



Ministry of Housing,
Communities &
Local Government

Mr Russell Dodge
Business Location Services Ltd
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Heron Way, Newham
TRURO
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TR1 2XN

Our ref: APP/D0840/W/17/3177201
Your ref: PA16/08236

23 October 2018

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY WESTCOUNTRY LAND (FALMOUTH) LTD / FALMOUTH RUGBY
CLUB / WESTCO / GALLIFORD TRY
LAND WEST OF BICKLAND WATER KNOWN AS MENEHAY FIELDS, BICKLAND
WATER ROAD, FALMOUTH, CORNWALL, TR11 5BY
APPLICATION REF: PA16/08236**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Nick Fagan BSc (Hons) DipTP MRTPI, who held a public local inquiry on 15-18 May 2018 into your client's appeal against the decision of Cornwall Council to refuse your client's hybrid outline/detailed application for planning permission for the erection of 155 residential dwellings (54 affordable), open space, landscaping, access, estate roads and infrastructure with all matters reserved except the principal access arrangements and a full detailed application for the erection of 71 residential dwellings (25 affordable) with associated access, estate roads, infrastructure, open space and landscaping in accordance with application ref: PA16/08236, dated 25 August 2016.
2. On 21 March 2018, 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.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed and planning permission refused.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to 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.

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Jean Nowak, Decision Officer
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Procedural matters

5. A signed and dated Section 106 agreement between the owners of the site and the Council was submitted on the last day of the Inquiry. A Heritage Statement assessing the effect of the proposed development on the setting of the three Listed Buildings was also submitted during the Inquiry and comments were received from third parties on 20th and 29th May regarding the statement. All parties were given the opportunity to respond but no further comments were received. The Secretary of State does not consider that the submission of these documents raised any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.

Matters arising since the close of the inquiry

6. On 31 July 2018, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the revised National Planning Policy Framework (“the Framework”) as he was of the view that the new information may be material to the appeal before him. Responses were received on behalf of the appellant and the Council on 14 August. These were sent to the parties and the appellant’s representative replied on 23 August. Copies of this correspondence may be obtained on written request to the address at the foot of the first page of this letter.
7. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.
8. An application for a full or partial award of costs was made by Westcountry Land (Falmouth) Ltd / Falmouth Rugby Club / Westco / Galliford Try against Cornwall Council (IR2). This application is the subject of a separate decision letter, also being issued today.

Policy and statutory considerations

9. 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.
10. In this case the development plan consists of The 2016 Cornwall Local Plan Strategic Policies (LP) 2010-2030, as adopted on 22 November 2016. The Secretary of State considers that the development plan policies of most relevance to this case are LP policies 2, 2a, 3, 12, 23, 24 and 25.
11. Other material considerations which the Secretary of State has taken into account include the Framework and associated planning guidance (‘the Guidance’).
12. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

13. The Secretary of State has taken into consideration the emerging Cornwall Site Allocations Development Plan Document (AP) - the purpose of which is to allocate land for a range of uses to support the spatial housing as set out in LP policy 2a, as well as the emerging Falmouth Neighbourhood Plan (FNP).
14. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. In view of the early stage of the AP and FNP the Secretary of State gives limited weight to the fact that the appeal site is not allocated for housing in either of them.

Main considerations

15. The Secretary of State agrees with the Inspector that the main issues are those set out at IR9.

Whether the proposed development would accord with the Council's housing strategy

16. For the reasons given at IR170-180, the Secretary of State agrees with the Inspector that the proposed development would not accord with policies 2 and 3 of the LP, although it would accord with Policy 2a (IR169).

Landscape and Visual Impact

17. The Secretary of State agrees with the Inspector that, for the reasons given at IR133-150, the proposed development would significantly harm the landscape character and visual amenity of the area including reducing the physical and perceptual gap between Falmouth and Budock Water and would also fail to accord with the LP in that respect.

Heritage Impact

18. The Secretary of State agrees with the Inspector that, for the reasons given at IR151-161, the proposed development would fail to accord with LP policy 24 (Historic Environment), which requires the protection and enhancement of heritage assets. It would also fail to comply with section 1 of LP Policy 2 because it would not respect the historic value of Menehay House as a Listed Building. He also agrees that the proposal would fail to comply with LP Policy 12 (Design) which has similar requirements in respect of the historic character of the County.

Best and Most Versatile (BMV) Agricultural Land

19. For the reason given at IR162-163, the Secretary of State agrees with the Inspector that, although the development site is BMV land, as this type of land is not scarce in Cornwall, significant weight should not be attributed to its loss.

Planning conditions

20. The Secretary of State has given consideration to the Inspector's analysis at IR116-121, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is

satisfied that the conditions recommended by the Inspector comply with the policy test set out in the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

Planning obligations

21. Having had regard to the Inspector's analysis at IR122-131, the planning obligation dated 23 May 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy (CIL) Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion at IR132 that the obligation complies with Regulation 122 and the tests at paragraph 56 of the Framework. However, he does not consider that the provisions proposed in the Section 106 Agreement date 18 May 2018 are sufficient to overcome the concerns identified in this decision letter with regard to this proposal.
22. The Secretary of State has considered whether it is necessary for him to refer back to parties in respect of regulation 123 prior to determining this appeal. However, the Secretary of State does not consider that the planning obligation overcomes his reasons for deciding that the appeal should be dismissed, as set out in this decision letter. Accordingly, he does not consider it necessary for him to do so.

Planning balance and overall conclusion

23. For the reasons given above, the Secretary of State considers that the appeal proposal is not in accordance with policies 2, 3, 12, 23, 24 and 25 of the development plan, and is therefore 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 up-to-date development plan.
24. The Secretary of State gives significant weight to the harm to the significance of Menehay House, albeit that the impact would be 'less than substantial harm' in terms of the Framework paragraph 193. He further gives significant weight to the intrusion of the proposed scheme into the landscape, including reducing the physical, visual and perceptual gap between Falmouth and Budock Water; and he considers that the development would fail to recognise the intrinsic character and beauty of the local countryside. The Secretary of State also attributes limited weight to the loss of BMV.
25. On the other side of the balance, the Secretary of State attaches significant weight in favour of the appeal scheme to the delivery of housing, including the proposed provision of up to 35% affordable housing as well as market homes.
26. Overall, the Secretary of State considers that there are no material considerations which indicate that the development should be determined other than in accordance with the development plan. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission refused.

Formal decision

27. 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 a hybrid outline/detailed application for a total of 226 new dwellings, comprising an outline application for the erection of 155 residential dwellings (54 affordable), open space, landscaping, access, estate roads and infrastructure with all matters reserved except the principal access arrangements and a full detailed application for the erection of 71 residential dwellings (25 affordable) with associated access, estate

roads, infrastructure, open space and landscaping in accordance with application ref: PA16/08236, dated 25 August 2016.

Right to challenge the decision

28. 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.

29. A copy of this letter has been sent to Cornwall Council.

Yours faithfully

Jean Nowak

Authorised by the Secretary of State to sign in that behalf

Annex A

SCHEDULE OF REPRESENTATIONS

General representations

| Date | Correspondent | |
|-------------|--------------------------------|---|
| 31/07/2018 | MHCLG – PCU | NPPF Ref Back |
| 14/08/2018 | James Millard - Boyer | Reference Back response |
| 14/08/2018 | Sandra Oram – Cornwall Council | Reference Back response |
| 20/08/2018 | MHCLG – PCU | Boyer & Cornwall Council ref back responses sent to parties |
| 23/08/2018 | James Millard - Boyer | Further comments |
| 30/08/2018 | MHCLG – PCU | Comments received from Boyer forwarded to Cornwall Council |



Report to the Secretary of State for Housing, Communities and Local Government

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Date 23 July 2018

Town and Country Planning Act 1990

Cornwall Council

Appeal by Westcountry Land (Falmouth) Ltd / Falmouth Rugby Club / Westco / Galliford Try

Against the decision to refuse a hybrid outline/detailed application for a total of 226 new dwellings, comprising an outline application for the erection of 155 residential dwellings (54 affordable), open space, landscaping, access, estate roads and infrastructure with all matters reserved except the principal access arrangements and a full detailed application for the erection of 71 residential dwellings (25 affordable) with associated access, estate roads, infrastructure, open space and landscaping

Inquiry Held on 15-18 May 2018

Land west of Bickland Water Road known as Menehay Fields, Bickland Water Road, Falmouth, Cornwall TR11 5BY

File Ref: APP/D0840/W/17/3177201

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List of Abbreviations

Witnesses listed in Appearances below are referred to by their initials – e.g. KS=Kathryn Statham, IM=Ivor Mathew etc including, NW=Nicholas Worlledge, who did not actually give his evidence orally at the Inquiry

BMV=Best and Most Versatile (agricultural land)
CNA=Community Network Area
SSSI=Site of Special Scientific Interest
CWS=County Wildlife Site
AP=Allocations Plan or Site Allocations DPD
eAP=Emerging AP
HLS=Housing Land Supply
LP=Cornwall Local Plan Strategic Policies 2010-2030
DP=Development Plan
MMs=Schedule of proposed Main Modifications to AP, Version 3, 18 April 2018
SoCG=Signed and dated Statement of Common Ground
FNP=Draft Falmouth Neighbourhood Development Plan
NPPF=National Planning Policy Framework
BWR=Bickland Water Road
PROW=Public Right of Way
SUDs=Sustainable Urban Drainage infrastructure
RPOE=Rebuttal Proof of Evidence
XC=Examination in Chief
XX=Cross Examination
REX=Re-examination
Appx=Appendix
RR=Refusal Reason (RR1, 2 & 3)
SA=Sustainability Appraisal;
SEA=Strategic Environmental Assessment
LVIA=Landscape and Visual Impact Assessment
VPs=Viewpoints referred to in the landscape evidence
NCA=National Character Area (re landscape assessments)
LCA+ Local Character Area (re landscape assessment)
DtC=Duty to Co-operate
PPG=Planning Practice Guidance
OR=The Officer Report for this proposal
OR1=An earlier unpublished version of the Officer Report, which was not considered by the Council's Planning Committee

File Ref: APP/D0840/W/17/3177201

Land west of Bickland Water Road known as Menehay Fields, Bickland Water Road, Falmouth, Cornwall TR11 5BY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant part outline and part full planning permission.
- The appeal is made by Westcountry Land (Falmouth) Ltd / Falmouth Rugby Club / Westco / Galliford Try against the decision of Cornwall Council.
- The application Ref PA16/08236, dated 25 August 2016, was refused by notice dated 31 March 2017.
- The development proposed is described as a hybrid outline/detailed application for a total of 226 new dwellings, comprising an outline application for the erection of 155 residential dwellings (54 affordable), open space, landscaping, access, estate roads and infrastructure with all matters reserved except the principal access arrangements and a full detailed application for the erection of 71 residential dwellings (25 affordable) with associated access, estate roads, infrastructure, open space and landscaping.

Summary of Recommendation: That the appeal be dismissed and planning permission refused

Procedural Matters

1. On 21 March 2018 the Secretary of State directed that he would recover this appeal for his own determination. The reason for his direction is that the appeal involves proposals for residential development of over 150 units on a site over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities. This is one of the grounds set out in the guidelines for recovering appeals in the Ministerial Statement of 30 June 2008 (recorded in Hansard).
2. At the Inquiry an application for costs was made by the appellants against the Council. This application is the subject of a separate Report.
3. I conducted an extensive unaccompanied inspection of the site and its environs on the afternoon of Monday 14 May, the day before the Inquiry opened, including visiting key viewpoints of the site identified in the various landscape appraisals submitted by the parties. I also conducted an accompanied site inspection on the morning of Friday 18 May attended by representatives of both the main parties and a number of local residents and Cllr John Bastin, the local Ward Member, which lasted for approximately 2 hours.
4. It was agreed that the relevant application drawings for this hybrid application are those set out in the Council's refusal notice with the addition of the appellants' Landscape Strategy Plan¹, which proposes the introduction of planted buffers to those parts of the site the subject of the outline part of the application.
5. A signed and dated Section 106 agreement (S106) between the owners of the site and the Council was submitted on the last day of the Inquiry.² This secures a number of benefits on grant of permission and commencement of the development sufficient to overcome the Council's third refusal reason. I address this in detail below (under the section entitled Obligations).

¹ IM.11

² ID31

6. The appellant submitted a Heritage Statement at appeal stage³ assessing the effect of the proposed development on the settings of three Listed Buildings (LB): Menehay House abutting the north west of the site, Roscarrack House to the south of the site (both listed Grade II) and the Grade II* St Budock Church north of the site. The Council's Committee report concluded that there would be 'less than substantial harm' to these designated heritage assets but that the public benefits outweighed such harm. However, in its evidence the Council pointed out that such harm, which remains a negative aspect of the proposed development, must be given considerable importance and weight as confirmed by *Barnwell*⁴, albeit that it did not raise such harm as a specific refusal reason and chose not to cross-examine (XX) Mr Worlledge (NW) at the Inquiry concerning his Statement despite the latter's attendance.
7. Mr Buswell, the owner of Menehay House, spoke at the Inquiry objecting to the impact of the development on his LB but he asked if he could put in additional comments to Mr Worlledge's Heritage Statement, which he had not yet seen. I agreed, the main parties having made clear that Mr Buswell would be provided with a link to the documents. He submitted comments on 20 May 2018 but pointed out that he had still not been provided with the Heritage Statement or a link to it, so I instructed the appellant to ensure this was done and gave Mr Buswell another week for any additional comments. He commented again on 29 May 2018.⁵ The appellants were given the opportunity to respond but did not do so. It was agreed at the Inquiry that I would take into account the written submissions of the main parties, Mr Buswell and other objectors in assessing the effect of the proposed development on the three designated heritage assets listed above, given that the Council did not wish to XX NW.
8. The loss of best and most versatile (BMV) agricultural land was also not a specific refusal reason but was a harm that the Council and the appellants agree that I should weigh in the final planning balance.
9. Consequently I indicated at the start of the Inquiry that I considered the following to be the matters for consideration:
 - 1) Whether the proposed development would accord with the Council's housing strategy including for the Falmouth & Penryn Community Network Area;
 - 2) The effect of the development on the landscape character and visual amenity of the area including its effect on the gap between Falmouth and Budock Water;
 - 3) Its effect on the settings of nearby designated heritage assets, in particular Menehay House and the Church of St Budock;
 - 4) Whether it would result in the loss of best and most versatile agricultural land;

³ By Nicholas Worlledge (NW), dated April 2018

⁴ *Barnwell Manor Wind Energy Limited v (1) East Northamptonshire District Council (2) English Heritage (3) National Trust (4) SSCLG [2014] EWCA Civ 137*

⁵ ID18

- 5) Whether it would be in accordance with the development plan when read as a whole, and whether on balance the need for the proposal outweighs any harmful impacts identified in the first four issues above.

The Site and Surroundings⁶

10. The appeal site amounts to a total of 7.4 hectares of greenfield land currently used for arable crop growing on the western edge of Falmouth. This land is agreed to be Grade 2 or 3a agricultural land and as such is defined as BMV. It comprises four adjoining fields, separated by hedgerows and trees including mature trees and Cornish hedges.
11. The site is located entirely within Flood Zone 1 as identified by the Environment Agency's Flood Risk Map for Planning (Rivers and Sea), the lowest area of flood risk. The site is not located within, or within the setting of, any nationally designated landscape although the Cornwall Area of Outstanding Natural Beauty (AoNB) lies less than 1km to the south. The Swanpool Site of Special Scientific Interest (SSSI) is located 840m from the site and the Budock Water County Wildlife Site (CWS) just over 500m from the site. It is not considered by the parties that the SSSI or the CWS would suffer any adverse effects resulting from the proposed development.
12. A public footpath crosses the site, which enters it at the north western corner of the southern field and runs in a south westerly direction, exiting along the eastern boundary of the site in the south eastern corner onto Bickland Water Road (BWR). Additional footpaths also run around the site on both the western and northern boundaries.
13. The site is fronted by BWR which forms the eastern boundary of the site, BWR being the main road that runs in a north-south direction linking Golden Bank in the south with Kergilliack and Ponsharden in the north on the western edge of Falmouth. The site is well located to access the nearby main road network, including the A39.
14. On the opposite side of BWR is a mix of residential and employment uses, including Falmouth Business Park. The western boundary currently forms an access to Menehay Farm Caravan Park and Menehay Farm. The northern boundary is formed by a private access road to Menehay House, which is also a public footpath. Menehay House is located beyond the north-west corner of the site and is a Grade II LB set within a mature garden with several outbuildings associated with the main house. The northern boundary of the site also adjoins land which benefits from outline planning permission for 94 dwellings.
15. The site is well served by local facilities with St Francis Primary School within 60m of the site and St Mary's Primary School within 330m. The nearest train station, Penmere Station, is to the east of the site less than a mile away. The site is on a public transport route, with frequent services to Falmouth, Swanvale, Golden Bank and Longfield. Bus Stops are located along BWR, with the nearest north bound stop being located at the south of the site, at the entrance to the Caravan Park. The nearest south bound bus stop is approximately 600m south along BWR at the junction with Davey's Close. So the site is well related to

⁶ Largely taken from the signed Statement of Common Ground (SoCG) – ID19

Falmouth for walking and cycling and its facilities including schools and employment, and in this respect is in a sustainable location for housing development.

