would be would be accepted to be no more than that which was axiomatic of any greenfield development extending an existing sustainable settlement. While the site itself would change in immediately adjacent views, that change was to a non-designated landscape, accepted to be 'off the bottom of the scale' in terms of paragraph 113 of the NPPF and to a landscape which was accepted not to be a 'valued landscape' for the purposes of paragraph 109.
33. As the Council, contrary to its planning officers and landscape officers advice, had refused this scheme on landscape grounds, it needed to be able to lead evidence that the impact on this landscape (a landscape that neither engages paragraphs 109 nor 113 of the NPPF), in respect of a site which it had itself identified as suitable for development as SUE1, and which in part even the emerging NDP had identified as AM4, would significantly and demonstrably outweigh the significant + substantial/great + some weight of the benefits. It did not and could not do so, and – as with the decision in Helston – permission should be granted.

#### *Agricultural Land Quality*

34. The Council very properly dropped this objection, having lost a number of appeals on that point. Paragraph 112 of the NPPF only requires that account be taken of this issue in the balance; moreover it is implicitly necessary for the LPA to show that there is sufficient land to provide for housing needs without using BMV land. It cannot do so and does not purport to do so. In fact, the agricultural land classification upon which the objection was originally based was in error. There is no Grade 2 land. There is one field of Grade 3a. The rest is not BMV. CLOUT instructed Mr Care to produce a report, but he had neither gone onto the land nor undertaken any soil samples. As such, the Appellant's Agricultural Land Classification report is the only evidence which has investigated the actual classification.



35. It is to be noted, therefore, not only that there is no Grade 2 land, but also that the entirety of the Neighbourhood Plan's draft allocation AM4 is on the Grade 3a field. Loss of BMV land is an inevitability of providing for Cornwall's housing need; it is not a matter which justifies refusal of these schemes.

*Sewage*

36. Much inquiry time was taken up by CLOUT discussing the failings of the St Ives & Carbis Bay foul sewage system. South West Water (SWW) has confirmed that there is adequate sewage capacity for the proposed developments. Moreover, it has pointed out to anyone who will listen that the development will drain its sewage not through the St Ives & Carbis Bay sewage system but to the South East via Lelant and, as such, does not exacerbate any claimed problems with the St Ives & Carbis Bay system or affect local beaches. The trouble is that CLOUT will not listen. SWW confirmed in 2013 that it had adequate capacity for the development. In January 2015, SWW confirmed that it had been repeatedly contacted by those opposed to the development and had explained to them that there was no objection to the proposals because the sewage would not go through the St Ives & Carbis Bay system. It repeated that statement in August this year to the Appellant. It has repeated it since.
37. Oddly, if there were a problem with sewage capacity in St Ives & Carbis Bay, it would more directly affect the proposed allocated sites in the NDP upon which CLOUT rely to deliver the 1,000 units it recognises as needed. But inconsistency of case does not appear to trouble CLOUT's witnesses. In any event, all this is a matter for other legislation than planning. The water undertaker has a duty to provide the requisite foul sewage capacity. It has no objection to the development. As the Council accept, impact on sewage infrastructure is not an objection that can properly justify a refusal of permission.

*Highways impact*

38. The statutory highways authority has no objection to either of the schemes. The trip generation, distribution and impact are all agreed. Although CLOUT repeatedly raised highways impact on Lelant, the A3074 is the arterial route out of St Ives & Carbis Bay. It passes through Lelant and is not seen by the Local Planning Authority or highways authority as an impediment to additional housing growth to St Ives & Carbis Bay. There is no highways justification for withholding permission.

*Archaeology*

39. CLOUT sought to argue that permission should not be granted for these outline schemes until a geo-physical survey has been undertaken. This is directly contrary to the conclusion of the responsible archaeology officer of the Council. CLOUT's witness claimed no archaeology expertise. She produced an elicited letter which she purported to support her position, but actually all it asked for was a watching brief during development – the witness had to replace it with another version altered at her request. In addition, CLOUT sought to draw support from a case in Usk whose circumstances were manifestly distinguishable

from the present scheme<sup>7</sup>. These are outline schemes. The density is not high and were there – and there is no indication that there are – archaeological remains that needed to be retained in situ, they can be. There is, as the Local Planning Authority recognises, no archaeological reason for withholding permission.

### *Conclusion*

40. These applications are for sustainable mixed use extensions to the sustainable settlement of St Ives & Carbis Bay. Cornwall as a district and St Ives & Carbis Bay as a settlement are in acute need for housing, both market and affordable, as well as the commercial development and social infrastructure provided. The location has been identified both by the Local Planning Authority and the Neighbourhood Plan group as suitable for development. There is neither substantive landscape objection, nor any other impact on interests of acknowledged importance which justify refusal.
41. The Council cannot demonstrate a 5 year housing land supply and paragraphs 49 and 14 of the NPPF are engaged. Permission should be granted unless the adverse impacts significantly and demonstrably outweigh the benefits of doing so. The benefits are the sum of 'significant' environmental benefits, 'substantial/great' social benefits, and some additional environmental benefits. The 'harms' are only those inevitably attendant on turning a greenfield to a housing estate – as is accepted to be necessary if Cornwall is to meet its need – on a landscape that is not 'valued' so as to trigger para. 109 of the NPPF and is 'off the bottom of the scale' in the hierarchy in paragraph 113. On no rational basis could this be said 'significantly' to outweigh the acknowledged benefits. The Secretary of State's policy as set out in NPPF, paragraph 14, directs that planning permission should be granted.

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

42. The two planning applications which are the subject of these appeals (PA13/09107 and PA14/01452) were submitted to Cornwall Council on 3 October 2013 and 31 October 2014 respectively. Both applications were submitted in outline, with all matters reserved except for access. The second application was submitted in an attempt to overcome the objections of the Planning Committee in respect of the first application and the main changes included a reduction in the size of the site and an increase in the provision of affordable housing.
43. When considered by the Council's Strategic Planning Committee, the first application was refused on two grounds. The second application was likewise considered by the Strategic Committee and was refused on three grounds. Following a review of the appeal decision, the ground of refusal relating to the loss of agricultural land was dropped by the Council. Reason 3, addressing the absence of a signed planning obligation, has been resolved by a Section 106 agreement, dated 3 December, and can also be withdrawn. The sole issue

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<sup>7</sup> Within the mediaeval walled town, 20m from the ramparts of the Roman legionary fortress and in the close vicinity of the site of nationally important archaeological remains.

between the Council and the Appellant therefore concerns the harm to the landscape character and the associated visual impact.

44. The starting point for consideration remains the development plan. It is accepted that policies relating to the quantum of housing provision are out of date, this does not necessarily mean that the same applies to the other policies, on which the Council seeks to rely. The policies relied on by the Council are: Policy GD1 (integration of new development with its surroundings); Policy CC1 (protection of the countryside); Policy TV1 (location of development) and Policy TP7 (rights of way).
45. The Cornwall Local Plan examination took place on 18 May 2015 and the Planning Inspector has now provided his written preliminary findings which the Council are considering. Therefore, in the absence of a fully tested objective assessment of housing need, it is not possible to conclude whether there is a five year supply of housing and paragraph 49 of the NPPF will apply. It is agreed that relevant policies for housing are not considered up to date.
46. Whilst it is accepted that the policies in the emerging Cornwall Local Plan are not yet part of the development plan, they do carry some weight, due to the stage that the Local Plan has reached in the adoption process, as an evolving entity. The policy and explanatory text does give a clear indication of the Council's direction of travel. This Local Plan has been developed from an up to date evidence base. The first stage of the Examination addressed legal compliance and key strategic issues, including the level of housing growth and affordable housing targets. Recent updates show that the figure has increased for housing distribution in St Ives/ Carbis Bay. The Fully Objectively Assessed Need is now set at 52,500 and the housing allocation for St Ives and Carbis Bay is 1,100,<sup>8</sup> with 462 completions between 2010 and 2015 and a remaining requirement of 351 (as at August 2015). The Council asserts that this demonstrates that the Local Plan is not vastly out of kilter with what the Inspector thought acceptable. The Council has taken on board the Inspector's suggestions and increased the amount of proposed housing accordingly.
47. The Council did not cite housing supply as a reason for refusal. The Council in their statement of case made it clear that this would not form part of their evidence. In the case of Upper Chapel, Launceston, where the housing land supply in Cornwall was challenged in some detail, for the first time, the Inspector stated, at paragraph 49: *"it is not my role in this planning appeal to pre-empt the outcome of that examination (referring to Local Plan)... that would not be appropriate."*<sup>9</sup> The Council submits that this approach is relevant in these proceedings.
48. The weight to be given to the NDP increases having regard to it being post examination which found it generally sound and due to the subsequent high degree of local support. There are unresolved objections to Policy H2 concerning primary residency. There is an indication that on this point the NDP

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<sup>8</sup> Proposed Schedule of Further Focused Changes to the Cornwall Local Plan Strategic Policies Proposed Submission Document – 2010-20130 (March 2014) and Schedule of Focused Changes (August 2014)/ Cornwall's Full Objectively Assessed Need/ Cornwall Local Plan Housing Distribution

<sup>9</sup> Appeal Decision Dunlop Appendix 17, p 11

will be challenged in the Courts. The weight to be given to this policy is less than significant, but ultimately is a matter for the decision maker.

