
Appeal Decision

Site visit made on 23 May 2017

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

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

Decision date: 31 May 2017

Appeal Ref: APP/V2635/W/16/3152793

81 Broadend Road, Walsoken, Wisbech, Cambridgeshire, PE14 7BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Pamela Wenn against King's Lynn and West Norfolk Borough Council.
 - The application Ref 16/00040/O, is dated 23 December 2015.
 - The development proposed is a single storey dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Pamela Wenn against King's Lynn and West Norfolk Borough Council. This application is the subject of a separate Decision.

Procedural matters and background

3. The application was made in outline and indicated that all matters were reserved for subsequent consideration except access and landscaping. Accordingly, in so far as the submitted drawing No. asca/ckm/09/10/12 shows the details of a dwelling I have treated these as illustrative.
4. The appellant's partner, Mr Wilson, also submitted an appeal against the Council's refusal of a certificate of lawful development (LDC) for this site under Ref APP/V2635/X/16/3154621. This concerned a "Use Class C3 dwellinghouse and residential garden" and I was to hold an inquiry into that appeal. However, that LDC appeal was withdrawn at the beginning of March this year.

Main Issues

5. The main issues are:
 - whether the proposal is acceptable in this location having regard to policies aimed at safeguarding the countryside;
 - the effect of the proposal on the supply of gypsy and traveller sites in the area; and
 - whether the occupiers of the proposed dwelling would be at risk from flooding.
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Reasons

6. Whilst there is a loose-knit ribbon of development, including dwellings and agricultural buildings, along the eastern section of Broadend Road, the appeal site lies outside the settlement boundary for Walsoken and therefore in the countryside.
7. The site forms part of a larger plot, for which planning permission Ref 10/00200/F was granted in 2011 (the 2011 permission) for the siting of a mobile home for persons of gypsy and traveller status. This was subject to conditions, including condition (3), which stated there shall be no more than 2 caravans on the site, of which no more than 1 shall be a static caravan or mobile home. The Council acknowledges that a caravan/mobile home, with maximum dimensions of 6.8m x 20m, could be lawfully sited on the land. Against that background, it accepts that a modest bungalow could be accommodated without significant harm to the character and appearance of the locality. I see no reason to take a different view.
8. However, the 2011 permission was granted on the basis of the need for gypsy and traveller accommodation. The appeal site is included as an authorised pitch within the Cambridgeshire, King's Lynn and West Norfolk, Peterborough and West Suffolk Gypsy and Traveller Accommodation Assessment (GTAA), October 2016. A proposal to remove condition 3 was considered in another appeal Ref APP/V2635/A/12/2176195 (the 2013 appeal). In dismissing that appeal, the Inspector said¹:

"The site contributes to meeting the need for gypsy and traveller sites in the District. This was an important consideration when the Council granted a permanent permission. Circumstances have not changed. To accept the appeal proposal would probably mean that the site would no longer be part of the general stock of gypsy caravan sites. Mr Wilson's housing need as a gypsy would be met but because of the type of park home accommodation there is no planning policy reason why this should be in the countryside. There would be harm to the supply of gypsy and traveller sites in the district. This consideration has substantial weight and reinforces the need for condition 3."
9. Whilst the siting of a caravan or caravans on the appeal site would have some impact on the character and appearance of the countryside, different policy considerations apply in relation to the provision of gypsy and traveller accommodation. As indicated in the 2013 appeal decision, the expectation of Planning Policy for Traveller Sites (PPTS) is that such sites will be in the form of residential caravan sites.² The appellant's partner, Mr Wilson, is a Romany Gypsy and, assuming he still comes within the policy definition of a gypsy or traveller, this proposal for a new bungalow nevertheless falls to be considered in the context of policies concerning the provision of unrestricted, open market housing in the countryside.
10. Policy CS06 of the King's Lynn and West Norfolk Core Strategy provides that the strategy for rural areas is to promote sustainable communities and patterns of development, with most new development being focused in key rural service centres. In particular it states that: "beyond the villages and in the countryside, the strategy will be to protect the countryside for its intrinsic

¹ DL 34.

² DL 24.

character and beauty... The development of greenfield sites will be resisted unless essential for agricultural or forestry needs." This is supported by Policy DM2 of the King's Lynn and West Norfolk Site Allocations and Development Management Policies Plan (SADMP), adopted 2016. This provides for a broader range of potentially acceptable developments in the countryside, but the appellant does not contend that the proposal complies with CS Policy CS06 or SADMP Policy DM2. I am satisfied that it conflicts with both.

