



Appeal Decision

Site visit made on 27 January 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Appeal Ref: APP/D0840/W/19/3239304

Land located on the east of Wesley Road, Cubert, Cornwall TR8 5HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Abe Simpson of Kingsley Homes Limited against the decision of Cornwall Council.
 - The application Ref PA18/08384, dated 7 September 2018, was refused by notice dated 9 September 2019.
 - The development proposed is a residential development of up to 30 dwellings.
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Decision

1. The appeal is allowed and planning permission granted for a residential development of up to 30 dwellings at Land located on the east of Wesley Road, Cubert, Cornwall TR8 5HB in accordance with the terms of the application, Ref PA18/08384, dated 7 September 2018, subject to the conditions set out in the schedule.

Application for costs

2. An application for costs was made by Kingsley Homes Limited against Cornwall Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application has been made in outline with all matters reserved for future consideration. Concept site plans showing alternative layouts have been submitted and I have had regard to these as potential options for layouts at the reserved matters stage were outline permission to be granted.
4. A signed and dated legal agreement has been submitted with obligations and I will examine this matter later.
5. During the processing of the appeal, the Council adopted the Housing Supplementary Planning Document (the Housing SPD) and this document carries full weight. The document appears to be very similar to the consultation version following the schedule of proposed changes and I am satisfied that no party would be prejudiced by the consideration of the document as part of the appeal considerations.

Main Issues

6. The main issues are:

- whether the development would meet an identified local need for affordable housing,
- the effect of the development on the character and appearance of the area,
- the effect of the proposal on the setting of The Vicarage, a Grade II Listed Building, and on Lantern Cottage, a non-designated heritage asset, and
- the effect of the proposal on the best and most versatile agricultural land.

Reasons

Affordable housing

7. Policy 9 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan) sets out the approach to the delivery of affordable housing on rural exception sites. The policy explains that the number, type, size and tenure of the affordable dwellings should reflect identified local needs as evidenced through the Cornwall Housing Register or any specific local surveys completed using an approved methodology.
8. Policy 9 also states that the Council will secure the first and future occupation of the affordable homes to those with a housing need and local connection to the settlement or parish in line with the Council's adopted local connection policies.
9. The Housing SPD explains that as set out in the Local Plan, housing need will always be considered at the parish level (if the site is in a parish) or settlement level (if a site is in a town).
10. In this case, the site lies within the Parish of Cubert. The Council undertook a Housing Need Survey for the Cubert Parish and the Final Report is dated 10 May 2019. The Report concludes that the combined registered and surveyed need indicates 36 households to be in affordable housing need. This was made up of 12 households on the Homechoice Register (those seeking an affordable rented home), 7 households registered with Help to Buy South West (those seeking an affordable home to buy) and 17 "hidden" households who would like an affordable home, but were not at that time registered with the Council.
11. When the planning application was considered at the Committee, the Affordable Housing Team provided the then latest figures (August 2019) which showed 16 households on the Homechoice Register and 10 households registered with Help to Buy South West. A total of 26 households registered as being in affordable housing need.
12. The Council in their appeal statement¹ has provided more recent figures which show 23 households on the Homechoice Register and 12 registered with Help to Buy South West. A total of 35 households registered.
13. These latter two sets of figures do not include "hidden" households and it may be the case that "hidden" households have now registered and therefore they appear in the figures in this way. This information can only be a snap shot in

¹ Dated 2 January 2020.

time and an estimate of affordable housing need within a Parish, nevertheless, it appears to constitute the most reliable data available. Policy 9 of the Local Plan specifically refers to identifying local needs evidence through the Cornwall Housing Register. In this case, based on the latest set of figures, which have been supplied by the Council, and are generally consistent with previous information, I consider that the affordable housing need for the Parish of Cubert is about 35 households.

