The Planning Inspectorate

# Appeal Decision

Site visit made on 28 August 2019

**by Andrew Tucker BA (Hons) IHBC**

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

**Decision date: 18th September 2019**

**Appeal Ref: APP/D0840/W/19/3229068**
**OS Field 6482, Merritt Hill, Illogan, Cornwall**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs Richards of K&R Blewett Ltd against the decision of Cornwall Council.
- The application Ref PA18/07711, dated 13 August 2018, was refused by notice dated 19 November 2018.
- The development proposed is development of 8 dwellings.

## Decision

1. The appeal is allowed, and planning permission is granted for development of 8 dwellings at OS Field 6482, Merritt Hill, Illogan, Cornwall in accordance with the terms of the application, Ref PA18/07711, dated 13 August 2018, subject to the conditions set out in the attached Schedule.

## Application for costs

2. An application for costs was made by Mr & Mrs Richards of K&R Blewett Ltd against Cornwall Council. This application is the subject of a separate Decision.

## Preliminary Matter

3. The appellants have submitted an additional plan with the appeal (1319 114), which show a typical section to demonstrate the position of the proposed dormer windows. It is not clear whether this plan was with the Council prior to its determination of the application, however I do not consider any party to be prejudiced if I take this plan into account. I shall therefore determine the appeal on the basis of the plans referred to on the Council's decision notice as well as this additional plan submitted as part of the appeal.

## Main Issue

4. The main issues are:

   a) the effect on the character and appearance of the area, and

   b) the effect on the ecological value of the site.

## Reasons

*Character and appearance*

5. The appeal site comprises a small field adjacent to existing residential development. Although at the edge of a developed area, and facing out

towards an area of undeveloped land, the site is defined by the presence of significant development on three sides. The appeal site is directly behind a row of modest bungalows. There is a significant presence of development to either side, including recently constructed dwellings to the northeast. From Merritts Hill it is difficult to view the undeveloped land beyond the existing bungalows as the land is broadly level and the existing bungalows are closely spaced. Most gaps between the bungalows are occupied by outbuildings. The appeal site is more distant from existing development to the south, and similarly is not easily viewed from this direction. As a result, the appeal site, in its current undeveloped state, makes little discernible contribution to the character or appearance of the area.

6. The proposal would take a broadly linear form, which would be roughly parallel to the existing dwellings fronting Merritts Hill, with two further plots at the rear of the site where it is wider. At the narrower end of the site plot 6 would stand alongside the existing residential curtilage of Cherry Cottage. At the opposite end of the site the developed area would relate well to existing development, which already extends built form beyond the site to the southeast.

7. Although most of the proposed dwellings would include accommodation at first floor, they would have a low eaves line that would relate well to the scale of existing buildings in the area, which are almost all bungalows. The proposed dwellings would be higher overall than the existing bungalows fronting Merritts Hill, however as they would be set well back behind these buildings they would not appear to be overscaled. The proposed layout, including the spacing of the properties would accord with the scale and layout of development in the area, and would therefore not constitute overdevelopment. The existing hedge that defines the boundary between the appeal site and the adjacent fields would be retained as part of the proposal.

8. Beyond the site to the south is a further area of development, known as West Tolgus. There is concern that the proposal would extend built form towards West Tolgus to the extent that its identity as a separate settlement would be reduced. On the basis of the information before me and my site visit I am not convinced that the area of West Tolgus that is closest to the appeal site has an identity as a separate settlement. Development in this area is largely 20th century and suburban in character. It has the appearance of part of the developed area of Illogan, with which it is continuous at its western end. Even if I did take the view that it had a separate identity that was worthy of retention, owing to the broadly flat topography there would be almost no inter-visibility between the area of West Tolgus and development at the appeal site. Furthermore, undeveloped fields would be retained between the appeal site and the existing development to the south.

9. Policy 3 of the Cornwall Local Plan Strategic Policies 2010 – 2030 adopted 2016 (CLP) establishes that development should be focused on the Council's main settlements. Illogan is grouped with Camborne, Pool and Redruth as one of these main settlements. The Policy establishes that, amongst other things, the delivery of housing will be managed through a Site Allocations DPD or Neighbourhood Plan. The site is outside the plan area of the Illogan Neighbourhood Development Plan.

10. The emerging Cornwall Site Allocations Development Plan Document (DPD) is at an advanced stage and therefore attracts significant weight. Part 5 of this

document relates to the combined developed areas of Camborne, Pool, Illogan and Redruth. At paragraph 5.31 priority is given to focussing development on existing urban areas, minimising the use of greenfield land. No allocations are included for Illogan, and, with further reference to paragraph 5.31, development is therefore limited to rounding off.

11. Policy 3 of the CLP clarifies that the rounding off of settlements relates to sites that are within or immediately adjoining that settlement, of a scale appropriate to its size and role. The Chief Planning Officer's Advice Note: Infill/Rounding Off (CPOAN) provides guidance on what the Council means by rounding off.

