

Appeal Decision

Site visit made on 14 February 2017

by Colin Cresswell BSc (Hons) MA MBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 March 2017

Appeal Ref: APP/D0840/W/16/3158466

Pentewan Valley Nurseries, B3273 from Treveskern to junction south of Tregiskey Farm, Pentewan, St Austell PL26 6DL

- 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 N and L Hoar against the decision of Cornwall Council.
 - The application Ref PA15/09719, dated 16 October 2015, was refused by notice dated 7 June 2016.
 - The development proposed is erection of five dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr & Mrs N and L Hoar against Cornwall Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Restormel Borough Council Local Plan 2001 no longer forms part of the statutory development plan for the area. I have determined this appeal in accordance with the policies of the Cornwall Local Plan, which was formally adopted by the Council during the course of the appeal process.
4. The application was made in outline with all matters, except access, reserved for future determination. I have considered the appeal on that basis.

Main Issue

5. Whether the site provides a suitable location for the proposed development, having particular regard to the risk of flooding.

Reasons

6. The appeal site is a former nursery and garden centre which contains a number of disused greenhouses and other structures. Whilst some of the information within the appeal evidence suggests that the site is within Flood Zone 3, both parties agree that the site is partially within Flood Zone 2 with the remainder being within Flood Zone 1. I have determined the appeal on this basis.
 7. The Environment Agency flood maps do not take account of the flooding defences along the St Austell River. According to the appellant's Flood Risk Assessment (the FRA) the crest level of the defences nearest the appeal site is
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0.45 metres above the 1:1000 year flooding event. Provided that the defences remain in place, the likelihood of the site flooding therefore appears to be low. However, although the defences are currently in Grade 3 (fair) condition, the proposed dwellings would be in place for the long-term and I am mindful that the condition of the defences could change over time. As such, there always remains some risk that the defences could fail. The FRA recognises that in the event of the defences being breached, the parts of the appeal site falling within Flood Zone 2 would be prone to flooding.

8. The appellant points out that irrigation within the nursery required an average of 60,000 litres of water a month, with 94,000 litres required at peak times. As such, the appeal proposal would lead to a substantial reduction in surface water compared to the former nursery use. It would also help to increase the permeability of the site through the reduction of hardstanding areas. Nonetheless, the FRA makes it clear that the main risk of flooding in the area is derived from the potential of the river to burst its banks rather than runoff or the saturation of groundwater. There is little before me to show that the risk of the river flooding would be lowered to any discernible extent as a result of the site being used for housing as opposed to a nursery.
9. In areas that are known to be at risk from flooding, the National Planning Policy Framework (the Framework) indicates that a 'sequential test' should be applied to proposals for development. The Planning Practice Guidance (the PPG) advises that the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. It is suggested that this may be identified from other Local Plan policies, such as the need for affordable housing within a town centre, or a specific area identified for regeneration.
10. In this particular case, the Council has conducted a sequential test based on the St Austell and Mevagissey Community Network Area (the CNA). This is the geographic area which is used to establish strategic housing targets within the Cornwall Local Plan (the Local Plan). Considering that the proposal is for open market housing development, this seems a reasonable approach given the advice contained within the PPG.
11. I understand that the CNA is a relatively sizeable area which incorporates the town of St Austell as well as large parts of the surrounding rural hinterland. For this reason, the appellants argue that it would be more appropriate to base the sequential test on a smaller search area, focused around the needs of local parishes. With this in mind, I have been referred to a survey of residents conducted by Pentewan Valley Parish Council in 2010 as part of a parish planning process. Although the survey found that the housing needs of local residents were being met, it was nonetheless anticipated that this would be likely to change in the future. Indeed, it was reported that 10% of respondents would be looking for a new home in the next 5 years.
12. Whilst I recognise that evidence of more localised housing needs may help to provide justification for a smaller search area, the parish survey information is now relatively dated and does not represent a particularly comprehensive assessment of local needs at present. Similarly, although rural housing may play some part in supporting community vitality, relatively little evidence has been put forward in this appeal to demonstrate that a smaller search area can be justified on these grounds alone.

