



Appeal Decision

Site visit made on 19 September 2023

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd October 2023

Appeal Ref: APP/D0840/W/23/3317937

**Dartana, Road From St Stephens Hill To Castle Hill, Forder, Cornwall
PL12 4QR**

- 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 Martin Knipe against the decision of Cornwall Council.
 - The application Ref PA22/09878, dated 4 November 2022, was refused by notice dated 6 February 2023.
 - The development proposed is the demolition of existing buildings and erection of a dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal has been made in outline, with all matters except access reserved for future consideration. A plan that accompanied the application shows an indicative location for the proposed dwelling. However, layout and scale are reserved matters, therefore I have considered this drawing solely on the basis that it has been submitted for illustrative purposes.
3. The Council's third reason for refusal related to harm to the integrity of the Tamar Estuary Special Area of Conservation and Plymouth Sound Special Protection Area as a result of the proposed development. During the appeal, the appellant has made an appropriate financial contribution towards measures to mitigate the harm. The Council has confirmed that it no longer wishes to pursue this reason for refusal.

Main Issues

4. The main issues are:
 - a) Whether the site is suitable for the development, bearing in mind the settlement policies of the development plan, the accessibility of services and facilities, and its effect on the character and appearance of the area; and,
 - b) Whether the location of the proposal would be acceptable having regard to the risk of flooding.

Reasons

Settlement policies, accessibility, character and appearance

5. The appeal site is part of a large area of land attached to Dartana, a house on the western edge of Forder, which is a small settlement concentrated around the steep banks to either side of Forder Creek. Much of the larger site is semi-wild woodland, but there are also areas of ornamental gardens, orchards, vegetable beds and a children's play area. The appeal site itself is an area of domesticated garden, with close cut lawns containing island beds and specimen trees, surrounded by gravelled paths. There are two single-storey timber clad buildings with corrugated sheet roofs in this area, which are used for general domestic storage.
6. Dartana itself lies within the Village Development Boundary (the VDB) for Forder, as defined by the Saltash Neighbourhood Development Plan 2021 – 2030 (the Neighbourhood Plan), which was made on 17 March 2022. Part of the proposed access track, which is within the red line delineating the application site, is also within the VDB. However, the main part of the site, where the dwelling would be located, is approximately 25 metres outside it.
7. Policy RUR2 of the Neighbourhood Plan says that, outside VDBs, only affordable housing led local needs residential development under CLP Policy 9¹ and appropriate rural development under CLP Policy 7² will be supported. The proposal has not been put forward as an exception site for affordable housing under Policy 9 of the Cornwall Local Plan Strategic Policies 2010 - 2030 (the Local Plan). Nor does it comprise any of the exceptional circumstances set out in Policy 7 of the Local Plan, whereby new homes in the countryside may be permitted. The proposal would, therefore, conflict with Policy RUR2 of the Neighbourhood Plan.
8. It has been put to me that the Neighbourhood Plan is silent on how Policy RUR2 interacts with Policy 3 of the Local Plan, and that it does not, therefore, preclude rounding off outside the VDB. I have been referred to one of my own appeal decisions³ in support of this view. That case, however, related to a different Neighbourhood Plan, where there was a Policy that supported infill development within the settlement boundary, but no Policy that limited residential development outside it. In this case, Policy RUR2 supports development in the VDB, but also limits development outside the boundary. Furthermore, it is evident from the last bullet point of paragraph 12.6 of the Neighbourhood Plan that the VDBs have been drawn with a view to encompassing sites that fall within the Local Plan definition of rounding off. I am not, therefore, persuaded that Policy RUR2 leaves scope for rounding off outside the VDB.
9. In any event, the site is not adjacent to any existing built development and is not contained by long standing and enclosing boundary features that would act as a barrier to future growth. It would appear as an isolated dwelling, detached from the built edge of the settlement, so would not provide symmetry or completion to the settlement boundary. Furthermore, it could facilitate continued incremental growth, as it would create an opportunity for rounding

¹ Policy 9 of the Cornwall Local Plan Strategic Policies 2010 - 2030

² Policy 7 of the Cornwall Local Plan Strategic Policies 2010 - 2030

³ Appeal Decision APP/D0840/W/19/3242527

off or infill between the appeal site and Gawen House to the east. Consequently, having regard to the definition at paragraph 1.68 of the Local Plan, and the further guidance contained in the Chief Planning Officer's Advice Note⁴, the proposal would not comprise rounding off.

