
Appeal Decision

Hearing held on 9 November 2016

Site visit made on 9 November 2016

by Daniel Hartley BA Hons MTP MBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 November 2016

Appeal Ref: APP/V2635/W/16/3154238

Land to the west of West Drove North, Walpole St Peter, Norfolk

- 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 Paul Savory against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 15/01698/F, dated 23 October 2015, was refused by notice dated 23 December 2015.
 - The development proposed is the standing of a static caravan as accommodation for the applicant to look after livestock.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. At the hearing the Council confirmed that the King's Lynn and West Norfolk Site Allocations and Development Management Policies Plan (SADMP) had been adopted on 29 September 2016. Therefore, Policies DM2 (Development Boundaries), DM6 (Housing Needs of Rural Workers) and DM21 (Sites in Areas of Flood Risks) of the SADMP have full weight for the purposes of determining this appeal. The Council also confirmed that as the SADMP had now been adopted, policy 4/21 of the King's Lynn and West Norfolk Local Plan 1998 was no longer in place. It is not therefore relevant for the purposes of determining the appeal.
 3. When the planning application was determined, the local planning authority could not demonstrate a five-year supply of deliverable housing sites. However, since this time the Council has undertaken a further assessment of housing land supply which was considered by an Inspector in respect of appeal Ref APP/V2635/W/14/221650. In allowing this appeal on 14 July 2016, the Inspector concluded that *"I calculate that there would be a deliverable supply of 6,109 dwellings equating to 5.81 years"* and *"the LPA can demonstrate a five year supply of deliverable housing land"*. At the hearing the appellant did not dispute this conclusion, and I have not received any evidence to suggest that the five year housing land supply position has changed since 14 July 2016. Therefore, the Council's housing supply policies remain up to date for the purposes of considering paragraph 49 of the National Planning Policy Framework (the Framework).
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4. At the hearing the appellant confirmed, for the avoidance of doubt, that the application was made on the basis of permanently living on the appeal site and that a permanent planning permission (ie not a temporary planning permission) was being sought. I have determined the appeal on this basis.

Main Issues

5. The main issues are (i) whether, having regard to national planning policy that seeks to avoid isolated new homes in the countryside, there is an essential need for a rural worker to live permanently at the appeal site; (ii) whether or not there would be unacceptable flood risks and (iii) the effect of the proposal upon highway safety.

Reasons

Site and proposal

6. The appeal site comprises a narrow strip of land which is positioned immediately to the west of West Drove North. It falls within an essentially rural area and is surrounded by essentially flat and open fields. There is a detached dwelling which is almost opposite the site and a further detached dwelling located immediately to the north. At the hearing the appellant confirmed that the site was currently being used for the keeping/rearing of four small bullocks and a handful of chickens. He also indicated that one of the two caravans on the site was occasionally being used for overnight sleeping purposes. I was able to see the animals and the caravans on my site visit.
7. In the north east corner of the site it is proposed to site a static caravan. Despite the annotation on the submitted plan (indicating that the siting of the caravan would be agreed) the appellant confirmed at the hearing that it was proposed to site the caravan in the position shown on the plan. The existing access into the site, which has double gates and is approximately 6 metres wide, would be utilised.
8. Clarification was sought by the Council on 2 December 2015 about the proposal and the appellant's agent commented that *"it is Mr Savory's intention to use the proposed static caravan on the land as residential accommodation. The reason for this is that he intends to keep bullocks and chickens on his land and needs the accommodations for their welfare. Mr Savory tells me that he has had two robberies from his land over the past year and would like to live on site to protect his animals and his property. The livestock would supplement Mr Savory's income"*.

Isolated Dwelling

9. Paragraph 55 of the Framework states that *"local planning authorities should avoid isolated homes in the countryside unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside"*. At the hearing there was disagreement between the main parties about whether or not the proposal would lead to an isolated dwelling in the countryside.
10. The appeal site is located outside of the development boundary of Walpole St Peter. Policy DM2 of the SADMP states that *"the area outside development boundaries and defined allocations will be treated as countryside where new development will be more restricted and will be limited to the provision of*

affordable housing, community facilities, development in support of the rural economy or to infilling in accordance with Policy DM3". There are very few dwellings in this part of the countryside and the appeal site would be divorced from the more built up part of Walpole St Peter. The site and its immediate surroundings are rural in character and appearance and the siting of a caravan within it would not constitute infilling. Moreover, the proposal would not relate to the provision of affordable housing or a community facility, and for the reasons outlined later on in this decision the proposed residential caravan would not be required to support the rural economy.

