



Appeal Decision

Site visit made on 10 October 2022

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th October 2022

Appeal Ref: APP/D0840/W/20/3259877

Tregoin Lodge, The Green, Trewoon PL25 5TA

- 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 Dr Sarah-Jane Eastman against the decision of Cornwall Council.
 - The application Ref PA19/07894, dated 8 September 2019, was refused by notice dated 22 July 2020.
 - The development proposed is change of use of detached garage (as approved in decision PA11/09377) to residential use for private rental purposes.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council determined the application on 22 July 2020. Both parties' submissions were prepared prior to the issue of the revised National Planning Policy Framework (the Framework) in July 2021 and the updated Planning Practice Guidance (the PPG) on 25 August 2022. The parties have been given the opportunity to make any additional comments relating to the updated advice and guidance.

Main Issues

3. The main issue is whether future occupiers of the building would be safe from flooding.

Reasons

4. The appeal relates to a detached building situated in the curtilage of Tregoin Lodge. The evidence indicates that it was built pursuant to a planning permission¹ that was granted in 2012 for a detached garage with storage over. Externally, it appears to accord with the drawings approved at that time. Internally, however, I saw that the building has been divided at ground floor level, so that the rear part accommodates a wc/shower room and a kitchenette. The entire first floor was in use as living accommodation at the time of my visit. It is proposed to change the use of the building to a separate residential unit.
5. It is not disputed that the Environment Agency's indicative flood map shows the building to be within Flood Zone 3 (high risk). The government's approach to managing flood risk is set out at Section 14 of the Framework. Paragraph 159 states that inappropriate development in areas at risk of

¹ Local Planning Authority reference: PA11/09377

flooding should be avoided by directing development away from areas at highest risk. Paragraph 161 explains that this should be achieved by applying a sequential, risk-based approach to the location of development – taking into account all sources of flood risk and the current and future impacts of climate change – so as to avoid, where possible, flood risk to people and property. This is usually to be achieved by applying the sequential test and then, if necessary, the exception test to manage any residual risk.

6. The Council contends that, as the site lies within Flood Zone 3, and there are alternative locations for residential development within the area at lower risk of flooding, the proposal does not pass the sequential test. However, paragraph 168 of the Framework says applications for some minor development and changes of use should not be subject to the sequential or exception tests. Footnote 56 clarifies that this applies to changes of use, other than where the proposed use is for a caravan or camping site. The proposal is for a change of use of the building, and does not involve any alterations. Consequently, the Framework does not require the sequential or exception tests to be applied to the development.
7. In arriving at this conclusion, I have had regard to the appeal decisions referred to by the Council, where Inspectors concluded that the sequential test should apply to various proposals involving access across land in Flood Zone 3. However, all of those cases involved the construction of new dwellings, rather than changes of use, so the need to apply the sequential approach was not affected by paragraph 168 of the Framework.
8. Notwithstanding that a sequential and exception test is not required, the PPG advises² that changes of use can increase the vulnerability of the development or result in occupation by people who are more vulnerable than the previous occupants to risks from flooding. Paragraph 168 of the Framework says that site-specific flood risk assessments should still be provided for applications for changes of use in Flood Zones 2 and 3.
9. A Flood Risk Assessment (the FRA) was submitted with the application. It demonstrates that the primary flood risk for the area is from the unnamed watercourse that is culverted to the north of the site and reopens to the south. The FRA analyses the catchment for the watercourse, and the likely flow from a 60 minute 1 in 100 year plus 40% climate change event. Using the calculated flow rates, topographical data, and a recognised hydraulic model, the FRA demonstrates that the garage building would remain free from flooding. The FRA therefore concludes it is within Fluvial Flood Zone 1. This conclusion is accepted in the Environment Agency's consultation response.
10. From my own observations, I saw that flood flows would be diverted around the building by the boundary walls that surround it to the north, west, and south. The FRA predicts that flood waters would bypass the open driveway of the property, because the topographical data shows there to be a kerb of approximately 60mm in height. However, I saw that there was very little upstand between the access road and the driveway, and that at the south-eastern end of the access, the road and driveway were virtually flush. Consequently, as the FRA predicts flood depths past the driveway to be between 10mm and 50mm, it is likely that flows would enter the site. Nevertheless, this water would flow downhill towards Tregoin Lodge. The

² Paragraph: 052 Reference ID: 7-052-20220825

building, being at a higher level, would remain unaffected. I am therefore satisfied by the evidence, that in a 1 in 100 year plus 40% climate change event, the building itself would be free from flooding.

