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SECTION 2

Summary

As the Independent Examiner appointed by Cornwall Council to examine the Porthleven Neighbourhood Development Plan, I can summarise my findings as follows:

1. *I find the Porthleven Neighbourhood Development Plan and the policies within it, subject to the recommended modifications does meet the Basic Conditions.*
2. *I am satisfied that the Referendum Area should be the same as the Plan Area, should the Porthleven Neighbourhood Development Plan go to Referendum.*
3. *I have read the Porthleven Consultation Statement and the representations made in connection with this subject I consider that the consultation process was robust and that the Neighbourhood Plan and its policies reflects the outcome of the consultation process including recording representations and tracking the changes made as a result of those representations.*
4. *I find that the Porthleven Neighbourhood Development Plan can, subject to the recommended modifications proceed to Referendum.*
5. *At the time of my examination the adopted local plan was the Cornwall Local Plan 2016.*

SECTION 3

3.Introduction

3.1. Neighbourhood Plan Examination.

My name is Deborah McCann and I am the Independent Examiner appointed to examine the Porthleven Neighbourhood Development Plan.

I am independent of the qualifying body, I do not have any interest in the land in the plan area, and I have appropriate qualifications and experience, including experience in public, private and community sectors.

My role is to consider whether the submitted Porthleven Neighbourhood Development Plan meets the Basic Conditions and has taken into account human rights; and to recommend whether the Porthleven Neighbourhood Development Plan should proceed to Referendum. My role is as set out in more detail below under the section covering the Examiner's Role. My recommendation is given in summary in Section 2 and in full under Section 5 of this document.

The Porthleven Neighbourhood Development Plan has to be independently examined following processes set out in the Town and County Planning Act 1990 (as amended by the Localism Act 2011) and the subsequent Neighbourhood Planning (General) Regulations 2012.

The expectation is that the examination of the issues by the examiner is to take the form of the consideration of the written representations. However, there are two circumstances when an examiner may consider it necessary to hold a hearing. These are where the examiner considers that it is necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case. Having read the plan and considered the representations I did require clarification on a number of issues. These points were dealt with by written representations in a question and answer format. This additional information is publicly available on the Cornwall Council website and covered in my report within the relevant policy.

3.2. The Role of Examiner including the examination process and legislative background.

The examiner is required to check whether the neighbourhood plan:

- *Has been prepared and submitted for examination by a qualifying body*
- *Has been prepared for an area that has been properly designated for such plan preparation*
- *Meets the requirements to*
 - i) specify the period to which it has effect;*
 - ii) not include provision about excluded development; and*
 - iii) not relate to more than one neighbourhood area and that*
- *Its policies relate to the development and use of land for a designated neighbourhood area.*

The examiner must assess whether a neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990 (as amended).

As an independent Examiner, having examined the Plan, I am required to make one of the following recommendations:

1. The Plan can proceed to a Referendum
2. The Plan with recommended modifications can proceed to a Referendum

Where a policy does not meet the basic conditions or other legal requirement I may, on occasion, need to delete wording, including potentially an entire plan policy and/or section of text, although I will first consider modifying the policy rather than deleting it. Where a policy concerns a non-land use matter, advice in the Planning Practice Guidance states “Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.” As such, when considering the deletion of any non-land use matters from the plan, I will consider if I can make a modification to place the relevant proposed actions in a non-statutory annex to the plan, dealing with ‘Wider Community Aspirations’. I will not generally refer back to parties on these detailed revisions. I will make modification either in order to meet the Basic

Conditions, to correct errors or provide clarification. However, the focus of my examination, as set out in legislation is relatively narrow, I must focus on compliance with the Basic Conditions. The main purpose of a neighbourhood plan is to provide a framework for the determination of planning applications, policies in a plan which have elements which either seek to control things which fall outside the scope of the planning system or introduce requirements which are indiscriminate in terms of the size of development or overly onerous and would not meet the Basic Conditions. In these circumstances it will be necessary to make modifications to the plan. In making any modifications I have a duty to ensure that the Basic Conditions are met however I am also very careful to ensure, where possible that the intention and spirit of the plan is retained so that the plan, when modified still reflects the community's intent in producing their neighbourhood plan.

3. The Plan does not meet the legal requirements and cannot proceed to Referendum

I am also required to recommend whether the Referendum Area should be different from the Plan Area, should the Porthleven Neighbourhood Development Plan go to Referendum.

In examining the Plan, I am required to check, under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990, whether:

- the policies in the Plan relate to the development and use of land for a designated Neighbourhood Area are in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act 2004:

- The Plan meets the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 to specify the period for which it has effect - the Plan has been prepared for an area designated under the Localism Act 2011 and has been developed and submitted for examination by a qualifying body.

I am also required to determine whether the Plan complies with the Basic Conditions, which are that the proposed Neighbourhood Plan:

- Has regard to national policies and advice contained in guidance issued by the Secretary of State;
- Contributes to the achievement of sustainable development; and
- Is in general conformity with the strategic policies contained in the Development Plan for the area.

There is now an additional Basic Condition to be considered. Since the 28th of December 2018, the Neighbourhood Planning (General) Regulations 2012 Such 2 para 1 has stated:

"In relation to the examination of neighbourhood development plans the following basic condition is prescribed for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act—

The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017."

The Plan must also not breach, and otherwise be compatible with EU obligations and Human Rights requirements.

Cornwall Council will consider my report and decide whether it is satisfied with my recommendations. The Council will publicise its decision on whether or not the plan will be submitted to a referendum, with or without modifications. If the Neighbourhood Plan is submitted to a referendum, then 28 working days' notice will be given of the referendum procedure and Neighbourhood Plan details. If the referendum results in more than half those voting (i.e. greater than 50%), voting in favour of the plan, then the Unitary Authority must "make" the Neighbourhood Plan a part of its Development Plan as soon as possible. If approved by a referendum and then "made" by the local planning authority, the Neighbourhood Plan then forms part of the Development Plan.

