
Appeal Decision

Site visit made on 26 November 2019

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 18 December 2019

Appeal Ref: APP/D0840/W/19/3236045

Treetops, Trewince Lane, Port Navas, Constantine, Falmouth TR11 5RH

- 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 Chris Perry against the decision of Cornwall Council.
 - The application Ref PA18/03489, dated 12 April 2018, was refused by notice dated 28 February 2019.
 - The development proposed is the conversion and extension of single storey boathouse to provide living accommodation at first floor level with ancillary/storage area below.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The revised National Planning Policy Framework (the Framework) was published in February 2019 and, as such, references to the Framework in this decision therefore reflect the revised Framework as published in February 2019.
3. The reason for refusal refers to Policy 23 of the Cornwall Local Plan Strategic Policies 2010-2030 ('the Local Plan'). However, the Council, in its appeal statement, has confirmed that this was an error and that the policy referred to should be Policy 26 of the Local Plan. The Appellant has been made aware of this and has had the opportunity to comment. I have determined the appeal on this basis.

Main Issue

4. The main issue whether the site provides a suitable location for the proposed development, having particular regard to the risk of flooding.

Reasons

5. The appeal site is located within Port Navas, set back from the highway which connects Port Navas to the settlement of Constantine. The site comprises an land and a building, which the evidence before me indicates is currently used as a boathouse. Southwest of, and adjacent to, the appeal site is the Trewince Stream which flows downhill past the site before entering the Helford River. According to the evidence and submissions made in this case, the site is located within Flood Zone 3.
6. Paragraphs 155 – 165 of the Framework, and the 'Flood risk and coastal change' section of the Planning Practice Guidance (the PPG), set out the

National Policy with regards to flood risk. Both confirm that the objective is to ensure that inappropriate development in areas at risk of flooding, whether now or in the future, is avoided. Strict tests are to be applied in order to protect people and property from river and sea flooding. Where these tests are not met, development should not be allowed. Policy 26 of the Local Plan, along with its supporting text, is reflective of this approach.

7. Whilst I acknowledge the submissions of the Appellant, in accordance with the PPG and given the appeal site's location within Flood Zone 3, there is a high probability of flooding at the site. There is no evidence before me which confirms that the site is not allocated for development and, in such circumstances, the Framework and the PPG require a Sequential Test to be applied and, if necessary, an Exception Test, before planning permission can be granted. Paragraph 158 of the Framework confirms that the purpose of the Sequential Test is to steer new development to areas with the lowest risk of flooding and that development should not be permitted if other appropriate sites are available to accommodate the development in areas with a lower risk of flooding.
8. A Sequential Test does not appear to have been undertaken or submitted by the Appellant, other than to a reference that it was the Appellant's belief that there would be no doubt that alternative sites would be found in the nearby settlements of Falmouth and Penryn. In this regard, it has been put to me by the Appellant that a Sequential Test is not required in relation to the appeal scheme. The Appellant maintains that the proposal is for minor development which the PPG¹ confirms does not require a Sequential Test. However, the PPG² provides a definition of 'minor development' and, in this instance, the appeal scheme would not accord with the criteria or definitions of 'minor development' as set out in the PPG.
9. With regards to the application of the Sequential Test, the PPG confirms that a 'pragmatic approach' should be taken on the availability of other sites. In this regard the Appellant contends that there are no other available sites which would result in less harm to the environment and which would be economically viable for their business.
10. Even in the event that it was considered that the Sequential Test demonstrated that there were no other alternative sites in areas with the lowest risk from flooding, the appeal proposal would be required to conduct an Exception Test. Paragraph 160 of the Framework provides that for the Exception Test to be passed, it should be demonstrated that the scheme would provide wider sustainability benefits to the community that outweigh the flood risk and that the proposed development would be safe for its lifetime.
11. In this regard, the submissions made by the Environment Agency confirm that the habitable rooms of the proposal would be at first floor level and that safe access to and egress from the proposed dwelling could be achieved. Consequently, in light of the above, consideration of the benefits which the proposal may bring to the community, is also required.
12. The proposal would provide some very limited benefit in terms of an additional dwelling towards local supply. The weight to be attached to this benefit is

¹ Paragraph 033 Reference ID: 7-033-20140306

² Paragraph 046 Reference ID: 7-046-20140306

limited by the scale of the proposed development and whilst I acknowledge that the Appellant believes that the appeal scheme would provide an affordable dwelling for a resident, it is apparent from the submissions that the proposal would not accord with the definition of Affordable Housing as provided for in the Glossary to the Framework.

13. The Appellant has further put it to me that it would be unsustainable to travel from other locations as their business and a number of business customers are situated within Port Navas. However, I have not been provided with any evidence to substantiate these considerations, and whilst I note that the Appellant maintains that most of the business can currently be conducted without the need for vehicles to travel to other locations, it is apparent from their submissions that some travel will be required in order to reach customers located outside of the settlement.
14. Whilst it may be that the proposal would result in less vehicle trips for the Appellant overall, these circumstances may not always be the same with occupants changing over time, whereas the development would be permanent. The evidence before me indicates that Port Navas does not contain the services and facilities that may be required on a day to day basis, such as schooling, healthcare and shops. Consequently, the appeal site cannot be said to be sustainably located with regards to access to such services and facilities and therefore any 'community benefit' in terms of lower numbers of vehicle trips in relation to the business, would be offset by the likely need to travel further afield on a daily basis to access basic services and facilities.
15. Taking all these factors into account, I cannot be content that the appeal scheme would provide wider sustainability benefits to the community that would outweigh the flood risk, as would be required in order to comply with paragraph 160 a) of the Framework. As such, even if the Sequential Test were to be passed, the proposal would fail to meet the requirements of the Exception Test.
16. For the above reasons, I find that the proposed development fails to comply with local and national policies which seek to steer new development away from areas at the highest risk of flooding. Accordingly, the appeal proposal is contrary to paragraphs 155 – 163 (inclusive) of the Framework, as well as the corresponding guidance in the PPG, and would conflict with Policies 3 and 26 of the Local Plan. Whilst I note that, within the reason for refusal, the Council refers to Policy 12 of the Local Plan which concerns design, it has not been shown how the proposal would conflict with the requirements of this policy.
17. Furthermore, whilst I sympathise with the Appellant's position with regards to their desire to reside within Port Navas, the Appellant's long standing connections to the area and the lack of objections from neighbours or nearby interested parties, are not considerations that would outweigh the identified harm caused by the proposed development.
18. The Appellant has drawn my attention to other development within the area, which the Council previously granted planning permission for or that were subject to appeal decisions, and which, it is maintained, are comparable to the appeal proposal with regards to flood risk.

19. I have considered the information which has been provided in this respect, and note that with regards to an appeal³ at Devoran (the Devoran Appeal), the Inspector found that the proposal would succeed when assessed against the Exceptions Test. In this instance I have concluded that, even in the event that a Sequential Test was not required, that the appeal scheme would also fail in respect of the Exceptions Test. Consequently, the two matters are not comparable, and this appeal decision would be consistent with the findings of the Inspector in the Devoran Appeal. Furthermore, I am not familiar with all of the circumstances that applied to the cited planning application decisions and, in any event, all applications for planning permission must be determined on their individual merits.

Conclusion

20. For the reasons given above, I conclude that the appeal should be dismissed.

A Spencer-Peet

INSPECTOR

³ Appeal Reference: APP/D0840/W/17/3181720