
Appeal Decisions

Hearing and site visit held on 10 January 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 17 February 2017

Appeal A Ref: APP/E2001/C/16/3151156

Appeal B Ref: APP/E2001/C/16/3153346

Land at South Moor Park, The Balk, Pocklington YO42 2NX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 [hereinafter the '1990 Act'].
- The appeals are made by Mr Phillip Lemon (Appeal A) and Mrs Linda Lemon (Appeal B) against an enforcement notice issued by East Riding of Yorkshire Council.
- The enforcement notice was issued on 31 March 2016.
- The breach of condition as alleged in the notice is occupation of the tourist chalets without complying with condition 2 of planning permission 02/02679/PLF dated 18 June 2002 which was granted for the use of the land for the siting of eight tourist chalets for holiday use, subject to conditions. Condition 2 states that the accommodation approved shall be used for holiday purposes only and shall not be used as permanent or main residence. It appears to the Council that the condition is not being met because the tourist chalets are being lived in permanently and not for holiday use only.
- The requirements of the notice are to:
 - (1) Cease the use of the tourist chalets for permanent residential purposes.
 - (2) Within one month of the cessation of occupation provide to the Council details of your sole or main residence by way of certified copies of the following: a lawful tenancy agreement, conveyance, lease or licence, and proof of residence for Council Tax purposes.
- The period for compliance with the requirements is 9 months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2) (f) and (g) of the 1990 Act. Since the prescribed fees have not been paid within the specified period for Appeal B, the initial appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act does not fall to be considered.

Summary of Decision: Both appeals succeed on ground (f) and (g), but otherwise the appeals are dismissed and the enforcement notice is upheld as corrected and varied in the terms set out below in the formal decisions.

Procedural matters

1. The planning permission in question relates to use of land for siting of tourist chalets, access and parking granted on 18 June 2002 (ref: 02/02679/PLF (I will refer to as 'the 2002 permission')). Condition 2) states the accommodation shall be used for holiday purposes only and shall not be used as permanent or main residences. On 31 March, use of the site was in breach of this stipulation. Now, Mr Lemon seeks a fresh planning permission by varying condition 2) to limit occupancy to those aged 55 and over. However, the deemed application under S177(5) of the Act is a retrospective one; to carry out the original development without complying with condition 2). I shall proceed on this basis.

2. Matters concerning the notice: Section 2 of the issued notice states the land to which it relates but it excludes tourist chalets 1, 4, 7 and 8. For clarity's sake, the allegation should specifically refer to chalet numbers 2, 3, 5 and 6. I am satisfied no injustice arises to any party from this minor correction so it will be done later.

Appeal A – ground (a)

Main issues

3. The Council object to deletion or variation of 2002 permission condition 2) on grounds that the permanent residential use is at odds with local and national planning policy. The chorus of protest focusses upon sustainable development and perceived harm to existing and future occupiers from flooding.
4. Against that background, I consider the **main issues** are:
 - (1) Whether it is necessary and reasonable to retain the holiday occupancy condition, and
 - (2) Whether permanent residential occupation results in increase risk to occupiers from flooding.

Reasons

Sustainable development

5. The purpose of policies S3 and S4, The East Riding Local Plan (LP) adopted in April 2016¹, is to direct development to areas where there are services, facilities, homes and jobs. The former sets out a settlement network, which ensures the right level of development takes place in the right place, while the latter seeks to support development in villages and the countryside setting out criteria for proposals outside development limits. In general terms these objectives echo national policy found in the National Planning Policy Framework (NPPF)².
6. Located on the eastern side of The Balk (classified B1247), the appeal site is known as South Moor Park. It is a triangular shaped plot that is sandwiched between The Balk and Cocoa Beck, which runs down its eastern side. South Moor Park has 8 holiday chalets. Chalet 1 and 4 benefits from existing use certificate specifying permanent residential use as being lawful. Plot 8 has an existing use certificate for siting of a residential caravan. I understand that chalet 7 is in use as a holiday let, which leaves chalet 2, 3, 5 and 6; the first two situated at the northern end of the site and the latter on the eastern side.
7. Mr Lemon argues that the 2002 permission exercises little control over how long residents live on the site, that current occupiers are happy with the location and elderly residents need to be close to Pocklington, because family and friends live in the settlement and provide care. Occupiers benefit from familiar surroundings and there is social benefit arising from residential use of the chalets. It should be borne in mind that planning permission runs with the land and, irrespective of who occupies the chalets currently, it is reasonable to examine the general characteristics of the land use and any environmental consequences.