11. Whilst the settlement of Walpole St Peter is relatively close to the appeal site, the main parties agreed at the hearing that it had only a very limited number of day to day facilities and services. In addition, there are no footpaths or street lights along West Drove North, which would discourage the occupier(s) of the proposed static caravan from walking or cycling to Walpole St Peter. I appreciate that if the appeal were allowed the appellant would not have to travel to his work base, but it would be isolated for anyone else who lived with him (such as a family if he were to have one) and trips would be necessary for non-work journeys. I consider that it is reasonable to conclude that a significant number of journeys would be undertaken using the private motor vehicle. For these collective reasons, I conclude that the proposal would constitute an isolated home in the countryside.
12. Given the above conclusion, it is necessary for me to consider whether or not the proposal would accord with paragraph 55 of the Framework (and the Council's development plan policies) in terms of whether or not there is an essential need for a rural worker to live permanently at the appeal site.

Essential need

13. At the hearing the appellant confirmed that to date he had not drawn any income from the rearing of animals from the appeal site. He confirmed that it was his intention to keep chickens in order to produce a few eggs, but that the main part of the agricultural enterprise would be from the rearing and selling of bullocks. He intended to increase the number of bullocks on the land from the existing four to twenty. He indicated that the bullocks would either be kept in existing shelters on the site or would have access to the open parts of the land. Given the relatively small size of the appeal site (coupled with the need for shelters), I have my doubts as to whether it would be possible to keep so many animals on the appeal site at any one time. The appellant indicated that he had access to additional land (about ten acres) approximately seven miles from the appeal site which he used on a rental basis. He said that it would be possible to put the bullocks on such land from time to time. However, I do not have specific details of this land, and I cannot be sure that the rental arrangement would endure indefinitely.
14. The appellant clarified at the hearing that there had been two robberies from the site in recent times which had involved a horse being taken and the loss of a trailer. The appellant confirmed that he had not registered these thefts with the police. However, in recent weeks he indicated that there had been a third theft which involved the loss of another trailer and that this incident had been registered with the police. Whilst I do not have any police records in respect of the first two robberies, I do not doubt that the thefts did take place. Clearly, a more regular on-site presence would seek to minimise potential thefts.

15. Notwithstanding the above, the site abuts a main road and is in very close proximity to some existing residential properties. Hence, members of the public would pass/view the site regularly thereby ensuring a reasonable degree of surveillance. I acknowledge that the appellant does have a security camera on the site. However, the appellant confirmed that this was simply a camera and images of the site could only be seen by playing back a video recording. I am not persuaded that the appellant has fully explored the potential for more advanced security arrangements, including the provision of a CCTV system where the site can be viewed using a computer/mobile phone at any point in time and where any tampering with the gates would send an alert to the appellant. I acknowledge that in terms of the fencing around the site the appellant has gone some way to make the site more secure since November 2015 (the date of the Council's site visit), but nonetheless, I do consider that it would be possible to make the site more secure, including the provision of more robust entrance gates and greater advertising of the fact that a CCTV system was in operation.
16. The appellant has indicated that he also needs to be on site to ensure the welfare of the animals. However, I have not heard or been provided with any specific evidence to demonstrate why it would be essential to permanently live on the site for animal welfare reasons. The appellant indicated that from time to time the bullocks would be kept on the rented land some miles away from the appeal site. It was not his intention to live near the rented land. I must therefore question why it would be essential to permanently live on the appeal site for animal welfare reasons when it would not be necessary to live in close proximity to the animals when they were on the rented land. On the evidence before me, I do not consider that it is essential for the appellant to live permanently on the appeal site for animal welfare reasons.
17. For reasons outlined above, I therefore conclude that it would not be essential for the appellant to live permanently on the site and hence there would not be a "*clearly established functional need*" having regard to 3a of Policy DM6 of the SADMP. Given this conclusion, it has not been necessary for me to consider in detail the requirements of 3b of Policy DM6 of the SADMP which states that new permanent dwellings should only be allowed where the "*need could not be met by existing dwellings within the locality*". Even if I had considered this matter further, such a requirement would not have been met as the appellant confirmed at the hearing that he had not explored the possibility of living in potentially available existing dwellings in the locality/close to the appeal site.
18. The appellant stated at the hearing that he did not want me to consider the possibility of a temporary planning permission (for example three years) and that a full/permanent planning permission was being sought. Even if a temporary planning permission had been considered, and hence criteria 4 and 5 of Policy DM6 of the SADMP were applied, based on the evidence before me the proposal would still be unacceptable as this requires temporary occupational dwellings to also satisfy criteria 3a and 3b of such a policy. I have found above that the proposal does not satisfy 3a.