Planning Policy⁷

The Development Plan (DP)

16. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the determination of planning applications must be made in accordance with the DP unless material considerations indicate otherwise. The DP for Cornwall Council comprises the Cornwall Local Plan Strategic Policies (LP) 2010-2030, as adopted on the 22 November 2016.
17. LP Policy 2a (Key Targets) states that a minimum of 52,500 homes are required over the Plan period to 2030. The LP Inspector's Report confirms: *"It is necessary to ensure that the requirement of 52,500 is met and is not interpreted in the future as a cap or ceiling on housing delivery as there is no evidence to justify such an approach"* (IR, paragraph 141).
18. The Inspector's Report (paragraph 139) goes on to state: *"I conclude under issue 5 below that a change is required to ensure that the overall housing requirement is regarded as a minimum. However, it is not necessary to similarly indicate that all the apportionments for each town and CNA residuals should be minimum figures. The basis for the apportionments is not an exact science and some flexibility in delivery is reasonable. A number of towns and CNA residual areas are projected by the Council to deliver more than their apportionment (MCC.HS.1 Appendix A). The Council suggested additional text to make clear that the apportionments are not a ceiling. This addition is necessary for effectiveness to avoid inflexibility (part of MM17)"*.
19. It is agreed the apportionment of housing to specific towns and Community Network Areas (CNAs) is set within this context. The table on pages 20 and 21 of the adopted LP immediately following Policy 2a and Table 1 on page 27 following Policy 3 confirms the apportionment to Falmouth and Penryn of 2,800 plus a residual amount of 600 totalling 3,400 dwellings over the Plan period. The March 2017 Falmouth and Penryn Housing Evidence Report prepared in support of the emerging Site Allocations DPD (henceforth described as the Allocations Plan or AP), states (on page 3): *"It is important to note that additional growth, over and above 2,800 dwellings, is not prohibited and may be planned via a Neighbourhood Development Plan and/or through the normal planning application process."* The Council has proposed modifications to the AP (Main Modification MM3 in this case) to provide further clarity relating to windfall.⁸
20. In the context of housing land supply (HLS) the LP (paragraph 1.73) confirms that the adequacy of the 5 year supply will be assessed at the local authority, Cornwall-wide, basis. In circumstances where a 5 year supply can be demonstrated, the adequacy of supply in meeting the needs of a particular CNA or town over the whole Plan period will be a material consideration when making

⁷ Again mainly taken from the SoCG but updated at the Inquiry in respect of progress on the emerging Site Allocations DPD (Allocations Plan)

⁸ Contained in Schedule of Proposed Modifications, Version 3, 18 April 2018 (MMs) – ID1

planning decisions (LP 1.74). Cornwall Council's latest assessment of housing land supply (base date 1st April 2017) identifies a supply of 6.2 years. The appellant does not challenge the Council's assertion that there is at least a 5 year supply. It is agreed that the ability to demonstrate a 5 year HLS does not preclude a scheme from being sustainable or mean that such proposals would be inherently harmful.

21. The LP policies relied upon by the Council to justify the decision to refuse planning permission, as set out in the Decision Notice, are as follows:

-Policy 2: Spatial Strategy (Refusal Reason or RR1)

-Policy 3: Role and Function of Places (RR1)

-Policy 23: Natural Environment (RR2)

-Policy 25: Green Infrastructure (RR2)

-Policy 28: Infrastructure. (RR3)

Falmouth Neighbourhood Development Plan (FNP)

22. The FNP Area was designated on the 16 January 2015. The extent of the designated area reflects the Falmouth Town Council area. The majority of the appeal site is located outside but directly adjacent to the Neighbourhood Plan Area (NPA) within Budock Parish. An approximately 30m wide belt of the eastern part of the site, including where the access to the site would be located, is within the NPA. The December 2016 First Consultation Draft of the FNP identified the appeal site as an appropriate location for development as part of the 'Menehay Community' (Policy Proposal HR 5). The provisions of this draft policy stated the requirements for the Menehay Community as being:

- "Respect the historic setting of Menehay House and Menehay Farm

- Maintain views of Budock Church, and proper separation between any development and Budock

- A local shopping and services centre at the junction of Mongleath Road and Bickland Water Road".

23. The 'Menehay community' as proposed in the Consultation draft of the FNP has since been removed in accordance with the proposed development locations identified in the emerging AP (eAP). On 5 March 2018 Falmouth Town Council supported the submission of the FNP as amended to Cornwall Council and at the time of the Inquiry final checks and corrections were being made prior to this occurring, although this is likely to be informed by the progress of the AP. Hence the FNP has not yet been the subject of an independent examination or referendum and is not yet 'made'. It is still an emerging plan. Notwithstanding the progress that has been made in preparing the FNP, it remains at a relatively early stage and as such it is agreed that it should be given limited weight in the context of this appeal.

Cornwall Site Allocations Development Plan Document (Allocations Plan or AP)

24. The AP is currently at Examination; hence it is also an emerging plan. Its purpose is to allocate land for a range of uses to support the spatial vision and objectives

- for Cornwall as set out in the adopted LP, including the distribution of housing as set out in Policy 2a (Key Targets). Sites to be allocated through the AP relate to housing growth, student accommodation, commercial development and enabling infrastructure. The preparation of the AP reflects the provisions of LP Policy 3.
25. The Examining Inspectors sent a Note to the Council on 11 May 2018⁹, two working days before the commencement of the Inquiry, requesting further information following Hearings held during February to April 2018. The contents of that Note made clear that it was in no way a formal partial or interim report into the AP and that further Hearings may be necessary, either before or after any proposed Main Modifications (MMs)¹⁰ are published for full public consultation. In essence the Note sets out requests for further work or information on three individual towns in the County not including Falmouth and Penryn. I understand that the Council intends to prepare the necessary information to address the points raised for the three other towns highlighted within the note, with an aim to submit this additional information very shortly if this has not already been done.
26. Prior to the submission of the AP the appeal site was identified in the draft version of the Regulation 19 consultation document as a proposed allocation for development. However, it was not taken forward in the final version of the Regulation 19 consultation document. The appeal site is not a proposed allocation in the submission version of the AP.
27. A key reason for excluding the appeal site was that an alternative site, the former Vospers brownfield site on the northern edge of Falmouth near to Penryn, was considered to be preferable to a greenfield site. Through the final Regulation 19 version of the AP this substitute site was identified as a proposed allocation (ref: FP-H4) to provide 210 dwellings.
28. It is agreed that the Vospers site is not viable as a residential only development and that through proposed MMs to the AP the Council proposes to amend the allocation such that it is now proposed to comprise a mixed use development to include circa 400-500 student bed spaces, although the relevant MM (MM52 & 52a) states that the 210 dwellings is still proposed to form part of the mixed use site. A Pre-Application Request for the former Vospers Site has been submitted to the Council (LPA Ref: PA18/00691/PREAPP) for a proposed development of: approximately 80 apartments, up to 500 student bed spaces, an 80-bedroom hotel, and retail units. No response had been given to this request at the time of the Inquiry.
29. The weight that can be given to the eAP is dependent upon the following, as prescribed by paragraph 216 of the National Planning Policy Framework (NPPF): the stage of preparation of the emerging Plan; the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater weight that may be given): and the degree of consistency of the relevant policies in the emerging plan to the policies set out in the NPPF. It is agreed that the submission version of the AP will be subject to MMs consultation. It is also agreed that the AP does not, at this time, form part of the

⁹ ID24

¹⁰ Main Modifications Version 3 (relevant extracts) are set out in ID1

statutory DP and that there are no sites allocated for development in any adopted Development Plan Document at Falmouth and Penryn.

Relevant Planning History¹¹

30. W2/PA06/00479/FM: Erection of a rugby clubhouse, two rugby pitches, training pitch, installation of floodlights and formation of a parking area. Application approved on 8 January 2007. Planning permission was granted in the knowledge that the Rugby Club's existing site at the Recreation Ground in Falmouth was to be redeveloped. The planning permission was not implemented and expired in January 2012. As one of the owners of the appeal site the Rugby Club have no intention of resurrecting this permission because it has accepted that local public opinion is vociferously against redevelopment of its current site for other uses. Instead it wishes to use the proceeds of the sale of its land here to improve facilities at the Recreation Ground situated in the centre of the town.¹²
31. PA15/05639: Screening Opinion for residential development comprising 235 dwellings (the initial draft proposal), public open space, footpaths, access road, infrastructure and landscaping. The Screening Opinion provided by the Council confirmed on 26 June 2015 that Environmental Impact Assessment (EIA) was not required by virtue of Schedule 2 paragraph 10 (b) of the EIA Regulations because the proposed development would not have a significant effect on the environment either on its own or in combination with nearby permitted development.
32. PA15/07631 (Land off BWR immediately to the north of the appeal site): Outline planning application for the erection of 94 residential dwellings, estate roads, open space and landscaping to include access, layout, scale and landscaping with design and appearance reserved. Planning permission was granted at appeal on 5 August 2016 (PINS Ref: APP/D0840/W/16/3147376). Reserved Matters applications and discharge of conditions pertaining to the original outline planning permission were under consideration by the Council at the time of the Inquiry.

The Proposals¹³

33. The appeal proposal comprises a hybrid scheme providing a total of 226 new homes, across three areas: the southern area (Field 1), the central area (Field 2) and the northern area (Fields 3 and 4). The central area is the subject of the full planning application (71 dwellings) and both the northern and southern areas form the outline planning application (155 dwellings). A schedule of house types and plot numbers for the central area was provided at the Inquiry¹⁴ by the appellants and this cross references to the Proposed Site Plan. Detailed plans and elevations including street elevations are provided for this detailed part of the application. Dwelling types are indicated by colour coding on the Proposed Site Plan for the outline parts of the proposal but these are strictly indicative or illustrative because all matters are reserved except the principal access arrangements.

¹¹ Taken from SoCG

¹² Oral evidence of Mr Instance at the Inquiry, Chairman of the Rugby Club

¹³ Largely taken from the SoCG, with additional material setting out the amended landscape strategy in the Landscape Strategy Plan

¹⁴ ID17

34. The scheme comprises 35% of affordable units across 1, 2, 3 and 4 bedroom properties, with a mix of affordable rent and shared ownership (c. 70:30 split):
- The central (detailed) element of the appeal scheme will provide 31 affordable units;
 - The northern and southern elements (outline) will deliver 48 affordable units.
- The delivery of affordable housing is frontloaded in the detailed phase and all units are included subject of an agreement with a Registered Provider (Devon and Cornwall Housing).
35. The main vehicular access to the appeal proposal would be formed from a roundabout at the junction of BWR and Bosmeor Road. In addition to the main access, pedestrian links would also be provided to the development to the north to allow access to the permitted signalised pedestrian crossing close to the junction of Mongleath Road and BWR. The appeal scheme provides for the retention of the public right of way (PROW) crossing the site which connects BWR to the access to Menehay Farm Touring Park.
36. The landscaping strategy for the appeal scheme ensures the retention of existing hedgerows and trees where possible and additional planting, particularly within the outline areas (northern and southern areas) to mitigate the landscape character and visual impacts. In particular, the Landscape Strategy Plan described above provides for the retention of the existing hedge to the western boundary of the site; the provision of a 15m mixed planted buffer with native trees and shrubs with occasional Holm Oak and Monterey Pine on the western boundary of Field 1 and a 1.5m Cornish hedge on its southern boundary; the provision of a 5m wide planting bed of ornamental and evergreen trees and shrubs to the western boundary of Field 4 next to Menehay House and a wider area of native corner planting to the north western corner of this field; and a 5m wide planting belt including a 1.2m wide new Cornish hedge planted with native hedge and occasional hedgerow trees such as Sessile Oak next to the lane to Menehay House to reinforce the enclosed nature of this lane, which is also a PROW and forms the northern boundary of the appeal site.
37. Public open space would be provided within the detailed phase of the development (the central area), with additional contributions towards other typologies of off-site open space in the S106 legal agreement. The appeal proposal incorporates Sustainable Urban Drainage (SUDs) for surface water and a connection to the mains sewerage system for foul water. It incorporates ecological mitigation measures, including additional tree planting, to offset the impacts on bats and other species native to the appeal site.

The Case for Cornwall Council

Please note that references § refer to paragraphs, p. to pages and bp to bullet points in the various Proofs of Evidence and Kathryn Statham's Rebuttal Proof of Evidence (RPoE). Responses by the various witnesses identified by their initials indicated as follows: XC=Examination In Chief, XX=Cross Examination & REX=Re-examination, IQ=Inspector Question. Appendices are simply referred to by their numbers – e.g. JH1 = James Holman's Appendix 1 or Appx 1.

38. As a setting to the Council's case it is useful to highlight the matters not agreed between the appeal parties as set out in the SoCG, which the Council addressed in evidence at the Inquiry:

- The weight to be given to the emerging AP (RR1)
- The extent to which the appeal proposals would prejudice the AP (RR1)
- The extent to which there are material considerations to justify a departure from the DP (RR1)
- Whether the Appeal scheme would cause harm to the character and visual amenity of the landscape; the efficacy of the proposed mitigation and extent and significance of such visual effects (RR 2)
- The extent to which the proposals erode the separation between Budock Water and Falmouth; the efficacy of the proposed mitigation and the significance of the perceived erosion of the physical separation between Budock Water and Falmouth (RR 2)
- The weight to be attached to the benefits associated with the appeal proposals as part of the planning balance (RR 2)
- Whether the proposals would cause less than substantial harm to heritage assets such that it would require to be weighed against public benefits

39. The above matters remained in dispute at the end of the Inquiry and I set out the Council's case below in terms of my main considerations identified in paragraph 9 above. Any emphases expressed below are those of the Council itself.¹⁵

Whether the proposed development accords with the Council's housing strategy in the Development Plan.¹⁶

40. The development does not accord with the housing strategy. It is clear that on a proper construction – which is a matter of law – LP Policy 3 does not intend to permit housing of strategic scale in the countryside (open or otherwise) to come forward outside of the process of allocation which is expressly foreshadowed by Policy 3. The proper construction of that Policy can be informed by the Chief Planning Officer's (CPO) Advice Note on infilling and rounding-off¹⁷ and the clarification which is being introduced through MM3¹⁸ into the AP.¹⁹ To find otherwise involves putting on its head a plan-led process within a recently adopted Local Plan which expressly provided for site allocation to deal with the strategic sites in identified main towns.

¹⁵ The Council's case is principally taken from its Closing Submissions – ID27

¹⁶ The whole LP is most conveniently located in JM1

¹⁷ JH6

¹⁸ It is worth noting that the relevant part of the MM3 text is contained in v2 of the MMs dated 9.3.08. The title note for v2 records "*Update to include further modifications at the request of the Inspector*". (Emphasis supplied)

¹⁹ The draft Allocations Plan is over 300 pages long and deals with the Spatial Strategy and Allocations for each of the main towns. Relevant extracts of it are in JH5.