¹ Policy found in The East Riding of Yorkshire and Humberside Structure Plan has been cited in section 4 (reasons for issuing the notice). The East Riding Local Plan supersedes these policies.

² In particular, paragraph 6 states that policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system.

8. Pocklington is designated as a town because of its size combined with extent of available services, such as education and health facilities and variety of shops and retail outlets. There is agreement that the site is not located within the development limits of this settlement. Indeed, it is beyond any defined village or town. Although there is a steelworks, a school, a caravan park and other buildings nearby, the surrounding area is predominantly rural in nature and character where residential development of this kind is strictly controlled. Nevertheless, on behalf of Mr Lemon, the argument is that the centre is about 2 km away from the site. There are bus stops close to South Lea Caravan Park and there is an hourly service. The claim is that the site is suitable for this kind of residential development. For the following reasons, I profoundly disagree.
9. The site is located on a busy and unlit rural highway that is subject to the national speed limit. There is no public footpath connecting it to the settlement or bus stop. The walk to and from the site is likely to be tortuous and dangerous. I consider walking, cycling or use of public transport to commute to and from the site to be an unattractive option. Residents are likely to be reliant almost entirely upon the private motor car for most of their day-to-day travel needs, because of the site's rural location. I am told that is how current occupiers meet their needs.
10. I acknowledge online shopping is becoming popular and groceries can be delivered to the site, but it does not necessarily follow permanent residential use is suitable or sustainable in this countryside location. It is likely future residents would be in need of private transportation to meet their daily needs. A routine trip to the health centre would require reliance on private transport given the inconvenient location of the bus stop and frequency of bus service. While this degree of reliance on the private car is common in a mainly rural area such as this, the kind and scale of residential development does not sit comfortably with local and national planning policy objectives of delivering sustainable development in a planned and co-ordinated manner. There is therefore clear conflict with the spatial aims and objectives of LP policies S3 and S4.
11. Permanent residential use has no impact on the character and appearance of the surrounding countryside as the chalet already exist and the site is well screened in views from the countryside. Economic advantages of the scheme are likely to be restricted to the limited extent to which the permanent occupiers of the chalet contribute to the local economy. On the other hand, the site is not located within a reasonable distance to amenities and its permanent residential use has the potential to encourage unsustainable pattern of travel. There are some social and economic benefits arising from the development, but these are factors to be weighed in the overall balance of considerations. In my assessment of this main issue, there are strong and good planning reasons for imposing condition 2).

Flood risk

12. LP policy ENV6 seeks to manage environmental hazards. NPPF paragraph 100 states inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. Local plans should apply a sequential, risk-based approach to the location of development to avoid where possible flood risk to people and property and manage any residual risk, taking account of the impacts of climate change, by applying the Sequential Test (ST) and, if necessary, applying the Exception Test (ET). Footnote 20 refers to the need for a site specific flood risk assessment for development in Flood Zone

