

Appeal Decision

Site visit made on 11 March 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2020

Appeal Ref: APP/V2255/W/19/3243925

My Retreat, Norman Road, Warden, Kent ME12 4EU

- 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 James Bird against the decision of Swale Borough Council.
 - The application Ref 19/504182/FULL, dated 30 August 2019, was refused by notice dated 11 November 2019.
 - The development is the use of land for the siting of 1no. static caravan for residential use.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description used in the heading above has been taken from the decision notice of the Council. The siting of two caravans at the site has already occurred, without planning permission, and the description of development used by the appellant within the application form and the appeal form reflects the existing situation. However, the main parties have confirmed that the development for which planning permission is sought is the siting of one caravan at the appeal site. As such, the description used in the heading above is the most accurate and I have assessed the proposal on that basis.
3. The Council's first reason for the refusal of the application indicated that the site was located within an Area of Outstanding Natural Beauty. However, it has subsequently been clarified that this is not the case.
4. The Council's second reason for the refusal of the application relates to the effect of the development on The Swale Special Protection Area and Ramsar Site. This matter only need be addressed if the appeal is likely to be allowed. As such, I will address it after I have considered all other matters.

Main Issue

5. The main issues are:
 - Whether the site is a suitable location for the development, having particular regard to the character and appearance of the site and the surrounding area and the accessibility of employment and services.
 - Whether other considerations, including housing delivery and the personal circumstances of the appellant, would outweigh any harm and indicate that planning permission should be granted.

Reasons

Location of Development

6. The appeal site is located within a rural area that features sporadic housing and large fields that are enclosed by hedges and trees. The fields are the dominant feature of the locality and, along with the large residential plots that serve the dwellings within the area, they create a spacious and green environment that gives the area a rural character that reflects its countryside location. Holiday parks and large agricultural buildings exist within the wider area, but they are distant from the appeal site and viewed in a different context.
7. The appeal site is accessed from Norman Road and is enclosed by hedges and trees to the front. A belt of vegetation at one side of the site separates the plot from the dwelling of Barbara Crest and at the other side of the site is the property of Collin Ridge which has a fence at the side boundary. The site is open to the rear with largely open views towards the property of Fairlea. The site mostly consists of grassed land, with two caravans and a timber structure close to its frontage. Planning permission is sought for the siting of one of the caravans at the site and its use as the residence of the appellant.
8. Policy ST3 of The Swale Borough Local Plan¹ (SBLP) states that development in the open countryside will not be permitted unless it is supported by national planning policies and contributes to the protection or enhancement of the intrinsic value, landscape setting, tranquillity and beauty of the countryside. No case has been made by the appellant that the development accords with national planning policies or that the exceptions relating to affordable housing or rural worker dwellings, as set out within policies DM12 and DM9 of the SBLP, are applicable. Nor have I found any reason to believe that the appeal scheme would accord with those Policies. Therefore, from the information before me, the development clearly appears to be at odds with the spatial strategy set out within the SBLP.
9. The use of the site, without planning permission, for the siting of two caravans gives the clear impression that the site is used for residential purposes. Whilst the existing boundary fencing and vegetation partially restrict views into the site, the existing caravans can be seen from Norman Road and from surrounding land, thereby causing the residential use to be noticeable within the locality. No evidence has been provided to demonstrate that the land at the appeal site has previously been used for any other purpose and, as such, it appears that the siting of caravans at the site has caused the domestication of the plot and the erosion of the green and spacious character of the rural locality.
10. Although this appeal relates to the siting of a single caravan rather than two, a single caravan at the site would still be a noticeable feature in the rural setting and would cause the site to have a residential appearance. Whilst the visual effect of the use of land would be less than the existing situation, it would still not be mitigated by the vegetation at and around the site and would cause the domestication of the plot. Moreover, it is likely that the residential use of the site would lead to the presence and accumulation of associated domestic paraphernalia at the site and this would emphasise the visual effect of the development. Accordingly, the use of the site for the siting and occupation of a single caravan would represent an intrusion into the rural setting and would cause significant harm to the intrinsic value and tranquil setting of the countryside.

¹ Bearing Fruits 2031 - The Swale Borough Local Plan. Adopted July 2017.

