

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78(1)(aa) APPEAL

Statement of Case

Appeal by Lorraine Stones
against Cornwall Council's
Refusal of planning permission in principle
Ref. PA23/04101

Application for Permission in Principle for the construction of up to two dwellings.
Land South Of Longshore Apartments Dane Road Newquay Cornwall TR7 1EN



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1 INTRODUCTION

- 1.1 The Appellant in this Appeal is Lorraine Stones, the 'Appellant'.
- 1.2 The Appellant's application was validated by Cornwall Council and given (Ref. PA23/04101) (the 'Application').
- 1.3 This Appeal is made under section 78(1)(aa) of the Town and Country Planning Act 1990 against Cornwall Council's decision notice dated 18 September 2023 to refuse planning permission in principle.
- 1.4 The reason given for the decision¹ was that:-

"The application site falls outside of the development boundary of Newquay, as defined in the Newquay Neighbourhood Development Plan 2019-2030 (NNDP), and the development would not comply with any exceptions for new residential development outside of the development boundaries, also set out in said Plan. The proposal is therefore considered to conflict with the aims and intentions of policy G1 (a) of the NNDP; Policies 1, 2, 3 and 7 of the Cornwall Local Plan Strategic Policies 2010 - 2030; Policy C1 of the Climate Emergency Development Plan Document 2023 and paragraph 80 of the National Planning Policy Framework 2023.
- 1.5 The Appellant has paid a sum to mitigate harm to the Penhale Dunes SAC and accordingly this is not a reason for refusal².
- 1.6 The Development Plan includes: the Cornwall Local Plan ('CLP'), the Newquay Neighbourhood Development Plan ('NNDP'), the Cornwall Site Allocations DPD ('SADPD') and the Cornwall Climate Emergency DPD ('CEDPD').
- 1.7 The Application proposes the construction of up to two dwellings.
- 1.8 Given that the application is for permission in principle the OR understandably only considers the principle of the development.
- 1.9 The Officer's Report³ ('OR') raises no issues in respect of the Town and Country Planning (Permission in Principle) Order 2017.

2 SITE DESCRIPTION

- 2.1 The site consists of an overspill Car Park and as set out in the Planning Statement submitted with the Application, the site has 1-14 Harvest Moon Apartments to the southeast, parking to the west, and 1-16 Longshore Apartments and the main hotel complex to the North on the headland. Additional car parking is provided to the east. Hence the site is enclosed on two sides by existing built development and on the other two sides by car parking areas.

¹ Decision Notice at Appendix 1

² Payment of the SAC contribution is confirmed in the OR (Appendix 2, page 7 of 8)

³ Appendix 2

- 2.2 The OR describes the land as follows: *“The site is an area of rough grass/gravel sitting adjacent to an area of hardstanding used as a car park area and accessed off Beacon Road. The site appears to serve as an informal overspill area to this car park with a track having been eroded through from this car park area. There is also a further more formalised access off King Edward Crescent which is for private use. The site lies within the grounds of the Hotel with further car parking adjoining to the north and residential development in the form of apartments to the south”.*
- 2.3 The Site is previously developed land.
- 2.4 The site is surrounded on three sides by the settlement boundary contained within the Newquay Neighbourhood Development Plan (‘NNDP’).

3 GROUNDS OF APPEAL

- 3.1 The sole reason for refusal boils down to the Council taking the view that the site is outside of the NDP settlement boundary and therefore not in accordance with the development plan.
- 3.2 For the reasons set out below the Appellant disputes the Council’s position and asserts that when the development plan is (as is required) read as a whole, the proposal is in accordance with the development plan.
- 3.3 In simple terms, the Appellant’s case is that the Appeal proposal is rounding off and on brownfield land and therefore supported by Policy 1 of the SADPD and Policy 21 of the CLP. For the reasons set out below, Policy G1(a) of the NNDP is not relevant. Where Policy 3 applies, it supports the proposal.
- 3.4 It is considered that the sole issue for the determination of this appeal is whether or not the NDP precludes rounding-off/infill in accordance with Policy 3 of the CLP and Policy 1 of the SADPD.
- 3.5 The Appeal may be determined solely by reference to Policy 1 of the SADPD and Policy 21 of the CLP. Given the reference to other policies in the reason for refusal these are addressed at length below.

4 CORNWALL LOCAL PLAN

- 4.1 The CLP was adopted in November 2016.