49. The site consists of open fields sub-divided by hedgerows and trees. It provides a verdant break from the built development of Carbis Bay to the west and the village of Lelant, towards which there are fields and hedges. It is attractive and valuable countryside, ensuring the settlements of Carbis Bay and Lelant remain physically separate, as well as being of interest in their own right, due to their contribution to the overall visual impact and landscape character, in St Ives Bay. Local resident and Cornwall Councillor, Liz Penhaligon, spoke of the importance of the separate identities of both parishes. It has been reiterated throughout the course of the Inquiry that this is an area of West Cornwall recognised as being a popular residential area, as well as an increasingly desirable Cornish holiday destination, known for its overall beauty.
50. The proposed area for building would increase the urbanising feel of the area and have a detrimental effect upon the landscape character of the area. With reference to the decision in Oxhill Road, Warwickshire, the development "would be seen as an incursion into the countryside rather than as a "rounding off." <sup>10</sup> Further, it was suggested that the proposed "rural edge" is not necessary and the woodland and community sports pitches proposed cannot improve on the rural setting currently in situ.
51. Within a wider area of great value, the land is valued. The site is within Landscape Character Area (LCA) CA05 – St Ives Bay<sup>11</sup>. This is generally characterised by a long curving bay with sandy beaches and extensive sand dunes. Suburban development is identified as a pressure on the LCA. Although the land is not within any formal landscape designation it is recognised as forming an important element of the overall setting and beauty of St Ives Bay in the emerging NDP and the loss of rural character is highlighted in the LCA. Both are indicative that although not formally designated, the land has some value. Further exploring the definition of valued land, as raised in the *Maldon* decision<sup>12</sup> referred to by CLOUT, it was suggested that valued landscape could encompass the feeling of the community and their relationship with the land.
52. It is accepted that the development needs of St Ives are likely to require some greenfield development, but the present site, despite not being designated, scores highly for its landscape and visual qualities and accordingly local and national policy, notwithstanding public feeling, indicate that it should be preserved if at all possible. As part of the preparatory work for the new plan, the Council prepared the UEA in order to assess all the land which directly adjoins St Ives and Carbis Bay for its suitability to accommodate growth. The majority of Site B was identified as one of four preferred options to be taken forward (SUE 1). This should be treated as being indicative only, as there was further work to be done.

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<sup>10</sup> APP/ J3720/A/14/2215276 Land South of Oxhill Road, Tysoe, Warwickshire, Appeal Decision, p 7

<sup>11</sup> In the Council's Cornwall and Isles of Scilly Landscape Character Study (2008)

<sup>12</sup> APP/ X1545/A/14/2224678 Land South of New Moor Farm and east of North End, Southminster, Appeal Decision

53. Importantly, the development would have a visual impact on users of the popular Public Right of Way, (which forms part of the South West Coast Path) who visit the area to view the beauty of the surroundings and should be treated as high sensitivity receptors. It was accepted by the appellant's landscape witness that some glimpses, over high hedges and through gateways would be inevitable. The footpath experience would be diminished and the works would create a hard developed environment through which the footpaths would pass in place of the current pasture field. The notion of the footpath being safer was flawed because some members of the public may find a narrower, more enclosed route in an urban environment more threatening. The Council, with the Thames Farm decision in mind, maintains that the countryside feel of the site will be lost. The appellant did not agree that the creation of an urban environment would harm the enjoyment of users. The housing would remain a dominant feature and the attention of vehicle passengers, also, is likely to be drawn to the development.<sup>13</sup>
54. Hedges would be removed and a new roundabout constructed as a result of the access to the site. These works and accompanying infrastructure and the adjacent development would have an urbanising effect on the locality changing its character. The LVIA identified a major impact at the site access. The proposed mitigation measures were unsatisfactory; particularly for Viewpoints 9, 10, 11, 14, 15, 17, 18 and 21. The Council is of the view that such measures (namely planting and the creation of a "green corridor") are superficial and speculative and that they can never adequately address the acknowledged permanent damage that would be undertaken. The Council maintains that both Local Views and Further Views, such as at Viewpoint 17 and Viewpoint 18 (Hayle Towans/ The Towans) have been disregarded and that this is reflected in the Landscape Visual Appraisal. The site is well viewed from the mouth of the Hayle Estuary, across St Ives Bay, or from the extensive dune network at Hayle Towans, adjoining the acclaimed "3 miles of golden sands," where holidaying visitors occupy chalets and flock to Cornwall to relax in a countryside setting and enjoy the stunning scenery that can be easily experienced. From here the development will be little short of a blot on the landscape.
55. The Council has a transport strategy for St Ives intended to support housing and employment growth. The strategy aims to manage traffic movements and support existing transport infrastructure. The proposals would support the implementation of the strategy by a contribution of £900,000. The contribution would be used to improve bus and rail infrastructure, walking and cycling routes, links to the St Erth transport interchange and traffic management by the provision of variable messaging signs. The Travel Plan for the development itself would support alternative modes of transport for future residents. There is congestion on the A3074 particularly in the summer months. The proposals would result in a 14% traffic increase at peak times. There have been a number of accidents in the immediate vicinity of the site. The crossroads at Church Lane has resulted in 6 accidents within the last 10 years. The proposed roundabout will remove the crossroads and improve highway safety. Its presence and the extension of the 30 mph limit will act as a traffic calming measure on the approach to Carbis Bay. The proposals include measures to restrict left turns out of the site onto Church Lane meaning that traffic would

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<sup>13</sup> APP/Q3115/A/14/2217931 Thames Farm, Henley-on-Thames, Appeal Decision, p 9

have to negotiate the roundabout and return through the estate road. This would discourage the use of Church Lane as a shortcut or rat run. The accident statistics from the site along the A3074 to the A30 are considered to be average for the volume of traffic and nature of the road.

56. The Council acknowledge the benefits of the proposal, particularly in terms of contribution to housing. It is also acknowledged that at present the housing land supply situation is such that paragraph 49 of the NPPF applies, i.e. relevant policies for the supply of housing are to be considered out of date, albeit recent development, namely the St Ives Neighbourhood Development Plan submissions, are encouraging in terms of housing numbers moving forward. In any event, the considerable harm identified significantly and demonstrably outweighs the benefits of the proposal.