14. My attention has been drawn to a scheme which is under construction and would deliver 6 affordable units at Holywell Road, Cubert². There is also a scheme at Penhale Camp³ (within the Parish of Perranzabuloe) which would provide 20 on site affordable dwellings and an off-site contribution that is explained would equate to another 20 dwellings. The main vehicular access to the site is through Cubert and the S106 Agreement names the parishes of Cubert and Perranzabuloe as both the primary area. Notwithstanding the individual parish approach to the delivery of affordable housing, this site could logically and reasonably be considered to meet some of the affordable housing needs of Cubert. However, it seems that on the latest information available that this site has stalled⁴ and this contribution has been excluded from the Council's affordable housing calculations in their appeal statement.
15. Consequently, on this basis, within the Parish of Cubert, there is presently 6 units of affordable housing likely to be delivered and a need for about 35 units, leaving an unmet need of about 29 homes.
16. The appeal scheme proposes up to 30 houses. The proposal is in outline form and the accompanying legal agreement sets out that the starting point would be the delivery of all the units as affordable but this would be subject to a viability test with a restriction of no less than 50% affordable units. This would accord with the approach in Policy 9 of the Local Plan. In all probability, based on the information from previous sites, the appeal proposal would deliver less than 100% of the units as affordable accommodation. Given the analysis of the housing need in Cubert Parish, the site would therefore meet some, if not most, of the identified need for affordable housing and would therefore be policy compliant in this respect.
17. However, representations including from the Council, Parish Council, Wesley Road Action Group and local residents raise the issue that there are a number of residential permissions in Crantock which include the delivery of affordable housing such that they would significantly exceed the requirement for such affordable accommodation in that Parish. It is said that looking across the area as a whole the site at Cubert is not needed, because it is likely that those in housing need could be accommodated in nearby Crantock. However, this approach would not meet with the policy requirement to look at the affordable housing need at a parish level or address the finding in the Cubert Parish Housing Need Survey (May 2019) that of the 32 households stated to be in housing need and with a local connection all wanted to live in the Parish of Cubert. I am therefore not satisfied that the planning permissions granted in Crantock can be used to conclude, in terms of the application of the

² PA17/01847 (associated reserved matters application PA18/03744- PA19/04088).

³ PA15/07114. Penhale Camp, Camp Road, Holywell Bay.

⁴ Table 5 (Planning Permissions not considered to be deliverable) of the Cornwall Monitoring Report - Cornwall 5 Year Housing Land Supply Statement 2019 - comments that the site is currently stalled due to significant offsite infrastructure costs.

development plan, that there is no or less need for the affordable housing in Cubert.

18. Also, the evidence does not satisfactorily demonstrate that the circumstances of Cubert and Crantock would meet the Cluster Parish Approach explained in the Housing SPD as both appear to be able to meet their housing growth organically.
19. Furthermore, the information before me is that those with a connection to Cubert Parish would not be in the primary area of the cascade for the affordable units in Crantock. Also, where there was an opportunity to be eligible in subsequent cascades those with a Parish of Cubert connection would be considered for the housing alongside those from at least one other parish.
20. The approach to looking at the needs of each parish would accord with the policy in the National Planning Policy Framework (the Framework) that local planning authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs.
21. Taking all these matters into account, I conclude that the site would meet an identified local housing need for the parish and comply with the requirements of Policy 9 of the Local Plan in this respect which seeks to deliver rural exception sites where the number of affordable dwellings reflect identified local needs.

Character and appearance

22. The wider area forms part of the Landscape Character Area LCA14 Newlyn Downs as set out in the Cornwall and Isles of Scilly Landscape Character Study which describes distinctive features of the landscape as including its wider rolling pastoral and arable character with Cornish hedges.
23. The site appears to display features of this Character Area and is an open field with established Cornish hedge boundaries at the edge of the village. There are wide ranging and distant views from the adjoining roads, out over the site, towards open countryside. However, while undeveloped and open, the site is influenced by the adjoining housing in Wesley Road, the dwellings, village hall and allotments along High Lanes, and by the large barn and other buildings further down the slope. Overall the site makes a modest, but positive, contribution to the character and appearance of the area at this entrance to the village.
24. While the character and appearance of the site would change from undeveloped farm land to residential development it would be adjoining the nucleated form of the village, which sits in an elevated position within the landscape. The existing established field boundaries would provide some containment and views from countryside locations towards the site would be in the context of the backdrop of the existing village.
25. The new housing would be well related to the physical form of the village and appropriate in scale to the extent of the adjoining built area. Overall while there would be a clear change to the character and appearance of the field the impact of the change would be localised, and with high quality landscaping, layout and design of dwellings at the reserved matters stage, the proposed

