

Appeal Decision

Hearing held on 19 July 2016

Site visit made on 19 July 2016

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

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

Decision date: 13 January 2017

Appeal Ref: APP/T3535/W/15/3141529

Smith & Sons Caravan Site, Blackheath Road, Lowestoft, Suffolk NR33 7JH

- 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 Ken Smith against the decision of Waveney District Council.
 - The application Ref DC/15/1627/COU, dated 17 April 2015, was refused by notice dated 16 October 2015.
 - The development proposed is an extension to existing caravan site and increase in caravan sites to 12.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For the purpose of clarity and accuracy, I have considered the location of the proposal as being on Blackheath Road rather than at 142-144 Blackheath Road.
3. The Council's reasons for refusal and its committee report were based on the caravans being for gypsies and travellers. Despite some ambiguity in documentation, the appellant confirmed that the accommodation would be for gypsies and travellers at the hearing. Therefore, I have considered the proposal on that basis.
4. At the hearing, the Council confirmed that it no longer wished to pursue its second reason for refusal detailed on its decision notice which relates to the provision of adequate amenities and facilities on the site to meet the needs of occupants. It was satisfied that these considerations could be met through a site license under the Caravans Sites and Control of Development Act 1960. I have no reason to reach a different conclusion.
5. An application for costs by the appellant against the Council was withdrawn at the hearing.

Main Issues

6. The main issues are:
 - The flood risk implications for the safety of the future residents of the caravans;
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- Whether any other circumstances exist, including the general need for and availability of gypsy sites and personal circumstances of the occupiers of the caravans, would be sufficient to outweigh any harm identified.

Reasons

Flood risk implications of the development

7. The existing caravan site has planning permission for 3 mobile homes, 2 tourers and an amenity block for gypsies¹. The proposal would extend this site by the addition of 7 caravans which would be mainly over an area with a permitted use as a working area (scrap metal dealing)². The appeal site is within tidal Flood Zone 2 which has a medium probability of flooding, defined as land having between 1 in 200 and 1 in 1000 annual probability of flooding. The caravans would be static positioned on concrete bases and are classified as 'Highly Vulnerable' within Planning Practice Guidance (PPG).
8. Amongst various criteria, Policy CS12 of the Waveney Core Strategy (CS) 2009 requires gypsy accommodation not to be located with Flood Zones 2 or 3. Such an approach is more prohibitive than the approach within the National Planning Policy Framework (the Framework) which does not exclude development in these zones subject to the consideration of Sequential and Exception Tests. For this reason, the policy is out-of-date by reason of its inconsistency with the Framework and I attach limited weight to the proposal's conflict with this development plan policy.
9. Although the Agency (EA) has raised no objection to the proposal³, the Framework states that local planning authorities should ensure that flood risk is not increased elsewhere and only consider development appropriate in areas of flooding, where informed by a site-specific flood assessment following a Sequential Test, and if required the Exception Test. The Sequential Test is used in areas at risk of any form of flooding and aims to steer new development to areas of lowest probability. The PPG states that local planning authorities should consider the extent to which Sequential Test considerations have been satisfied, informed by evidence provided by the developer. Without the passing of the Sequential Test, the Exception Test does not apply.
10. No evidence, including a search area, has been provided by the appellant to the Council and there has not been any Sequential Test undertaken. The submitted Flood Risk Assessment (FRA)⁴ does indicate that there are areas beyond Flood Zones 2 and 3 and therefore alternatives cannot be discounted in principle. Although a pragmatic approach to the Sequential Test has to be taken, the proposal would not be for an extension to an existing business premises as set out in PPG. Whilst the working area is commercial in nature, the existing caravans on the site are for residential purposes and therefore I am not persuaded that the proposal can be described as an extension to a business premises.

¹ Local Planning Authority reference DC/12/1365/FUL, planning permission dated 2 September 2013.

² Local Planning Authority reference DC/12/1159/COU, planning permission dated 2 September 2013.

³ Letter dated 6 August 2015

⁴ MTC Flood Risk Assessment for Caravan Sites for Gypsies with Working Area At the rear of 142/148 Blackheath Road.

