



Appeal Decision

Site visit made on 7 September 2020

by K R Seward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 12 November 2020

Appeal Ref: APP/V2635/C/18/3213686

Land at 50b North Beach, Heacham, Norfolk

- An appeal was made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr Michael Rowell against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
- The enforcement notice was issued on 31 August 2018. The alleged breach of planning control was identified as: "Without planning permission, the material change of use of the Land for the stationing of a caravan for residential use".
- The appeal was brought on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
- This decision supersedes that issued on 9 October 2019 insofar as it relates to the deemed planning application arising under section 177(5) of the Act for the development already carried out which was quashed by Consent Order of the High Court. That part of the decision to grant planning permission pursuant to section 177(1)(a) of the Act was quashed and remitted to the Secretary of State to redetermine the application.

Summary of Decision: The application is refused.

Procedural matters

1. The previous Inspector quashed the enforcement notice and granted planning permission for the development already carried out on the deemed planning application arising under the ground (a) appeal pursuant to section 177(1)(a) of the Act. The legal proceedings that followed under section 288 of the Act concerned only a challenge by the Council to the validity of the grant of the deemed application for planning permission with conditions. The High Court made an Order by consent to quash the grant of planning permission. No challenge was brought under section 289 of the Act. Therefore, the Order does not affect the validity of the previous Inspector's decision to uphold the enforcement appeal and to quash the enforcement notice.
2. Accordingly, this decision concerns solely the deemed planning application for the material change of use of the land for the stationing of a caravan for residential use. That application must be considered afresh. The decision of the previous Inspector to grant planning permission can have no bearing in this redetermination of the application.

Main Issue

3. The main issue is whether the development complies with local and national planning policies which seek to steer new development away from areas at the highest risk of flooding.

Background

4. The application site is located along North Beach near to the Norfolk coast where it is within Flood Zone 3a of the Environment Agency Flood Maps. It is similarly shown within Tidal Flood Zone 3 of the Kings Lynn & West Norfolk Level 2 Strategic Flood Risk Assessment Maps (2019). Flood Zone 3a is classified as having a 'high probability' of river or sea flooding as defined within the national Planning Practice Guidance ('PPG'). The land also lies within the Coastal Flood Risk Hazard Zone (Hunstanton to Dersingham).
5. Prior to its sub-division, the site at 50B formed part of the plot at No.50 on which a chalet style property still stands. The plots are now under separate ownership. The long and narrow appeal site is bisected by the unmade Beach Road. The caravan is positioned on the western side of the road where the plot extends up to the sea wall with promenade. On the eastern side of the road is a steep grassed embankment.
6. According to the appellant, his family has occupied the caravan on this plot since 2016 from when annual Council Tax has been paid. The payment of Council Tax has no bearing on whether planning permission should be granted.
7. A Direction made in March 1967 under Article IV of the Town and Country Planning General Development Order 1963 removed permitted development rights along this stretch of coast for uses involving the placing of moveable structures, including caravans (amongst other uses) without express planning permission.

Reasons

8. The deemed planning application is for the residential use of the caravan as it existed at the time the enforcement notice was issued. The appellant emphasises that he seeks permission only for seasonal occupation between April and September and is willing to accept a condition to that effect.
9. Pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004 the determination must be made in accordance with the development plan unless material considerations indicate otherwise.
10. Policy DM18 of the Council's Site Allocations and Development Management Policies Plan, 2016 ('DMP') applies within the Coastal Flood Risk Hazard Zone as defined on the Policies Map. It provides that new or additional park homes/caravans will not be permitted within Tidal Flood Zone 3 as designated on the Strategic Flood Risk Assessment Maps.
11. As the development is a new caravan within Tidal Flood Zone 3 it is not permitted under DMP Policy DM18. The policy also addresses proposed changes of use which will not be permitted if, as a result of the change, the flood risk vulnerability (as defined in the PPG) would be increased. It proceeds to say that seasonal occupancy will be limited to between 1 April and 30 September. However, whilst the application is for a material change of use of land it is nevertheless caught by the first criterion addressing new developments in the form of caravans. This criterion does not differentiate between residential and seasonal use caravans.
12. Policy CS08 of the King's Lynn & West Norfolk Borough Council Local Development Framework – Core Strategy, 2011 ('CS') sets out that the

Council's Strategic Flood Risk Assessment ('SFRA') outlines potential flood risk throughout the borough. In order to ensure future growth is sustainable the findings of the SFRA will be used to guide future developments away from areas of high flood risk and the Council will work with the Environment Agency ('EA') and ensure that decisions take into account coastal flooding and climate change adaptation issues. In reference to Policy CS01, it is acknowledged that some development may be required in flood risk areas and development in high flood risk areas will need to demonstrate that the type of development is appropriate to the level of flood risk identified in the SFRA. If the development vulnerability type is not compatible with the flood zone then it must be demonstrated that the development contributes to the regeneration objectives of King's Lynn or the wider sustainability needs of rural communities. Flood risk must also be fully mitigated through appropriate design and engineering solutions.