Policy 3

- 4.2 Newquay is a ‘main town’ for the purposes of Policy 3.
- 4.3 Policy 3 supports the Appeal, as that policy provides in Newquay the delivery of housing, community, cultural, leisure, retail, utility and employment provision will be managed through a Site Allocations DPD or Neighbourhood Plans.

- 4.4 The policy supports development in accordance with the SADPD (see below) and hence Policy 3 supports the Appeal on that basis.

Policy 3 – Rounding Off

- 4.5 (Prior to the adoption of the SADPD – see below) it had previously been held that the rounding-off and infill windfall elements of Policy 3 were also applicable to the main towns. The delivery of windfall sites was considered in the adoption of the Local Plan and was part of the process of determining that the delivery of houses would meet the number required in the Local Plan.

- 4.6 Given that rounding off in main towns is now covered by Policy 1 of the SADPD the Inspector may consider that it is not necessary to consider Policy 3 further, if not, that part of the policy is addressed below.

- 4.7 Hence, rounding off and infill need to meet the following requirements:-

'rounding off of settlements and development of previously developed land within or immediately adjoining that settlement of a scale appropriate to its size and role; infill schemes that fill a small gap in an otherwise continuous built frontage and do not physically extend the settlement into the open countryside.'

- 4.8 The CLP supporting text states

Para 1.65. **Infill:** *For the purposes of this policy, 'infilling' is defined as the filling of a small gap in an otherwise continuously built up frontage that does not physically extend the settlement into the open countryside.*

Para 1.68. *In smaller villages and hamlets in which 'infill' sites of one-two housing units are allowed, the settlement should have a form and shape and clearly definable boundaries, not just a low density straggle of dwellings. The settlement should be part of a network of settlements and / or be in reasonable proximity to a larger village or town with more significant community facilities, such as a primary school. Neighbourhood Plans can provide detailed definition on which settlements are appropriate for infill and boundaries to which the policy will operate.*

Rounding off: *This applies to development on land that is substantially enclosed but outside of the urban form of a settlement and where its edge is clearly defined by a physical feature that also acts as a barrier to further growth (such as a road). It should not visually extend building into the open countryside.*

Previously developed land: *In principle the use of previously developed land within or immediately adjoining the settlement will be permitted provided it is of a scale appropriate to the size and role of the settlement.*

- 4.9 The Application site therefore involves previously developed land (see also re: Policy 21 below) and is also within or immediately adjoining the settlement of Newquay.

- 4.10 The proposal would “*not visually extend development into the open countryside*” per the Chief Planning Officer’s Advice Note (Rounding Off) (see below).
- 4.11 It is noted that the OR takes no issue with the location other than it is outside of the NNDP settlement boundary.
- 4.12 The development is therefore considered to be rounding off. The Site is within the settlement of Newquay and, even on a worst case scenario, is surrounded on three sides by the settlement boundary of Newquay. The proposal does not visually extend the building into the open countryside.

Alternative approach to Policy 3

- 4.13 In the alternative, a number of Inspectors’ decisions have now made it plain that Policy 3 is a permissive policy, aimed at helping Cornwall Council to meet its housing targets. It is not a restrictive policy which requires that all proposed housing developments meet its criteria.

- 4.14 In the 2017 Quintrell Downs decision⁴, the Inspector noted that:

27. Policy 3 of the Local Plan indicates that housing delivery will be managed through a Site Allocations DPD or Neighbourhood Plans, but this does not exclude the delivery of housing elsewhere, even taking into account that the planning system is to be plan led. [...]

[...]

29. Therefore, the proposal would not be in accordance with Policy 3 of the Local Plan in that it would represent development which is not managed through a Site Allocations DPD or a Neighbourhood Plan, but for the reasons explained above I do not think it could be considered to be contrary to that policy. However, it would comply with Policy 2 in that it would represent strategic scale growth accommodated in a main town. As Policy 2a sets out a minimum number of dwellings to be provided the proposal would be in compliance with this policy. It would also be in accordance with Policy 7 in that it would not represent new housing in the open countryside.