Need to live permanently at the site

19. In order to consider whether or not the proposed residential caravan would be justified, it is necessary to consider the long term prospects of the proposed agricultural enterprise. However, I have very little evidence from the appellant

about this matter. He has not submitted a business plan for the proposed enterprise and therefore I doubt whether the enterprise has been properly planned on a sound financial basis.

20. I understand that any income that would be realised from the proposed agricultural enterprise would be very limited (at the hearing the appellant indicated about £500 net profit per bullock) and that it would supplement his main income which is currently from driving. The number of animals that would be kept on the relatively small site would be limited, and in the absence of any evidence to the contrary, I have my doubts about whether there would be enough work to support a full time agricultural worker. I have no evidence of any firm intentions to invest in the agricultural enterprise, and in the absence of a firm and detailed business plan, I cannot be sure that the enterprise would be sustained over time.
21. In conclusion, I do not consider that the proposal accords with the requirements of Paragraph 3c of Policy DM6 of the SADMP which states that new permanent dwellings should be on well-established rural based enterprises providing *"the application meets the requirements of the financial test"*. Furthermore, there is conflict with 3d of Policy DM6 of the SADMP as the appellant confirmed at the hearing that the enterprise was in its infancy and that to date there had been no profit from it. Even if I were to consider a planning condition which granted temporary planning permission for the proposed development (the appellant indicated that he was not applying for planning permission on this basis at the hearing), on the evidence before me the proposal would still have been unacceptable in respect of applying criteria 5a, b and c of Policy DM6 of the SADMP.

Flood Risks

22. The appellant has submitted a site specific flood risk assessment as part of the planning application. The appeal site falls within Flood Zone 3a of the Environment Agency (EA) Flood Map and within Flood Category 3a of the King's Lynn and West Norfolk Borough Council's Strategic Flood Risk Assessment (an additional plan clarifying this point was tabled by the Council at the hearing). It is at a "high risk" of flooding.
23. Paragraph 066 (Table 2) of the Planning Practise Guidance (PPG) includes flood risk vulnerability classifications and indicates that caravans, mobile homes and park homes intended for permanent residential use are *"highly vulnerable"*. The static caravan would be intended for permanent residential use. I acknowledge the extent of the appellant's land ownership, but I have little evidence that other sites which are less prone to flooding have been considered. In this regard, the appellant has not fully met the requirements of the sequential test. In any event, I have found that the proposal is unacceptable for other reasons, including the fact that there is not an essential need for a rural worker to live permanently at the appeal site. Furthermore, paragraph 067 (Table 3) of the PPG, which includes flood zone and flood risk tables, states that in considering the exception test against the appeal proposal the *"development should not be permitted"*.
24. I note that the EA was consulted at planning application stage and objected to the proposals for the reasons outlined above. I have considered the appellant's site specific flood risk assessment, but this does not include any information which would indicate that the development would be appropriately flood

- resilient and resistant, or that there would be safe access or escape routes if needed. In fact, I do not consider that the site specific flood risk assessment constitutes a robust assessment of flood risks, as it fails to include information relating to whether the proposal would increase flood risk elsewhere, existing rates and volumes of water run-off, historic data of flooding events, predicted flooding occurrences and how climate change may affect flooding in the future.
25. I acknowledge that the appellant considers that the EA has historically cleared the adjacent drainage channel, and therefore that the site is unlikely to flood, but I do not have any information from the EA (or any other Authority) to confirm that this has happened. Furthermore, the flooding risk is tidal and not related to surface drainage matters and, in any event, there is still a requirement to complete a full and robust site specific flood risk assessment to be considered by the EA: this would go beyond a consideration of simply the drainage channel.
26. I note that the EA has submitted additional information (and a flood risk map) which appears to indicate that the appeal site does benefit from flood defences. However, I do not have any specific information from the EA about the nature or extent of the flood defences, and, in any event, I agree with the EA who comment that *"the reason that the National Planning Policy Framework policy applies to floodplains benefitting from flood defences is that such defences can fail (breach) or be overtopped. The submitted flood risk assessment does not assess this breach possibility or mitigation for it"*.
27. In considering paragraph 102 of the Framework, the submitted site specific flood risk assessment does not demonstrate that occupation of the proposed static caravan would be safe. For the reasons outlined elsewhere in this decision (ie there is not an essential need for a rural worker to live permanently at the appeal site), the proposal would not provide wider sustainability benefits to the community that would outweigh the potential flood risk. Furthermore, I am not persuaded that the site specific flood risk assessment has demonstrated that the development would be safe for its lifetime. Therefore, even if one were to consider that the sequential test had been properly met, the exception test would not be passed.
28. In conclusion, I do not consider that the appellant has provided sufficient information in respect of flooding impacts (and potential mitigation) in terms of the submitted site specific flood risk assessment. Furthermore, the proposal constitutes highly vulnerable development and falls within a flood risk area where development should not be permitted. On the evidence before me, I conclude that the proposal would be unacceptable from a flood risk point of view, and that it would not accord with the flood risk aims of paragraphs 102 and 103 of the Framework and Policy DM21 of the SADMP.