### **The Case for Carbis Bay and Lelant Opposing Urbanisation Together (CLOUT)**

57. CLOUT had several speakers who made representations at the inquiry. The main points made are summarised in the following paragraphs. The applications were opposed by over 400 residents writing individual letters of objection. The democratic wishes of local people should be respected and the Council's decisions to refuse planning permission upheld. The site is not allocated for development and so the proposals are contrary to the development plan. The proposed affordable homes will not be affordable for local people with seasonal low-income jobs. The recent Housing and Planning Bill will result in a fall in affordable housing as developers await its provisions for starter homes. This will particularly affect the social rented sector, which is critical in this case. It is likely that most of the dwellings would be second homes, empty during the winter. The schemes would be detrimental to the tourism industry of the area due to their impact on important coastal views and traffic at the gateway to the town. The development will change the whole dynamics of the place. The area is renowned for its artists and as a location for TV programmes and films.
58. Paragraph 7 of the NPPF sets out the three dimensions of sustainable development. There is no guarantee that the proposed retail and employment will actually be provided. Construction jobs are short term and may not go to local people. The affordable housing may not be delivered as the developer can apply to amend the s. 106 agreement under the terms of the Act. The proposals are for lower density of dwellings on high grade agricultural land. Whilst recent appeals have failed to sustain concerns regarding the loss of BMV land, this was on the basis of a higher density. The NPPF at paragraph 49 emphasises the importance of housing but not to the exclusion of all other considerations. The Landscape Character Study<sup>14</sup> at CA05 refers to the inexorable spread of built development into the rural landscape. The effects of the proposal on the rural landscape are significant as described below. There are views from the coast and from boats on the regular trips to Godrevy Island. Persons engaged in water-based sports would have similar views. There would also be views from the area around the junction of the A3074 with the A30. The appellant's visual impact assessment shows that close to the proposals there would be a major landscape and visual impact as a result of the development.

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<sup>14</sup> Cornwall and Isles of Scilly Landscape Character Study 2008

These factors were important in an appeal in Leicester<sup>15</sup> and Maldon (not referenced). These effects should carry considerable weight and would conflict with LP Policy CC-16.

59. The historic environment aspect of the scheme has not been properly assessed. There remains the distinct possibility that the proposals could have a significant detrimental effect on the as yet undiscovered archaeological remains of local significance. A full geophysical survey should have been required even though the site only had a moderate potential for remains to be present, as identified in the appellant's desktop study. This was recently insisted upon in other sites in Cornwall with a similar moderate potential. The site may contain barrows, which are of regional significance and often scheduled. If found the effect of the proposed development on their significance would be an important consideration for any decision-maker. A letter from Michelle Brown FSA, Professor Emerita of Medieval Manuscript Studies, draws attention to the importance of the Hayle estuary in ancient times and the possibility of archaeological sites in the area. The letter refers to features suggestive of the possible presence of barrows on the site and was amended to state that it would be highly desirable for some archaeological survey work to be undertaken before development is sanctioned. The letter originally stated that a watching brief would suffice.
60. Reference was made to guidance on assessing the significance of non-designated heritage assets published by Historic England. The proposed conditions are valueless and would not protect the remains before development commences. Minor disturbance can cause significant loss to existing features. The possibility of unrecorded remains has not been properly considered. Reference was made to an appeal decision in Usk where planning permission was refused because of the lack of an archaeological assessment for a proposed extension to a dwelling 20m from a Roman fortress<sup>16</sup>.
61. There was no assessment of any potential effect on the undesignated heritage assets outside the site contrary to Historic England Guidance<sup>17</sup>. These are: Celtic crosses, WWII pill boxes and St Uny's well. In particular, any potential effect from surface water draining into St Uny's well which is fed by a spring.
62. The proposals will increase the severe congestion and traffic problems in the village of Lelant. Lelant is an historic, scenic and beautiful village. There are beautiful walks along the Saltings Lane and other lanes in and around the village, which link to the coastal paths. The A3074 which runs through the village is the main road to St Ives from the A30. It is severely congested especially in the summer holiday season. The road through the village has several bends and pinch points, in particular the bend by the Badger Inn. The footways are of inadequate width or non-existent in places with consequent danger to pedestrians, especially those with prams or the disabled. There are no pedestrian crossings in the village. The proposals will increase the traffic through the village, especially during the construction period. They will be detrimental to air quality, and increase noise and vibration. Motorists will start using the charming back lanes of Lelant to avoid the congestion on the main

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<sup>15</sup> APP/X2410/W/15/3002495 30 September 2015

<sup>16</sup> APP/E6840/A/15/3132957 27 November 2015, see also footnote 8

<sup>17</sup> Managing Significance in Decision-taking in the Historic Environment, Historic Environment Good Practice Advice in Planning: 2, Historic England, July 2015

- road. There have been several accidents and 9 fatalities on the A3074 in recent years.
63. The proposed roundabout access to the site will not aid the situation. It will just cause more delay for motorists. The "no left turn" sign to prevent traffic turning into Church Lane will not work. This narrow country lane will be used as a rat run when the road is congested. The sustainability claims of the developer are questioned. The train service is only one an hour and cannot cope with the peak demands in summer. The park and ride at St Erth is not operational.
  64. The scale of the proposals is too large for the area. They would be a monstrous carbuncle completely out of character with the area. The proposed development would erode the green gap between Carbis Bay and Lelant. It would set a precedent for further development to be approved resulting in the loss of the gap. Brownfield sites should be the preferred location for new development. The importance of agriculture and locally produced food to the area's economy cannot be over-stated. Farmers must be supported and the loss of farmland resisted.
  65. It was claimed that the proposals would result in the loss of high grade agricultural land. In support of this, Mr Care presented an agricultural land quality appraisal. This was based on his experience of farming in the area and knowledge of past crops produced on this land gained some years ago. No site investigations or visits to the site were undertaken in connection with the production of his report. This is an early producing part of Cornwall. It is therefore possible to produce two crops a year on land like this and so it commands a higher rental value. The site is higher grade land.
  66. The proposals would be contrary to paragraphs 7, 17, 56, 58 and 61 of the NPPF and Policies GD1 and GD2 of the Penwith LP. The lack of a 5 year land supply is not a trump card as confirmed by The Planning Inspectorate Group Manager at a conference in London in September. Most of the dwellings needed to meet the future needs of the settlement have been given planning approval. The proposals would be contrary to the NDP which is going to referendum soon. The NDP should be given no weight as the referendum result may be negative, given the opposition to its allocation AM4. There is no demonstrated need for the shops, restaurants, pubs and employment uses proposed.
  67. Local schools are full to capacity and cannot accept more pupils. Expansion plans will not deal with the existing approved new development never mind these proposals. Section 106 payments will not address this problem. The local school is a faith school and not open to all. The infrastructure of the area cannot cope with any new development – hospitals are overstretched. The proposed doctor's surgery cannot be built without the permission of the NHS licence holder in the area. Reference was made to surface water flooding problems that may arise. There are old mine workings in the area that have led to catastrophic collapses of gardens during heavy rainfall, one of which was nearby. The case presented by Cllr Garrod on sewerage matters is strongly supported.



68. CLOUT raised a concern that no information had been provided to ensure that Regulation 123 (3) of the CIL Regulations was not breached. Further information was sought from the Council post inquiry. CLOUT commented that the information from the Council only relates to St Ives. The relevant CIL Regulations apply to the administrative area of the Council. The contribution for education will not meet the demand for places generated by the proposal. The extension to St Uny Primary School will only meet existing demand. There is no contribution for nursery or secondary education. There is no information as to how it was finally calculated. Since the appeal further contributions have been entered into: one for St Uny School, one for transport and one for open space. There are 4 open space contributions in these appeals. The information cannot be relied upon as it does not contain all the planning obligations entered into since April 2010.
69. CLOUT were also concerned that the RSPB contributions were not in the Council's Committee report or heads of terms. A beach ranger to direct persons away from the nature reserve could be contrary to rights of access to open space. The payment for a ranger would not constitute open space infrastructure. The provisions for payment of the RSPB would not comply with the CIL Regulations because RSPB were not a party to the obligations. The Council agreed that this matter was not in the Committee report or heads of terms. The beach (SSSI) is reasonably close to the site. It was considered necessary to manage access to avoid impacts on bird populations at certain times of the year. The Council would act in good faith to pass the relevant monies to the RSPB.

#### **The case for Cllr Garrod**

70. The sewerage system in St Ives and Carbis Bay is totally inadequate and is over capacity. Carbis Bay is in a critical drainage area. Infrastructure planning assessments undertaken by Cornwall Council refer to hydraulic overloads and the need to upgrade the system to Hayle. There have been numerous incidents of raw sewage being discharged from manholes in the streets including on Headland Road. At times the system becomes overloaded and sewage is discharged into the sea. The surfing community has set up alerts to advise when this will happen. The Councillor provided details of the system in the area. There is a bottleneck or problem area at a sewage holding tank at Longstone Hill, which is where the proposal will make its connection to the sewers. South West Water does not want to acknowledge that there is a problem. The situation has been referred to the utility regulator. It is disputed that the site will drain towards Lelant and anyway this will still cause problems at the holding tank nearby.