SECTION 4

4.The Report

4.1. Appointment of the Independent examiner

Cornwall Council appointed me as the Independent Examiner for the Porthleven Neighbourhood Development Plan with the agreement of Porthleven Town Council.

4.2. Qualifying body

I am satisfied that Porthleven Town Council is the Qualifying Body.

4.3. Neighbourhood Plan Area

Porthleven Town Council applied for designation as a Neighbourhood Plan Area on 18th June 2014 and approved by Cornwall Council on 19th of August 2014.

The designated Porthleven Neighbourhood Area covers the Parish of Porthleven.

The Basic Conditions Statement submitted with the Porthleven Neighbourhood Development Plan confirms there are no other Neighbourhood Plans covering the Area of the Porthleven Neighbourhood Development Plan.

4.4. Plan Period

It is intended that the Porthleven Neighbourhood Development Plan will cover the period 2020-2030, chosen to align with the Cornwall Local Plan. The Plan period should appear on the cover of the plan and be consistent across all associated documents.

4.5. Cornwall Council initial assessment of the Plan (Regulation 15).

Porthleven Council submitted the draft Porthleven Neighbourhood Plan to Cornwall Council for consideration under Regulation 15 of the Neighbourhood Planning (General) Regulations 2012 on the 16th of November 2020. Cornwall Council made an initial assessment of the Neighbourhood Development Plan and the supporting documents and is satisfied that these comply with the specified criteria.

4.6 Site Visit

I carried out an unaccompanied site visit on the 8th April 2021 to familiarise myself with the Neighbourhood Plan Area.

4.7. The Consultation Process

The Porthleven Neighbourhood Development Plan has been submitted for examination with a Consultation Report which sets out the consultation process that has led to the production of the plan, as set out in the regulations in the Neighbourhood Planning (General) Regulations 2012.

The Statement describes the approach to consultation, the stages undertaken and explains how the Plan has been amended in relation to comments received. It is set out according to the requirements in Regulation 15.1.b of the Neighbourhood Planning (General) Regulations 2012):

- (a) It contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
- (b) It explains how they were consulted; (c) It summarises the main issues and concerns raised by the persons consulted; and
- (d) It describes how these issues and concerns were considered and, where relevant, addressed in the proposed neighbourhood development plan.

Examination of the documents and representations submitted in connection with this matter have led me to conclude that the consultation process was thorough, well conducted and recorded.

A list of statutory bodies consulted is included in the Consultation Statement.

4.8. Regulation 16 consultation by Cornwall Council and record of responses.

The Cornwall Council placed the Porthleven Neighbourhood Development Plan out for consultation under Regulation 16 for 10 weeks from Thursday 10th December 2020 to Thursday 18th February 2021. The normal statutory period for consultation is 6 weeks but due to the unprecedented situation caused by Covid-19, the

consultation period was extended to 10 weeks in line with the guidance from The Ministry of Housing, Communities and Local Government.

A number of representations were received during the consultation period and these were made available by Cornwall Council as part of the supporting information supplied for the examination process. I considered the representations, have taken them into account in my examination of the plan and made reference to them where appropriate.

4.9. Compliance with the Basic Conditions

A Basic Conditions Statement was produced for the Porthleven Neighbourhood Development Plan. The purpose of this statement is to set out in detail how the Neighbourhood Development Plan, as submitted meets the Basic Conditions. It is the Examiner's Role to take this document into consideration but also make take an independent view as to whether or not the assessment as submitted is correct.

I have to determine whether the Porthleven Neighbourhood Development Plan:

1. *Has regard to national policies and advice*
2. *Contributes to sustainable development*
3. *Is in general conformity with the strategic policies in the appropriate Development Plan*
4. *Is not in breach and is otherwise compatible with EU obligations and Human Rights requirements.*
5. There is now an additional Basic Condition to be considered. Since the 28th of December 2018, the Neighbourhood Planning (General) Regulations 2012 Such 2 para 1 has stated:

"In relation to the examination of neighbourhood development plans the following basic condition is prescribed for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act—

The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species

Regulations 2017."

Documents brought to my attention by the Unitary Authority for my examination include:

(a) The Porthleven Neighbourhood Development Plan:

This is the main document, which includes the policies developed by the community.

(b) The Consultation Statement:

This is a statement setting out how the community and other stakeholders have been involved in the preparation of the Porthleven Neighbourhood Development Plan and is supported by an evidence base, which arose from the consultation.

(c) Basic Conditions Statement.

This is a statement setting out how Porthleven Neighbourhood Development Plan Working Group considers that the Neighbourhood Development Plan meets the Basic Conditions. This statement also includes the screening report for the Strategic Environmental Appraisal and Habitats Regulations Assessment and addresses how the plan contributes to the achievement of sustainable development.

(d) Porthleven NDP Local Greenspace Assessment

Comment on Documents submitted

I am satisfied having regard to these documents and other relevant documents, policies and legislation that the Porthleven Neighbourhood Development Plan does, subject to the recommended modifications, meet the Basic Conditions.

4.10 Planning Policy

4.10.1. National Planning Policy

National Policy guidance is in the National Planning Policy Framework (NPPF). At

the time of the preparation of the Neighbourhood Plan the relevant NPPF was the National Planning Policy Framework (NPPF) February 2019 (as updated).

To meet the Basic Conditions, the Plan must have “regard to national policy and advice”. In addition, the NPPF requires that a Neighbourhood Plan “must be in general conformity with the strategic policies of the local plan”.

Paragraph 29 states:

“Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area or undermine those strategic policies.”

