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# **INDEPENDENT EXAMINER'S REPORT ON THE ST HILARY NDP**

Deborah McCann

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## **SECTION 2**

### **Summary**

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

1. *I find the St Hilary 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 St Hilary Neighbourhood Development Plan go to Referendum.*
3. *I have read the 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 St Hilary 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 St Hilary 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 St Hilary Neighbourhood Development Plan meets the Basic Conditions and has taken into account human rights; and to recommend whether the St Hilary 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 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 not require clarification. 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 or which fall outside the scope of the planning system or introduce requirements which are indiscriminate in terms of the size of development or are overly onerous 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 St Hilary 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:

- 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. *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 has appointed me as the Independent Examiner for the St Hilary Neighbourhood Development Plan with the agreement of St Hilary Parish Council.

#### **4.2. Qualifying body**

I am satisfied that St Hilary Parish Council is a qualifying body and entitled to submit a Neighbourhood Development Plan (NDP).

#### **4.3. Neighbourhood Plan Area**

Application for designation as a Neighbourhood Plan Area under the Neighbourhood Planning Regulations 2012 (part 2, S6) was submitted on 30 November 2015 and it was formally designated by Cornwall Council on 4 February 2016.

The designated St Hilary Neighbourhood Area covers the covers the Parish of St Hilary as it was prior to the boundary changes in 2021 (so including Gears Lane now in Perranuthnoe Parish) and the Basic Conditions Statement submitted confirms there are no other Neighbourhood Plans covering the area.

#### **4.4. Plan Period**

It is intended that the St Hilary Neighbourhood Development Plan will cover the period to 2030, chosen to align with the Cornwall Local Plan.

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

St Hilary Parish Council submitted the draft St Hilary Neighbourhood Development Plan to Cornwall Council for consideration under Regulation 15 of the Neighbourhood Planning (General) Regulations. 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.



## **Site Visit**

I carried out an unaccompanied site visit on the 27 February 2024 to familiarise myself with the Neighbourhood Plan Area.

### **4.7. The Consultation Process**

The St Hilary 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.

I am satisfied that the consultation process was carried out robustly, that the community were aware of the process and had the opportunity to comment at the appropriate stages and that the Consultation Statement as submitted meets the required standard.

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

The Cornwall Council placed the St Hilary Neighbourhood Development Plan out for consultation under Regulation 16 from 22 January 2024 to the 4 March 2024.

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 St Hilary 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 take an independent view as to whether or not the assessment as submitted is correct.

I have to determine whether the St Hilary 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. Does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017. (Prescribed Conditions)

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

(a) The St Hilary 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 St Hilary 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 St Hilary Neighbourhood Development Plan Steering 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.

### **Comment on Documents submitted**

I am satisfied having regard to these documents and other relevant documents, policies and legislation that the St Hilary 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 my examination of the Neighbourhood Plan the relevant NPPF was the National Planning Policy Framework (NPPF) December 2023.

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

I have examined the St Hilary 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**

St Hilary 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 St Hilary Neighbourhood Development Plan must be in “general conformity” with the strategic policies of the development plan.

The NPPF December 2023 states:

“20. Strategic policies should set out an overall strategy for the pattern, scale and quality of development, and make sufficient provision 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 December 2023 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 St Hilary 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.

The St Hilary Neighbourhood Development Plan Steering Group requested that Cornwall Council screen the Neighbourhood Plan for Strategic Environmental Assessment. Natural England, the Environment Agency and Historic England were consulted as part of the screening process. The screening opinion, issued in November 2022 concluded that based on the scale of development proposed, the St Hilary Neighbourhood Plan is unlikely to have significant effects on the environment and that SEA is therefore not required."

This view is confirmed by the consultation bodies.

As part of the screening request for the SEA screening a Habitats Regulations Assessment Screening request was also submitted to Cornwall Council. Cornwall Council concluded as part of the SEA screening that the St Hilary Neighbourhood Plan is unlikely to have significant effects on European Sites and that HRA is therefore not required.

This view is confirmed by the consultation bodies

### **Prescribed Matters**

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 with the HRA conclusion that there are no likely significant effects on any European site resulting from the policies in the Plan and therefore the Prescribed Matters in this connection are met.

#### **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 St Hilary Neighbourhood Development Plan does, subject to the recommended modifications, meet the Basic Conditions in this regard.