- 4.15 This was followed by the 2018 Carclaze Road⁵ decision, which cited the Quintrell Downs appeal and stated that:

11. Although policy 3 of the Local Plan states that housing delivery will be managed by a SADPD or Neighbourhoods Plans, this does not preclude housing elsewhere. Indeed, as the Housing Implementation Strategy (August 2017) shows the contribution of windfall sites to housing delivery is significant. The Council acknowledges in its Chief Planning Officer’s Advice Note³ that windfall sites in the main towns may be significantly larger than 10 dwellings and that it is not intended that all such larger sites must be managed through the SADPD

⁴ Appendix 5

⁵ Appendix 6

or a Neighbourhood Plan. This position is consistent with a recent allowed appeal decision to which I have been referred for up to 140 houses within the Newquay with Quintrell Downs CNA.

[...]

13. For the reasons given above, I therefore conclude that whilst the location of the proposed development would not be in accordance with policy 3 of the Local Plan, in that it has not been managed through a SADPD or Neighbourhood Plan, I do not consider that it would be contrary to it. In locating development on the edge of the current built up area of St Austell it would also comply with the spatial strategy of policy 2 of the Local Plan.

- 4.16 These decisions confirm that even where a proposal in a main town is not considered to comply with Policy 3 (but see below in terms of the SADPD), the fact that a proposed development is not in accordance with Policy 3 is not a sufficient reason to refuse permission for that development – the proposal must be contrary to Policy 3 or some other part of the Development Plan.

Policy 7

- 4.17 The Appellant's position is that Policy 7 is not relevant to the determination of this Appeal.

- 4.18 The Council continue to seek to run an argument that any land outside of a settlement or settlement boundary is 'open countryside'. That argument is fundamentally flawed and has failed in numerous appeals to date.

- 4.19 The Council's persistence in pursuing such an argument is manifestly unreasonable, particularly here so where no attempt has even been made to make an assessment of whether the site is within the open countryside. The OR simply says that:-

*"The site lies outside the Settlement Boundary, and the proposal does not comprise any of the types of new housing that are supported by Policies 3 and 21 of the Local Plan. Consequently, it would constitute residential development in the countryside. Policy 7 of the Local Plan says that development of new homes in the countryside will only be permitted where there are identified special circumstances."*⁶

- 4.20 The Council's approach fails to take account of the fact that Policy 3 (and Policy 1 of the SADPD) envisage rounding off and infill to take place on land that is substantially enclosed but outside of the urban form, hence the approach the Council take here (and in other unsuccessful appeals), i.e. that outside a settlement \equiv open countryside, is fundamentally at odds with the purpose of Policy 3. Policy 3 (and Policy 1 of the SADPD) can only function where a proper, reasoned assessment is made as to the whether the site is within the open

⁶ Appendix 2, page 7 of 8.

countryside. In this case no such assessment has been carried out, simply relying on the fact that the site is outside the settlement boundary.

- 4.21 No reference is made to the supporting text of the CLP, or the SADPD. No reference is made to the test in the CPOAN (see below). No judgment has been applied at all.
- 4.22 The matter can be simply dispensed with the Site, being an overspill car park, sited with housing on two sides and two car parks on the two other sides, is not open countryside.

Policy 21

- 4.23 Whilst Policy 21 was raised by the Agent and referred to as a relevant policy in the OR, the OR does not address Policy 21.
- 4.24 Policy 21 of the Local Plan encourages sustainably located proposals that use previously developed land and buildings. The appeal site is a overspill car park and hence is brownfield land. As set out above, the Site is either in, or adjoining the settlement and is in a sustainable location.
- 4.25 Policy 21 is therefore supportive of the Appeal proposal.

5 NEWQUAY NEIGHBOURHOOD DEVELOPMENT PLAN

- 5.1 The reason for refusal refers to the NNDP Policy G1(a).
- 5.2 The first limb of Policy G1(a) is a permissive policy which supports development within the settlement boundary shown on Map G1a.
- 5.3 Whilst not part of the policy, the supporting text explains that the objective of the G1 policy is threefold:-
- Provide a clear delineation between defined settlements and open countryside.
 - To direct sustainable development to the main urban centre of town and restrict inappropriate development of smaller settlements that lack suitable infrastructure.
 - To ensure a green gap is maintained between Newquay and Quintrell Downs, distinguishing the settlements.
- 5.4 An extract from the NNDP Map 1 - G1(a) with the Site boundary (roughly) shown is at Appendix 3.
- 5.5 The proposal does not offend any of the objectives of the G1 policy.
- 5.6 The second limb of Policy G1(a) may be read as an attempt to restrict development outside of the settlement boundary (which appears to be how the OR has interpreted it).