10. It is not disputed that the site comprises previously developed land (PDL). Policy 3 of the Local Plan allows for the development of PDL within or immediately adjoining a settlement. However, the site for the dwelling is detached from the VDB by a considerable distance. I have had regard to the case law that has been drawn to my attention⁵ regarding the interpretation of the wording of this Policy. However, in my planning judgement, the site is so detached from the built-up part of the settlement that it cannot be considered to be immediately adjoining it. The proposal is not, therefore, supported by this strand of Policy 3 of the Local Plan. Even if it were, it would still be in conflict with Policy RUR2 of the Neighbourhood Plan. As the Neighbourhood Plan has become part of the development plan more recently than the Local Plan, Section 38(5) of the Planning and Compulsory Purchase Act 2004 (as amended) indicates that Policy RUR2 should take precedence.
11. The site lies outside the VDB, is significantly detached from it, and the proposal does not constitute rounding off. Consequently, the site falls within the definition of open countryside given at paragraph 2.33 of the Local Plan, which is the area outside of the physical boundaries of existing settlements. The proposal for a new dwelling in this location would, therefore, be contrary to the settlement policies of the development plan, which comprise of Policies 3 and 7 of the Local Plan, and Policy RUR2 of the Neighbourhood Plan.
12. Although detached from the VDB, the dwelling would not be so far away from the settlement that its occupants would be unable to readily access the limited facilities within the village by foot. Similarly, the occupants would be no less able than other residents of Forder, to access the much wider range of services and public transport connections available within Saltash, a walk of approximately 0.5km. The site does, therefore, have reasonable accessibility to services and facilities, so the proposal attracts a measure of support from Policy 21 of the Local Plan, which encourages sustainably located proposals that use PDL and buildings.
13. The site is surrounded by trees and shrubs on all sides, although parts of it are visible from the Creek. However, the existing buildings are tucked down behind a screen of vegetation, so are not readily seen from any public viewpoint. Any long-distance views from the Creek are, therefore, of the existing domestic garden. Provided the dwelling were to be suitably sited, and of an appropriate scale, such that it was not visible from these viewpoints, it would not be harmful to the character and appearance of the wider landscape.
14. To conclude on this issue, the proposal would be contrary to the settlement policies of the development plan. It would, however, use PDL in a relatively accessible location, so is supported to some extent by Policy 21 of the Local Plan. It could be achieved without harm to the landscape, but this is not a positive factor in the balance of considerations. Overall, I conclude that the site is not suitable for the development, bearing in mind the settlement policies of the development plan when considered as a whole.

⁴ Chief Planning Officer's Advice Note: Infill/Rounding off - December 2017

⁵ Corbett v Cornwall Council [2022] EWCA Civ 1069

15. In arriving at this conclusion, I have had regard to the planning permission⁶ at Callington that has been drawn to my attention. I note, however, that this is a considerable distance away, and is not within the same Neighbourhood Development Plan area. Consequently, the balance of planning considerations would not have been comparable with the case before me. I also note that the planning permission at Crannog⁷ was granted two years before the Neighbourhood Plan was made. As a result, neither of these permissions carries significant weight in my decision.

