



Appeal Decision

Site visit made on 11 January 2022

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 22 February 2022

Appeal Ref: APP/P1133/W/21/3279220

Golden Sands Holiday Park, Warren Road, Dawlish Warren, Dawlish, Devon EX7 0PQ

- 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 on behalf of Park Holidays UK Ltd against the decision of Teignbridge District Council.
 - The application Ref 18/01178/MAJ, dated 6 June 2018, was refused by notice dated 22 January 2021.
 - The development proposed is the use of land for the stationing of static holiday caravans, repositioning of play equipment and associated works.
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Decision

1. The appeal is dismissed.

Main Issues

2. Although Teignbridge District Council (the Council) has given two reasons for refusal on the decision notice, having reviewed the evidence and submissions I have considered it appropriate to identify three main issues.
3. Accordingly, the main issues in this appeal are:
 - Whether or not adequate arrangements are made for the disposal of surface water from the site,
 - The effect of the proposed development on the Exe Estuary Special Protection Area (the SPA), and on the Dawlish Warren Special Area of Conservation (the SAC); and,
 - The effect of the proposed development on the living conditions of nearby residents within Mount Pleasant Road and on the living conditions of future occupants of the proposed holiday caravans.

Reasons

Flood Risk

4. Policy EN4 of the Teignbridge Local Plan (May 2014) (the Local Plan) concerns flood risk and, amongst other matters, provides that in considering development proposals regard will be had to drainage and disposal arrangements. Paragraph 167 of the National Planning Policy Framework (the Framework) provides that development should ensure that flood risk is not increased elsewhere.

5. The appeal site is within Flood Zone 1, although it falls within a Critical Drainage Area. Devon County Council as the Lead Local Flood Authority, having considered the information provided by the Appellant in support of the planning application, removed their earlier objection and indicated that the proposed development would be acceptable subject to planning conditions with regards to submission of detailed drainage designs, proposals for adoption and management of surface water drainage, and safe management of exceedance flows. However, the Council raise concerns that the proposed development would result in an increase in impermeable area and that insufficient information has been provided by the Appellant that demonstrates that the proposed surface water drainage arrangements would be appropriate and sufficient to ensure that the appeal scheme would not result in increased flood risk at adjacent sites which are located within Flood Zones 2 and 3.
6. The Environment Agency's Critical Drainage Area Document for Dawlish Warren states that 'all off-site surface water discharges from development should mimic "Greenfield" performance up to a maximum 1 in 10 year discharge rate. On-site all surface water should be safely managed up to the "1 in 100+climate change" conditions'.
7. In respect of the concerns raised by the Council with regards to pre-development greenfield runoff rates and volumes, during the course of the appeal the Appellant has provided further information which confirms the greenfield runoff rates and which, for the appeal proposal, demonstrates that the 1 in 1 year rainfall rate would result in a flow of 2.7 litres per second. As noted above, the guidance within the Critical Drainage Area Document for Dawlish Warren provides that flows are restricted to the 1 in 10 year discharge rate and the Council have confirmed that the proposed outfall from the site represents a betterment over the existing Critical Drainage Area guidance and resolves their concerns in this regard.
8. Nonetheless, the Council has also raised concerns regarding the information supplied in respect of the proposed discharge of surface water through infrastructure associated with the adjacent Hazelwood Holiday Park, which is not in the Appellant's ownership, and specifically in relation to layout, capacity, and condition. Following submission of further information from the Appellant in these respects, the Council maintains that an additional pre-commencement planning condition be imposed to show the condition and capacity of the existing pipework can accept the flows which included appropriate remedial and any other works to that system if deemed to be necessary, and which provided confirmation of the operation of penstock controls in times of high flows, could address the Council's remaining concerns.
9. However, the Council have put it to me that such a planning condition may not meet the relevant tests with regards to the use of such conditions as set out in the Planning Practice Guidance and in respect of conditions requiring works on land that is not controlled by the Appellant. In this regard, the relevant guidance does provide that a negatively worded planning condition that prohibits development until a specified action has been taken, may be possible.
10. In my view such a negatively worded condition would satisfy the relevant tests and would be reasonable in order to ensure that existing pipework was of sufficient capacity and in adequate condition to accept the flow of 2.7 litres per second as proposed. Given that it could be up to three years before

development commenced at the site, a pre-commencement condition would be necessary to ensure that details of the condition of the existing pipework was provided at the time the development was to be undertaken, rather than being able to rely on historic information or data. Consequently, I find that such a negatively worded pre-commencement condition would be required in order to prevent increased flood risk off-site.