41. Policy 3 is entitled to full weight. The correct approach to Policy 3 can be drawn directly from its text. It has to be read as a whole and applying common sense. It provides in paragraph 1 that *“Delivery of housing . . . will be managed through a Site Allocations DPD or Neighbourhood Plans for the following locations: . . . Falmouth with Penryn”*.
42. Allowing a site of strategic size to come forward outside of either the AP or a Neighbourhood Plan is therefore contrary to Policy 3. It will not be *“managing”* the delivery of housing through the AP. It is illuminating to consider what has happened during the eAP in this case. The appellants are fighting hard to seek to ensure that the site is allocated. They are doing that because the application of Policy 3 depends on whether they are allocated or not. If the fact of allocation was irrelevant to compliance with Policy 3, there would be no reason to pursue this course so firmly, as many parties are seeking to do through the eAP.
43. Paragraph 3 of the policy deals explicitly with growth other than in the main towns. There it is envisaged that housing growth will be provided by (i) identification of sites where required through Neighbourhood Plans; (ii) rounding off²⁰; (iii) re-use of previously developed land (PDL) *“within or immediately adjoining that settlement”*; (iv) *“infill schemes that fill a small gap in an otherwise continuous built frontage and do not physically extend the settlement into the open countryside”*; (v) and rural exception sites.
44. Accordingly, again, where sites of any category beyond (ii) to (iv) above are coming forward, that will happen by specific identification within Neighbourhood Plans. This observation reinforces the clear underlying purpose of Policy 3 that strategic growth should be plan-led. The CPO’s Note clarifies the point, which is clear by implication (and if not deduction), that Policy 3 permits categories (i) to (iv) above in the main towns.²¹ MM3, which is coming forward as jointly proposed by the eAP Examiners and the Council, will give the clarified position a clear grounding in DP policy. There is no indication from the Examiners’ recent Note that they have any concern over MM3, it having come forward as a joint proposal. Further, in terms of points that have been raised during the Inquiry about legal compliance and Sustainability Appraisal (SA), the Examiners’ Note specifically addresses the issues of Duty to Cooperate (DtC) and legal compliance and does not note any concerns in that regard – this point is also relevant to the Green Buffer designation.
45. The Site is not rounding off or infill in any meaningful sense. Nor, plainly, is it re-use of PDL *“within or immediately adjoining the settlement”*. The definition of open countryside is met in terms in this case by the express words of RR2 which says *“Bickland Water Road currently forms a strong edge to Falmouth. This site breaches the clearly defined edge . . .”*. That position is confirmed by JH’s evidence.²²

²⁰ Rounding off is defined at p.25/1.68 as development which *“. . . should not visually extend building into the open countryside”*. Open countryside is defined at p.41/2.33 *“Open countryside is defined as the area outside of the physical boundaries of existing settlements (where they have a clear form and shape).”*

²¹ JH §5.10 & JH6.

²² JH §5.18

46. The site is not, and was not proposed to be allocated in the Regulation 19 version of the AP.²³ Nor was it identified as a preferred option for Falmouth and Penryn at the Regulation 18 stage.²⁴ When, at stages, it was under discussion as a potential additional site, recognition was given to the critical landscape constraints that affected the site. These constraints led to officer recommendations that any such allocation should be governed by a series of criteria requirements dealing with, amongst other things, scale and massing, landscape, and ensuring the separation of Falmouth and Budock was maintained; together with a suggested capacity of approximately 150 units for the site.²⁵ The proposed development is, plainly, much denser than that; and the proposed development at 226 units has led to precisely the kinds of harm that were foreshadowed in the Council's concerns about the site. Ultimately, by the Regulation 19 stage, the Council, by its Cabinet (the appropriate decision making body)²⁶ considered that it had other better sites which could be utilised. That is not surprising, and, as JM accepted²⁷, sustainability is a relative concept – and that principle applies to plan making.
47. The latest draft of the FNP, similarly, does not include any references to the site as part of a "Menehay Community" – which is no longer proposed within the FNP.
48. In light of the appellants' references to the SA supporting the emerging plan process it is important to underline the fact that the SA scores given to the site were given precisely on the basis of the suggested capacity of 150. The process of choosing sites has many other features as discussed in detail by MW in his evidence.²⁸
49. The Quintrell Downs appeal decision²⁹ lends support to the Council's approach on Policy 3. Although the Inspector's reasoning is not as clear it might have been, the inspector concluded that the proposal did not accord with Policy 3 (and that is the statutory wording in s.38 of the Act): see most clearly paragraph 53. It is implicit from the Inspector's finding that the proposal complied with Policy 2 and that it did not generate the harms identified by the Council in relation to this scheme in RR2.
50. There is no other countervailing reason in the Council's strategy to permit this countryside site now. The Council has demonstrated at least a 5 years HLS, and it has demonstrated the ability to provide 115% of the need ascribed to Falmouth and Penryn.³⁰ This figure takes into account the exclusion of the appeal site (for 150 dwellings) and its substitution by the Vosper's site at Ponshardon on the northern edge of Falmouth near Penryn (MM52a).
51. Accordingly, the proposed development does not accord with Policy 3. Policy 3 is a central policy of the DP – defining its strategy in delivering housing. This

²³ MW §2.28

²⁴ MW §2.9

²⁵ MW §2.17 – 2.20 & Appx B, site FP-H4

²⁶ MW §2.26 – 2.29

²⁷ XX JM Day 3 c. 15.20

²⁸ MW §2.37. The appellants put their questions in this respect on the basis that the SA gives "a broad brush picture".

²⁹ ID2

³⁰ MW §2.39-2.50

breach of Policy 3 is substantial. It amounts to a breach of the DP read as a whole.

Effect on visual amenity and landscape character, including on the gap between Falmouth and Budock Water

52. In the four weeks since IM's Landscape and Visual Impact Assessment (LVIA) has been in the public domain there has been no revised layout plan etc. to show how the implications of his considerations might be represented in a scheme. Still less has there been any apparent reconsideration of the parameters of the scheme more generally. In particular, there has been no consideration as to how the additional land-take required for the extensive mitigation, some 3,500m²³¹ odd (or 19.5 of the typical dwelling plot sizes) might affect a proposal for 226 dwellings.³² To suggest what occurred at the exchange of evidence is simply an example of iterative improvement is obviously wrong. It was that decision by the appellants, which led to the need for KS's rebuttal statement/evidence.
53. IM accepted³³ that two images did provide a reasonable representation of how the site appears in the locality and its context in the area south of Mongleith Road. First, was the aerial photo contained in the Design and Access Statement (DAS) which plainly shows the change in the nature of BWR on its western side once passed that junction (on the basis that the consented development to the north will take place).³⁴ Second, was View 12,³⁵ which shows clearly how the character on the western side of the road changes from the gates of Menehey House where the PROW begins. JH confirms that position in his evidence.³⁶ KS's evidence dealt in more detail with the changes that also occur in relation to the eastern side of the road – the recessed and more modest nature of Falmouth Business Park for example - and the absence of street lamps shortly after the junction with Mongleith Road.
54. However, the proper focus is on the western side of the road – as relied upon in the reasons for refusal. IM agreed in terms that it would be reasonable for a person considering where a boundary might be drawn between urban and countryside, to take the line at the northern edge of the appeal site, considering those images.³⁷ Indeed, all parties are agreed that the site lies in countryside.³⁸ Applying IM's evidence above to the plan definition of "open countryside" the proper conclusion is that the site is in open countryside. In XX MW said "*my view is that Bickland Water Road in the vicinity of the appeal site has formed a definitive line*".

Visual amenity

55. There is agreement that the proposed development causes harm to visual amenity from a significant number of representative viewpoints. IM accepted in

³¹ KS RPoE §2.12 and revised estimate submitted at the Inquiry

³² KS provided a calculation of how that figure had been arrived at – ID10. It has not been substantially challenged.

³³ IM XX Day 3

³⁴ JM8, section 2 "Site and Context Appraisal", Figure 1 "Site Location".

³⁵ IM.7 p.42

³⁶ JH §5.43

³⁷ IM XX

³⁸ JM §3.29 & XX.

XX that in his assessments of significance, any harm of *minor* or above fell to be weighed in the planning balance. The extent of the debate is about the level of harm caused from various Viewpoints (VPs) where the experts disagree as to its severity, and about the potential amelioration by mitigation. The acceptance of such harm is a feature, in part, of the acceptance that the ridge is a locally important and locally valued feature in the landscape.³⁹ It is recognised as a sensitive site. It is sandwiched between Budock Water and Falmouth.⁴⁰ And it is seen from many places by people with high sensitivity to their surroundings because there are enjoying the extensive network of PROW in the vicinity of the site, as well as the PROW across the site itself.⁴¹

56. Thus, taking IM Table 12 – the “*Summary Table of Visual Assessment*”⁴² – it is necessary to add major significance of effect for the viewpoints taken from within the site.⁴³ These impacts cannot be mitigated. Thereafter, at year 0/1 he accepts major harm from VP13 and moderate harm from a number of other Representative VPs in IM.7. He does not give detailed evidence about when the effects identified would reduce, but the periods in question often appear to be many years. Further, he accepts that in relation to a number of views, residual harms would remain even after mitigation (VP4, VP9a, VP9b, VP11a, b, c, VP12 and VP13). It is also clear that IM’s “*moderate*” harm covers a range of potential harms up to just below major.⁴⁴
57. KS considers that in relation to many views IM has underestimated the harm, applying his own definitions. It is notable that in her analysis by applying a more nuanced hierarchy of harms she has on a number of occasions downgraded harm that would have been assessed by her as major applying IM’s scale, to “*major moderate*” on her own. Her supplemental Table⁴⁵ provides a useful guide as to the competing views as at year 0/1.⁴⁶ Of course, both of these analyses involve substantial amounts of professional judgment at each state of the process (applying GLVIA3⁴⁷), but in some cases it may be relatively easy to decide whether IM has underestimated the harm.
58. To take two examples, in KS VP40⁴⁸ it is clear from the position of the Turkey Oak⁴⁹ that the proposed development will be visible from that VP (IM considered

³⁹ IM accepted both those points in XX. JH makes these and related points at §5.56 – 5.71 – applying the Stroud judgment to whether the landscape is valued for the purposes of NPPF §109 – as set out in RR 2.

⁴⁰ JH §2.2

⁴¹ JH §2.5; IM.5 – Figure 8 – Public Rights of Way

⁴² IM.1 p.117/Table 12

⁴³ IM XX, see IM.6 Figure 11 – Views from within the site

⁴⁴ So, for example, comparing VP1, VP2 and VP5 in Table 12 – all of which result in moderate despite VP2 having a “*low*” score for sensitivity (the lowest) whilst VP1 and VP5 have “*high*” and not “*medium*” (the highest).

⁴⁵ ID3

⁴⁶ IM volunteered in XC it was “*useful up to a point*”. He noted it oversimplified, but it was not intended to set out the entire evidence.

⁴⁷ The third edition of Guidelines for Landscape and Visual Impact Assessment (GLVIA3), Landscape Institute & IEMA, 17 April 2013 – see relevant extracts supplied at the Inquiry in ID4

⁴⁸ KS RPoE A1.3

⁴⁹ This is the tree entirely omitted from consideration in the Arboricultural Assessment: KS XX.

it was *“not likely”* that the site would be seen).⁵⁰ Also IM VP5⁵¹ - KS and IM agree that walkers here should be treated as high sensitivity⁵², and in light of the panorama they can take in from the focussed view afforded from the PROW, and the visibility of Fields 1 and 2, it is likely that visual amenity will be affected to a significant degree in the early years. The consequence is a major impact applying IM’s own guidelines. As KS demonstrates, there will be adverse cumulative visual impacts from PROW within the AoNB.⁵³

Landscape

59. IM accepted in relation to landscape harm, as he had for visual amenity, that minor effects identified by him weighed in the planning balance against the proposal. He made it clear⁵⁴ he was not suggesting the harms that he had identified were met or outweighed by the two minor positive landscape benefits he identified, and so the overall picture, on his own evidence, is one of landscape harm.
60. IM Table 7⁵⁵ identified a significant number of adverse landscape effects. True it is, that he found no harm for a number of receptors, but that does not stop each of the findings of harm he did make demonstrating a clear picture of harm to the landscape. They included:
- (a) Harm to NCA 152 – LVIA paragraphs 6.2.3 to 6.2.10
 - (b) Harm to LCA 13 – 6.2.14 to 6.2.21
 - (c) Moderate harm to HLCA: Medieval Farmland – 6.2.34 to 6.2.40
 - (d) Harm to Cornwall AONB – 6.2.52 to 6.2.58
 - (e) Moderate (landscape) harm to Listed Building Menehay House (Grade II) - 6.2.114 to 6.2.121
 - (f) Harm to Listed Building – Burial Ground Walls (Grade II) - 6.2.135 to 6.2.137
 - (g) Moderate harm to the Landform of the Site – 6.2.183 to 6.2.188
 - (h) Major harm to the Landcover of the Site – 6.2.190 to 6.2.196
61. KS considered that there would be harm to the landscape. She identified for particular consideration the undeveloped ridge and the hedge boundaries and field pattern. Her conclusion was that the overall impact of the landscape effects

⁵⁰ He gave that answer in response to IQ. In response to IQ on the Turkey Oak and her VP40 KS said *“Yes – you’ll definitely be able to see the housing”* and later *“[that] buildings of 2 and 3 storeys high in that area will be visible”*.

⁵¹ IM.7 p.31, Fig 34 V5 – View from the footpath on higher ground to the west of Budock Water

⁵² In XC IM gave an interesting answer about sensitivity of walkers in enclosed woodlands. He said in that case *“where you have an enclosed woodland, views are restricted, people are generally enjoying the woodland surround, so they have a slightly reduced sensitivity”* (emphasis supplied), day 3, c. 10am.

⁵³ KS RPoE §2.2 and VP41

⁵⁴ XX IM

⁵⁵ IM.1 – LVIA, p.81

she identified was *major/moderate adverse*⁵⁶, for the reasons she gave.⁵⁷ The reasons contained within her Landscape Appraisal were a reasonable, proportionate, appropriate, and ultimately persuasive critique of both the original MeiLocci LVIA submitted with the application and IM's evidence including his LVIA.⁵⁸ It demonstrates that in a number of respects he is likely to have underestimated the harm arising from the proposal.

62. IM accepted that the undeveloped ridge was capable of being a landscape characteristic for these purposes. He accepted there was some harm to it by the proposed development.⁵⁹
63. Further, his written conclusion that the hedgerow changes amounted to a minor beneficial landscape effect must be questionable in light of his acceptance that the context in which the hedgerows are read is important to their value. As he said *"The Value of the hedgerows and trees is that although a very widespread landscape element in the area, the hedgerows and associated trees contribute to a very distinctive and pleasing agricultural landscape more widely and they are the key landscape elements on the appeal site"*.⁶⁰ (Emphasis supplied). It is clear, through his conclusions as to the harm to landcover and landform, that the context in which the hedgerows and trees are experienced will be transformed to a relatively dense urban environment.

The Gap between Falmouth and Budock Water

64. There is some overlap between the above indications of harm and the harm to the gap. But the harm to the gap arises because the ridge is recognised as being locally important and valued in part⁶¹ because it maintains the visual separation of Falmouth and Budock Water. It is clear that visual separation will be compromised by the development. It is now common ground⁶² that significant elements of the development will be on the ridge.⁶³ The ridge is not a sharp ridge but contains a plateau. It is entirely clear from the appellants' written case prepared for the appeal that they accepted the development would be visible from Budock Water.⁶⁴ The same statement acknowledged the importance of this local green buffer.⁶⁵ There appears to have been some confusion about the issue in JM's proof, which he was unable to explain for lack of recall.⁶⁶
65. IM says that ultimately the new mitigation now proposed within IM.11 will *"completely obliterate"* any views of the site from Budock Water. However, he has not produced any sections or other clear evidence to demonstrate how that would be so. He has not given a convincing explanation for why, when a 15m

⁵⁶ KS §4.5.38

⁵⁷ KS §4.5.4 to 4.5.25

⁵⁸ As the Inspector noted, it was not for KS or the Council to produce an LVIA. That was for the Appellants to do in seeking to support the proposed development.

⁵⁹ In REX IM was asked again about the significance of that element. IM said *"In terms of significance, it's a moderate element"*.

⁶⁰ IM §5.17

⁶¹ This is not the extent of its value – see the summary at KS §4.5.26 regarding landscape.

⁶² XX IM

⁶³ See KS App 3.2.

⁶⁴ SoC §7.4.3 bp 5 and 6; §7.4.15

⁶⁵ SoC §7.4.15

⁶⁶ XX JM, JM §5.62

buffer is required for the southern field, a much narrower buffer will apparently be sufficient for the detailed section of the application/appeal. The buffer in the detailed application is 4m of 'structure and ornamental planting' and a strip of wildflower meadow measuring between 2-3m.⁶⁷ KS was clear that her view was that the mitigation proposed in that 4m strip would not produce a joined canopy.⁶⁸

66. The difficulty with IM's position is that, in the case of visual coalescence, that coalescence will remain if those in Budock Water can see the ridgelines of the houses at or near the ridge. It is also difficult to explain why, if this was considered to be an appropriate mitigation scheme for the proposed development, it was not advanced during the iterative approach which must have preceded the bringing forward of a properly "landscape led" development, before that scheme was submitted for planning approval. Instead, as IM acknowledged in XX, what has happened is a very significant shift in the approach to mitigation in the last few weeks preceding this recovered appeal, following IM's own LVIA. KS gave clear evidence as to why, in her view, it would take at least 15 years for the proposed mitigation to mature sufficiently so that it could screen the development from Budock Water.⁶⁹ In any event, as KS said, introducing this extensive kind of screening is not appropriate in the landscape – it is not characteristic of the local landscape associated with the ridge.⁷⁰

Impacts on Heritage Assets – Menehey House and the Church of St Budock

67. The Council did not rely on heritage impact as a RR, because it ultimately concluded that the provision of 226 dwellings would outweigh that harm applying the NPPF. However, it did find less than substantial heritage harm and that is described in the officer report and in JH's evidence⁷¹. That remains the Council's position in relation to harm to heritage assets.