13. The appellants have drawn my attention to a planning application for housing at Polcoverack Lane¹ where the officer report accepts that the search area for the sequential test should be confined to the local parish. I do not have the full details of the evidence that was submitted to justify that approach, but note the Appeal Decision at Devoran Boatyard². In that particular case, the Inspector found it appropriate to base the search area on the CNA due to a lack of robust evidence of a specific housing need within Devoran or an indication that development was needed to sustain the community. I consider the circumstances of the current appeal to be similar in that respect.
14. The appellants refer to a number of other planning applications where housing has been approved within flood zones despite the availability of sites at lower risk of flooding. In the case of residential development at Wadebridge³ and Tuckingmill⁴ (subsequently allowed at appeal) the schemes were justified on the basis of their town centre location. Given that the former development plans aimed to focus growth in town centre locations, it was reasonable to reduce the search areas to help meet this objective.
15. Whilst Policy 3 of the recently adopted Local Plan allows some limited infill development on the edge of rural settlements, it is clear that the bulk of new housing is to be located in the main towns. In addition, the Council has provided evidence to show that there is a five-year supply of deliverable housing sites in the area. Information within the appeal documents suggests that this was not necessarily the case when the applications in Wadebridge and Tuckingmill were assessed. As such, the circumstances of those cases do not lend much weight to the argument that a smaller search area should be applied in the current appeal. It is not in a location that is specifically prioritised for housing development within the Local Plan and evidence has been provided to show that housing needs are presently being met.
16. The Level 1 Strategic Flood Risk Assessment indicates that it should be possible to deliver growth outside flood zones, but development that is specifically required for regeneration may be necessary within Flood Zones 2 and 3. With this in mind, the appellants draw my attention to Par Docks, a previously developed site earmarked for 300 dwellings within the Local Plan. While parts of the docks are located outside Flood Zone 1, this land is discounted from the sequential test in order to enable a more thorough regeneration of the site in line with the strategic objectives of the Local Plan. It is suggested that a similar approach should be adopted in the current appeal as it would enable the development of a previously developed site.
17. However, whilst the plan encourages the re-use of previously developed land, it also aims to steer growth away from areas at risk of flooding. I am not aware of any policies that explicitly permit development of unallocated brownfield land in Flood Zones 2 and 3. The appeal proposal is a much smaller scheme than Par Docks and the benefits of redeveloping the site are clearly of less strategic importance. Although the appeal proposal would lead to the removal of redundant greenhouses and generally tidy the site, there is limited evidence before me to show that the wider benefits would necessarily justify the sequential test being applied to a more localised area.

¹ Council Ref: PA15/10635

² Appeal Decision: APP/D0840/W/16/3143424

³ Council Ref: PA13/09213

⁴ Council Ref: PA15/02688

18. Having established that it is reasonable to use the CNA as the search area for the sequential test, I now consider how the test was applied by the Council. Appendix A of the Committee Report lists three sites in the CNA which had permission for residential development (7 dwellings in total) and a further site with potential for around 9 dwellings at Hewas Water⁵ which was only subject to pre-application advice at that time. The minutes of the Planning Committee acknowledge that it was premature to report the site at Hewas Water. However, even discounting Hewas Water, Appendix A indicated that there were enough extant planning permissions within the CNA to accommodate five dwellings in Flood Zone 1 (albeit split between different sites).
19. The appellants argue that the Council should have identified sites of a similar size to the appeal proposal instead of relying on combinations of smaller sites to show that five dwellings could be accommodated elsewhere. However, the main justification for providing five open market dwellings in the CNA is to deliver the Local Plan housing target. This objective can be equally well achieved whether five dwellings are built on a single site or multiple smaller sites. Hence, the Council took a reasonable approach in this respect. Whilst I am referred to a Judgement⁶ where it was decided that such an approach was not appropriate in a Scottish retail development, the circumstances of that case are clearly different from that of the current appeal. Certain forms of retail development may require sites of a minimum size for operational reasons, whereas this argument is less easily applicable to housing proposals.
20. It is also argued that the sequential test should have focused on identifying previously developed land in order to find sites more equivalent in nature to the appeal proposal. I note that none of the sites listed in Appendix A of the Committee Report are previously developed, apart from the Hewas Water site which was not available at that time. The Framework indicates that the sequential test should aim to identify reasonably available sites appropriate for the proposed development. In this case the 'proposed development' is housing which can be equally well accommodated on either previously developed or greenfield sites. Whilst I accept that the Local Plan promotes the reuse of previously developed land, it also recognises that not all sites are necessarily suitable for development by virtue of their location. Overall, the Council has taken a reasonable approach by including greenfield land within its list of available sites.
21. The alternative sites identified by the Council had planning permission at the time the Committee Report was written. While I am not aware of any guidance that prevents the inclusion of sites with planning permission, my attention is drawn to the appeal at Devoran Boatyard⁷ where the Inspector found that sites which already have planning permission should not have been treated as being 'reasonably available' for the purposes of the sequential test. Although I do not have access to all the information that was before the Inspector in that appeal, it is clear from the decision that the Council were unable to demonstrate a five year supply of housing sites at that time and housing needs were not being met. Consequently, sites in addition to those which already had planning permission were needed in order to address housing needs.

⁵ Subsequently gained planning permission. Council Ref: PA16/04849

⁶ Tesco Stores Limited v Dundee City Council (Scotland) [2012] UKSC 13.

