



Appeal Decisions

Site visit made on 28 January 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 05 June 2020

Appeal A. Ref: APP/X1545/C/18/3228268

Land at Bridgemarsh Marina, Bridgemarsh Lane, Althorne, Essex CM3 6DQ

- 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 made by Mr John Wilsdon against an enforcement notice issued by Maldon District Council.
 - The enforcement notice, numbered ENF/17/00159/03, was issued on 29 October 2018.
 - The breach of planning control as alleged in the notice is the unauthorised change of use of the land to a caravan site to be used for residential purposes.
 - The requirements of the notice are:
 - a. Discontinue the use of the Land as a caravan site accommodating caravans to be used for residential purposes as a sole or main place of residence.
 - b. Remove from the Land any caravans, items, materials, tools, machinery, apparatus, paraphernalia, detritus or debris associated with the unauthorised use of the Land.
 - c. Restore the Land to its condition before the breach of control took place.
 - The period for compliance with the requirements is Two (2) calendar months after the date this Notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Appeal B. Ref: APP/X1545/X/19/3225972

Bridgemarsh Marina, Bridgemarsh Lane, Althorne, Essex CM3 6DQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr John Wilsdon (W & H Wilson Agriculture against the decision of Maldon District Council.
 - The application Ref LDE/MAL/18/01513, dated 21 December 2018, was refused by notice dated 5 March 2019.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as '*the storage of materials, plant and boats belonging to Bridgemarsh Marina*'.
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Formal Decisions

Appeal A:

1. The enforcement notice is varied whereby, in paragraph 2 the wording "excluding any areas hatched red" shall be deleted and substituted with the wording "excluding any areas hatched red or coloured red in full"

2. Subject to this variation the appeal is dismissed, and the enforcement notice is upheld.

Appeal B:

3. The appeal is dismissed.

Appeal A

The Appeal on Ground (a) and the deemed planning application (DPA)

Procedural Matters

4. The Council confirms that there are three distinct areas within the site which were granted a LDC in 2013 for caravans to be used for residential purposes, as a sole or main place of residence. Accordingly, the Council intended to exclude these plots from the enforcement notice. The notice refers to these plots as "areas hatched red on the attached plan". However, the copy of the attached plan I have received shows certain structures coloured red, but no red hatchings. In the event I shall correct the notice, accordingly.
5. The appellant has only lodged an appeal on the basis that planning permission should be granted for the unauthorised use, as alleged. However, he also says that the enforcement notice, concerned with the residential use of four caravans, was issued when only two were occupied. It is not clear whether this implies that two of the four caravans have not been in use for residential purposes.
6. If this were the case the appellant would have needed to make a Ground (b) appeal whereby the appellant would contend the enforcement notice on the basis that the alleged breach had not occurred as a matter of fact. It would be open to me to deal with this as a hidden ground, but as the appellant has not advanced any detailed or compelling evidence to support his claim I do not intend to explore this matter further.

Background

7. Bridgemarsh Marina itself represents a lawful use of the land. In addition, sited within the relevant site area on the plan attached to the enforcement notice, there are seven holiday units and also three residential units. Both these elements have been confirmed as lawful by the Council, and are thereby immune from planning enforcement action.
8. In March 2017 the Council responded to a complaint regarding an alleged increase in the number of caravans at the site, and the use of caravans/mobile homes as permanent residences. A series of site visits were then carried out by Council officials, and it was found that 17 caravans were in place within the site. In response the landowner was noted, at the time, as saying that the marina benefitted from an established use certificate which allowed for an unlimited number of caravans to be used for residential or holiday purposes. I have not, though, seen any evidence from the appellant to confirm this assertion.
9. In October 2018, just prior to the enforcement notice being issued, the Council refused planning permission (ref FUL/MAL/18/00604) for a retrospective application submitted in respect of the change of use of four static caravans at

the site to accommodate staff at the marina. In the circumstances, the Council then saw it expedient to issue the enforcement notice.

10. The particular units in residential use, other than those already immune, have not been identified, and the Council has worded the alleged breach as a "caravan site", used for residential purposes.

