The Planning Inspectorate

Appeal Decision

Site visit made on 26 November 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 5th February 2020

Appeal Ref: APP/T3535/C/18/3211982
Land on the north side of Dam Lane, Kessingland.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is by Gary Regan against an enforcement notice issued by Suffolk Coastal and Waveney District Council.
- The enforcement notice, ref. ENF/2015/0279/DEV, was issued on 5 September 2018.
- The breach of planning control alleged in the notice is the erection of outbuildings and wooden jetties, fencing and gates over 1 metre adjacent to a highway and engineering operations amounting to the formation of a lake and soil bunds.
- The requirements of the notice are to:
  1. *Permanently remove from the Land the five wooden outbuildings.*
  2. *Permanently remove from the Land the wooden jetties.*
  3. *Permanently remove from the Land the soil bunds.*
  4. *Permanently fill in the lake on the Land using uncontaminated soil and/or from the existing bunds on the site until completely filled and replant the area with grass seed.*
  5. *Permanently reduce the height of the fencing and gates to a maximum of 1metre.*
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period, and the appeal on ground (a) and application for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.

Decision

1. 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.

Preliminary matters

2. I note that since the enforcement notice was issued, East Suffolk Council has been created covering the former districts of Suffolk Coastal District Council and Waveney District Council. As a result, policy documents referring to "Waveney District Council" continue to apply to East Suffolk District Council until such time as a new document is published.

Background matters

3. The appeal site lies on the northern side of Dam Lane. It is in the open countryside about 2 kilometres inland from Kessingland Beach and lies within Flood Zone 3b. As such it is an area at risk of flooding where government policy

is that a site-specific Flood Risk Assessment (FRA) is required. The area is generally flat and characterised by marshy land intersected by a network of drainage ditches. The Hundred River runs about 300 metres to the west of the site.

4. In 2017 planning permission was refused on a retrospective application for the formation of a lake for private recreational use and erection of 5 timber structures on the land for amenity and storage use[1].

5. I understand that the Council have served two enforcement notices against this development – the notice subject of this appeal and another relating to material change of use of the land from agriculture to private recreational domestic use. There has been no appeal against the latter.

The appeal on ground (a) and the deemed planning application

6. Ground (a) is that planning permission should be granted for the development. From my inspection of the site and surroundings and from all that I have read I consider the main issues to be:
   - The effect of the development in terms of any increase in flood risk, and potential harm to the water environment as a result of pollution; and,
   - The effect of the development on the character and appearance of the appeal site and surrounding countryside.

7. At the retrospective planning application stage the Environment Agency made an initial holding objection subject to submission of a FRA by the appellant. On receipt of the FRA they were not satisfied that suggested measures demonstrated adequate flood storage compensation, details of where the excavated spoil had gone, and whether the five buildings on the site could be used for sleeping accommodation.

8. On submission of a revised FRA the Agency upheld their objection on the basis that spoil had been re-graded and formed a bund between the site and the nearby watercourse. This had the effect of removing the site from the functional floodplain.

9. As noted above, this site lies within Flood Zone 3b, which is defined as land where water has to flow or be stored in times of flood[2]. Furthermore, the objectives of the site-specific FRA are to establish whether amongst other things a development will increase flood risk elsewhere, and whether the measures proposed to deal with these effects and risks are appropriate[3].

10. I saw that bunds have been formed so that the ground is raised significantly above the level of the land around the appeal site. As a result virtually the entire site area is cut off from the flat countryside on the northern, western and eastern sides, and from nearby watercourses. The site has effectively been removed from the functional floodplain. No compensatory measures have been proposed to ensure there would not be any overall loss of flood storage capacity such as an available area of land on the edge of the floodplain.

11. The site lies within a coastal area where there is both fluvial and tidal flood risk. Paragraph 148 of the National Planning Policy Framework (NPPF) advises

[1] Decision notice ref. DC/17/0786/FUL, dated 29 May 2018.
[2] PPG Paragraph: 065 Reference ID: 7-065-20140306.
[3] PPG Paragraph: 030 Reference ID: 7-030-20140306.

that the planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It is increasingly important that development that might exacerbate flood risk should be avoided. In my opinion the development in this case causes a significant increase in flood risk.

12. As regards the water environment, drainage from the site connects into the local river system – eventually the River Waveney. There have been scant details provided of the methods of disposal of sewage and grey waste water but given that the site could well be used frequently there is a likelihood that pollution of the river system could occur.

13. I understand the appellant has given an undertaking that any potentially polluting waste water will be collected in containers and removed from the site, and that no toilet facilities will be provided, so that site users would rely on facilities of local retail and restaurant sites. In my view such arrangements would be impractical, and it would be difficult to ensure they would be adhered to. If planning conditions were imposed they would be nearly impossible to enforce.

14. I conclude on the first main issue that the development causes significant harm in terms of increase in flood risk, and potential harm to the water environment in terms of pollution. The development does not accord with the development plan, in particular with Policy WLP8.24 of the Waveney Local Plan of 2019[4]. This includes aims to ensure that satisfactory flood risk mitigation measures can be demonstrated over the lifetime of a development by means of a site-specific FRA, and to prevent development unless it provides sustainability benefits which outweigh flood risk. Furthermore, development should deliver water quality improvements wherever possible.

15. Turning to the second main issue, the buildings on the site are either of distinctly domestic nature – notably the 'log' cabin with its gabled pitched roof, the hexagonal barbecue hut, and the flat roofed building near the western end of the lake – or the shed-like structures with felt shingles on curved roofs. Taken together with the mown areas of grass, the jetties and bridge on the lake, and planting of ornamental trees they give an incongruous domestic character to this rural site. The gates and fencing on the road boundary are further incongruous features that appear out of place in the context of the rough hedging and mature trees that border Dam Lane.

16. I find these changes are quite at odds with the highly rural/agricultural surroundings and have caused significant harm in terms of countryside interests. This is contrary to the advice of NPPF paragraph 170(b) that the intrinsic character and beauty of the countryside should be recognised.

17. I conclude on the second main issue that the development causes significant harm to the character and appearance of the appeal site and its countryside surroundings. The development does not accord with the development plan, notably in respect of Policies WLP8.29 and WLP8.35 of the Waveney Local Plan. These include aims to ensure that development shows a clear understanding of the form and character of the natural environment and complement local character and distinctiveness, and to protect landscape character. The appeal on ground (a) therefore fails.

[4] Adopted subsequent to issue of the enforcement notice.

18. I appreciate that the lake has been extensively landscaped with reeds and water plants which probably provides an attractive environment for wildlife and may be ecologically sound. However, this benefit does not outweigh the significant harm I have identified in terms of flood risk, potential water pollution, and the character and appearance of the area.

19. The appellant has drawn my attention to other development in the area including housing and a zoological park. However, I do not know the circumstances of these – either in terms of their location in relation to flood risk, or the policy regime under which they were permitted.

Conclusions

20. For the reasons given above and having regard to all other matters raised I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Stephen Brown

INSPECTOR