#### **European Convention of Human Rights and compliance 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.

An Equalities Checklist is included within the Basic Conditions Statement I am satisfied that the ST Hilary NDP has taken cognisance of the European Convention of Human Rights and to comply with the Human Rights Act 1998.

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

#### **4.11.3 Excluded development**

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

### **4.12 St Hilary 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 St Hilary 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.

#### **4.12.1 The Neighbourhood Plan Vision, Aims, Objectives and Policies**

##### **The Vision for St Hilary Parish 2030**

**In the period up to 2030 St Hilary Parish will support sustainable development that protects and enhances its natural environment, rural landscape and rich heritage while providing small-scale affordable homes that meet local need and facilities that enable prosperous and healthy community life.**

##### **Objectives**

- Natural Environment
- Landscape
- Heritage
- Climate Change
- Housing

- Health and Well-being, Local Facilities and Services
- Design
- Economy

## **COMMENT**

**I am satisfied that the St Hilary NDP vision and objectives were developed from the consultation process and that the policies within the plan reflect the vision and strategic objectives.**

## **NEIGHBOURHOOD PLAN POLICIES**

### **Natural Environment**

#### **Policy 1a Trees and Woodland**

Development proposals should comply with the CEDPD policies G1 and G3 on green infrastructure and canopy cover and demonstrate, via a comprehensive landscaping plan, the inclusion, wherever possible, of native trees and Cornish hedges planted with native tree species, in any new development.

Proposals should be able to show that they do not result in the loss of irreplaceable ancient woodland or veteran trees.

## **COMMENT**

**The NPPF 2023 sets out the framework for the protection of ancient woodlands and veteran trees. This policy does not reflect that protection. For clarity and to meet the Basic Conditions, the last paragraph of this policy should be modified as follows:**

**Proposals resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) will not be supported, unless there are wholly exceptional reasons and a suitable compensation strategy exists.**

## **Policy 1b Biodiversity and Green Infrastructure**

Proposals for development will be supported where:

- A. They comply with CEDPD Policy G2 for Biodiversity Net Gain
- B. Major developments include a survey of the existing biodiversity, carried out by a suitably qualified ecologist
- C. Proposals enhance the biodiversity and green infrastructure of the parish through retaining and enhancing wildlife areas and green spaces and the connections between them so that they:
  - i. avoid areas which contain large or linked areas of natural and/or semi- natural habitat
  - ii. ensure that any areas of natural and/or semi-natural habitat are retained and ideally linked together as part of the proposals
  - iii. retain, restore and re-create habitat linkages such as Cornish hedges and ancient field systems as part of developments
  - iv. maximise enhancement opportunities to create, expand and link natural and/or semi- natural habitats on-site
  - v. conserve, protect and enhance features of biological interest across the parish including locally designated County Wildlife Sites. Where any unavoidable ecological impacts occur they must be appropriately mitigated or compensated for

### **COMMENT**

**I have no comment on this policy.**

## **Policy 1c Local Green Space**

The neighbourhood plan designates the following locations as local green spaces: i. Rosudgeon Recreation Ground

ii. Friendship Woods

iii. Memorial Garden in St Hilary iv. Badcock's Green in Relubbus

These are shown on Map 1c Proposed Local Green Spaces.

Inappropriate development will only be approved in very special circumstances.

## **COMMENT**

**Local Green Space designation is a “restrictive and significant policy designation” equivalent to Green Belt designation. It is essential that, when allocating Local Green Space, plan-makers can clearly demonstrate that the requirements for its allocation are met in full.**

**The NPPF 2023 states:**

**“105. 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.**

**106. 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.**

107. Policies for managing development within a Local Green Space should be consistent with those for Green Belts.”

Given that the Framework is not ambiguous in stating that a Local Green Space designation is not (my emphasis) appropriate for most green areas or open space, it is entirely reasonable to expect compelling evidence to demonstrate that any such allocation meets national policy requirements.

In addition, Neighbourhood planning guidance states:

" Different types of designations are intended to achieve different purposes. If land is already protected by designation, then consideration should be given to whether any additional local benefit would be gained by designation as Local Green Space."

Importantly, sites which are already subject to a statutory designation such as Historic Parks and Gardens or Scheduled Ancient Monuments are already subject to high levels of protection and would not benefit from an additional local designation. Likewise, sites which fall within the curtilage of a listed building or Conservation Area do not necessarily need additional protection under this policy as their importance and contribution to a settlement must already be considered if any application falls within or in the vicinity of these sites.