12. The proposal is for 8 dwellings, which includes the demolition of an existing dwelling. In this respect it is modest in the context of the existing developed area of Illogan. Paragraph 1.68 of the CLP suggests that rounding off applies to development on land that is substantially enclosed, and where its edge is clearly defined. As I have already established, the appeal site is clearly within the context of existing development on three sides, and its outer edge is well enclosed by a mature hedge line, which accords with the guidance in the CPOAN relating to a long standing and enclosing boundary feature. I am satisfied that it would not visually extend built form into the open countryside, but would instead relate clearly to existing development to either side.

13. My attention has been drawn to two other decisions. The circumstances of the appeal at Land North of Rose Cottage, Lower West Tolgus[1] appear to be quite different from the case before me, where the Inspector concluded that the development would appear as an extension to the open countryside, and could not be considered rounding off. The proposal at The Cabin, West Tolgus[2] was also considered to not be appropriate as it would have an urbanising effect on the rural character of the area, which I have found would not be the case with the appeal proposal.

14. In summary, the proposal would not harm the character or appearance of the area, in accordance with Policies 1, 2, 3, 12 and 23 of the CLP and Paragraph 170 of the National Planning Policy Framework (the Framework), which together establish a presumption in favour of sustainable development and the Council's spatial strategy, and seek to ensure that development proposals are of an appropriate scale and layout with a clear response to setting and landscape character.

*Ecology*

15. Evidence before me suggests that the demolition of the bungalow would destroy a bat roost and risk harm to bats if appropriate mitigation is not in place. The Council has considered this matter in detail within its officer report, with reference to the derogation tests set out in the Conservation of Habitats and Species Regulations 2010.

16. In terms of reasons for overriding public interest, which is the first test, the proposal would boost local housing provision through the delivery of seven additional houses. In addition, there would be economic benefits arising from the construction of the dwellings on the basis that it is most likely that persons employed for construction would be local for a scheme of this size, and from future occupiers accessing paid for services and goods in the area.

[1] APP/D0840/W/18/3200370
[2] Council ref PA17/04411

17. The second test is that there is no satisfactory alternative. The scheme is deliverable and there are no known available alternative sites that are preferable in ecological terms. The demolition of the existing dwelling is necessary to facilitate an adequate access to the site.

18. The third test is that the proposal would not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range. The report recommends carrying out further surveys between May and August prior to demolition, and the installation of compensatory measures such as bat boxes or bat tiles, which could be secured by an appropriately worded condition. Existing hedgerows and trees at the site are to be retained, which would retain foraging and commuting habitat for bats, and a condition can be imposed to ensure that external lighting is designed to avoid overspill to minimise its impact on bats.

19. I can therefore conclude that compliance with the recommendations set out in the report would be sufficient to ensure that the ecological value of the site would be preserved. This would accord with Policy 23 of the CLP, which seeks to ensure that development proposals avoid adverse impacts on protected species.

**Other Matters**

20. Pre-application discussions related to a larger site area, and the appellants suggest that the development of land beyond the appeal site may be considered in the future, hence the incorporation of future access points within the layout. However, this application must be determined on its own merits. Furthermore, the Council suggest that it would consider the combined site area in terms of contributions if further applications were submitted.

21. Matters of highway safety have been brought to my attention, including the increase of traffic on Merritts Hill taking into account its width, and the absence of a footway to the east of the access. The additional vehicle movements arising from seven additional dwellings would be limited. Merritts Hill is relatively straight, of a sufficient width and affords good visibility. It is served by footways in the context of the site and to the west. I note that the Council is satisfied that the proposal would not harm highway safety, and I have reviewed the comments of its highway's specialist. I find no reason to take a contrary view.

22. The proposal was amended prior to the Council's determination to remove rear facing dormer windows and replace them with high level roof lights that would prevent overlooking towards existing dwellings, as shown on drawing 1319 114. A 1.8 metre fence would be erected against existing boundaries, which would be sufficient to ensure that there would be no overlooking from ground floor windows or areas of garden towards existing dwellings. There would be some impact on outlook from the rear of the existing dwellings towards the proposed dwellings, however owing to the relative distances and spacing between the proposed dwellings this would not be significant. The access road at the northeast end of the site would be separated from existing dwellings by an existing mature hedge, supplemented by additional tree planting, sufficient to ensure that the living conditions of these occupiers would not be harmed. Access to rear boundaries and the future maintenance of the proposed fences would become a civil matter between respective landowners.

23. Concerns have been raised regarding inadequate local services. No evidence to substantiate this has been put forward, and the settlement of Illogan is included as a suitable location for new development within the development plan. I therefore give this matter little weight.

24. Further matters raised such as the potential for surface water flooding, contaminated land and the retention of existing vegetation can be addressed through appropriately worded conditions.

25. It has been suggested that public consultation was inadequate. I have no evidence before me to substantiate this, and the evidence I do have would suggest that the consultation carried out was adequate. I therefore give this matter little weight.

26. The proposal would result in the loss of a small agricultural field, there would be some disturbance to local residents during the construction process and there would be an environmental impact arising from the demolition of the existing dwelling. These matters however carry little weight and are not sufficient to outweigh my findings on the main issue.

**Conditions**

27. I have had regard to the planning conditions that are included within the Council's submission. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance.

