Cornwall Council

Report to:	**Planning Policy Advisory Committee**
Date:	**17 March 2016**
Title:	**St Ives Area Neighbourhood Development Plan: Plan Proposal Decision**
Portfolio Area:	**Planning**
Divisions Affected:	**St Ives East, St Ives West and Lelant and Carbis Bay**

Relevant Scrutiny Committee: **Scrutiny Management**

Key Decision:	**Y**	Approval and clearance obtained:	**Y**
Urgent Decision:	**N**	Date next steps can be taken: (e.g. referral on of recommendation or implementation of substantive decision)	**Normally 5 days after substantive decision is published**

Appropriate pre-decision notification given where an executive Decision? **N**

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Recommendation:

1. That the Planning Policy Advisory Committee recommends to the Portfolio Holder for Planning that the St Ives Area Neighbourhood Development Plan is amended according to the Examiner's recommendations and Cornwall Council's amendments under Regulation 12 of the Neighbourhood Planning (General) Regulations 2012, the plan proposal decision is published and the St Ives Area Neighbourhood Development Plan progresses to Referendum.

1. Executive summary

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The St Ives Area Neighbourhood Development Plan (NDP) has been successful at examination, with the Examiner recommending that the Plan should proceed to referendum, subject to a number of recommended amendments.

The Local Planning Authority is responsible for deciding what action to take in response to the Examiner's recommendation. This report details the recommendations of the Examiner and Cornwall Council and the amendments made to the NDP, which have been made with the involvement of the St Ives NDP steering group.

A letter has been received from the representatives of Gonwin Developments Ltd, who have an interest in a development site within the plan area, suggesting that the NDP cannot lawfully proceed to a referendum and that the Council would leave itself open to a judicial review challenge in the High Court, were it to progress the NDP. The issues raised in the letter are that:

- The second home restriction is incompatible with the Human Rights Act 1998
- The NDP is not in general conformity with the Penwith Local Plan 2004
- The NDP and the Examiner's report fail to give reasons and/or fails to have regard to relevant considerations in relation to the appropriateness of the second home restriction
- Due regard has not been given to the potential discriminatory impact of the second home restriction
- There has been a failure to comply with the Strategic Environmental Assessment Directive 2001 and the Environmental Assessment of Plans and Programmes 2004
- No,or no rational, reasons have been given for treating the emerging Local Plan housing target as a maximum
- No, or no rational, reasons have been given for the inconsistency with the National Planning Policy Framework (NPPF) of restrictive policies in the NDP
- Policy OS5 fails to meet the requirement of appropriateness in the light of the Examiner's unanswered criticisms

2. Background

The Council has a statutory duty to assist communities in the preparation of Neighbourhood Development Plans and Orders and to take plans through a process of Examination and Referendum.

The St Ives Area Neighbourhood Plan has been subject to the regulatory stages required by the Localism Act 2011 and the Neighbourhood Planning (General) Regulations 2012, as follows:

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- St Ives Area NDP Area designation 2 December 2013
- Pre-submission consultation 17 November 2014 until 2 January 2015
- Draft Plan submitted to Cornwall Council 5 March 2015
- Legal compliance agreed by Portfolio Holder Decision on 28 May 2015
- Publication consultation 18 June to 30 July 2015

Cornwall Council, with the agreement of the St Ives Town Council, appointed Ms Deborah McCann as Examiner on 28th July 2015. Ms McCann carried out the examination by written representations; she carried out an unaccompanied site visit and held a clarification meeting with the NDP Steering Group and Cornwall Council officers.

The Council's comments on the Publication draft plan were reported to and agreed by Planning PAC on 16th September 2015 and were submitted to the Examiner, along with the 86 comments and the petitions received during the publication consultation. At the Examiner's request, Cornwall Council also supplied clarification of our advice on the draft policies and how they could be implemented and further background information on conservation areas and Article 4 directions.