Paragraph 107 of the NPPF states that the policies for managing development within a Local Green Space should be consistent with those for Green Belts. Paragraphs 152-156 detail the policy framework for development affecting the Green Belt. Paragraph 152, in particular states;

“Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.”

It should be noted that designation as a LGS does not preclude all development. It protects a designated site from inappropriate development except in very special circumstances. Paragraph 154 of the NPPF 2023 sets out what types of development would not (my emphasis) be considered

**inappropriate:**

**" 154. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:**

**a) buildings for agriculture and forestry;**

**b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;**

**c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;**

**d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;**

**e) limited infilling in villages;**

**f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and**

**g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:**

**– not have a greater impact on the openness of the Green Belt than the existing development; or**

**– not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority."**

**The decision to designate a particular site is a matter of planning balance and I**

have made my decision based on whether or not I consider that the proposed designations meet the NPPF tests. I have carefully considered the evidence put before me for all the designations proposed and have concluded that they do meet NPPF 2023 tests.

## **Policy 2 Landscape Character**

A. Proposals for development will be supported where they demonstrate how they will protect and positively enhance the landscape character of St Hilary Parish, including the areas covered by the AONB and Area 3 of the WHS with reference to Policies 23 and 24 of the CLP and the six landscape types identified in the St Hilary LLCA.

B. Proposals for development will be supported where it is demonstrated that, if external lighting is required, it protects the night sky from light pollution through:

(i) The number, design, specification and position of lamps

(ii) Full shielding (at the horizontal and above) of any lighting fixture exceeding 500 initial lumens and evidence of limited impact of unshielded lighting through use of adaptive controls

(iii) Limiting the correlated colour temperature of lamps to 3000 Kelvin or less

C. New development should not compromise the views and vistas as shown on Map 2 and described in Appendix 1.

## **COMMENT**

**In November 2023 AONBs have been retitled as National Landscapes. Any reference in policies in the plan or other text should be changed to reflect this. I suggest the change as follows:**

### **Policy 2 Landscape**

**A. Proposals for development will be supported where they demonstrate how they will protect and positively enhance the landscape character of St Hilary**

**Parish, including the areas covered by the Cornwall National Landscape (Formally known as Cornwall AONB) and Area 3 of the WHS with reference to Policies 23 and 24 of the CLP and the six landscape types identified in the St Hilary LLCA.**

**The second part of this policy refers to protecting dark skies. I recommend that this becomes a separate policy as follows:**

### **Policy 2 a Protecting Dark Skies and Reduce Light Pollution**

**Proposals for development will be supported where it is demonstrated that, if external lighting is required, it protects the night sky from light pollution through:**

**(i) The number, design, specification and position of lamps**

**(ii) Full shielding (at the horizontal and above) of any lighting fixture exceeding 500 initial lumens and evidence of limited impact of unshielded lighting through use of adaptive controls**

**(iii) Limiting the correlated colour temperature of lamps to 3000 Kelvin or less**

**C. New development should not compromise the views and vistas as shown on Map 2 and described in Appendix 1.**

### **Policy 3a Historic Character, Heritage Assets and Conservation Areas**

Development proposals that affect heritage assets will only be supported where they:

A. Have assessed the historic significance of the proposed site and its setting to identify the impact of any development on historic character or heritage assets with reference to: relevant Local Plan Policies; national legislation and guidance (currently NPPF 2023); the Ancient Monuments and Areas Act; the Planning (Listed Buildings and Conservation Areas) Act; the Cornish Cultural Distinctiveness Assessment Framework (2019); the Framework Convention for the Protection of National Minorities; the Cornwall Council Heritage Strategy (2022). Proposals



affecting farmsteads should make reference to the Cornwall Historic Farmsteads Guidance

B. Act to preserve, conserve and enhance historic character and any designated or non- designated Heritage assets (including locally listed assets identified in the emerging St Hilary Local Heritage List)

C. Seek to conserve and enhance any historic character by undertaking repair and conservation work to a heritage asset where appropriate

## **COMMENT**

**This policy is confusing as it mixes policy control over Heritage Assets and Conservation Areas. In addition, Clause B. of this policy does not reflect national policy regarding the protection of the historic environment. For clarity and to meet the Basic Conditions, the policy should be modified as follows:**

