

**Gill Claxton**

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**From:** John Spurgeon  
**Sent:** 07 November 2011 12:28  
**To:** Gill Claxton  
**Subject:** FW: DMC Meeting 9th Nov. 2011

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**From:** Thurstan [mailto:thurstan.adburgham@btopenworld.com]  
**Sent:** 07 November 2011 10:25  
**To:** John Spurgeon  
**Cc:** Celina Jagusz  
**Subject:** DMC Meeting 9th Nov. 2011

Dear Mr Spurgeon,

**Application CB/09/06431/OUT, Land at French's Avenue, Dunstable –  
CPRE Comments**

I would have wished to speak at Wednesday's D.M.C. meeting in connection with this application, but unfortunately I have a prior commitment which has proved impossible to rearrange. I would be grateful, therefore, if this email could be brought to the Committee's notice under the 'Late Sheet' procedure.

We strongly maintain all the objections to this scheme that were set out in our letter of December 3<sup>rd</sup> 2009. We have studied the responses made by the applicants in their memorandum of March 2010, and none of them deal either credibly or acceptably with the issues we have raised.

The fact remains that this scheme is one imposing unsustainable impacts on Dunstable, and involves a major incursion into a highly sensitive area of Green Belt landscape, for which no sufficient case of very special circumstances has been established to justify the level of harm caused to it, in particular to the setting of Maiden Bower. The mitigation measures proposed do not deal effectively with these adverse impacts, and, in the case of Maiden Bower, it is not possible to envisage any that would do so.

We are glad to note the Officer recommendation to refuse this application, and most strongly trust that the Committee will support this recommendation.

Yours sincerely,

Thurstan Adburgham,  
Area Representative, CPRE Bedfordshire

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07/11/2011

31 October 2011

Mr Stephen Harris  
Emery Planning Partnership Ltd  
4 South Park Court  
Hobson Street  
Cheshire  
SK11 8BS

Our Ref: APP/D0840/A/10/2130022  
Your Ref: 09/01525

Dear Mr Harris,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY WAINHOMES (SOUTH WEST) HOLDINGS LTD  
AT LAND AT TREVERBYN ROAD, ST AUSTELL, CORNWALL PL25 5RX  
APPLICATION: REF 09/01525**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Martin Pike, BA MA MRTPI, who held a public local inquiry between 30 November and 17 December 2010 into your client's appeal against a decision of Cornwall Council to refuse planning permission for residential development of up to 1,300 dwellings; up to 9,000 sq m of classes B1, B2 and B8 floorspace; ancillary retail floorspace (classes A1, A2 and A5) and leisure (classes A3 and A4); 60 bed care home (class C2); primary school (class D1); strategic landscaping and public open space; community transport hub of up to 100 spaces and access connections; and associated engineering works, infrastructure, drainage and car parking on land at Treverbyn Road, St Austell, Cornwall PL25 5RX, Ref 09/05125 dated 11 November 2009.
2. On 16 August 2010, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990. The reason the appeal was recovered is that it involves proposals for residential development of over 150 units 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.

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

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

### Matters arising after the close of the inquiry

4. On 30 June 2011, the Secretary of State wrote to the parties to invite the Council and the appellants to provide up to date information on housing need and housing land supply in Cornwall and, particularly, in St Austell and to invite all other parties to comment on these issues. This was because he considered that he required this further information in order to assist him in determining the appeal. The representations received were then circulated to all interested parties for further comment under cover of his letter of 3 August. All representations received by the Secretary of State after his letter of 30 June are listed at Annex A to this letter. He has taken account of these responses in his consideration of the appeal before him, but as the responses were circulated to all parties who appeared at the inquiry, he does not consider it necessary to summarise the responses here or attach them to this letter. Copies of the correspondence can be made available upon request to the above address.
5. The Secretary of State has also taken account of the representation received from Emery Planning Partnership dated 28 March 2011 and those from Mr Hayes, dated 10 May, and M Tregunna, dated 2 June. As these did not raise any new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. Copies of these representations can be made available upon written request.