Whether the development would result in the loss of BMV

68. The development would result in the loss of BMV. The site is graded by the Council as grade 2,⁷² and by the appellants as grade 3a. On either view, it amounts to BMV. The loss of BMV was not given as a reason for refusal, but it falls to be taken into account in the planning balance.

Whether the need for development outweighs any harmful impacts and whether it would be in accordance with the Development Plan

69. In terms of market housing the appropriate levels of housing have been identified in the recently adopted LP. The Council can demonstrate more than 5 years HLS (it puts the figure at 6.2 years) and has provided evidence showing that with the proposed allocations delivery in relation to the LP apportionment of housing to

⁶⁷ KS RPoE §2.4(c)

⁶⁸ XX KS – Day 2, c. 11:20

⁶⁹ In XC IM said *"I would have said by 8-9 years you would have a fairly good shrubby screen"*. In answer to IQ he accepted the development would be seen from Budock Water when it first went in.

⁷⁰ KS RPoE §2.11

⁷¹ JH §5.132 – 5.147

⁷² JH §2.6

Falmouth & Penryn will be 115% of the requirement.⁷³ That calculation has been done by reference to an up to date delivery schedule dated March 2018 which is before the Examination and this Inquiry.⁷⁴

70. The development would provide policy compliant levels of affordable housing. In light of the council and district wide needs for affordable housing that benefit should be given significant weight. The weight to be given to it is tempered by the fact that the recently adopted LP has decided, having looked at all proper material planning considerations, what a sound housing figure should be (albeit not a ceiling) and in coming to that figure took fully into account that it would not mean that affordable housing needs were 100% met, but that over half of that need would be met. The Council is hardly unusual in finding itself in that position. As has been pointed out, this scheme is not affordable housing led.
71. JH has explained why there is not a current pressing need to provide additional unplanned sites for residential development.⁷⁵
72. Further, the eAP is entitled to weight. The parties debate whether in general terms that should be considerable or limited weight. But the plan is at a relatively advanced stage. It was submitted as sound. The Examining Inspectors have not indicated any concerns in relation to legal compliance or DtC. Their recent Note, entirely properly, is very carefully framed. But the tenor of the Note gives, as MW said *"the direction of travel"* which is strongly positive.⁷⁶ Where they have identified further work on particular towns that is required, they have said so, and Falmouth & Penryn is not one of the (only 3) identified. Accordingly, there is nothing in their letter to suggest they consider the Vosper's site unsound or the approach to Falmouth & Penryn unsound. The wording of the proposed policy for Vospers is now agreed as between the Council, landowner and developer.⁷⁷ The Examining Inspectors have not suggested there is any particular difficulty with either MM3, the SA to the AP (an issue of legal compliance) or the policy intent or proposed extent of the Green Buffers (which plainly apply in a number of areas).⁷⁸ They give no support to the idea that an additional allowance for flexibility should be introduced into the DP via the AP.
73. As an aside, the appellants have chosen to focus on a number of documents as set out below which do not reflect the settled position of the Council. This part of the debate brought some heat from the appellants but very little light.
- (a) The pre-app advice: This was normal informal pre-application advice provided prior to submission and prior to adoption of the LP, at a time

⁷³ MW §2.48, and for detail see MW §2.41 to 2.50.

⁷⁴ MW robustly defended that schedule (his App J) in XX.

⁷⁵ JH §5.148-5.152

⁷⁶ MW has been closely involved in that process and gave evidence at the Falmouth and Penryn session: XX MW.

⁷⁷ MW explained in XX the chronology relating to the availability of the Vospers site, and that being the reason why officers had not included it as an alternative earlier. He said he became aware of that prospect "at end of February/March". He noted the pre-app had not become valid until after the relevant hearing, by which time the revised wording for Vosper's had been agreed. MW noted the proposed changes included in MM version 3 as MM52a.

⁷⁸ MW deals in more detail with the Green Buffers at his §2.51-2.62. They are part of the Green Infrastructure strategy as he noted in XX.

when the Council could not demonstrate 5 years HLS.⁷⁹ Even then, it informally indicated issues in relation to landscape that have come into much sharper focus.

- (b) The unpublished report: This report has no status. It never represented the view of the Council and the Appellants' reliance on it in a planning inquiry is odd. It is a "jury point". The published report provides the basis of the decision and the reasons for refusal. In landscaping terms that report was utterly consistent with the position KS has taken in relation to this site for some time, and consistent with her comments on the application itself. The Council has an appeals team and so does not call the case officer.⁸⁰ The position had moved on between the two reports as the AP had been to both the Planning Policy Advisory Committee (20.2.18) and Cabinet (16.3.18).⁸¹
- (c) The consideration of the site in the emerging Site Allocations process: This has been dealt with above. The Examination is not for this place, but as matters stand the Council has entirely reasonably decided to prefer other options, and there is no indication the Examiners consider the AP should be altered in that respect.

74. The Council's reasons for refusal are substantially made out. Accordingly, the proposal is in breach of two central policies of the LP. It is contrary to the DP as a whole. That conclusion – of breach as a whole - should be the same even if the Inspector finds that only Policy 2 is breached, due to the central nature of that policy and the nature and extent of the breaches. There are no material considerations sufficient to indicate that there should be a departure from the DP.

The Case for the Appellants

Abbreviations are as per the Council's case. CC=Cornwall Council. MM=Main Modifications. OR=Officer Report submitted to March 2017 Committee. OR1=The earlier Officer Report of February 2017 recommending permission, which did not go to Committee but which the Appellants obtained under Freedom of Information.

75. The appellants address the same main considerations as I set out in paragraph 9 above, albeit that the arrangement of their Closing Submissions as set out in the sub-headings below deals principally with the Council's prematurity argument in the first issue and assesses whether the development accords with the DP in the fifth or last issue.⁸²

Prematurity – Allocations Plan (AP)

76. RR1 appears to be directed to alleging that the proposals are premature and should be rejected on that basis since they are of such a nature as they prejudice the AP process. As noted above, MW conceded that RR1 effectively conceded (XX and IQ) that the key elements of RR1 cannot be maintained for the following reasons:

⁷⁹ JH XX Day 2 c. 16:30

⁸⁰ XX JH

⁸¹ XX JH

⁸² The appellants' case is principally taken from its Closing Submissions – ID28

- (a) The grant of a permission for another housing site does not undermine the housing allocations in the AP and MW accepted in XX that - (i) the development plan does not set a maximum for housing provision (LP Policy 2a); (ii) flexibility is built into Policy 3 and housing provision (demonstrated by MW's own updated delivery schedule⁸³ provided to the Examining Inspectors and the CPO's Advice Note of December 2017); and (iii) it was agreed there was no evidence that bringing forward the site for development would deter the bringing forward of any of the allocated sites. There have been no objections from the owner/developers of the allocated sites to the appeal proposals; and
- (b) The issue relating to the green buffer only introduced in the first (pre-examination) MMs simply reflected the issue of protecting the separation of Falmouth's western edge and Budock Water (and associated landscape issues) which had been part of the consideration of the site and its development all along. So this aspect was dealt with by RR2 in any event and RR1 added nothing to it. Moreover, in respect of the MM green buffer: –
 - (i) MW agreed that the MMs were yet to be finalised by the Examining Inspectors prior to consultation, and it follows there has as yet been no opportunity for objection and comment;
 - (ii) The MM was introduced following the PPAC decision of 20.2.17 rejected the site as a draft allocation and directly as a result of it, without assessment and without assessment of the substitute Vosper's Site. It was a member response to the appeal application and not officer-led;
 - (iii) JH accepted in XX that this had not been assessed by an SA/SEA and had not been considered in terms of reasonable alternatives.

The MMs seeking to designate the green buffer must therefore be of minimal weight in any event.

77. In any event, the objections would not meet the guidance on prematurity in the Planning Practice Guidance (PPG)⁸⁴, which was not in any event considered in either the OR or the evidence of MW:

“... arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:

(a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or neighbourhood planning; and

(b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

... Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice

⁸³ MW Appx J

⁸⁴ PPG Reference ID: 21b-014-20140306.

the outcome of the plan-making process.”

78. This guidance is plainly not met here for the reasons set out in JM’s evidence at §§7.53-7.90⁸⁵ and accepted by MW as indicated above.

Landscape and Visual Impact

79. IM’s approach and judgments are to be preferred to those of KS and that the judgments of KS are flawed for a number of reasons as set out below.

80. KS agreed, and GLVIA3 makes it clear, that the guidance expects professional judgments to be used and to be transparently explained. The approach should lead to the methodical application of judgments on a series of issues, so that each assessment was clear and justified and could be understood. It is not appropriate to place undue weight on a matrix based approach.

81. Indeed, the position is summarised on the Landscape Institute’s website⁸⁶:
“GLVIA3 replaces the second edition GLVIA2. In general terms, the approach and methodologies in the new edition are the same. The main difference is that GLVIA3 places greater emphasis on professional judgement and less emphasis on a formulaic approach.”

82. This approach is explained in more detail in GLVIA3 itself⁸⁷ (emphases added):
“3.35 In reporting on the significance of the identified effects the main aim should be to draw out the key issues and ensure that the significance of the effects and the scope for reducing any negative/adverse effects are properly understood by the public and the competent authority before it makes its decision. This requires clear and accessible explanations. The potential pitfalls are: over-reliance on matrices or tabular summaries of effects which may not be accompanied by clear narrative descriptions; failure to distinguish between the significant effects that are likely to influence the eventual decision and those of lesser concern; losing sight of the most glaringly obvious significant effects because of the complexity of the assessment.

3.36 To overcome these potential problems, there should be more emphasis on narrative text describing the landscape and visual effects and the judgements made about their significance. Provided it is well written, this is likely to be most helpful to non-experts in aiding understanding of the issues. It is also good practice to include a final statement summarising the significant effects. Tables and matrices should be used to support and summarise descriptive text, not to replace it.”

83. KS did not provide clear and transparent narrative text to explain all of her judgment as was put to her in XX but was over-reliant to the use of matrices. Indeed, the table she produced purporting to undertake a comparative analysis of her own assessment and IM’s, applying IM’s Table 10 and her own matrix which purported to show inconsistencies by IM (which were not put to IM in XX) in fact demonstrated:

- (a) KS had been over-reliant on matrices or tabular summaries not by clear narrative descriptions explaining judgments;
- (b) KS’s table simply applied matrices to elements of IM’s judgment without seeking to understand from the detailed and clear narratives provided by IM

⁸⁵ Indeed, as referred to by JM §§7.55-7.68 CC has permitted additional housing despite binging forward the Allocations Plan.

⁸⁶ <https://www.landscapeinstitute.org/technical/glvia3-panel>

⁸⁷ Part of the extracts from GLVIA3 supplied to the Inquiry in ID3.

in LVIA pages 96-115 and without providing a narrative explanation for the judgment purportedly reached in the Table herself;

- (c) KS did not follow through the explanations by IM for each of his judgments on impact for his viewpoints in the LVIA and thus failed to understand that he had built up his analysis leading to his judgments on overall significance of impact.
84. KS in fact agreed in XX that IM had complied with the guidance in GLVIA3 in producing his LVIA whereas she criticised the superseded MeiLoc application LVIA for not being GLVIA3 compliant. This acceptance was inconsistent with her criticisms made of IM's approach to the sensitivity of walkers as receptors (apparently considering that they had to be treated as highly sensitive in all contexts).
85. KS accepted in XX that she had also failed to consider the views on landscape and visual impact previously produced on behalf of CC which were in conflict with her own. There were many and, whilst not determinative, support the conclusion that KS has not reached a defensible conclusion on landscape and visual impact. It is not at all clear on what basis KS considered she should simply ignore the other views although she made plain her disagreement with them. In particular, for reasons she did not explain, she did not trouble to discuss her views with CC's case officer for this application and who had screened out EIA for these proposals, had given positive advice pre-application and had originally drafted a report for Members for 2.2.17 recommending the grant of permission (OR1⁸⁸). CC did not call the case officer (Mr Peter Bainbridge) to offer an explanation of why OR1 had been delayed then changed.
86. There were a number of occasions when views were expressed as to the acceptability of the site for housing development or of the proposed development inconsistent with the views advanced by KS:
- (a) The inclusion of the Site as Site UE2a in the draft of the core strategy in August 2011⁸⁹, which post-dated KS's 2010 Falmouth and Penryn Framework assessment;
- (b) EIA screening that no EIA was required since the likely effects were not considered likely to be significant;⁹⁰
- (c) The case officer issued pre-app advice on 19.9.15 [JM16] which gave a positive view of the proposal (then larger than the appeal proposals, at 235 houses);
- (d) Officers' proposal to include the site as part of the Reg. 19 AP. The site was clearly considered to be acceptable for housing development (subject to meeting certain criteria). It was only removed on the initiative of Members, not officers who had recommended its inclusion, at PPAC meeting on 20.2.17⁹¹. At that stage there had been no assessment of the Former

⁸⁸ JM19

⁸⁹ JM13

⁹⁰ ID25 - The Council's EIA Screening Opinion

⁹¹ JM29, JM§§7.18, 7.19; MW Appx C

Vospers' site which was nonetheless advanced on that occasion to replace the Site;

- (e) As is set out in the SoCG §6.31⁹² (and table NTS1 within it) the site scored as well as or better than Reg. 19 Falmouth proposed sites in the SA/SEA process⁹³. This provides an objective basis for concluding that the site performs in terms of the relevant assessment considerations (including heritage, landscape, biodiversity, transport and housing) at least as well, if not better, than the proposed allocated sites;
- (f) The case officer's OR1 which was written in late December/early January for a Committee meeting on 2.2.17 but which was not published and did not proceed. Unlike KS, JH agreed that it was a complete report and not a draft. It adopts a significantly different approach to assessing landscape impact to the report produced for the 30.3.17 Committee meeting (OR – JM9).⁹⁴

87. It is noted that KS refused to answer the question whether she considered the site to be acceptable in principle for housing development and asserted that she could not assess this without an application before her. This was patently unsustainable given that the appropriateness of sites are assessed on a regular basis, including this site in the SA, without specific proposals or masterplans, as the process of assessing sites for allocation for housing amply illustrates. Even if, as CC's Counsel put to JM, this was a matter for comparative acceptability of sites (which JM did not agree⁹⁵), this did not cause KS to contend that the site was not suitable in principle.

88. Her reluctance to answer a basic question revealed a lack of objectivity on her part and, ultimately, nonetheless disclosed her view that it was a site where development is acceptable in principle despite the views expressed in her evidence. If she had considered the site could not be developed in principle for housing, it would have been easy for her to say so. It is submitted that this refusal concealed KS's unwillingness to recognise that her views might have to be tempered by an acceptance of its suitability in principle which might have been thought not to be a difficult issue given it was at one stage considered suitable to be allocated and is agreed in the SoCG to be sustainable.

89. There are serious faults in the assessment by KS both in terms of errors and omissions:

- (a) KS had not considered other views or the Reg. 19 SA (until put to her);
- (b) KS had assessed impact based on a significantly exaggerated extent of development proposed along the western boundary – see the error agreed by in XX respect of her VP1 and VP 5⁹⁶;

⁹² Also JM §§7.78 & 7.79.

⁹³ The point MW raised that it was proposed for approximately 150 houses, went nowhere since he agreed in XX that no capacity exercise had been undertaken for the site. See ID26 - Falmouth & Penryn Site Allocations SA Summary

⁹⁴ Contrast §§60, 61 and 102 of OR1 with §§61, 62 and 100 of OR.

⁹⁵ The site does not cease to be an acceptable or sustainable site because others are prioritised or preferred.

⁹⁶ And (potential) visibility in the southern part of Budock Water does not comprise the whole of the southern part even on the "bare earth" approach of IM's ZTV – see IM4, Appxs p. 6.