Ms McCann supplied her final report on 2nd December 2015. The report concluded that the St Ives Area NDP could proceed to referendum, subject to some recommended modifications to make the wording of policies and their application clearer and to ensure that the NDP meets the basic conditions. The recommended modifications are:

<u>General recommendations</u>

- Reference to the emerging Cornwall Local Plan should be removed. Although the emerging Cornwall Local Plan is well advanced, the adopted plan for the area is the Penwith Local Plan (2004) saved policies and the St Ives Area NDP must be examined for general conformity with these policies. Although reference to the emerging Cornwall Local Plan does not prevent the St Ives Area NDP from meeting the Basic Conditions, the Examiner considers that these references should be removed.

- The plan is long and, in some areas, complex. Thinking of the end user, some of the background information should be moved into separate appendices. (again a recommendation – not a basic conditions issue)

- The Plan could be simplified and shortened by including an overarching policy covering development principles.

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- The Character Area policies should be retained, but repetition could be avoided by introducing an overarching 'Design Code' policy for this section.

- Policies requiring public consultation cannot exceed the requirements in the Development Plan and National Planning Policy Framework and some amendments to policies are required so they do not exceed this.

- In some circumstances in the Plan the word 'permitted' should be replaced by 'supported.'

Policy Specific Recommendations

- CH1: Local Community and Heritage Assets – needs to be revised to address the issue of categories of listed buildings. The policy should specify a viability test to judge whether community and/or economic use can continue.
- LED1: New Economic Proposals - some criteria should be removed and covered in an overarching 'Development Principles' policy. The 'Development Principles' Policy should require a Landscape and Visual Assessment to accompany applications in designated landscape areas.
- LED3: Catering and Food Outlets – wording should be amended to make the aim of the policy (i.e. support a balance of retail provision in the town centre) clear
- LED4: Redevelopment and Change of Use and LED 6: Agricultural Development Policies – the policies need to acknowledge that change of use is sometimes 'permitted development' and that these permitted changes are subject to change from time to time.
- LED8: Catered Holiday Accommodation – elements should be moved to an overarching policy
- H1: Affordable Housing – revise to reflect NPPF, Penwith Saved policies and remove reference to emerging policies.
- H2: Full Time Principal Residence Requirement – revise policy wording and remove reference to holiday lets
- H3: Phasing of Housing Development – delete this policy and add a requirement for a masterplan with phasing information to the site allocations policies
  NB in the revised document policies are renumbered following the deletion of H3 – this report refers to the original numbering in the Examination draft document and the Examiner's report.
- H4: Development of Un-Allocated Sites and Additional Sites Following the Commitment of all Allocated Sites – revise to reflect the adopted Development Plan, remove reference to emerging documents and remove requirements for community consultation that exceed NPPF

- H6: Subdivision of Dwellings – there is no definition of 'acceptable standard' – refer instead to 'residential amenity.' Space and building standards will be controlled through the Building Regulations
- H7: Residential Care and Nursing Homes – remove elements that will be in overarching 'Development Principles' policy and remove requirement for consultation that exceeds NPPF requirements.
- All Site Allocation policies (AM1 – 4 and AS1 – 6) will have to be revised to include a requirement for the submission of a master plan identifying phasing, due to the recommended deletion of Policy H3. Unnecessary repetition should be removed and a 'Development Principles' policy inserted.
- AM2: Land off Laity Lane and AM4 land South West of Gonwin Manor – remove reference to use class B2, which is not considered compatible with residential use
- OS5 – explain why the separation of settlements is important and reference the areas involved on a map
- OS6 – Open Areas within and on the edge of Settlements – explain the criteria for selections and omit the phrase ' but not exclusively'
- OS9 – Panorama, Vistas and Views – describe views, set criteria for their selection, explain their importance and identify the views on a map.
- B13- Historic Core Areas of Lelant: in addition to general comments on character areas, replace 'replicate' with 'reflect'
- BE17: Development in Existing Private Gardens – remove and include elements in the 'development principles' policy

The full report is attached at Appendix 1.

The Examiner's overall recommendation is that the Neighbourhood Plan, as amended following the recommendations, be submitted to a referendum and that the referendum area should be the same as, and not extend beyond, the NDP area.

