
Appeal Decision

Site visit made on 11 November 2021

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 November 2021

Appeal Ref: APP/V2635/C/21/3270507

**Land adjacent to Riverside, John Lake Shellfish, Cross Bank Road,
King's Lynn, Norfolk PE30 2HD**

- 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 Neil Lake against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The enforcement notice was issued on 3 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of land from industrial to a mixed use of industrial and for the siting of a residential caravan.
 - The requirements of the notice are:-
 - i) Permanently cease the residential use
 - ii) Permanently remove the caravan from the land
 - The period for compliance with the requirements is 3 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 application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decision

1. It is directed that the enforcement notice be corrected by the insertion of the words 'for residential purposes' at the end of paragraph 3. Subject to this correction the appeal is dismissed, the enforcement notice is upheld and 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. The enforcement notice refers to 'the siting of a residential caravan' but it does not explicitly state in the allegation that the residential caravan is being used for residential purposes. This may be inferred from the first requirement to 'permanently cease the residential use'. It is the use of land which amounts to development in breach of planning control. There is no dispute that the caravan is used for residential purposes. Accordingly, no injustice would arise to either party from the addition of the words 'residential purposes' for precision.
3. In exercise of powers conferred by The Town and Country Planning (Environmental Impact Assessment) Regulations 2017¹, the Secretary of State has issued a screening direction that the development does not require an Environmental Impact Assessment (EIA). Any potential impacts on flooding or

¹ Regulations 14(1) and 7(5)

ecology and biodiversity are unlikely to be so significant that an EIA would be required. This is a consideration to which I shall have regard in the ground (a) appeal. However, it is a finding in relation only to the EIA Regulations and does not fetter or direct how the ground (a) appeal should be determined.

4. After the issue of the enforcement notice, the National Planning Policy Framework ('the Framework') was revised on 20 July 2021. This officially replaced the previous version published in February 2019. The parties have had opportunity to comment on the revised Framework and in reaching my decision I have had regard to it.
5. The enforcement notice follows the refusal of two previous retrospective planning applications for the siting of a mobile unit for short-term accommodation. Neither refusal was appealed. I shall consider the matter afresh on the information before me.

Main Issue

6. The terms of the deemed planning application arising under the ground (a) appeal are derived from the allegation within the enforcement notice. It follows that planning permission is sought for the material change of use of land from industrial to a mixed use of industrial and for the siting of a residential caravan for residential purposes.
7. The main issue is the suitability of the appeal site for the siting of a caravan for residential purposes having regard to flood risk.

Reasons

Background

8. The appeal site is located within an existing industrial area of King's Lynn. It lies adjacent to the River Great Ouse within Flood Zone ('FZ') 3a identified in the Level 1 King's Lynn and West Norfolk Strategic Flood Risk Assessment, 2018 ('SFRA') and Environment Agency mapping. FZ3a is classified as having a 'high probability' of river or sea flooding as defined within the section on Flood Risk and Coastal Change of the national Planning Practice Guidance ('PPG').
9. The appellant operates a shellfish business from the appeal site. The static type caravan is positioned on a hardstanding next to the enclosed operational area. It is mounted on bricks. When the business is unable to source labour locally, the caravan provides a resting area/accommodation for workers in between fishing trips. After 3-4 days of trips to sea, or due to tides, the workers return to their own homes.
10. Thus, the appellant seeks retention of the caravan for short term use when required due to the nature of the fishing. It is emphasised that the caravan would not be for every-day use.

Local planning policy

11. The Council cites conflict with Policy DM 1 of its Site Allocations and Development Management Policies Plan, 2016 ('DMP'). This policy simply sets out the presumption in favour of sustainable development as contained within the Framework. It does not explicitly address flood risk as alluded to in the reasons for issue of the enforcement notice. Nevertheless, Policy DM 1 does

specify that planning applications that accord with policies in this Local Plan will be approved without delay unless material considerations indicate otherwise.

