



## Appeal Decision

Site visit made on 2 September 2020

**by Matthew Jones BA(Hons) MA MRTPI**

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

**Decision date: 23 October 2020**

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**Appeal Ref: APP/D0840/W/20/3250944**

**Land rear of Chy-Kerensa, Ashton TR13 9RN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
  - The appeal is made by Mr and Mrs Inch against the decision of Cornwall Council.
  - The application Ref PA19/10244, dated 19 November 2019, was refused by notice dated 24 January 2020.
  - The development proposed is a single dwelling.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The appeal proposal is for permission in principle (PIP). This consent route has two stages, the first stage establishes whether a site is suitable in principle, and the second stage, the technical details consent, is where the detailed development proposals are assessed. The appeal proposal is at the first stage and therefore I have considered the principle of the scheme.
3. Although not an issue raised by the Council in its Decision Notice, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the Fal and Helford Special Area of Conservation (the SAC). This is because it is a European Designated Site afforded protection under the Conservation of Habitats Regulations 2017 as amended (the Habitat Regulations). As such, it is necessary to consider this matter as a main issue.

### Main Issues

4. The main issues are therefore:
  - the effect of the proposed development on the integrity of the SAC;
  - the suitability of the site for a dwelling, having regard to local and national policy for the location of housing; and,
  - the effect of the proposed development on the character and appearance of the area, with particular regard to the Cornwall and West Devon Mining Landscape World Heritage Site (the WHS).

### Reasons

#### *Special Area of Conservation*

5. Case law has established that the decision maker, when considering the effect that a proposal may have on a European Designated Site, must consider

mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage<sup>1</sup>. Further, under Article 5B of the Town and Country Planning (Permission in Principle) Order 2017 (as amended) (the Order), PIP must not be granted for development which is habitats development. The PPG<sup>2</sup> defines habitats development as:

- a) development which is likely to have a significant effect on a qualifying European site or a European offshore marine site, referred to as habitats sites in the National Planning Policy Framework (the Framework) (either alone or in combination with other plans or projects);
  - b) is not directly connected with or necessary to the management of the site, and;
  - c) the competent authority has not given consent, permission, or other authorisation in accordance with regulation 63 of the Habitats Regulations.
6. In practice this means that PIP may only be granted if I can ascertain that the proposal would not affect the integrity of the SAC following AA.
  7. The SAC is so designated owing to its habitats of saltmarsh, intertidal mudflats, subtidal sandbanks, large shallow inlets and bays, its reefs and its estuaries. The Council's officer report identifies the appeal site to be inside the 12.5km Zone of Influence (ZOI) of the SAC. The ZOI includes areas within which 75% or more of likely recreational visits to the SAC are deemed to arise in association with where people live, as explained by the emerging Marine and Estuarine European Sites Mitigation Supplementary Planning Document (the eSPD).
  8. Whilst the eSPD is not adopted, this does not necessarily devalue the quality of the evidence upon which it has been drafted, nor has any contrary data been put to me to challenge it. In any case, the supporting text to Policy 22 of the Cornwall Local Plan Strategic Policies 2010–2030 (adopted 2016) (the CLP) itself identifies the SAC to be at potential risk of significant effects from recreational pressure. It goes on to state that large coastal (particularly estuarine) sites tend to have considerably larger catchments than inland sites. Given such, on the evidence before me, it cannot be ruled out that the proposed dwelling, when considered alone or cumulatively with other schemes, would have significant effects on the SAC due to increased recreational use.
  9. Natural England (NE) has taken this view, and considers that appropriate mitigation could be provided, probably in the form of a financial contribution, pursuant to the strategic solution set out by the eSPD. Whilst I acknowledge that the current status of the eSPD may be a more pertinent issue in this regard, no mitigation has been put forward, either financial or otherwise, in any event. Planning conditions cannot be applied at this stage in the PIP process.
  10. As such, I am unable to ascertain the delivery of any appropriate mitigation and I am not in a position to favourably conclude my AA. It follows that the development falls within the definition of habitats development under Paragraph 5B (1)(b) of the Order for which PIP may not be granted. The scheme would conflict with Policy 22 of the CLP insofar as it seeks to prevent development which would give rise to adverse effects on the SAC.

