



Appeal Decision

Site visit made on 10 October 2019

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 22 November 2019

Appeal Ref: APP/X3540/W/19/3229916

Low Grange Farm, Long Lane, Heveningham, Halesworth IP19 0EF

- 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 & Mrs Rush against the decision of East Suffolk Council.
 - The application Ref DC/19/0462/FUL, dated 30 January 2019, was refused by notice dated 10 April 2019.
 - The development proposed is retention of residential mobile home.
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Decision

1. The appeal is allowed and planning permission is granted for retention of residential mobile home at Low Grange Farm, Long Lane, Heveningham, Halesworth IP19 0EF in accordance with the terms of the application, Ref DC/19/0462/FUL, dated 30 January 2019, subject to the following conditions:
 - 1) This permission shall endure solely for the benefit of Marc Rush; and not for the benefit of the land and shall be for a limited period being the period of 5 years from the date of this decision, after such time the mobile home shall be removed from the site and land shall be returned to its previous condition as an agricultural field.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 18/129/01/A.
 - 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no building or structure permitted by Classes A (extensions or alterations), B (changes to the roof) or E (buildings or enclosures within the curtilage of a house) of Schedule 2 Part 1 of the Order shall be erected other than those expressly authorised by this permission.

Procedural Matter

2. I note the Suffolk Coastal Local Plan Final Draft Plan January 2019, however, since there is no certainty that the policies within will be adopted in their current form, I attribute them limited weight.

Main Issue

3. From the evidence before me it is common ground between the main parties that the development conflicts with the Council's development plan policies with respect to the location of development in particular the accessibility of services and facilities. In addition, the Council stated in their statement that their second reason

for refusal has been addressed. Therefore, the main issue is whether there are any other considerations that might indicate that the appeal should be allowed.

Reasons

4. The appeal site lies outside of defined settlement boundaries and is therefore within the countryside in the terms of the Suffolk Coastal District Local Plan Core Strategy & Development Management Policies Development Plan Document July 2013 (CS). Since there are other buildings near the appeal site, it is not isolated with respect to paragraph 79 of the National Planning Policy Framework (Framework).
5. The nearest settlements have limited services and facilities and the highway adjacent to the dwelling lacks footpaths and lighting such that the occupant is reliant on the private motor vehicle for daily requirements. However, from the evidence before me, the number of occupants are limited such that the quantity of daily trips arising from the site is likely to be limited. As such, the harm in terms of environmental sustainability is minor.
6. It is common ground between the main parties that the development conflicts with CS Policies DM3, SP1, SP19 and SP29 which together direct developments according to the settlement hierarchy and restrict development in countryside areas. Given the location of the development, I see no reason to disagree. However, while the policies carry full weight, given the small scale of the development and the limited number of future occupiers, the harm is limited.
7. Planning law¹ requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
8. Material considerations have been put forward by the appellant. Detailed and compelling evidence has been provided relating to the health of the appellant's son who occupies the dwelling. It is clear from this evidence that this specific site fulfils particular needs of the occupant in relation to his health and is imperative for his well-being.
9. I note the Council's suggestion that alternative accommodation could be found for the occupant or a relocation of the mobile home. However, from the evidence before me, this particular location allows the occupant to be independent from his parents as well as near enough to the appellants' home, such that he can receive the support he needs while benefitting from some distance and independence. Moreover, this particular location which is mostly surrounded by open fields, has played a significant role in the management of the occupant's health. Therefore, given the importance of this particular site for the health of the occupant, it is unlikely that any alternative locations would improve or at the very least sustain his well-being. I therefore attach significant weight to this material consideration in favour of the development.
10. I have had due regard to Article 8 of the of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998 (Article 8) which states that everyone has the right to respect for his private and family life, his home and his correspondence. Since the relocation of the appellant's son would be likely to lead to the need to move to an unsuitable site and given the likely negative effects on his health as indicated by the evidence before me, the dismissal of this appeal

¹ S38(6) of Planning and Compulsory Purchase Act 2004 and s70(2) of Town and Country Planning Act 1990

would amount to a grave interference with his Article 8 rights and I attach significant weight to this point.

11. I have also had due regard to the Public Sector Equality Duty (PSED) contained in Section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appeal is made for the use of the occupant who has a particular health condition, it is for a person who shares a protected characteristic for the purposes of the PSED.
12. It does not necessarily follow from the PSED that the appeal should succeed. However, in my view, the significant weight attached to the other material considerations set out above would outweigh the development plan conflict given the limited harm that would arise.
13. Consequently, the material considerations in this particular case indicate that the appeal should be allowed.

Other Matters

14. The appeal scheme proposes a dwelling on a site that lies within the Zone of Influence of the Minsmere to Walberswick Heaths & Marshes Special Area of Conservation (SAC) and Special Protection Area (SPA). Since the development is for one dwelling only, the number of additional recreational visitors would be limited and the likely effects on the SAC and SPA site from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Consequently, an Appropriate Assessment (AA) is necessary to ascertain the implications for the site.
15. The interest features of the SAC and SPA include an important assemblage of rare breeding birds associated with marshland and reedbeds as well as European dry heaths and annual vegetation of drift lines. The Habitats Regulations Assessment Recreational Disturbance Avoidance and Mitigation Strategy for Ipswich Borough, Babergh District, Mid Suffolk District and East Suffolk Councils – Technical Report (RAMS) sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England (NE), I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SPA and SAC sites.
16. The appellants have submitted a signed and dated undertaking pursuant to Section 111 of the Local Government Act 1972 (S111) for £321.22 to be paid to the Council. The Council has stated that the payment has been made and that their second reason for refusal has been addressed. Natural England has also commented that they are content that the proposed RAMS will be secured by way of this undertaking pursuant to S111. Given the evidence before me I am satisfied that the mitigation measures will be secured in a timely and effective manner.
17. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of

the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.

18. Consequently, the proposal would not adversely affect the integrity of the SAC and SPA sites and would accord with CS Policy DM27 which relates to biodiversity.
19. I acknowledge the Council's comments regarding the development setting a precedent. However, I have assessed the appeal based on its planning merits and this has not altered my overall decision.
20. I note that the dwelling was erected without planning permission, however, given the particular circumstances of the case and since granting permission would allow the Council some control over the development, this point has not altered my overall decision.
21. While the Council mentioned that the mobile home is considered to be an alien feature in its setting, no other evidence is before me to indicate that there would be any harm to the character and appearance of the area. Given the small scale of the dwelling and its design with pitched roof and brown timber cladding as well as a tall hedge that runs adjacent to the site, the mobile home sits discreetly within the rural landscape. Therefore, there are no adverse effects on the character and appearance of the area.

Conditions

22. I have considered the conditions suggested by the Council and made minor amendments having regard to paragraph 55 of the National Planning Policy Framework and the Planning Practice Guidance.
23. Given the specific circumstances of this case, I have attached a personal condition which is necessary in the interests of environmental sustainability in the event that the dwelling is no longer required by the occupant. The condition needs to be temporary to allow the main parties to re-evaluate the occupant's health. From the evidence the occupant's health issues have been ongoing for a substantial period of time and requires long term management. I have therefore set the period of permission to be five years rather than two as suggested by the Council.
24. I have included a condition requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty and to safeguard the character and appearance of the area. In this case, given the rural location of the development, there is exceptional justification for removing specified permitted development rights in order to protect the character and appearance of the area.

Conclusion

25. For the reasons given above the appeal should be allowed.

R Sabu

INSPECTOR