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# Appeal Decision

Inquiry held on 22, 23 and 24 March 2011

Site visit made on 23 March 2011

by **B J Juniper BSc, DipTP, MRTPI**

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

Decision date: 8 June 2011

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**Appeal Ref: APP/D0840/A/10/2141605**

**Trecerus Farm, Padstow, PL28 8RT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Poltair Homes Ltd against the decision of Cornwall Council.
  - The application Ref PA10/04033, dated 6 April 2010, was refused by notice dated 8 October 2010.
  - The development proposed is residential development of 67 dwellings to include 45 affordable units (22 social rented and 23 units for sale by shared ownership or intermediate rent properties).
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## Decision

1. I allow the appeal, and grant planning permission for residential development of 67 dwellings to include 45 affordable units (22 social rented and 23 units for sale by shared ownership or intermediate rent properties) at Trecerus Farm, Padstow in accordance with the terms of the application, Ref PA10/04033, dated 6 April 2010, subject to the conditions set out in the Annex to this Decision.

## Procedural Matters

2. The application was made in outline with all matters except for access being reserved for subsequent approval.
3. Immediately before the Inquiry the appellants altered the affordable housing offer and this has been reflected in the description of the proposal in the header to this Decision. A unilateral undertaking dated 23 March 2011 and dealing with affordable housing and other obligations was submitted by the appellants at the Inquiry. I have taken these matters into account in reaching my decision and I do not consider that the interests of any party have been adversely affected by my having done so.

## Main Issue

4. The Council does not dispute the suitability of the site for housing and accepts that the proposal accords with the criteria set out in paragraph 69 of Planning Policy Statement 3 – *Housing* (PPS3) against which applications for planning permission should be judged. The undertaking submitted by the appellant company addresses the matters related to education and open space provision referred to in the reasons for refusal of the application. The main issue is therefore whether there is a five year supply of deliverable sites for housing development.

## Reasons

5. The core of the Council's case was that it could demonstrate that a five year supply of housing land was available locally, the area in question being that formerly governed by North Cornwall Council. Its calculation of the requirement was based on the Cornwall Structure Plan (SP) which was adopted in 2004 and includes a housing provision for the period 2001 to 2016 of 5,100 units, equivalent to 340 dwellings per annum (dpa). Of these 4,214 were completed in 2001/10 leaving a comparatively modest balance of 886 units for the remaining 6 years, or 148 dpa. Assessment of projected completions led the Council to conclude that a 13.1 year supply was available.
6. The Regional Spatial Strategy (RSS) for the SW has not been adopted so on the face of it there appears to be some logic in the Council's stance that the SP should be the basis for assessing housing supply, given that it remains the principal plank of the development plan so far as the calculation of housing need is concerned. However, although adopted in 2004, those calculations were based on government household projections dating from 1996 and published in 1998. The appellants argued that this information was sufficiently out-of-date to undermine its accuracy and relevance to the present situation.
7. Much more recent (2004 based) household projections were available for the preparation of the RSS which reached an advanced stage with the publication of the Secretary of State's proposed modifications in 2008. Only a legal challenge to another of the RSSs which had implications for the overall approval process, prevented it being finalised. The RSS Panel recommended that 13,400 dwellings be provided in North Cornwall for the period 2006 to 2026, which is equivalent to 670 dpa.
8. The Council accepted that a calculation based on the RSS Panel's figures meant that only about 2.8 years supply would be available at present, but argued that, given the Secretary of State's announced intention to revoke the Regional Strategies, the RSS for the South West will never be adopted and should therefore only be given limited weight. I do not, however, find this line of reasoning particularly convincing. Government advice is unequivocal with regard to the assessment of an appropriate level of housing, requiring an evidence based approach taking into account, among other factors, Strategic Housing Market Assessments and the latest published household projections<sup>1</sup>. Local Planning Authorities are also advised to take account of data in RSSs and emerging RSSs in formulating their Local Development Documents<sup>2</sup>. Reliance on the figures prepared for the SP, based on data some 8 years older than that available to the RSS Panel, runs contrary to that advice and the very low level of provision envisaged by the Council for the balance of the SP period indicates to me that it is an unrealistic basis on which to proceed.
9. This conclusion is reinforced by the limited prospects for an early replacement to the existing development plan which, as well as the SP, includes the North Cornwall Local Plan (LP) which was adopted in 1999 with horizon of 2006. The intention to review this plan at five yearly intervals<sup>3</sup> was not followed up. The former North Cornwall Council began work on its Local Development Framework but subsequently abandoned it on the reorganisation of local authorities in the county in 2009. Although some of the provisions of the LP

