
Appeal Decision

Site visit made on 16 March 2022

by R C Shrimplin MA(Cantab) DipArch RIBA FRTPI FCI Arb MCIL

an Inspector appointed by the Secretary of State

Decision date: 18th May 2022

Appeal Reference: APP/P1560/W/21/3280842

Land at Elm Farm, Frinton Road, Thorpe le Soken, Essex CO16 0JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr N Morris (Elm Farm Country Park) against the decision of Tendring District Council.
- The application (reference 20/00721/FUL, dated 5 June 2020) was refused by notice dated 25 May 2021.
- The application sought planning permission for the following development "*Change of use of former agricultural land to form extension to caravan park; Reconfiguration of existing 44 place park and the siting of 32 additional caravans; Construction of internal roadways, provision of hardstanding pitches and associated services for caravans. Erection of ancillary buildings; Formation of play areas and landscaping of site; Alterations to existing vehicular access onto Frinton Road and closure of existing caravan park access, as amplified by Bat Survey Report received on 06 May 2008*" without complying with conditions attached to two planning permissions, references 08/00192/FUL (dated 27 May 2008) and 15/00382/FUL (dated 14 May 2015), respectively.
- The conditions in dispute are conditions numbers 8, 9 and 10 of the earlier planning permission, reference 08/00192/FUL, and condition number 2 of planning permission reference 15/00382/FUL (which varied the previous permission). These conditions state as follows:
 - 08/00192/FUL – condition 8: "*The holiday caravans shall be occupied for holiday purposes only.*"
 - 08/00192/FUL – condition 9: "*The holiday caravans shall not be occupied as a person's sole, or main place of residence.*"
 - 08/00192/FUL – condition 10: "*The owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans on the site, and of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority (see note 6).*"
 - 15/00382/FUL – condition 2: "*The caravans shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence. The operators of the caravan park shall maintain an up-to-date register of the names of all owners of caravans on the site and of their main home addresses and shall make this information available at all reasonable times to the Local Planning Authority.*"
- The reasons given for the conditions are as follows:
 - 08/00192/FUL – reason 8: "*To ensure that approved holiday accommodation is not used for unauthorised permanent residential occupation.*"
 - 08/00192/FUL – reason 9: "*To ensure that approved holiday accommodation is not used for unauthorised permanent residential occupation.*"

08/00192/FUL – reason 10: *"To ensure that approved holiday accommodation is not used for unauthorised permanent residential occupation."*

15/00382/FUL – reason 2: *"To ensure that the accommodation remains in holiday use in support of planning policies aiming to encourage tourism and does not become a permanent residential use."*

Decision

1. The appeal is dismissed.

Application for costs

2. Applications for costs were made by Mr N Morris (Elm Farm Country Park) (the Appellants) against Tendring District Council and by Tendring District Council against the Appellants. These applications are the subject of a separate Decision.

Procedural matters

3. The planning application was made as an "application for removal or variation of a condition following grant of planning permission". Section 73 of the Town and Country Planning Act 1990 applies to the appeal, therefore.
4. The single application that is the subject of this appeal identifies conditions that relate to two previous permissions. Three conditions relate to planning permission reference 08/00192/FUL (and "Note 6" referred to in condition 10 of that planning permission does not affect the terms of the condition itself). One condition relates to planning permission reference 15/00382/FUL, which, in turn, was an application for the variation of different conditions that were imposed upon the earlier planning permission. The appeal seeks the relaxation of the various conditions, to permit permanent residential use of caravans on the appeal site, subject to different restrictions.

Main issues

5. The first main issue to be determined in this appeal is whether the proposed relaxation of the existing restrictive conditions would harm the tourism industry in the locality, in the light of Policies in the Development Plan. Alongside that, it is necessary to consider whether the proposals would benefit the provision of housing in the locality (especially affordable housing). It is also necessary to consider whether the proposals would make adequate provision for affordable housing, for mitigation of recreational disturbance effects on the Essex Coast, and for improvement of local public open space.

Reasons

6. Thorpe-le-Soken is a substantial settlement, focussed on the junction of the B1033 and the B1414, which are both significant distributor roads, passing through the village. There are good bus services along these main roads and Thorpe-le-Soken railway station is located a short way to the south of the village. A range of local services and facilities of various types is to be found in the village and it has been classified as a "Rural Service Centre".