11. If an Inspector is minded to grant planning permission subject to pre-commencement conditions it may only be done with the written agreement of the Appellant to the terms of the conditions. The Appellant has been provided with the opportunity to comment on the suggested pre-commencement condition. It does not believe any further information should be provided on the capacity of the existing pipework or the penstock management issues raised by the Council and so has not given its agreement to such a condition.
12. Whilst the Appellant's comments are acknowledged, for the reasons given above, I find that it would be reasonable and necessary for the required details to be subject to a pre-commencement condition to make the development acceptable in planning terms.
13. Consequently, without such a condition in place to ensure the pipework over third party land could adequately carry the intended flow, I cannot be certain that the proposal, once built, would not result in increased flood risk off-site. The proposed development would conflict with Policy EN4 of the Local Plan and would fail to accord with the provisions of the Framework with regards to planning and flood risk.

Effect on the SPA and the SAC

14. The appeal site is located within 10km of the SPA, which is also a RAMSAR site, and within 10km of the SAC. The submissions in this appeal provide that the SAC is designated for its dune habitat and for Petalwort, and that the SPA is designated primarily for its over wintering and migrating water birds. The Conservation of Habitats and Species Regulations 2017 requires that the decision maker considers whether any proposal would have a significant effect on such areas, either alone or in combination with other plans and projects.
15. By reason of the location of the appeal proposal, I consider that, without mitigation, new residential and tourist development is likely to have a significant effect upon the qualifying features of both the SAC and the SPA when considered in combination with other projects, due to the risk of increased recreational pressure caused by such development. The appeal scheme seeks to increase the number of static holiday caravans and it is likely that future occupants of the appeal scheme would visit the SPA and the SAC. Consequently, the appeal proposal would be likely to result in significant effects on these habitat sites through increased disturbance arising from recreational activity.
16. A Joint Approach as agreed between the Council, Exeter City Council, East Devon District Council and Natural England provides, in the absence of bespoke mitigation, a mechanism by which mitigation in respect of the likely significant effects on these designated sites can be provided by developers in the form of a financial contribution based on the number of holiday units proposed at the site. In this instance the Council have said that by reason of the type of development and its close proximity to the designated habitat sites, a financial

contribution of £902.00 per holiday unit would be required in relation to recreational impacts arising from the proposed holiday units. Furthermore, the Council maintain that the loss of the appeal site for recreational use by holiday makers at the holiday park would result in increased recreational pressures on the protected habitats and which would not be mitigated by contributions made under the Joint Approach.

17. In these regards, the Appellant does not seek to provide bespoke mitigation and intends to provide mitigation in the form of a financial contribution based on the Joint Approach. I have consulted with Natural England on this matter. Natural England have confirmed that, to prevent harmful effects from occurring as a result of the appeal scheme, mitigation would be required in the form of an appropriate financial contribution. In this respect, Natural England have confirmed that the criteria applied to financial contributions as provided by the Joint Approach are sufficient to ensure that an adverse impact on the integrity of the above described designated habitat sites and their qualifying features, can be avoided. Natural England further confirmed that the financial contributions as provided by the Joint Approach would mitigate only the impact associated with the proposed holiday units, with no financial contribution requirement, or any other such requirement, outlined in the agreed strategy to address loss of existing on site recreation and open space provision. I give the views of Natural England great weight in the determination of this appeal.
18. Notwithstanding the main parties' submissions with regards to the potential impact arising from the loss of on site open space, the Appellant has submitted a unilateral undertaking which sought to provide financial contributions of £876.00 (Index Linked) per holiday unit, to be provided prior to commencement of development.
19. The evidence before me indicates that, at the time the Council determined the planning application, that the Joint Approach provided for financial contributions of £902.00 per holiday unit. However, amongst other matters, the submitted unilateral undertaking is not dated, has not been executed by the relevant parties and does not include a plan which clearly identifies the relevant land. On that basis, I cannot be certain that the required financial contribution would be secured if planning permission were granted. Consequently, and as the competent authority undertaking Appropriate Assessment of the appeal proposal, I cannot ascertain that it would not adversely affect the integrity of the protected habitat sites.
20. The Appellant has indicated that payment of the sums of £902.00 per holiday unit, as calculated by the Council, is agreed and that such a payment can be made direct to the Council in advance of commencement of the proposed development and that confirmation of that payment would be provided. The Appellant maintains that such arrangements have been accepted by the Council in relation to other developments. However, whilst noting the Appellant's submissions, no confirmation that such payment has been made has been provided, and I have no evidence before me which confirms that such arrangements have been accepted in relation to other developments and that such payments would be secured in relation to the South East Devon European Sites Mitigation Strategy.
21. I have considered whether a planning condition could be applied for securing a completed planning obligation or to require that payment of the agreed

financial contribution be made. The Planning Practice Guidance advises that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence, may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. In the absence of any detailed information to suggest otherwise, the proposal is not a complex or strategically important development. Consequently, the use of a planning condition to require payment of the sum or the submission of a completed planning obligation would not be appropriate in this instance.