- housing would form an acceptable extension of built development to the village, and not detract from the character and appearance of the wider area.
26. I have had regard to the Landscape and Visual Appraisal (September 2019) (the LVA) and the detailed response to this document from the Council in its statement. Overall, I concur with the conclusions of the LVA that there would be a degree of effects on the landscape but only at close proximity where the landscape is already influenced by the proximity of the village and roads, whereas the wider, more rural landscape would not be significantly affected.
 27. With appropriate details at the reserved matters stage, the scheme would meet the Framework requirement to be sympathetic to local character including the surrounding built environment and landscape setting. Furthermore, as the proposal would be close to the village, and seen in the context of the existing built form, I am satisfied that the extent of development would not harm the intrinsic character and beauty of the countryside in this location.
 28. Accordingly, I conclude that the proposal would not harm the character and appearance of the area and therefore comply with Policies 1, 2, 9, 12, 21 and 23 of the Local Plan which seek, amongst other things, in these respects to sustain local distinctiveness and character.
 29. I consider this to be a rural exception site proposal and the location and impact would comply with Policy 9 of the Local Plan. In this respect the proposal would be in accordance with the overall intentions of the development plan for the provision of this type of housing notwithstanding that the scheme would not meet with the exceptions for new housing in the countryside as defined by Policy 7 of the Local Plan.

Heritage assets

30. The Vicarage is a Grade II Listed Building located in reasonably sizeable grounds. It has a vehicular access by the junction of High Lanes, Holywell Road and Wesley Road and a visually prominent elevation that faces towards the Church (a Grade I Listed Building). The Vicarage is significant including because of its 18th Century origins, design, layout, materials, fenestration together with its relationship to the nearby church.
31. I am mindful of the duty to have special regard to the desirability of preserving listed buildings, their setting and features of special architectural or historic interest which they possess.
32. The setting to The Vicarage includes the entranceway area by the junction, although because of the established trees within the grounds and the spacing to the building, the views of the building from this area are filtered and limited. While the details would be considered at the reserved matters stage, in all likelihood and having regard to the proposals shown in the concept plans, there would be built development of housing at this road frontage and junction area and this would change the character of the immediate surroundings. Also, from the footpath crossing the farm land near the site the views towards this junction area would become more built up.
33. However, given the relationship, spacing and established trees there would be limited inter-visibility between the new housing and The Vicarage. The housing would lead to a reasonably minor change in the way the entranceway to the listed building was experienced and therefore a limited change to its setting.