11. Although the terms of Policies CS06 and DM2 are consistent with the National Planning Policy Framework (the Framework), at the time the application was submitted, the Council could not demonstrate that it had a sufficient supply of deliverable housing, as ruled by the High Court in July 2015³. Accordingly, those policies were then out of date. However, the Council has re-evaluated the position since then. Following an inquiry into another appeal Ref APP/V2635/W/2221650 in May 2016, the Inspector concluded on 14 July 2016 that the Council could then demonstrate a five year supply of deliverable housing land.⁴ This is not disputed by the appellant and it has not been suggested that the position has changed since then. Accordingly, I am satisfied that CS Policy CS06 and SADMP Policy DM2 are up to date.
12. The appellant's case in this appeal focuses very much on the lengthy and contentious history of this site and, in particular, enforcement action taken by the Council. I need not rehearse this in detail, however the basis of the appellant's case is that the existing structure on the site is not a caravan, but a dwellinghouse building, which has become lawful. In turn, that argument rested on a contention that an enforcement notice issued by the Council in 2006 was a nullity, because it alleged the stationing of a "park home", which is a caravan.
13. If there were already a lawful dwelling on the site that would clearly affect the merits of a proposed replacement bungalow and, in this regard, the appellant refers to SADMP Policy DM5 concerning the enlargement or replacement of dwellings in the countryside. However, there is a planning enforcement notice in force, which was not challenged by appeal or through the courts and it is not open to me to declare that notice a nullity in this appeal. On the basis of that enforcement notice, the Council has already secured a conviction in 2008 and has taken direct action to remove the structure, albeit that it has since been reinstated by the appellant, or Mr Wilson. Furthermore, the LDC appeal was withdrawn, following receipt of counsel's advice. There is no basis upon which I can rule, in this appeal, that the existing structure is lawful. Its existence cannot have a significant bearing on the merits of this proposal and Policy DM5 is not relevant to it.
14. I conclude on the first main issue that the proposal is unacceptable in this location having regard to policies aimed at safeguarding the countryside. In particular it conflicts with CS Policy CS06 and SADMP Policy DM2.
15. Turning to the second main issue, the Inspector in the 2013 appeal noted that the site contributes to meeting the need for gypsy and traveller sites in the District, because of the 2011 permission. The 2016 GTAA identified a need for

³ *Borough of King's Lynn and West Norfolk v Secretary of State for Communities and Local Government and Elm Park Holdings Ltd* [2015] EWHC 2464 (Admin).

⁴ DL 44.

additional gypsy and traveller pitches across the study area, over the period 2016 to 2036, and this included a need within King's Lynn and West Norfolk.

16. In her costs application, the appellant suggests there are "very deep", but unspecified flaws in the GTAA. However, she does not effectively counter the Council's evidence that, if allowed, this proposal would ultimately result in the loss of an established gypsy and traveller site and would harm the supply of sites across the District. I accept that evidence. This would be contrary to the Government's aim, as expressed in PPTS, of increasing the number of traveller sites in appropriate locations with planning permission, to address under provision and to maintain an appropriate level of supply. Like the Inspector in the 2013 appeal, I attach substantial weight to this consideration.
17. In relation to the last main issue, the appeal site falls within Flood Zone 3a, as identified in the Council's 2009 Strategic Flood Risk Assessment. The Framework provides for a sequential test, namely that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
18. The Norfolk Group Report 4 demonstrates that there are reasonably available suitable alternative sites in Flood Zone 1, within the development boundaries of Walsoken and Emneth. The appellant does not dispute this but, the Council contends that, even if the sequential test were met, as the proposed development falls within the "more vulnerable" category in the Planning Practice Guidance (PPG), it would also have to satisfy the "exception test."
19. Under the exception test: (i) it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and (ii) a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall. The Council says the Environment Agency did not comment on the suitability of the Flood Risk Assessment. In the context of her costs application, the appellant says this was because the Council did not provide sufficient information. However, in any event, the appellant does not contradict the Council's contention that the development would not provide wider sustainability benefits, given that it is contrary to countryside protection policies. Both limbs of the exception test must be satisfied.
20. On the evidence before me, I am satisfied that the proposal would conflict with CS Policy CS08, the Framework and the PPG, which together seek to guide development away from high flood risk areas. However, the site has permission for the siting of caravans for permanent residential use. In accordance with the PPG, such caravans are "highly vulnerable" development, rather than "more vulnerable", and such development should not be permitted in Flood Zone 3. On this basis, the proposed development would actually reduce the risk to occupiers of the site and this is a consideration which indicates that the conflict with CS Policy CS08 and related national policy should not be sufficient in itself to justify dismissal of the appeal.

Conclusion

21. Notwithstanding my conclusion on the issue of flood risk, and having regard to all other matters raised, I am satisfied that the appeal should be dismissed on

the basis of my findings of harm on the first and second main issues, and the associated conflict with the development plan and national policy.

J A Murray

INSPECTOR