The Porthleven Neighbourhood Development Plan does not need to repeat national policy, but to demonstrate it has taken them into account.

I have examined the Porthleven Neighbourhood Development Plan and consider that, subject to modification, the plan does have “regard for National Policy and Advice” and therefore the Plan, subject to modification does meet the Basic Conditions in this respect.

4.10.2. Local Planning Policy- The Development Plan

Porthleven lies within the area covered by Cornwall Council. The relevant development plan is the Cornwall Local Plan 2016.

4.10.3 To meet the Basic Conditions, the Porthleven Neighbourhood Development Plan must be in “general conformity” with the strategic policies of the development plan.

The NPPF 2019 (updated) states:

“20. Strategic policies should set out an overall strategy for the pattern, scale and quality of development, and make sufficient provision¹² for:

a) housing (including affordable housing), employment, retail, leisure and other commercial development;

b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the

provision of minerals and energy (including heat);

c) community facilities (such as health, education and cultural infrastructure); and

d) conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation.”

4.10.4 Neighbourhood Plans should only contain non-strategic policies. The NPPF 2019(updated) states:

“Non-strategic policies

28. Non-strategic policies should be used by local planning authorities and communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.

29. Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area or undermine those strategic policies.”

4.10.5 Should there be a conflict between a policy in a neighbourhood plan and a policy in a Local Plan, section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved in favour of the policy, which is contained in the last document to become part of the development plan.

4.10.6 The distinction between strategic and non-strategic policies is important because of the relationship with Neighbourhood Plans. Neighbourhood Plans only have to be in general conformity with the strategic policies of the development plan (Localism Act 2011, Schedule 4B, s7 (2)(e)) When made, neighbourhood plan policies take precedence over existing non-strategic policies in the local plan, where

they are in conflict.

4.10.7 Planning Policy Guidance paragraph 41-076-20140306 sets out that:

“Strategic policies will be different in each local planning authority area. When reaching a view on whether a policy is a strategic policy the following are useful considerations:

- whether the policy sets out an overarching direction or objective
- whether the policy seeks to shape the broad characteristics of development
- the scale at which the policy is intended to operate
- whether the policy sets a framework for decisions on how competing priorities should be balanced
- whether the policy sets a standard or other requirement that is essential to achieving the wider vision and aspirations in the Local Plan
- in the case of site allocations, whether bringing the site forward is central to achieving the vision and aspirations of the Local Plan
- whether the Local Plan identifies the policy as being strategic”

I have considered the Strategic policies of the Development Plan and the Policies of the Porthleven Neighbourhood Development Plan and consider that, subject to the recommended modifications, the Plan does meet the Basic Condition in this respect and is in general conformity with the Strategic policies of the Cornwall Local Plan 2016.

4.11. Other Relevant Policy Considerations

4.11.1 European Convention on Human Rights (ECMR) and other European Union Obligations

As a ‘local plan’, the Neighbourhood Development Plan is required to take cognisance of the EU Strategic Environmental Assessment (SEA) Directive 2001/42/EC Office.

SEA Screening

The NDP was initially screened in 2017 and the statutory consultees including Natural England agreed that neither a SEA or HRA was required:

“The proposed allocation (shown as cell 6 in the Map of cells) is the area where the majority of new development is expected. The Local Landscape Character Assessment, Stage 2 Report, assesses the capacity of the settlement edge for new housing development and this includes an appraisal of the effect on historic assets. Area 6 has been judged to have little impact on the setting or character of the village. The site is contained within the topographical ‘bowl’ within which the village nestles and does not extend over the ridge line – so that its impact on the landscape is contained. This also ensures that the impact of this development does not extend to the setting of the historic Penrose Estate. Proposed development will avoid the Flood zone area around Methleigh Stream and the SSSIs”.

The screening report was then updated in 2020, following the Sweetman case in 2018 and the need for an appropriate assessment. The conclusion of the update remained that HRA and SEA were not needed. Natural England commented and questioned the consideration of the allocation and its’ proximity to the Porthleven Cliffs SSSI. Cornwall Council concluded in the updated SEA screening report that ‘the Immediate Response Zone (IRZ) show that small scale residential development is not a risk to these areas’ and that “the allocation is well related to Porthleven and within the development boundary, so we would consider that to be residential (100 units or more), rather than rural residential for the purposes of IRZ thresholds”.

At Regulation 16 natural England made the following representation:

“Policy HO1 supports development within the settlement boundary. The settlement boundary includes parcels of land (outlined in blue on the map below) that are in sensitive locations, being adjacent/close to Porthleven Cliffs Site of Special Scientific Interest (SSSI) and within the Area of Outstanding Natural Beauty (AONB).

We question whether the neighbourhood Planning Group intend to support development within these plots or whether the settlement boundary should be re-drawn to exclude these areas.

The plots have remained within the development boundary but the consideration of their proximity to the SSSI boundary, in the updated SEA screening report, isn't quite accurate. The SEA screening report states that "the IRZ show that small scale residential development is not a risk to these areas", however, for these areas within 50m of the SSSIs the IRZ is triggered by all developments except householder applications.

In addition, the areas of concern are not within an identified Landscape Cell and so I don't think the response provided within paragraph 6.48 of the Consultation Statement that we should "refer to the LLCA document which advises against building on these plots" is applicable, and therefore the undeveloped areas are not afforded protection by Policy NE1.

In summary, we advise that Cornwall Council need to be satisfied that, if these parcels of land are to be retained within the development boundary, that the Neighbourhood Plan is supported by appropriate evidence and/or explanation and provides adequate protection to the Sites of Special Scientific Interest (SSSI) and the Area of Outstanding Natural Beauty (AONB)."