#### **The case for Cllr Rita Lait, Chair of the St Ives area Neighbourhood Development Plan Steering Group on behalf of St Ives Town Council**

71. Part of the site has been allocated for development in the NDP under Policy AM4. This should be given considerable weight given the stage that the NDP has reached. AM4 and the other 9 allocated sites do not restrict development but rather spread it around smaller sites. This will be sustainable development, which the appeal proposals are not. The smaller allocation for a mixed use development (including 50 dwellings) has more community support and will not impact so heavily on landscape and infrastructure. Access would be proposed

from the adjacent housing development of Nantkervis Court. These allocations will meet the remaining housing requirement of 350 dwellings for the next 15 years. This combined with the development already approved will meet the overall housing requirement for St Ives and Carbis Bay of 1,100 dwellings. The proposals are not the only option to meet the target. Policy H4 of the NDP requires that development on unallocated sites should be for 100% affordable housing. The proposed development on the edge of the existing settlement would also be contrary to Policy OS5 of the NDP. The development would diminish the open area of countryside between Carbis Bay and Lelant, to the detriment of the character of the area. It was accepted that there is no defined green gap or designated area.

### **The Cases of Other Participants**

72. The local Councillors who spoke at the inquiry made similar points to those made by the representatives and supporters of CLOUT and the other cases reported above. The three Cornwall Councillors who made submissions at the inquiry were Cllr Andrew Mitchell, Cllr Tim Andrews and Cllr Elizabeth Penhaligon. The housing land supply issues are about to be addressed by the Council and remitted back to the LP examination for consideration. Mr Williamson, Mr Guppy, Mrs Brereton, Ms Henderson, Mr Baxter, Mr Hodding, Mr Weatherly, Mr Calderwood, Ms Pardoe and Mr Britt made similar points to the cases referred to above. Additional points regarding issues with a shortage of Police Officers in the area and congestion on other lanes after accidents on the main road were made by Mr Guppy.

### **Written Representations**

73. The written representations submitted at the application and appeal stage repeat many of the points referred to above. I draw attention to a letter from Derek Thomas MP that was presented to the Inquiry by CLOUT. This refers to the pressure for places at the local primary school. He argues that the proposed contributions will not address this, especially as the local school is a faith school. He refers to the traffic and capacity problems in Lelant and concerns regarding air quality there. He supports the concerns with regard to the drainage infrastructure in St Ives/Carbis Bay.

### **Conditions and Obligations**

74. Two broadly similar planning obligations were submitted to the Inquiry – one for each application. The obligations provide for the provision of 50% affordable housing in accordance with a scheme to be agreed by the Council. There are complete mechanisms to ensure control of the type and delivery of the affordable, shared ownership and intermediate housing. The deed also addresses future ownership and occupation. The obligations require financial contributions towards the provision of education facilities, off-site public open space and transport projects. The obligations include a contribution to the RSPB for a beach ranger, signage and a camera. The obligations also address the management of on-site open space, the provision of a travel plan and of sustainable urban drainage systems.

75. The Council confirmed (in post hearing correspondence) that the requirements of Regulation 123 (3) of the CIL Regulations were not breached. This demonstrates that there have not been 5 contributions for the infrastructure projects covered by the obligations submitted with this appeal. The information related to the St Ives area as this is the correct approach under the CIL Regulations. The contribution towards education was calculated in accordance with the Council's guidance and will be used in accordance with that guidance.
76. The conditions shown in Annex 1 were agreed by the appellant and the Council. It was further agreed that conditions related to the development being carried out in broad accordance with the submitted Masterplans and design parameters would be acceptable.
77. The main parties stated that the conditions relating to a travel plan and sustainable urban drainage systems do not duplicate the s106 obligations because the obligations address ongoing matters and management that would be outside the ambit of conditions.
78. CLOUT were concerned that condition 10 would fail to protect any remains found on the site. Conditions should require a geophysical survey. If anything were found as a result of that geophysical survey that would sterilise a large part of the site.

## Inspector's Conclusions

*The numbers in brackets [] refer to paragraphs elsewhere in the report.*

79. I consider that the main issues in these appeals are firstly, whether the proposals would be sustainable development within the meaning of the NPPF and whether the adverse impacts of granting planning permission for the proposed developments would significantly and demonstrably outweigh their benefits. The main adverse impacts referred to were the impact on the landscape and setting of Carbis Bay; the impact on infrastructure (principally the highway network and sewerage system) and the impact on public rights of way. The identified benefits related to the matters contained within paragraph 7 of the NPPF [31]. The second main issue is the impact of the proposals on heritage assets.

### *Planning Policy*

80. The starting point for the consideration of these proposals is the development plan as required under Section 38(6) of the Planning and Compulsory Purchase Act 2004. The development plan is the Penwith Local Plan (LP). It was agreed that the housing policies of the LP are out of date because the Council cannot demonstrate a 5 year supply of housing land (paragraph 49 of the NPPF) [19 23]. There are no settlement limits for St Ives/Carbis Bay in the LP [10]. The tests in the LP policies referred to above [10] are not compliant with the NPPF because they impose absolute requirements rather than being criteria-based. As such paragraph 215 of the NPPF applies and less weight must be given to them. However, the topic areas covered by these policies remain relevant [24].
81. The Cornwall Local Plan will replace the LP when adopted. The examination into the Plan has been suspended whilst the examining Inspector awaits the Council's response to his preliminary findings. The weight to be attached to this Plan is low pending the outcome of the examination once resumed and the subsequent Inspector's report [11, 25, 46].
82. The NDP examination has concluded. The report was published before the close of the Inquiry. The next stage is for the NDP to go to a referendum. It is by no means clear what the outcome of that referendum will be given the evidence of CLOUT [12, 23, 66]. I therefore give the NDP limited weight. Even if it were adopted, its housing policies would not apply by virtue of paragraph 49 of the NPPF [23]. The NDP has been found to be sound and will probably proceed to referendum in the future. The proposals comply with Policy H1 on Affordable Housing. Policy H2 is subject to legal challenge [48]. Policy H3 on phasing and H4 on additional housing sites are based on the overall housing numbers in the Council's emerging LP, which has not been subject of an independent examination. The NDP Examiner's report indicates that Policy H3 should be deleted and Policy H4 will have to be revised so that it reflects the requirements of the NPPF. The other Policies referred to raise issues that are considered in this report. I conclude that the weight to be attached to the housing policies of the NDP is low because the Council cannot demonstrate a 5-year HLS and because Examination of the housing figures in the Cornwall Local Plan has not yet taken place.

83. The majority of Appeal B site was considered by the Council under the UEA and assessed as one of 4 preferred options to be taken forward for further consideration [25, 52]. This process has ceased and will not be used as part of the development plan. The document carries little weight. However, an appeal decision has referred to a similar exercise in another town in Cornwall<sup>18</sup>. The conclusion reached was that the assessment was a comprehensive examination, carried out in a rigorous, objective and professional way. Despite that document not carrying weight, the evidence base was considered to have great value [28]. There was no convincing contradictory evidence before me and I agree with the conclusions of the Inspector in that case.

