



Appeal Decision

by J P Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Welsh Ministers

Decision date: 19/09/2023

Appeal reference: CAS-02620-N1F4K3

Site address: Land off The Croft, Castle Street, Loughor, Swansea SA4 6TB

- 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 Kiley (Julians Supermarkets Limited) against the decision of the City and County of Swansea Council.
 - The application Ref: 2015/0453, dated 10 May 2015, was refused by notice dated 4 July 2023.
 - The development proposed is four detached dwellings with detached garages.
 - A site visit was made on 5 September 2023.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal was lodged against the initial failure of the Council to determine the application. However, the Council subsequently issued a decision notice within the 4-week period of dual jurisdiction. Therefore, I have treated this appeal as one against the refusal of the application, in accordance with s.78A(3) of the Town and Country Planning Act 1990.
3. There is a minor difference in the spelling of the appellant's surname between the application form and the appeal form. I have taken the spelling used in the banner heading above from the application form and the Council's decision notice.
4. Although the appeal form indicated that the appellant intended to submit a costs application, no formal application or sufficient explanation of grounds has been submitted, notwithstanding subsequent requests from PEDW. Therefore, it is reasonable to conclude that the appellant did not wish to pursue it. Consequently, I have not considered that aspect further.
5. At an advanced stage in the appeal process, the appellant expressed a wish to submit flood modelling information at a later date. PEDW advised the appellant that the statutory timescales for the submission of evidence had been clearly set out both at the start and during the course of the appeal, in accordance with The Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017, and that ample time and opportunity had been available to the appellant to prepare and submit

relevant information during the course of the application and the appeal process. In addition, no exceptional circumstances or persuasive reasons had been given to explain why such information could not have been prepared and submitted earlier. Moreover, the flood modelling information referred to was still not available. Therefore, given the above and that the relevant timescales for the submission of evidence had expired, I considered that it would not be appropriate to accept late submissions at some future point, which would delay the determination of the appeal. The appellant was advised that if they considered that the provision of additional information was necessary, they could withdraw the appeal and submit a new planning application with the relevant information, when it was available. Alternatively, the appeal could be determined on the basis of the evidence already submitted. The appellant chose the latter option and I have, therefore, determined the appeal on the basis of the evidence before me.

Main Issues

6. The main issues are:

- whether the proposed development would be safe from flooding for its lifetime without unacceptably increasing the risk of flooding elsewhere; and,
- whether sufficient information has been provided to assess the effect on trees within or adjacent to the site, taking into account their contribution to the character and appearance of the area and its ecology.

Reasons

7. The appeal site comprises an irregularly shaped parcel of land located to the north of a cul-de-sac with houses, known as The Croft. The site is also bounded to the north and the northwest by houses with garages to the rear, at Gwydr Place and Gwydr Villas, which are located along a road which runs parallel to the Loughor Estuary. To the east, it is bordered by the rear of houses along Landor Drive. The site consists largely of scrub land although there are groups of trees along some boundaries. Two public footpaths run across the site.

Flood Risk

8. The proposed development of four detached houses falls into the category of 'highly vulnerable development', as defined in Welsh Government's Technical Advice Note 15: Development and Flood Risk (TAN 15) (July 2004). Natural Resources Wales (NRW), the relevant advisory body, advises that although the site is shown to lie within Zone A of the Development Advice Map (DAM) referred to in TAN 15, indicating little or no risk of fluvial or tidal/coastal flooding, it borders Zone C2, which comprises areas of floodplain without significant defence infrastructure and where highly vulnerable development should not be considered. NRW also advises its Flood Map for Planning (FMfP) identifies part of the application site to be at risk of flooding and falling into 'Sea – Flood Zone 3', which are areas with more than 0.5% (1 in 200) chance of flooding from the sea in a given year, including the effects of climate change. The FMfP has no official status until the Welsh Government implements the proposed revised TAN 15. However, it represents the best available information that NRW have and NRW uses it to inform its planning advice. The concern relates to flood risk from tidal inundation from the nearby Loughor Estuary.
9. Referring to the content of its Flood Consequences Assessment (January 2023, Final: Revision C) (FCA), the appellant maintains that NRW's hazard maps indicate that, currently, the site is '*not at risk during either the T200 or the T1000 tidal event.*' However, the FCA advises that, with 100 years of sea level rise, it is expected that the precautionary T200 flood level could reach 7.419m AOD (Above Ordnance Datum), while

the precautionary T1000 could reach 7.839m AOD. As this could affect part of the site, the FCA advises that the finished floor levels would need to be set above 7.419m AOD.