7. The settlement is fairly compact but with some development extending from the core of the settlement in ribbons along the road frontages. 'Elm Farm Country Park' is located on the northern frontage of Frinton Road, the B1033, with open land on most of the opposite frontage. The site is an extensive caravan park, with open land to the north, behind the caravan park, that appears to have an informal recreational function, with access from the 'Country Park'. To the west, there is a relatively new residential development, extending back from the main road, with further development to the east, along the northern frontage of the road. Thus, the location now has a rather suburban character.
8. The caravan park is neatly laid out and well tended, with generous grassy areas and landscape planting between the caravan parking spaces. The parking spaces were not all occupied at the time of the site visit but were clearly laid out, with suitable hardstandings and service connection points. In some cases, the individual caravans (or lodges) have plants associated with them but, although some units have verandahs, the plots do not have individual gardens, as such.
9. The caravan park is currently subject to restrictions that limit the use of the caravans to use as holiday accommodation and it is now proposed that the restrictions should be lifted, to "allow the unrestricted residential occupation of 76 caravans on the site for those over 50 years of age". In effect, this would require the variation of the conditions rather than their complete removal. The application form states that this proposed "development" has not "already been started".
10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the statutory Development Plan unless material considerations indicate otherwise. The 'National Planning Policy Framework' (dated July 2021) restates the principle that "planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise" (at paragraphs 2 and 47). Development Plan policies are therefore especially important.
11. Section 1 and Section 2 of the new 'Tendring District Local Plan 2013-2033 and Beyond' were adopted in January 2021 and January 2022, respectively. The Policies in the earlier 'Tendring District Local Plan 2007' are taken forward in the new Policies.
12. In general terms, some growth is envisaged in the District, in accordance with Policies SPL1 and SPL2, and Thorpe-le-Soken is identified as one of the larger villages in the District, suitable for some development. In relation to "holiday parks", however, Policy PP11 imposes specific constraints. In particular, certain of the District's holiday parks (having been the subject of a recent review) are shown as "safeguarded sites" on the Policies Map and the Policy requires that "these sites will be protected against redevelopment for alternative uses either in part or in whole". Even on sites that are not defined as "safeguarded sites", a degree of protection is afforded and proposed alternative uses need to be clearly justified.

13. In this case, the appeal site is identified as a "safeguarded site" to which Policy PP11 applies. The proposed relaxation of the restrictions that have been imposed by previous conditions would have the effect of changing its existing character as a "holiday park" significantly, widening the scope for permanent residential occupancy. The proposed change would thus undermine the tourist industry in this part of Essex, contrary to the provisions of the Development Plan.
14. It is asserted that the existing "holiday park" will not be viable in the long term and evidence has been produced to support the contention, including a substantial report entitled 'Elm Farm Country Park Evolution and Projection of Park Operations 2000 – 2020'. This report sets out various approaches to the business model of the 'Country Park' and it identifies difficulties with sales, as well as offering some insight into this sector of the market, although more information on detailed occupancy rates for holiday lets might have been instructive.
15. Notwithstanding the report (and other submissions), 'Elm Farm Country Park' is reasonably well placed to provide tourist accommodation, with a range of attractions in the area, in spite of its not being located immediately on the coast itself. On balance, therefore, I am not persuaded that the benefits of the scheme outweigh the harm that would be done to the tourist industry, in the light of the clear conflict with the Development Plan. In consequence, I have formed the opinion that this appeal must fail.
16. In reaching that conclusion, I am aware that the Council has demonstrated a more than adequate supply of housing land (more than five years supply) and that the additional presumption in favour of development that would arise if housing targets were not being met does not apply. I acknowledge, of course, that the adequacy of supply does not preclude further housing, in appropriate circumstances. I also accept that the type of accommodation that would become available would meet the needs of a particular group of potential occupiers and would be relatively low cost accommodation in practice. Nevertheless, I am not persuaded that the benefit to the provision of housing in the locality would outweigh the objection that has been identified above.
17. The second reason for refusal relates to "affordable housing contributions" and attention is drawn to Policy LP5 of the 'Tendring District Local Plan 2013-2033 and Beyond' and Policy HG4 of the 'Tendring District Local Plan 2007'. These Policies promote the laudable aim of addressing the housing needs of poorer families but they apply, in certain circumstances, essentially to development projects that will result in the creation of "new dwellings".
18. In this case, I accept the argument that the caravans would satisfy the criteria of "affordable" homes, by comparison with other homes in the locality and having regard to local incomes and local house prices. Although that argument was not supported by a detailed study of the housing market in the area, that would have been unnecessary in the circumstances, since it seems to me to be obvious that, if not restricted to holiday use, they would in themselves amount to a low cost form of housing, meeting the requirements of the 'National Planning Policy Framework'. Having regard to Section 5 of the 'National Planning Policy Framework', and to the particular circumstances of this case, in my opinion, an additional financial contribution to the provision of affordable