Following this submission by Natural England I have consulted Cornwall Council and they are satisfied that the screening process that have undertaken is robust and has reached the correct conclusion. The inclusion of the site within the development boundary means that in principle the site can be developed but this is subject to the policy safeguards set out at a national and local level. Although the neighbourhood plan sets out that the intention is to accommodate the majority of the housing need identified (85 units) on the site in question it is not an absolute figure and the capacity of the site will have to be measured against any impact on both the AONB and the Porthleven Cliffs SSSI. Although the policy restrictions are high on both AONBs and SSSIs there is no preclusion against development in its entirety, the

impacts have to be assessed and a balanced decision arrived at. I consider that it is reasonable to do so, in this situation at application stage.

Directive 92/43/EEC and Directive 2009/147/EC seek to protect and improve Europe's most important habitats and species. As part of the screening request for the SEA a Habitats Regulations Assessment Screening request was also submitted to Cornwall Council. Based on the scale and location of development proposed in the draft plan Cornwall Council concluded that the Porthleven NDP is unlikely to have significant effects on the environment or on European Sites and an HRA was therefore not required.

Natural England, the Environment Agency and Historic England were consulted as part of the screening process.

I am therefore satisfied that the Porthleven Neighbourhood Development Plan meets the Basic Conditions in this respect.

4.11.2 Sustainable development

The Basic Conditions Statement sets out how the plan addresses achieving sustainable development:

I am satisfied having regard to this document and other relevant documents, policies and legislation that the Porthleven Neighbourhood Development Plan does, subject to the recommended modifications, meet the Basic Conditions in this regard.

European Convention of Human Rights and to comply with the Human Rights Act 1998.

The Neighbourhood Development Plan is required to take cognisance of the European Convention of Human Rights and to comply with the Human Rights Act 1998.

The Basic Conditions Statement refers to how the development of the plan and its policies accord with EU Human Rights obligations.

I am satisfied with this conclusion.

Regulation 32 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out a further basic condition for a Neighbourhood Development Plan in addition to those set out in the primary legislation. Being that:

- the making of the neighbourhood plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2012) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007) (either alone or in combination with other plans or projects). (See Schedule 2 to the Neighbourhood Planning (General) Regulations 2012 (as amended) in relation to the examination of neighbourhood development plans.)

I am satisfied that the Porthleven Neighbourhood Development Plan, subject to modification meets the basic conditions on EU obligations.

4.11.3 Excluded development

I am satisfied that the Porthleven Neighbourhood Development Plan does not cover County matters (mineral extraction and waste development), nationally significant infrastructure such as highways and railways or other matters set out in Section 61K of the Town and Country Planning Act 1990.

4.11.4 Development and use of land

I am satisfied that the Porthleven Neighbourhood Development Plan covers development and land use matters.

4.12.1 Porthleven Neighbourhood Development Plan Policies

General comments

Planning Guidance on preparing neighbourhood plans and policies is clear, it states:

“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to

the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.

Neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land. They may identify specific action or policies to deliver these improvements. Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.”

In order to provide clarity and to ensure that the policies in the Porthleven Neighbourhood Plan meet the Basic Conditions it has been necessary for me to make modifications to a number of policies. This includes modifications where:

- Policies have sought to introduce controls outside the scope of the planning system or where existing policy already sets out the scope of control.
- A policy has not been drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications.

The details of these modifications are set out within my comments on the related policies. My comments on policies are in blue with the modified policies in red.

12.The Neighbourhood Plan Vision, Strategic Aims and Policies

VISION

The Vision for Porthleven Parish

“Our plan aims to ensure that Porthleven maintains and enhances all of the aspects that make it a significant place to live and work, both for present and future generations.

Our plan aims to make our Neighbourhood an even better place to live, work and visit.

Residents have expressed the desire to influence where and how any future development takes place and evidence from the community has indicated preferred locations for the development.

Development should be community-led and should provide high quality accommodation, support and enhance the economy, respect the character of the town and protect and enhance the natural environment.

Our vision is to sustain and enhance the beauty and vitality of our Neighbourhood and make sure our infrastructure is capable of supporting the community.

We will propose the site(s) for approximately 85 new homes within the Settlement Area of Porthleven”

The NDP Objectives

a) Housing Objective

To encourage a healthy, resilient and sustainable community with new housing for local people, located in harmony with the environment.

b) Heritage Objective

To protect, enhance and strengthen the important heritage of Porthleven Parish, including Listed Buildings, the conservation area and scheduled ancient monuments.

c) Natural Environment Objective

To protect and enhance the unique landscape character, including the AONB, biodiversity and other environmental designations and safeguarded places.

d) Design and Built Environment Objective

To support new build development that respects and responds to the distinctive natural and built environment of the parish and seeks to encourage energy efficiency and renewable technologies wherever possible

e) Community Facilities Objective

To provide a high quality of life in our settlements with community facilities to meet changing needs and to safeguard those facilities and local green spaces that are special to the community.

f) Infrastructure Objective

To provide the infrastructure and facilities that are key to the ongoing sustainability and resilience of our settlements.

g) Economic Objective

To support and encourage local businesses, particularly in agriculture, tourism, marine and light industry, ensuring that people have good opportunities for and access to local employment.

COMMENT

I am satisfied that the Porthleven NDP vision and objectives were developed from the consultation process and that the policies within the plan reflect them.