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<sup>1</sup> Planning Policy Statement 3 – *Housing* – paragraph 33

<sup>2</sup> *ibid* – paragraph 53

<sup>3</sup> CD2 - paragraph 1.23

have been 'saved', the weight I can give them is restricted by its relative age. There is advice in PPS3 to the effect that regard should be had to policies in that statement which may supersede the policies in existing development plans<sup>4</sup> and, so far as housing provision is concerned, I consider the present LP to be a case in point.

10. The new Cornwall Council has begun the process of producing its Core Strategy (CS) but, at the time of the Inquiry, this had progressed only as far as the publication of an options paper for consultation. This includes a number of growth option scenarios but given that the CS is at such an early stage of preparation, I can accord it very little weight. In any event the Council's evidence was to the effect that even its own level of growth figures submitted to the RSS Panel would have implied a shortfall in the 5 year supply. The Panel came to the view that a much higher figure was needed.
11. The only other data source from which an annual dwelling requirement can be calculated is the Strategic Housing Market Assessment for the Northern Peninsula, completed in December 2008. Here again the Council accepted that the requirement for a 5 year supply derived from the study would not be met<sup>5</sup>. Effectively, therefore, the only basis on which a five year supply appeared to be demonstrable was the SP.
12. A key element of the Council's case was that the saved SP should prevail given the government's intention to abolish RSSs, announced on 6 July 2010. Whilst a legal challenge to that decision was under consideration at the time the Council determined the application in October 2010, the outcome of that challenge was not known and to that extent the Council's conclusion was not entirely unreasonable. Similarly at the time the appeal application was determined, the Secretary of State's decision to dismiss the appeal at Binhamy Farm<sup>6</sup>, which also partly turned on the appropriateness of housing supply calculations, would have given some comfort to the Council that its standpoint was defensible. That was subsequently challenged and the Secretary of State issued a consent order effectively quashing the decision.
13. However, the RSS reached an advanced stage and the conclusions reached by the Panel were not seriously challenged during this appeal. Perhaps more pertinently, as outlined above, those conclusions were based on much more recent data and research and for that reason I can give very little weight to the intended abolition of the RSS.
14. There was a certain amount of disagreement between the principal parties as to the extent to which discounting could be applied to existing housing commitments. Discussions between them before the Inquiry led the Council to concede that their estimate of dwellings under construction and completed was about 70 units too high and there was some inconclusive evidence as to the validity of some of the other commitments. The Council had also adopted non-implementation allowances of 5% for sites with full permission and 20% for those with outline permission whereas the appellants argued that a more conventional approach would be to discount by 10% across the board. However, almost all of the areas of uncertainty would have the effect of further depressing the supply figures; there was no indication that significant additional permissions or completions were forthcoming. As a substantial

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<sup>4</sup> Paragraph 68

<sup>5</sup> CD24

<sup>6</sup> Appeal ref: APP/D0840/A/09/2115945 – found at CD15

shortfall against any calculation of need other than that based on the SP had been demonstrated, I give only limited weight to this matter.

15. The proposal as considered at the Inquiry includes 22 social rented affordable units, provided with the assistance of Social Housing Grant; 23 intermediate affordable units provided without public subsidy and 22 houses for sale on the open market. On this basis the appellants calculated that 67% of the units in the scheme would be affordable homes. However, the 22 social rented units are already under construction, following grant of planning permission for 42 affordable houses on part of the site in June 2010 so cannot, in my view, be considered to contribute to the overall proportion of affordable housing which would result from the proposal. Nevertheless, the intermediate affordable units are to be provided on a basis which conforms to the government's definition of such housing<sup>7</sup> and the scheme would thus provide a little over 50% affordable housing. The Council has no adopted development plan policy as to the proportion of affordable housing but its 2008 supplementary planning guidance document<sup>8</sup> suggests 50% as a minimum. In any event, the Council did not object to the proportion proposed and, given the established need for such housing in the area, I have accorded this element of the scheme significant weight.
16. Saved SP Policy 3 gives priority to the re-use of previously developed land but the Council acknowledges that some greenfield sites will be required; its target for provision of housing on previously developed land is only 40%. The site is close to useful facilities such as a primary school and a local supermarket as well as being on a bus route. As it adjoins the existing urban area and the development of the front part of the site is already well under way, I consider that the scheme conforms to the requirement in Saved SP Policies 10 and 25 to be well integrated with existing settlements.
17. I find no conflict with the general environmental stipulations set out in LP Policy ENV1 but LP Policies HSG1, 4 and 10 preclude development outside existing settlements unless there is a special need or where 100% affordable housing is to be provided and the proposal does not meet these criteria. The scheme is therefore contrary to the development plan and this factor needs to be balanced against the material considerations, principally relating to overall housing land supply.