- 2 (FZ 2) and Flood Zone 3 (FZ 3). Further guidance is found in the Department's Planning Practice Guidance in the section dealing with planning and flood risk.
13. As I have already observed, Cocoa Beck passes to the east of the site and poses a fluvial risk. The Environment Agency flood zone map shows about half of chalet 2 and 3 are within FZ 3A – high probability³. This is because of their location at the northern end of the site. The vast majority of South Moor Park falls in FZ 1 (low probability). It is agreed that caravans, mobile homes and park homes for permanent residential use are highly vulnerable whereas sites used for holiday are regarded as more vulnerable in terms of flood risk. Essentially, the former should not be permitted in FZ 3A and an ET is required in the case of the latter.
 14. Mr Lemon argues that the Council knowingly granted planning permission in 2002 for park homes inside this FZ, that the park homes are 600 mm above surface level, and only part of the site recently flooded when level of water was insignificant. However this is not a strong enough argument to grant a fresh planning permission for permanent residential occupation of plots 2 and 3. While the park homes could, at least in theory, be occupied 365 days a year as there is no seasonal occupancy condition, I consider that the nature, scale and frequency of a holiday use is likely to be materially different to their permanent residential use. The level of activity and duration of occupation associated with a permanent residential use is likely to be significantly different in character.
 15. Mr Lemon argues plots 2 and 3 could be repositioned taking them out of FZ 3A altogether. An earth bund has been created to address future flood event but it is unclear how this actually works in practice, because of its design and location. I am afraid the evidence presented does not show, to my satisfaction, how caravans could be relocated without compromising the layout of the site. There is nothing to show how mitigation could be suitably achieved to address my concerns without increasing flood risk elsewhere.
 16. Pulling all of the above points together, I consider that the permanent residential use of chalet 2 and 3 put existing and future occupants at risk from flooding, because of the location of Cocoa Beck. Deletion or variation of condition 2) imposed on the 2002 permission has the potential to result in permanent residential use, inappropriate development, in FZ 3A. Accordingly, the scheme conflicts with LP policy ENV6 and the NPPF.

Other considerations

17. Tourism is an important part of East Riding's economy and the area has plenty of caravan parks. So Mr Lemon maintains the loss of this particular site has no impact on tourism facilities. He maintains that his business has already been affected by economic uncertainty as well as the expansion of the nearby South Lea Caravan Park, which has increased from 18 to 77 pitches. I am afraid that the evidence presented does not show the business has no reasonable prospects in the short, medium or long term. No evidence to corroborate these assertions has been tendered for my detailed examination. For example, there is a lack of information showing how or when recent changes in circumstances or booking trends actually affected the business. On the basis of the available information, I cannot be certain that the site is no longer viable for use in connection with the local tourism industry.

³ Land having a 1 in 100 or greater annual probability of river flooding or 1 in 200 or greater annual probability of sea flooding.

18. LP policy H1 seeks a mix of housing. As I have indicated elsewhere the advanced alternative is to substitute condition 2) by restricting occupancy to those aged 55 and over. The claim is that the resultant development would contribute to a special kind of housing. Compared to traditional two-storey housing stock predominant in Pocklington, the park homes are single-storey and provide adequate living accommodation for residents that meets the social and physiological needs of elderly residents.
19. My general observation is that the notice alleges a breach of condition 2). A grant of planning permission for the siting of eight tourist chalets for holiday use subject to a condition limiting occupancy to those aged 55 and over has the potential to substantially change the nature of development originally enforced against. I do not consider that such a scheme is part of the alleged matters. Even if an alternative view is to prevail, Mr Lemon overlooks a fundamental problem and that is the physical location of the site relative to the settlement.
20. Mr Lemon contends that there is no longer a good planning reason for condition 2), because 4 out of 8 chalets are in permanent residential use. That the difference between short-term and permanent occupation is unperceivable. Be that as it may, I think there is precise land-use policy justification for limiting occupancy of the chalets. The disputed condition is unambiguous as it renders permanent residential use of plots 2, 3, 5 and 6 contrary to the terms of the 2002 permission. Substituting the condition has the potential to result in the creation of four unjustified dwellings, albeit restricting occupancy to those aged 55 and over. I consider the stipulation continues to serve a valid planning objective, it relates to the permitted development, it is enforceable and reasonable.
21. I am aware of current occupiers' personal circumstances, many of whom purchased plots some time ago. Some have particular health conditions, being close to Pocklington helps them as family and friends care for them. Adjacent to the caravan park there is a paddock where a resident keeps horses; living here assists in keeping a watchful eye on her animals. Varying the condition to allow occupancy to those aged 55 and over to permanently live on the site would greatly assist current occupiers and put their minds at ease. I understand and sympathise with Mr Lemon and residents' predicament. However, it is in the public interest to ensure proper planning whereas permanent residential use represents an ad hoc form of development in the countryside.
22. Allied to personal circumstances are occupiers' Human Rights. Refusing planning permission has the potential to result in occupants of chalet 2, 3, 5 and 6 vacating their home although there is no suggestion affordable and suitable alternative accommodation is not available. Nevertheless, this has the potential to interfere with home and family life, but chalet 2 and 3 are partly located in FZ 3A and that has health and safety implications. It is nonetheless necessary to consider whether it would be proportionate to dismiss the appeal and refuse planning permission in all the circumstances of this case.