Housing Policies

Policy HO1: The Location of Housing Development

1.A site has been identified to deliver the cumulative housing requirement for the Parish. Development will be supported in the plan period that helps to deliver the cumulative housing requirement of the Parish of up to 85 dwellings. The requirement will be delivered in principle through the following methods, subject to accordance with the other policies within the NDP and strategic policies in the LP:SP:

New build housing within the settlement boundary of Porthleven, new build housing will be supported as infill housing development in line with LP:SP Policy 3.3.

a) Development proposals outside of the settlement boundary, but physically adjoining will be supported as rural exception sites where they are small scale and necessary to meet evidenced local housing need and provide a majority (starting at

100% and not less than 50% of the total number of dwellings or site area) of housing as affordable housing in accordance with LP:SP Policy 9.

b) New housing development, which is not within or physically adjoining the settlement boundary, will only be permitted where they meet the requirements of LP:SP: Policy 7 (Housing in the Countryside).

Development that exceeds the housing figure will only be supported on exceptions sites where evidence is provided that the scale and need for the development responds directly to the local housing needs of Porthleven Parish

3. Proposals for development within the settlement boundary will be permitted where they include 30% affordable housing on sites of more than 10 dwellings or where dwellings would have a combined gross floorspace of more than 1000 square metres.

4. Porthleven is designated as a Rural Area, in accord with The Housing Order 1981. Therefore, the affordable housing threshold will be more than 5 dwellings. Between 6 and 10 dwellings a financial contribution in lieu of on-site provision of affordable housing, will be sought, per unit that would have been provided.

COMMENT

The wording of this policy is confusing. For clarity the policy should be modified as follows:

Policy HO1: The Location of Housing Development

1. New housing development will be supported in the plan period that helps to deliver the cumulative housing requirement of the Parish of up to 85 dwellings. The requirement will be delivered in principle through the site shown on the proposals map with diagonal red lines at Figure 2 on page 19; and subject to being in accordance with other relevant policies within the NDP and Cornwall Local Plan proposals will be supported for:

i. Infill housing development in line with CLP Policy 3.3.

ii. Rural Exception Sites, outside the settlement boundary, but physically adjoining where they are small scale and necessary to meet evidenced local housing need in accordance with Cornwall Local Plan Policy 9.

iii. Development within the settlement boundary which includes 30% affordable housing. Porthleven is designated as a Rural Area and the affordable housing threshold is more than 5 dwellings. Between 6 and 10 dwellings a financial contribution in lieu of on-site provision of affordable housing, will be sought, per unit.

2. New housing development, which is not within or physically adjoining the settlement boundary, will only be permitted where they meet the requirements of CLP Policy 7 (Housing in the Countryside).

3. Development that exceeds the housing figure will only be supported on exceptions sites where evidence is provided that the scale and need for the development responds directly to the local housing needs of Porthleven Parish

Policy H02: Housing Sizes and Mix

1 The size and type of new dwellings (both market led and affordable) in the parish should respond directly to housing needs in the parish and that address the following requirements:

a) Proposals for single dwellings or apartments shall normally, as evidenced by the current Home Choice Register be three bedrooms.

Proposals for more than one dwelling unit shall provide a mix of dwelling sizes, based on the number of bedrooms, with a predominance of 1, 2 and 3 bed roomed dwellings.

Any variation to the above will be required to demonstrate how it responds to local need.

b) Where appropriate, all new development should be designed as 'Lifetime Homes';

where applicants should demonstrate how they meet the 'Lifetime Homes Design Principles'.

COMMENT

I have received representation from Cornwall Council affordable housing team who are concerned that the size of new dwellings should relate to the housing need identified. I believe that this is the intention of the policy, but the wording could be interpreted differently. There is also concern that the requirement that all new houses could impact on the viability of affordable schemes. For clarity the policy should be modified as follows:

Policy H02: Housing Sizes and Mix

1. The size and type of new dwellings (both market led and affordable) in the parish should respond directly to the identified housing needs in the parish in accordance with CLP policy 6.

2. New housing development should, as a minimum be designed to Nationally Described Space Standards. Wherever possible the design should achieve 'Lifetime Homes Design Principles'

Policy H03: Development Site

1 A site for housing development is shown on the proposals map with diagonal red lines at Figure 2 on page 19.

Proposals for housing development will be supported for this site, where the proposal provides:

a) 30% affordable housing; and

b) retains boundary hedgerows and trees within the site and provides new hedges and corridors to enhance their role in providing biodiversity corridors between and through the site to the countryside; and

c) public open space to meet the needs of the development or an upgrading of existing open space in the existing adjacent residential area to include a new children's play area and the upgrading of all existing play areas; and

d) screening of the southward side of the site (B3304) through the addition of trees and Cornish hedges and the protection of the ancient lane along the boundary; and provides an appropriate response to the street scene and the scale of development adjacent to the site.

COMMENT

Concern has been raised by Natural England regarding the potential impact of development on this site on the Cornwall AONB and the Porthleven Cliffs SSSI. Whilst there is an ambition to accommodate the majority of housing need (85 units) for the plan period on this site, the capacity of the site has not yet been assessed. Any proposals will have to be tested against national policy requirements and the relevant policies within the Development Plan in particular assessing any impacts on the AONB and SSSI policy. I am satisfied that Policy HO3 subject to modification together with other existing policy will provide the necessary safeguards for both the Cornwall AONB and the Porthleven Cliffs SSSI. For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy H03: Development Site

1 A site for housing development is shown on the proposals map with diagonal red lines at Figure 2. Proposals for housing development will be supported on this site, where it:

i. Conserves and enhances the Cornwall AONB in accordance with national policy and guidance, CLP Policy 23 and the Cornwall AONB management plan.

ii. Provides 30% affordable housing in accordance with CLP policy 8.

iii. Retains boundary hedgerows and trees within the site and provides new hedges and corridors to enhance their role in providing biodiversity corridors

between and through the site to the countryside; and

iv. Provides public open space to meet the needs of the development or an upgrading of existing open space in the existing adjacent residential area to include a new children's play area and the upgrading of all existing play areas; and

v. Includes screening of the southward side of the site (B3304) through the addition of trees and Cornish hedges and the protection of the ancient lane along the boundary; and provides an appropriate response to the street scene and the scale of development adjacent to the site.