*Landscape and Visual Impact on the Character of the area*

84. The appeal sites are shown on the respective illustrative Masterplans. The A3074 between Lelant and Carbis Bay has streetlights throughout. There are several isolated dwellings and buildings. As one approaches Carbis Bay there is a group of dwellings on the south side of the A3074. The proposed access roundabout would be in this location in what is currently a smaller field enclosed by hedges. A short distance further west is the junction of Church Lane which is at a crossroads. At this point there is built development on the north side of the road (with the appeal sites to the rear). On the south side of the A3074, there are trees and Longstone Cemetery to the rear. The approach is therefore rural but one gains the impression of having arrived in Carbis Bay from the junction of Church Lane onwards.
85. The access to Gonwin Farm is off Church Lane. It is straight and enclosed by banks and hedges save for field gates. Gonwin Farm contains a complex of buildings as well as the large house itself. The main public footpath skirts Gonwin Farm to the east and runs north to link with the upper coastal path. This coastal path runs along the top of the cliff and is quite well-enclosed by vegetation and banks, apart for some gaps. To the north of the site there is a line of dwellings and apartments along the cliff edge at Headland Road. The development along the site boundaries to the west comprises a line of dwellings along the southern side of Headland Road with low density dwellings set amongst mature pines to the rear. Some small scale development is under way in this area. To the south of this the sites back onto higher density development at Hendra Veau and Longstone Close.
86. In terms of character and appearance, the majority of the appeal sites are semi-rural urban fringe with the eastern part of site A being more rural. Site B has existing built development on three sides and the Gonwin Farm complex on the fourth. The development boundary with the cliff top path extends only as far as the existing line of buildings at the end of Headland Road (a distance of around 170m). This is because the field to the rear of the farmhouse is not part of either application. The portion of appeal site A to the east of the farm is set back around 170m from the cliff top path and woodland planting is proposed within that portion of the site. Gonwin Farm and the drive leading to it provide a reasonable boundary definition of site B from Church Lane northwards. The access roundabout and associated development would be in a small field to the east of the existing edge of the settlement. Site A proposes some additional

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<sup>18</sup> APP/D0840/A/14/2229258 [Dunlop Appendix 22]

built development as well as recreational facilities and woodland planting in two large fields to the east of site B. As such this proposal would extend development further into the countryside.

87. The only LVIA or detailed landscape evidence was that supplied by the appellant. It is acknowledged that the impact on the local landscape would be major and adverse as green fields would be replaced by buildings. The LVIA states that the visual impact of the proposals would be moderate or severe adverse in close views [26, 58]. The proposed access and new roundabout would be particularly prominent [54, 58]. The visual impact would be screened somewhat by existing hedges along the road, coastal path and the footpath leading to Gonwin Farm. There would be clear views from the adjoining residential areas to the west. This part of the appeal site is also zoned for development in the NDP. There would be more screening to the northern part of the site to views from existing dwellings. The detailed design and landscaping proposed would reduce most landscape and visual impacts to neutral at year 15 [26]. The development adjoining existing dwellings around Hendra Vein and Church Lane would still have a major impact on those dwellings [27, 54, 58]. Appeal site A would extend development along Church Lane, with a greater impact in this area.
88. The impact from medium distance views would be more limited as there would be few public views available. The development would be seen from one limited viewpoint on the A3074 near Lelant [26]. Appeal Site A would be closer in this view. One can see part of the site from around Hayle Towans and the mouth of the Hayle estuary at a distance of around 2 km [54]. One can also gain views around the A30 junction south of Lelant [58]. This is a busy highway interchange and drivers' attention would be focussed on the road. From these locations the site is a small component of a wider view and is seen against the backdrop of the existing development to the west. The landform would screen parts of the development and the highest part of the site would be developed at a lower density [27]. I consider that the visual impact from here would be minor. There would be clear views of a part of the site from out to sea [58]. The existing properties along Headland Road would be in the foreground of these views. It was proposed that this part of the site would be developed at a lower density [27]. The longer distance views to the south east are correspondingly further away and the site is part of a wide vista.
89. The adverse effects would be limited to the locations and views identified above. Some of the adverse effects would be limited by the detailed design and layout of the proposals. The proposed landscaping would also mitigate the impacts over time. The allocation of part of the site in the NDP and the assessment in the UEA are important considerations. Finally planning permission was granted for some development on the site near Gonwin Farm [13]. I therefore conclude that there would be a relatively minor degree of conflict with LP Policies GD 1, TV 1 and CC 1 for appeal B. The degree of conflict with LP Policies would be greater for appeal A.

### *Heritage Assets*

90. Paragraph 128 of the NPPF states that where a development site includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation. The Council has required such an assessment and concluded after consultation with the appropriate experts that the archaeological interest of the site can be safeguarded by a condition requiring further archaeological work including a written scheme of investigation [16]. The condition also addresses the protection of the site before development taking place by the clause: No demolition or development shall take place other than in accordance with the Written Scheme of Investigation as approved [78]. I consider that such a condition would comply with Historic England<sup>19</sup> and Government guidance.
91. There was no convincing evidence to dispute the expert conclusions of the Council and appellant. The references to other sites where geophysical surveys or trial excavations were required are not particularly relevant as the evidential context of archaeological remains may have differed [59]. Certainly the conclusions from the Council's expert advisers were different and much as the objectors may dispute those conclusions, they represent independent expert evidence before this inquiry. The appeal decision in Usk related to works in a location within 20m of defences of a roman fortress which is a Scheduled Ancient Monument of national importance [60]. The circumstances are not therefore comparable to this case.
92. The letter from Ms Brown refers to general activity in the area, especially the Hayle estuary. There is no reference to any survey work or site investigation other than in general terms. The conclusion on the type of conditions necessary was altered at the objectors' request [59]. There was no evidence of any potential effect on the undesignated heritage assets outside the site. The Celtic crosses and WWII pill boxes are some distance and visually separated from the proposals. St Uny's well is located on the cliff below the site and would not be physically or visually affected [61]. The requirements for SuDS would ensure that there would be no surface water implications.
93. I conclude that there was no convincing evidence of any harm to heritage assets as a result of the proposals. Any archaeological remains that might be discovered during construction can be addressed by a condition requiring further archaeological work including a written scheme of investigation. A comprehensive condition has been suggested by the main parties. I recommend its use in this case due to the evidence presented.

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<sup>19</sup> Managing Significance in Decision-taking in the Historic Environment, Historic Environment Good Practice Advice in Planning: 2, Historic England, July 2015

### *Impact on Public Footpaths*

94. The character of the main footpath would be altered from the A3074 to the north of Church Lane [53]. Thereafter it would form the boundary of site B as far north as Gonwin Farm. In the case of site A, there would be development on both sides of the footpath. The footpath would run through a mixed use development for some distance from the A3074 in both proposals. I do not consider that any increased security would be a significant benefit for users [27]. From there on the experience for users of this footpath would be relatively unchanged given the existing screening along the lane. Around and to the north of Gonwin Farm the character of the footpath would be largely unchanged as the footpath traverses fields (site B) and proposed planting (site A). The cliff top coastal path would have development on both sides for an extra 170m. This path already runs along roads to the west and then beside the buildings on Headland Road. To the east of the site, views of the proposed development would be limited to gaps in the existing hedges. Overall I conclude that there would be a minor adverse effect for users of the footpaths. There would be some conflict with Policy TP 7 and Policy OS7 of the NDP in that part of the routes would be less attractive.

### *The gap between Carbis Bay and Lelant*

95. Policy OS5 of the NDP seeks to protect the gap but does not define any areas to be protected [12]. The site is not part of a designated landscape or a valued landscape as defined in paragraph 109 of the NPPF [16, 29, 51]. This was accepted by the Council in the SOCG and amendments to the reason for refusal prior to the Inquiry. The site is not in any protected area in the NDP [12]. The proposal will clearly relate to Carbis Bay. There will be a localised impact on the character of the landscape. The gap between Carbis Bay and Lelant was referred to as an important one, albeit not designated as such in any development plan [10, 12]. The remaining gap if the proposals were constructed would be around 1 km for Appeal B and around 850m for Appeal A. Neither scheme would be visible from the built-up area or settlement of Lelant [26]. Streetlighting of the new development may be visible from Church Lane. However, the A3074 has streetlights all along its length between Carbis Bay and Lelant and I do not consider that this would materially affect the openness of the gap. Despite the concern of setting a precedent for further development, there was no evidence of any other proposals [64]. Further, permitting Appeal B as recommended would not prevent the Council from resisting development that would have an unacceptable impact on the gap. The Council would be in a position to resist future proposals, especially as much of the area to the east is in an AGLV. There is therefore no substantive argument that an important gap would be lost or significantly reduced as a result of the proposal. The proposals comply with development plan policies in this respect.