Planning balance

23. I have found that it is necessary and reasonable to retain the holiday occupancy condition, because this site is unsuitably located for permanent residential use. To this finding, I attach significant weight. Added to that is the potential risk to existing and future occupants of chalet 2 and 3 from flood water.

24. On the other side of the scales, there is some social and economic benefits arising from permanent residential use, but the weight I attach to these matters is considerably reduced because of the potential for environmental damage arising from the permanent residential use. Imposing a restriction on occupancy to those aged 55 and over would not address these concerns. I therefore give limited weight to the advanced alternative scheme.
25. The loss of this site to permanent residential use is unlikely to affect the supply and availability of holiday facility. Chalet 1, 4 and 8 are already in permanent residential use though plot 7 is in holiday use, and that suggests demand for this kind of accommodation. Chalet 2, 3, 5 and 6 could also be utilised for holidaying and there is no solid evidence showing this type of facility is unviable in this location.
26. I have not lost sight of the potential impact of my decision upon the occupiers if the appeal is dismissed; interference with their Human Rights is severe given the involvement of elderly residents with particular health needs. This must be balanced against the public interest in upholding planning policy to protect the environment. The overall harm to the Council's spatial strategy, sustainable development and risk arising from flooding represents a serious objection to the nature and scale of the development. There is a need for restrictive policies to be applied and this restriction is an appropriate proportional response to that need.
27. I am satisfied that this legitimate aim can only be safeguarded by refusing planning permission. Therefore, in the light of the deliberations above, refusing planning permission would be a proportionate response and would not lead to an unacceptable violation of the appellant and occupiers' Human Rights, which thus carry only limited weight in support. I shall examine later whether reasonable period should be given to comply with the notice's terms.
28. The case in favour of planning permission has been elegantly and forcefully put. Nevertheless, having in mind the personal circumstances of Mr Lemon and occupiers, in my planning judgement, the advanced considerations in support of the appeal, whether taken individually to cumulatively, do not, on balance, outweigh my findings on the first and second main issues above. Accordingly, there is conflict with LP policies ENV6, S3 and S4, and national planning policy referred to above.

Appeals A and B – ground (f)

29. The notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes:
 - (a) Remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
 - (b) remedying any injury to amenity which has been caused by the breach.

In this ground of appeal, it is necessary to consider whether the steps required by the corrected notice exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

30. Section 5 sub-section (1) and (2) specify the following requirements:

- '(1) *Cease the use of the tourist chalets for permanent residential purposes; and*
- (2) *Within one month of the cessation of occupation provide to the Council details of your sole or main residence by way of certified copies of the following: a lawful tenancy agreement, conveyance, lease or licence, and proof of residence for Council Tax purposes'.*

The Council confirmed that the issued notice sought to restore the land to its original condition by making the development comply with the terms of the 2002 permission. That is consistent with the document as a whole. The purpose of the requirements fall within S173(4)(a) of the Act.

31. I understand that step (2) is designed to assist the Council's monitoring process and to keep a watchful eye on compliance with the notice's terms. But it has other regulatory powers at its disposal to investigate breach of planning control or violation of the notice. This type of requirement is beyond the notice's lawful scope, in my opinion. Even if an alternative view is to prevail on the latter point, I take the view that the phraseology used has the potential to create significant legal interpretational problems and generate much uncertainty in the notice's terms. Given potential criminal liability that comes with a failure to comply with the notice, I find that to be an unacceptable outcome.
32. Consistency ensues by requiring the development to comply with the terms including conditions and limitations of the 2002 permission, which has been granted in respect of the land. The appeal parties agreed that variation causes no injustice to any party. Indeed, Mr and Mrs Lemon confirmed that they clearly understood the requirements of the issued notice. They explained to me that the notice seeks compliance with the terms of the 2002 permission. I am therefore satisfied that the variation does not make the notice any more onerous than first issued.
33. As I am varying the steps required to comply with the notice, ground (f) succeeds.