Highway safety

29. At the hearing the appellant accepted that even with the removal of some of the existing hedgerow fronting West Drove North, it would not be possible to achieve the required visibility splays in both a northerly and southerly direction. Taking into account the speed limit outside the appeal site (40 mph), I consider that the Highway Authority were right to assess the proposal against the highway standards in Design Manual for Roads and Bridges TD/93 2002 (DMRB). The highway standards in Manual for Streets 2007 relate to highways with lower traffic speeds (ie 37mph or less) and I consider that West Drove

North is a road rather than a street. In reaching this decision, I have also taken into account the information submitted by the Highway Authority about the 85th percentile speed along West Drove North.

30. It would be possible to achieve a visibility splay of 2.4 m x 62 m in a southerly direction and 2.4 m x 42 m in a northerly direction. This would fall considerably short of the required 2.4 m x 120 m DMRB visibility splay requirement. In this regard, the proposed access arrangement would not be acceptable (even with the cutting back of the hedgerows), and hence the movement of vehicles into and out of the site would cause significant harm to matters of highway safety. I accept that there is already an existing access into the site. I do not know whether this has the benefit of necessary consents, but even if this were the case, the proposal constitutes an intensification in the use of the site and an increase in the amount of traffic movements into and out of it.
31. Notwithstanding the above, the Highway Authority confirmed at the hearing that it may be possible to create a new access to the south of the site and which may be possible of achieving the requisite sightlines. However, it is possible that such a proposal would require the removal of most (if not all) of the existing site frontage hedgerow. Without the submission of a topographical survey, and an amended scaled plan showing a new access into the site, I cannot be sure if such a proposal would be acceptable in highway safety terms. Furthermore, without such details, I cannot be sure of the exact extent of the removal of hedgerows which would be an important consideration in environmental terms.
32. Given the above, and notwithstanding the potential for an alternative access arrangement, I conclude that the access as proposed would have a significantly detrimental impact upon highway safety and hence would not accord with the highway safety aims of the Framework and Policy CS11 of the King's Lynn and West Norfolk Borough Council Local Development Framework – Core Strategy (CS). Even if it had have been possible for me to have obtained sufficient clarity/detail about an alternative access arrangement, this would not have overcome my conclusions on the other main issues.

Other Matters

33. I note the comments made by the King's Lynn Drainage Board and in particular byelaw 10 which prohibits any works being carried out within 9 metres of the edge of a Board maintained drain (Walpole West Drain runs alongside the appeal site), unless prior written consent is obtained from the Board. Had the appeal been allowed, it would not have overridden the need to separately comply with byelaw requirements. This matter does not alter my conclusions on the main issues.

Conclusion

34. The proposal would constitute an isolated dwelling in the countryside and there would not be an essential need for a rural worker to live permanently (or temporarily) at the appeal site. As there is not an essential need for a rural worker to permanently (or temporarily) live on the appeal site, and the dwelling would be in an isolated location in the countryside, I conclude that the proposal would not accord with the sustainability aims of the Framework; Policy CS06 of the CS and the SADMP.

35. In addition to the above, I conclude that in the absence of a detailed full risk assessment there is potential for the occupier(s) of the proposed caravan to be at serious risk of flooding given that the appeal site falls within flood risk zone 3a. Furthermore, the proposed site access arrangements are such that it would not be possible to achieve safe vehicular sightlines, and consequently the development would have a detrimental impact upon highway safety. Even if an acceptable alternative site access had been drawn up for detailed consideration, this would not have overcome my conclusions on the other main issues. For the reasons outlined above, and taking into account all other matters raised, I therefore conclude that the appeal should be dismissed.

Daniel Hartley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Kevin Wheeler (Agent)

Mr Paul Savory (Appellant)

FOR THE LOCAL PLANNING AUTHORITY

Ms Clare Harpham (Planning Officer) Borough Council of King's Lynn and West Norfolk

Mr David Parkin (Principal Planning Officer) Borough Council of King's Lynn and West Norfolk

Mr John Shaw (Senior Engineer) Norfolk County Council

DOCUMENT SUBMITTED AT THE HEARING

Drawing No 60036933/3563/005.2 Rev 05 'Figure 5.2 Flood Risk Assessment Maps – Climate Change Sheet 5 of 11'