- (c) KS had assessed impact wrongly assuming 11m tall buildings within 10m of the western boundary in Field 1 (a point emphasised 3 times in KS's proof and once in rebuttal) rather than 7.6m, or even some other height bearing in mind the outline nature of that part of the proposal;
- (d) KS was extremely reluctant to acknowledge in XX that the scheme shown outside Field 2 was in outline only both to the north and south of the detailed part of the application and that the layout, mitigation, unit sizes etc could be adjusted;
- (e) KS failed to consider the impact of the Taylor Wimpey scheme to the north of the site – see her additional VP 40 which did not indicate/analyse the effect of the TW permission⁹⁷;
- (f) KS had undertaken her assessments without considering mitigation. While she criticised the mitigation proposed by IM in rebuttal (see IM11) she still had not factored it into her assessment of impact;
- (g) KS exaggerated the adverse impact of the proposals by contending that boundary buffers would take 15 years or more to establish and assuming that there would be no screening until year 15 or later. She failed to consider that the establishment of the planting would be progressively effective and assumed in all her assessments an impact as at Day 1 of development. This is unrealistic and is another failure of judgment. IM explained that it would be possible, given the good soil, the state of other vegetation in the locality, the shelter from the existing hedgerow and other factors it was feasible to expect a significant degree of cover in less than 15 years e.g. 5 years at the northern boundary and along the western boundary in 8-9 years. As IM explained, it would be possible to adjust the proposed planting and landscape buffer along the western boundary of Field 2, the detailed part of the application to ensure successful growth. He rejected KS's view that a 7m gap was insufficient between the buffer and houses. He also pointed out that it would not take 15 years to screen the bungalows at the western end of Field 2 (detailed application area) on plots 1, 2, 9 and 10.
- (h) The proposals will not close the gap between the edge of Falmouth and Budock Water. Indeed, the gap that would remain can be favourably compared with the extent of the gap to the north/north west of the site⁹⁸;
- (i) Since the western side of BWR running north from the site to the A39 has either been subject to residential and commercial development or has planning approval for both types of development, BWR does not form a strong edge to Falmouth (see e.g. IM10 and JM and IM's evidence). IM explained that the sensitive area to the west of BWR only came to the south of Roscarrack where the houses in fact sat on the western slope of the ridge so the countryside to the west of the road was much more exposed to views;

⁹⁷ Her Appx. A2.5 which is similar to the current reserved matters application she said.

⁹⁸ See the LVIA e.g. at 6.2.75 and OR §62 – “62. The village of Budock lies 305 metres at the closest point to the site in a westerly direction. This is a greater distance than that between the development to the north and Budock. The nearby Kergilliack scheme for up to 300 dwellings lies a similar distance away north of Budock.”

- (j) To prevent the coalescence of Falmouth and Budock Water, the proposed area of green buffer is arbitrary and does not consider the physical topography which effectively provides physical and visual separation, and which provides the backdrop to Budock Water. The line should follow the ridgeline, bordering the western edge of the southern part of the appeal site, where development would taper towards the small development on the eastern edge of Roscarrack House. A green buffer is not required to include the site, having regard to its purported objective, and the proposals would not impair its objective in any event;
- (k) Criticisms of the design of the scheme were neither part of the RRs nor supported by the OR that Members supported

90. As §8.1.2 of the LVIA (IM1) states:

“The appeal site would extend residential development further west from Falmouth than current at this point, however it would not extend closer to Budock Water than the approved residential site immediately to the north of the appeal site, and it would be over twice the distance from the edge of Budock Water than approved residential development on the northern approach into Budock Water. As the appeal site slopes to the east, its landscape context is linked with Falmouth and not the rural landscape to the west. Additionally, the appeal site does not form part of an access to Budock Water, therefore it is assessed that the position of the appeal site would not erode the separation between Budock Water and Falmouth to a significant degree which would either be detectable in a visual way or through landscape context of the village’s setting.”

91. Following a detailed consideration of landscape and visual impacts in his evidence which speaks for itself, IM concludes:

- (a) The site does not lie in a rare and unique landscape, nor does it impact on important designated landscapes, but it is a transitional urban-rural fringe landscape also influenced by the urban elements to the east as well as the more rural elements to the south and west. The landscape forms only a very small proportion of the character areas in which it sits or is proximate and the value which the ridge has within the landscape is local only;
- (b) The proposed development would not be prominent in the surrounding landscape due to a combination of the existing mitigation features on and around the site and the robust scale of proposed strategic landscape planting. He has suggested further landscape mitigation detailed in his evidence which can be secured by condition (and if necessary a condition could be imposed to ensure planting is carried out ahead of development and also the phasing of development from east to west to allow it further time to establish);
- (c) The effects would be limited and not significant and the impacts can be sufficiently mitigated, ensuring that there would be no coalescence of Falmouth and Budock Water (see the LVIA e.g. at §§4.3.15, 6.2.45, 6.2.47, 6.2.72-6.2.76 and 8.1.2). The effects put to IM were not long term effects and for reasons explained, KS’s views about the time taken to establish screening were exaggerated. Moreover, as IM confirmed in RX, there is no point at which the western edge of the site can be seen which does not also include views of the valley and fields which separate the site and the edge of Falmouth from Budock Water. The fact, as IM acknowledged in his LVIA and in XX, that there will be some adverse impacts even with mitigation does not mean that they are unacceptable, are not outweighed by the benefits and are not contrary to LP Policy 23.

- (d) There is a greater scope for structural landscaping than KS has assessed, including at the eastern boundary of the Site where there is scope to continue the proposed Cornish hedge and to replace the lost section of hedge with new hedge at the northern end of the boundary which is not currently Cornish hedge.
- (e) In the light of IM's approach, the proposals would not be contrary to LP landscape policies which taken into account mitigation.

92. On this basis, and for the detailed reasons explained by IM, the objections raised by RR2 on landscape and visual matters, should be rejected.

Heritage Impacts and Loss of BMV Agricultural Land

93. Although CC suggested that less than substantial harm would be caused to the setting of certain heritage assets (Menehay House and St Budock's Church) JH accepted that he lacked heritage expertise and acknowledged that only NW presented expert heritage evidence to the Inquiry. Although present at the Inquiry, and tendered to give evidence if required, NW did not give oral evidence since it was clear that no one (including CC) wished to question him and his evidence was therefore taken as read. It was therefore undisputed and explains clearly why no harm would be caused.
94. Even if (contrary to NW's undisputed evidence) some harm would be caused, it would in any event fall within NPPF paragraph 134 and given JH's view that it would not have justified refusal taken on its own it plainly lies at the lower end of the paragraph 134 category of harm. Even given the significance which is generally attached to heritage impacts, the harm caused would clearly be outweighed by the significant public benefits (especially in terms of affordable housing) which the appeal proposals would secure.
95. A similar point arises in the case of the loss of BMV land in that JH also agreed that this factor, though negative, would not have justified refusal on its own: i.e. must be of little significance and easily outweighed by benefits.
96. As a useful comparator, if the SA Report for the Reg. 19 AP is considered [JM37 pages 14-15] it can be seen that the great majority of sites in Falmouth and Penryn and in the AP area as a whole raise similar issues of heritage impact and loss of BMV land. These issues are not unusual for housing sites in Cornwall and JH was correct therefore to accept that, taken alone, were of insufficient significance to justify refusal.

The Development Plan and the Planning balance

97. It is common ground with CC that this is not a case where the DP is silent or out of date, nor is it a case where CC cannot demonstrate a 5 year housing land supply. It is therefore agreed that the tilted balance does not apply and that the appeal is to be determined simply on the basis of whether the proposals are in accordance with the DP and, if not, whether material considerations indicate that the appeal should be allowed notwithstanding any conflict.
98. JH accepted at the outset of XX that given it was common ground that no tilted balance applied, that there was no footnote 9 issue and that the s. 38(6) approach applied - in the event that there was considered to be a lack of compliance with the DP then the extent and significance of this should be

considered and weighed against the benefits of the proposals (including assisting addressing the acute need for affordable housing) taken as a whole.

99. The policies are analysed in detail by JM in his evidence. The appellants submit that the proposals are not only sustainable within Policy 1 but also consistent with the other applicable LP policies as set out below.

Policy 1

- a) This policy duplicates much of what is in NPPF paragraph 14 and has a degree of circularity to the extent that sustainability is said to be compliance with the LP (in which event it adds little to s. 38(6) of the 2004 Act).
- b) However, the emphasis on sustainability in Policy 1 is important since it is common ground with CC that the site is sustainable for housing development given its public transport links, access to employment and education and to various modes of transport⁹⁹.
- c) The sustainability of the site, it is submitted, underlines the compliance of the proposals with Policy 1.

Policy 2

- a) See above on sustainability;
- b) The only point which arises in respect of this policy is the landscape impact issue which, if IM's evidence is accepted (and that of the initial assessment of proposed sites by CC) then the policy requirements are met.

Policy 2a

- a) The policy requires the provision of "a minimum of 52,500 homes" and is plainly not breached even if the proposals were to cause the total provision to exceed 52,500: the numbers are not a cap;
- b) It is also agreed that Policy 2a requires provision for affordable housing but that the plan will only meet 58% of that requirement;¹⁰⁰
- c) It is common ground that the weight to be given to the provision of affordable housing in this application attracts significant weight given the acute shortage in the locality and in Cornwall generally.

Policy 3

- (a) This policy does not restrict development to the locations stated but manages delivery of development in order to secure the provision of the quantum of housing as required by CLP -
"Delivery of housing, community, cultural, leisure, retail, utility and employment provision will be managed through a Site Allocations DPD..."
- (b) Although MW considered Policy 3 did restrict development to the proposed allocation sites (or those proposed in a NDP) -

⁹⁹ See SoCG at 2.11 and 7.2-7.5.

¹⁰⁰ LP §2.54 table 4 reinforced by JH in XX.

- (i) He failed to appreciate that this construction of policy was inconsistent with his acceptance that there was flexibility in the plan to provide more or alternative housing provision since, if his construction of Policy 3 was correct, that flexibility would be removed;
- (ii) This is not supported by the text of purpose of Policy 3. LP §§1.53, 1.54 and 1.62 relied upon by MW simply did not support his construction of the policy and the plan text demonstrated the opposite, that the policy was not intended to be restrictive –

“1.61 In assessing how the remainder of the housing apportionment is to be met, the following factors need to be considered:

- An assessment of the deliverability of those sites with planning permission during the Plan period. This is set out in the Council’s Housing Implementation Strategy, updated annually; and
- An allowance made for the estimate of windfall development that is likely to come forward during the Plan period.

1.62 Together these indicate the residual level of growth that will need to be provided by allocations in either the Site Allocations Development Plan Document or Neighbourhood Plans. Progress towards this delivery of that residual requirement will be monitored annually.

1.63 There may be a requirement to allocate or permit development of further sites above the residual housing number to ensure delivery of the target in the Plan period or support the provision of a continuous 5 year land supply. The provision of critical strategic infrastructure essential to the implementation of the Local Plan strategy may also require additional housing sites to be permitted.”

- (c) MW’s construction of Policy 3 is also underlined by the Chief Planning Officer’s Advice Note [JH 6] –

“The ongoing delivery of the LP housing target requires delivery on unplanned (windfall) sites in the main towns; this may be on sites significantly larger than 10 dwellings. Neither is it intended that all sites over 10 dwellings must be managed through allocations within the Allocations DPD or NDPs. Site allocations are required to ensure delivery of the housing apportionment in line with the settlement strategy outlined in Policy 2 (Spatial Strategy). They do not preclude other windfall development coming forward, but their location or layout should not prevent planned sites being delivered.”

Whether or not this applies to smaller or other sites, the fact is that it recognises that Policy 3 is not exclusive and does not preclude other sites coming forward even at the main towns.

- (d) In the Quintrell Down appeal decision of 20.12.17¹⁰¹ at §27 the Inspector recognised Policy 3 -

“indicates that housing delivery will be managed through a Site Allocations DPD... but this does not exclude the delivery of housing elsewhere, even taking into account that the planning system is to be plan-led.”

He oddly contrasts whether proposals are in accord and whether they are contrary to policy which is not as CC’s Counsel (WB) suggested reflective of s. 38(6) because the point about s. 38(6) is whether the proposals are contrary since the Act uses “accord” as meaning “not in conflict with” as NPPF 12 makes

¹⁰¹ ID2 - Only produced by CC after its own witnesses had given evidence so they were not XXd on it.

clear-

“Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise.”

WB is placing technical weight on “accord” which is plainly contrary to the sense of §§27 and 29 read fairly¹⁰² i.e. that in terms of s. 38(6) the proposals accord with the DP as a whole and there was no need to consider whether other material considerations lead to a different conclusion.

The location of the Site in any event forms part of the western edge of Falmouth. As MW confirmed, in response to IQ, there is no defined settlement boundary. Recent permissions and development in the vicinity of the site means that BWR does not present a clear western boundary to Falmouth since substantial development has been permitted to the west of that road, as noted above, both north and south of the site. Some of that development encroaches far more into the gap separating the western edge of Falmouth from Budock Water. See IM10 and the acceptance of that by the OR (even in its final, published version as per Footnote 103 below).

KS’s refusal to accept that the boundary had moved west of BWR along the length of the road from Roscarrack House to the industrial estates in the north failed to recognise the residential permission for the Taylor Wimpey development to the immediate north of the site (which KS said was now the subject of a reserved matters application) and the housing development opposite, on the eastern side of BWR was substantial and suburban in nature. She was unwilling to acknowledge the significance of obvious features and that the character had changed e.g. the busy road, the close boarded fences, the trimmed garden hedges, the made up footpaths, the street lighting and the clear views of a substantial extent of housing and cultivated gardens. The unreasonableness of her judgment was also reflected in her repeated and absurd claim that the housing development to the east of Roscarrack House was akin to agricultural buildings in its grounds.

- (e) MM3 proposed by CC goes beyond the remit of LP Policy 3 by seeking to impose restrictions on the grant of permission e.g. for windfall sites, and their validity is therefore questionable, as is the appropriateness of their being included within a plan intended to allocate development in order to meet the requirements of the LP, such as in Policy 2a, though at this stage they can carry minimal or no weight since they have yet to be consulted upon and

¹⁰² In *Barwood* [2018] P.T.S.R. 88, Lindblom LJ held at [50] - “Excessive legalism has no place in the planning system, or in proceedings before the Planning Court, or in subsequent appeals to this court. The court should always resist over complication of concepts that are basically simple. Planning decision-making is far from being a mechanical, or quasi-mathematical activity. It is essentially a flexible process, not rigid or formulaic. It involves, largely, an exercise of planning judgment, in which the decision-maker must understand relevant national and local policy correctly and apply it lawfully to the particular facts and circumstances of the case in hand, in accordance with the requirements of the statutory scheme....”

¹⁰³ JM9 para. 62 – “The village of Budock lies 305 metres at the closest point to the site in a westerly direction. This is a greater distance than that between the development to the north and Budock. The nearby Kergilliack scheme for up to 300 dwellings lies a similar distance away north of Budock.”

examined¹⁰⁴. MM3 appears to be an attempt to rewrite and/or enlarge Policy 3 beyond its current scope. This is not in accordance with the LP and therefore appears to fail s. 19(2)(h) of the Planning and Compulsory Purchase Act 2004 and to run contrary to NPPF paragraph 153 which says the correct approach to ensure flexibility is to review the plan.

Policy 7

WB sought to run a point of his own relating to Policy 7 and open countryside which JM rejected. This point was made without authority or evidence since –

- a) Not a RR (see SoCG §6.12)
- b) Pages 9-13 of JH's evidence, running through the CLP policies he does not refer to or rely on Policy 7;
- c) The SoCG does not list it as one of the matters not agreed at §8.1.

Policy 8

It is common ground that the proposals comply with this policy for the provision of affordable housing¹⁰⁵.

Policy 23

- a) The policy is to be read as a whole and must take account of mitigation etc – Policy 23.4;
- b) Must also read plan as a whole which includes the promotion of sustainable development;

100. For the reasons set out in detail by JM, in chief and XX, there is no conflict with Policy 3 or the other applicable policies of the LP. If it is accepted that the landscape effect should be resolved in favour of the appellants, then the proposals are in conformity with the DP and the presumption in paragraph 14 of the NPPF applies.

101. If there were found to be a breach of Policy 3, for the reasons explained by JM and accepted by MW, there would not be any significant harm to the objectives of that policy given the minimum requirement for housing and §1.62 of the LP.

102. Even the OR with its recommendation to refuse advised:

“96. The proposed development is contrary to Policy 3 of the newly adopted Cornwall Local Plan as the site is not allocated for development therefore is not plan-led for a scheme of a scale which would have a profound effect on the future of the town and wider area. Consideration is required as to whether the benefits of the scheme are of such a degree to warrant the setting aside of this policy conflict at this time when alternative sites have been identified to meet the need.

97. It is worthy of note however (particularly in light of recent appeal decisions) that this conflict with CLP policy 3 and the prematurity to the adoption of the Site Allocations DPD is not in isolation

¹⁰⁴ See Examiners' Note of May 2018 §8. As MW agreed, there are likely to be objections – which further underlines the minimal weight to be attached to the MMs.

¹⁰⁵ XX of JH.

considered to justify a sound reason for refusal if the proposal is assessed to constitute sustainable development which could be held to outweigh this conflict in the planning balance.

98. In this regard the proposal would make a contribution towards meeting the general demand for housing in the Falmouth-Penryn area including the Council's ability to maintain a 5 year land supply. The proposal would thereby accord with the Government's objective of boosting significantly the supply of housing and a policy compliant level of affordable housing (35%) would be provided."