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<sup>1</sup> People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

<sup>2</sup> Paragraph 005 Reference ID 58-005-20190315 Revision date 15.3.19

### *Suitability of the site*

11. The site comprises the spacious domestic garden of Chy-Kerensa, at the eastern edge of the settlement of Ashton. Dwellings are to the west, with domestic garden land to the north. A Public Right of Way (the PROW) separates the site from farmland along its east boundary, which is formed of a substantial hedgerow, fencing, and a sizable gate. The land to the south is currently being developed for eleven houses<sup>3</sup>.
12. Policy 2 of the CLP sets out Cornwall's spatial strategy. It seeks to maintain the dispersed development pattern, based on the role and function of each place. Policy 3 of the CLP supports limited growth adjacent to or within settlements such as Ashton, subject to the site meeting one of a number of specific criteria.
13. Most applicable here is where a scheme would develop Previously Developed Land (PDL) within or adjoining the settlement or lead to the 'rounding off' of the settlement of an appropriate scale. The supporting text to Policy 3 clarifies that rounding off applies to development on land that is substantially enclosed but outside of the urban form of a settlement and where its edge is clearly defined by a physical feature that also acts as a barrier to further growth. Schemes should not visually extend building into the open countryside.
14. A new dwelling within Ashton would be appropriate to its size and role. The site is residential garden within a rural location and is therefore PDL. Whilst it is outside of the urban form of the settlement, it is domestic in appearance, and has urbanity to the west and south. The site is well enclosed to the south, west and north by timber fencing and to the east by a substantial hedge. Combined, these act as a physical barrier to future growth. The PROW draws a distinction between the obvious countryside to the east and the comparatively urbanised land to the west. The dwelling would also likely be well hidden. The proposal would not, as such, visually extend building into the open countryside. For these reasons, the proposal finds support under Policy 3 as it would reuse PDL and also because it would constitute the rounding off of the settlement.
15. The parties have made reference to the document titled the Chief Planning Officer's Advice Note: Infill/Rounding Off (the CPOAN). This document provides guidance and is not intended as a substitute for the development plan. It has therefore had limited weight in my assessment.
16. I therefore conclude on this issue that the site would be suitable for a dwelling, having regard to local and national policy for the location of housing. It would accord with Policies 1, 2 and 3 of the CLP and the Framework. As the site is within Ashton there would be no conflict with Policy 7 of the CLP.

### *Character and appearance*

17. As the PROW meets Fore Street it is made in tarmac and has housing on both sides. Towards the appeal site the housing falls away to the east, and the track becomes unmade and quite overgrown. However, there is a continuous sense of the built form on the west side up until that point, which will intensify as the adjacent housing continues to be developed. Whilst that scheme is an exception site, this does not alter its increasing, practical visual effects. Given that it is highly likely that the proposed dwelling would be well screened,

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<sup>3</sup> Pursuant to Ref PA16/07939

particularly if it were to be single storey, the proposed development would have a negligible presence and would do little to alter this PROW environment.

18. Whilst historic mapping shows smallholdings in the location of the site, there is no substantive evidence that the area was used by or for the mining community. Furthermore, much of the historic field pattern has been changed, and the domestic trappings and well-maintained lawn of the appeal site do little to evoke any former agricultural character. Even if the site's boundaries were of some provenance, they could be incorporated into a scheme. Consequently, the proposal would not harm the Outstanding Universal Value of the WHS.
19. I conclude on this issue that the proposal would have an acceptable effect on the character and appearance of the area, with particular regard to the WHS. It would accord with Policies 12, 23 and 24 of the CLP and the Framework.

### **Conclusion**

20. The site would be suitable having regard to local and national policy for the location of housing, and the proposal would not harm the character and appearance of the area. However, the proposal amounts to habitats development and PIP should not therefore be granted.
21. For the reasons given above, I conclude that the appeal should be dismissed.

*Matthew Jones*

INSPECTOR