2. Development that is likely to have an adverse effect on the Porthleven Cliffs Site of Special Scientific Interest, alone or in combination with other developments, will only be permitted in exceptional circumstances, where the benefits of the development unequivocally outweigh the impacts on the site's designated features and on the network of national sites.

Policy H04: Replacement Dwellings

1 The replacement of dwelling units will be permitted provided that all of the following criteria are met as defined in Appendix C LLCA Stage 1 Report.

a) the design of the new building should reflect the characteristic forms and palette of materials in the parish; as defined in Appendix C LLCA Stage 1 Report, Chapter 5, Village Character Assessment.

b) the new development is in sympathy within its setting and respects the distinctive local character of the area in terms of bulk, scale, height and materials; and

c) should be comparable in size to the dwelling that it will replace, and overbearing impacts will not be supported.

COMMENT

Planning decisions for the Porthleven area are made by Cornwall Council

subject to relevant policies in the Development Plan. A Made neighbourhood development plan forms part of the development plan and decisions should be made in accordance with the development plan subject to other material considerations. For clarity and to meet the Basic Conditions the first sentence of the policy should be modified as follows:

The replacement of dwelling units will be supported subject to meeting the following criteria (as set out in Appendix C LLCA Stage 1 Report):

Built Environment Policies

Policy BE1: Design Principles

1. All proposals for new development must be sited and designed so as to respond to and enhance the distinctive landscape and built setting of the application site and Porthleven Parish.

2. Applicants

a) should provide supporting documentation to demonstrate that the proposed development should be: -

- visually well-integrated with nearby structures in terms of form, scale, building details, local features, materials, finishes and colour, siting, landscaping and characteristic patterns of settlement;

2.1 will be placed to protect landscape character and mitigate for any environmental impact.

- where applicable, should positively respond with the heritage assets and the Porthleven Conservation Area or its setting;

- will positively respond to characteristics and key features within the surrounding rural landscape (as described in the Porthleven Local Landscape Character Assessment).

b) are informed by the Cornwall Design Guide;

c) Where appropriate, development supports the delivery of 'Lifetime Homes' standards;

d) Will seek to reduce to light pollution of the night sky through careful consideration of lighting placement and specification.

e) Encourage new buildings to be designed to the Building with Nature standard.

Please read the Cornwall Biodiversity Planning Guidance

(<https://www.cornwall.gov.uk/media/3630844/Sustainable-Building-Guide.pdf>)

Cornwall Council's minimum 10% biodiversity net gain target.

([https://www.cornwall.gov.uk/environment-and-planning/planning/planning-](https://www.cornwall.gov.uk/environment-and-planning/planning/planning-policy/adopted-plans/planning-policy-guidance/biodiversity-net-gain/)

[policy/adopted-plans/planning-policy-guidance/biodiversity-net-gain/](https://www.cornwall.gov.uk/environment-and-planning/planning/planning-policy/adopted-plans/planning-policy-guidance/biodiversity-net-gain/))

COMMENT

The requirements of this policy would not be appropriate for all development proposals and is potentially confusing and has areas of repetition. For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy BE1: Design Principles

Proposals for new development should be sited and designed so as to respond to and enhance the distinctive landscape and built setting of the application site and Porthleven Parish and will be supported where they:

i. Are designed with reference to the Cornwall Design Guide to be visually well-integrated with nearby structures in terms of form, scale, building details, local features, materials, finishes and colour, siting, landscaping and characteristic patterns of settlement;

ii. Are placed to protect landscape character and mitigate for any environmental impact.

iii. Meet the policy requirements for proposals affecting the Porthleven Conservation Area and Heritage Assets

iv. Positively respond to characteristics and key features within the surrounding rural landscape (as described in the Porthleven Local Landscape Character Assessment).

v. Support the delivery of ‘Lifetime Homes’ standards, as appropriate;

vi. Protect dark skies through careful consideration of lighting placement and specification.

vii. Increase biodiversity in accordance with current standards. Buildings designed to meet the Building with Nature standard are encouraged.

Please read the Cornwall Biodiversity Planning Guidance

(<https://www.cornwall.gov.uk/media/3630844/Sustainable-Building-Guide.pdf>)

Cornwall Council’s minimum 10% biodiversity net gain target.

(<https://www.cornwall.gov.uk/environment-and-planning/planning/planning-policy/adopted-plans/planning-policy-guidance/biodiversity-net-gain/>)

Policy P1: Parking

1. Where appropriate, new housing developments should provide appropriate levels of off-street parking taking into account accessibility as per the Cornwall Local Plan Policy No 13 Section 3, to meet the needs of the occupants and ensure that pressure on limited existing parking is not increased. Housing 1 sp/unit where highly accessible 2 spaces/unit elsewhere 1 1/2 spaces/unit not to be exceeded overall larger development as per Page 19

<https://www.cornwall.gov.uk/media/3627939/Travel-plan-guidance-proof9-2-.pdf>

2. Proposals seeking to provide less parking than this will be required to demonstrate that it will not increase the existing congestion problems within the town.

COMMENT

The document referred to in the policy:

<https://www.cornwall.gov.uk/media/3627939/Travel-plan-guidance-proof9-2-.pdf> is guidance and not policy. For clarity and to meet the Basic Conditions the policy should be modified:

Policy P1: Parking

1. Where appropriate, new housing developments should provide appropriate levels of off-street parking taking into account accessibility as per the Cornwall Local Plan Policy No 13 Section 3, to meet the needs of the occupants and ensure that pressure on limited existing parking is not increased.

2. Proposals seeking to provide less parking than this will be required to demonstrate that it will not increase the existing congestion problems within the town.