### **Conditions and Undertakings**

18. A unilateral undertaking dated 23 March 2011 was submitted at the Inquiry. Under its terms the owners of the land covenant to make a contribution to education facilities, and to provide, lay out and ensure the proper management of an open space area at the centre of the site. The undertaking would also ensure that the affordable dwellings and social rented dwellings are provided, that the open market housing will be restricted in size and marketed initially to local people. An additional clause would prevent the open market housing being utilised as holiday homes for rent, which would go some way towards addressing concerns raised by objectors that these houses would not be realistically available to local people. From the information provided I am satisfied that the obligations are necessary to enable the development to

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<sup>7</sup> Delivering Affordable Housing – DCLG November 2006, paragraph 38

<sup>8</sup> CD3 – paragraph 2.1.7

proceed satisfactorily and otherwise meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010.

19. Of the conditions suggested by the Council, I am satisfied that it is necessary to ensure prior approval of drainage works and to restrict the hours during which construction works can take place to prevent nuisance or hazards arising to local residents. I agree also that overhead cabling needs to be precluded in the interests of the appearance of the development and that, in order to achieve adequate play equipment, there should be agreement between the developer and the Council about what should be provided. I have also imposed a condition specifying the appropriate drawings.
20. The Council's suggestion that permitted development rights for extensions and alterations to the dwellings should be removed is unnecessary given the visual context of the site and the limited scope for such changes allowed under the relevant Order. The suite of conditions relating to provision of access also seems to me to be redundant, given that the facilities are being provided in connection with the frontage scheme presently under construction.

### **Conclusion**

21. The proposal is for development of a greenfield site outside the established boundaries of Padstow and for that reason it is contrary to the development plan. However, the Council accepts that it is a relatively small scheme and to allow the development would not prejudice its overall strategy. Further, the development plan is significantly out of date and proposals to replace it are at a comparatively early stage. There was no dispute that there is an unmet need for affordable housing locally and the scheme would result in 23 dwellings which would fulfil the criteria for affordable housing. The overriding issue, however, is the supply of housing land and I have come to the view that the Council's stance on the availability of a 5 year supply is unsupportable. These considerations outweigh the provisions of the development plan and for that reason the appeal must succeed.

*B J Juniper*

INSPECTOR

## **Annex**

### *Conditions*

- 1) 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.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 6361-01-001; -002 and -003.
- 5) No development approved by this permission shall be commenced until details of a scheme for the provision of surface water management has been submitted to and approved in writing by the Local Planning Authority. The details shall include:
  - (a) details of the drainage during the construction phase;
  - (b) details of the final drainage scheme;
  - (c) provision for exceedence pathways and overland flow routes;
  - (d) a timetable of construction;
  - (e) construction quality control procedures; and
  - (f) a plan for the future maintenance and management of the system and overland flow routes.

Prior to the occupation of the site it shall be demonstrated to the Local Planning Authority that the relevant parts of the scheme have been completed in accordance with the details and timetable agreed. The scheme shall thereafter be managed and maintained in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

- 6) None of the dwellings hereby permitted shall be occupied until connected to an adoptable main sewer and, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no cess pits or septic tanks shall be installed or constructed on the site.
- 7) All electricity and telephone cables serving the approved development shall be laid underground.
- 8) No construction works shall be carried out outside the hours of 0800 to 1800 Mondays to Fridays, 0800 to 1200 Saturdays, and not at all on Sundays, Bank Holidays or Public Holidays.
- 9) Prior to the commencement of development hereby approved the applicant shall agree in writing with the Local Planning Authority the play equipment that is to be included in the open space shown on the approved plan. The agreed scheme shall be implemented prior to the occupation of the 21st dwelling on the development or in accordance with a timetable to be agreed in writing with the Local Planning Authority.