11. Although Planning Policy for Traveller sites (PPFTS) does not specify the carrying out of the Sequential Test, paragraph 13(g) states that sites should be avoided in areas at a high risk of flooding, including functional floodplains, given the particular vulnerability of caravans. As such, this reinforces my view that development should not be permitted here unless it has been found that there are no reasonably available sites appropriate for the development in areas with a lower probability of flooding. This can only be achieved with a Sequential Test assessment.
12. The EA has raised no objection to the FRA but in its response, it indicated that the local planning authority should ensure the development and its users are safe during its lifetime. In this regard, the EA has commented that with climatic change, the protection of the existing sea defences in providing against a tidal flood with a 0.5% annual (1 in 200 year) chance of occurrence will be eroded. Without the raising of the defences, this would result in flooding of the site of up to 1.96m at the end of the development's lifetime. The EA further indicates that such a flood level would be likely to flood the caravans which would present challenges to the safety of the users of the caravans and future reliance on flood excavation or emergency response.
13. In terms of funding for sea defences, the Suffolk Shoreline Management Plan 7 has a policy to "Hold the Line" until 2105 and the Lowestoft Flood Risk Management Strategy Summary 2016 details options to address tidal flood risk. However, both documents are aspirational and do not provide certainty of funding. Furthermore, the EA identifies some elements of the dry emergency access and egress as being within flood risk in an extreme 1 in 1000 year event unless sea defences are raised to take account of climatic change. Whilst a flood excavation and response plan could be conditioned, any such plan would not remove such risk and there is no guarantee that occupants would receive or heed the warning even with the best efforts of the appellant. On this basis, I am not persuaded that the development and users would be safe.
14. Residents indicated recent flooding had occurred from Kirkley Stream following an extreme rainfall event. Nevertheless this did not affect the appeal site and nor was any technical evidence produced to indicate it might in the future. Conversely, other residents indicated that the appeal site has never flooded. However, in this respect, the technical evidence provided by the EA's letter indicates that it could, in the absence of raised sea defences taking into account climatic change for the reasons indicated.
15. Reference has been made to the reasons for granting planning permission for the existing caravan site which is also in tidal Flood Zone 2. The FRA submitted here was similar to that before me, if not identical. However, it is unclear whether a Sequential Test assessment was carried out in accordance with the Framework and PPG, and whether the consideration of sea defences and the effect of climatic change was raised. In any case, I have dealt with the present proposal on its individual planning merits.
16. In summary, the proposal would be clearly contrary to national policy of seeking to manage flood risk in the absence of a Sequential Test assessment. There would be uncertainty of funding for rebuilt sea defences in light of climatic change which could leave the caravan site flooded and would result in unacceptable flood risk to people and property. The mobile homes can be designed to be immovable in the event of flood but this would not address the

safety of occupiers. For these reasons, there would be a conflict with national planning policy within the Framework, the PPG and PPFTS on flood risk.

Other considerations

17. National policy recognises that there is a need to increase the number of gypsy and traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply.
18. For Waveney, the Council's Gypsy, Traveller & Travelling Showpeople Accommodation Assessment 2013 concluded that there was a requirement for three additional pitches for the period 2012-2017, three further pitches for the period 2018-2022 and four further pitches for the period 2023-2027. Planning permission has been granted for four additional pitches at an existing gypsy and traveller site at Kessingland in 2014. Despite a recent enquiry to amend the scheme, there is no certainty of when it will be implemented.
19. The Written Ministerial Statement of 22 July 2015 states that travellers cannot rely on the lack of a five year supply of deliverable housing sites under the Framework to show that relevant policies for the supply of housing are not up to date. Nevertheless, paragraph 10 of the PPTS 2015 sets out, amongst other matters, that local planning authorities should, in producing their Local Plan identify and update annually, a supply of specific deliverable sites sufficient to provide five years' worth of sites against their locally set targets. Given my comments on the Kessingland planning permission, the evidence before me indicates that the Council cannot demonstrate a five year supply of deliverable sites.
20. The existing site at Kessingland has 24 pitches which are fully occupied according to the appellant. The Council has not disputed this. No other alternative site has been brought to my attention. The lack of available suitable alternative sites, together with the extent of need for sites is a factor in favour of the proposal and of significant weight in this decision.
21. At the hearing, nine letters from people describing themselves as gypsies and travellers was submitted who indicated their wish to be accommodated at the appeal site. Although the gypsy and traveller status of these people was not questioned by the Council, no detailed assessment was made to confirm that these people met the definition within PPFTS, Annex 1: Glossary. As such, this information is of limited relevance and weight.
22. Turning to personal circumstances, the appellant confirmed at the site meeting that the existing development of five pitches mainly serves his family. For the additional seven pitches under the appeal proposal, there are 9 letters from people expressing an interest in occupying the caravans. At the hearing, the agent confirmed that there is no guarantee that these people would be the future occupiers. Given that personal situations can easily change especially over time, I would concur with this view. Therefore on the basis of the limited evidence submitted, I am unable to give the personal circumstances of these people any significant weight.
23. Permission for the appeal proposal would result in the remediation of a permitted working area, a scrapyard, and the removal of unsightliness associated with such a use. Although there is a restriction on height of stored

materials, the removal of the working area would still offer environmental benefits of some weight.

24. The proposed reduction of access points into the site from two to one would not be of any great benefit in highway safety terms because the existing accesses from the site are onto a narrow minor back access way which restricts traffic speed and movement.