Historic Environment Policy

Policy HE1: Designated and Non-designated Heritage Assets

1. All development proposals within, or in the setting of the Porthleven Conservation Area will be supported where:

a) it reflects in terms of scale, massing, bulk and proportions with the existing character and appearance of the area, existing buildings and the street scene and protects and enhances the character and appearance of the area; and

b) has demonstrated how it has responded positively to the Porthleven Conservation Area Appraisal & Management Strategy (March 2010) where actions have been identified for that site or location.

2. High priority must be given to the protection, preservation, access and

enhancement of non- designated heritage assets of archaeological and historic significance in the NDP area. (Listed in LLCA Report 1 Appendices)

COMMENT

I have no comment on this policy.

Natural Environment Policies

Policy NE1: Local Landscape Character Assessment - Safeguarding and Enhancing our Valued Landscapes

Where appropriate, all proposals within the parish will be required to protect and enhance our valued landscapes and demonstrate how proposals have responded to, and to comply with the Local Landscape Character Assessment document, Appendix C.

COMMENT

I have no comment on this policy

Policy NE2: Development within, or in the setting of the South Coast Western Section of the Cornwall AONB

1. Proposals for development in the AONB, or affecting its setting, will not be supported unless they have demonstrated that they meet the objectives of the Cornwall Area of Outstanding Natural Beauty Management Plan, namely to:

- a) conserve and enhance the diverse landscape and special qualities of the AONB;
- b) use materials and be of a scale and design that has appropriate regard to the character, sensitivity and capacity of the protected landscape;
- c) be appropriately sited to avoid damage (individually or cumulatively) to the natural beauty, character and special qualities of the AONB.

COMMENT

National Policy and Guidance exists to control development within the AONB, policy NE2 does not reflect this policy. For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy NE2: Development within, or affecting the setting of the South Coast Western Section of the Cornwall AONB

1. Proposals for development in the AONB, or affecting its setting, should be in full compliance with national policy and guidance; and policy 23 of the Cornwall Local Plan. Proposals will not be supported unless they demonstrate that they meet the objectives of the Cornwall Area of Outstanding Natural Beauty Management Plan, namely to:

a) conserve and enhance (individually or cumulatively) the diverse landscape and special qualities of the AONB;

b) use materials and be of a scale and design that has appropriate regard to the character, sensitivity and capacity of the protected landscape;

Major development in the AONB will be refused subject to the tests of exceptional circumstances and where it can be demonstrated that the development is in the public interest as set out in national policy.

Policy NE3: Open Spaces – Provision and Protection

1. Land that provides important formal or informal recreational space or sports pitches is shown on the proposals map as Local Green Space in accordance with Paragraphs 99 and 100 of the NPPF (2012). Reference Appendix D. Redevelopment of the recreational areas and important green spaces identified on the proposals map will only be permitted where:

a) the development would enhance the use of the area or space by, for example, providing play or sports equipment; or

b) the development would provide a building with community facilities such as a clubhouse or changing rooms, subject to approval of the scale, siting and design of

the proposal, and it can be shown that the area or space affected is surplus to requirements; or

c) the loss resulting from the development would be replaced by equivalent or better provision in a suitable location within the Parish.

COMMENT

The NPPF refers to open space and recreation as follows:

“Open space and recreation

96. Access to a network of high-quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities. Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities (including quantitative or qualitative deficits or surpluses) and opportunities for new provision. Information gained from the assessments should be used to determine what open space, sport and recreational provision is needed, which plans should then seek to accommodate.

97. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or

b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or

c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.”

Paragraphs 99 and 100 of the NPPF refer to the designation of Local Green Spaces as follows:

“99. The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and

complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated and be capable of enduring beyond the end of the plan period.

100. The Local Green Space designation should only be used where the green space is:

- a) in reasonably close proximity to the community it serves;
- b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and
- c) local in character and is not an extensive tract of land.”

These two types of space are identified as being intrinsically different in the NPPF but appear combined within policy NE3. During the course of my examination, I sought clarification on the intention of this policy from the QB. The QB’s response was to confirm that only the areas shown on Map 6 and 7 in the Local Green Space Appendix D, the school and children’s centre/private nursery should be considered under paragraphs 97 of the NPPF 2019, the other areas identified to remain for consideration under paragraphs 99 and 100 of the NPPF 2019 to be considered as Local Green Space designations.

I have carefully considered the proposed Local Green Space designations and have concluded that the following areas do not meet the NPPF tests:

- *Wrestling Fields (Map 4)*
Reason: I have not been provided with evidence to persuade me that this particular section of the coast path and the area around it is any more demonstrably special than the areas adjacent and does not therefore meet the NPPF test.
- *Shrubberies Hill car park*
Reason: Whilst the car park provides parking for those wishing to access the surrounding area, I do not consider that the car park on its own could be considered to be demonstrably special and does not therefore meet the NPPF test.

- *Highburrow car park and surrounding area (Map 13)*
Reason: I have not been provided with evidence to persuade me that this particular area is any more demonstrably special than the areas adjacent and does not therefore meet the NPPF test.
- *Kittos Field car park (Map 14)*
Reason: Whilst the car park provides parking for those wishing to access the surrounding area, I do not consider that the car park on its own could be considered to be demonstrably special and does not therefore meet the NPPF test.
- *Withy Field Car Park (Map 16)*
Reason: Whilst the car park provides parking for those wishing to access the surrounding area, I do not consider that the car park on its own could be considered to be demonstrably special and does not therefore meet the NPPF test.