103. Although JH emphasised that the heritage impacts and loss of BMV land should be placed on the impact side of the balance, in accepting that these would not have justified refusal on their own, it is clear that they are low significance when weighed against the benefits which the development would deliver.

104. JM identifies in Section 3 of his evidence the social, economic and environmental benefits of the proposals, including the provision of a mix of housing and 79 affordable homes, and explains the sustainability of the site and proposals. CC appears to accept that there is an acute need for more affordable housing in this area. It is agreed that there is a "significant need" for affordable housing in the area¹⁰⁶ and §71 of the March 2017 Strategic Planning Committee Report [JM9] described the need as "acute" -

"The provision of affordable housing in an area of such acute need where the numbers of affordable houses delivered, committed or yet to be consented to meet the emerging Local Plan housing target is not sufficient to meet the existing identified need weighs heavily in favour of the proposed development."

105. The economic benefits, summarised at JM's para. 3.24 are set out in his JM10.

106. As noted already, and the SoCG sets out, it is agreed with CC that the site is a sustainable location for housing¹⁰⁷ and MW agreed in XX that had the Reg. 19 allocation of the site proceeded the draft criteria that officers had formulated¹⁰⁸ would have been complied with and the only live issues would be those two criteria relating to the landscape etc issues within RR2.

107. It is submitted that the planning balance should be resolved in favour of the grant of permission and that, even if there is found to be some conflict with the DP, the benefits, sustainability of the site and the lack of significant impact on the housing strategy all are material considerations that support the grant of permission nonetheless. The benefits advanced by JM were not challenged in XX.

Inspector's Comment

108. After the Inquiry closed the appellants requested the submission of a copy of an appeal decision that allowed circa 82 dwellings at Carclaze Road on the northern edge of St Austell¹⁰⁹, arguing that the circumstances in that appeal are directly comparable with those in this appeal. I have accepted the submission of this appeal decision because it was determined on 15 June 2018 after the closure of the Inquiry. I address the issues raised by the appellant in relation to this decision in my Conclusions below.

¹⁰⁶ SoCG §§7.6, 7.7

¹⁰⁷ SoCG §§2.11 and 7.2-7.5

¹⁰⁸ MW Appx B, draft reg. 19, Site FP-H4.

¹⁰⁹ ID5 – APP/D0840/W/17/3184721: Kernow Veor, Carclaze Road, St Austell, Cornwall PL25 3TA

Written Representations

109. Falmouth Town Council objects to the proposed development on the grounds that it would have a detrimental impact on Falmouth's infrastructure exacerbating the demand for schools, doctors and dentists surgeries which are already at capacity and pre-empting the AP and FNP, worsen flood risk and exacerbate highway safety concerns on BWR.
110. Budock Parish Council objected at application stage on the following grounds: (a) loss of BMV land contrary to NPPF; (b) coalescence of Falmouth and Budock Water contrary to NPPF; (c) site not identified for development in eAP; (d) severe impact on biodiversity of the area. At appeal stage the following objections were added: (e) there is only a need for 600 dwellings in the Falmouth Penryn CNA in the Plan period and there is already extant planning permission for 677 dwellings and an incipient application about to be submitted for an additional 300 dwellings on land already identified as appropriate for development, which shows there is no need for this site to come forward now; and (f) 99% of respondents to the latest questionnaire sent out by the FNP team stated that a green buffer should continue to be maintained between Budock Water and Falmouth.
111. Historic England set out the following points in its response to the application of 29 March 2017. Menehay House and Farm was gentrified in the mid C19 with formal landscaping allowing for views across the wider rural landscape towards Pendennis peninsula from its elevated position on the ridge above Falmouth. St Budock Church and Menehay share a strong rural setting. The associated agricultural landscape is closely associated to the former use of the house as a farm and is also integral to the gentrified landscape associated with the refinement of the house in the C19. The proposal would continue the trend of eroding the green wedge between Falmouth and Budock Water. That would result in the boundary of Falmouth being redefined in line with the church town and the loss of the last vestiges of independence of this discrete group of buildings from its much larger neighbour.
112. The site will encompass the eastern boundary of Menehay, intruding into the current view across Falmouth and its connection to the agricultural landscape. It would form a strong suburban feature within the setting of Menehay as well as reinforcing the urbanisation already approved to the east of the Church, compounding the harm and introducing urban development into the only access to the complex of building that has retained its rural character. As such the proposal would result in harm to Menehay House and St Budocks Church. Such harm would not be outweighed by public benefits because the AP suggests that other sites could satisfy the housing requirements of the local area.
113. 143 indications of support were submitted in response to the application consultation on the following grounds :
- (a) it is important to secure the future of Falmouth Rugby Club by investing in facilities at the Recreation Ground, which sale of its land at the site would fund;
 - (b) development of the site is necessary to meet Falmouth's housing need including for affordable housing;
 - (c) housing on the site would be close to local facilities including bus routes;

- (d) speed reduction measures including the proposed new roundabout would address existing speeding problems on BWR;
 - (e) the proposed development would be well designed and would benefit the local economy.
114. 15 objections were received in response to the application consultation on the grounds raised above by the Council and as follows:
- (a) Benefit to the Rugby Club should not be a consideration;
 - (b) Enough houses have been built in the area and more are under construction;
 - (c) Infrastructure is inadequate: local schools are full and need expansion, existing highways struggle to cope with current use, and the proposal would exacerbate parking problems in the area due to school traffic
 - (d) Increased flood risk; and
 - (e) Adverse impact on ecology
115. One letter of support was raised in response to the appeal consultation on the grounds indicated above and because the supporter is of the view that the development would not have an impact on the gap between Falmouth and Budock Water. 13 letters of objection were received at appeal stage including 3 from Mr Buswell, the owner of Menehay House for the reasons set out above and a petition signed against the proposal essentially for the reasons indicated above by 535 residents of Budock Water, 13 residents interviewed being undecided and 8 were in favour of the proposals. A further 2 written objections were handed to me at the Inquiry by residents who attended some of the sessions but did not speak¹¹⁰.

Conditions

116. An updated agreed list of 20 conditions was submitted during the Inquiry¹¹¹ and this is replicated below in the Schedule of Conditions, in the event that the Secretary of State decides to allow the appeal. These conditions all meet the requirements set out in NPPF paragraph 206 and in PPG as set out below. References to numbered conditions are to those in the Schedule.
117. Condition 1 is necessary in the interests of precision. A Construction Plan is required to ensure that the effects of construction work do not cause highway safety problems or significant adverse effects on nearby residents' living conditions as per Condition 2. The implementation of the Travel Plan for the development is necessary in order to facilitate transport modes by the occupiers of the development other than the private car as per Condition 3.
118. Construction work shall be limited to reasonable hours in the interests of nearby residents as per Condition 4. Condition 5 requires the prior submission of a Landscape and Ecology Management Plan in order to deliver the environmental benefits the appellants say will be provided and Condition 5A requires the

¹¹⁰ ID15 & ID16

¹¹¹ ID14

phasing and delivery of the structural landscaping on the western boundary to be agreed prior to construction of the first dwelling for the same reason.

119. Condition 6 requires the pre-provision of parking and turning areas for each dwelling and their retention as such in the interests of highway safety on BWR. Conditions 7-9 are necessary in the event that any ground contamination is discovered on the site. Condition 10 requires a pre-commencement written scheme of archaeological investigation to be agreed with the Council in order to assess and record any buried archaeology.
120. Conditions 11-17 relate only to the detailed permission. Condition 11 is the statutory commencement condition. Condition 12 requires the pre-commencement agreement of surface and foul drainage details in order to prevent flooding. Hard landscaping details are required to be agreed in Condition 13 and implemented in order to secure good design and appearance and Condition 14 specifies the details that should be provided in the soft landscaping scheme in the interests of the character and appearance of the area. Condition 15 requires the prior construction of the access before any other construction work in the interests of highway safety and Condition 16 the prior agreement of the design of the estate roads and their construction prior to occupation of any dwelling for the same reason and to ensure satisfactory living conditions for the first occupiers of the dwellings. Condition 17 requires the prior approval of external materials of the dwellings in the interests of the appearance of the area.
121. Conditions 18 and 19 relate only to the outline application and are the statutory requirements.

Obligations¹¹²

122. Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (the CIL Regs) sets out the three statutory tests of necessity, direct relationship to the development and being fairly and reasonably related in scale and kind which must be met for obligations to be given weight. These are also the policy tests set out in paragraph 204 of the NPPF. LP Policy 28 requires developers to fund the infrastructure necessitated by their developments.
123. 79 of the 226 dwellings would be affordable (35%): 55 affordable rented and 24 Registered Provider shared ownership homes or intermediate homes for sale. The strong need for such homes is set out in LP Policy 8 and the Council's Affordable Housing Supplementary Planning Document¹¹³. The proportion and mix is justified by Policy 8 and the SPD and the S106 secures this and the appropriate phasing, timing and occupancy and qualifying provisions.
124. An education contribution of £402,192 or £2,736 per qualifying dwelling is required and secured by the S106 towards the construction or extension of facilities at St Francis Primary School, the nearest primary school to the site. The formula which determines the contribution is set out in the Council's 'Guidance on Section 106 Planning Obligations for Education Provision'¹¹⁴.

¹¹² Contained in the signed and dated S106 in ID31

¹¹³ JH14

¹¹⁴ JH20

125. A contribution of £24,800 or £160 per dwelling towards mitigating the impacts of water based recreation activities in the Fal and Helford Special Area of Conservation (SAC) is required and secured by the S106. This is a requirement of LP Policy 22 because the site is close enough to the SAC for its residents to have an impact upon it. Such moneys would fund the employment of an estuary officer who will deliver the necessary mitigation measures, as per the formula set out in the Strategic Access Management Measures (SAMM) developed by the Council and Natural England.
126. LP Policy 16 (Health and wellbeing)¹¹⁵ requires the provision of community open space and in this case, given the nature of the development for family dwellings, a total contribution of £40,416 is required towards the following nearby open space facilities, which the residents of the development would be likely to use:
- (a) £10,605 towards improving the green corridor from East Rise Woods to Swanpool. Ecological and tree surveys are required to enable the creation of a footpath, the total estimated costs being £25,000.
 - (b) £20,209 towards Dracaena Skate Park, the total estimated cost being £500,000.
 - (c) £9,602 towards improvements to Roscarrack Road Allotments in order to secure long term availability.
127. These contributions are justified by reference to the FNP's *Environment and Open Spaces Working Group's Work Programme Final Report*¹¹⁶, specifically Section 6.3 in terms of the green corridor, Section 6.4 regarding the skate park (page 29 specifically) and Section 6.5 regarding the allotments. The Council has confirmed that none of these projects, nor indeed the contributions towards the local primary school set out above and the highway contribution set out below, has received more than 5 contributions, the appellant does not dispute that, and so I see no reason to doubt that all these contributions are CIL Regulation 123 compliant.
128. Details of the final layout and provision of on-site open space including children's play areas would be secured through an open space strategy with a bespoke maintenance and management scheme secured through the S106. All of the above open space requirements and provisions are justified in policy terms through the Council's Open Space Strategy for Larger Towns in Cornwall.¹¹⁷
129. A highway contribution of £390,285 would be directed towards a walking and cycling link between BWR and Swanvale identified in the *Swanvale, Falmouth Walking and Cycling Feasibility Study* to connect with the Falmouth Town Wide Walking and Cycling Network and promote trips by foot and cycle on a more direct and gradient friendly route and thus support the Falmouth Transport Strategy¹¹⁸. The specific schemes identified (Schemes 6, 7 & 8)¹¹⁹ are relatively close to the site and would be likely to be used by residents of the proposed

¹¹⁵ Not LP Policy 14 as indicated in JH §5.114

¹¹⁶ JH21

¹¹⁷ JH22

¹¹⁸ Pages 142-144 of the AP – JH5

¹¹⁹ JH18

scheme. These cycling and walking improvements would be secured through a S278 agreement linked to the S106.

130. In order that the benefits of delivering the dwellings as soon as possible would occur the S106 obliges the owners of the land to complete 20 dwellings within 2 years of the grant of permission and thereafter an additional 30 dwellings per year. Finally the S106 obliges the owners to agree the design, implementation and maintenance of a suitable SUDs scheme in relation to surface water drainage of the development site.

131. I sought confirmation from the Council that the appellant would not be double charged for the above financial contributions if the Council adopted its CIL Charging Schedule, which I understand it is likely to do soon with an implementation date of 1 January 2019. The Council notified the Inspectorate on 23 May 2018¹²⁰ that it has still not finalised its Charging Schedule but confirmed that the final Regulation 123 List will be worded so as to provide a clear distinction between requirements from S106s and CIL funding. It also confirmed that any permissions granted prior to 1 January 2019 will not be charged CIL. For these reasons I am confident that there is no danger of the appellants being double charged for the above financial contributions.

132. For the reasons indicated above I consider that the obligations in the S106 comply with the CIL Regs and are necessary in order to overcome the Council's third reason for refusal.

Inspector's Conclusions

The following conclusions are based on the evidence given at the Inquiry, the written representations including NW's Heritage Statement for the appellants and the Council's and others' opposing views regarding heritage impact, and my inspections of the site and surroundings. The references in square brackets below [] are to earlier paragraphs or footnotes in this Report.

Landscape and Visual Impact

133. The key issue here is the acknowledged importance of the green gap between the built-up western edge of Falmouth and the separate village of Budock Water and the extent to which the proposed development would or wouldn't affect it. [56]

134. The appellants' original LVIA by MeiLocis was deficient in some key respects identified by KS for the Council and they rightly commissioned a new LVIA to address these deficiencies as part of the appeal (the IM LVIA). This is a thorough piece of work which follows the methodology set out in GLVIA3 and seeks to specifically address the Council's landscape impact criticisms of the proposal by introducing the improved landscape screening/mitigation measures set out in the Landscape Strategy Plan (IM11) described above. But it is important to note that the conclusions of this LVIA, as well as KS's landscape appraisal, is ultimately based on a series of judgements about the effect of the proposed development on landscape character and visual impact and I make my own judgements below. [58, 81-85]

¹²⁰ ID13

135. KS for the Council does not consider that such mitigation will be effective in maintaining the green gap between Falmouth and Budock Water. The appellants have sought to dismiss her approach as overly reliant on her introduced Table, which they say is a rigid approach based on the use of matrices that is discouraged in GLVIA3. But I consider this Table to be no more than an attempt to set out in an objective form the visual impact of the development based on her evidence, arising from her consideration of the likely impact on receptors at key viewpoints (VPs) and it accurately reflects her evidence. It is not the Council's role to conduct a full LVIA itself. [58, 81-85]
136. The ridgeline between Falmouth and Budock Water essentially follows the western boundary of the site as set out in KS's Appendix A3.1 but it is a plateau and IM acknowledged under XX that the nearest dwellings would be able to be seen from parts of Budock Water until the planting in the 15m landscape buffer in Field 1 matures sufficiently. Although I accept that there would be progressive screening from well before the 15 years suggested by KS it is hard to estimate how many years it would take to be realistically effective. [66]
137. At the very least it appears that the western-most dwellings in Field 1 (the southern outline element of the proposal) would be seen from some key VPs in Budock Water for several years, even if this buffer was to be planted a year or so prior to construction of the dwellings. Such VPs include that from IM's VP5 (KS's VPs 2, 3 & 4 in her Appendix 4.1), KS's VP41 from the PROW to the west of Budock Water and also her VPs from residential properties in Budock Water – her VPs 1, 5 & 6. I acknowledge that IM has carefully assessed the impact on walkers of PROWs at each location but I have no doubt that walkers on the Footpaths to the west of Budock Water would have high sensitivity when looking eastwards towards the ridge. In reaching this conclusion I have taken into account KS's corrections provided to me at the Inquiry concerning the annotated delineation of the extent of the site on these VPs, notably that on her corrected VP1¹²¹. [59, 65-67, 89-90]
138. This also presupposes that such screening is the best way of preserving the importance of the green gap between the two settlements. I acknowledge that the physical gap between the development site and Budock Water would not be less than that which is shortly to occur as a result of the approved development to the north of the site: the Taylor Wimpey housing site and the extension of the industrial site to the north of it. But those sites are well below the topographical ridgeline and cannot be seen from Budock Water. [90]
139. I have no doubt that the 15m western buffer to Field 1 would in time screen the dwellings in this Field from Budock Water. But the detailed layout of Field 2, the central part of the site covered by the full application does not provide such a 15m buffer. The western boundary to Field 2 allows for 4m of 'structure and ornamental planting' and a strip of wildflower meadow measuring between 2-3m deep. KS was clear that her view was that the mitigation proposed in that 4m strip would not produce a joined canopy. It is unclear to me why the appellants consider that a 4m planting strip would be sufficient on this part of the western boundary, even taking into account that the heights of the nearest dwellings (bungalows) in Plots 1,2, 9 and 10 would only be 7.6m, when a 15m buffer would