3. Outcomes/outputs

The next stage of the Regulations requires the Council to:

- Decide what action to take in response to the recommendations of the Examiner
- Publish the decision and their reasons for it
- Publish the Examiner's report

This report is the Council's decision on how to incorporate the Examiner's recommendations. The power to decide whether the Examiner's amendments are incorporated or not, lies with the Local Planning Authority. However, the Examiner's report has been discussed in detail with the NDP Steering Group and the Neighbourhood Plan and the

proposed amendments to the Plan in response to the Examiner's report have been developed with the Group's involvement.

In line with the Examiner's recommendations, background information has been moved to appendices and maps and information on, for example, the evidence for the selection of open areas, has been added where requested, except for the identification of open spaces between settlements where the policy justification and policy wording has been rewritten to explain the approach but additional maps have not been inserted. Repetition has been removed from several of the policies, particularly the allocations, character area and economic policies and put into overarching Development Principles policy GD1. Requirements for additional public consultation have been removed and other minor amendments have been made, using recommended wording provided by the Examiner.

Other changes have been made in response to other advice from the Examiner, but where exact wording has not been provided, as follows.

The way that the emerging Cornwall Local Plan is referred to in the NDP has been altered. The NDP makes it clear that its policies are in general conformity with the Saved Policies of the Penwith District Local Plan 2004. A paragraph has been added to explain how the NDP will be reviewed for conformity once the Cornwall Local Plan is adopted. Whilst the NDP therefore still contains some references to the fact that there is an emerging Cornwall Local Plan, it does not rely on emerging documents within its policies. The Examiner recommended removing all references to the emerging Cornwall Local Plan, but commented that this was not a Basic Conditions issue. The Council therefore feels that the approach taken, where some references to the emerging Cornwall Local Plan remain in supporting text, reflects the current Development Plan position most clearly and is appropriate.

Additionally the phrase 'but not exclusively' has been removed from Policy CH1 where it relates to policy criteria to be applied to a list of heritage assets. Although the Examiner did not recommend its removal, she recommended the removal of the same phrase from open spaces policy OS6, where it refers to policy criteria to be applied to a list of open spaces. The Council considers this to be the correct approach; if placing requirements for certain criteria to be met in certain areas or for certain buildings the policy needs to make clear where those areas or buildings are.

Policy H3: Phasing of Housing development has been removed and Policy H4, now renumbered H3: Development of Additional Sites following the commitment of all Additional Sites – has been revised to remove requirements for additional consultation over and above the requirements

of the NPPF. Reference to the emerging Local Plan housing figure is in the supporting text.

4. Options available and consideration of risk

In the Examiner's report, the policy which received most comment is policy H2: Full Time Principal Residence Requirement. This policy received objections during the consultation period and these were considered and reported to PAC. The Council previously considered the Human Rights implications of this policy which were reported to PAC in September 2015 and that consideration is repeated here. The Council has recently received a letter from the agent for Gonwin Developments, an objector to the Plan, suggesting that they intend to apply to challenge the Plan in the High Court as a result of a number of alleged defects, including a failure to comply with Article 8 of the Human Rights Act 1998. For this reason it is for the Council to come to a view on the matter, before it considers whether to accept the Examiner's recommendation.

The Examiner has supplied the following reasoning to support her conclusion that policy H2 is not in conflict with the Human Rights Act 1998:

'As a Neighbourhood Plan Examiner I am required to satisfy myself that the Neighbourhood Development has taken "cognisance" of the European Convention of Human Rights and complies with the Human Rights Act 1998.

At the time of my examination I was satisfied that the Plan did "take cognisance of the Human Rights Convention" as a result of an examination of the plan itself, the supporting documents in general including the Basic Conditions Statement and specifically the report to the planning policy advisory committee (16/09/2015) which explored this issue in some detail. I also concluded that there was no evidence to support a contention that it did not comply with the Human Rights Act 1998.