### Procedural Matters

6. The Secretary of State has taken account of the revisions, referred to by the Inspector at IR1.1, that were made to the original application. He has determined this appeal on the basis of the revised application (IR1.2).
7. In reaching his decision, the Secretary of State has taken into account the Environmental Statement (IR1.4) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the application.

### Policy considerations

8. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be
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determined in accordance with the development plan unless material considerations indicate otherwise.

9. In this case, the development plan comprises the Regional Planning Guidance for the South West (RPG10), the saved policies of the Cornwall Structure Plan 2004 (CSP) and the saved policies of the Restormel Local Plan (RLP). The Secretary of State considers that the development plan policies most relevant to the appeal are those referred to by the Inspector at IR3.2 - 3.5.
10. The Secretary of State has made it clear, following the judgment of the Court on 10 November 2010 in *Cala Homes (South) Ltd v Secretary of State for Communities and Local Government and Winchester City Council* [2010] EWHC 2886 (Admin), that it is the Government's intention to revoke RSSs, and the provisions of the Localism Bill which is now before Parliament reflect this intention. This gave rise to a subsequent decision of the Court on 7 February 2011 in *Cala Homes (South) Ltd v Secretary of State for Communities and Local Government* [2011] EWHC 97 (Admin) which held that the Government's intention to legislate to revoke regional spatial strategies was capable of being a material consideration. However, while the Secretary of State has taken this matter into account in determining this case, he gives it limited weight at this stage of the parliamentary process.
11. The Secretary of State has taken account of the emerging development plan documents referred to by the Inspector at IR3.6 – 3.7. He has had regard to the Draft RSS reaching the Proposed Changes stage in its development but, given that it is unlikely to progress to publication, he has accorded its policies little weight. Given that the draft Cornwall Core Strategy is at a very early stage of development, he has accorded its policies little weight.
12. Other material considerations which the Secretary of State has taken into account include the national planning policy documents listed at IR3.8, Circular 05/05: *Planning Obligations*; Circular 11/95: *The Use of Conditions in Planning Permission*; and the *Community Infrastructure Levy (CIL) Regulations*, and the other planning documents listed under CD5, CD6, CD7, CD8 and CD9 on pages 63 and 64 of the IR. He has also taken into account the St Austell, St Blazey and China Clay Area Regeneration Plan which was adopted in July 2011.

### Main Issues

13. The Secretary of State considers that the main issues in this case are those listed by the Inspector at IR10.1

### Housing Need

14. Having taken account of the further representations made by the parties and with particular reference to the Additional Housing Supply Statement of Common Ground (AHSSCG), the Secretary of State agrees, except where stated below, with the Inspector's reasoning and conclusions, at IR10.2 – 10.26, on whether there is a need for the proposed housing, having regard to the provisions of the development plan and PPS3. He agrees that the proposal is contrary to RLP policy 3, but considers that the relevance of the RLP is limited, given that it is somewhat dated with an end date of 2011 (IR10.2). Interpreting the development plan as a whole, he agrees that it is reasonable to conclude that if the CSP housing need to 2016 cannot
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be met from land within the St Austell urban area, urban extensions such as the appeal site are not necessarily in conflict, subject to the sustainability and other criteria being satisfied (IR10.4).