⁷ Appeal Decision: APP/D0840/W/16/3143424

22. In the current appeal, the Council says that it can demonstrate a five year supply of deliverable housing sites. Furthermore, a new Local Plan has been adopted which establishes clear housing targets for particular areas. According to the Local Plan Housing Implementation Strategy there is a residual target of 300 dwellings within the CNA for the period up to 2030. From this target, 208 dwellings had already been completed and 63 had planning permission as of April 2015. This would include the sites identified within Appendix A of the Committee Report. Assuming that the existing planning permissions are implemented during the plan period, a further 29 dwellings will need to be built on new sites before 2030 in order to meet the Local Plan residual housing target for the CNA (only 2 per year on average).
23. This seems a likely prospect considering that the latest Strategic Housing Land Availability Assessment identifies 9 potential windfall sites within the CNA capable of accommodating a total of 227 dwellings, even when a 30% discount is applied. In addition, it is forecast that 120 windfalls will come forward on smaller sites (based on rates of completion over the last 10 years). Hence, there is a good chance that the 29 dwellings necessary to meet the CNA residual housing target will be exceeded before 2030. There is little indication that the Council would be reliant on development outside Flood Zone 1 in order to meet this target. I appreciate that the appellant's sequential test analysis raises questions about the viability and lead-in times of some of the specific sites identified by the Council (such as the site at Ledrah Gardens). However, the total number of potential windfalls is relatively large and it would only require a small proportion of these to be developed in order to meet the residual housing target for the area.
24. In light of this evidence, I consider that the circumstances of this appeal are somewhat different from that of the Devoran Boatyard case. It has been reasonably demonstrated that the combination of sites that already have planning permission (including those in Appendix A of the Committee Report) and those which are anticipated to come forward through windfall are sufficient to address the residual CNA housing target without necessarily having to develop on land which is at risk of flooding.
25. This leads me to conclude that the proposal would not meet the provisions of the sequential test. With reference to paragraph 102 of the Framework, it would therefore be possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding. Although the appellants argue that the Council's application of the sequential test is not 'consistent with wider sustainability objectives' as required by the Framework, the evidence before me indicates that local housing needs can be adequately addressed by sites situated within Flood Zone 1. Furthermore, it has not been clearly shown that the proposal would have wider benefits, even though it would make use of a previously developed site. The overall indications are that equally sustainable forms of housing development could be situated in areas of lower flood risk.
26. Although the boundaries of the appeal site include land in Flood Zone 2, the appellant suggests that the proposed dwellings could be confined to the parts of the site in Flood Zone 1. However, the parts of the site within Flood Zone 1 are situated away from the road frontage. In the event of flooding, it would not be possible for future occupiers to achieve safe access and egress without having to enter adjoining land.

27. I saw during the site visit that there is a gate to the rear of the site providing access to the neighbouring Sun Valley Holiday Park. This could potentially be used to achieve safe access and egress in a flood event and note that the landowner has given written permission for future occupiers to enter their site if flooding occurred. However, whilst I recognise that some initial steps have been taken to secure the agreement of the landowner, it is only an informal arrangement at this particular stage. The proposed housing would be in place for the long term and ownership of neighbouring land may change. Permission to enter the site could be withdrawn or physical barriers erected. If I were to impose a condition to ensure that the proposed dwellings would be confined only to parts of the site within Flood Zone 1, it would not be certain that the housing could be made safe for the lifetime of the development (as required by the exception test set out in paragraph 102 of the Framework). As such, it is reasonable to apply the sequential test even though parts of the site are in Flood Zone 1.
28. Notwithstanding the above, I note that the Environment Agency state that the proposal would comply with the second part of the exception test, subject to conditions being imposed. With regard to the first part of the exception test, the appellants argue that the housing would be accessible and offers wider sustainability benefits in terms of re-using a redundant site. However, I have not considered these matters any further because the Framework is clear that the provisions of the exceptions test only apply if the sequential test is passed. While I have been referred to an application for a dwelling at Polcoverack Lane⁸ that did not pass the sequential test but was nonetheless approved on the basis that the exception test could be passed, this decision was made against professional advice and does not establish a convincing precedent. Although it is argued that the proposal would comply with Policy 3 of the Local Plan, this does not help to overcome non-compliance the sequential test.
29. I therefore conclude that the site would not provide a suitable location for the proposed development. There would be conflict with Policy 26 of the Local Plan, which indicates that development should be sited to avoid flood risk. There would also be conflict with the objective of the Framework to steer new development to areas with the lowest probability of flooding.
30. For the above reasons, and having regard to all other matters raised, including the comments of the local Councillor, the appeal should be dismissed.

Colin Cresswell

INSPECTOR

⁸ Council Ref: PA15/10635