



Appeal Decision

Site visit made on 21 February 2022

by S Edwards BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 June 2022

Appeal Ref: APP/L3815/W/21/3273949

Thornham Products, Thornham Lane, Southbourne PO10 8DD

- 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 & Mrs T McDermott against the decision of Chichester District Council.
 - The application Ref SB/21/00089/FUL, dated 8 January 2021, was refused by notice dated 18 March 2021.
 - The development proposed is "Retention of existing single mobile home on the land and to continue to use it for the applicant's place of residence, following expiry of temporary period granted under condition 2 of SB/15/01837/FUL which ended on 2 June 2019".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published after the determination of the planning application. Policies within the Framework are material considerations which should be taken into account for the purposes of decision-making from the date of its publication. The parties have had the opportunity to comment on this matter as part of the appeal process, and I have had regard to the revised Framework for the determination of this appeal.
3. The stationing of the mobile home on the appeal site has been subject to a previous appeal¹. The Inspector granted planning permission for the stationing of the mobile home on a temporary basis for three years, which has expired. The appellants are seeking planning permission to retain the mobile home on the site as their main place of residence, subject to a personal condition which would limit the duration of the occupation.

Main Issues

4. The main issues are:
 - Whether the site constitutes a suitable location for the development, particularly in relation to access to services and facilities;
 - Whether the mobile home is suitably located, having regard to national and local planning policies which seek to steer development away from areas with the highest risk of flooding; and

¹ APP/L3815/W/15/3133958.

- The effect of the development on the character and appearance of the area, having particular regard to the Chichester Harbour Area of Outstanding Natural Beauty (AONB).

Reasons

Location

5. Policy 2 of the Chichester Local Plan: Key Policies 2014-2029 (LP) outlines the Development Strategy and Settlement Hierarchy for the area administered by the Council, and sets out a presumption in favour of sustainable development within the Settlement Boundaries.
6. The appeal site lies within the Thornham Peninsula, outside of any Settlement Boundary and therefore falls, for planning policy purposes, within the 'Rest of the Plan Area', which includes small villages, hamlets, scattered development and the countryside. There is however no suggestion that the appeal development requires a countryside location and meets an essential local rural need or supports rural diversification, as set out in LP Policies 2, 45 and 46.
7. The site is accessed by a narrow lane and lies at some distance away from the village of Hermitage. I have been presented with no substantive evidence to demonstrate that the occupiers of the development are able to access most of the local services and facilities required for day-to-day living, using sustainable modes of transport. Walking and cycling would not represent attractive alternatives, due to the narrowness of the lane, absence of continuous footway and lack of street lighting. Overall, there is therefore a greater likelihood that, having regard to the site's location in relation to the wider network, occupiers of the development rely on the private car for the majority of trips.
8. Even though this would be for a temporary period, the development is not, for the reasons detailed above, situated in an accessible and sustainable location. It therefore fails to accord with the Council's Spatial Strategy and Settlement Hierarchy and is contrary to LP Policies 1, 2 and 45 and the sustainable development objectives of the Framework. I however find no conflict with LP Policy 8, which seeks to improve accessibility to key services and facilities, and provide an improved and better integrated transport network.

Flood risk

9. According to the Environment Agency's (EA) Flood Map for Planning (Rivers and the Sea), the mobile home is sited within Flood Zone 3, that is in an area with a high probability of flooding. As detailed in Annex 3² to the Framework and the national Planning Practice Guidance (PPG) on Flood risk and coastal change, caravans, mobile homes and park homes intended for permanent residential use are regarded as a highly vulnerable category, which should not be permitted in Flood Zone 3.
10. National planning policy and guidance require a Sequential Test to be applied, in order to steer development to areas with the lowest probability of flooding. Although the Council suggest that there are other sites available within areas at a lower risk of flooding, no alternatives appear to have been considered here. As no evidence of a Sequential Test has been provided, it cannot be established with certainty whether there are no sequentially preferable locations for the

² Annex 3: Flood risk vulnerability classification.

appeal development. The PPG clearly states that the Exception Test should only be applied following application of the Sequential Test.

11. The appellant's submissions are supported by a Flood Risk Assessment³ (FRA), which shows how flood risk would be managed on the appeal site, for example by raising the floor levels and entrance to the mobile home. Access to and from the site may nevertheless be restricted during flood events, making it more difficult for the occupiers to regain access to the mobile home, and thus causing potential disruptions to their living conditions whilst putting additional pressure on emergency services. The FRA refers to a Flood Evacuation Plan (FEP), notably requiring occupiers of the development to register the EA's Floodline Warning Service. However, limited information has been presented to ensure that access and egress can be accommodated safely through the FEP.
12. The FRA relies on existing defences being maintained. However, as detailed in the representations made by the EA, there is no certainty that these defences would offer a significant standard of protection over the lifetime of the development, given that most of them are privately owned and maintained. Furthermore, it should be noted that even if it passed the Exception Test, the appeal scheme would still fail the sequential approach as required by the Framework and the PPG.
13. Having regard to the available information and in the absence of satisfactory evidence to the contrary, I conclude that the development is not suitably located, by reason of its vulnerability in flood risk terms. The appeal scheme is therefore contrary to LP Policy 42, but also the Framework (paragraphs 155-165) and the PPG on Flood risk and coastal change. These notably seek to avoid inappropriate development in areas at current or future flood risk, and to direct development away from areas of highest risk.