15. The Secretary of State has taken account of the Inspector's assessment of housing supply at IR10.5 – 10.10 and agrees with him that, at the time of the Inquiry, the Council's five year supply figure of 2,356 dwellings for the Mid 2 area (IR10.7) was to be preferred. However, having considered all the further evidence submitted by the parties he considers that the deliverable housing supply figures set out in Tables 4, 9 and 13 of the AHSSCG most accurately represent housing supply in Cornwall, the former Restormel district and St Austell as at 1 April 2011.
16. The Secretary of State has had regard to the Inspector's assessment of five year supply as set out at IR10.11 – 10.24 and considers, in the light of the new evidence available to him, that the Inspector's method of assessing five year supply using a range of housing requirement figures is sound. However, he considers that the assessment of five year supply of housing land for Cornwall, former Restormel district and St Austell, as set out in tables 5, 10, and 14 of the AHSSCG most accurately represents the position as at 1 April 2011. Of these, he considers that, while the figures for former Restormel and St Austell are indicative of the position in local housing markets, it is the figures for Cornwall that are relevant in assessing whether the Local Planning Authority, Cornwall Council, is able to demonstrate a five year supply in accordance with the advice in PPS3.
17. The Secretary of State agrees with the Inspector that the most up-to-date indicators of need are the PCRSS and its evidence base and the emerging CCS (IR10.25). Having had regard to the evidence submitted by the parties, he further agrees that the PCRSS evidence base, together with certain other indicators leads to a finding that the land supply is appreciably less than five years (IR10.25). Like the Inspector, he considers that the Council's decision to produce locally-based growth strategies lessens the weight that should be accorded to the higher housing growth projections based on the PCRSS evidence base (IR10.26). Having taken account of the representations made by the parties on this issue, the Secretary of State agrees with the Inspector that reliance on the highest of the housing growth projections does not reflect the most likely outcome and that a stronger case can be made for using the middle growth option proposed in the draft CCS, for despite the lack of testing, it is broadly congruent with the Option 1 figure which the Government has indicated might be an appropriate yardstick (IR10.27). On this basis, and having regard to the figures in Table 5 of the AHSSCG, he considers that there is considerable uncertainty as to whether a five year supply of housing land exists in Cornwall and that, on this basis, the PPS3 paragraph 71 presumption in favour of the grant of planning permission where there is not an up-to-date five year supply of deliverable sites would apply in this case. In accordance with the advice in PPS3, the Secretary of State has gone on to consider to what extent the appeal proposal would accord with the considerations set out in paragraph 69 of PPS3, particularly the need to ensure that development is in line with planning for housing objectives, reflecting the need and demand for housing in, and the spatial vision for, the area and does not undermine wider policy objectives.

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### Prematurity

18. The Secretary of State agrees with the Inspector's reasoning and conclusions as set out at IR10.28 – 10.36 on whether the release of this large site would be premature in advance of the Council's Core Strategy. He agrees that all that can be reasonably be said at this stage is that the appeal site is one of a number of potential candidates which may be required to deliver the housing needs of the town (IR10.30). He agrees that, consequently, the grant of planning permission now would inevitably reduce the choices otherwise available to the forthcoming LDF site selection process and could prejudice future decisions (IR10.31). He further agrees that the grant of planning permission now would deny the local community the opportunity of determining its preferred choice of housing sites for St Austell and that, without full public consultation on all potential options, a complete representation of local opinion would not emerge (IR10.36).
19. The Government has made it clear that its intention is to return decision making powers in housing and planning to local authorities. This is a key planning priority for the Government and the Secretary of State considers that in this particular case it is important to give Cornwall the opportunity to complete its Core Strategy process. Taking all the factors referred to by the Inspector into account, the Secretary of State agrees that there is a strong argument that the appeal proposal is of such a scale that to permit it now would prejudice decisions that ought properly to be taken as part of the LDF process (IR10.37). For these reasons, and with respect to the considerations set out in paragraph 69 of PPS3, the Secretary of State considers that granting permission for the appeal scheme now would undermine wider policy objectives in Cornwall and that the appeal scheme would not accord with PPS3.

### Ecological Information

20. The Secretary of State agrees with the Inspector's reasoning and conclusions, at IR10.38 – 10.50, on whether the ecological information is sufficient to enable a determination which complies with the Environmental Impact Assessment Regulations 1999 and the Conservation of Habitats and Species Regulations 2010. He has taken account of there being no dispute that an appropriate level of survey work and assessment has been undertaken to establish the likely presence of, and therefore the potentially significant impacts upon, most habitats and species (IR10.39). He agrees that there is sufficient evidence to be confident that the development would not cause significant harm to the favourable conservation status of any bat species, having regard to the commuting and foraging habits available off-site (IR10.45). The Secretary of State considers, like the Inspector, that the proposed mitigation strategy to ensure that birds are properly protected during the breeding season is sufficient to ensure compliance with the Wildlife and Countryside Act 1981 (IR10.48).
21. The Secretary of State agrees, from the evidence available, that it is reasonable to conclude that all species likely to be present have been surveyed and the impacts of the development on them have been appropriately assessed (IR10.49). He agrees that the proposed conditions and s106 obligations would be appropriate mechanisms to ensure that there would be no threat to the maintenance of populations of
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protected species at a favourable conservation status in their natural range (IR10.50).

