



# Appeal Decision

Site visit made on 6 January 2022

**by Mrs H Nicholls FdA MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 January 2022

---

**Appeal Ref: APP/D0840/W/21/3281713**

**9 Boscundle Close, Boscundle, St Austell PL25 3RN**

- 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 John Alton against the decision of Cornwall Council.
  - The application Ref PA20/04542, dated 2 June 2020, was refused by notice dated 8 March 2021.
  - The development proposed is proposed woodland holiday lodges and associated works.
- 

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. There was evidence, in the form of hardcore tracks and bases, and a platform on stilts, that the proposed development had commenced prior to my site visit.
3. The site is within the parish of Carlyon, which is designated as a neighbourhood plan area. However, the Carlyon Parish Neighbourhood Development Plan 2020 – 2030 (NDP) appears to be in draft form, having not passed the examination stage. Accordingly, given its stage of preparation, the NDP does not form part of the adopted development plan and I attribute limited weight thereto.

## Main Issues

4. The main issues are:
  - whether the proposal accords with local policies that seek to direct tourism-related developments of a scale appropriate to the accessibility of their location;
  - whether the location of the proposal would be acceptable having regard to the risk of flooding;
  - the effects of the proposal on the character and appearance of the area, with particular regard to the loss of trees; and
  - the effects of the proposal on the biodiversity value of the area.

## Reasons

### *Location of development*

5. The site is located in the settlement of Boscundle, in close proximity of residential dwellings, including that owned by the appellant. Boscundle is linked by road, and is a relatively short distance away from St Austell. There is pedestrian infrastructure leading from Boscundle to St Austell, and in the

opposite direction towards St Blazey and Par, passing by the public house, 'The Britannia Inn'. There are bus stops for both directions within 300m of the site.

6. Between the A390 (Holmbush Road) and the site, there is a stretch of wide two-way road which is absent of footways and streetlighting that would need to be traversed by guests. The length of about 130m is a relatively short distance for pedestrians to navigate the sub-optimal conditions, but I consider it is likely to be safe to do so and suitably links the site to adequate pedestrian and public transport infrastructure in the wider area.
7. Policy 5 of the CLP states that the provision of new, high quality tourism accommodation will be supported where developments would be of a scale appropriate to their location and to their accessibility by a range of transport modes. Setting aside that the Policy also requires that a well balanced mix of economic, social and environmental benefits should also be delivered, I consider that the scale of the proposal would be appropriate to its location, well related to St Austell, and also to its accessibility by a range of transport modes. I also note that in his decision<sup>1</sup>, my colleague found the site to be located within the residential area of Boscundle on the edge of St Austell, with various facilities and services.
8. Whilst the lack of special justification or lack of a tourist or local need for the proposal has been raised, the Policy does not require such to be provided. Consequently, in my view, the location of the proposal accords with CLP Policy 5 which seeks to ensure tourist facilities are of a scale appropriate to their location and their accessibility by a range of transport modes.

#### *Flood risk*

9. The site is located within Flood Zone 1 and is therefore not at risk from fluvial or tidal flooding. The submitted Flood Risk Assessment (FRA) acknowledges that the site is located within a Critical Drainage Area (CDA), but that there are low risks of the site itself flooding by means of surface or ground water. As such, the development itself does not appear to be at particular risk of flooding. The development type is classified as 'more vulnerable' under the terms of the Planning Practice Guidance (PPG), but given the site's low flood risk, the development would be appropriate were it accessible from land entirely within Flood Zone 1.
10. As also acknowledged in the appellant's FRA, the site can only be accessed by car via the entrance on to Boscundle Close which is within Flood Zones 2, 3 and 3b and therefore at risk of flooding from fluvial events. Although this area doesn't strictly overlap with the site, it is clear that this area is the primary vehicular and pedestrian access route to the site and flooding of this area could cause safety risks and great inconvenience to future guests.
11. The PPG<sup>2</sup> sets out that a sequential test is not normally necessary for development in Flood Zone 1 (lowest risk of flooding) unless there are flooding issues in the area. In this instance, there are largely unavoidable flood risks along the main access to Boscundle Close. This evidence of flood risk necessitates the application of the sequential test which seeks to ensure that there are no reasonably available sites in Flood Zone 1 before the suitability of sites in Flood Zones 2 or 3 (areas with a high/highest probability of flooding)