### **Policy 3a Historic Character, Heritage Assets and Conservation Areas**

**A. Development proposals that affect designated and non-designated heritage assets will only be supported where they have assessed the historic significance of the proposed site and its setting to identify the impact of any development on historic character or heritage assets with reference to: relevant Local Plan Policies; national legislation and guidance (currently NPPF 2023); the Ancient Monuments and Areas Act; the Planning (Listed Buildings and Conservation Areas) Act; the Cornish Cultural Distinctiveness Assessment Framework (2019); the Framework Convention for the Protection of National Minorities; the Cornwall Council Heritage Strategy (2022).**

**Proposals affecting farmsteads should make reference to the Cornwall Historic Farmsteads Guidance**

**B. Proposals affecting Conservation Areas will only be supported where they are in compliance with national policy and the development plan.**

**C. All proposals affecting the historic environment should wherever possible conserve and enhance any historic character by undertaking repair and**

## **conservation work to a heritage asset where appropriate**

### **Policy 3b The Cornwall and West Devon Mining Landscape World Heritage Site**

A. All development proposals within, or in the setting of, the Tregonning and Gwinear Mining Districts with Trewavas of Area Three of the Cornwall and West Devon Mining Landscape World Heritage Site will be required to accord with the national and local heritage policies, including policies contained within the World Heritage Site Management Plan and guidance set out within any WHS Supplementary Planning documentation.

B. Development will not be supported in fields that are characteristic of mineworkers' smallholdings, even when these may have seen the loss of one or more field boundaries as part of later amalgamation, or a change in the use of the land, where these fields continue to provide an appreciable contribution to the setting of smallholding fieldscapes, mining settlements or former mine sites.

C. Little or no weight will be given to attempts to demonstrate that a development is not located within a smallholding solely on the basis of the Tithe apportionment/maps and historic census records. In instances where there is a high probability of an application site having once been in use as part of a mineworker's smallholding, then the precautionary approach will be adopted when assessing such proposals. In such instances and where characteristics, including but not limited to size, location and association, indicate that the application site may be part of a former smallholding then development will not be supported.

### **COMMENT**

**I have no comment on this policy.**

### **Policy 4a Renewable Energy**

Small scale domestic renewable energy such as solar panels and heat pumps will be supported where it can be demonstrated that proposals conform with CEDPD Policies on renewable energy (RE1) and small-scale renewables (SEC1) and are of low visual, heritage and landscape impact.

## COMMENT

I have no comment on this policy.

### **Policy 4b Energy Efficiency**

A. The design and standard of any new development should aim to meet a high level of sustainable design and construction and be optimised for energy efficiency, targeting zero carbon emissions. Alterations to existing buildings requiring planning permission must be designed with energy reduction in mind and comply with sustainable design and construction standards.

Development proposals should demonstrate that they comply with the requirements of policy SEC1 in the CEDPD covering the construction and retrofitting of buildings.

B. Non-residential developments should aim to meet the Buildings Research Establishment BREEAM building standard 'excellent'.

C. The retrofitting of heritage properties/assets including listed buildings and those in conservation areas and the WHS would be supported to reduce energy demand and to generate renewable energy where appropriate, providing it safeguards historic and architectural special interest and development is achieved with the full engagement and permissions of relevant organisations.

## COMMENT

I have no comment on this policy.

### **Policy 4c Natural Capital and Climate Resilience**

A. Proposals should make use of Sustainable Urban Drainage principles and be able to demonstrate the following:

i. How they will reduce as far as possible the use of hard, engineered drainage systems

ii. How they intend to manage water at or near the surface and maximise infiltration

into the ground, and

- iii. How they will use drainage solutions to deliver ecological and community benefits
- iv. How they have maximised the use of “natural” SuDS features including infiltration, swales, storage basins, ponds and wetlands
- v. How they have considered water efficiency, for example by incorporating rainwater harvesting technology alongside other SuDS features
- vi. How they have considered tree planting, street trees, rain gardens and green roofs

B. Development proposals must include a drainage strategy to show how they have included adequate drainage that can cope with a 1 in 100-year flooding event.

C. Any proposed new development adjacent to the coast should demonstrate consistency with the Cornwall & Isles of Scilly Shoreline Management Plan (SMP2, 2011, the review of 2016 and any further updates).