11. Policy CP2 of the SBLP also requires development to be located in accordance with Policy ST3 in order to minimise the need to travel for employment and services and to facilitate the use of sustainable transport. In this regard, the site is remote from all settlements and there appears to be no public transport connections within close proximity. Furthermore, the location of the site and the absence of footpaths would be likely to discourage walking to any nearby settlements or facilities, particularly in times of bad weather and at night. Therefore, any occupiers of the site would be likely to be highly reliant upon private modes of transport to access places of employment and all facilities and services required for day-to-day living.
12. For these reasons, the site is not a suitable location for the development, having particular regard to the character and appearance of the site and the surrounding area and the accessibility of employment and services. The development, therefore, fails to accord with policies ST1, ST3, DM14 and CP2 of the SBLP which combine to create a spatial strategy for development in the interests of protecting the countryside, providing access to services and facilities and promoting sustainable transport. The development also fails to accord with paragraph 79 of the National Planning Policy Framework (The Framework), which states that the development of isolated homes in the countryside should be avoided.

Other Considerations

13. The evidence indicates that the Council cannot currently demonstrate a Framework compliant supply of housing land and therefore, in accordance with paragraph 11 of the Framework, the so-called tilted balance is engaged. In this regard, whilst the development represents a boost to the supply of housing, as it relates to a single caravan, the arising benefit would be modest.
14. The appellant's submissions set out the personal circumstances that led to the occupation of the caravans at the appeal site and that, had this not occurred, the appellant and his wife would have been homeless. In this context, I have had regard to the First Protocol to the European Convention of Human Rights as incorporated by the Human Rights Act 1998 and have identified that dismissing the appeal may lead to the removal of accommodation from the site. This would represent a form of interference with the rights of the appellant, particularly in relation to Article 8 of the First Protocol. However, such interference would be in accordance with the law and in pursuance of a well-established and legitimate aim, i.e. managing development in the interests of sustainability.
15. Whilst I acknowledge the circumstances of the appellant and his wife, no evidence has been provided to demonstrate that other forms of accommodation have been considered or that other housing options have been explored. Furthermore, no evidence has been provided that children reside at the site or that the occupiers have any specific needs which limit the type of accommodation that they could occupy. As such, it has not been demonstrated that other suitable accommodation would not be reasonably available. Conversely, I consider it to be in the public interest to avoid the harm that has been identified above and the associated conflict with national and local planning policies. As such, I find that dismissing the appeal would be a necessary and proportionate action.
16. Given that the appellant's submissions indicate that steps are being made to address the abovementioned personal circumstances and as it is necessary for any interference with human rights to be proportionate, I have had regard to the possibility of granting a temporary planning permission. However, I do not find that, even on a temporary basis, the personal circumstances of the appellant represent grounds to allow the conflict with the development plan or the harm caused by the development.

17. For these reasons, whilst I have had regard to the personal circumstances of the appellant and the implications of dismissing the appeal, I find that the interference with the human rights of the appellant is a proportionate and necessary action and that the objective of managing development in the interests of sustainability could not be achieved through lesser forms of interference. In this respect, I acknowledge the appellant's comments in relation to the manner in which the Council reached its decision. However, as the implications of the Human Rights Act 1998 have been considered in reaching this appeal decision, I do not find that the approach taken by the Council is, in itself, a reason to allow the appeal.

Planning Balance

18. The siting of a caravan at the appeal site addresses the personal circumstances of the appellant and also represents a small boost to housing supply, the importance of which is highlighted by The Framework. However, the Framework also states that planning decisions should recognise the intrinsic character and beauty of the countryside, ensure that developments are sympathetic to local character and the landscape setting, promote sustainable transport and, other than in certain circumstances, avoid the development of isolated homes in the countryside. In this case, I find that the harm that has been identified in terms of the accessibility of the site and the visual effect of the development significantly and demonstrably outweigh the modest public benefits of the development.
19. As such, the conflict with the development plan that has been identified above is not outweighed by other considerations, including The Framework and its presumption in favour of sustainable development. Furthermore, I find that the interference with the human rights of the appellant that would arise from the dismissal of this appeal is lawful, necessary and proportionate.

Other Matter

20. The site is located within the identified 6km Zone of Influence of The Swale Special Protection Area and Ramsar Site, which are afforded protection by the Conservation of Habitats and Species Regulations 2017. The second reason for the refusal of the application related to the potential effect of the development on the protected areas as a result of increased recreational disturbance. Whilst the Council identified that a financial contribution towards off-site works of mitigation could address this matter, no steps were taken towards securing a planning obligation. This matter has not been addressed by the appellant and no mechanism is in place to secure any mitigation.
21. Given my findings in respect of the main issue and all other matters, there is no prospect of planning permission being granted and, as such, it is not necessary for me to ascertain the appropriateness of the scheme or the necessity for mitigation within an Appropriate Assessment. Consequently, as the appeal is to be dismissed for other reasons, I have not taken this matter further.

Conclusion

22. For the reasons given above, I conclude that the appeal should be dismissed.

Ian Harrison

INSPECTOR