Main Issues

The main issues in this appeal are:

- 1) whether this is a suitable location for new residential development;
- 2) whether there is an identifiable and justified functional need for the development;
- 3) whether the development could give rise to an increased risk of flooding;
- 4) the effect of the development on nature conservation;
- 5) the effect on the character and appearance of the area;
- 6) whether the development provides for a satisfactory standard of living conditions for its occupiers, with particular regard to layout, usable amenity space and any overlooking that might occur.

Reasons

Location

11. The appeal site falls in an area of rural character, outside the Council's identified settlement boundaries. The appellant disputes this on the basis that the caravans at issue are within a site with a residential caravan licence. That, however, is not the issue, as the Council is referring to the defined settlement boundaries within its development plan.
12. Policies S1 and S8 of the Maldon District Local Development Plan (LDP), adopted in July 2017, say that the countryside will be protected for its landscape and ecological value as well as its intrinsic character and beauty. It is indicated that planning permission will only be granted for development where this is not adversely impacted upon and provided that the development is compliant with other policies in the LDP.
13. The existing accommodation at the site involving three residential units and seven holiday units do not help the proposal in terms of its accessibility by means other than the private motor car. The appellant says that the site's residents do not tend to own or use a car and he indicates that the occupiers walk to Althorne railway station, which is some 500 metres from the site. This might be reasonably walkable, but sustainability also involves good accessibility to shops, services and other facilities. None of these appear to be locally available. Accordingly, it would be most surprising if residents at the site did not quite reasonably look for reliance on the private motor vehicle.
14. In such circumstances, on this first main issue, I find that the development, given the material considerations involved, is not sustainable and would compromise the Council's strategic objectives and LDP policies S1, S2, S8, T1 and T2.

Functional need

15. Paragraph 79 of the National Planning Policy Framework (the Framework), says that planning decisions should avoid the development of isolated homes in the countryside unless, amongst other things, there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. Whilst the residential use of such a caravan site might not be considered as isolated homes in the sense of them being brick built dwellinghouses, the static caravans involved suggest a degree of permanence. Also the site is somewhat remote.
16. The appellant considers that there is a functional need for four caravans, indicating that two are needed to provide accommodation for, and to attract, staff to live subsidised on an isolated site to cover eventualities throughout the night and day. On site workers are needed to supervise matters, offer advice to boat owners, maintain the boats, and to offer hospitality to the boat owners and visitors.
17. With the other two caravans said to be required for workers to be involved with the marina's expected renewal, it is indicated that the residential use helps with the capital renewal investment required. However, no financial details have been provided to confirm that this is a viable business able to support four workers, and for which a functional need might be demonstrated.
18. The Council accepts that marinas, being located on waterfronts, should be able to deal with emergencies arising from tides and weather related difficulties. I agree. However, although I note the appellant's comments in this regard, bad weather is by and large now accurately predicted. I accept that investment in the site is likely needed but I am not fully convinced that there are compelling reasons why marine workers would need to live at the site continuously to deal with day to day matters or emergencies. A rota system could be operated, and workers could travel to the marina, as required.
19. No details have been provided as who occupies the three lawful residential units at the site, nor has there been any detailed evidence provided as to whether or not there is suitable residential accommodation in the vicinity of the site. The Council says in its representations that there are local settlements which provide a varied housing market for the area, and refer to a search it carried out showing that there were 25 properties available for sale within 1 mile of Althorne, with an asking price of up to £300,000. It is understood that a few of these properties were in Althorne village. The appellant has not explained why such properties would not be suitable to cover the needs of the marina workers.
20. On the basis of the submitted information I conclude that an identifiable functional need for marine workers to live on the site continuously has not been justified, and the proposal is in material conflict with the objectives and requirements of LDP policy H7 and advice within paragraph 79 of the Framework.

Flood risk

21. The site falls within Flood Zone 3, the highest risk zone. Paragraph 163 of the Framework, by way of its footnote 50, requires for a site specific Flood Risk Assessment (FRA) for all development proposals (including minor development

and changes of use) in Flood Zones 3, and in this connection, the provision of residential units is classified as highly vulnerable.