34. Overall, the development would lead to less than substantial harm to the setting of the listed building and therefore its significance. However, given the likely relationship between the development and the heritage asset and its setting, the impact would be at the lower end of the range of less than substantial harm.
35. The Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation and this is irrespective of the level of any potential harm. The Framework also requires that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Any harm to the significance of a designated heritage asset should require clear and convincing justification.
36. The reason for refusal also refers to harm to the setting of Lantern Cottage, a non-designated heritage asset. This building is located by the junction opposite part of the site. The evidence indicates that it is considered to have been built in 1765 for John Wesley and thought to be the oldest example of a Wesleyan Chapel in Cornwall. The building is presently a dwelling, has some modern alterations to the external fabric and is angled towards Holywell Road. Its significance includes its historic fabric and also, in particular, its historic associations.
37. Direct views of the building when approaching along High Lanes would be largely unaffected although the rural setting would be altered to a more urban one with the location of housing on the northern side of the road. The fabric of the building would not be affected although the wider surroundings would be altered by the proposed housing. However, given the orientation of Lantern Cottage, the likely siting of the dwellings, having regard to the concept plans and the position of the site on the other side of the road, and that existing dwellings already adjoin Lantern Cottage, I consider that the impact to the setting of Lantern Cottage and therefore its significance would be minor.
38. In this respect the Framework advises that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application, and that this will require a balanced judgement having regard to the scale of any harm or loss and the significance of the heritage asset.
39. Examining the public benefits of the scheme, up to 30 units would be delivered and the future occupants would, in all likelihood, given the location next to the village, support local services and facilities and there would be economic benefits during the construction phase. The scheme could provide a reasonably significant part, and potentially all, of the Parish's outstanding need for affordable housing. These are public benefits to which I attach significant weight in favour of the proposal.
40. While I attach great weight to the less than substantial harm to the setting and the significance of the listed building, I have also found that the public benefits of the proposal would afford significant weight. They are such that they provide clear and convincing justification that would outweigh the harm to the setting and significance of the listed building and to the non-designated heritage asset, Lantern Cottage.

41. In the light of the above analysis, I conclude that whilst there would be harm to the setting of both heritage assets and their significance, the combined harm would be outweighed by the public benefits. As a consequence, the scheme would comply with Policy 24 of the Local Plan and the Framework which seek, amongst other things, that any harm to the significance of a designated or non-designated heritage asset must be justified.

Best and most versatile agricultural land

42. The site is classified as Grade 2 farm land and therefore falls within the category of the best and most versatile agricultural land. I have had regard to the Agricultural Land Classification Report (21 May 2018) and that the scheme would result in the loss of over 1ha of farm land.
43. It is said that the land is limited by its capabilities in terms of agricultural production and modern agricultural machinery. However, it appears that the land has been productively farmed and I consider the land could be suitably maintained to be productive in the future. The Framework and Policy 21 of the Local Plan explain the economic and other benefits of the best and most versatile agricultural land should be taken into account and where significant development of agricultural land is demonstrated to be necessary, areas of poorer land should be preferred to those of higher quality.
44. The evidence indicates that much of the agricultural land surrounding the village falls within the best and most versatile category. If an exception site for affordable housing is to be delivered to meet the scale of housing need identified it is very likely to involve the best and most versatile farm land. I do not have detailed evidence that an alternative site with a poorer quality of agricultural land, that would also be well related to the physical form of the settlement, is available to meet the identified housing need in this case.
45. I am satisfied that the proposal would not lead to a significant loss of agricultural land given the scale of the proposal and the extent of adjoining farm land. Even if that were to be considered to be the case, the loss of the economic and other benefits from the land in agricultural use would be outweighed by the benefits of the proposed housing scheme.
46. For these reasons, I conclude that the loss of the site from agricultural use within the best and most versatile category would be acceptable and therefore not conflict with Policy 21 of the Local Plan or the Framework which seek, amongst other things, to make the best use of land and buildings.

Legal Agreement

Habitat site

47. The site would lie within the zone of recreational influence of the Penhale Dunes Special Area of Conservation (the SAC). Increased visitor numbers as a result of the proposed housing would have the potential to harm its special qualities. The Council has set out in the Terrestrial European Sites Mitigation Supplementary Planning Document Consultation Draft (May 2017) (the European Sites SPD) a mitigation strategy and, in respect of the SAC, a costed payment for each dwelling is proposed to provide Strategic Access Management and Monitoring (SAMM).