“Proposals for development outside the settlement boundaries will only be permitted around the Newquay Town boundary to meet a clearly evidenced local need for affordable homes and treated as exception sites led by 100% affordable housing”.

5.7 However, a strict interpretation of that part of the policy would preclude development that is supported by the NPPF and the Cornwall Local Plan and the basic conditions⁷ require that an NDP:-

(a) Has regard to national policies and advice contained in guidance issued by the Secretary of State...;

(e) is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)

5.8 Clearly, determining an application solely with regard to the second limb of NNDP Policy G1(a) would result in the LPA being unable to approve the following development outside the settlement boundary, despite support from national policies or strategic policies of the Cornwall Local Plan (Policy references included in brackets), e.g.:-

- Subdivision of existing residential dwellings (CLP Policy 7(2));
- Reuse of suitably constructed redundant, disused or historic buildings (CLP Policy 7(3));
- Agricultural Occupancy Condition dwellings (CLP Policy 7(5));
- NPPF Para 80(e) dwellings
- Gypsy and Travellers sites (CLP Policy 11);
- Rural Exception Sites that cannot viably provide 100% Affordable Housing (Policy 9 and Policy 10); and critically here,
- Rounding off and Infill (CLP Policy 3(3))

5.9 Tellingly, there is no reference to any of these types of development within the NNDP.

5.10 The Basic Conditions Statement for the NNDP refers to Policy G1 at page 22 (extract provided at Appendix 4⁸). This policy analysis within the Basic Conditions Statement confirms that the G1 policy reflects the aims of Policies 3, 5, 7 and 9.

5.11 Accordingly, NNDP Policy G1 policy must be read in conjunction with these Cornwall Local Plan policies and on the basis that the NNDP does not conflict with the Strategic Policies of the Cornwall Local Plan (including Policy 3).

⁷ paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990

⁸ Coincidentally Appendix 4 of the Basic Conditions Statement

- 5.12 It is the Appellant's position therefore that where the development is in accordance with CLP Policy 3 (or Policy 1 SADPD – see below), the development cannot be considered to be contrary to NNDP Policy G1.

Chichester DC

- 5.13 The Appellant's case is supported by the Court of Appeal case "*Chichester DC v (1) Secretary of State for Housing, Communities and Local Government (2) Beechcroft Land Ltd*⁹, in which consideration was given to the interpretation of a Neighbourhood Development Plan policy in the terms. In his appeal decision the Inspector determined that the NDP Policy was not applicable and therefore neither weighed in favour nor against the proposal – and considering the planning balance allowed the appeal.
- 5.14 The District Council challenged the Inspector's decision in the High Court with the judge determining that "*The proposal was "not explicitly contrary to either Policy 1 or [Policy] 2" of the neighbourhood plan, but those policies "offered no positive support for development outside the settlement boundary and specified areas".*
- 5.15 The District Council appealed to the Court of Appeal. In his judgment Lord Justice Lindblom set out:-

"Policy 1 of the neighbourhood plan supports proposals for development within the settlement boundaries, "provided they accord with other provisions of the Neighbourhood Plan and development plan". It responds to the role envisaged for neighbourhood plans by Policy 2 of the local plan: to fix settlement boundaries, within which "a presumption in favour of sustainable development" will apply. But it says nothing about development outside the settlement boundaries";

"the policies of the local plan do not require any "natural and necessary inference" to be drawn in deciding whether a proposal such as Beechcroft's is in accordance with the development plan. It is not necessary to deduce a conflict with the development plan from the absence of support in a specific policy"

"None of the inspector's conclusions betrays any misinterpretation or misapplication of the development plan policies in play. There is nothing unlawful, or indeed surprising, about them. They represent a series of reasonable planning judgments in the application of the relevant policies, with which the court will not interfere. And the assessment of the proposal on its planning merits is not flawed by any legal error in understanding or applying the policy in paragraph 198 of the NPPF. To describe any of the inspector's conclusions as "irrational" is, in my view, impossible".

"He carefully considered but rejected the district council's contention that there was also conflict with Policy 5 of the local plan and Policies 1 and 2 of the

⁹ [2019] EWCA 1640

neighbourhood plan (paragraphs 10, 11, 12 and 51). He did so because the neighbourhood plan policies “do not directly presume against” development outside settlement boundaries – which is true”.

