



Appeal Decision

Site visit made on 29 October 2024

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2024

Appeal Ref: APP/D0840/W/24/3344896

Land adjacent to 9 Boscundle Close, Boscundle, St Austell PL25 3RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr J Alton against the decision of Cornwall Council.
 - The application Ref is PA22/08297.
 - The development proposed is woodland holiday lodges and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the appeal, on 19 and 20 December 2023, the Government published revisions to the National Planning Policy Framework (the Framework). The alterations result in the paragraphs that are referred to on the Council's decision notice being renumbered. The wording, however, remains the same.

Main Issue

3. Whether the location of the proposal would be acceptable having regard to the risk of flooding.

Reasons

4. The main part of the appeal site lies to the west of a collection of houses served by Boscundle Close, just outside St Austell. It comprises a fairly level area of former mining land that is at a higher level than 9 Boscundle Close, and largely surrounded by trees. The proposal is to site three modest timber holiday lodges on this part of the site, which lies in Flood Zone 1. Vehicular access to the buildings would be via a track leading off Boscundle Close, which is included in the appeal site. The eastern part of this track, where it meets Boscundle Close lies within Flood Zone 2. The junction of the Close and the distributor road to the east lies within Flood Zones 3 and 3b.
5. Paragraph 165 of 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 167 and 168 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.

6. The application was accompanied by a Flood Risk Assessment (the FRA)¹, which contended that a sequential test was not necessary, on the basis that the site is in Flood Zone 1, and safe dry access can be gained to it at all times. However, whilst the holiday lodges would be in Flood Zone 1, part of the access track, which is within the appeal site, would be in Flood Zone 2, and access to this track from the public highway 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'² that, where developments contain different elements of vulnerability, the highest vulnerability category should be used, unless the development is considered in its component parts. As the track is the only vehicular access to the site, it would be integral to the functioning of the holiday lodges, so should not be considered as a separate component.
7. The proposed use of the entire site should therefore be considered to be in the 'more vulnerable' classification under the PPG. As part of the site is in Flood Zone 2, the sequential test set out in the Framework should be applied to the proposal.
8. Part of the appellant's contention that a sequential test is not required is that an alternative safe pedestrian egress from the site can be achieved via the public right of way that runs along the northern boundary of the site. I saw that this is a very rough, narrow, unmade track, which is unlit and not easily navigable by anyone with limited mobility. The nearest public vehicular highway would be over half a kilometre away via this route. Correspondence has been provided from the Council's Emergency Management Manager indicating that the route would be acceptable for emergency evacuation. However, his conclusion does not appear to be based on a physical inspection of the nature of the route. From what I saw at my visit, I concur with the Inspector's conclusion at the previous appeal³ that it is not a safe and convenient access for guests or the emergency services.
9. The FRA also contends that, notwithstanding that the main access is prone to flooding in extreme events, it could still be used by emergency vehicles. It includes details of a hydraulic modelling exercise that was undertaken, and concludes that the maximum flood depth on the access route would be 0.39m during a 1 in 100 year flood event with a 52% allowance for climate change. It assumes a typical velocity of 0.77m/s and concludes that would result in a classification of "danger for most", which does not include emergency services. Correspondence with the Fire and Rescue Service has been provided that indicates it would not foresee access being an issue in these circumstances. However, there are significant caveats to that advice, as the vehicle exhausts would be below the maximum flood level, vehicles may have to stop short of the maximum depth, and a risk assessment would have to take place on arrival.
10. Consequently, whilst there is a possibility that emergency services could reach occupants of the lodges during a flood event, it is by no means guaranteed, and would clearly be more onerous than would be the case in an area with a lower risk of flooding. In any event, the issues of safe access and escape routes should be considered as part of an exception test, which should also

¹ EDS Ref: J-1523 dated 17 August 2022

² Paragraph: 079 Reference ID: 7-079-20220825

³ Appeal Decision APP/D0840/W/21/3281713

demonstrate that the development would provide wider sustainability benefits to the community that outweigh the flood risk. Paragraph 169 of the Framework indicates 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. The evidence in the FRA regarding access and egress does not, therefore, overcome the need for the sequential test to be undertaken.

11. An updated sequential test was submitted with the appeal⁴. The search area included the whole of Cornwall, and examined sites on the market for under £150k. The parameters included the site being outside Flood Zones 2 and 3, in a sustainable location, and in an area where a holiday use would be acceptable in planning terms (such as visual impact). The objectives of the development were cited as providing a unique experience for guests outside residential areas. The search identified 71 sites, none of which were considered to be reasonably available.
12. Many of the identified sites have been discounted on the basis that they are in an unsustainable, rural location, with no accessible services. However, Policy 5 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan) is supportive of new, or upgraded, high quality sustainable tourism facilities where they would be of an appropriate scale to their location and to their accessibility by a range of transport modes. It does not elaborate on what level of accessibility should be available, and it does not require developments to be near settlements containing everyday services and facilities. The requirement is that the scale of the proposal is commensurate with the accessibility of the site. In this case, the appeal proposal for three lodges is small in scale, so a site that is in the open countryside, but reasonably close to a small settlement may well comply. On the limited information provided, it would appear that a number of the discounted sites would fall within this category.
13. Some of the sites have been discounted on visual grounds, and in some cases, it is clear that they are open, exposed, coastal sites where a small tourist development would be harmful to the landscape. However, some appear less constrained. For example, Site 43 is described as being "set in a tucked away location within the village", and appears to have a degree of tree screening. Others are discounted on the basis that they would result in the loss of agricultural land, but no evidence of the classification has been provided. Furthermore, any loss would be very small scale, and Policy 5 does not prohibit the use of agricultural land.
14. Furthermore, some sites are discounted as they lie within a World Heritage Site where development may be resisted. However, there is no analysis of whether any mining infrastructure or artefacts lie close to the sites, or how they may be affected.
15. In conclusion, the submitted sequential test too readily discounts rural sites where a small-scale holiday use may be acceptable, and provides insufficient detail for excluding other sites on landscape, agricultural, or heritage grounds. Furthermore, it is limited to sites that are currently on the market, which is likely to be a small fraction of the potentially suitable land in Cornwall that lies outside Flood Zones 2 and 3. Consequently, I cannot be confident that there are no reasonably available sites appropriate for the proposed development in

⁴ EDS Ref: J-1523-02 dated 22 May 2024

areas with a lower risk of flooding. The proposal therefore fails the sequential test. As a result, the exception test is not applicable.

16. I therefore conclude that the proposed development would not be suitably located having regard to the risk of flooding, so would be contrary to Policies 2, 16 and 26 of the Local Plan. Taken together these policies seek to protect people from unsafe environments and potential hazards; ensure that buildings can be resilient to climate change; and 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.

Conclusion

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

Nick Davies

INSPECTOR