In my consideration of Policy H2 in relation to the Human Rights Act 1998 my conclusion was:

- *Policy H2 as modified, did not infringe upon the right "to respect for his private and family life, his home and his correspondence". The requirement within the policy to provide proof if required of occupancy is no more onerous than that commonly required by LPA's when seeking to prevent the permanent occupation of holiday accommodation. I was satisfied that the suggested rewording of the policy was flexible enough to be applied appropriately.*

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- *I do not consider that the policy H2 is incompatible with the Human Rights Act 1998. Just as for the restrictions placed on agricultural occupancy or affordable housing it can be argued in the case of St Ives that it is in the interests of the economic well being of St Ives and does protect the rights and freedoms of others who are currently being affected by the unrestricted occupancy of houses as second homes. In addition, it only applies to new housing development therefore not placing a restriction on the entire housing market.*

- *The Plan and its supporting documentation does give clear and rational reasons for including Policy H2 (including supporting evidence). When considering the policy as presented I was mindful of this rationale and evidence and questioned it at length during the clarification meeting. I was satisfied that the policy – subject to the modifications suggested is appropriate. I made clear in my comment on the policy my rationale for its inclusion- subject to modification.*

- *I considered the potential of the discriminatory impact of the second home restriction however my rationale was as follows:*

a) The restriction will only apply to new housing development.
b) It will not apply retrospectively.
c) My suggested modification allowed for a flexibility in the implementation and enforcement.
d) It would not be any more discriminatory than the widely applied restrictions on agricultural dwellings or affordable housing which each place limits and restrictions on who can purchase or occupy property.

- *I set out a clear rationale of why I considered that Policy H2 as modified would be consistent with the NPPF.*

General Issues

- *I consider that the St Ives Neighbourhood Development Plan is in general conformity with the strategic policies within the Penwith Local Plan 2004. I am of the opinion that the Plan only has to be in general conformity with Policies that exist not ones that don't. The absence of an occupancy restriction policy within the Penwith Plan is irrelevant.*

- *As the emerging Local Plan is not the Development Plan I am unsure of the relevance of the reference "No, or no rational, reasons have been given for treating the emerging Local Plan "minimum" housing target as a maximum;"*

- *I raised issues in relation to Policy OS5 and suggested how the policy could be modified. I am unaware if these modifications have been implemented. On re reading my comments I consider that my comments*

could have been more explicit in that the policy does need to be modified as described.

- *In my consideration of Policy H2 and LED 8 I gave careful consideration of the evidence regarding the issues relating to the provision of holiday accommodation and its importance to the local economy. This issue was also discussed at the clarification meeting. The Plan does support existing and the provision of new holiday accommodation through policy LED 8.'*

This additional explanation from the Examiner provides a response to the suggestions in the letter on behalf of Gonwin Developments that the Examiner's report fails to give any, or any rational reasons and/or fails to have regard to relevant considerations in the relation to the appropriateness of the second home restriction. The Council will append the extra reasoning to the Examiner's report.

Your officers therefore set out below a summary of the main issues raised by the objector and their response:

(i). The second homes restriction is incompatible with the Human Rights Act

The Council must be sure that human rights are not breached by restrictions on the occupation of housing proposed by plan policies. Article 8 of Part 1 of Schedule 1 of the Human Rights Act 1998 is a qualified right providing freedom from interference with an individual's home, family and private life.

Article 8 states

> 'Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

It is questionable whether the article is in play where the restriction is imposed, as here, only on newly constructed accommodation so that those who subsequently purchase or occupy the homes subject to the restriction are aware of the restriction from the outset. However, it is prudent to assess the applicability of Article 8 from the outset of the creation of the policy since it may be invoked by those adversely affected in the case of enforcement for a breach of the restriction. In any event,

the Council will need to be alert to the potential for the existence of such issues when exercising its discretion to take enforcement action on the breach of any such restriction.

Article 8 requires that the restriction be justified in terms of necessity and proportionality. In the St Ives Area Neighbourhood Plan, evidence has been presented of the harm that excessive levels of second homes has on the social fabric of the community which harm will continue unabated if no such restriction is imposed to prevent the use and occupation of new homes by the second home and holiday home market and that it is therefore contrary to sustainable development. This conclusion was accepted by the Examiner. Your officers are of the view that members are entitled to conclude on the evidence base of the NDP that the policy is a necessary and proportionate response to a particular local issue of some significance to those living in the area of the Plan.