28. I have imposed a condition specifying the approved plans as this provides certainty. I have imposed conditions relating to contaminated land due to historic mining in the area. Some of these conditions need to be pre-commencement as contamination may be found in the existing building. For the same reason I have imposed a condition relating to land stability, which also needs to be pre-commencement to ensure investigations can be carried out fully prior to the commencement of any work. I have imposed a condition relating to drainage to prevent the risk of flooding and ensure proper management of surface water. This condition needs to be pre-commencement to ensure that a full assessment of site conditions can be carried out before work commences. I have imposed a condition relating to landscaping to safeguard the character and appearance of the area. I have imposed conditions relating to ecology, in response to the findings of the submitted report in the interest of preserving and enhancing the ecological interest at the site. One of these conditions needs to be pre-commencement as further survey work needs to be carried out before any work on site takes place that may cause disturbance to protected species. I have imposed a condition relating to the new access for reasons of highway safety, and a condition relating to external lighting to safeguard the character and appearance of the area and to preserve and enhance the ecological interest at the site. The use of pre-commencement conditions has been agreed with the appellant.

**Conclusion**

29. For the reasons above, the appeal should be allowed.

*Andrew Tucker*

INSPECTOR

## Schedule of Conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development shall be carried out in strict accordance with the following submitted plans: 1319 100 A, 1319 101 A, 1319 102 A, 1319 105 B, 1319 106 B, 1319 107B, 1319 108, 1319 110 A (Existing Site Plan), 1319 110 C (Bungalow Type Plans – Sheet 1 Plots 1 & 2), 1319 111 C, 1319 112 C, 1319 113 A and 1319 114.

3) No development shall commence until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include: a) a survey of the extent, scale and nature of contamination; b) the potential risks to:
    - human health;
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
    - adjoining land;
    - ground waters and surface waters;
    - ecological systems; and
    - archaeological sites and ancient monuments.

4) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.

5) The approved remediation scheme in condition (4) shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.

6) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported in writing immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning

authority. These approved schemes shall be carried out before the development is resumed or continued.

7) Before the development hereby permitted is commenced, an assessment of the site to identify any ground instability shall be submitted to and approved in writing by the local planning authority. If instability is identified on the site, a scheme for on-site investigations, an assessment to identify the extent of unstable ground and the measures to be taken to avoid risk to buildings when the site is developed, shall also be submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented and completed before the development hereby permitted is first occupied.

8) No development approved by this permission shall be commenced until the following details are provided:

   - Details of the final drainage schemes including calculations and layout;
   - Confirmation from South West Water Ltd that the foul network has sufficient capacity to cater for this development;
   - A Construction Surface Water Management Plan;
   - A Construction Quality Control Plan;
   - A plan indicating the provisions for exceedance pathways, overland flow routes and proposed detention features;
   - A timetable of construction;
   - 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 Developer must inform the local planning authority of any variation from the details provided and agree these in writing before such variations are undertaken. 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.

9) Prior to the first occupation of the development hereby permitted a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The landscaping scheme shall provide planting plans with written specifications including:

   - Details of all existing trees and hedgerows on the land, showing any to be retained and measures for their protection to be used in the course of development;
   - Full schedule of plants;

- Details of the mix, size, distribution and density of all trees/shrubs/hedges;
- Cultivation proposals for the maintenance and management of the soft landscaping.

The protection measures proposed shall be completed in accordance with the approved scheme before the development hereby permitted commences and shall thereafter be retained until it is completed. Notice shall be given to the local planning authority when the approved scheme has been completed. All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner. Notice shall be given to the local planning authority when the approved scheme has been completed. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species as those originally planted.

10) The development shall be carried out in accordance with the recommendations and mitigation measures identified within the Preliminary Ecological Assessment Report prepared by Brookside Ecology September 2018, Bat Emergence Survey prepared by Brookside Ecology dated September 2018, Reptile Survey prepared by Spalding Associates Ltd dated Summer 2017, and results of Bat Activity Transects and Remote Detector Surveys prepared by Spalding Associates Ltd dated July to September 2017.

11) The existing dwelling shall not be demolished and no development shall take place until a bat survey has been carried out by a suitably qualified person, involving dusk/or pre-dawn pre-entry surveys following the Bat Conservation Trust Bat Surveys – Good Practice Guidelines (2nd Edition 2012) and the results of the survey along with a schedule and implementation timetable for any mitigation measures has been submitted to and approved in writing by the local planning authority. All recommendations and mitigation shall be implemented in accordance with the agreed schedule and timetable.

12) Before any other building or engineering works are carried out on the site, other than the erection of a dwelling and associated infrastructure on plot 1, as indicated on Drawing no. 1319 106 Rev B, the access shall be laid out and constructed in accordance with Drawing No. 1319 107 Rev B. The access shall be retained as approved thereafter.

13) Before any dwelling hereby permitted is first occupied, the parking and turning areas serving that dwelling shall be laid out and constructed in accordance with the approved drawing no. 106 Rev B and the said areas shall not thereafter be obstructed or used for any other purpose.

14) 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 without the further written approval of the local planning authority.