*“The neighbourhood plan does not have a policy for development on unallocated sites akin to the policy for “windfall” housing development in the Broughton Astley Neighbourhood Plan – Policy H3. A settlement boundary has been established in the neighbourhood plan. **The approach to decision-making on development outside that settlement boundary is not merely implicit. It is set by express policies of the development plan. However, those policies are not in the neighbourhood plan, but in the local plan – Policies 2 and 45.**”*

“Unlike Gladman v Canterbury City Council, the policies of the local plan do not require any “natural and necessary inference” to be drawn in deciding whether a proposal such as Beechcroft’s is in accordance with the development plan. It is not necessary to deduce a conflict with the development plan from the absence of support in a specific policy”.

- 5.16 It is therefore not correct to interpret NNDP policy as prohibiting rounding off development outside the boundary when that development is supported by strategic policies of the Local Plan or later development plan policies (see below).
- 5.17 No other NNDP policies are cited in the reason for refusal and therefore these are not considered further here.

6 CORNWALL SITE ALLOCATIONS DPD

- 6.1 The SADPD was adopted in November 2019, i.e. after the NNDP was made.
- 6.2 The SADPD sets out¹⁰ the position on windfall developments in the main towns, stating that *“it is also expected that the ongoing delivery of the LP:SP housing target requires delivery on unplanned (windfall) sites in the main towns including the towns named in the Site Allocations DPD”*
- 6.3 Policy 1 of the SADPD reads as follows:-

Housing growth will be delivered for the settlements named in the Site Allocations DPD through the policies in this plan and through:

1. ...

2. Infill development that does not physically extend into the open countryside or diminish a large gap that is important to the setting of the settlement;

¹⁰ Para 1.11

3. Small scale rounding off that is appropriate to the size and role of the settlement and does not physically extend development into the open countryside;

4. The development of previously developed land within or adjoining the named settlements.

6.4 The SADPD therefore restates parts of Policy 3 of the CLP, but clarifies a point that had been contentious prior to the adoption of the SADPD, i.e. that development of windfall sites by way of rounding off, infill and development of previously developed land are acceptable in the main towns as well as other areas (CLP Policy 3(3)).

6.5 The supporting text of the SADPD confirms that *“Proposals will not visually extend development into open countryside. Proposals must be adjacent to existing development and should be predominantly enclosed by long standing edging features, for example a road, Cornish hedge or stream. Suitable sites are likely to be surrounded on at least two sides by existing built development”*

6.5.1 The Site is not open countryside – as set out above;

6.5.2 The Site is adjacent to existing development;

6.5.3 The site is enclosed on two sides by residential development, on one by a substantial bund and car park and on the fourth by a road and car park;

6.5.4 The Site is enclosed on two sides by existing built development.

And the Appeal proposal is therefore in accordance with the requirements set out in the supporting text.

6.6 Hence, even where the position on NNDP Policy G1 on the interpretation of the NNDP (as set out above) is not accepted, it is clear that the SADPD, being part of the development plan, supports windfall development by rounding off, infill and development of previously developed land.

6.7 For the avoidance of any doubt on this matter, the Inspector is referred to the PPG which states:-

policies in a neighbourhood plan may become out of date, for example if they conflict with policies in a local plan covering the neighbourhood area that is adopted after the making of the neighbourhood plan. In such cases, the more recent plan policy takes precedence¹¹.

6.8 The PPG is an interpretation of s38(5) of the Planning and Compulsory Purchase Act 2004 which states:

If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in

¹¹ Paragraph: 084 Reference ID: 41-084-20190509; Revision date: 09 05 2019

favour of the policy which is contained in the last document to become part of the development plan.

- 6.9 Hence, whilst it is the Appellant's view that Policy G1(a) of the NNDP should be interpreted in accordance with CLP Policy 3 and Policy 1 of the SADPD, the law requires that, if there is a conflict, that conflict must be resolved in favour of Policy 1 of the SADPD.
- 6.10 Tellingly, the OR does not refer to Policy 1 of the SADPD and the references to the SADPD in the OR are limited to: i) the consultation response stating that the Site is not an allocated site; ii) the fact that the SADPD applies to Newquay; and iii) noting (only) that the SADPD is relevant¹².
- 6.11 It is apparent therefore from the OR that proper regard has not been had to the SADPD, in particular Policy 1 and that no regard has been had to PCPA 2004, s38(5).