The policy contemplates that the restriction will be imposed by condition or by planning obligations under Section 106 of the Town and Country Planning Act, as amended. Paragraph 206 of the NPPF gives the six tests for a valid condition; they must be necessary, relevant to planning, relevant to the development permitted and be enforceable, precise and reasonable in all other respects. The legal tests for a valid condition are that they must be imposed for a planning purpose and not for any other ulterior purpose; they must be fairly and reasonably related to the development permitted by the planning permission; and the condition should not be so unreasonable that no reasonable planning authority could have imposed it.

Given that there is a strong evidence base in support of this position of a restriction on second homes in the Plan area, your officers believe that the case can be made for the restriction in terms of both legal and policy requirements. The Examiner concluded that, 'due to the adverse impact on the local community/economy of the uncontrolled growth of second homes the restriction of further second homes does in fact contribute to delivering sustainable development, in terms of "delivering a wide choice of quality homes'', I consider that the restriction could in fact be considered as facilitating delivery of the types of homes identified as being needed within the community.'

The policy wording has been revised, removing the very restrictive requirement for a new property to be occupied for 270 days a year and defining principal residence as 'those occupied as the residents' sole or main residence, where the resident spends the majority of their time when not working away from home .' It also excludes replacement dwellings from the restriction and replaces the wording 'owners and tenants' with 'occupiers' for clarity.

It specifies that owners of homes with a Principal Residence condition will be required to keep and provide proof on request and lists possible types of verifiable evidence. It will of course be for the individual householder to decide how he or she complies with this obligation, but they are clearly put on notice of the advisability of retaining independent verification of their occupation.

It is the practice of the Council to consider the issue of human rights in any enforcement action and it would be required to do so in any case where article 8 was in play. Cornwall Council, as the Local Planning Authority, is the authority that determines planning applications and there may be circumstances when it is not appropriate to strictly enforce Policy H2, due to other material considerations including those of the effect on the home or family life of the householder or members of his or her family.

The policy as proposed to be modified will only apply to new houses so that it will not apply to existing homes. It does not prevent the development of new homes but seeks to control their subsequent use. Those who seek second or holiday homes in the area are able to do so in the ordinary 'churn' or activity of the market in 'second hand' homes. Thus, it is open for the Council to take the view that it is unlikely that article 8 will be engaged in this context, but if it is, the interference is or could be justified as set out below.

The requirement of article 8 is that the restriction be "necessary in a democratic society in accordance with law" as it is "In the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

The policy is promoted for the social and economic well being of the area as set out in the NDP and report of the examiner. That is for the economic and social well being of the area in which it applies rather than for well being nationwide. Thus, in context, it can be said to relate to the economic well-being of that part of the country in which it will apply. In any event, it also applies to the protection of the rights and freedoms of others to own and occupy their own homes in the area and who are presently prevented from doing so by the strong second and holiday home market.

It is said generally by the objector that the public interest objective underlying policy H2, that is the justification for the necessity for the interference, is flawed because the 1100 dwelling requirement in the emerging Local Plan upon which the housing requirements of NDP are based is predicated on the needs for both homes for those wishing to live locally who are the intended beneficiaries of policy H2, and those requiring holiday or second homes. Thus it is said there is no objective basis for the

policy the objective of which could just as well be met by increasing housing requirement.

It is true that the housing requirement of the emerging plan district wide has been based on the assessed Objectively Assessed Need (OAN) for the area plus an addition of 7% to allow for the demand for second homes. The scale of second homes in the area led the examining Inspector of the Local Plan to advise that such an adjustment was made. Accordingly the OAN assessment made such an adjustment having observed that 11.2% of houses in the county did not have a usual resident and that "the scale of the impact upon the availability of Cornwall's housing stock is significant". The NDP shows that although the figure countywide is 11% the equivalent figure for the area is one of 25% rising to 48% in the town centre and the Island. This is plain evidence of a problem supported by anecdotal evidence of the consequent hardships caused to local residents seeking to own homes in the area.