22. In relation to this main issue, from available evidence I consider that the development would be harmful to the protected habitat sites and, in the absence of appropriate mitigation, would not protect or enhance the biodiversity interests of the SAC or the SPA, which are internationally important. The proposal would therefore not comply with Policies EN8, EN9, EN10 and EN11 of the Local Plan which, amongst other matters, seeks to ensure that development protect important habitats and features.

Living Conditions

23. Policy S22 of the Local Plan defines land outside of a given list of settlements as being classified as open countryside. Whilst the site is located outside of the named settlements, Policy S22 of the Local Plan, amongst other things, supports leisure and tourist uses.
24. Policy S1 of the Local Plan provides criteria against which developments are to be assessed and, amongst other matters, includes the impact on residential amenity, the maintenance or enhancement of the character, appearance and historic interest of affected landscapes, seascapes, settlements, street scenes, buildings, open spaces, trees and other environmental assets, and the impact on biodiversity. Policy S2 of the Local Plan concerns design and seeks to ensure that developments integrate with and, where possible, enhance the character of the adjoining built and natural environment, and create clearly distinguishable, well defined and designated public and private spaces which are attractive, accessible and safe and provide a stimulating environment.
25. The appeal site comprises a predominately undeveloped area of green space which is available for use by holiday makers residing within the holiday park, and which includes an area providing play equipment. Whilst it is acknowledged that the existing play equipment is to be removed to facilitate the siting of the proposed static holiday caravans, the submissions indicate that replacement equipment would be provided within the appeal site. Whilst specific details of the play equipment and its layout within the site have not been provided, such matters can be adequately secured by a planning condition requiring that such details are provided to the Local Planning Authority for approval.
26. The evidence before me indicates that the appeal site is not located within the Undeveloped Coast nor within an Area of Great Landscape Value. The appeal scheme would be seen in the context of the wider, substantially sized, holiday park and given its position and subject to appropriate landscaping conditions, the proposed extension to the existing holiday park would not, in my view, result in harm to the wider surrounding landscape or to the character and appearance of the area.

27. The appeal site is located at a significantly lower land level than those dwellings which are located south of the site on Mount Pleasant Road. Outlook from the rear of those dwellings including from the rear garden spaces would be towards and over the existing holiday park. By reason of that significant change in ground levels and the separation distance that would exist following the proposed introduction of a vegetated buffer zone between the proposed caravans and the dwellings located on Mount Pleasant Road, the appeal scheme would not result in a harmful impact for residents of those properties with regards to outlook.
28. For the above reasons, I find that the appeal scheme would not result in a detrimental impact on the amenity of occupiers of nearby dwellings located within Mount Pleasant Road, in terms of visual amenity and outlook. Furthermore, the proposal would not result in a detrimental impact on the amenity of holiday makers residing within the holiday park with regards to loss of play equipment. Consequently, the appeal proposal would not conflict with the provisions of Policies S1, S2 or S22 of the Local Plan with regards to the living conditions of future holiday makers and nearby residents.

Other Matters

29. Interested parties raise additional objections to the proposal on the grounds of impact on local services, trees, waste collection, traffic, highway safety and in relation to antisocial behaviour. These are important matters and I have considered all the submissions before me. However, given my findings in relation to the main issues above, these are not matters that have been critical to my overall decision.

Conclusion

30. The proposed development would provide undoubted economic benefits in terms of additional employment opportunities and through the future spend of visitors within local businesses. The appeal scheme is located close to services and facilities including access to wider transport links. However, whilst I have not found any harm in relation to the living conditions of existing or future residents, the proposed development would conflict with the policies of the development plan with regards to flood risk and in respect of impacts on protected habitats. In my view the benefits of the scheme would be outweighed by the identified harm and resulting development plan conflict to which I attach significant weight.
31. For the reasons given above I conclude that the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR