



Appeal Decision

Site Visit made on 13 August 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2021

Appeal Ref: APP/A1530/C/21/3266894

West Mersea Holiday Park, Seaview Avenue, West Mersea CO5 8DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ('the Act'). The appeal is made by Park Holidays UK Ltd against an enforcement notice issued by Colchester Borough Council.
 - The notice was issued on 11 December 2020.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, the erection/siting of ten buildings used as camping pods shown in the approximate positions coloured RED on the plan labelled "A" attached to this notice.
 - The requirements of the notice are to:
 - (i) Demolish/dismantle/remove the ten buildings used as camping pods and all associated works shown in the approximate positions coloured RED on the plan labelled "A" attached to this notice to ground level.
 - (ii) Remove all materials and debris from the land affected arising from compliance with requirement (i) and restore the land to its former condition.
 - The period for compliance with the requirements is: 1 month from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appellant has appealed under ground (c) on the basis that the camping pods are not buildings. This is essentially an argument that the matters stated in the notice have not occurred and would ordinarily be dealt with under ground (b). The Council has had the opportunity to consider the appellant's argument in this regard through the appeal and has responded to the points made by the appellant. Consequently, I am satisfied I can consider this without injustice.
3. Since the appeal was lodged, the Government published its revised National Planning Policy Framework ('the Framework')(July 2021). The parties have had the opportunity to comment on the implications of the changes during the appeal process.
4. During my visit, it was evident that additional camping pods have been erected within the holiday park. For the avoidance of doubt, this appeal relates to the alleged erection of ten buildings used as camping pods, as detailed in the enforcement notice and not any development which may have occurred after the notice was issued.

Ground (b)

5. An appeal under ground (b) is made on the basis that the matters stated in the notice have not occurred. Part of the appellant's case is that the camping pods are touring units and are a use of the land and not building operations. Although the appellant does not explicitly allege that the camping pods are caravans, given the arguments put forward regarding their mobility and layout, I shall consider whether the camping pods are caravans.

Whether the camping pods are caravans

6. The appellant has drawn my attention to a site licence for Drummohr Holiday Park, in Scotland, which states that "touring caravan" includes "a motor caravan, trailer tent, camping pod or tent". However, in law, a caravan is only a caravan if it meets the description laid down in section 29 of the Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968. The term 'caravan' is defined as meaning any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include...(b) any tent.
7. It is not disputed that the pods fall within the specified dimensions of a "caravan" and are capable of being moved from one place to another. However, there is no water supply, toilet or shower/bath and they do not have a kitchen area. Such facilities are, in my view, necessary for human habitation. Although the camping pods contain beds, are provided with an electrical supply and are able to utilise park facilities, as a matter of fact and degree, I therefore find that the pods have not been adapted for human habitation and do not therefore meet the definition of a caravan.

Whether the camping pods are buildings

8. Whether the camping pods are buildings is a matter of fact and degree. Case law has established three primary factors in determining what is a building: size, permanence and physical attachment, none of which is necessarily decisive. The pods measure around 2.55m in height and have a maximum depth and width of around 3.04m by 4.80m. The Council advise the camping pods weigh around 1.5 tonnes, a point which is not disputed by the appellant.
9. The appellant advises that the camping pods rest on the ground by their own weight and I have no reason to doubt this. The pods are placed upon existing concrete hardstandings and do not have any foundations or permanent fixings/attachments to the ground, nor do they have any permanent service connections. Whilst the pods can be moved by lorry, given their weight and the likelihood that users will want to connect to the nearby electrical supply, I consider it highly likely that they would remain in the same place throughout the holiday season, from 15 March to 14 January. This is a period of 10 months.
10. Although the pods are not particularly large structures, they are of sufficient size to be of significance in planning terms, both in terms of their visual impact and their effect on flood risk. The pods would be likely to remain in place for sufficient time to have the quality of permanence. Annual removal would not deprive the pods of this quality.

11. Thus, given their size and permanence, I consider that, as a matter of fact and degree, the camping pods are buildings for the purposes of the Act. Consequently, the appeal under ground (b) fails.

