



Appeal Decision

Site visit made on 28 November 2017

by **C J Ball** DArch DCons RIBA IHBC

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

Decision date: 12 December 2017

Appeal Ref: APP/D0840/W/17/3181720

Former Devoran Car Sales site, Devoran, Truro TR3 7NR

- 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 Philip Perryman against the decision of Cornwall Council.
 - The application Ref PA17/03857 dated 21 April 2017, was refused by notice dated 7 July 2017.
 - The development proposed is residential development of five houses and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the residential development of five houses and associated works at the Former Devoran Car Sales site, Devoran, Truro TR3 7NR in accordance with the terms of the application Ref PA17/03857, dated 21 April 2017, subject to the conditions set out in Annex A.

Application for costs

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

Main Issue

3. Whether this is an appropriate site for residential development, with particular regard to the risk of flooding.

Policy background

4. The Council can demonstrate at least a 5 year supply of deliverable housing sites so the relevant housing policies of the Cornwall Local Plan (CLP) are up to date and the 'tilted balance' in favour of sustainable development, as outlined in the 4th bullet point of paragraph 14 of the National Planning Policy Framework, is not applicable. I shall therefore determine the appeal in accordance with the development plan unless other material considerations indicate otherwise.
5. The Council refers to CLP policy 26, which requires *development to be sited, designed, of a type and where necessary relocated in a manner that: (a). increases flood resilience of the area, taking account of the area's vulnerability to the impacts of climate change and coastal change and the need to avoid areas of flood risk, in the first instance, taking into account the vulnerability of the use proposed; and (b). minimises, or reduces and where possible, eliminates flood risk on site and in the area.*

6. The explanatory text says *policies will seek to ensure development does not add to the flooding of existing communities and new development is located to avoid areas of flood risk as a first principle to minimise its risk of flooding. Policy 26 is intended to complement national policy and guidance on avoiding and minimising flood risks, particularly the application of the sequential and exception tests and the recognition of the differing vulnerability to flood risk of different types of use and development, the sequential test should be applied in assessing the selection of sites to be allocated in subsequent plans and for designing the layout of development on sites where part of a site may be at risk of flooding.*
7. The Framework sets out national policy, with further guidance given in national Planning Policy Guidance (PPG).
8. Framework paragraph 99 confirms that *inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.*
9. Paragraph 100 indicates that *Local Plans should apply a sequential, risk based approach to the location of new development to avoid where possible flood risk to people and property and manage any residual risk, taking account of the impacts of climate change, by applying the Sequential Test and, if necessary, applying the Exception Test.*
10. Paragraph 101 says that *the aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. A sequential approach should be used in areas known to be at risk from any form of flooding.*
11. PPG advises that *a pragmatic approach should be taken to the availability of alternative sites. The Exception Test should only be applied following application of the Sequential Test*
12. Framework paragraph 102 explains that *if, following application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exception Test can be applied. For that to be passed, it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, and a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime.*
13. Paragraph 103 confirms that, *when determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, following the tests, it can be demonstrated that the development is appropriately flood resilient and resistant, including safe access and escape routes where required, and residual risk can be safely managed.*

Reasons

14. The site is a former filling station, subsequently used for car sales, and now unused and semi-derelict. It lies on the bypassed former A39, a short distance

from the village of Devoran, and just west of the confluence of the Lower River Carnon and the Perranwell Stream, at the head of Restronguet Creek. The site lies adjacent to the Devoran Conservation Area and within the Cornish Mining World Heritage Site. The rerouting of the A39 affected the commercial viability of the filling station business. The subsequent car sales business also proved to be financially unviable. The site has been advertised on the open market, to no avail. It is therefore sensible to consider an appropriate new use for the site. The appellant proposes a development of 5 new family houses.