### *Highways and Access*

96. The A3074 is the main route to St Ives. The evidence was that traffic levels and congestion/delays are high in the tourist season [55, 62]. The A3074 passes through the village of Lelant. In several places the footways are very narrow and there are no controlled crossings in the village. In particular, there is a right angle bend and narrow footways at the junction of Church Road, near the Badger Inn. There was considerable evidence of the traffic problems caused by congestion, parked cars, poor pedestrian routes, large vehicles and sheer weight of traffic. This is a serious problem for the residents of the village [62].
97. Proposals are in place for a range of traffic measures designed to improve the situation in relation to traffic flows through the village. The proposals would provide funding towards the implementation of a range of these measures [55]. There is no ready alternative to the A3074 for traffic wishing to access St Ives [38]. The introduction of messaging and improved park and ride facilities seems eminently sensible and must improve the traffic situation.
98. The highway authorities had no objection to the proposals [20, 38] subject to contributions towards the above traffic measures. The objectors' concerns [62] relating to increased accidents in the area as a result of the proposals were not shared by the Highway Authority. There was no convincing evidence that the traffic from the proposal would increase the risk of accidents. Rather it was argued that the access roundabout and its inclusion on the 30mph speed limit would reduce traffic speeds and would be acceptable and safer than the existing crossroads [55]. This would be the sole vehicular access but pedestrian links would be provided in several locations to aid permeability of the site and provide access to public transport.
99. All parties (and the examining Inspector for the LP) agree that St Ives/Carbis Bay must expand and provide for at least 1,100 new homes [25, 46, 71]. It is therefore inevitable that there will be increased traffic on the A3074 with consequent effects on air quality and noise [62]. No data or scientific evidence was submitted to indicate that air quality or noise limits or standards in Lelant have been exceeded or would be exceeded were the proposals to go ahead. Whilst sympathetic to the genuine concerns of residents, the evidence leads me to conclude that the refusal of these proposals on the basis of traffic generation or highway safety would not be warranted.

### *Sewerage and Drainage*

100. There was a considerable volume of evidence of the existing problems in St Ives/Carbis Bay with overloading of the existing sewers at certain times, for example, after periods of heavy rain. The problems caused are a major pollution concern for residents of the area [67, 70]. The concern that the proposals would have an adverse impact on sewerage facilities in the settlement were not supported by the Council or statutory undertakers [17, 36]. The evidence from the statutory undertaker was that the sewerage connection would be made and sewage would flow away from Carbis Bay towards Lelant. The development site would not drain into or impact upon St Ives or Carbis Bay or the nearby beaches [35]. This would avoid the problem areas and not exacerbate the existing problems. In these circumstances, these matters would not justify the refusal of planning permission.

101. The proposals would include measures to ensure that surface water flows are contained within the site as part of the SuDS [74]. This would improve the existing situation and ensure that localised flooding caused by run-off from the site would be avoided in the future. There was no objection to the proposals from the Environment Agency. I consider that these matters can be addressed by suitable conditions, supplemented by the s106 obligations.

*Agricultural Land Quality*

102. The Council abandoned its objection to the proposals on the basis of the loss of best and most versatile agricultural land (BMV land) under Policy E5 of the LP [43]. Policy OS8 of the NDP also refers. In the context of this area, BMV land consists of Grade 2 and 3A land. The survey based evidence of the appellant pointed to one field being Grade 3A land [34]. This is the field identified for development in the NDP as AM4 [35]. The objectors' evidence did not have any scientific or investigative basis. The witness relied on personal experience of agricultural practice in the area some years ago [65]. I consider that the limited loss of BMV would not be significant in this case and the above Policy requirements are met.

*Other matters*

103. Concerns were raised regarding the pressure of the development on existing facilities [67]. The developer would contribute towards the improvement of education facilities in the area. The Council are satisfied that this would be a fair and reasonable contribution to address the shortfall in child places as a result of the development proposed [75]. It would be for the Council to ensure that those contributions are related to the development and this includes ensuring that the improved facilities are available for prospective residents. The proposed medical practice would have to be sanctioned by the relevant authorities. The impact of the proposals on other facilities such as hospitals and secondary schools would be similar wherever new development is proposed in the area. This must be considered in the context of the necessary expansion of the settlement [25, 46, 71].
104. The importance of tourism to the area is very clear [57]. The impacts on views, the character of the area, footpaths and traffic lead me to conclude that there is little evidence that there would be any significant adverse impact on tourism as a result of these proposals. The appeal decisions put forward by the Council and CLOUT demonstrate that the lack of a 5 year HLS does not mean that planning permission will always be granted for residential development [50, 51, 58]. However, each case must be considered on its own merits against the identified test in paragraph 14 of the NPPF. The specific circumstances of sites are rarely directly comparable. I have read these decisions and those raised by the appellant. I conclude that they are different in terms of characteristics of the sites, their location, size of settlement and the important considerations and other matters raised. There is no requirement to demonstrate a need for the retail and employment facilities of the scale proposed as part of the development. Mixed use development is encouraged in the NPPF as part of sustainable development. The NDP allocation AM4 is also for mixed use development. The retail floorspace can be controlled by condition.

*Conditions*

105. I now consider the suggested agreed conditions (Post Inquiry Document) against the provisions of paragraph 206 of the NPPF.
106. Suggested conditions 1, 2 and 3 relate to time limits and submission of details and are standard to outline planning permissions. Great emphasis was placed on the quality of the development by the appellant. This was to be ensured by following the Masterplans and design parameters. It is therefore essential that the development if approved be carried out in broad accordance with the submitted Masterplans and design parameters. This can be controlled by additional wording to suggested condition 2. The change in the period for the submission of reserved matters in condition 3 to 6 years was not explained and I therefore recommend that the standard 5 year period is used. Condition 4 requires a phasing plan, which would be appropriate for development of this scale.
107. Condition 5 requires that the access is provided in accordance with the approved plans. It is essential that the junction is provided before any other development takes place. I have revised the wording accordingly. Conditions 6 and 8 control construction activities and provide for appropriate mitigation of the effects of construction. I consider that this is very important and necessary as there are dwellings adjoining the sites. Condition 7 requires the submission and implementation of a TP, which is considered to be necessary [20]. The approval of details must rest with the Local Planning Authority and cannot be derogated to any other authority. It is of course open to the Local Planning Authority to consult with the appropriate highway authorities. Condition 9 proposes to safeguard landscape and ecological features, secure appropriate mitigation and the appointment of an ecological clerk of works. This is necessary and appropriate to address by condition. Condition 10 relates to safeguarding the archaeological interest of the site. The need for this condition and the wording has been considered above [101].
108. The background papers indicate that contamination may be present on site and it is essential that it is investigated and remediation measures are put in place prior to development taking place as required by paragraph 121 of the NPPF. Condition 11 addresses this issue. Surface water drainage is addressed by condition 12 [96]. The NPPF indicates that sustainable urban drainage systems should be incorporated into all development. It is also necessary to ensure that the drainage arrangements during the construction phase are controlled. However, this matter is addressed by suggested condition 6 and so condition 13 represents unnecessary duplication. There was no evidence of any watercourses on site and therefore suggested condition 14 is not necessary. Condition 15 sought details of the proposed access roads and junctions and cycle and pedestrian links. These details would be required as part of the reserved matters and for the adoption of the highways. This condition is not therefore necessary. It is appropriate and necessary to restrict the scale of retail facilities as suggested in condition 16 in order to enable the Local Planning Authority to protect the vitality and viability of St Ives Town Centre. Condition 17 seeks to prevent pollution of surface water associated with the proposed employment uses, which is necessary and appropriate.

109. I have recommended minor wording changes to the suggested conditions in order to ensure that they comply with the provisions of paragraph 206 of the NPPF and to ensure consistency of terminology.

