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## Appeal Decision

Site visit made on 11 March 2021

**by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 March 2021**

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**Appeal Ref: APP/D0840/W/20/3263587**

**Land adjacent to Chyryn, Harris Mill, Illogan, Cornwall TR16 4JG**

- 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 & Mrs R Holborn against the decision of Cornwall Council.
  - The application Ref PA20/04241, dated 5 April 2019, was refused by notice dated 24 September 2020.
  - The development proposed is for outline planning for new dwelling.
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### Decision

1. The appeal is allowed and planning permission is granted for outline planning for new dwelling at Land adjacent to Chyryn, Harris Mill, Illogan, Cornwall TR16 4JG, in accordance with the terms of the application, Ref: PA20/04241, dated 5 April 2019, subject to the conditions in the attached schedule.

### Application for costs

2. An application for costs was made by Mr and Mrs R Holborn against Cornwall Council. This application is the subject of a separate Decision.

### Procedural Matters

3. In the interests of accuracy and consistency, I have used the address of the appeal site as provided on the Council's Decision Notice, in the banner heading above. Furthermore, I have amended the original description of development to reflect that as stated at section E of the appeal form and as provided for on the Council's decision notice, again in the interests of accuracy and consistency.
4. The application was made in outline with all matters reserved for later consideration. I have considered the appeal on that basis.

### Main Issue

5. The main issue in this appeal is whether the proposed development would be in a suitable location for a new dwelling, having regard to Local and National Planning Policies.

### Reasons

#### *Policy Context*

6. The development plan comprises the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan), the Cornwall Site Allocations Development Plan

Document (the SADPD) the and the Illogan Parish Neighbourhood Development Plan 2016-2030 (the NDP).

7. The Council's settlement strategy is contained within Policy 2 of the Local Plan which sets out a sustainable approach to accommodating growth and maintaining the dispersed development pattern of Cornwall, providing jobs in a proportional manner based on the role and function of each place. Policy 3 of the Local Plan seeks to control the distribution of new dwellings across Cornwall and provides that housing within larger settlements such as Illogan will be allocated according to the SADPD and Neighbourhood Plans. Policy 7 of the Local Plan supports development proposals within the open countryside where it shown that special circumstances, such as where there is re-use of a redundant building or where accommodation is required for rural workers, apply. The supporting text to this policy defines open countryside as being the area outside of the physical boundaries of an existing settlement where it has a clear form and shape.
8. Policy 1 of the SADPD confirms that housing growth will be delivered for settlements such as Illogan through windfall development which, amongst other things, supports the use of previously developed land (PDL) within or adjoining named settlements such as Illogan.
9. While the NDP places the appeal site within the Illogan Parish boundary, the NDP provides that the site is located outside of the settlement boundary of Illogan. Policy PH1a of the NDP provides that small scale infill development on previously developed land within the settlement will be supported, with Policy PH1b of the NDP confirming that affordable housing development will be supported on sites outside of but adjacent to the settlement boundary. Policy PEH1 of the NDP provides that development outside of settlement boundaries should maintain and, if possible, enhance the character and appearance of the area. Policy PH3 of the NDP concerns design, with Policy PH4 confirming that development within existing gardens, located within the Parish boundary, will be permitted subject to certain criteria.
10. My attention is also drawn to the Chief Planning Officer's Advice Note – Infill/Rounding Off (December 2017) (the CPOAN) which, whilst being informal guidance, provides clarity on the approach to be adopted in relation to matters such as PDL and rounding off of settlements, and as such I have had regard to this advice.

#### *Location of Development*

11. The appeal site comprises a relatively level area of garden land associated with the dwelling at Chyryn. The appeal site is set back from the adjacent highway at an elevated level. There is residential development to the west and east, with the land to the north being predominately open countryside. Whilst the appeal site is situated outside of Illogan, it does, nonetheless, adjoin that settlement.
12. Policy 3 of the Local Plan provides that outside of the main settlements, housing growth will be delivered by, amongst other things, development of PDL within or adjoining settlements. In this instance, as noted above, the site is located outside of but adjacent to the settlement and comprises garden land.