¹²¹ ID6

be necessary on Field 1. The western boundaries of both these Fields sit on the plateau of the ridge. [66, 89]

140. Consequently I conclude that even with the mitigation planting proposed the nearest dwellings in the detailed part of the proposal in Field 2 – especially plot numbers 1, 2, 9 & 10 but also probably 3-6 inclusive – would be likely to be seen from certain viewpoints in Budock Water in perpetuity. The downward slope of the land westwards from the ridge towards Budock Water would remain as a green gap but the fact that these dwellings would be permanently visible would give the impression that the urban development of Falmouth was close at hand. In my opinion this would significantly compromise the function the green gap between these settlements serves – to keep them visually and perceptually as well as physically distinct. Added to this would be the impact of the nearest dwellings in Field 1 until the landscaping in the 15m buffer had matured sufficiently to screen them; this would, as acknowledged by IM, take about 8-9 years. [47, 66, 89-91]
141. The appellants suggest that since the layout of Field 1 is only illustrative because this part of the proposal is in outline, the number of units can be readily removed to accommodate the 15m landscape buffer. Whilst this is possible it implies the rest of that Field or indeed Fields 3 & 4 would have to accommodate more dwellings, which would push up the density of the development overall, given that the proposal is for 226 dwellings and not simply residential development in principle.
142. It appears to me that the current density of the overall layout as set out on the Proposed Site Plan is probably about right given the suburban character of the area. In any case the effect of the landscape mitigation on the likely density implications for the southern and central (the outline parts of the site) has not been considered by the appellants. KS's figures for the estimated land take required by the landscape mitigation strategy set out in the appellant's Landscape Strategy Plan is over 3,500m², which equates to about 20 dwellings on the current indicated density.¹²² I have seen no evidence to suggest that relocating these dwellings elsewhere within the outline parts of the scheme could be accommodated in a manner which chimes with the character of this wider suburban area of Falmouth. [52]
143. Indeed if some of these 20 'lost' dwellings from the southern part of the site were to be accommodated on the northern part it could have implications for the setting of Menehay House. The illustrative layout on Field 4 already indicates that dwellings would be sited relatively close to Menehay House's eastern boundary and the need to accommodate more dwellings on the northern outline site may exacerbate any such impacts. I address the impacts of the proposal on Menehay House further below. [52]
144. In terms of landscape character there is therefore clear harm to the largely undeveloped ridge in this location. The stationing of caravans on the adjacent site to the west, which admittedly can be clearly seen from Budock Water, are not comparable because they are not present all the year. There would be harm to the field pattern, trees and hedgerows on the site. The proposal would not cause major harm to the NCA or LCA as a whole but it would cause the harms

¹²² ID10

identified by KS and it would clearly bring suburban residential development onto the ridge eroding the green gap between Falmouth and Budock Water. I agree with the Council that there is a marked distinction between the character of BWR to the north of the site, which is already and soon to be even more urbanised and BWR adjacent to and to the south of the site, which has a more rural feel despite the infill group of houses constructed in the front grounds of Roscarrack House. There can be no doubt that the site is, purely as a matter of fact, open countryside and that its loss to the development would fail to enhance its intrinsic character and beauty. [53-54, 62-63]

145. I acknowledge that the Council initially sought to allocate the site in the Reg. 19 AP consultation and that it performed as well as if not better than some other proposed sites in the SA/SEA process [87]. But at every stage that the site has been considered for allocation going back to 2011/12 the importance of the ridgeline and the need for a continued green gap between Falmouth and Budock Water has been emphasised. I attach little weight to MM48 which seeks to designate a green buffer on the site and surrounding land because the appellants obviously object to such a modification now and would be likely to do so formally once the MMs go out to public consultation and I cannot be sure that it will actually be included within the adopted AP. Nonetheless, the physical and visual separation of the two settlements has always been an important landscape policy priority and it remains one today. [46, 86]
146. The Council's determination that no EIA was required for the scheme does not mean that there is no landscape impact, and indeed it is agreed between the parties that there is some harm, albeit the level and thus significance of the harm is disputed. Nor is it a valid substantive argument in itself to suggest that the Council is not entitled to conduct a landscape appraisal of the development for this appeal when it was previously considering allocating the site for residential development. The Council has produced cogent evidence as set out above to indicate that there would be a significant impact on the local landscape arising from the development. [52-66, 86]
147. The PROW across the site would be retained but the illustrative layout suggests that it would follow the line of the new internal road. This would not enhance this well used local footpath, contrary to LP Policy 25 (Section 1).
148. For these reasons I consider that the proposed development would significantly harm the landscape character and visual amenity of the area including by reducing the physical, visual and perceptual gap between Falmouth and Budock Water.
149. LP Policies 2 (Spatial Strategy), 23 (Natural Environment) and 25 Green Infrastructure) have been cited by the Council in RR2. Section 1 of Policy 2 and Sections 1 & 2 of Policy 23 require proposals to respect and protect the special character of Cornwall including its landscapes and setting of settlements. Policy 25 requires the retention and enhancement of the most important environmental infrastructure assets (Section 1) and the provision of appropriate buffers to natural spaces that have community and heritage significance (Section 3). For the reasons given above the proposed development would fail to accord with the above DP Policies.
150. The development would fail to recognise the intrinsic character and beauty of the local countryside and so fail to accord with NPPF paragraph 17, bullet point 5.

It would fail to accord with bullet point 4 of NPPF paragraph 58 because it would fail to respond adequately to local character. Although I have been provided with no clear reason by the Council why I should regard the site as part of a 'valued landscape' under bullet point 1 of NPPF paragraph 109, it clearly has local landscape value and I have explained above why the proposal would fail to respect this local landscape.

Heritage Impact

151. As set out above [6-7, 68] I am taking the written submissions of all the parties as read concerning the effect of the proposed development on the settings of nearby designated heritage assets, in particular Menehay House and the Church of St Budock but also on the setting of Roscarrack House to the south of the site.
152. In considering whether to grant planning permission for development which affects a listed building or its setting the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.¹²³
153. Roscarrack House is situated some distance south of the site, which is bounded here by mature trees and hedges and the proposal would strengthen such planting features. Consequently the proposal would have no significant impact on its setting and therefore its significance as a Grade II LB.
154. There may possibly be glimpsed views of the roofs of dwellings in the northern Field from the footpath next to Budock Church cemetery and from the cemetery extension itself especially in winter, for instance from KS's VP40 contained in the Appendices to her Rebuttal Proof of Evidence. However, this path and cemetery are some distance from the Church and its original cemetery containing the gravestones that are designated LBs themselves. I consider any such views would only be glimpsed and then probably only in winter due to the deciduous tree screen on this boundary of the site, which would be in full leaf for more than 6 months of the year. For these reasons I consider that there would be no significant impact on the setting of the Grade II* listed Church or any of the Grade II listed gravestones within it and certainly none that would affect the architectural or historic significance of any of these LBs.
155. However, the development is much closer to Menehay House and its garden. Field 4 directly abuts its southern boundary and the illustrative layout shows that dwellings would be likely to be built very close to it. Given the above comments regarding the effect of the landscape buffers on the overall density of the scheme it seems likely that the dwellings in Field 4 would actually be at least this close to Menehay's boundary.
156. Parts of this boundary have trees within it but much of it is composed of a relatively low hedgerow compared to many of the Cornish hedge boundaries on and bounding the site. There is a particularly low section in the central part of this boundary, as clearly demonstrated by KS's VP36 and which I was able to verify during my site visits.

¹²³ S.66(1) Planning (listed Buildings and Conservation Areas) Act 1990

157. Historic England (HE), in their comments on the application scheme of 29 March 2017, points out that the original farmstead at Menehay was gentrified in the mid C19 with formal landscaping allowing for views across the wider rural landscape towards Pendennis peninsula from its elevated position on the ridge above the town. In my view the House's setting includes this wider rural landscape including Field 4. HE states that the proposal will result in the site encompassing the eastern boundary of Menehay, intruding into the current view across Falmouth and its connection to the agricultural landscape. I agree that this would be the case if the proposed development went ahead, irrespective of the fact that Field 4 has I understand been fairly recently severed from the ownership of Menehay House. As such it would adversely compromise its agricultural and open setting to the east, which I consider to be an important part of the LB's significance, albeit this impact would comprise 'less than substantial harm' in terms of NPPF paragraph 134. [111-112]
158. The historical development of Menehay as contained in NW's Heritage Statement only serves to confirm the importance of what is now Field 4 to its historic setting. Whilst Falmouth has grown westwards towards it over the last 50 years the extent of current development is bounded to the east by BWR, which is still a considerable distance away from Menehay's eastern boundary. The development would significantly and irreversibly change that and compromise the House's agricultural open rural setting to the east.
159. Such harm should be weighed against the public benefits of the proposal, which in this case comprises the delivery of additional housing including affordable housing. However, in my view such benefits could be (at least partially) achieved, either on the site as a whole or elsewhere in the Falmouth and Penryn area, whilst protecting the setting of Menehay and consequently I conclude that the harm outweighs the public benefits.
160. I acknowledge that such harm was not considered important enough on its own to warrant a specific refusal reason by the Council but I must give considerable importance and weight to any harm to a designated heritage asset. My conclusion on this matter therefore weighs heavily against the proposed development in the planning balance.
161. I agree with HE that the proposed development would, for the reasons indicated above, fail to accord with LP Policy 24 (Historic environment), which requires the protection and enhancement of heritage assets. It would also fail to comply with Section 1 of LP Policy 2 because it would not respect the historic value of Menehay House as a LB. For the same reasons it would fail to comply with LP Policy 12 (Design) which has similar requirements in respect of the historic character of the County.

Best and Most Versatile (BMV) Agricultural Land

162. There is agreement that the site is either grade 2 or 3a agricultural land and is therefore BMV land. The appellants point out that development on such greenfield sites often leads to the loss of BMV land in Cornwall, since there is a lot of it, and that this does not therefore comprise a substantive reason for refusal.
163. The Council effectively accept this, otherwise they would have advanced such loss as a separate standalone RR, but merely point out that this is a negative

aspect of the proposed development to be weighed in the overall planning balance since it would lead to the loss of 7.4 ha of BMV land. I agree because NPPF paragraph 112 states that LPAs should seek to use areas of poorer quality agricultural land in preference to BMV, albeit I do not attribute significant weight to the loss of this BMV land for the reasons advanced by the appellants, which are unchallenged by the Council. [68, 95-96]

Whether the Proposed Development would Accord with the Council's Housing Strategy

The Weight to be given to the Emerging Plans and the Prematurity Argument

164. As set out above I give little weight to the eFNP owing to the limited stage it has reached in the adoption process: it does not form part of the DP. [23]
165. Neither does the eAP, which is still undergoing Examination. As the Examining Inspector's recent Note indicates, the Inspectors will decide whether any further Hearings should take place, either before or after any proposed MMs are published for full public consultation, depending on the response to their Note.¹²⁴ The appellants object to proposed MM3 regarding windfall development, to proposed MM48 regarding the designation of a green buffer between Falmouth and Budock Water encompassing the appeal site, and to MM52/52a which substitutes the appeal site for the Vosper's site as allocated site FP-H4. The current request for pre-app advice on the Vosper's site involves a proposed scheme which does not include Class C3 dwellings and the viability of dwellings on this PDL site is therefore at least open to question. [28]
166. For these reasons and in accordance with NPPF paragraph 216 I can therefore give only limited weight to the eAP, including to its proposed housing allocations. [25-29, 72, 76, 99(e)]
167. The Council advances the argument that the proposal is premature because it will compromise and pre-empt the eAP by effectively allocating the appeal site in preference to the Council's preferred housing sites. But in my judgement the development proposed would not be so substantial, or its cumulative effect so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to the eAP for the reasons set out by the appellants in [76] above, which is the relevant test in PPG [77 & Footnote 84].

The Housing Strategy in the Development Plan

168. The Council's adopted spatial including housing strategy is set out in LP Policies 2, 2a and 3 and further explained and justified by the explanatory text on pages 13-28 of the LP. I have already concluded that the development would not accord with Policy 2 because it would fail to respect and enhance the character of the area, which is a key aspect of this Policy (Section 1).
169. Policy 2a requires the delivery of a minimum (my emphasis) of 52,500 homes between 2010-2030 at an average rate of about 2,625 per year. Delivery in excess (my emphasis) of this figure, including delivery in excess of the 3,400

¹²⁴ ID24 §3

homes apportionment for the Falmouth-Penryn CNA, would therefore, by definition, accord with Policy 2a. [17, 19, 99]

170. Section 1 of Policy 3 states: *"Delivery of housing . . . will be managed through a Site Allocations DPD or Neighbourhood Plans for the following locations: . . . Falmouth with Penryn"* (my emphases). The Council is attempting to do just that in the eAP. So it appears that, on the face of the above wording, the proposed development fails to accord with this Policy. Paragraph 1.63 of the explanatory text states: *"There may be a requirement to allocate or permit development of further sites above the residual housing number to ensure delivery of the target in the Plan period or support the provision of a continuous 5 year land supply. The provision of critical strategic infrastructure essential to the implementation of the Local Plan strategy may also require additional housing sites to be permitted."* However, it is agreed that there is a 5+ years HLS at present and it is unclear what reason there is for permitting additional sites in the Falmouth-Penryn CNA beyond the arguments concerning viability of C3 use on the Vosper's site, which are currently unresolved. [40-45, 99]

171. The appellants point out that the CPO's Advice Note¹²⁵ states: *"The ongoing delivery of the LP housing target requires delivery on unplanned (windfall) sites in the main towns; this may be on sites significantly larger than 10 dwellings. Neither is it intended that all sites over 10 dwellings must be managed through allocations within the Allocations DPD or NDPs. Site allocations are required to ensure delivery of the housing apportionment in line with the settlement strategy outlined in Policy 2 (Spatial Strategy). They do not preclude other windfall development coming forward, but their location or layout should not prevent planned sites being delivered."* (Appellants' emphases). [99(c)]

172. This quote implies, on its face, that sites like the appeal site are acceptable in principle because the Council has provided no evidence that delivery of homes on the appeal site would prevent the Council's preferred allocated sites from being delivered, including the Vosper's site.

173. But the CPO Note must be read as a whole. It states that windfall development is anticipated to include appropriately scaled infilling, re-use of PDL and rounding off opportunities. I agree with the Council that the proposed development cannot be considered infill development or rounding-off because it would extend major built development into the open countryside beyond the clear urban boundary of BWR, which the remainder of the CPO note precludes. In particular, it states: *"Larger developments should be considered to be of a strategic nature, relative to the settlement, and should be led either through Site Allocations or NDPs and should not be considered rounding off or infill"* and *"Open countryside is beyond the physical boundaries of existing settlements where they have a clear form and shape and is part of an expansive area before the next settlement."* In my judgement that is exactly the situation here.