15. The Council has no objection in principle to the residential use of the site. The scale and massing of the proposal is considered appropriate and there would be a significant visual improvement. The development would have benefits in the redevelopment of redundant brownfield land and the removal of a semi-derelict former filling station, something of an eyesore on the edge of a conservation area and within the World Heritage Site which makes a negative contribution to the character of the local area. It would also resolve the potential pollution problem arising from historic forecourt spillage and ageing underground fuel storage tanks.
16. The site is considered sustainable in respect of its position in relation to the village of Devoran and public transport connections. The site would provide easy connections to existing pedestrian and cycle networks and would assist in meeting housing provision in the wider area. The proposal would make a positive and architecturally attractive contribution to local character and distinctiveness and there would be no significant issues in relation to the historic environment. The proposal would also remedy the site's negative impact on the Outstanding Universal Value of the World Heritage Site.
17. The Environment Agency (EA)'s Indicative Flood Map shows the major part of the site to be within Flood Zones 2 and 3. Housing is considered to be 'more vulnerable' development. The appellant's Flood Risk Assessment shows the site to be at risk from both tidal and fluvial flooding. Allowing for a rise in sea level due to climate change, tidal flooding is considered to be the primary risk. The appellants therefore carried out a Sequential Test to assess whether there are reasonably available alternative sites within a search area of adjoining Community Network Areas (CNA) agreed with the Council.
18. The appellant reviewed the Cornwall SHLAA Report January 2016 to identify potential locations for alternative sites. The Report indicates that the totality of the sites considered available far exceed the housing targets for the CNAs. Although the appellant's investigation confines itself to smaller sites, the availability of sites is not restricted to those directly comparable to the proposed development. The appellants conclude in any event that there are alternative greenfield sites available in areas at a lower risk of flooding. On the face of it the proposal fails to meet the Sequential Test and, in not avoiding an area of flood risk where potentially there are reasonably available alternative sites, there is conflict with part (a) of CLP policy 26.
19. PPG advises, that, when applying the Sequential Test, a pragmatic approach on the availability of alternatives should be taken. The SHLAA Report confirms the importance of unidentified windfall sites to achieving the housing targets. Such sites are identified as normally comprising small previously developed sites that have unexpectedly become available. Small sites delivering less than 10 dwellings have delivered a very significant proportion of recent housing (2 out

of every 5 houses delivered over the past 10 years) and the Council expects that this will continue to some extent. The Council refused the application for the single reason that it did not pass the Sequential Test. In my view, the availability of this site as a small windfall site and the agreed benefits that its development would provide makes it necessary to go on to consider whether there are other material considerations to take into account.

20. The scheme has been designed to meet the Exception Test set out in Framework paragraph 102. A site-specific flood risk assessment demonstrates that the development would be safe for its lifetime. The lowest floor level of the houses would be above the identified extreme tidal flood level. Other measures would be taken to ensure flood resilience. The EA considers that the floor levels are such that the building would be safe from flooding for its lifetime and, importantly, has no objections to the proposal on flood risk grounds provided that a condition is incorporated into any planning permission to ensure safe access/egress in the event of a severe tidal flood event.
21. In accordance with Framework paragraph 103, the flood risk elsewhere would not be increased and the overall design proposals demonstrate that the development would be appropriately flood resilient and resistant, safe access and escape routes can be provided to land in Flood Zone 1 and residual risk can be safely managed. The proposal has been designed to eliminate flood risk on site and in the local area. It would neither cause nor suffer significant harm in terms of flooding thereby meeting the objectives of part (b) of policy 26.
22. The CLP states that for the Community Network Area (CNA) of Penryn and Falmouth priority for delivering the housing target should be given to the utilisation of brownfield sites. Reflecting paragraph 111 of the Framework, CLP policy 21 seeks to ensure that the best use is made of land; encouragement is given to sustainably located proposals that use previously developed land, particularly derelict and contaminated land not of high environmental or historic value.
23. This is just such a site. In compliance with policy 21, the proposed scheme would utilise an unattractive brownfield site, helping fulfil the housing requirement within the CNA without the need for the development of greenfield land. Furthermore, I note that some leakage from underground tanks has occurred with the potential for greater pollution of the local waterways. The development would provide the opportunity to decontaminate the site and prevent a potentially serious pollution event.
24. Although the site is subject to flood risk, the scheme has been designed to eliminate the risk to the occupiers of the houses and to the local area. In an area where the SHLAA report identifies virtually every site as greenfield land, the benefits of reusing this contaminated brownfield site to contribute to local housing provision are significant. On balance, I consider that the development of this site in the way proposed would provide wider sustainability benefits to the community that outweigh the flood risk. I therefore find that the conflict with the development plan is clearly outweighed by other material considerations and that this is an appropriate site for residential development.
25. Planning permission for the proposed development should therefore be granted subject to appropriate conditions. The conditions suggested by the Council relating to surface water drainage, foul drainage and external materials are appropriate and necessary. Since the site is subject to flood risk a sustainable