*Planning Obligations*

110. I now consider the submitted agreements under s106 of the Act against the tests in paragraph 204 of the NPPF and Regulation 122 of the CIL Regulations.
111. The evidence was clear that there is an urgent need for affordable housing in this area [18]. The obligation to provide and secure appropriate arrangements for the transfer, occupation and maintenance of the level of affordable housing appropriate to the area in the light of emerging planning policy is necessary and meets the above tests. The contribution towards measures to address the chronic issues with the highway leading to the area is necessary and meets the above tests. Similarly there was clear evidence of the need to provide additional educational facilities in the local area. The contribution for such facilities therefore meets the legal tests. There is a shortfall in the types of open space and recreation facilities to serve the proposal and this must be compensated for by a contribution towards facilities to be provided nearby.
112. I accept the main parties' explanation that ongoing maintenance and monitoring issues mean that the agreements regarding the submission of a TP, maintenance of open space and SUDS are necessary.
113. Regulation 123 (2) restricts the use of pooled obligations towards items that may be funded by the CIL and applies generally from April 2015. Specifically it provides that no more may be collected for a specific infrastructure project or type of infrastructure if 5 or more contributions have been made since 2010. I consider that the obligations in this case are all for infrastructure projects related to the St Ives area. The Council supplied information on all the contributions for these infrastructure projects in St Ives area since 2010 [75]. This demonstrates that the 5 contributions limit had not been exceeded even taking into account the additional contributions brought to my attention by CLOUT in post-inquiry correspondence [68]. The Council has replied to CLOUT correspondence to indicate that the information was correct at the time it was supplied. The 5 contributions limit has not been exceeded and it is for the Council to decide what weight should be given to future obligations [75].
114. The agreement to fund various items for the RSPB did not appear in the recommendations of the Council's Committee reports. The beach area below the site is part of an SSSI important for over-wintering birds. The Committee Report makes it clear that the proposals would not have a significant impact on the SSSI or over wintering birds. There is reference to funding access control measures in the relevant section of the Committee report. The claim that the development of 200 or so houses would generate the need for a ranger is not convincing. This area is on the edge of the settlement and contains the SW Coastal Path and is well-used by residents and visitors to the area. I do not therefore consider that the proposed development would be so large as to justify a full-time ranger. The obligation would not therefore be reasonably related to the development or necessary. I would also share the reservations expressed regarding the basis for this particular requirement [69]. I do not consider this contribution to meet the tests in the NPPF for this reason. The payment of monies to inform the public of the need to safeguard feeding bird

populations and exercise care not to disturb them would be reasonable. I am confident that the Council as a responsible public body would pass these funds to the RSPB.

115. In conclusion, I consider that all obligations save the funding of a ranger for the RSPB meet national policy as set out in paragraph 204 of the NPPF and the 3 statutory tests set out in Regulation 122 of The Community Infrastructure Levy Regulations 2010. I conclude that the restrictions on pooled obligations imposed by Regulation 123 (2) do not apply. Thus I recommend that they are afforded significant weight in the determination of these appeals.

### ***Sustainability and overall conclusions***

116. The starting point for the consideration of these proposals is the development plan as required under Section 38(6) of the Planning and Compulsory Purchase Act 2004. The proposals do not comply with the housing policies of the LP. However, the Council cannot demonstrate a 5 year HLS and paragraph 49 of the NPPF applies to render the housing policies of any plan out of date [19]. There was no dispute regarding the serious shortfall in affordable housing provision in the area. I have concluded above that there would be relatively minor conflict with LP Policies GD 1, TV 1 and CC 1 for appeal B with a greater degree of conflict for appeal A [89]. There would also be some conflict with Policy TP7 as a result of both proposals [94]. The tests in these policies do not comply with the NPPF, but the topics are still relevant [80].
117. Planning permission for sustainable development should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits<sup>20</sup>. This is the appropriate test against which the proposals should be assessed [23, 30, 56].
118. Carbis Bay is identified in the emerging plan as a significant settlement [16, 25]. The site is within reasonable walking distance of a bus stop on a main bus route. There is a train station nearby with reasonable connections to St Ives and the mainline in the other direction. There are local facilities in terms of shops and services, schools, etc. in reasonable proximity [16]. The development proposed includes local retail, service and employment uses that would complement the existing facilities. The submitted planning obligations address the shortfalls in existing infrastructure that have been identified by the Council and consultees [31]. The Council was satisfied that the submitted TP demonstrated a commitment to the promotion of alternative modes of travel for prospective residents. The submission of a comprehensive TP for the final proposals and its implementation can be addressed by conditions. The Council and the appellant agreed that the site is in a sustainable location for new housing development. I have considered the objectors' evidence above and conclude that there was no convincing argument to counter that proposition.

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<sup>20</sup> Paragraph 14 of the NPPF

119. The benefits of the proposals relate to increasing the supply of housing in the Council area and St Ives/Carbis Bay – a sustainable location. The evidence was that at least an additional 1,100 dwellings would be needed in the town. Whilst some new dwellings have been provided there is still much progress to be made. It was agreed that a 20% buffer would be required due to persistent under delivery [19]. The 5 year HLS cannot be met and even if it were the NPPF does not indicate that this is a ceiling on development, but rather that it is a minimum target. The proposals include 50% affordable housing provision in an area with an acute need. The completed planning obligations would address the provision of affordable housing. They would also provide significant contributions to improve transport infrastructure, educational facilities, open space and towards nature conservation actions in the local area.
120. The economic and social benefits of the scheme align with the roles identified in paragraph 7 of the NPPF. In summary, they would be the provision of housing, which the Government has consistently stated to be a top priority. All the evidence pointed to a major shortfall in affordable housing in this area [18]. The provision of 118 affordable houses would therefore be a very significant benefit of the scheme. The proposals would lead to job creation and other indirect economic benefits. The submitted obligations would benefit transport infrastructure, education, nature conservation and recreation for the developments and the wider community. The Council agreed that the economic benefits should be given 'significant weight', that the social benefits should be given 'substantial or great weight' and that further positive weight could be attributed to the environmental factors, excluding the landscape impacts [32, 56]. I heard no evidence that convincingly contradicted this assessment. Objectors' concerns regarding the affordability of the proposed housing were not supported by the Council. The relevant obligations were negotiated and agreed with the Council as the relevant responsible public body.
121. The adverse effects of the proposals must be considered separately for each appeal. Apart from the access roundabout, site B is contained by existing development on three sides and Gonwin Farm on the fourth. It is necessary to provide a suitable access to the site, even if it were confined to the site identified in the NDP. To some extent new development would improve the current approach to the town, as the existing development on the edge of the settlement is not of the highest quality [27]. I therefore consider that the residual adverse impacts of appeal B, as described above, would be relatively minor.
122. Appeal A on the other hand would extend the proposed development beyond the access and include two fields to the east of Gonwin Farm. I accept that most of those two fields would be used to provide playing pitches and substantial planting. However, new buildings and car parking are shown on the illustrative masterplan to the east of the access road and in the southern portion of both fields along Church Lane. This would extend development along Church Lane much further than the existing development or appeal B. Appeal site A would be considerably larger than SUE1 identified in the UEA. It would represent a substantial additional incursion into the countryside, which would not be warranted by the additional benefits of development or recreational facilities that would be provided. The woodland planting to provide a better development boundary would not be required if there were no development in this area.

123. I have carefully considered the considerable local opposition to the scheme from the local MP, Councillors, the town Council, CLOUT and local residents. Public opposition in itself is not a reason to refuse a proposal. Much of the objections were concerned with opposition to the principle of development per se and the fact that the site was outside the settlement. This must be weighed in the balance against the objectively assessed benefits including providing affordable and other housing and the harm that would be caused by the schemes if approved. These issues have been considered in this report and weighed in the final balance.
124. I have had regard to the changes to the Planning Practice Guidance section on Neighbourhood Planning in relation to housing land supply which, in the light of the facts in this case, do not alter my recommendations. For the reasons given above, I consider that the housing policies of the NDP should be accorded little weight. I am satisfied that the parties have had the opportunity to make representations on this issue. The conflict with other NDP policies should be given less weight because the plan has not been adopted, in accordance with the NPPF guidance on prematurity.
125. The conflict with the out of date LP policies has been assessed above and I include this conflict in the overall balance on both appeals. I conclude that the relatively small amount of harm that would be caused by Appeal B would not significantly and demonstrably outweigh the benefits of the proposal. I consider that Appeal proposal B would be sustainable development. I will therefore recommend that Appeal B is allowed.
126. I conclude that the additional harm that would be caused by the additional development proposed as part of Appeal A would not be warranted by the minor additional benefits accrued. Thus the harm would significantly and demonstrably outweigh the benefits of that proposal. I consider that Appeal proposal A would not be sustainable development. I will therefore recommend that Appeal A is dismissed.

### **Recommendations**

127. I recommend that Appeal A is dismissed. In the event that the Secretary of State disagrees with me, I recommend that the conditions in the Appendix below be attached to any permission.
128. I recommend that Appeal B is allowed subject to the conditions in the Appendix below.