---

<sup>1</sup> Appeal decision Ref: APP/D0840/W/19/3243662 dated 15 May 2020

<sup>2</sup> Paragraph: 033 Reference ID: 7-033-20140306

- are considered, taking into account the flood risk vulnerability of land uses and applying the exception test if required.
12. The appellant refutes that the sequential test is necessary as it is claimed that safe pedestrian egress from the site can be achieved via the adjoining public right of way (PROW). However, the narrow, unsurfaced, unlit route from the site along the PROW for about 10 – 15 minutes' walk along either of two available routes to the nearest public highway are more appropriate as recreational walking routes for ambulant pedestrians, rather than suitable alternatives to safe and convenient access to the site for guests or for the emergency services. As such, I do not consider that there is a safe means of access/egress to/from the site that avoids the need for the sequential test to be undertaken.
  13. The Framework and PPG set out that the sequential test should be applied before the exception test. Applying the exception test is therefore only necessary if the sequential test shows that it is not possible for development to be located in areas with a lower risk of flooding. Simply identifying an alternative means of egress from the site (for at least ambulant pedestrians) is, in effect, foreshortening the process to the application of the exceptions test without first having considered whether there are safer alternatives to developing the site.
  14. In the absence of a sequential test, I cannot reach a firm conclusion on the reasonable availability of other sites suitable for the development which are located within an area at a lower risk of flooding. As such, there is no need for me to consider the exception test.
  15. I have taken into consideration the other cases raised by the appellant where developments were permitted with some degree of relationship with higher risk flood zones<sup>3</sup>. However, I do not consider these cases are of an age or so comparable to the site, so as to suggest that the proposal should be approved despite my findings.
  16. Whilst I am also mindful that the FRA indicates that there are two potential surface water drainage options which could avoid any impacts on the CDA, the suitability of which can be determined by further ground investigations, this does not overcome the need to apply the sequential test.
  17. For the reasons detailed above, the location of the site is not acceptable in terms of the risk of flooding, with particular regard to the sequential test. It therefore conflicts with CLP Policies 2, 16 and 26 which collectively seek to protect people from unsafe environments and potential hazards, ensure that buildings can adapt and be resilient to climate change and require development to be sited in a manner that increases flood resilience of the area, taking account of the need to avoid areas of flood risk. For similar reasons, the proposal would also be inconsistent with the provisions in the Framework and PPG in relation to planning and flood risk.

#### *Character, appearance and tree losses*

18. The site was previously a mining area and there is evidence of former mine buildings and structures within the site. There is also evidence of former excavations and areas of made ground where excavated material has been left

---

<sup>3</sup> Appeal refs: APP/D0840/W/15/3137961 and APP/D0840/W/16/3163288

on the site and around the bases of tree trunks. Despite the evidence of its past use, and though that does not necessarily give it previously developed status (PDL) given its restoration since then, the woodland obviously has a value to the character and appearance of the area, even if the trees have a lower amenity value when considered individually.

19. Setting aside the laying of tracks and a platform which do not appear to have planning permission, I regarded the current management of the woodland as a generally positive intervention, with the ability to secure future maintenance through the use of conditions. I note the direct loss of a single tree and the likely loss of further trees in due course, more for reasons of their root compaction by mine waste and natural degradation, than specifically from the development itself, though it may have the effect of accelerating their declines by a modest degree. The effects of these losses, whilst perhaps noticeable from the PROW, would be minimised by the wider structure and density of the woodland as a whole from more distant views.
20. The appearance of the modestly-scaled timber lodges would be compatible with their woodland setting. The two units with stilts would appear as light-weight structures on the site, with an interesting visual appeal and would be carefully constructed around the landscape features. The ground-based unit would also be modest in size and designed to carry over the same natural timber rustic theme as the units raised on stilts. Given the site's location adjacent to the PROW, the overall effects of the development would be partly visible from the public realm, but I do not regard that it would be harmful. I also agree that there would be less of an expectation of openness from woodland-based lodges than would be the case if they were designed as residential dwellings, so their proximity to trees does not cause me concern in this regard.
21. Taking all of the above into account, whilst the proposal could modestly speed up the likely eventual losses of trees already in decline, this harm could be offset by replacement planting and through securing appropriate ongoing woodland management by way of planning condition. The development itself would also be acceptable within its context and in relation to its degree of public visibility. The proposal would therefore have an overall neutral effect on the character and appearance of the area and woodland character, in accordance with, in particular, Policies 12 and 23 of the CLP which seek to secure high quality, safe, sustainable and inclusive design in all developments. They also seek to sustain local distinctiveness and protect Cornwall's natural environment and assets.

#### *Biodiversity value*

22. I note that the Council's fourth reason for refusal relates to the absence of an ecological survey. Whilst the appellant's Statement of Case alluded to such a survey and recommended follow-ons having been undertaken, these were not actually submitted with the same. I noted the summarised conclusions from those surveys within the Statement, but absent of the full documents, a degree of uncertainty remained.
23. The appellant's final comments provided the Preliminary Ecological Appraisal and Bat Emergence Survey<sup>4</sup> in full, helpfully evidencing that these were in fact undertaken specifically in relation to the site, proposal and undertaken by an

---

<sup>4</sup> Preliminary Ecological Appraisal and Bat Emergence Survey, undertaken by Western Ecology and dated July 2021

appropriately qualified specialist. The late timing of their submission in full may be considered prejudicial the Council's ability to comment in respect of the same. However, whilst I am of the view that the surveys provide sufficient clarity that with conditions the proposal could ensure the protection of the biodiversity value of the site and secure appropriate benefits to accord with Policy 23 of the CLP, the appeal is failing for other reasons in any event. This matter is, therefore, not determinative.

### **Planning Balance and Conclusion**

24. In respect of its location, accessed primarily through a route which is at a high risk of flooding from fluvial sources, and in the absence of a sequential test outcome to indicate that there are no reasonable alternatives to developing in such an area, the proposal conflicts with the development plan, when taken as a whole.
25. There are numerous neutral factors relating to the proposal that comply, or that subject to planning conditions, could achieve compliance with the relevant development plan policies, including the accessible location of the site, the character effects on the surrounding area and suitability of surface water drainage infrastructure.
26. The main public benefits would result from an economic contribution to the area by future guests staying in the lodges and purchasing from local businesses, and potential reduced pressures on the housing stock that may otherwise be used for tourism purposes. A secondary benefit would result from the protection of the site's mining buildings and features and potential means to aid the understanding by guests of such.
27. However, the combination of the above neutral and beneficial aspects does not outweigh the identified harm or indicate that a decision should be taken other than in accordance with the development plan.
28. Consequently, the appeal is dismissed.

*Hollie Nicholls*

INSPECTOR