48. The appellant has provided a signed and dated agreement that provides the necessary financial contribution in accordance with the European Sites SPD to mitigate the impacts from recreation. Natural England has confirmed at the application stage that, on the basis of the appropriate financial contribution being secured for the associated SAMM, they concur with the Council's conclusion that the scheme would not have an adverse effect on the integrity of the SAC.
49. In these circumstances, when undertaking an Appropriate Assessment in accordance with the Conservation of Habitats and Species Regulations 2017, I am satisfied, as the appropriate mitigation is secured, that the proposal would not significantly and adversely impact on the integrity of the SAC, alone or in combination with other schemes. The proposal would therefore accord with Policy 22 of the Local Plan. Consequently, the obligation is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

Other obligations

50. The affordable housing obligation as set out in the agreement, including the viability assessment, mix, phasing, timing and cascade provisions are all necessary to meet with the requirements of Policy 9 of the Local Plan and the housing SPD to ensure that the site delivers the proposed affordable housing.
51. The education contribution is required having regard to the advice from the Council's Education Officer, the document Section 106 Planning Obligations Guidance for Education Provision and the school roll at the local schools, including Cubert School.
52. The off-site public open space contribution and on-site public space provision is required having regard to policies 12 and 13 of the Local Plan, the advice from the Council's Open Space Officer, and the approach set out in the Open Space Strategy for Larger Towns in Cornwall (July 2014).
53. The affordable housing requirement is fundamental to meet the application justification and the other obligations would mitigate the effects of the proposal. The affordable housing, education, off-site public open space and on-site public space obligations are all individually necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. All the obligations meet with the requirements set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

Other Matters

54. While there are some letters in support of the proposal, I have taken into account the detailed objections including from local residents, the Wesley Road Action Group, Cubert School and the Cubert Parish Council, and the petition.
55. The Council is able to demonstrate a 5 year supply of deliverable housing land across the development plan area and the housing figures in the St Agnes and Perranporth Community Network Area show a surplus. However, the proposal seeks to deliver affordable housing in this Parish for which there is an identified need. I understand that a larger scheme was proposed in the past which included the adjoining field, however that is not the scheme before me. I also

note the concern that the site would lead to an adjoining site which it is said would form an infill site which would be contrary to policy and guidance. However, I have treated this site on its individual merits, based on an exception site approach and any other site would need to be considered on its merits and the policy situation at that time were proposals to come forward in the future.

56. Issues including impacts on the amenity of local residents, congestion particularly at school start and finish times, highway, traffic and parking concerns, the sustainability of the location in planning terms, potential second home ownership and cost of any open market units, and the impacts on infrastructure were all considered by the Council and do not form a reason for refusal. Having examined these matters, I have found no reason to disagree. Matters in respect of archaeology and ecology can be satisfactorily addressed by planning conditions in any approval. I have noted the background and that the site is intended to be excluded from development on the basis of the 1973 Development Plan for Cubert, however, I am required to determine the proposal based on the existing development plan unless material planning considerations indicate otherwise. I therefore attach limited weight to these matters.
57. I have noted the concerns with regard that the local school is operating at and beyond capacity, as well as the secondary school provision in the wider area. However, subject to the appropriate obligation, the Council do not raise objection on these matters. Again, I have found no reason to disagree with the Council in this respect.
58. Concerns are raised that the application has been made in outline without a viability appraisal. While the Housing SPD does not encourage this approach, it explains the mechanism when an outline proposal is submitted and the legal agreement ensures that the starting point for the assessment is 100% affordable units with no less than 50% affordable units. The land take requirement for the affordable units would also be able to be addressed at the reserved matters stage. This would be a policy compliant approach.
59. I have noted the references that the Council would be unlikely to support outline proposals on rural exception sites in a parish with low or marginal need and/or a sensitive site unless there is exceptional justification or community support is demonstrated. This is a case where there is an identified local need for the reasons explained above and not one of low or marginal need or a sensitive site such as an Area of Outstanding Natural Beauty. I fully appreciate that there are substantial objections to the proposal, however, Policy 9 of the Local Plan does not require local support as a pre-requisite for an affordable housing scheme and, in this case, the scheme is compliant with the development plan when considered as a whole.

Conditions

60. The Council has recommended, on a without prejudice basis, that were I minded to allow the appeal those conditions originally set out in the Committee Report should be attached to any approval. I have had regard to those conditions and the advice in the Planning Practice Guidance.
61. Conditions setting out the time limits for the submission of reserved matters and the commencement for this application, and a condition specifying the

approved plan, are necessary in the interests of certainty. A condition seeking tree protection is not necessary at the outline stage as landscaping is a reserved matter and the small number of trees on the site can be assessed at that stage.