The following sites are more appropriately considered under paragraph 97 of the NPPF:

1. *Porthleven Cricket Pitch (Map 1)*
2. *Gala Park Football Pitch, Bowling Green and (Map 2)*
3. *School playing fields (Map 5)*

The maps which accompany the sites to be designated should be included with the policy, not in a separate appendix and should be modified where necessary to reflect the policy modification. The boundaries of the sites should be clearly identifiable. For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy NE3 Open Spaces

The following areas are identified as important open spaces within the parish:

4. *Porthleven Cricket Pitch (Map 1)*
5. *Gala Park Football Pitch, Bowling Green and (Map 2)*
6. *School playing fields (Map 5)*

and should not be built on unless:

- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or**
- b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or**
- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.**

Policy NE3 (a) Local Green Space Designation

The following areas are designated as Local Green Spaces:

- 1. Methleigh Meadows (Map 1a)**
- 2. Moors Playing Field (Map 2a)**
- 3. Vicarage Road Cemetary (Map5)**
- 4. St Bartholomew's Church Graveyard (Map 6)**
- 5. Top Park - Local Green Space (Map 12)**
- 6. Harbour Head (Map 3)**
- 7. Boslan grass area and play park (Map 8)**
- 8. Matela Close play park (Map 9)**
- 9. The Shrubberies estate grass area (Map 10)**
- 10. Penrose Parc green area (Map15)**

Inappropriate development will only be approved in very special circumstances.

Economic Policies

Policy EC1: Supporting a Prosperous Rural Economy in the Parish

1. Employment and/or business development will be supported where appropriate, within, or adjoining, Porthleven, subject to other NDP and Cornwall Local Plan policy compliance.

2. "The Cornwall Local Plan sets out the Council's policies for meeting Cornwall's

economic environmental and social aims for the future. www.cornwall.gov.uk“

COMMENT

I have no comment on this policy.

Policy EC2: Development within the Harbour

1. The Porthleven Harbour area is defined on the proposals map at Figure 2 in the area referred to as the Conservation Sub Areas - Harbour. Proposals for redevelopment or change of use of land or buildings within the defined Harbour Area, from marine, commercial or economic uses to other business uses will only be permitted where it is demonstrated that the existing use or alternative use is no longer required for both existing and future needs.

If located alongside the waterfront, proposals must wherever possible preserve or add opportunities for access to or glimpses of the sea from public viewpoints.

COMMENT

Planning decisions for the Porthleven area are made by Cornwall Council subject to relevant policies in the Development Plan. A Made neighbourhood development plan forms part of the development plan and decisions should be made in accordance with the development plan subject to other material considerations. For clarity and to meet the Basic Conditions, the policy should be modified as follows:

Policy EC2: Development within the Harbour

1. The Porthleven Harbour area is defined on the proposals map at Figure 2 in the area referred to as the Conservation Sub Areas - Harbour. Proposals for redevelopment or change of use of land or buildings within the defined Harbour Area, from marine commercial or economic uses to other business uses will only be supported where it is demonstrated that the existing use is no longer viable and no alternative use appropriate to the location can reasonably be found.

If located alongside the waterfront, proposals must wherever possible preserve or add opportunities for access to or glimpses of the sea from public viewpoints.

Infrastructure and Facilities Policies

Policy A1: Penrose Footpath Link

1. The provision of a safe and accessible public footpath/ bridleway link from the eastern side of the town providing pedestrian/ cycle connectivity to the Penrose Estate will be supported in principle.

COMMENT

I have no comment on this policy.

Policy PR: Infrastructure

1. Proposals that support the delivery of the projects highlighted in the Local Project List held by and regularly updated by the Town Council will be supported in principle, subject to and in accordance with other policies in this plan.

2. Financial contributions will be sought from new development in accordance with policy 28 of the Cornwall Local Plan to support the delivery of projects highlighted on the Local Project List.

COMMENT

I have no comment on this policy.

Policy C1: Retention of Community Facilities

1. The change of use or redevelopment of an existing community facility (e.g. shop, public house, town hall) to an alternative use will only be permitted if the community facility:

a) is incorporated or replaced within the new development to the existing or

improved standard; or

b) is relocated to a more appropriate building or to a location which improves its accessibility to potential users; or

c) is no longer required because there are alternatives in the locality which are able to meet the needs of and are of equal or improved accessibility to the local community;

d) is no longer needed and this can be demonstrated through a process of community engagement or active marketing of the facility for community uses for a period of 91 months

COMMENT

I am assuming that the reference to 91 months in paragraph d) of this policy is a drafting error. For clarity paragraph d) should be modified as follows:

d) is no longer needed and this can be demonstrated through a process of community engagement or active marketing of the facility for community uses for a period of 9 months.

SECTION 5

Conclusion and Recommendations

1. I find that the Porthleven Neighbourhood Development Plan has been prepared in accordance with the statutory requirements and processes set out in the Town and County Planning Act 1990 (as amended by the Localism Act 2011) and the subsequent Neighbourhood Planning (General) Regulations 2012. (as amended)
2. The Neighbourhood Plan does not deal with County matters (mineral extraction and waste development), nationally significant infrastructure such as highways and railways or other matters set out in Section 61K of the Town and Country Planning Act 1990.
3. The Porthleven Neighbourhood Development Plan does not relate to more than one Neighbourhood Area and there are no other Neighbourhood Development Plans in place within the Neighbourhood Area.
4. The Strategic Environmental and Habitats Regulations Assessment screening meet the EU Obligation.
5. The policies and plans in the Porthleven Neighbourhood Development Plan, subject to the recommended modifications would contribute to achieving sustainable development. They have regard to national policy and to guidance, and generally conform to the strategic policies of the Cornwall Local Plan 2016.
6. I therefore consider that the Porthleven Neighbourhood Development Plan subject to the recommended modifications can proceed to Referendum.

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NPIERS Examiner

CEDR accredited mediator

24th May 2021