The fact that the demand for second homes may be a component of the requirement district wide does not mean that in the case of St Ives that the market will take up new housing in accordance with the district wide expression of demand. Experience shows that in the St Ives area an uncontrolled market will see the take up of a disproportionate element of the market housing for occupation by the second and holiday home market.

The examining Inspector of the emerging Local Plan in his initial findings indicated that the demand for second homes was a market signal for the purposes of assessing the housing requirement of the Plan. This does not mean that the units that result from that calculation are intended to be holiday homes, they could just as easily be there to compensate for losses to second homes.

In the view of Cornwall Council the evidence evinced by the process of consultation and that identified in the St Ives Area Neighbourhood Development Plan and the examination report is such as to provide a rational basis for the necessity for the policy.

A further human rights point not mentioned in the letter is the potential for Article 1 of the First Protocol to be engaged. This protects the individual in the peaceful enjoyment of his possessions subject to the power of the state to control the use of property in accordance with the general interest. If this is engaged in the case of a purchaser of a new dwelling who is prevented from using it for holiday accommodation etc, the control exercised by policy H2 has been found by the Examiner to be in the public interest. As such there is no infringement of that right.

Finally on this topic there is a section in the letter dealing with the "impact" side of the equation. It remains the case that at that stage the

implications of article 8 are likely to feature as important considerations. However, of itself that does not mean that a policy that requires a dwelling to be used as a principal residence is of itself prima facie in breach of article 8. It must be recalled in that context that (a) this is only a policy not a statute; (b) the scheme of the 1990 Act is that at this stage enforcement action can only be taken if the authority find it expedient to do so and at that stage are required to take into account all material considerations that would include the implications for the right of the individual to their home.

The letter from the objector refers to the phrase in the policy "when working away from home" and suggests that this creates "an inexcusable differential treatment between those people whose primary residence is abroad and those whose primary residence is somewhere else in the UK". Your officers do not understand any such differential to be created. Anyone commuting away from the area so that they are not at home during the period that they are working, whether in London, Truro, Plymouth, Hong Kong or an oil rig in the North Sea, for example, will be working away from home and will not be in breach of the obligation provided that the dwelling remains their main or principal residence for that period of absence.

(ii). The NDP is not in general conformity with the Penwith Local Plan 2004 because the Penwith Local Plan does not have a principal residence policy

This point is misconceived. The basic requirement is that the Plan be in general conformity with the strategic policies contained in the development plan. There is no strategic policy of the 2004 plan with which policy H2 is alleged to conflict. Therefore there is no conflict so as to justify the allegation.

(iii). Due regard has not been given to the Equalities Act

The letter suggests that the second home restriction may have an indirectly discriminatory effect against certain categories or person, specifically ' the potential for a disproportionate amount of older people to be affected is clear.' No substantial justification is given for this allegation nor any immediate reason why the policy should be regarded as discriminatory in this sense. The Comprehensive Impact Assessment considers the effects of the policy on relation to Equality and Diversity and does not conclude that the proposal will apply disproportionately to any of the protected categories.

(iv). Failure to comply with the Strategic Environmental Assessment (SEA) Directive and 2004 Regulations (Planning Practice Guidance (PPG))

The NDP has been the subject of an SEA. The SEA of the NDP states that two alternatives were considered in respect of the housing policies but not that of increasing the housing provision from the allocation in the emerging Cornwall Local Plan. The complaint is that the alternative of considering the provision of more units than the minimum figure identified in the emerging Local Plan was wrong in law.

The obligation relating to alternatives is contained in regulation 12 of the Environmental Assessment of Plans and Programmes Regulations 2004:

(2) The report shall identify, describe and evaluate the likely significant effects on the environment of— (a) implementing the plan or programme; and (b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.

The PPG advises accordingly:

Reasonable alternatives should be identified and considered at an early stage in the plan making process as the assessment of these should inform the preferred approach.