Proposals to undertake minor works to improve sea defences and strengthen or stabilise cliff faces will be supported where it can be demonstrated that the works are consistent with the management approach in the latest version of the Shoreline Management Plan. While it will be important to minimise any adverse environmental impact, essential works to protect the listed buildings at Prussia Cove including public access will be supported.

D. In the low-lying land and open valley slopes:

- i. Proposals for a development must minimise any increase in the area of hard, impermeable surfaces
- ii. Proposals would be supported for Natural Flood Management (NFM) schemes through Working with Natural Processes (WWNP) to reduce flooding involving implementing measures that help to protect, restore and emulate the natural functions of catchments, floodplains and rivers

## COMMENT

**I have no comment on this policy.**

### **Policy 5a Development Boundaries**

This plan establishes new boundaries for the coherent settlements within the Neighbourhood Plan Area and where the settlement edge of villages that have their core in adjacent parishes has extended into the Parish.

Development boundaries have been defined for the following seven areas of settlement (see Maps):

5a.1 St Hilary

5a.2 St Hilary Churchtown

5a.3 Relubbus (part within St Hilary Parish boundary)

5a.4 Plain-an-Gwarry

5a.5 Rosudgeon (part within St Hilary Parish boundary)

5a.6 Gwallon (part within St Hilary Parish boundary)

5a.7 Gears Lane (part within the Designated Area for the St Hilary NDP)

Small scale infill and rounding off within the development boundaries will be supported.

## COMMENT

**I have received representation from Perranuthnoe Parish Council in relation to the proposed development boundary for Gears Lane, part of which, as a result of the change in Parish boundaries, now falls within Perranuthnoe Parish but is within the designated area for the St Hilary NDP. Perranuthnoe PC request amendments to the boundary as follows:**

**"1. That the settlement boundary is tightened around its western edge at the former Museum site to limit the settlement to the existing building and its immediate curtilage rather than include the significant area of land that is behind the Old Woodyard site. Perranuthnoe PC do not wish to encourage any further development in this area which is on the edge of open countryside.**

**2. That the settlement boundary is adjusted on its eastern edge to remove the narrow slither of garden of Chy Golfury which runs behind the boundary of other properties on Gears Lane and is on the very edge of open countryside."**

**I have examined the evidence and the methodology underpinning the position of the development boundaries and am satisfied that the policy meets the Basic Conditions. On the basis that the process of establishing the development boundaries followed an established methodology and this policy has undergone an appropriate level of consultation at all stages of the plan preparation I do not consider it would be appropriate for me to recommend that any change to the development boundary for Gears Lane, as proposed by Perranuthnoe PC.**

### **Policy 5b Affordable Housing**

Proposals for affordable housing development on exception sites in accordance with Policy 9 of the Cornwall Local Plan will be supported where:

- i. They are closely related or immediately adjacent to a settlement area and
- ii. They are of a scale and design which is in keeping with the settlement area and contributes to preserving and enhancing the rural identity of the parish and
- iii. The type and tenure meets the identified needs of local people in housing need and
- iv. They are available firstly to people with an identified local connection to the parish in line with Cornwall Council policy and
- v. They are secured as affordable housing in perpetuity and

vi. They are sustainably located within walking distance of local services and public transport to main centres and

vii. Opportunities for affordable self-build homes are encouraged

## **COMMENT**

**For clarity and consistency with other policies in the plan the reference to "settlement areas" in this policy should be replaced with "development boundaries".**

### **Policy 5c Principal Residency**

New open market housing, excluding replacement dwellings, will only be supported where there is a restriction to ensure its occupancy as a Principal Residence.

A planning condition or obligation will be placed on new open market homes requiring that they are occupied only as the primary (principal) residence of those persons entitled to occupy them.

Occupiers of homes with a principal residence condition will be required to keep proof that they are meeting the obligation or condition and be obliged to provide this proof if/when Cornwall Council requests this information. Proof of principal residence is via verifiable evidence which could include, for example, (but not be limited to) residents being registered on the local electoral register.