62. A condition requiring a programme of archaeological work is necessary following the findings and recommendations in the Land off Wesley Road, Cubert, Cornwall – Results of an Archaeological Evaluation report. Conditions requiring the submission and approval of a scheme for the management of foul and surface water, and for the foul drainage to be connected to the main system, are necessary in the interests of pollution and flood water control.
63. A condition requiring the submission and approval of external lighting is necessary in the interests of the character and appearance of the area. It is necessary for the existing hedgerows to be retained as they are important landscape features. In accordance with the ecological report it is necessary for the development to be carried out to comply with these recommendations.
64. It is necessary that archaeology, and foul and surface water drainage matters are dealt with as pre-commencement conditions because of the timing that is required in relation to archaeology and in the case of drainage so that these matters can be incorporated into the plans from the outset.

Conclusion

65. For the above reasons, and having regard to all other matters raised, the proposal would comply with the development plan when considered as a whole and there are no material considerations that indicate a decision should be made other than in accordance with the development plan. I therefore conclude, subject to the recommended conditions and the obligations in the agreement, that the appeal should be allowed.

David Wyborn

INSPECTOR

Schedule of conditions

- 1) Details of the access, appearance, landscaping, layout and scale,(hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) An application for approval of reserved matters must be made no later than the expiration of 3 years from the date of this decision and the development hereby approved shall commence no later than 2 years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 3) The development hereby permitted shall be carried out in accordance with the Existing Site and Location Plan drawing number 2582.C.300RevA.
- 4) No development shall take place/commence until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions, and:
 1. The programme and methodology of site investigation and recording;
 2. The programme for post investigation assessment;
 3. Provision to be made for analysis of the site investigation and recording;
 4. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
 5. Provision to be made for archived position of the analysis and records of the site investigation; and
 6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No development shall take place other than in accordance with the approved Written Scheme of Investigation.

The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the approved Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

- 5) No development approved by this permission shall be commenced until details of a scheme for the provision of foul and surface water management has been submitted to and approved in writing by the Local Planning Authority. The details shall include:
 1. Details of the finalised drainage schemes including calculations and layout;
 2. Confirmation from South West Water Ltd that the foul network has sufficient capacity to cater for this development;
 3. A Construction Surface Water Management Plan;
 4. A Construction Quality Control Plan;
 5. A plan indicating the provisions for exceedance pathways, overland flow routes and proposed detention features;
 6. A plan indicating the phasing of development;
 7. A timetable of construction;

8. Confirmation of who will maintain the drainage systems and a plan for the future maintenance and management, including responsibilities for the drainage systems and overland flow routes.

The surface water drainage systems shall fully manage surface water flows resulting from the developed site up to the 1 in 100 year peak rainfall event plus a minimum allowance of 40% for the impact of climate change.

The approved scheme shall be implemented in accordance with the timetable so agreed and the scheme shall be managed and maintained in accordance with the approved details for the lifetime of the development.

- 6) The development hereby permitted shall not be occupied until details of all external lighting have been submitted to and approved in writing by the Local Planning Authority. The lighting shall be designed to minimise sky glow and light overspill onto the surrounding hedgerows and shall be designed in order to minimise its impact upon bats. The development shall be carried out in accordance with the approved details and shall thereafter be retained without alteration. No further external lights shall thereafter be installed.
- 7) Foul drainage from the development (and no other drainage) shall be connected to the public foul or combined sewer.
- 8) The existing hedgerows on the site boundaries shall be retained, except for where it is necessary to form the means of access to the site.
- 9) The development shall be carried out in accordance with the recommendations and mitigation measures identified within the Extended Phase One Habitat Survey of Land off Wesley Road, Cubert, Newquay, Cornwall dated 17 August 2018 and prepared by Spalding Associates (Environmental) Ltd.

End of Schedule