12. The Local Plan includes the King's Lynn & West Norfolk Borough Council Local Development Framework – Core Strategy, 2011 ('Core Strategy'). One of the development priorities for the borough set out within Policy CS01 is to seek to avoid areas at risk of flooding. In accommodating its priorities, the Council utilises a settlement hierarchy to ensure that, amongst other things, new development is guided away from areas at risk of flooding now or in the future. However, CS01 recognises that development may be required within flood risk areas to deliver regeneration objectives within King's Lynn.
13. As set out in Core Strategy Policy CS08, the Council's 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. The Council will work with the Environment Agency and ensure that decisions take into account coastal flooding and climate change adaptation issues.
14. Policy CS08 proceeds to set out the criteria to be met in recognition of the acknowledgement, within Policy CS01, that some development may be required in flood risk areas. Among the requirements, 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, or [*my emphasis*] 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.

National Policy and the Sequential Test

15. The Framework sets strict tests to protect people and property from all sources of flooding and where these tests are not met new development should not be allowed.
16. There are five classes of flood risk vulnerability as set out in Annex 3 to the Framework. Caravans, mobile homes and park homes intended for permanent residential use are classified as being 'highly vulnerable' to flooding. That is so whether within FZ3a or FZ3b. Sites used for short-let caravans are classified as 'more vulnerable', subject to a specific warning and evacuation plan.
17. In applying the Framework, 'flood risk' is a combination of the probability and the potential consequences of flooding from all sources. Land within FZ3 is an area at risk of flooding for the purposes of the Framework. Paragraph 159 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.
18. 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.

19. For some changes of use the sequential test does not need to be applied. However, the PPG and the footnote to Paragraph 168 of the Framework explicitly provide that the change of use to a caravan site (which includes a single caravan) does not benefit from this exception.
20. As stated in Paragraph 162 of the Framework, the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. 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.
21. Paragraph 167 of the Framework makes clear that all development within FZ3 should be supported by a site-specific flood risk assessment ('SSFRA'). Further, development should only be allowed in areas at risk of flooding, where in light of the SSFRA (and the sequential and exception tests, as applicable) it can be demonstrated, amongst other things, that (a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location, and (b) the development is appropriately flood resistant and resilient such that in the event of a flood, it could be quickly brought back into use without significant refurbishment.
22. The PPG advises that only where there are no reasonably available sites in FZ1 or 2 should the suitability of sites in FZ3 be considered, taking into account the flood risk vulnerability of land uses and applying the exception test if required. The aim should be to keep development out of medium and high flood risk areas (FZ2 and 3) where possible. The flood zones as refined in the SFRA provide the basis for applying the Test.

Analysis

23. The appellant argues that the caravan sits at the highest part of the flood defence and not within an area known to flood. Should the immediate area flood then he maintains that King's Lynn would be flooded as a whole. I observed that the ground levels rise within the site and that the caravan is positioned at the highest point. There is lower lying land behind. Even so, there is no SSFRA to support the contention that the caravan is safe from flood risk. The need for a SSFRA is not negated by the site or area not having flooded in the past. The Framework is clear that considerations of flood risk relate to both existing circumstances and any future risks, associated with for example climate change.
24. Planning conditions might mitigate flood risk. For instance, by imposing a restriction on periods of occupation, a flood evacuation plan and to potentially anchor/secure the caravan. Nevertheless, even with limitations to bring the use within the lower 'more vulnerable' classification, I simply cannot be satisfied that short term occupants of the caravans would be safe from flood risk (as well as those who might have to rescue them) in the absence of a SSFRA.
25. Therefore, it has not been demonstrated that the development is appropriate to the level of flood risk. Nor has it been demonstrated that the development contributes to the regeneration objectives of King's Lynn or the wider sustainability needs of rural communities.

26. It has not been demonstrated that any measures have been taken to try to identify an alternative suitable site at lower risk of flooding for the caravan. It is the responsibility of the appellant to justify with evidence what area of search has been used. If no other locations have been considered, then no explanation for this has been provided or why the caravan cannot reasonably be located within FZ1 or FZ2. In the absence of any details, I cannot be satisfied that the sequential test is met. In these circumstances, the exception test does not fall to be considered.
27. In light of the above, the material change of use is contrary to Core Strategy Policies CS01 and CS08 which aim to protect development against flood risk. There is also conflict with Paragraphs 159, 162 and 167 of the Framework which seek to steer new development to areas with the lowest risk of flooding.
28. Accordingly, on the information before me the development is not in accordance with the development plan and there are no material considerations, including the Framework, that outweigh such conflict.

Conclusion on ground (a) and the deemed planning application

29. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

KR Seward

INSPECTOR