Appeals A and B – ground (g)

34. It is necessary to consider whether the specified compliance period, 9 months, falls short of what should reasonably be allowed. I consider 15 months as a period of compliance would be excessive, because of the nature of the varied requirements. Nonetheless, alternative accommodation would be required for occupiers. Mr and Mrs Lemon indicate chalet owners may wish to sell their park homes. All of this is likely to take considerable time and result in some kind of disruption and potentially cause upset and hardship. A slightly extended period would assist. I am of the firm opinion 12 months is reasonable and appropriate in the circumstances. Having regard to individuals involved in this case, this is a just and proportionate response to the particular circumstances presented, and strikes a fair balance between the competing interests of the wider public and individuals involved in this case. Therefore, ground (g) succeeds.

Appeals A and B - conclusions

35. For all of the above reasons and having regard to all other matters, my inescapable conclusions are as follows. Ground (a) fails and planning permission will be refused on the deemed application.

36. I further conclude that the requirements are excessive and a reasonable period for compliance would be 12 months, and I am varying the enforcement notice accordingly, prior to correcting and upholding it. The appeals on ground (f) and (g) succeed to that extent.

Formal decisions - Appeal A Ref: APP/E2001/C/16/3151156

37. It is directed that the enforcement notice be corrected by insertion of the following text in section 3, the matters which appear to constitute the breach of planning control: 'number 2, 3, 5 and 6' after the words 'tourist chalets' in the second paragraph.

For the avoidance of doubt, section 3, second paragraph, now states '*It appears to the Council that the condition is not being met because tourist chalets number 2, 3, 5 and 6 are being lived in permanently and not for holiday use only*'.

38. The appeal succeeds on ground (f), and the enforcement notice is varied by the deletion of all of the text in section 5, what you are required to do, and the substitution therefor by the following text: '*Comply with the terms, including conditions and limitations, of planning permission reference 02/02679/PLF dated 18 June 2002*'.
39. The appeal succeeds on ground (g), and the enforcement notice is varied by the deletion of all of the following text in section 6, time for compliance: '*Within 9 months*' and substitution therefor by the following text: '*12 months*'.
40. Subject to the correction and variation above, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/E2001/C/16/3153346

41. It is directed that the enforcement notice be corrected by insertion of the following text in section 3, the matters which appear to constitute the breach of planning control: 'number 2, 3, 5 and 6' after the words 'tourist chalets' in the second paragraph.

For the avoidance of doubt, section 3 second paragraph now states '*It appears to the Council that the condition is not being met because tourist chalets number 2, 3, 5 and 6 are being lived in permanently and not for holiday use only*'.

42. The appeal succeeds on ground (f), and the enforcement notice is varied by the deletion of all of the text in section 5, what you are required to do, and the substitution therefor by the following text: '*Comply with the terms, including conditions and limitations, of planning permission reference 02/02679/PLF dated 18 June 2002*'.
43. The appeal succeeds on ground (g), and the enforcement notice is varied by the deletion of all of the following text in section 6, time for compliance: '*Within 9 months*' and substitution therefor by the following text: '*12 months*'.
44. Subject to the correction and variation above, the appeal is dismissed and the enforcement notice is upheld.

A U Ghafoor

Inspector

APPEARANCES

FOR THE APPELLANT:

Gareth Stent BA (Hons) DipTP MRTPI AFA Planning

Linda Lemon

Peter Lemon

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} Appellants

FOR THE LOCAL PLANNING AUTHORITY:

Nick MacDermott Planning Officer, East Riding of Yorkshire Council

DOCUMENTS HANDED IN AT THE HEARING

- 1) Letter of notification and those consulted
- 2) Notice of decision ref: DC/16/00333/CLE/WESTWW
- 3) Extract copy of Local Plan.