Overall balance and conclusions

25. PPTS and the Framework require applications for planning permission, including planning applications for travellers, to be assessed and determined in accordance with the presumption in favour of sustainable development. There would be some potential for the occupants of the site to contribute towards the economic role through their use of shops and services. In the social role, the proposal would provide seven pitches for travellers in a location with accessible local services in the context of unmet need. In this regard, there is an unmet demand for more sites for travellers in the District and no alternative sites have been put forward. The Council cannot provide a 5-year supply of deliverable sites for travellers. These factors carry considerable weight in favour of the development because the proposal would provide additional seven pitches. The appeal site would also provide a settled base from which residents could access health and education services.
26. There would be some environmental benefit through the re-use of an existing brownfield site and the removal of an unsightly scrapyards use with remediation for contamination. However the Framework requires a Sequential Test assessment to manage flood risk. The location of the site within Flood Zone 2 is a fundamental concern that could have implications for the personal safety of the site occupiers. I am not persuaded that adequate mitigation has been put forward to address flood risk for the lifetime of the development given EA's comments about the need to reinforce sea defences and the uncertainty of funding to achieve this and thus, there is a significant risk of adverse flooding harming property and people for the reasons indicated. Furthermore the Framework's requirement for a Sequential Test assessment is a key requirement in steering new development to areas with the lowest probability of flooding. In considering a permanent planning permission, the adverse impacts of this proposal would be outweighed by the benefits for these reasons and the development would not be sustainable.
27. Nonetheless I have considered a temporary planning permission as an alternative: the unmet need for gypsy and traveller accommodation and the contribution that the proposal makes to this would remain of great significance and weight. The removal of the scrapyards use would be of some weight also.
28. However a Sequential Test assessment would not have been carried out which is a key requirement of national policy on managing flood risk. Furthermore, at the hearing, the appellant indicated a requirement for a permanent planning permission on account of the cost of developing the site. This would include possible remediation of the site from contamination. A temporary planning permission was not sought because of the uncertainty over whether it would be renewed and therefore the possible loss of financial outlay. Given this, I am not persuaded a temporary planning permission would be reasonable. In terms of flooding, the EA has previously commented that the site could experience

some flooding towards the end of the development's lifetime. Nonetheless there is no evidence on the extent of flooding levels in the short term taking into account EA comments about sea defences and whether a temporary planning permission would allay concerns on this matter. Thus I am not persuaded that a temporary planning permission would ensure the safety of the future residents of the caravans.

29. For these reasons, even though the actual consequences of the development would be short term, the identified harms arising from conflict with national policy on flood risk and the safety of future residents, whilst also being temporary in nature, would be so weighty as to outweigh the benefits of the additional pitches meeting accommodation needs of gypsies and travellers, and removal of the scrapyards use.
30. In summary, there would be a conflict with a development plan policy to which I attach limited weight. However, along with the identified harms and all other considerations set out above, including the contribution of the proposal to addressing the unmet need for gypsy and traveller accommodation, I conclude the adverse effects of the proposal, whether permanent or temporary, would significantly and demonstrably outweigh the benefits of granting permission. Therefore, the proposal cannot be regarded as sustainable development under the framework. As to human rights, despite the general need for gypsy and traveller accommodation, the appellant has made no case based on personal circumstances. In reaching this view I consider that the protection of the public interest cannot be achieved by means which are less interfering of the rights of gypsy and travellers and this decision is proportionate in the circumstances of this case. For all these reasons, the appeal fails.

Conclusion

31. For the reasons given and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathon Parsons

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Dr R K Home MA DipTP PhD MRTPI
K Smith
M Smith

Planning Consultant
Appellant
Appellant's son

FOR THE LOCAL PLANNING AUTHORITY

R Amor

Waveney District Council

INTERESTED PARTIES

V Field
S Barker
L Gooch
B Durbans
W Da Silva
J W Moore
A Canham
S Brooham
D Butcher
Mr & Mrs Cable
K Podkowka
P Kendal
G Henley-Waring
C Coham
C Flewin

Resident
District and County Councillor
District Councillor
Resident
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DOCUMENTS SUBMITTED AT THE HEARING

1. Decision Notice and approved plans DC/12/1365/FUL.
2. Decision Notice and approved plans DC/12/1159/COU.
3. Letter dated 16 April 2015, Dr R.K Holme, to the Council, clarifying the nature of the application.
4. Lowestoft Flood Risk Assessment Strategy Summary 2016.
5. Gypsy, Traveller & Travelling Showpeople Accommodation Assessment (GTTSA) 2013.
6. Letters purported to be from people of gypsy and traveller backgrounds, dates where indicated, from 12 December 2015 to 23 December 2015.