
Appeal Decision

Site visit made on 24 April 2017

by Zoe Raygen Dip URP MRTPI

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

Decision date: 18 May 2017

Appeal Ref: APP/V2635/W/17/3169623

Plot 1F, South Beach, Heacham, Kings Lynn PE31 7LH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Anthony Peake against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 16/02089/F, dated 28 November 2016, was refused by notice dated 16 January 2017.
 - The application sought planning permission for construction of a bungalow (amended design) without complying with a condition attached to planning permission Ref 2/98/1559/F, dated 10 December 1998.
 - The condition in dispute is No 2 which states that: The occupation period of the chalet bungalow hereby approved shall be restricted to between 1 April or Maundy Thursday (whichever is the earlier) and 31 October in any year.
 - The reason given for the condition is: To prevent loss of life during winter storm tide events.
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Decision

1. The appeal is dismissed.

Background

2. Planning permission was granted for the construction of a bungalow at the appeal site (2/98/1559/F) subject to condition 2 which restricts occupancy of the bungalow to 7 months of the year only. The Council applied the condition to prevent loss of life during winter storm tide events. The appellant now wishes to occupy the bungalow on a more permanent basis and therefore the appeal seeks to allow for the variation of Condition 2.

Main Issue

3. The main issue is whether the variation of Condition 2 to allow permanent occupancy would result in a significant and unacceptable risk to life and property.

Reasons

4. Ocean View is a bungalow set within a line of other properties, most of which are caravans. To the west are the seafront and a further line of caravans set at a higher level than the appeal site, incorporating a flood bank. To the east is a river, open land and a second flood bank.
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5. The site lies within Flood Zone 3 according to the Environment Agency (EA) and the Coastal Flood Risk Hazard Zone (CFRHZ) of the North Norfolk Coast from Wolferton Creek to Hunstanton. According to the Coastal Planning Protocol (CPP)¹ the area is inadequately defended from coastal flooding. As a result the CPP advises that development within the area is likely to be restricted to water compatible development only. This is reflected in the wording of Policy DM18 of the Site Allocations and Development Management Policies Plan 2016 (SADMPP) which significantly restrict residential development in the area.
6. In particular due to the risks associated with the seasonality of each of the highest astronomical tides, the probability of storm surges and wave action severity the Council's Strategic Flood Risk Assessment (2003 Hunstanton/Snettisham Study) concludes that the only safe period of occupancy is between 1 April and 30 September each year. As a result therefore both Policy DM18 and the CPP restrict seasonal occupancy to this time period. Furthermore Policy DM18 states that applications to remove, relax or vary (by way of extension) any existing seasonal occupancy conditions will be restricted.
7. The appellant has not submitted a site specific Flood Risk Assessment (FRA) with the proposal. The absence of a FRA together with no other substantive evidence from the appellant regarding the potential for flood risk were the property to be occupied within the winter months means I have very limited evidence to refute the Council's position in this respect.
8. I appreciate that the bungalow may be sited above sea and ground level. Furthermore it is of brick built cavity wall construction. Moreover, the appellant is part of the EA Flood Alert Scheme. Nevertheless the area is identified as at high risk of flooding. The National Planning Policy Framework (the Framework) states that inappropriate development in vulnerable coastal areas should be avoided and this is reflected in local Policy. Furthermore, the Framework states that development in a Coastal Change Management area would only be appropriate where it is demonstrated that it would be safe over its planned lifetime.
9. I note that the appellant considers that the proposal is not development as the bungalow has already been constructed. However, the variation of the occupancy condition would lead to the occupation of the bungalow at times of high flood risk making the use more vulnerable than currently exists. In order to ensure that prospective occupiers would be safe over the planned lifetime of the bungalow then a FRA would be required in accordance with paragraph 103 of the Framework. Furthermore, the EA has objected to the development in the absence of a FRA which demonstrates that future occupiers would be safe.
10. The occupiers of Ocean View would use local facilities and pay Council Tax which are benefits of the scheme but given they relate to only one additional dwelling, those benefits would be limited. They would not therefore be sufficient to outweigh the considerable harm that may arise to life and property due to flooding.

¹Coastal Flood Risk – Planning Protocol Wolferton Creek to Hunstanton

Joint Position Statement of the Borough Council of King's Lynn & West Norfolk and Environment Agency

11. The appellant refers to the potential for occupation of Ocean View for 11 months of the year which he states would be similar to that allowed at properties at 3A, 3B and 64. However, I have seen no substantive evidence to justify any variation to the length of occupancy. Furthermore, I have been provided with no further details of the circumstances that may have led to the proposals referred to by the appellant being acceptable and therefore cannot be sure that they represent a direct parallel to the appeal proposal. In any case I have determined the appeal on its own merits.
12. For the reasons above therefore I conclude that the variation of Condition 2 of 2/98/1559/F to allow permanent occupancy would result in a significant and unacceptable risk to life and property. The proposal would therefore be contrary to Policy DM18 of the SADMPP and paragraphs 106, 107, 108 of the Framework. Together these require that seasonal occupancy of development in the CFRHZ be restricted and that inappropriate development in vulnerable areas be avoided.
13. The Council also refer to Policy C12 of the King's Lynn & West Norfolk Borough Council Local Development Framework Core Strategy 2011 which is concerned with Environmental Assets. My attention has not been drawn to any part of the Policy in respect of coastal flooding and therefore it has not been determinative in this respect.

Conclusion

14. For the reasons set out above, having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Zoe Raygen

INSPECTOR