Ground (c)

12. An appeal under ground (c) is made on the basis that the matters stated in the notice, if they occurred, do not constitute a breach of planning control. The main thrust of the appellant's case is that no material change of use has taken place and that the permission is not exclusive to either touring caravans or tented camping.
13. West Mersea Holiday Park comprises a mixed static holiday caravan/lodge, touring caravan and camping site which is stated to have planning permission and a site licence for a total of 293 static holiday caravans and 120 touring caravans/tents over an area of approximately 12.95ha. The southern section of West Mersea Holiday Park, within which the appeal site is located, is stated to operate by virtue of planning permission COL/99/85 dated 15 April 1985 and planning permission 130327 dated 17 May 2013, which permitted a variation of condition to planning permission COL/99/85.
14. COL/99/85 'permits the continuance of long established use of part of site as touring van and tent park'. Condition 1 attached to the permission states '*This permission shall relate solely to the use of the site by touring caravans and tents. No such caravans or tents shall be stationed on the site except during the period between 1st March and 31st October each year*'. The reason given for the condition is '*The Site is not suitable for all-the-year use and Council consider it should be retained for use by touring caravans and tents only*'.
15. Planning permission 130327 permits variation of condition 1 of planning permission COL/99/85 in order to allow for an extended holiday season for the touring caravans. Condition 2 states '*this consent relates to the stationing of touring caravans and tents within the area edged red on the submitted Drawing 1:2500 LOCATION PLAN, and varied condition 1 on application COL/99/85 to allow the touring caravans and tents to be stationed from the 15th March in any one year until the 14th January the following year unless otherwise subsequently agreed, in writing, by the Local Planning Authority. All other conditions on application COL/99/85 remain in force and are not affected by this consent.*' The reason given for the condition is '*for the avoidance of doubt as to the scope of this permission and in the interests of proper planning*'.
16. Although the camping pods are used as short term holiday accommodation, in a similar way to touring caravans and tents, they are not touring caravans, nor are they tents. As set out above, I have found that they are buildings. Whilst I acknowledge touring caravans and tents may come in a variety of different shapes, sizes and colours, planning permission COL/99/85 specifically relates to use of the site as a touring van and tent park and does not authorise the use of other types of holiday accommodation, such as static caravans or camping pods. Furthermore, since planning permission at the site limits the use of the site to touring caravans and tents by condition, the stationing of camping pods within the site constitutes a breach of condition.
17. In any event, section 55(1) of the Act defines development as the carrying out of building, engineering, mining or other operations in, on over or under land, or the making of any material change in the use of any buildings or other land.

The enforcement notice does not allege a material change of use. I have found that the camping pods are buildings and their erection within the site constitutes a building operation, as alleged in the notice. Consequently, even if a change of use has not occurred, the camping pods are development for the purposes of the Act, and their erection constitutes a breach of planning control.

18. The appellant has drawn my attention to a number of holiday parks where camping pods have been placed on approved touring caravan pitches. However, I do not have substantive details of the sites provided and whilst the respective local authorities may not have required a separate planning application to be made, whether or not camping pods require planning permission will depend upon the circumstances of the case.
19. Thus, for the reasons given above, I conclude that the camping pods are development for which planning permission is required and are not authorised by an extant permission. The appeal under ground (c) therefore fails.

Ground (a)

Main Issue

20. The main issue is whether the appeal scheme would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding.

Reasons

21. The appeal site comprises part of the West Mersea Holiday Park, which is located adjacent to a beach, lined with beach huts, within the vicinity of the Blackwater Estuary. I saw that there is a grassed embankment, which runs to the south of the site. The embankment, which appears to be constructed of soils, doesn't appear to be a natural feature, nor do I have any information as to its construction, management or retention.
22. The Colchester Borough Strategic Flood Risk Assessment (SFRA) shows part of the site falls in Flood Zone 3b Functional Floodplain, with the remainder in Flood Zone 3a. The PPG defines Flood Zone 3b as land where water has to flow or be stored in times of flood and is identified by local planning authorities in their Strategic Flood Risk Assessments. Flood Zone 3a is defined as land having a 1 in 100 or greater annual probability of river flooding; or Land having a 1 in 200 or greater annual probability of sea flooding.
23. The Environment Agency Flood Map for Planning shows that the appeal site is located within Flood Zone 3, which is the area that could be affected by flooding from the sea with a 1 in 200 or greater chance of happening each year, or from a river with a 1 in 100 or greater chance of happening each year. The Modelled Defended map shows much of the appeal site falls within the 1 in 20 or 5% risk of flooding, which extends to the whole of the appeal site once climate change is taken into account.
24. Policy DP20 of the Colchester Development Policies (CDP)(2010) states that development will only be supported where it can be demonstrated that the proposal meets requirements in PPS25 (Development and Flood Risk). Planning Policy Statement 25 was withdrawn on 7 March 2014 and has been replaced by the Planning Practice Guidance (PPG).