13. The Council's reasons for issuing the enforcement notice specify that the caravan would result in an increase in habitable accommodation and a change of use that increases flood risk vulnerability and the number of people at risk of flooding. This is identified in the notice as being contrary to Paragraph 167 of the National Planning Policy Framework ('the Framework') which provides that plans should reduce risk from coastal change by avoiding inappropriate development in vulnerable areas and not exacerbating the impacts of physical changes to the coast.
14. The appellant seeks to demonstrate that the development is appropriate to the level of flood risk through the imposition of conditions to control its use and various other measures. These include raising the habitable floor level above existing ground level, anchoring the caravan to the ground and removal of the caravan from site at the end of each seasonal occupation period.
15. The appellant considers that the flood risk is overstated and believes the risk to be low. A revised site specific Flood Risk Assessment ('FRA') (dated August 2020) is submitted. The FRA specifies that the Heacham Beach area is estimated to accommodate up to 1000 caravans and the site is located on the northern limits of such development. It describes the whole sea frontage at North Beach as consisting of caravans and chalets immediately behind or on the crest of the sea defence embankment. One potential source of flooding has been identified as a result of the appellant's assessment from the overtopping and breaching of the tidal defences at Heacham. It is acknowledged that there is a 'medium to high risk' of flooding from the sea during winter months. To address this, the FRA concludes that occupation should be restricted each year as per the Council's agreed protocol with the EA on Coastal Flood Risk Planning.
16. There are five classes of flood risk vulnerability as set out in the PPG section on Flood Risk and Coastal Change. Caravans intended for permanent residential use are classified as being 'highly vulnerable' to flooding. Those used for holiday or short-let are classified as 'more vulnerable'. The FRA suggests that if the caravan is permitted only for occupation during the summer months when the risk of flooding is at its lowest, the site could be considered as being 'less vulnerable'. However, there is no basis to justify that argument particularly as the type of occupation would not differ in any appreciable way from a holiday or short-let. Moreover, it does not coincide with the types of development identified within the PPG as falling within the 'less vulnerable' classification.

17. The FRA explains that the sea and tidal defences along Heacham frontage consist of a natural shingle bank surfaced with a concrete promenade and a crest level of 6.480m aOD. The embankment to the rear of the plot is identified as a secondary flood bank. Six extreme events are recorded since 1953. The last surge resulting in flooding occurred in 2013. The FRA suggests that no significant impacts of flooding are anticipated due to the existing standards of tidal defence.
18. The EA confirms the site is located between two lines of sea defences, but says it is only afforded protection from a single (primary) line of defence with a standard of protection of 1 in 100. This means it will protect the site against tidal flood level (storm surge or extreme high tides) with an annual probability of 1 in 100. During a design flood event (1 in 200 for tidal zones) the defences are expected to either fail or be overtopped causing potentially deep and fast flowing flood water to enter the site and impact the caravan. The EA advises that the secondary line of defence does not provide any benefit to the site and would likely increase the impact of a flood to the site.
19. The appellant's FRA notes that recent storm surges have not resulted in significant flooding. In response, the EA advises that to rely upon historic events as a predictor of flood risk needs accurate records of sea levels for a significant length of time which do not exist in order to estimate a 1 in 200 AEP. The EA comments that historic accounts of flooding are a good indicator of the impacts of flooding that can occur and, in this instance, flooding has caused significant damage and loss of life in the past.
20. Whilst the FRA has been updated, much of the assessment remains the same. It does not appear to address the EA comments of March 2020 that the FRA fails to assess the risk of a local breach in the defences to allow the impacts to be determined. In the EA's view, given the likely depths and velocities that could be expected, a hazard will be posed to those occupying the caravan. The EA acknowledges that the modelling shows that the site is at a lower direct risk of flooding from more remote beaches, but the site is likely to become isolated in this scenario and given the estimated flood depths along the access routes, emergency services are unlikely to be able to reach the site during the peak of the event.
21. On the information before me I simply cannot be satisfied that even if the caravan is inhabited short term to reduce the classification to 'more vulnerable' that it is the type of development appropriate to the level of flood risk in Zone 3. Furthermore, there is no evidence that the development contributes to the regeneration objectives of King's Lynn or the wider sustainability needs of rural communities as required by Policy CS08. Neither Policy CS08 nor DMP Policy DM18 is met and the development does not accord with the development plan. There is also conflict with Paragraph 167 of the Framework insofar as it seeks to avoid inappropriate development in vulnerable areas.