housing in the area would not be justified in the context of the current proposals and the Policies referred to ought not to be applied to the relaxation of conditions which is sought in this appeal.

19. The third reason for refusal seeks "mitigation" for a predicted "adverse effect (alone or in combination) on a European designated site". Reference is made to the 'Conservation of Habitat and Species Regulations 2017' as well as to Policy PPL4 of the 'Tendring District Local Plan 2013-2033 and Beyond' and to Policies EN6 and EN11a of the 'Tendring District Local Plan 2007'. The legislation and planning policies are evidently aimed at protecting the natural environment from adverse effects that are likely to arise from new residential development.
20. Evidently, the caravans on the site are currently in a form of residential use. It is asserted in the Council's submissions that permanent residency would be likely to increase the number of recreational visitors to the Stour and Orwell Estuaries but there is no clear evidence to support this assumption. Indeed, the site's location away from a coastal resort makes it likely that tourists would use the caravans as a base for visits further afield, including nature reserves. In the circumstances of these proposals, therefore, I am not persuaded that it would be reasonable or necessary to require the provisions for "mitigation" that are identified in the Council's third reason for refusal.
21. The fourth reason for refusal seeks a financial contribution for the provision of new or improved off-site facilities in relation to open space facilities in the village. This reason for refusal refers to 'Saved Local Plan Policy COM6'.
22. In relation to the provision of open space, it is observed that 'Elm Farm Country Park' enjoys the benefit of substantial and spacious open areas, even disregarding the land to the north that is evidently also used informally (from visual inspection). The site lacks formal recreational infrastructure, however.
23. Whether or not a contribution might have been sought at an earlier date, this appeal is to be considered on its own merits and it is again pointed out that the existing site is currently in a form of residential use, presumably giving rise to local requirements for such facilities as open space. In this case, it would not be right for the appeal proposal (to relax conditions that apply to existing residential units) to be treated as if the accommodation were entirely new and the requirement for a financial contribution to be made to public open space facilities in the village is not justified.
24. The appeal scheme would involve the relaxation of existing conditions, thus enabling the caravans at 'Elm Farm Country Park' to be used for permanent residential accommodation rather than only as holiday accommodation. The site is identified as a "safeguarded site" in the Development Plan and up-to-date Policies in the Development Plan deserve to be supported, in principle. Cogent arguments have been advanced to explain the pressures that are faced by such holiday parks but, on balance, I am not persuaded that the considerations that apply in this case are sufficient to "indicate otherwise" than to follow the Development Plan. In the present circumstances I am persuaded that the proposals would harm the tourism industry in the District and that the proposed relaxation of conditions ought not to be allowed.

25. On the other hand, I am not convinced by the Council's other reasons for refusal. The claimed financial contributions do not, in my opinion, reflect the circumstances of the particular case and are not well founded in planning policy or legislation, meeting the tests set out in the 'National Planning Policy Framework'. They would not be necessary to make the development acceptable, nor would they be reasonably related to the development, bearing in mind the nature of the existing site and the specific proposals.
26. Nevertheless, I am convinced that the objection which I have identified above outweighs the benefits of the project. Hence, I have concluded that the scheme before me ought not to be allowed and, although I have considered all the matters that have been raised in the representations, I have found nothing to cause me to alter my decision.

Roger C. Shrimplin

INSPECTOR