22. The government's planning practice guidance (PPG) explains what a FRA should establish including the risks of flooding from all sources, and paragraph 155 of the Framework says that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk.
23. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. For a specific development proposal this might involve applying a Sequential Test and then, only if this passed, an Exception Test. Accordingly, the FRA should include evidence in order to allow the Council, in the first instance, to apply the Sequential Test.
24. The appellant has provided little information or detail to counter the Council's concerns on this issue. Moreover, in instances where no meaningful FRA has been provided it is recognised, procedurally, that this in itself, is sufficient to lead to dismissal of an appeal and planning permission being refused.
25. I thereby conclude that, in the absence of any comprehensive FRA with compelling evidence to suggest otherwise, nor any details of mitigation measures in this regard, the risk of flooding weighs heavily against the proposal, and is in material conflict with LDP policy D5, and is contrary to relevant advice in paragraphs 155, 158 and 163 of the Framework, and also the PPG.

Nature conservation

26. The marina and the adjacent tidal and intertidal habitats are covered by a number of national and international designations. These include the Crouch and Road Estuaries Site of Special Scientific Interest (SSSI), Special Protection Areas (SPA), a Ramsar Site, a Marine Conservation Zone and a Special Area of Conservation (SAC). Such sites are, as the names suggest, given significant levels of protection.
27. The Council says that the appellant has not submitted sufficient information to allow a Habitats Regulations Assessment to be carried out to demonstrate that the use has no adverse effect so that the adverse effect can be mitigated or compensated in a satisfactory way.
28. The appellant commissioned specialist consultants to produce a document 'Extended Phase 1 Habitat Survey.' The survey indicates that the surrounding habitats including the estuarine and Bridgemarsh Island habitats which are important ecological sites, and that the proposed development may impact upon mobile species in association with the estuary and adjacent habitats. Identified species such as bats, great crested newts, badgers, birds, reptiles and hedgehogs could be affected by the development.
29. No new or direct access will be created between the SPA/SAC/Ramsar and the Application Site. The study also says that the owner is committed to protecting the local environment and, in order to mitigate against visitor pressures to the SPA/SAC/Ramsar, the survey suggests that the appellant would implement certain measures. These would include directing dog walkers away from the SPA and SAC, the identification of visitor management techniques such as restricting persons to walking on the public right ways along the sea wall, the

provision of site signage to highlight the country code, which would be designed in consultation with Natural England, Essex Wildlife Trust and associated stakeholders.

30. The survey suggests the impacts to the SPA/SAC/Ramsar will be negligible and, given the small number of people using the caravans and historic/existing levels of disturbance, it is said that it is extremely unlikely that more than 1% of any local bird species using the estuary would be impacted upon through recreation pressures incurred by four additional caravans.
31. Nonetheless, were I to allow this appeal and grant planning permission, given the wording of the breach in the enforcement notice, planning permission would be granted for the whole site to be used lawfully for residential purposes. Given that the breach involves the residential use of caravans on the land this, by way of planning law, is the correct approach for the Council to have taken. Accordingly, the impact on the nature conservation and the local sites of significant importance could be considerable should planning permission be granted.
32. There is a statutory duty for competent authorities to undertake an appropriate assessment of the potential impacts of projects likely to have a significant effect on European sites. A person applying for planning permission must provide such information as may reasonably be required for the purposes of the assessment or to enable it to be determined whether an appropriate assessment is required. Further, one of the principles set out in paragraph 175(b) of the Framework is that development on land within or outside a SSSI, likely to have an adverse effect on a SSSI (either individually or in combination with other developments) should not normally be permitted.
33. In this particular instance the information provided by the appellant, and the level of accompanying detail, is wholly insufficient to allow for an appropriate assessment to be carried out, or for the application to be determined in this regard. Accordingly, and in the absence of any details to demonstrate otherwise, I conclude that the development is in material conflict with the objectives and requirements of LDP policies D2 and N2, paragraphs 175, 177 and 180 of the Framework and the PPG.