13. Annex 2 of the National Planning Policy Framework (the Framework) includes a definition of PDL and confirms that land in 'built-up areas' such as private residential gardens is excluded from the definition. In the Dartford<sup>1</sup> case, it was held that residential gardens that are not in 'built-up areas' are not excluded from the definition. Consequently, in light of the above, the appeal site can properly be described as PDL.
14. I therefore consider that the appeal site would accord with the definition of PDL as set out within the Framework and the CPOAN. Accordingly, there would be compliance with criterion 3 of Policy 3 of the Local Plan and, given the site's proximity to the services and facilities contained within Illogan, complies with the provisions of criterion a) of Policy 21 of the Local Plan with regards to the use of PDL. Consequently, there would be compliance with the overall strategy for the location of development as set out in the Local Plan.
15. Given the above conclusion on the use of PDL, and the related compliance with Policy 3 of the Local Plan, it has not been necessary to examine matters of rounding off or infill with regards to the appeal scheme. In light of the above reasons, the requirements of Policy 7 of the Local Plan, and the need to demonstrate special circumstances for the erection of a dwelling in the countryside, do not need to be met in this instance.
16. Further to the above, the appeal scheme would accord with the provisions of Policy 1 of the SADPD with regards to development of PDL at locations adjoining Illogan. As described above, Policy PH4 of the NDP supports development within private gardens within the Parish boundary, subject to certain criteria. In this regard, the appeal proposal would not adversely affect any significant features and would reflect the density of nearby development, with access being taken from the adjacent highway. Furthermore, the appeal proposal would be seen in the context of nearby dwellings and would not encroach into the open countryside. Consequently, the appeal scheme would accord with Policy PH4 of the NDP.
17. In summary of the above, whilst the appeal site is located outside of Illogan and would not strictly accord with the provisions of Policies PH1a and PH1b of the NDP, the proposed development would comply with the provisions, aims and objectives of Policies 2, 3 and 21 of the Local Plan and would accord with Policy 1 of the SADPD, Policy PH4 of the NDP and the Framework. It is acknowledged that the policies of the development plan can pull in different directions, and while the conflict with Policies PH1a and PH1b of the NDP is acknowledged, I attach more weight to the appeal scheme's compliance with Policy 1 of the SADPD given its more recent date of adoption and its consistency with Policy PH4 of the NDP.
18. The Council have also cited Policy 23 of the Local Plan which concerns the natural environment, and Policy PEH1 of the NDP within their reason for refusal. In these respects, the appeal scheme is in outline with matters of appearance, layout and scale being reserved for later consideration. As such, compliance with these policies could be achieved through a well thought out design which respects local distinctiveness.
19. The appeal proposal would provide social benefits in terms of the contribution towards housing supply and would provide economic benefits in terms of

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<sup>1</sup> Dartford BC v SSCLG [2017] EWCA Civ 141

employment opportunities during the construction phase and through the spend of future residents within local businesses. Furthermore, and in respect of any environmental benefits that may result from the proposed scheme, I conclude that the appeal site would be close to a range of services, facilities and employment opportunities which can be conveniently accessed. Once these matters are considered together, the proposed scheme could be considered to be sustainable development in the terms of the Framework and in terms of Policy 1 of the Local Plan for which there is a presumption in favour of.

### **Other Matters**

20. Concerns have been raised by interested parties with regards to highway safety and in respect of drainage. These are important matters and I have fully considered the submissions of interested parties in respect of these matters.
21. Whilst the concerns regarding drainage are noted, details of the final scheme can be secured by condition and which would ensure that the appeal scheme does not increase flood risk elsewhere and near to the site. I am therefore satisfied that the proposal can be adequately controlled via condition in respect of drainage.
22. In respect of highway safety, from the evidence before me and from observations made on my site visit, the appeal site and shared access is of sufficient size to allow vehicles to safely manoeuvre and exit in forward gear and would provide sufficient visibility in both directions for vehicles emerging from the site. I am therefore satisfied that the appeal scheme would not have a harmful effect with regards to highway safety.

### **Conditions**

23. I have considered the planning conditions suggested by the Council in light of paragraph 55 of the Framework and the advice in the Planning Policy Guidance. Other than the standard outline conditions dealing with reserved matters and time limits, it is reasonable to require that details of surface water drainage be presented in order that the site is drained in a satisfactory manner without increasing the risk of flooding elsewhere. This is required to be a pre-commencement condition as it is fundamental to have these details agreed before any work commences.
24. Where necessary, and in the interests of clarity and precision, I have altered the wording of the conditions suggested by the Council in order to better reflect the relevant guidance. The Appellants have been provided with the opportunity to comment on the wording of the Council's suggested pre-commencement conditions and these have been agreed by the Appellants.

### **Conclusions**

25. For the reasons given above, the appeal succeeds and planning permission granted subject to conditions identified.

*A Spencer-Peet*

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 not commence until the details of a system for the disposal of surface water on the site has been submitted to and approved in writing by the Local Planning Authority. The details shall include a programme for maintaining the system. Prior to the first occupation of the development hereby permitted the surface water drainage system shall be installed in accordance with the approved details. The system shall be retained and maintained thereafter in accordance with the approved details.