174. Whilst the wording of Policy 3 could perhaps have been clearer I see no contradiction between the CPO's Note and the wording of Policy 3 and its explanatory text. The Note merely confirms that the provisions in the Policy (in Section 3) regarding rounding off, infill schemes and development of PDL apply equally well to windfall schemes in the main towns as well as in the villages,

¹²⁵ Ibid JH6

which must be of an appropriate scale and delivered through the AP or NDPs. That is entirely logical and sensible. I agree with the appellants that Policy 3 does not preclude windfall sites coming forward outside the eAP at Falmouth-Penryn CNA or indeed in Budock Parish but they must still satisfy the criteria, which the proposed development clearly does not. [40-45]

175. The appellants argue that MM3 (which essentially says the same thing as the CPO Note) is an attempt to extend the remit of Policy 3 by seeking to impose restrictions on the grant of permission for windfall sites, and its validity is therefore questionable. I'm not sure that this is the case and it is a matter anyway for the examining Inspectors of the AP to determine. I am aware of the text of LP paragraph 1.55, which states: *"In some cases housing allocations and/or planning permissions for a town will cross parish and community network boundaries or abut such boundaries where this best meets the growth needs of that place."* But the proposal would not in my view best meet the growth needs of Falmouth for the above landscape and heritage impact reasons and so it would not meet the criteria in this explanatory LP paragraph. The site is predominantly located in Budock Water Parish, not in Falmouth, and so because the criteria in paragraph 1.55 are not complied with it can be said to fall within the ambit of Section 3 of Policy 3 anyway, being outside a main town. [99(e)]
176. The appellants quote paragraph 27 of the recent Quintrell Downs appeal decision¹²⁶ where the Inspector states that Policy 3 *"indicates that housing delivery will be managed through a Site Allocations DPD... but this does not exclude the delivery of housing elsewhere, even taking into account that the planning system is to be plan-led."* But I note that in the next paragraph (28) of the decision the Inspector states that he is satisfied that the appeal site does not fall within the open countryside, a situation which directly contrasts with this proposal. [49, 99(d)]
177. I acknowledge that the circumstances in the recent Carclaze Road, St Austell appeal decision (paragraphs 7-13 of the decision) set out in the appellants' agent's email of 19 June match the circumstances in this appeal, particularly the fact that the appeal site in that case was on the edge of a main town and was not an allocated site in the AP. I also agree with that the Inspector's conclusions on the limited weight that can be given to the AP and the prospective green buffer and his conclusions on prematurity mirror my own views set out above on these matters. [108]
178. But, contrary to what the appellants state, paragraph 9 of that decision makes clear that the site in that case does not (my emphasis) lie within the open countryside and is surrounded on three sides by housing that forms the built edge of St Austell. In terms of character and appearance, paragraph 14 states that the land is not BMV, is surrounded on three sides on rising land on the edge of St Austell and is bounded on its remaining side by the A391 which forms a logical boundary to the town. Crucially, paragraph 15 states that the predominant character and appearance of the area is now residential, and paragraph 16 that the site is of intermediate landscape value and is of medium or low visual sensitivity. Those circumstances are at odds with the circumstances

¹²⁶ Ibid ID2

on this site, which is in the open countryside and where I have found the landscape impact to be significant. [108]

179. I agree that like proposals on sites with directly comparable circumstances should be considered alike. But, for the above reasons, the circumstances in the Quintrell Downs and St Austell decisions outlined above do not match the circumstances in this case, and so do not provide a justification for allowing this appeal. I note that the Inspector in the St Austell decision (in paragraph 11) deals with that section of the CPO's Note raised by the appellants [171], but I have concluded that the CPO Note needs to read as a whole and, in any case, it simply clarifies what Policy 3 already says – that larger developments like the appeal proposal, which are not rounding off or infilling and extend into the open countryside, should be allocated in the AP.
180. For these reasons I conclude that the proposed development would not accord with LP Policy 3 and would be contrary to it, which in effect is the same thing, as the appellants acknowledge. In summary, the proposal is not in accord with or is contrary to LP Policies 2 and 3, which together set out the Council's spatial strategy including for housing. [51, 99(d)]

The Planning Balance and Overall Conclusion

181. The parties agree that the 'tilted balance' does not apply here, albeit that I have concluded that there will be harm to a designated heritage asset. Even applying the normal planning balance I have concluded that the proposed development would not accord with/comply with LP Policies 2, 3, 12, 23, 24 and 25 for the reasons set out above. It would also fail to comply with LP Policy 7, which restricts new homes in the open countryside subject to a number of exceptions which are inapplicable in this case. The proposal would not be in accordance with the DP when read as a whole. [97-98]
182. Set against this is the considerable weight agreed by both main parties that should be attached to the delivery of a significant number of badly needed affordable homes. I also attach considerable weight to the delivery of the market homes because the LP does not put a ceiling on housing delivery. There would also be the benefits set out in the S106 and the on-site ecological landscape and ecology benefits as well as economic benefits to local businesses during the construction of the houses and the increased demand for goods and services by residents of the development. [104-107]
183. These benefits comprise material considerations but they are insufficient to outweigh the harm to the local landscape, the harm to Menehay House, the loss of BMV land and the conflict with the plan-led system which indicates that such major housing development should be dealt with through the AP. [71]

Recommendation

184. It is recommended that the appeal be dismissed and planning permission refused. However, if the Secretary of State concludes otherwise, then permission should be granted subject to the executed S106 and the Conditions in the Schedule below.

Nick Fagan

INSPECTOR

Schedule of Conditions

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| 1 | <p>The development hereby permitted shall be carried out in accordance with the following drawings:</p> <p>Proposed STL-01-XX-DR-A-XXXX-01A06 PL03 received 19/01/17</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-01Z24.0 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-01Z24.1 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-01Z25 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z01 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z02 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z03 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z04 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z05 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z06 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z07 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z08 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z09 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z10 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z11 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z12 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z13 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z14 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z16 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z17 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z18 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z19 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z20 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z21 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z22 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z23 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z24 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-02Z25 PL4 received 27/09/16</p> <p>Site/location Plan STL-01-XX-DR-A-XXXX-01A01 PL02 received 02/09/16</p> <p>Proposed STL-01-XX-DR-A-XXXX-01A03 PL06 received 27/09/16</p> <p>Block Plan STL-01-XX-DR-A-XXXX-01A04 PL02 received 02/09/16</p> <p>Submitted Plan STL-01-XX-DR-A-XXXX-01A05 PL02 received 02/09/16</p> <p>Submitted Plan STL-01-XX-DR-A-XXXX-01A06 PL07 received 27/09/16</p> <p>Site/location Plan STL-01-XX-DR-A-XXXX-01A07 PL02 received 02/09/16</p> <p>Submitted Plan STL-01-XX-DR-A-XXXX-02A01 PL04 received 02/09/16</p> <p>Submitted Plan STL-01-XX-DR-A-XXXX-02A02 PL04 received 02/09/16</p> <p>Submitted Plan STL-01-XX-DR-A-XXXX-02A03 PL04 received 02/09/16</p> <p>Submitted Plan STL-01-XX-DR-A-XXXX-02A04 PL04 received 02/09/16</p> <p>Submitted Plan STL-01-XX-DR-A-XXXX-02A05 PL04 received 02/09/16</p> <p>Mixed - Existing and Proposed STL-01-XX-DR-A-XXXX-03A01 PL02 received 02/09/16</p> <p>Landscaping STL-01-XX-DR-L-XXXX-09A04 PL02 received 02/09/16</p> <p>Landscaping STL-01-XX-DR-L-XXXX-09A05 PL02 received 02/09/16</p> <p>Landscaping STL-01-XX-DR-L-XXXX-09A06 PL02 received 02/09/16</p> <p>Landscaping STL-01-XX-DR-L-XXXX-09A07 PL02 received 02/09/16</p> <p>Landscaping 3004-001-TSE received 05/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-01Z01 PL4 received 27/09/16</p> <p>Proposed STL-00-ZZ-DR-A-XXXX-01Z02 PL4 received 27/09/16</p> |
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| | <p>Proposed STL-00-ZZ-DR-A-XXXX-01Z03 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z04 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z05 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z06 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z07 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z08 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z09 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z10 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z11 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z12 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z13 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z14 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z16 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z17 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z18 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z19 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z20 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z21 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z22.0 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z22.1 PL4 received 27/09/16 Proposed STL-00-ZZ-DR-A-XXXX-01Z23 PL4 received 27/09/16 Site/location Plan STL-01-XX-DR-A-XXXX-01A03 PL6 received 19/01/17 Landscaping STL-01-XX-DR-L-XXXX-09A03 PL08 received 11/01/17 Landscaping STL-01-XX-DR-L-XXXX-09A02 PL08 received 11/01/17 Landscaping STL-01-XX-DR-L-XXXX-09A01 PL08 received 11/01/17 Proposed W16200 A_001 received 19/10/16 Proposed W16200 TRK_001 received 19/10/16 Proposed W16200 TRK_002 received 19/10/16 Proposed W16200 TRK_003 received 19/10/16 Existing DG13128-1-1 received 02/09/16 Figure 97: Landscape Strategy Plan contained in Appendix IM.11 of appeal documents</p> |
| 2 | <p>No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority.</p> <p>In addition to general environmental management considerations applicable to the construction phase, the CEMP shall also include, but not be limited to, details of dust mitigation measures, details of roles and responsibilities, monitoring and reporting, emergency responses, community and stakeholder relations and training and a Construction Traffic Management Plan. The development shall be carried out in accordance with the approved CEMP.</p> |
| 3 | <p>No part of the new development shall be occupied prior to implementation of those parts identified in the Approved Travel Plan as capable of being implemented prior to occupation. Those parts of the Approved Travel Plan that are identified therein as capable of implementation after occupation shall be implemented in accordance with the timetable contained therein and shall continue to be implemented in accordance with the approved details as long as any part of the development is occupied.</p> |
| 4 | <p>No construction work shall take place outside the following hours: 0800 - 1800 Monday to Friday 0800 - 1300 Saturdays</p> |

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| | <p>No workings Sundays, Public and Bank Holidays</p> <p>Construction work outside these hours shall only take place with the prior written permission of the local planning authority and those works shall not exceed the World Health Organisation thresholds (indoor and outdoor) outside the boundary of the site. Construction work shall include use of any plant or machinery, cleaning and maintenance of plant or machinery, deliveries to the site and movement of vehicles within the curtilage of the site.</p> |
| 5 | <p>Prior to any development commencing a Landscape and Ecology Management Plan (LEMP) will be submitted to the Local Planning Authority that will address the following; Implementation, improvement and mitigation of ecology and biodiversity of the development (in accordance with the Design and Access Statement and the Ecology Reports) and appointment of an ecological clerk of works.</p> <p>The LEMP shall also contain details of the following ecological and landscape mitigation and enhancement measures to supplement the Landscaping Reserved Matters application:</p> <ul style="list-style-type: none"> • Physical protection of the retained hedgerows and trees through tree protection measures throughout the construction period; • Avoidance of artificial lighting spill onto the boundary hedges during the construction and detailed lighting strategy for the operational phase of the development to prevent harm to light-sensitive bat species (using directional lighting, careful positioning of street lighting and appropriate light levels); • Avoiding of construction during the bird nesting season; • The installation of bird boxes; • Installation of bat boxes; • Incorporation of native species, ornamental planting and evergreen species in landscape planting schemes in hedgerow enhancement and landscaping throughout (including in the open spaces); • Sympathetic management of existing trees and hedges. <p>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.</p> |
| 5A | <p>The phasing and delivery of the site, including the early implementation of structural landscaping on the western boundary commensurate to that part of the development, shall be agreed in writing prior to the commencement of construction of the first dwelling. The development shall be carried out in accordance with the approved details.</p> |
| 6 | <p>Before any dwelling is first occupied, the parking and turning areas serving it shall be laid out and constructed in accordance with the approved drawings, and the said areas shall not thereafter be obstructed or used for any other purpose.</p> |
| Remediation Scheme | |
| 7 | <p>No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed</p> |

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| | remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. |
| 8 | Verification. The approved remediation scheme referred to in condition No. 7 shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied. |
| Reporting of Unexpected Contamination | |
| 9 | Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported in writing immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development |
| 10 | <p>A) No demolition/development shall take place/commence until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions, and:</p> <ol style="list-style-type: none"> 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; <p>B) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (A);</p> <p>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.</p> <p>D) The archaeological recording condition will normally only be discharged when all elements of the WSI including on site works, analysis, report, publication (where applicable) and archive work has been completed.</p> |
| Conditions applicable to only the detailed planning permission | |
| 11 | The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission. |

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| 12 | <p>No development approved by this permission shall be commenced until details of a scheme for the provision of surface water management and foul water treatment has been submitted to and approved in writing by the local planning authority. The details shall include:</p> <ul style="list-style-type: none"> • A description of the foul and surface water drainage systems operation • Details of the final drainage schemes including calculations and layout • Confirmation from South West Water Ltd that the foul network has sufficient capacity to cater for this development • A Construction Environmental Management Plan • A Construction Quality Control Procedure • A plan indicating the provisions for exceedance pathways, overland flow routes and proposed detention features • A timetable of construction including a plan indicating the phasing of development including the implementation of the drainage systems • Confirmation of who will maintain the drainage systems and a plan for the future maintenance and management, including responsibilities for the drainage systems and overland flow routes <p>Thereafter, the approved scheme shall be implemented in accordance with the details and timetable so agreed and the scheme shall be managed and maintained in accordance with the approved details. Details of the maintenance schedule shall be kept up to date and be made available to the local planning authority within 28 days of the receipt of a written request.</p> |
| 13 | <p>No development shall commence until full details of hard landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out in accordance with the approved details which shall include a timetable for implementation and notice shall be given to the local planning authority when the approved scheme has been completed.</p> <p>The hard landscaping details shall include:</p> <ul style="list-style-type: none"> • Means of enclosure; • Vehicle and pedestrian access and circulation areas; • Hard surfacing materials • Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.). |
| 14 | <p>No development shall commence until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The landscaping scheme shall provide planting plans with written specifications</p> |

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| | <p>including:</p> <ul style="list-style-type: none"> • Details of all existing trees and hedgerows on the land, showing any to be retained and measures for their protection to be used in the course of development • Full schedule of plants • Details of the mix, size, distribution and density of all trees/shrubs/hedges] • Cultivation proposals for the maintenance and management of the soft landscaping <p>The protection measures proposed shall be completed in accordance with the approved scheme before the development hereby permitted commences and shall thereafter be retained until it is completed. Notice shall be given to the local planning authority when the approved scheme has been completed.</p> <p>All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner. Notice shall be given to the local planning authority when the approved scheme has been completed.</p> <p>Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species as those originally planted.</p> |
| 15 | <p>Before any other building or engineering works are carried out on the site, the access shall be laid out and constructed in accordance with the approved drawings. The access shall be retained as approved thereafter.</p> |
| 16 | <p>No development shall commence until details of estate roads and their junctions, surface water drainage, street lighting and means of access to the proposed dwellings, have been submitted to and approved in writing by the local planning authority. Prior to occupation of any unit, the estates roads and accesses shall be constructed in accordance with the approved plans and shall be retained as such thereafter.</p> |
| 17 | <p>Prior to the construction of the walls of the buildings above foundation level details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.</p> |
| <p>Conditions applicable to only the outline planning permission</p> | |
| 18 | <p>Details of the appearance, landscaping, layout and scale, (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.</p> |
| 19 | <p>An application for approval of reserved matters must be made no later than the expiration of 3 years from the date of this decision and the development hereby</p> |

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| | approved shall commence no later than 2 years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved. |
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APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Wayne Beglan of Counsel

Instructed by the Solicitor to the Council

He called

Kathryn Statham BA (Hons), Dip LA, CMLI

Mathew Williams MRTPI

James Holman MRICS, MRTPI, FAAV

FOR THE APPELLANT:

David Elvin QC

Instructed by Christopher Tofts, Partner,
Stephens Scown LLP

He called

Ivor Mathew CMLI, Principal landscape Architect,
Lawrence Associates

James Millard MRTPI, Associate director, Boyer
Planning

INTERESTED PERSONS:

Cllr John Bastin

Ward member for Budock Water, Cornwall
Council

Mr Instance

Falmouth Rugby Club

John Buswell

Owner of Menehay House

DOCUMENTS

The documents were all in the form of appendices to the witnesses' proofs of evidence, apart from the documents submitted at the Inquiry which are list here (all ID numbers as follows):

- 1 Allocations Plan, Schedule of Proposed Modiciations, Version 3, 18 April 2018
- 2 APP/D0840/W/17/3177729 – Appeal decision re Land off West Road, Quintrell Downs TR8 4WE – 20 December 2017
- 3 KS's Table: Visual Assessment
- 4 Relevant Excerpts from GLVIA3
- 5 APP/D0840/W/17/3184721 – Appeal Decision re Kernow Veor, Carclaze Road, St Austell PL25 3TA – 15 June 2018 with accompanying email from appellants' agent dated 19 June 2018
- 6 KS's corrected VP1
- 7 KS's corrected VP2a
- 8 KS's aerial photo showing site and Budock Water relationship
- 9 KS's blown up detail of western site boundary at and next to Field 1
- 10 KS's estimated calculation for land required to create boundary planting proposed in IM.11 – Landscape Strategy Plan
- 11 Documents referred to by KS not within her evidence
- 12 Falmouth & Penryn Town Framework Plan – Landscape Character Field Assessment Work, February 2011
- 13 CIL Statement by Council, 23 May 2018
- 14 Agreed list of Conditions
- 15 Objection from Lucy Thompson
- 16 Objection from David Beake
- 17 Schedule of house types and plot numbers
- 18 Late objections from Mr Buswell dated 20 & 29 May 2018
- 19 Signed and dated Statement of Common Ground (SoCG)
- 20 List of appearances for appellants
- 21 List of appearances for Council
- 22 Opening submissions for appellants
- 23 Opening submissions for Council
- 24 Note from Examining Inspectors of AP requesting further information, 11 May 2018
- 25 Screening Opinion by the Council for the scheme dated 26 June 2015
- 26 Falmouth & Penryn Site Allocations Plan SA Summary
- 27 Closing submissions by Council
- 28 Closing submissions by appellants
- 29 Costs application by appellants
- 30 Response to Costs application by Council
- 31 Signed S106 agreement dated 18 May 2018



Ministry of Housing, Communities & Local Government

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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.