The objector's case appears to be that the target figure (now raised to 1100 homes to reflect the evidence base of the emerging Local Plan, but initially 1,000 homes in line with the submission version Local Plan) is expressed as a minimum for the area so why was not a higher figure tested as a reasonable alternative is the question that is raised.

There is no express description of the 1,100 units as a minimum or as a maximum in the emerging Cornwall Local Plan. It is the figure identified by the emerging Local Plan for the St Ives area. The testing of alternative requirements in terms of quantum may well be a matter for the SEA of the Local Plan but for the Neighbourhood Plan the issue is how to accommodate the requirement identified for the area by the emerging Local Plan. So the SEA quite properly considered alternative means of accommodating the 1,100 units within the area as reasonable alternatives; it was not its role to test reasonable alternatives to the proposed allocation.

The principle of the NDP allocating sufficient sites, by reserve if necessary, to accommodate the requirements of an emerging plan to meet the objectively assessed needs (OAN) of the area is well established [see NPPG ID:41-009-20160211 for example] and the Plan is accordingly following best practice in this regard.

In so far as this objection may have been driven by the preference for the promoters of the NDP to treat the housing figure as a maximum that has been overcome within the latest draft of the NDP and lies in the role of

policy H3 in directing further housing development that may occur in addition to that provided for by policy H1. This development is now described as affordable housing led, rather than being restricted to affordable housing.

(v) . Inconsistency with the NPPF

The Plan has to have 'regard to national policies and advice contained in guidance issued by the Secretary of State.' In terms of promoting sustainable development, the NDP provides land for development to meet local need and allows for some flexibility for further development, so it does have regard to the NPPF. The inspector has reached a clear conclusion on the sustainability of the policy. A conclusion with which Cornwall Council agrees.

(vi) Inappropriateness of Policy OS5 in the light of the Examiner's unanswered criticisms

The Examiner advised the Council that the policy had flaws which should be corrected (Examiner's Report page 46/47) but she did not expressly require a modification. She advised that justification be explained, the two issues that are entangled to be disentangled into two separate policies or sub-policies and to be supported by plans for the sake of clarity.

The objective of the policy as drafted was to prevent development having significant adverse effect on the landscape setting of settlements in the area and to avoid the merging of settlements. The policy merely states: "Proposals for development within or on the edge of settlements should not diminish the open areas of countryside between the settlements of" X and Y etc.

The Examiner's advice has been acted on. New policy OS5 deals with proposals on the edge of settlements and OS6 deals with the preservation of identified open areas within settlements.

The objector also complains that the policy is "a back door Green Belt or 'green wedge' policy, imposing a blanket ban on development which would "diminish" the "open space" in areas to which it relates, without any regard to the extent of potential impacts and benefits for any particular application ... and without having been based on anything like the rigorous criteria-based landscape and visual assessment of these areas and the potential effect of development on them".

There is no requirement that such policies in NDPs be supported by the sort of studies suggested, although it is good practice for that to happen. The support here lies in the results of public consultation as to the perceived value of certain open space between identified settlements. This provides the justification required by the Examiner.

The policies are said to be Green Belt or equivalent policies since they are concerned only with development that has the effect of diminishing openness in the identified areas. However, when considered in context this is intended to be a reference to openness in terms of a characteristic of the landscape setting of the identified settlements. Paragraph 7 of the NPPF refers in the context of environmental sustainability to protecting and enhancing our natural environment, paragraph 17 refers to taking account of the different roles and character of different areas and paragraph 109 refers to protecting and enhancing valued landscapes; the role of the policy is to meet those objectives.
In order to clarify the intention of the policy and how it should be applied, the Council has further modified the policy wording to state that

'Proposals for development on the edge of settlements should not have significant adverse effect on the landscape setting of the settlements of St Ives, Halsetown, Carbis Bay and Lelant and should not result in the merging of settlements.'

This is to make it clear that the purpose of the policy is to protect the landscape setting of settlements and not to impose a blanket ban on development.

