



Appeal Decision

Site visit made on 6 November 2024

by **S Harrington MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 November 2024

Appeal Ref: APP/D0840/W/24/3336832

Land Adjacent to Bassett Road, Illogan TR16 4SS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions imposed on the approval of reserved matters or details pursuant to a previous planning permission.
 - The appeal is made by Cornovia Homes (Illogan) Limited against the decision of Cornwall Council.
 - The application Ref is PA23/07014.
 - The application sought planning permission for residential development (up to nine dwellings) without complying with a condition attached to the approval of reserved matters PA21/09229 on 19th December 2022 pursuant to planning permission Ref PA18/04738, dated 12 March 2019.
 - The condition in dispute is No 1 which states that: The development hereby approved shall be carried out in accordance with the approved drawings numbered- 1708-C-GA-100-P1; 1708-C-GA-105-P1; 1708-C-GA-200-P2; 1708-C-GA-201-P1; 1708-C-GA-205-P1; 1708-C-GA-210-P1; 1708-C-GA-220-P1; 1708-C-GA-221-P1; 1708-C-GA-250-P1; 1708-C-GA-300-P1; 1708-C-GA-301-P1; 1708-C-GA-303-P1; 2026-4DAS-DR-A-001-P01; 2026-4DAS-DR-A-002-P06; 2026-4DAS-DR-A-003-P01; 2026-4DAS-DR-A-004-P03; 2026-4DAS-DR-A-006-P02; 2026-4DAS-DR-A-007-P01; 2026-4DAS-DR-A-008-P01; 2026-4DAS-DR-A-009-P01; 2026-4DAS-DR-A-010-P01.
 - The reason given for the condition is: A condition regarding the approved plans is required to provide certainty.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The application the subject of this appeal sought to replace condition 1 of reserved matters approval PA21/09229 with a condition specifying alternate layout plans. This is in order to relocate plot 6 and re-orientate plot 7 from that previously approved to accommodate additional Cornish hedging.
3. The outline planning permission¹ was subject to a pre-commencement condition requiring a Landscape and Ecological Management Plan to be submitted to and approved by the Council. Although the Council had discharged this condition, this decision was subject to a successful High Court judgement² resulting in a Landscape and Ecological Management Plan still being required prior to commencement.

¹ PA18/04738

² Case No: AC-2023-CDF-000081

4. A condition of a reserved matters approval is a condition of a planning permission (that being the combination of the outline planning permission and reserved matters approval). Furthermore, an application under s73 of the Town and Country Planning Act 1990 (as amended) (The Act) is an application for development to be carried out without complying with a condition imposed on a planning permission. The result of a successful s73 application is the grant of a new planning permission.
5. Therefore, it is not possible to grant a new 'approval of reserved matters' through a s73 application and if this appeal were allowed, a new full planning permission would be created.
6. Since the appeal has been made, the Council has stated that they would have approved the application, had they retained jurisdiction to do so. However, interested parties have made representations during the planning and appeal process. The appellant has had opportunity to view and respond to interested party comments within the appeal process. From the evidence before me, and given the application the subject of this appeal being under s73 of the Act for the development of land without complying with conditions imposed on the approval of reserved matters, I consider the main issue is the effect that varying the condition would have on biodiversity.

Reasons

7. The application the subject of this appeal was accompanied by a Landscape and Ecological Management Plan, (ES Ltd, September 2023, version 2) (the LEMP) which states that it has been produced with regard to recommendations outlined in a Preliminary Ecological Appraisal Report (Plan for Ecology, 22nd July 2018) (PEA). Amongst other aims and objectives, the LEMP seeks to ensure proposed new habitat features are successfully established and managed effectively in the long-term and to maintain and enhance existing biodiversity and green ecological corridors throughout the site.
8. The PEA recommends that new sections of hedgerow must be positioned to maximize connectivity across the site by connecting directly to retained hedgerows. Despite an area of new hedging to the north forming a 'T' shape to the hedge line, the proposed new hedging does connect to retained hedging and would provide ecological connectivity.
9. Furthermore, although the LEMP refers to a permanent buffer being created along Cornish hedges along both the southern and eastern site boundaries, it does not refer to a permanent buffer along the Cornish hedge to the northern boundary. Nevertheless, the seeding of a buffer along the northern boundary is referred to and, in any case, the PEA recommends that each new section of Cornish hedge must be protected by a minimum 3m development free buffer seeded with a native wildflower/ grass seed mix.
10. The proposed amendment to the siting of plots 6 and 7 seeks to provide the required 3m buffer. However, The LEMP requires that these new sections of Cornish hedging are to be built to a height of 1.5m, with a base of 1.5m, being built in the style consistent with the local area and following a cross section of a Cornish hedge provided for within the LEMP.
11. The proposed plans indicate that the new hedge to the northern boundary is narrower than existing hedging. The appellant within their final comments,

refer to the hedges being 1300mm wide and suggest a planning condition be imposed to ensure that this is the case. Nevertheless, even if the hedges were to be 1300mm wide, this is below that stated within the LEMP and I cannot be sure, on the evidence before me, that a narrower Cornish hedge of the length proposed would provide sufficient mitigation for the loss of the existing hedge.

12. Moreover, given the proximity of the northern elevation of Plot 7 to the northern boundary, I have no certainty that a hedge of 1500mm width could be achieved within the site boundary, whilst still achieving a 3m buffer separation between the dwelling and the outside edge of the Cornish hedge. Additionally, the proposed site layout illustrates the 3m development free buffer to the southern and eastern hedges by way of hatching. However, areas of driveway protrude into the buffer of the southern Cornish hedge. I therefore cannot be sure that the buffers would be sufficient to protect the new and existing Cornish hedges.
13. Consequently, even if the width of new hedging that could be achieved was not significantly less than that outlined within the LEMP, or reductions in buffer zones are small, it would nevertheless result in the proposal failing to achieve the required biodiversity mitigation and enhancement as outlined within the PEA and LEMP.
14. I therefore conclude that it has not been adequately demonstrated that the proposal would result in appropriate mitigation and enhancement of biodiversity. The proposal would therefore conflict with Policy 23 and Policy 25 of the Cornwall Local Plan Strategic Policies 2010-2030, and Policy C1 of the Climate Emergency Development Plan Document February 2023. These policies seek, amongst other things to conserve, protect and where possible enhance Cornwall's natural environment and green infrastructure, and provide a net-gain for biodiversity and appropriate buffers to natural spaces.

Conclusion

15. For the reasons given above, I find that the proposal would conflict with the development plan, read as a whole. No material considerations, individually or cumulatively, indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal is dismissed.

S Harrington

INSPECTOR