#### Other matters

22. The Secretary of State agrees with the Inspector's assessment of other planning matters, as set out at IR10.51 – 10.61. He agrees that the loss of part of the countryside setting to St Austell and the loss of good quality agricultural land are matters that weigh against the proposal and that it is not possible to reach a considered view on whether, in terms of landscape impact and agricultural land quality, the appeal scheme might be better or worse than other potential sites for large scale housing development (IR10.53). With regard to flooding, he agrees that the weight of evidence does not support the view that the development would result in greater surface water run-off and exacerbate downstream flooding (IR10.56). In the absence of compelling evidence that the solutions identified would not work, he agrees that an objection on traffic and highways grounds cannot be sustained (IR10.58). On the issue of employment, the Secretary of State agrees that the provision of serviced employment land as part of a mixed use development is unquestionably a significant benefit of the proposal (IR10.59).

#### Obligation and Conditions

23. The Secretary of State has considered the executed planning obligations as submitted by the appellants, the CIL Regulations 2010, and Circular 05/2005. He agrees with the Inspector's assessment of the obligations as set out at IR9.3 – 9.5 and 10.62 – 10.64 and is satisfied that the provisions in the obligations are relevant and necessary to the proposed development and comply with the policy tests in Circular 05/2005 and with the CIL Regulations. Given that he is not minded to grant planning permission for this development, he has not found it necessary to reach a view on the appropriateness of clause 3.15 (IR10.64).

24. The Secretary of State does not consider that the provisions in the obligations or the proposed conditions, either individually or in combination, would overcome his reasons for dismissing the appeal.

#### Overall Conclusions

25. The Secretary of State agrees with the Inspector's reasoning and conclusions on the balance of considerations, as set out at IR10.65 and IR10.68 – 10.70. For the reasons given at paragraph 14 above and at IR10.65, he concludes that the proposal is contrary to the development plan.

26. The Secretary of State concludes that it is probable that a five year supply of housing land does not exist in Cornwall and that, on this basis, the PPS3 paragraph 71 presumption in favour of the grant of planning permission applies, subject to the considerations set out in paragraph 69 of PPS3. However, he also concludes that the appeal proposal is of such a scale that to permit it now would prejudice decisions that ought properly to be taken locally as part of the LDF process and that the appeal scheme would not accord with PPS3 on account of it undermining wider policy objectives in Cornwall. The Secretary of State considers that allowing the appeal in



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advance of establishing the appropriate level of future housing provision across Cornwall would pre-empt decisions that should properly be taken locally.

27. The Secretary of State is satisfied that all species likely to be present on the appeal site have been surveyed and the impacts of the development on them have been appropriately assessed. He concludes that the loss of part of the countryside setting to St Austell and the loss of good quality agricultural land are matters that weigh against the proposal.
28. The Secretary of State considers that benefits of the proposal include the provision of a sizeable number of new homes so as to meet a probable shortfall in the five year supply of housing land in Cornwall. He also considers that increased choices in the supply of both market housing and serviced employment land, and a range of improvements to local infrastructure are further benefits of the scheme. Overall, he concludes that these and other benefits are not sufficient to outweigh the conflict with the development plan and the Government's strong desire that decisions about the future strategy for an area should be taken by the local community through the LDF process.

#### **Formal Decision**

29. 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 residential development of up to 1,300 dwellings; up to 9,000 sq m of classes B1, B2 and B8 floorspace; ancillary retail floorspace (classes A1, A2 and A5) and leisure (classes A3 and A4); 60 bed care home (class C2); primary school (class D1); strategic landscaping and public open space; community transport hub of up to 100 spaces and access connections; and associated engineering works, infrastructure, drainage and car parking on land at Treverbyn Road, St Austell, Cornwall PL25 5RX, Ref 09/0125 dated 11 November 2009.

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

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
31. A copy of this letter has been sent to Cornwall Council and other parties who were represented at the Inquiry. A notification letter has been sent to all other parties

Yours sincerely

**Richard Watson**

Authorised by the Secretary of State to sign in that behalf

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