7 CORNWALL CLIMATE EMERGENCY DPD

- 7.1 Policy C1 of the CEDPD is referred to in the reason for refusal. The OR contains no text on the alleged conflict with the C1 Policy.
- 7.2 Policy C1 is a general policy of Climate Change Principles. It is not clear why the Council considered that the proposal was in conflict with such a policy, particularly given that the application was for permission in principle, where many of the elements of the C1 policy cannot be determined until the Technical Details Consent stage.
- 7.3 In terms of Policy C1(6), the Site is within the main town of Newquay, with access to facilities and services on foot and access to public transport, including a train station. Occupants will therefore have the ability to make trips by sustainable and active modes of transport.
- 7.4 It is not considered that the Council can reasonably argue that locating such development within Newquay amounts to an unsustainable location. In fact, the OR appears to accept Applicant's submissions on that point, referring to the Agent's basis for submitting the Application, i.e. that "*whilst the site lies outside the settlement boundary it remains sustainable*"¹³.
- 7.5 In respect of Policy C1(4), given the brownfield nature of the site, the reuse of land is supported by Policy C1.

¹² Appendix 2, bottom of page 3, top of page 4.

¹³ Appendix 2, page 6 of 8

8 DETERMINATION OF THE APPLICATION

- 8.1 Section 38(6) PCPA 2004 provides that the determination must be made in accordance with the development plan unless material considerations indicate otherwise.
- 8.2 The relevant policies of the development plan are considered above.
- 8.3 The CLP was adopted in November 2016; the NNDP was made on 08 May 2019; the SADPD was adopted in November 2019; and the CEDPD adopted on 21 February 2023. Reference to (and the importance of) s38(5) is set out above.

Conclusion on the development plan

- 8.4 In *Tiviot Way Investments Ltd v Secretary of State* [2016] J.P.L. 171, Patterson J held that compliance with the development plan is not a mechanistic process. At paras. 27 and 30 she held:

"27. It is axiomatic that the decision maker does not have to deal with each and every policy that has been raised by the parties during an appeal. That is not the Claimant's case. Rather, it is submitted a finding of compliance or conflict with the development plan and the basis for it needs to be made so that the decision maker can proceed to undertake the planning balance in an informed way. I agree. Such a step is not just form. Rather, it is an essential part of the decision-making process, so that not only the decision maker but also the reader of the Decision Letter is aware and can understand that the duty imposed under section 38(6) has been discharged properly by the decision maker."

"30. That does not mean a mechanistic approach of judging the proposals against each and every policy that may be prayed in aid of a development or against it, but an evaluation of main policy areas within the development plan that are relevant to the proposal to be determined and an assessment of how the proposal [fares] against them. That can be shortly stated and the process to be followed is for the individual decision maker. But it needs to be clear at the culmination of the decision-taking process what the eventual judgment is against the development plan as a whole. Only by carrying out that exercise can the next step of evaluating the planning balance be properly undertaken."

- 8.5 This approach was endorsed by Lindblom LJ and the Court of Appeal in *BDW Trading Ltd (t/a David Wilson Homes (Central, Mercia and West Midlands)) v Secretary of State* [2017] P.T.S.R. 1337 at [21].
- 8.6 Further in *R (on the application of Corbett) v Cornwall Council* [2020] EWCA Civ 508 the following principles can be distilled:-
 - 8.6.1 The section 38(6) duty can only be properly performed if the decision-maker establishes whether or not the proposal accords with the development plan as a whole.

- 8.6.2 Development plan policies can “*pull in different directions*”, i.e. some may support a proposal, others may weigh against it.
 - 8.6.3 A decision maker is required to assess the proposal against the potentially competing policies and then “*decide whether in the light of the whole plan the proposal does or does not accord with it*”.
 - 8.6.4 This is not a mathematical or mechanical exercise. It is not a question of counting.
 - 8.6.5 This exercise calls for a series of judgments to be made, which may include determining the relative importance of the policy, the extent of any breach and how firmly the policy favours or set its face against such a proposal.
- 8.7 Therefore, in determining whether the application is ‘in accordance with the development plan’ it is necessary to consider the development’s compatibility with the development plan as a whole and not simply to identify conflicts which one more individual elements of the plan. In doing so, it is necessary also to have regard to the circumstances applicable to the particular site in question.
- 8.8 Here it is considered that the development is supported by Policies 1, 2, 2a, 3, and 21 of the CLP, Policy 1 of the SADPD and Policy C1 of the CEDPD. It is considered that the development does not conflict with Policy G1 of the NNDP, either because G1(a) must be interpreted in light of the CLP and SADPD, or because the SADPD is the last document to become part of the development plan, and the operation of s38(5).
- 8.9 Accordingly, it is considered that the development is in accordance with the development plan as a whole and therefore permission should be granted in accordance with s38(6).

