



Appeal Decision

Site visit made on 14 December 2021

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 March 2022

Appeal Ref: APP/Y2003/W/21/3280156

Brookside Caravan Park, Stather Road, Burton-upon-Stather DN15 9DH

- 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 Mr Chris Barrett of Brookside Caravan Park against the decision of North Lincolnshire Council.
 - The application Ref PA/2020/1949, dated 7 December 2020, was refused by notice dated 2 July 2021.
 - The development proposed is described in the application form as 'change of use of land to permit the siting of static caravans (resubmission of PA/2020/276).'
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Chris Barrett against North Lincolnshire District Council. That is the subject of a separate Decision.

Main Issues

3. The main issues are the effects of the proposal on protected species, specifically badgers and on the living conditions of the occupiers of neighbouring properties.

Reasons

Protected Species

4. The appeal site is an area of open land that is bounded by woodland and lies adjacent to the existing Brookside Caravan Park, a mixed tourer and static caravan site. It is proposed to extend the existing static caravan park and site statics on the appeal site. An Inspector who determined a previous appeal¹ at the site concluded that a similar proposal for static caravans would likely adversely affect badgers. At least part of the appeal site is in use by badgers as is evidenced by the Badger Survey Report (November 2020) (the Report). This identifies active sett entrance holes, snuffle holes and badger trails within the appeal site and the adjacent woodland.
5. Badgers are protected by law² and their presence is a material consideration when a development proposal is being considered which would be likely to

¹ APP/Y2003/W/20/3257186

² Protection of Badgers Act 1992

result in harm to the species or its sett. There is a statutory duty on me to have regard to the conservation of biodiversity³.

6. In an effort to prevent harm to the resident badgers, the Report includes mitigation. It recommends the provision of a post and rail fenced enclosure extending out 25 metres from the boundary with the woodland. This is intended to provide a buffer of a minimum of 15 metres from the closest sett entrances to the edge of the proposed caravan site. The distance of 15 metres is not, however, supported by any site-specific evidence, although the Report advises that badger tunnels rarely extend for more than 10 metres in any one direction.
7. Although the outline of the post and rail fence is shown on the proposed site plan, no elevation drawings or other details, such as its height or means of construction have been provided. However, a post and rail fence is typically a reasonably low open boundary treatment that would be unlikely to prevent badgers from accessing the proposed site through it. Such a boundary would also be unlikely to prevent dogs or people accessing the enclosed area which could disturb badgers within or outside of this area. Therefore, on the basis of the information available to me, I am not satisfied that the proposed mitigation would adequately mitigate the potential harm to badgers arising from the proposal.
8. I accept that Natural England have offered no objections to the proposal. However, they have not commented specifically on protected species and have referred the Council to their standing advice with regard to this issue. That standing advice states that development should avoid harm to badgers and any harm should be mitigated to reduce the impacts. Furthermore, the standing advice refers to the potential for disturbance of badgers from noise and light. An assessment of the effect of noise and light arising from the proposed caravan site is not contained within the Report and this adds to my concerns.
9. I have had regard to the Council's suggestion of a condition to address the lack of detail provided with regard to the boundary treatments proposed. However, I am mindful of Government Circular 06/2005 which establishes that it is essential that the extent that protected species may be affected by a proposal, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
10. On the basis of the information before me and my above reasoning, the extent to which protected species may be affected is not clear (neither, by consequence, is any implication of the mitigation measures before me). I cannot therefore legitimately resolve such matters via imposing conditions, as has been suggested to me by the appellant. Whilst I do not doubt the appellant's intention to provide appropriate mitigation, my assessment must be based on firm evidence in that regard.
11. In this regard, paragraph 180 of the National Planning Policy Framework states that if significant harm to biodiversity resulting from development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

³ Section 40 of the Natural Environment and Rural Communities Act 2000 as amended

12. I therefore cannot conclude that the proposal would not adversely affect badgers, a protected species known to be present at the site. The proposal would therefore conflict with Policies CS5 and CS17 of the North Lincolnshire Core Strategy 2011 (NLCS) and Policy R13 of the North Lincolnshire Local Plan (NLLP) which, amongst other things, seek to protect and enhance the natural assets of the District and ensure unavoidable impacts on biodiversity and wildlife are appropriately mitigated, and produce net gains in biodiversity. It would also be contrary to paragraph 174 (d) of the Framework which amongst other things, seeks to minimise impacts on and provide net gains for biodiversity.
13. As highlighted by the previous Inspector, Policy RD2, which has been referred to in the Council's decision, has limited relevance to the main issue and does not add anything that is not covered by the above policies.

Living Conditions

14. Like the previous proposal, it is proposed to utilise the existing access to the caravan park which, whilst reasonably wide, passes between two neighbouring dwellings. This access is already in use by those staying in the existing static caravans as well as by visitors with touring caravans accessing the tourer site. The neighbouring residential properties therefore already experience a degree of noise and disturbance associated with the coming and goings of vehicles to and from the caravan site.
15. The council advises that there are 22 existing static caravans at the site and whilst the number of touring caravans has not been provided, this part of the site occupies a similar area to that of the static site. It is proposed to site 21 additional static caravans on the appeal site.
16. The design and access statement states that there would be a maximum of 21 additional cars per day accessing the site. Clearly this number would only occur on occasion when all statics are fully occupied, which the appellant suggests is at peak season weekends. As a guide, the existing statics are fully occupied for just 14% of the time on average per year.
17. Taking into account the existing level of use of the access by those staying in statics and tourers, I am not convinced that the proposal would result in a significant increase in vehicles using the access road. Whilst there would inevitably be some increase, in my view this would not lead to a significant increase in noise and disturbance over and above what is already experienced by the residents of neighbouring properties from the existing site.
18. In terms of the potential for noise arising from the caravans, I would note that there is a substantial distance between the closest static caravans and the neighbouring dwellings. This would be sufficient to avoid any significant increase in noise and disturbance being experienced by the occupiers of these dwellings.
19. I therefore conclude that the proposal would not have a significant adverse effect on the living conditions of the occupiers of neighbouring properties. The proposal does not conflict with Policies DS1, H7 and RD2 of the NLLP, which amongst other things, seek to ensure new development does not cause unacceptable loss of amenity to neighbours.

Other Matters

20. The issue of the proximity of a kennels to the appeal site was considered by the Inspector at the previous appeal and is referred to in the Environmental Health Officer's comments. Whilst the proposal would bring the existing caravan site closer to the kennels, these would not be occupied as permanent residences. Furthermore, I note that there are several residential properties that are closer to the kennels site than the proposed caravans. This is therefore not a determinative matter in this appeal. I note that this the Inspector at the previous appeal concluded similarly with regard to this matter.
21. I accept that the scheme would entail certain economic benefits and that both the development plan and Framework are supportive of a prosperous rural economy and tourism in broad terms. Be that it may, neither are unconditionally supportive of such. Consequently neither that, nor any other matter, is sufficient to outweigh my reasoning above.

Conclusion

22. For the reasons given, having considered the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Paul Martinson

INSPECTOR