*A L McCooey*

**Inspector**

## Appearances

### **For the Appellant**

Christopher Boyle QC	instructed by D2 Planning
Martyn Lonsdale	Lavigne Lonsdale
Desmond Dunlop	D2 Planning

### **For the Council**

Ben Curnow	Legal Officer (Solicitor)
Peter Blackshaw BA (Hons) MRTPI	Principal Development Officer

### **Interested Parties**

#### Cornwall Councillors

Cllr Andrew Mitchell  
Cllr Tim Andrews  
Cllr Elizabeth Penhaligon

#### St Ives & Carbis Bay Town Councillors

Cllr Hayden Garrood  
Cllr Rita Lait – Chair of NDP Steering Group  
Cllr Joan Symons  
Cllr Linda Taylor – Mayor of St Ives

### CLOUT

Mr Hosken Chairman	Mr Smith FCCA, Secretary	Mr Healey
Ms Mauger, Solicitor-Advocate	Mr Percival	Mr Woods
Mr P H Care FNAEA FNAVA of Care & Co		

### Local Residents

Mr Williamson	Mr Guppy	Mrs Brereton
Ms Henderson	Mr Baxter	Mr Hodding
Mr Weatherly	Mr Calderwood	Ms Pardoe
Mr Britt		



## **Documents submitted to the Inquiry**

Signed and Executed Agreements under Section 106 of the Act for each Appeal  
Examiner's Report on the St Ives NDP

### **Appellant**

APP 1 – A3 Map and Photographs from Mr Lonsdale

APP 2 – Table of Planning Applications on NDP Allocated Sites from Mr Dunlop

APP 3 – Emails with South West Water re: Sewerage and Drainage

APP 4 – Soil and Agricultural Land Classification by Mr Colborne MSc C.Sci: MIPSS

APP 5 – Highway and Transport Summary by Mr Pearson FIHE

### **Council**

CC 1 – Agenda Papers for Council Response to Examining Inspector's Interim Report on the Cornwall Local Plan

CC 2 – Appeal Decisions: APP/J3720/A/14/2215726 & APP/Q3115/A/14/2217931

### **Submissions of CLOUT**

CLOUT 1 – Statement of Mr Hosken Chairman (enclosing letters from residents)

CLOUT 2 – Statement of Mr Percival, resident of Lelant (with attachments)

CLOUT 3 – Statement of Mr Healey, resident of Lelant

CLOUT 4 – Statement of Mr Woods, resident of Lelant

CLOUT 5 – Statement of Mr Smith FCCA, Secretary

CLOUT 6 – Submissions of Ms Mauger, Solicitor-Advocate with attachments including Appeal Decisions APP/E6840/A/15/3132957 & APP/X2410/W/15/3002495  
Letter from Michelle P. Brown, FSA, dated 30 November 2015  
Letter from Derek Thomas MP and from local residents

CLOUT 7 – Agricultural Land Report by Mr P H Care FNAEA FNAVA of Care & Co

CLOUT 8 – Bound Book of Photographs & text with DVD of boat trip to Godrevy

### **Other Interested Parties**

OBJ 1 – Submission from Cllr Garrod with map and attachments

OBJ 2 – Submission from Cllr Lait

OBJ 3 – Submission from Cllr Penhaligon

OBJ 4 – Submission from Mr Calderwood

OBJ 5 – Submission from Mr & Mrs Brereton

OBJ 6 – Submission from Mr Guppy

## **Documents Submitted Post Inquiry**

### **Council & Appellant**

Statement of common ground re: St Ives Neighbourhood Plan

Amended agreed conditions

### **Correspondence related to the submitted obligations under s.106 of the Act**

Information from the (Council) re: s.106 infrastructure payments since 2010

CLOUT – letter of 19 January re: information from the Council on Planning Obligations entered into since April 2010.

Council's Response to the above letter of 19 January from CLOUT.

## Appendix 1

Conditions in the event of planning permission being granted:

- 1 The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 2 No development shall commence within any development parcel/phase within the application site until details of the layout, scale, appearance and landscaping (hereinafter referred to as "reserved matters") of that parcel/phase to be developed have been submitted to and approved in writing by the Local Planning Authority. The reserved matters shall be in broad accordance with the Masterplans and Design Parameter plans submitted with the application.
- 3 An application for approval of reserved matters for the first parcel of the site shall be made to the Local Planning Authority not later than the expiration of three years from the date of this permission and all applications for approval of the reserved matters shall be made before the expiration of five years from the date of this permission.
- 4 No development shall commence until a phasing plan has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved plan unless the Local Planning Authority gives prior consent in writing to a variation.
- 5 The means of vehicular access to the permitted development shall be from the A3074 road in accordance with plan 12476/C003 in the submitted transport assessment. Development shall not begin until the junction has been constructed in accordance with the approved details.

- 6 No development shall commence until a Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority. The approved Plan shall be adhered to throughout the construction period and shall provide for:
- i) the parking of vehicles of site operatives and visitors;
  - ii) the loading and unloading of plant and materials;
  - iii) the 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) a scheme for recycling/disposing of waste resulting from construction works;
  - viii) provisions for surface water management during construction; and
  - ix) measures, including the timing of construction processes, to protect flora and fauna of ecological or biodiversity interest.
- 7 No development shall be occupied until a Travel Plan has been submitted to and agreed in writing by the Local Planning Authority. The Travel Plan must be prepared in line with prevailing policy and best practice. It shall include as a minimum:
- The identification of targets for trip reduction and modal shift
  - The methods to be employed to meet these targets
  - The mechanisms for monitoring and review
  - The mechanisms for reporting
  - The penalties to be applied in the event that targets are not met.
  - The mechanisms for mitigation
  - Implementation of the Travel Plan to an agreed timescale and its operation thereafter
  - Mechanisms to secure variations to the Travel Plan following monitoring and reviews

A review of the targets shall be undertaken within 3 months of occupation of the first phase/part of the development, and on an annual basis thereafter, at the time of the submission of the Annual Travel Plan Report.

- 8 No construction work shall take place outside the following hours:  
0800 - 1800 Monday to Friday  
0800 - 1300 Saturdays  
No workings Sundays, Public and Bank Holidays.
- 9 No development shall commence until a Landscape and Ecology Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority that will address the following; Implementation, improvement and mitigation of ecology and biodiversity of the development (in accordance with the recommendations of the Design and Access Statement and the Ecology Reports) and appointment of an ecological clerk of works. The development will be undertaken in accordance with the approved details and timing of the LEMP unless otherwise agreed in writing by the Local Planning Authority.
- 10 A) Prior to the submission of the reserved matters a programme of archaeological work including a Written Scheme of Investigation shall be submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:
1. The programme and methodology of site investigation and recording
  2. The programme for post investigation assessment
  3. Provision to be made for analysis of the site investigation and recording
  4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
  5. Provision to be made for archive deposition of the analysis and records of the site investigation
  6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- B) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (A).
- C) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the

programme set out in the Written Scheme of Investigation approved under condition (A) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

11 No development shall commence until:

- a strategy for investigating contamination present on the site has been submitted to and approved in writing by the local planning authority;
- an investigation has been carried out in accordance with the approved strategy; and
- a written report, detailing the findings of the investigation, assessing the risk posed to receptors by contamination and proposing a remediation scheme, including a programme for implementation,

has been submitted to and approved in writing by the local planning authority. Remediation work shall be carried out in accordance with the approved remediation scheme and programme. Remediation work on contamination not identified in the initial investigation but found during construction work shall be carried out in accordance with details submitted to and approved in writing by the local planning authority subsequent to its discovery.

12 No development shall commence until details of the design; implementation, management and maintenance of a sustainable surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. No building shall be occupied until the surface water drainage scheme has been implemented in accordance with the approved details.

- 13 The floor area of any single A1 retail shop within the Local Centre shall be limited to a maximum of 150 square metres.
  
- 14 No development shall commence until details of drainage from hardstanding areas of the light industrial area have been submitted to and approved in writing by the local planning authority. No light industrial unit shall be occupied until drainage has been provided in accordance with the approved plans. The approved drainage shall be permanently retained.

[End of Conditions]



## **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).

#### **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 day after 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 day after 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.