9 MATERIAL CONSIDERATIONS

NPPF

- 9.1 Para 69(c) of the NPPF requires that LPAs supports the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes. For the purposes of the NPPF, it is considered that the Site is within the existing settlement of Newquay notwithstanding the drawing of a line in the NNDP. Paras 70 and 71 are also relevant.
- 9.2 The reason for refusal refers to para 80 NPPF. It is submitted that this reference clearly underlines the Council’s failure to properly consider the Application and the relevant policy. Para 80 seeks to “*avoid the development of isolated homes*

in the countryside". There can be no doubt that the Site is not for para 80 'isolated homes in the countryside'¹⁴, the Council's position is unreasonable.

9.3 In *Braintree*, Lord Justice Lindblom set out:-

31. In my view, in its particular context in paragraph 55 of the NPPF [as it then was], the word "isolated" in the phrase "isolated homes in the countryside" simply connotes a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling is, or is not, "isolated" in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand.

32. What constitutes a settlement for these purposes is also left undefined in the NPPF. The NPPF contains no definitions of a "community", a "settlement", or a "village". There is no specified minimum number of dwellings, or population. It is not said that a settlement or development boundary must have been fixed in an adopted or emerging local plan, or that only the land and buildings within that settlement or development boundary will constitute the settlement. In my view a settlement would not necessarily exclude a hamlet or a cluster of dwellings, without, for example, a shop or post office of its own, or a school or community hall or a public house nearby, or public transport within easy reach. Whether, in a particular case, a group of dwellings constitutes a settlement, or a "village", for the purposes of the policy will again be a matter of fact and planning judgment for the decision-maker. In the second sentence of paragraph 55 the policy acknowledges that development in one village may "support services" in another. It does not stipulate that, to be a "village", a settlement must have any "services" of its own, let alone "services" of any specified kind.

33. Does this reading of the policy in paragraph 55 fit the broader context of the policies for sustainable development in the NPPF and guidance in the PPG? I think it does.

9.4 The proposal fulfils the three overarching objectives contained within para 8 of the NPPF:-

9.4.1 Economic – the development of a new affordable homes will provide a short-term economic benefit through the construction of the homes and also through the New Homes Bonus. Longer term the new dwellings will provide Council Tax receipts to both Cornwall Council and the Town Council.

9.4.2 Social – the site will provide homes for families at a time when Cornwall Council acknowledge a housing crisis.

9.4.3 Environmental – the proposal seeks to use brownfield land and will provide access to sustainable forms of transport.

¹⁴ See *City & Country Bramshill Ltd v SSHCLG* [2021] EWCA Civ 320 and *Braintree District Council v Secretary of State for Communities and Local Government* [2018] EWCA Civ 610

CPOAN

9.5 The Chief Planning Officer's Advice Note: Infill/Rounding of ('CPOAN') supports the Appeal and the Appellant's position is consistent with that note.

9.6 In particular, the CPOAN sets out:-

9.6.1 *The NPPF allows Local Planning Authorities to make an 'allowance for windfall sites in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply' ([former] paragraph 48 NPPF). This was the argument the Council successfully made within the LP:SP to allow windfall to be counted as part of our housing supply*

9.6.2 *The ongoing delivery of the LP:SP housing target requires delivery on unplanned (windfall) sites in the main towns;*

9.6.3 *[site allocations] do not preclude other windfall development coming forward*

9.6.4 *windfall development is anticipated to include appropriately scaled infilling, re-use of previously developed land and rounding off opportunities*

9.6.5 *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.*

10 CONCLUSION

10.1 The Appeal proposal is in accordance with the development plan.

10.2 Material considerations support the grant of permission and do not indicate that the decision should be made otherwise than in accordance with the development plan.

10.3 The Appeal should be allowed.

Stephens Scown LLP

20 October 2023

Appendices

1. Decision Notice
2. Officer's delegated report
3. Extract of Map 1- G1a Settlement Boundary with Site indicated
4. NNDP Basic Conditions Statement Appendix 4
5. Quintrell Downs Appeal Decision Notice
6. Carclaze Road Appeal Decision Notice