Character and appearance

34. Located beyond the sea wall the site is occupied by a number of caravans and structures with associated vehicles and also small boats in a somewhat haphazard arrangement. Their planning status aside, at my site visit I noted that the appearance is one of a small caravan park and, as mentioned, some of the units have lawful use for both holiday accommodation and also full residential use.
35. Such sites are not uncommon, and this one would be capable of being tidied up with the caravans more cohesively arranged, thereby improving the layout and meeting relevant advice in paragraph 127 of the Framework. In the circumstances, I do not agree with the Council's assessment that the site has a significant and materially detrimental impact upon the character and appearance of the surrounding countryside, and I do not consider that LDP policy D1, concerned with design quality for new development, is directly applicable in this particular instance.

36. I thereby conclude that the development is not harmful to the character and appearance of the area.

Living conditions

37. Although in a much larger caravan park, where mobile homes of varying sizes and elaborate forms might be found, each, perhaps, with its own small enclosure, the caravans on this particular site appear to be merely functional, with a modest standard of accommodation. The occupiers of the caravans would not realistically be expecting individual allocated areas of external amenity space. Also, matters of overlooking, which are more associated with householder developments, are not considerations of particular importance here. If caravans were sited too close to one another, then they would likely be moved slightly, as required.
38. I understand that on-site amenities and utilities are provided, and I therefore conclude that the current scale of the development does provide a satisfactory standard of living conditions for its occupiers, consistent with the relevant objectives of LDP policy D1 and paragraph 127(f) of the Framework. However, were I to allow the appeal and grant planning permission for full residential use of the site, intensification of use would likely impact on the living conditions of its occupiers. That said, a limit as to the number of caravans sited could be imposed by way of a planning condition, were the development to be satisfactory in all other respects.

Overall Conclusions on Ground (a) Appeal

39. Although I have found that the development does not have a significant detrimental impact on the character and appearance of the surrounding area, nor that the residents would not necessarily enjoy a satisfactory standard of living conditions, these matters are substantially outweighed by my findings on the other main issues. In illustration, the site is in an unsustainable location, no functional need for additional residential accommodation has been demonstrated, the site lies within the highest flood risk zone, with no FRA produced, and it has not been demonstrated that the additional residential development would not be harmful to the local sites of nature conservation importance.
40. For the above reasons, and having had regard to all matters raised, the appeal fails and the planning application deemed to have been made under section 177(5) of the 1990 Act as amended is refused.

Appeal B

41. In an appeal under s195 of the 1990 Act against the refusal of a LDC the burden of proof is upon the appellant. The test of the evidence is one of balance of probability. As such, the planning merits of that applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.

Main Issue

42. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

43. An enforcement notice (Council ref ENF/17/00166/01) in respect of an alleged material change of use of the land for storage purposes, and completely separate to the enforcement notice the subject of the current appeal, was issued on 15 January 2018. Requiring for the cessation of the use, the notice was not appealed and thereby took effect on 13 February 2018. Compliance was required within four months of the effective date, ie by 13 June 2018.
44. I have received no indication that the notice's requirements were ever complied with and, in this respect, I understand that the Council had, in fact, filed papers with the local magistrates court, seeking prosecution due to non-compliance. The appellant's defence is not known to me but, that aside, the current appeal can have no bearing on the case before the court.
45. The LDC dated 21 December 2018, and now at appeal, was submitted to the Council claiming use rights, and thereby immunity from formal planning enforcement action, for the storage of materials, plant and boats belonging to Bridgemarsh Marina. This clearly conflicted with the enforcement notice which had, by this time, taken effect.
46. S191(2) of the 1990 Act says that uses and operations are lawful at any time if, under sub-section 2(b), *"they do not constitute a contravention of any of the requirements of any enforcement notice then in force."*
47. A LDC cannot, therefore, be granted where it contravenes the requirements of an enforcement notice in force. Given this, the evidence submitted, extra to the fact that, in this instance, an enforcement notice relating to the s195 appeal is in effect, must be set aside and can no longer be considered.
48. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the land for the said storage purposes was well founded, and that the appeal should fail.
49. Accordingly, I will exercise the powers transferred to me in section 195(3) of the 1990 Act, as amended.

Timothy C King

INSPECTOR