Cornwall Council has a duty to support communities who are preparing neighbourhood plans. The Regulations detail the Council's responsibilities. Failure to take the Plan forward to referendum would risk customer dissatisfaction and would be a failure of the Council's duty.

5. Proposed Way Forward

The plan proposal decision, amended in response to the Examiner's report and further amendments by Cornwall Council under Regulation 12 of the Neighbourhood Plan (General) Regulations 2012 and the Examiner's report should be published and the NDP should progress to referendum.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	Relevant legislation: Town and Country Planning Act 1990 (as amended) Planning and Compulsory Purchase Act 2004 Localism Act 2011 Neighbourhood Planning (General) Regulations 2012.

		It is the decision of the Council whether to accept the Examiner's recommendation and proceed to Referendum. As the modifications are acceptable to the Council and the NDP Steering Group the Council is in a position to proceed to Referendum having made additional modifications to the NDP.
Financial	N	There are costs associated with the referendum. The estimated costs for the St Ives referendum are £15,800. Central Government provides a grant to the LPA of £5,000 at area designation, £5,000 at submission and £20,000 on successful examination. These grants are currently provided until 31 March 2016 and will be used to fund the associated costs. The value of the grant is fixed, irrelevant of the actual examination and referendum costs, so for smaller neighbourhood plans the grant is usually in excess of the costs incurred. This is retained by the Service to cover the cost of the larger towns, where the costs are higher. The current budget is sufficient to accommodate St Ives' costs. During the financial year, if the accumulated costs for the neighbourhood plans exceed the grants received, then the Planning and Enterprise Service will have to identify funding from elsewhere within their approved budget to fund any deficit. The Council has also been given notice of the intention of a developer with interests in the area to lodge a legal challenge to the plan. The legal costs will be borne by the Council.
Risk	Y	Failure to take the plan forward to referendum would risk customer dissatisfaction and would be a failure of the Council's duty to support neighbourhood plans. If the Plan is taken forward the Council has been given notice of the intention of a developer to lodge a legal challenge against the NDP.
Comprehensive Impact Assessment Implications		
Equality and	Y	The plan covers the St Ives Parish area and its aim

Diversity		is to meet the needs of all the community. The Plan has to contribute to sustainable development and be compliant with European Human Rights Legislation. The Examiner has considered this Basic Condition and concludes that the NDP does not breach and is otherwise compatible with EU obligations and human rights requirements. A key element of the plan is its approach to housing delivery; the plan requires all new housing to be occupies as a principal residence. The Examiner considered this and the Council has also investigated the potential negative impacts of the principal residence and considered this is in the light of the Human Rights Act.
Safeguarding	N	No Implications
Information Management	Y	Planning Applications will be made and dealt with in the usual way.
Community Safety, Crime and Disorder	Y	The Plan requires that play spaces are safe in terms of location, access and supervision.
Health, Safety and Wellbeing	Y	The Plan has to contribute to sustainable development. The plan should have a generally positive effect on health, safety and wellbeing through its objectives and policies on: protecting existing and providing new open space and community and recreational facilities; supporting safe and accessible pedestrian and cycle routes; supporting economic development that will contribute to a resilient local economy; providing affordable housing that meets local needs and supports a balanced housing market that safeguards the sustainability of the local community, including residential care and nursing homes.
Other implications	N	None

Supporting Information

Appendices:

Appendix 1 Independent Examiner's Report on the St Ives NDP 2.12.15

Cornwall Council

Appendix 2 St Ives Area Neighbourhood Development Plan Proposal – with Examination Amendments

Appendix 3: St Ives Area NDP maps

Background Papers:

Letter from D2 Planning dated 11 February 2016

All reports:

Final report sign offs	**This report has been cleared by OR not significant/not required**	**Date**
Legal (if significant/required)	Elizabeth Dunstan Planning Policy and Special Projects Legal Consultant	8 March 2016
Finance Required for **all** reports	Leah Thomas	9.3.2016
Equality and Diversity		

Cabinet/individual decision reports:

Final report sign offs	**This report has been cleared by**	**Date**
Head of Service	Phil Mason	09/03/2016
Corporate Director		