## **COMMENT**

**Evidence to support this policy has been produced both in the Neighbourhood Development Plan itself and the supporting evidence base available to view in full on the Cornwall Council website. The evidence is largely based on the 2011 Census, that evidence sets the second home figure at 13%. The Housing Evidence Base document has taken the information from the 2011 Census, information from the Household Survey conducted in 2017 and new housing numbers in the Parish to conclude that the percentage of non-resident dwellings may have increased to 15%. I have subsequently been provided**

with information from the 2021 Census (available to view on the Cornwall Council website) which indicates that the percentage of unoccupied properties has increased to 15.9%.

Cornwall Council have considered the evidence provided and have concluded that it is insufficient to support this restriction. I have taken this response into account when reaching my conclusion.

I accept that it is not easy to provide the information and statistics relating to ownership/ occupation of houses within any parish area however the imposition of a Principal Residence policy has serious implications and it is necessary to ensure that there is strong evidence to support the imposition of such a restriction.

I have given very serious consideration as to whether or not I can find that this policy meets the Basic Conditions. My concerns relate to how the policy can meet the Basic Conditions particularly having regard to the NPPF – “delivering a wide choice of quality homes” and “delivering sustainable development” together with how the policy meets the requirements of the Human Rights Act 1988 and other European Legislation.

I accept that the number of second homes will probably have increased since the 15.9% indicated by the 2021 Census figures however I have not been provided with evidence that it has reached a % that would support the imposition of this policy restriction.

I have also considered in detail Mr. Justice (now Lord Justice) Hickinbottom’s judgment in R (RLT Environment Ltd) v Cornwall Council in relation to Policy H2 of the St. Ives Neighbourhood Development Plan. He concluded:

“that Policy H2 is in pursuit of legitimate public interests identified in article 8(2), namely the interests of the economic well-being of the country, and for the protection of the rights and freedoms of others.”

I have also carefully considered the potential for unintended consequences on the local housing market and the future delivery of affordable housing.



I accept that there is community support for a principal residency occupancy restriction however my decision is one of planning balance and I conclude that in this instance I have not been provided with evidence to satisfy me that the imposition of a principal residency condition would meet the Basic Conditions and Policy 5c should be deleted. There is however opportunity to review the plan and this policy at a later date should the % increase to a level where such a policy restriction could be justified.

### **Policy 5d Development in the Open Countryside**

Where planning permission is required, proposals for development outside of settlement areas will be supported where:

- i. They meet the requirements of Policy 7 or Policy 9 of the Cornwall Local Plan and
- ii. They meet the requirements of Policy AL1 of the Climate Emergency Development Plan Document (CEDPD)

Proposals to convert wooden, concrete or metal barns and sheds to residential accommodation will not be supported.

### **COMMENT**

**For clarity and consistency with other policies in the plan the reference to "settlement areas" in this policy should be replaced with "development boundaries".**

### **Policy 6a Sustainable Transport and Access**

A. Proposals for new walking or cycle routes, or improvements to existing routes will be supported where:

- i. They are sympathetic to the coastal and rural character of the parish and
- ii. They improve the signage of public rights of way within the parish and
- iii. Effective arrangements are in place for their long-term maintenance

iv. They are designed and improved to be accessible to all including people with disabilities by applying the principle of “Least Restrictive Access”

Proposals which would see the loss of existing footpaths will not be supported unless a suitable alternative route is provided offering the same or better connectivity and accessibility.

B. Provision of safe and pleasant cycle ways and connection points within the parish

connecting to the national cycle route network and surrounding areas using the existing shared highway network through support for the introduction of traffic calming, signage, speed restrictions and quiet lanes designation where appropriate will be supported.

C. Proposals to improve existing or create new pavements adjacent to highways to improve pedestrian safety will be supported.

## **COMMENT**

**I have no comment on this policy.**

### **Policy 6b Leisure, Recreation, Local Facilities and Services**

A. Proposals for new, or improvements to, existing community buildings and leisure facilities, will be supported where:

- i. Any proposed building is a maximum of two storeys high
- ii. The proposed development does not restrict any valued views or vistas
- iii. The design is sensitive to the local historic and landscape character
- iv. Sufficient car parking is available

B. Loss or partial loss of community or leisure facilities, including open spaces and rights of way, will only be supported where:

- i. Alternative facilities of an equal or greater quality are provided nearby or

ii. It can be demonstrated that there is no longer any need or demand for the existing facility or

iii. The existing facility is no longer economically viable despite all reasonable attempts to maintain it