Flooding

16. The application was accompanied by a Flood Risk Assessment (the FRA), which demonstrates that the main part of the appeal site, where the dwelling would be constructed, is located within Flood Zone 1. The FRA also indicates that the site is at low risk of flooding from groundwater and overland/surface water. Consequently, the dwelling itself would not be at particular risk of flooding. However, the appeal site includes the private access road that winds down from the area for the proposed dwelling, to provide vehicular and pedestrian access to the public highway to the southeast. The FRA shows that the lower end of this access road would be in Flood Zone 3, and is at risk of fluvial and tidal flooding.
17. The FRA demonstrates that under current conditions, in a 1 in 100-year fluvial event, flood water at the access junction would be 0.29 metres deep, and occupants would have to travel 22 metres through the flood to reach safety. However, when the effects of climate change are factored in, the 1 in 200-year tidal event would see floodwater to a depth of 1.56 metres, and a travel distance of 56 metres to safety. Figure 11 of the FRA demonstrates that under current conditions the hazard classification of this flooding would be "Danger for Most", which includes the general public. In the climate change scenario, the classification would be "Danger for all", which includes emergency services.
18. Paragraph 159 of the Planning Policy Framework (the Framework) advises that inappropriate development in areas at risk of flooding should be avoided, by directing development away from areas at highest risk. To achieve this, paragraphs 161 and 162 say that all plans should apply a sequential, risk-based approach to the location of development – taking into account all sources of flood risk. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.
19. Whilst the dwelling itself would be in Flood Zone 1, its main vehicular and pedestrian access, which is within the application site, would be in Flood Zone 3. The Planning Practice Guidance (the PPG) advises in the notes to Table 2: Flood risk vulnerability and flood zone 'incompatibility'⁸ that, where developments contain different elements of vulnerability, the highest vulnerability category should be used, unless the development is considered in its component parts. It is contended in the FRA that the access lane could be described as "amenity open space", which is classified as water compatible in Table 2 of the PPG. However, the access would be integral to the functioning of

⁶ Local Planning Authority Ref: PA20/00956

⁷ Local Planning Authority Ref: PA19/10391

⁸ Paragraph: 079 Reference ID: 7-079-20220825

the dwelling. Without it the occupants would be unable to enter or leave the site. It is not a component that can, or should, be considered separately. Therefore, in my judgement, the sequential test set out in the Framework should be applied to the proposal. Paragraph 162 advises that development should not be permitted if there are reasonably available sites appropriate for the development in areas with a lower risk of flooding.

20. The Council's evidence indicates that it can demonstrate a 6.6-year supply of deliverable housing sites. No contrary evidence has been provided to demonstrate that this is not the case. Furthermore, I have no evidence to indicate that the dwelling could not be accommodated in areas at lower risk of flooding and in accordance with the settlement strategy set out in the Local Plan. I cannot, therefore, safely conclude that the sequential test could be satisfied.
21. The FRA identifies an alternative access/egress route that could be used in the event of the road being flooded. It also sets out proposals for mitigation, including the preparation of a flood warning and evacuation plan and connection of the dwelling to the Environment Agency's flood warning system for the area. Furthermore, it suggests that if flood waters are present, residents could remain in the dwelling and within the site until they subside. However, these issues should be considered as part of an exception test, which should also demonstrate that the development would provide wider sustainability benefits to the community that outweigh the flood risk.
22. The Framework states that the exception test should only be applied if it is not possible for the development to be located in an area with a lower risk of flooding. As this has not been demonstrated, and the proposal fails the sequential test, the exception test is not applicable. I therefore conclude that the proposed development would not be suitably located in relation to flood risk, so would be contrary to Policy 26 of the Local Plan and Policy GRN4 of the Neighbourhood Plan, which seek to minimise, or reduce and where possible, eliminate flood risk. It would also be contrary to the advice on planning and flood risk in Section 14 of the Framework.
23. In arriving at this conclusion, I have had regard to the two planning permissions that have been drawn to my attention, in which a sequential test was not required where an alternative emergency access/egress was provided. However, I note that both of those decisions were made before the Flood risk and coastal change section of the PPG was extensively amended on 25 August 2022. Consequently, they carry little weight in my decision.

Conclusion

24. 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