11. However, the PPG advises³ that, when assessing the safety implications of flood risk for a development, the ability of residents and users to safely access and exit a building during a design flood, and to evacuate before an extreme flood, should be considered. Access to the building is via The Green, which exits to the north of the site onto Cooperage Road. The FRA concludes that flood waters would inundate The Green to depths of approximately 50mm immediately adjacent to the site. This depth would then increase towards Cooperage Road, in which flood depths of between 750mm and 1m would be encountered. Figure 7.1 of the FRA demonstrates that depths above 600mm constitute a 'Danger to most' or 'Danger to all', depending on the velocity of the flow. Consequently, residents of the proposed accommodation would not be safe when accessing or leaving the building during a 1 in 100-year event.
12. The mitigation measures identified in the FRA include a recommendation that occupants remain in the building until flood levels subside. However, whilst the model for the FRA was based on a 60-minute storm duration, there is no certainty that any future event would be limited to that period. Consequently, it is unclear how long occupants would be trapped in the building. If it were for a prolonged period, residents may attempt to traverse the flood waters to obtain goods or services. Alternatively, others may seek to reach the building to assist the occupants. This would be particularly likely if the residents were older, disabled, or vulnerable. The likelihood that occupants or visitors to the building would be put at risk during a flood event in the future cannot, therefore, be reasonably discounted.
13. The FRA also recommends that residents should be connected to the Environment Agency's flood alert system, so that they can be prepared for such an event. However, the location, timing, and intensity of rainfall events are difficult to predict with certainty. Furthermore, the FRA model shows that water would be flowing down The Green within 10 minutes of overtopping the culvert, with water levels at the junction with The Cooperage at a height of over 300mm within 20 minutes. Residents would, therefore, have little time to evacuate the building, or to return to it, before flood depths were at a level that presented a 'Danger to most' or 'Danger to all'. The provision of alerts may not, therefore, be successful in preventing residents being put at risk when attempting to access or evacuate the building before a flood event.
14. Consequently, whilst the building itself would be safe from flooding, I find that its use as an independent dwelling would introduce risk for residents and visitors attempting to access and exit the site during a flood. In coming to this conclusion, I am mindful that the occupants of other properties served by The Green are at a similar risk. This does not, however, amount to a convincing reason to place another household in the same position. The appellant has also referred to several planning permissions for dwellings in the same post code, on the same road, in Flood Zone 3. However, I have not been provided with any details, so I cannot take them into account.
15. Whilst the appellants have not witnessed flooding in the area in the four years that they have lived in the property, the evidence, including the submitted FRA,

³ Paragraph: 005 Reference ID: 7-005-20220825

demonstrates that the access to the building is at risk of flooding. In these circumstances, the use of the building as a separate dwelling would be inappropriate, having regard to the Framework guidance and PPG advice, as it would result in risk to residents seeking to access or exit the site during a flood. Consequently, the proposal would conflict with Policy 26 of the Cornwall Local Plan Strategic Policies 2010 – 2030, which seeks to increase the flood resilience of the area and minimise, or reduce and, where possible, eliminate flood risk on the site and in the area.

Planning Balance

16. The development would provide some benefits. Paragraph 60 of the Framework seeks to significantly boost the supply of homes. The proposal would provide an additional dwelling, which would assist with this aim. However, paragraph 69 of the Framework only gives great weight to the benefits of using sites within existing settlements for homes if they are suitable. As the access is at risk of flooding, I have found that the site is not suitable. Consequently, and in view of the small scale of the proposal, the contribution to housing supply attracts limited weight in my decision.
17. The proposal would have social and economic benefits through the contribution of an additional household to support local businesses and services. However, as the proposal is only for one dwelling, these benefits would be limited. The provision of a stable source of income for the appellant would be a personal, rather than public, benefit, so attracts little weight in my decision.
18. The limited benefits of the proposal do not, therefore, outweigh the risk to occupants and visitors attempting to access and exit the site during a flood, and the consequent conflict with development plan policy and national planning advice in this regard.

Conclusion

19. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Nick Davies

INSPECTOR