## **APPEARANCES**

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

Virginia Meldrum	Solicitor to the Council
She called	
Martin Cookman	Special Projects and Monitoring Group Leader
Paul Banks	Principal Planning Officer (Majors Team)

### **FOR: THE APPELLANT:**

Christopher Young	Of Counsel
He called	
James Stacey	Tetlow King – Planning Consultants

### **INTERESTED PERSON:**

Len Gorey	Local resident
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## **CORE DOCUMENTS**

- CD1: Cornwall Structure Plan 2004
- CD2: North Cornwall Local Plan 1999
- CD3: North Cornwall Community Benefits SPG 2008
- CD4: Strategic Housing Market Assessment for the Northern Peninsula 2008
- CD5: Cornwall Council Annual Monitoring Report 2009/2010
- CD6: Draft Regional Spatial Strategy for the South West 2006
- CD7: Secretary of State's Proposed Changes to the Draft RSS 2008
- CD8: CLG Demonstrating a 5 Year supply - 29th March 2010
- CD9: CLG Chief Planning Officer Letter 12th May 2009
- CD10: Rt Hon SoS Eric Pickles MP Letter 27th May 2010
- CD11: CLG Chief Planning Officer Letter 6th July 2010
- CD12: Cala Homes (South) Ltd v Secretary of State for Communities & Local Government [2010] EWHC 3278 (Admin)
- CD13: CLG Chief Planning Officer Letter 10th November 2010
- CD14: Cala Homes (South) Ltd v Secretary of State for Communities & Local Government [2011] EWHC 97 (Admin)
- CD15: Bude Appeal Report and SOS Decision Letter
- CD16: Local Growth White Paper
- CD17: CLG CPO letter of 15th December announcing the Localism Bill – including Annex A

- CD18: Cornwall County Council's Advice to the South West Regional Assembly, January 2007 (Option 1 figures)
- CD19: Cornwall Council Core Strategy Options paper – Planning Future Cornwall February 2011-02-14
- CD20: Cornwall Council Planning Future Cornwall, Community Network Areas, Core Strategy Area Bases Discussion Paper February 2011
- CD21: Cornwall Council Strategic Housing Land Availability Assessment Final Report November 2010
- CD22: Cornwall Strategic Housing Market Assessment 2010
- CD23: Consent Order – Binhamy Farm dated 25 January 2011
- CD24: Council's understanding on Housing Supply Position
- CD25: Developing a Housing Target Model – Cornwall CC
- CD26: Secretary of State's decision on Appeal ref: APP/A3010/A/10/2124458
- CD27: Secretary of State's decision on Appeal ref: APP/C3430/A/10/2127110
- CD28: Secretary of State's decision on Appeal ref: APP/Q4245/A/10/2127223
- CD29: Secretary of State's decision on Appeal ref: APP/Z0116/A/10/2126342
- CD30: Secretaries of States' decision on Appeal ref: APP/P1750/A/09/2118357

#### **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Council's letter of notification and list of addresses to which it was sent
- 2 Unilateral Planning Obligation dated 23 March 2011
- 3 Guide to the Planning Obligation prepared by the appellants
- 4 Advice to Inspectors: Materiality and the weight of a Bill before Royal Assent
- 5 Localism Bill progress diagram
- 6 Padstow Town Council Housing Needs Survey Report – September 2009
- 7 Abolition of Regional Spatial Strategies: Report of the House of Commons Communities and Local Government Committee – 28 February 2011
- 8 The Good, the Bad and the Ugly – Housing Demand 2025: Institute for Public Policy Research – March 2011
- 9 Letter re Bottreaux Grange, Boscastle dated 12 January 2011
- 10 Drawing of Broomhill [undated]
- 11 Extract from Halifax mortgage calculation web site

- 12 Statement by Rt Hon Greg Clark MP re Planning for Growth – 23 March 2011
- 13 Extract from Statement entitled 'Budget 2011' re Housing
- 14 Letter from the Chief Planner at CLG re the Town and Country Planning (Development Management Procedure) order 2010 – dated 9 September 2010
- 15 Closing submissions on behalf of the Council [an amended version was provided after the close of the Inquiry]
- 16 Closing submissions on behalf of the Appellants [amended as delivered]

#### **PLANS SUBMITTED AT THE INQUIRY**

- A Perspective drawing of the proposed development

TETLOW KING PLANNING