10. Given the site location, concerns were initially expressed by NRW about whether it was clear that the finished floor levels of the proposed houses would be set above the level recommended in the FCA. Having received further confirmation on that aspect, NRW agreed (email dated 27 May 2022) that the proposal would comply with the 'flood-free threshold requirement' in Table A1.14 and 'acceptable flood depths' in Table A1.15 of TAN 15, albeit it also recommended that revised drawings should be provided to ensure implementation. Amended drawings were subsequently submitted by the appellant (Proposed Site Sections – 210402-P36 Rev A), which the Council advises clearly show that site levels would be increased across part of the site and that the dwellings would have finished floor levels above the level required. Therefore, I am satisfied on that aspect, as are the Council.
11. Notwithstanding, NRW has consistently expressed the view that, while the flood risk is predominantly tidal in nature, as the site is within an inland flood cell rather than an open coastal location, raising the site levels, as proposed, would result in the loss of flood storage or conveyance that could affect the risk of flooding elsewhere. That is particularly relevant given the proximity of existing residential properties.
12. A letter from the appellant's consultants [Francis Sant Ltd, who produced the FCA], dated 15 December 2021, accepts that if the risk were from fluvial flooding, raising the ground levels would result in a loss of flood storage capacity, with water being pushed elsewhere, increasing the risk to third parties. However, the consultants maintain that: *'Generally, as the risk is from a tidal source and considering the vastness of the sea, the loss of flood volume we are anticipating for the scheme can be considered to be negligible'*. They indicate that their belief is that, when compared with *'the vastness of the estuary'*, the proposed raising of the land level would not have an impact on third parties and that there would be only a minimal impact on tidal conveyance.
13. Although NRW has assessed those submissions, it considers that they are assumptions rather than based on evidence and data. Indeed, the appellant's consultants advised, as long ago as December 2021, that they were in the process of building a TUFLOW model (which the Council advises is a type of hydraulic and hydrodynamic modelling system) to provide further evidence. However, the consultants questioned whether, given the technical challenges involved, the value of the scheme and their view of the level of risk, such modelling could be justified.
14. NRW advised that, although it was ultimately for the Council (as the local planning authority (LPA)) to decide if a TUFLOW model was needed, it considered that its concerns regarding the impact on third parties had not been addressed by the appellant and that, therefore, it was not in a position to advise the LPA on the impact of flooding elsewhere. Based on the advice of its Drainage Officer, the Council considers that a TUFLOW model is required.
15. I have carefully considered the appellant's submissions, including those from its two professional consultants [Francis Sant Ltd and HR Wallingford]. However, bearing in mind the clear and consistent advice of NRW, the Council's similar view, and that the relevant TUFLOW modelling referred to has not been submitted or assessed, I cannot be confident that the proposed development would not increase the risk of third-party flooding, which may affect nearby residential properties.
16. I conclude, therefore, that insufficient evidence has been presented to show that the proposed development would be safe from flooding for its lifetime without unacceptably increasing the risk of flooding elsewhere. It follows that it would be contrary to policy RP 5

of the Swansea Local Development Plan 2010-2025 (adopted 28 February 2019) (LDP). That policy states that development will not be permitted: in areas at risk of fluvial, pluvial, coastal and reservoir flooding, unless it can be demonstrated that the development can be justified in-line with national guidance and is supported by a technical assessment that verifies that the new development is designed to alleviate the threat and consequences of flooding; or, where it would lead to an increase in the risk of flooding on the site or elsewhere from fluvial, pluvial, coastal flooding or increased water run-off from the site. The proposal would also fail to comply with similar national guidance within TAN 15.

Trees

17. The Council considers that the appellant has failed to provide an adequate Arboricultural Impact Assessment (AIA), which fully assesses the impact of the proposal in relation to trees located within or adjacent to the site.
18. The submitted AIA identifies proposed tree removals, which the Council and its Tree Officer have not objected to. Although some fifty-eight trees are recommended to be removed, the AIA indicates that the large majority of them are Ash trees with Ash Die Back disease. Therefore, I see no reason to take issue with that aspect.
19. Concerns have been expressed by the Council and its Tree Officer regarding authorship of the AIA, some of its content and the adequacy and nature of the tree protection plans submitted.
20. However, overall I consider the arboricultural information provided to be adequate and that such deficiencies could be overcome by the imposition of suitable conditions. Indeed, I note that, although provided without prejudice to the outcome of the appeal, the Council has suggested relevant landscaping and tree protection conditions, which could be imposed to address the relevant concerns.
21. Therefore, I conclude that, subject to appropriate conditions, the proposed development would not adversely affect trees within or adjacent to the site, taking into account their contribution to the character and appearance of the area and its ecology. It follows that there would be no significant breach of LDP policy ER 11, in that regard.

Other Matters

22. I note that there were some representations in support of the proposed development, received at the planning application and the appeal stage. Those in favour cite various benefits including: improvement in the appearance of the site, which is referred to as unkempt wasteland where old cars are dumped; that the proposed diverted public footpath would provide an improved and more pleasant access to the Loughor Estuary and its beautiful walks; and, that development of the site would discourage antisocial behaviour which currently occurs on it. While I have considered all matters raised and agree that there would be some benefits from the proposal, they do not outweigh my findings regarding the first main issue, concerning the risk of flooding elsewhere, as detailed above.
23. There have also been objections to the proposal, including a petition, through its various iterations (as plans were amended), raising a range of matters. However, where relevant, those issues have been dealt with in the Council Officer's Report. As I am dismissing the appeal for the reasons given, there would be no purpose in me considering those other aspects further here.

Conclusion

24. The appellant refers to aspects of the proposed development which comply with the LDP, such as its position within a settlement boundary and its sustainable location, in terms of

transport links and access to goods and services. There would also be a contribution to the housing supply. However, while I have considered those aspects and found that concerns about effects on trees could be dealt with by suitable conditions, the finding, based on the evidence currently before me, that the development could increase the risk of flooding elsewhere is decisive. Overall therefore, the proposed development would fail to comply with the development plan, considered as a whole, and relevant national planning policy, including that detailed within TAN 15.

25. Accordingly, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

26. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-being of Future Generations (Wales) Act 2015 ('the Act'). I consider that this decision is in accord with the Act's sustainable development principle through its contribution towards one or more of the Welsh Minister's well-being objectives as required by section 8 of the Act.

JP Tudor

INSPECTOR