drainage system should be considered. Conditions to ensure the proper remediation of the contaminated site are also important. I also consider that connection to the EA's flood warning system is particularly necessary. I have amended the wording of some of the suggested conditions in the interests of clarity and to accord more with the standard conditions recommended by the Inspectorate. A number of pre-commencement conditions relate to matters which need to be resolved before work can start on site.

26. The EA's support relies on ensuring safe access/egress in the event of a severe tidal flood event. Apart from the safety aspect, lack of such access/egress could cause considerable disruption to the occupiers, including limiting the ability of occupiers to get to work or to school. I consider that it is not appropriate for occupiers to remain on site to await the abatement of flooding, an alternative suggested by the appellant, and that a safe access/egress route is necessary. The appellant's Flood Risk Assessment suggests a safe pedestrian route along an existing verge, and this is partly shown on the plans. The verge is not in the appellant's ownership so, in the absence of a legal agreement, the access/egress route can best be secured by imposing a Grampian-type condition requiring its provision before occupation.
27. On that basis, for the reasons given above, I conclude that the appeal should be allowed.

Colin Ball

Inspector

ANNEX A

Schedule of conditions to be attached to the grant of planning permission for the residential development of five houses and associated works at the Former Devoran Car Sales site, Devoran, Truro TR3 7NR in accordance with the terms of the application Ref PA17/03857, dated 21 April 2017:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 15113.1.F001, 15113.3.002, 15113.3.003, 15113.2.005, 15113.2.006 & 15113.2.007A.
- 3) None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 4) None of the dwellings hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 5) No development shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby approved have been submitted and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details.
- 6) No development shall take place until an assessment of the risks posed by any contamination shall have 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:

- i) a survey of the extent, scale and nature of contamination;
 - ii) 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.
- 7) 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 shall have 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 options, 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. The approved remediation scheme 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.
- 8) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported 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.
- 9) No development shall take place until a monitoring and maintenance scheme to demonstrate the effectiveness of the proposed remediation has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented, and the reports produced as a result, shall be submitted to the local planning authority within 14 days of the report being completed and approved in writing within 21 days of receipt. If any of these reports identifies any discrepancy with the verification report then a protocol, including timescale, for the necessary remediation shall be submitted to the local planning authority within a further 14 days and approved in writing within 21 days of receipt. Thereafter, any necessary remediation and verification shall be carried out in accordance with the approved protocol.
- 10) No dwelling shall be occupied until details confirming the connection of each dwelling to the Environment Agency's flood warning system and site instructions showing how occupiers are to be made aware of how to

respond in the event of a severe tidal flood have been submitted and approved in writing by the local planning authority. The connections and site instructions should be thereafter retained.

- 11) No dwelling shall be occupied until a safe pedestrian emergency flood escape route has been provided in accordance with plan 15113.2.005 and Fig 7.1 of the appellant's Flood Risk Assessment. The escape route shall thereafter be kept available.