## COMMENT

**I have no comment on this policy.**

### **Policy 7a Design**

Proposals for development will be supported where:

A. The design has been informed by the St Hilary Parish Design Guide, with applicants being strongly encouraged to complete the design guide checklist

B. The proposal meets the requirements of any future St Hilary Parish Design Code

C. It is demonstrated that light spill from within buildings will be reduced by:

(i) avoiding or recessing large areas of vertical fenestration

(ii) avoiding glazing which is facing upwards (whether horizontal or angled) including conservatory roofs

(iii) within a site, locating and orientating development as sensitively as possible

## COMMENT

**I have no comment on this policy.**

### **Policy 7b Housing Standards**

Proposals for new homes (market-led or affordable) should:

A. Meet the requirements of Part M4(2) of building standards

B. Include sufficient and suitable outside space that meets the requirement of Policy

G1(8) of the CEDPD enabling a range of activities and support for nature

C. Include sufficient off-road parking in order to avoid creating parking issues within the settlements in line with Cornwall Council standards

D. Include covered bin storage and secure storage within the house or plot design for cycles and other healthy lifestyle equipment

E. Use Cornish hedging or walls of local granite for boundaries and not wooden fencing wherever possible

## **COMMENT**

**Building Regulations is a separate policy regime to that for planning, for clarity and to meet the Basic Conditions, the policy should be modified as follows:**

### **Policy 7b Housing Standards**

**Proposals for new homes (market-led or affordable) will be supported subject to other policies in the development plan where they:**

**A. i. Include accessible and adaptable dwellings to meet the future needs of occupants (Part M4(2) of Building Regulations).**

**A. ii. where there is an identified housing need Include units which are fully wheelchair adaptable or accessible (Part M4(3) of the Building Regulations)**

**B. Include sufficient and suitable outside space that meets the requirement of Policy G1(8) of the CEDPD enabling a range of activities and support for nature**

**C. Include sufficient off-road parking in order to avoid creating parking issues within the settlements in line with Cornwall Council standards**

**D. Include covered bin storage and secure storage within the house or plot design for cycles and other healthy lifestyle equipment**

**E. Use Cornish hedging or walls of local granite for boundaries and not wooden fencing wherever possible**

## **Economy**

### **Policy 8a Employment Space**

A. Sustainable proposals to convert existing buildings into workspaces, or for the development of new employment space, will be supported where they are within or adjoining development boundaries.

B. Proposals for sustainable new employment space outside of development boundaries will be supported where a clear locational need for the business on the proposed site can be demonstrated and no suitable alternative exists.

#### **COMMENT**

**I have no comment on this policy.**

### **Policy 8b Agriculture**

A. Where planning permission is required, proposals for the conversion of existing redundant farm buildings will be supported where:

- i. It would create new small scale employment space or
- ii. If it is for residential use (including holiday use), only where it would preserve a structurally sound, traditional stone building of a viable size

B. Proposals for new buildings which would support an existing farm business will be supported where any new building is located within the existing built farm settlement.

C. Proposals for agricultural or horticultural uses on unused fields will be supported.

#### **COMMENT**

**I have no comment on this policy.**

### **Policy 8c Tourism**

A. Proposals for development that support the tourism industry, including permanent and temporary accommodation should ensure that:

i. The scale and design of accommodation will not have a negative impact, including consideration of any cumulative impact on heritage assets, on landscape character or any negative visual impact on the rural character of the parish area and

ii. The proposal does not involve the net loss of any existing residential dwellings  
and

iii. The proposed development is not on any known floodplain and

iv. The proposal is in a sustainable location, within walking distance to sustainable transport links and

v. The proposal contributes to the diversity of tourist accommodation within the parish and

vi. There is a clear demonstration of the need for additional tourist accommodation at the proposed location

B. Proposals for new or expanded tourist accommodation (to include camping, caravans and other holiday accommodation) will not be supported within the AONB, the WHS or open countryside.

## **COMMENT**

**For clarity Clause A of this policy should be modified as follows:**

**A. Proposals for development that support the tourism industry, including permanent and temporary holiday accommodation will be supported where:**

## SECTION 5

### Conclusion and Recommendations

- 1. I find that the St Hilary 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 St Hilary 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 St Hilary 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 St Hilary Neighbourhood Development Plan subject to the recommended modifications can proceed to Referendum.*

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April 2024