Character and appearance

14. As noted above, the appeal site comprises a mobile home and a number of ancillary structures, set within spacious and relatively open grounds, and forms part of the Chichester Harbour AONB. The Chichester Harbour Management Plan⁴ notes that this area is predominantly characterised by the flatness of the landform, which accentuates the significance of sea and tide and of distant landmarks across land and water, as well as very special sense of tranquillity.
15. The site forms part of a small cluster comprising a number of residential properties, as well as premises used for equestrian and horticultural purposes, and lies within proximity to a sewage treatment plan, which detracts significantly from the character and appearance of its surroundings.
16. Although the structure is to some extent screened, by fences and gates, the stationing of the mobile home on the site constitutes an incongruous feature in the landscape, which detracts from the rural character of its surroundings. It represents an encroaching form of development in the countryside, which has a detrimental effect on the predominantly open and flat character of this part of the Chichester Harbour AONB. The harm is exacerbated by the forms of boundary treatment and mature vegetation enclosing the structure, but also the proliferation of domestic paraphernalia associated with the use for

³ Flood Risk Assessment dated December 2020, and prepared by Stephen Jupp MRTPI.

⁴ Chichester Harbour Management Plan (2019-2024) – Protecting the Special Qualities.

residential living, which are alien features bringing a cluttered character and appearance to the site.

17. Furthermore, I share the concerns raised by the previous Inspector in respect of the open area sited to the rear of the mobile home, which is more typical of the rural character of the area and is visible from a public footpath to the rear of the site. As the appeal site boundary appears to include this area, the grant of permission would also include this area, thus enabling the possibility of domestic use which would cause further harm to the rural and open character of the area.
18. For the foregoing reasons, the development adversely affects the character and appearance of the surrounding area, and fails to conserve and enhance the landscape and scenic beauty of the Chichester Harbour AONB, to which I ascribe great weight, in accordance with paragraph 176 of the Framework. The appeal scheme subsequently conflicts with LP Policy 43, which seeks to ensure that the natural beauty and locally distinctive features of the AONB are conserved and enhanced.

Other Matters

Special Protection Areas

19. The appeal site lies within proximity to the Chichester and Langstone Harbours Special Protection Area (SPA), which is recognised under the Habitats Regulations as being of international importance for supporting significant numbers of overwintering bird species. The Council considers that the appeal development may have a likely significant effect on the integrity of this sensitive area (either individually or in combination with other plans or projects) notably by reason of additional recreational pressures, unless suitable mitigation is provided. Residential development schemes are therefore required to make a financial contribution towards mitigation measures, which are normally secured through the completion of a planning obligation.
20. Concerns have also been raised by the Council regarding the effect of increased levels of nutrients entering the water environment, causing eutrophication, which can threaten the aquatic ecosystem. The advice provided by Natural England confirms that an increasing number of waterbodies, in or linked with European Sites, are now deemed to be in an 'unfavourable' conservation status for the purposes of the Habitats Regulations. This may also have a likely significant effect on the integrity of the SPA.
21. As I am dismissing this appeal on other substantive grounds, these are not matters which need to be considered further here. However, had the development been considered acceptable in all other respects, I would have sought to explore the necessity for undertaking an Appropriate Assessment, to ensure the development's compliance with Habitats Regulations.

Housing Land Supply

22. The Council is presently unable to demonstrate a five-year supply of deliverable housing sites. In such circumstances, paragraph 11d) of the Framework, as directed by Footnote 8, advises that the policies which are most important for determining the application are considered out-of-date, and planning permission should be granted. This presumption does not however apply where the application of policies in this Framework that protect areas or assets of

particular importance provides a clear reason for refusing the development proposed.

23. As detailed in Footnote 6 to the Framework, such areas or assets of particular importance include land designated as an AONB and areas at risk of flooding or coastal change. The appeal scheme fails to conserve and enhance the landscape and scenic beauty in the Chichester Harbour AONB and is sited in area at risk of flooding. The policies of the Framework in these respects provide clear reasons for refusing the appeal scheme. The tilted balance set out in paragraph 11 of the Framework is therefore not engaged in this instance.

Planning Balance and Conclusion

24. Whilst I have found that the appeal scheme conflicts with the development plan, it is also necessary to consider whether the grant of a temporary or personal permission would be justified in this instance. A number of considerations have been brought to my attention in favour of the development and in particular, I have therefore had due regard to the personal circumstances of the appellants.
25. As part of the previous appeal, the Inspector identified conflicts with the development plan but nevertheless granted planning permission on a temporary basis for three years to give the appellants sufficient time to find an alternative location or accommodation. In her decision, the Inspector referred to the PPG⁵, which states that it will rarely be justifiable to grant a second temporary permission.
26. The rights of the appellants under the Human Rights Act 1998 is an important consideration. The dismissal of the appeal would in all likelihood lead to the loss of the appeal site's use for the stationing of the mobile home. The appellants' submissions include information to demonstrate that they have been unsuccessful in their attempts to acquire a property or find rented accommodation elsewhere. However, I have only been presented with one letter from a lettings agent. Moreover, and though rental prices may be high in the area, it remains unclear whether, having regard to the available evidence, a wider search area has been considered, where accommodation may be more affordable.
27. The appellants argue that the Council has previously considered personal circumstances to justify a personal condition on the site. However, limited information has been presented in that regard, and I cannot therefore be certain that the circumstances represent a direct parallel to the appeal before me.
28. Another temporary permission or the imposition of a personal condition, which would limit the duration of the permission to the period required by the appellants, would unacceptably prolong the harm caused by the development and risks associated with it. Whilst I have given due consideration to the personal circumstances of the appellants, these are outweighed by the harms which I have identified.
29. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

⁵ Paragraph: 014 Reference ID: 21a-014-20140306.

S Edwards

INSPECTOR