25. The National Planning Policy Framework ('the Framework')(2021) states that, where appropriate, applications should be supported by a site specific flood-risk assessment, which includes all development in Flood Zones 2 and 3. The PPG explains what a Flood Risk Assessment (FRA) should establish including the risks of flooding from all sources, the potential to increase flooding elsewhere, measures to deal with these effects and risks, evidence to allow the local planning authority to apply the Sequential Test, if necessary and in relation to the Exception Test, if applicable.

Sequential Test

26. Since the site is within Flood Zone 3, application of the Sequential Test is necessary. The PPG advises when applying the Sequential Test, a pragmatic approach on the availability of alternatives should be taken. The appeal site is within the boundary of the West Mersea Holiday Park, which is a well established site. It is, in my view, impractical to suggest that there are more suitable alternative locations for the development elsewhere.
27. The Framework classifies sites used for holiday or short-let caravans and camping, subject to a specific warning and evacuation plan, as 'more vulnerable'. The PPG sets out that in Flood Zone 3b, more vulnerable development should not be permitted.

Whether in Flood Zone 3b Functional Flood Plain

28. The appellant has provided a Hydraulic Modelling Assessment (HMA), which sought to refine Flood Zone 3b as shown in the SFRA and Coln and Blackwater – Coastal 2018 model mapping. The appellant has used 1M DTM LIDAR data, in which features such as beach huts are removed, so as to better represent the actual ground surface. Only the 20-year tidal return period was considered in the modelling assessment.
29. High ground, which is shown to have an elevation ranging between 4.0 and 4.8m AOD is stated to be present to the south and west of the site. Although I have not been provided with a topographical survey of the area, from the evidence and from my inspection of the site, it appears this 'high ground' comprises the embankment to the south of the site. While there are no formal defences fronting the site, it seems likely to me that the embankment has been erected to protect the site in some way.
30. The modelling appears to place significant reliance on the embankment, however, I have no evidence as to its structural integrity. Furthermore, it is not clear whether the embankment will be maintained and therefore whether it will remain effective over time. Consequently, I am not persuaded that the modelling carried out by the appellant should supersede both the SFRA and Colne and Blackwater – Coastal 2018 model mapped extents of Flood Zone 3b in the vicinity of the site.
31. Moreover, even if I were to conclude that the site is not in Flood Zone 3b, it has not been demonstrated that the site is not subject to flood risk. The appellant's Flood Evacuation and Management Plan, February 2020, confirms that the site is located within Flood Zone 3, having a 1 in 100 or greater annual probability of fluvial flooding and a 1 in 200 or greater annual probability of tidal flooding. It also states that the site is located within the vicinity of fluvial

flooding sources, including Drain 1, Blackwater Estuary and various main rivers.

32. Environment Agency Modelled Defended Flood Levels, 1 in 200 scenario, show levels within the site to be around 4.2mAOD. The appellant's Hydraulic Modelling Assessment (HMA) suggests the 'high ground' has an elevation ranging between 4.0 and 4.8mAOD. In which case, it is possible that the 'high ground' would be breached, and the site would flood.

Exception Test

33. The PPG sets out that in Flood Zone 3a, the exception test is required for more vulnerable development. The exception test requires proposed development to show that it provides wider sustainability benefits to the community that outweigh flood risk, and that it will be safe for its lifetime, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
34. The appellant has not suggested any sustainability benefits to the community that would arise from the development. Were I to refuse the appeal, the site could still be used for touring caravans and tents and so I consider it unlikely that there would be any significant economic benefit arising from the appeal scheme.
35. While a detailed Flood Evacuation and Management Plan has been submitted, the appellant has not demonstrated what the level of risk would be or how it could be mitigated. During a flood event, in the event the site was inundated, the camping pods have the potential to displace water, thereby increasing flood risk elsewhere.
36. Although touring caravans could utilise the site in the event I refuse the ground (a) appeal, they are likely to be brought to the site by individuals with means to remove them at short notice. Due to their weight and size, the appellant is unlikely to be able to remove the camping pods at short notice and so they are likely to remain within the site during a flood event.
37. For the reasons given above, I am not satisfied that it can be concluded that the site is not within Flood Zone 3b functional flood plain. Furthermore, even if I had concluded the site is not within Flood Zone 3b, the appellant has not demonstrated that the site would not be at risk of flooding, or if it is, that the appeal scheme meets the exception test. Consequently, the development is contrary to Policy DP20 of the CDP and the Framework, the requirements of which are set out above. I conclude that the development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Conclusion

38. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Savage

INSPECTOR