The Sequential Test

22. The PPG states that the Framework sets strict tests to protect people and property from river and sea flooding and that where these tests are not met new development should not be allowed.
23. For the purposes of applying the Framework, "flood risk" is a combination of the probability and the potential consequences of flooding from all sources.

Land within Zone 3 is an area at risk of flooding for the purposes of the Framework. Paragraph 155 thereof states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

24. When determining any planning applications, Paragraph 163 of the Framework states that development should only be allowed in areas at risk of flooding, where in light of a site-specific flood-risk assessment (and the sequential and exception tests, as applicable) it can be demonstrated that, amongst other things, the development is appropriately flood resistant and resilient.
25. The PPG explains that in decision-taking a 'sequential approach' should be taken where necessary for specific development proposals. The general approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk.
26. As stated in Paragraph 158 of the Framework, the aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be permitted if there are reasonably available sites appropriate for the development in areas with a lower risk of flooding. The SFRA provides the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.
27. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test if required.
28. The aim should be to keep development out of medium and high flood risk areas (Flood Zones 2 and 3) where possible.
29. The appellant's FRA suggests that the site is exempt from the Sequential and Exception Tests within the Framework as it lies within the recreational area of Heacham, as designated by the Council. This submission is not elaborated upon and there is no evidence before me to demonstrate that the development is within a category where the Sequential Test does not need to be applied. Indeed, the PPG specifically includes a change of use to a caravan or mobile home site within the need to apply the Sequential Test.
30. The FRA says there are no other potential available sites on this frontage with or without planning permission which could be considered suitable to the applicant's family as the whole frontage as shown in the SFRA is within Flood Zone 3. The FRA indicates that in order to locate to Flood Zone 1 would require a position east of the sea defences in the village area of Heacham but no land is available for such development. The conclusion reached is that there are no sites within a 3.0km radius of The Wash Tidal defences which are outside the Zone 3 category. It is submitted that the Sequential Test is therefore passed.
31. When applying the Sequential Test, a pragmatic approach on the availability of alternatives should be taken. However, this does not appear to be a case where there is a specific need for the caravan to be sited in this location or indeed along the coastal frontage. The applicant should justify with evidence what areas have been searched. In this case, it is unclear what sites have been

considered as no details have been provided. Furthermore, it is asserted that there are no available sites outside Zone 3 but there is no indication of whether the search included other sites at lower risk within Zone 3, as highlighted by the EA. Ultimately, there is no substantive evidence in the FRA submitted to demonstrate that there are no other sequentially preferable sites.

32. In the absence of further particulars, I cannot be satisfied that the Sequential Test is met. Accordingly, the development fails to accord with Paragraphs 155, 158 and 163 of the Framework which seek to steer new development to areas with the lowest risk of flooding. In these circumstances the Exception Test does not fall to be considered.

Other Matters

33. As the appellant's family already owned the site, it is argued that the development is reasonable as infill development which should be permitted as similar to the remainder of development to the North Beach sea frontage. The appellant stresses that the location in the flood plain is similar to all other development on the North Beach. With seasonal restricted occupation the development is safe and will not increase the flood risk elsewhere. These factors, the appellant maintains, outweighs the limited locational policy harm.
34. The availability of this site to the appellant carries little weight in favour of the development. Many of the homes along this long road in North Beach are chalets or housing of permanent construction. Although I noted other caravans, the circumstances surrounding their siting and use is unclear. I acknowledge that the appellant feels aggrieved given the presence of other caravans and his suggested mitigation measures. Nevertheless, the development must be assessed against prevailing policies, including those covering flood risk as already discussed. None of the factors advanced alter the fact that there is conflict with the development plan and the Sequential Test has not been demonstrated to be met.
35. The appellant points out the Council itself has applied for planning permission for the continued use of land at North Beach, Heacham for the standing of 105 beach huts for seasonal occupation. The Councils' District Emergency Planning Officer has recommended that any approval should be limited until 30th September 2031 in line with renewals in the coastal hazard zone. That may be so, but beach huts are not habitable accommodation and so the circumstances are not comparable.

Conclusion

36. For the reasons given above, and having had regard to all other matters raised, I conclude that the application for deemed planning permission should not succeed. As the enforcement notice was quashed, it will be a matter for the Council to decide whether another notice should be issued.

Formal Decision

37. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

KR Saward

INSPECTOR