



Appeal Decision

Hearing held on 20 & 21 September 2022

Site visit made on 21 September 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2022

Appeal Ref: APP/F2605/W/21/3282678

Breckland Meadows Touring Park, Lynn Road, SWAFFHAM, PE37 7PT

- 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 Birch's Park Homes Ltd against the decision of Breckland Council.
 - The application Ref 3PL/2020/0514/F, dated 8 October 2020, was refused by notice dated 11 March 2021.
 - The development proposed is use of land for siting of static caravans for permanent occupation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has sought planning permission for the stationing of static caravans at Breckland Meadows Touring Park. It has been put to me by the appellant that the appeal is not for a change of use, however there is no lawful development certificate on the site to confirm whether the site can currently be occupied for permanent residential purposes.
3. I have been directed to Lambeth¹ where the judge summarised that the starting point is to find "the natural and ordinary meaning" of the words used, viewed in their particular context and in the light of common sense. However, the judge also reiterated that such considerations arise from the legal framework within which planning permissions are granted.
4. The site has the benefit of a number of planning permissions originally approved in 1984 (3/84/0015) for proposed touring caravan park including toilet block and 2 no. static vans. This permission was originally limited by two conditions restricting all round use of the site and the length of any individual's stay. In subsequent years these conditions have been varied or removed and a certificate of lawfulness has established that caravans can be stationed on the site for longer than 28 days.
5. In 1999, planning permission was granted (3PL/1999/0870/CU) with a condition which states that "with the exception of the approved static caravans the site shall be used solely as a touring caravan site". This remains the only restrictive condition controlling the occupation and use of the site.

¹ [2019] UKSC 33, 2019 WL 02772271

6. There is no dispute that touring caravans can be placed on the site for an indefinite period. However, the Council remain of the view that taking into account the ordinary meaning of the word touring, the description of development and condition would preclude the use of the caravan as a person's sole or main place of residence.
7. Static caravans are not buildings and therefore this change in itself is not operational development. However, the change from touring caravans to static caravans can result in a change in the character of the land, in particular due to their size and manner of use, such that a change of use would occur as a matter of fact and degree. Touring caravans are typically towed by a car and of a size that can be moved without difficulty. Furthermore, the size and footprint of static mobile homes, such as those already on the site, are much larger. The condition was imposed to prevent this from occurring.
8. Within the context of an appeal under section 78 of the Act it is not within my remit to formally determine whether the proposed development requires planning permission. However, I shall consider the evidence as to whether permission is required so far as it is material to this appeal. If the appellant wishes to ascertain whether the development would be lawful, they may make an application under section 192 of the Act. Therefore, I have dealt with the appeal as set out in the description of development.

Main Issues

9. The main issues are:
 - whether the site represents an appropriate location for the proposed development, having regard to the Council's spatial strategy;
 - whether the site represents an appropriate location for the proposed development, having regard to access to services and facilities on foot;
 - the effect of the development on the character and appearance of the area;
 - whether the development would be at risk from flooding; and
 - whether the proposal would make adequate provision for education, affordable housing, libraries and public open space.

Reasons

Spatial Strategy

10. The appeal site is located outside of the settlement boundary for Swaffham, which is defined in Policy GEN03 of the Breckland Council Local Plan 2019 (LP) as one of three market towns within the district in the second tier of the settlement hierarchy. This hierarchy is based upon the utilisation of existing infrastructure.
11. Policy GEN05 of the LP sets out defined settlement boundaries around larger settlements in order to recognise that those areas are those in which growth will be acceptable in principle. Outside of these areas development will be restricted to recognise the intrinsic character and beauty of the countryside.

12. Development outside of the settlement boundaries will only be permitted where it gains support from other policies within the LP. The strategy in relation to areas outside of the settlement boundary are provided within three policies, but these relate only to Local Service Centres, Villages with Boundaries and Small Villages and Hamlets outside of Settlement Boundaries. I have not been provided with any policies relating to development which are outside of the boundary of Market Towns or Key Settlements.
13. The Swaffham Neighbourhood Plan (NP) sets out in HBE1 that new residential development should be of an appropriate mix of type and tenure of housing and that it should include housing for older people. This policy does not preclude development outside of the settlement boundary and the community aspiration is for development to be distributed to the east and west of the town to ensure that the town centre remains easily accessible from all parts of the town.
14. As a result of the sites location outside of the defined settlement boundary, the proposed development fails to accord with policy GEN05 of the LP, but given the site already benefits from planning permission as a caravan park, I have given this conflict limited weight.

Access to services and facilities

15. The site is located where access to the range of services provided within Swaffham can be reached within a recognised acceptable walking distance and there is also a regular bus service from the nearby bus stop.
16. The appellant has agreed to provide a footpath along the frontage of the site which would link to a footpath that has been provided as part of the neighbouring residential development which is currently under construction. It is common ground that the site is well located subject to the delivery of the proposed footpath connection and I am satisfied that this can be secured by the use of a Grampian condition.
17. In conclusion, in relation to the sites access to services and facilities the site would provide a suitable location for housing in accordance with paragraph 79 of the Framework which promotes sustainable development in rural areas.

Character and appearance

18. The site is located off Lynn Road which is considered a main gateway into Swaffham and is largely screened by existing landscaping although glimpsed views of the site are possible through the entrance.
19. Views of the site from the road are partially restricted by the existing hedge and established trees, nevertheless where views can be afforded, the site is characterised by the sporadic siting of touring caravans in well spaced pitches. Even if fully occupied, as evidenced by the original layout plan approved in 1984, the site would remain relatively spacious with good separation provided to the boundaries of the site.
20. The site provides a visual separation between the two storey built development under construction and contributes to a transition to the open rural fields which are experienced beyond the appeal site.

21. The proposal would be prominent when viewed from Lynn Road as the introduction of 40 static caravans, which would have a greater footprint than the touring caravans which are to be replaced, would be more visually dominant. There would also be an intensification in the use of the site arising from the permanent occupation of the larger buildings. The siting of the static caravans at the top part of the site would also increase the prominence of the development having regard to the existing topography.
22. As a result, the proposed development would not respond positively to the character and appearance of the area and would be more visually intrusive than the existing use of the site for touring caravans. Therefore, there would be a degree of urbanisation and countryside encroachment through additional development. For these reasons, therefore, the proposed development would introduce a discordant built form to the locality that would be harmful to the character and appearance of the surrounding area.
23. Policy HBE5 of the NP also requires that where new development is located at the town entrances, they should enhance the visual approach or gateway to Swaffham, including through the use of buildings in character with Swaffham. Although the appellant has agreed to conditions requiring the details of the appearance and colour of the proposed static caravans, the siting of 40 caravans on the site would not enhance the visual approach into Swaffham for the reasons already given.
24. In conclusion, the development would be harmful to the landscape character and quality of the area and conflict with policies GEN02, COM01 of the LP and policies HBE1 and HBE5 of the NP.

Flooding

25. The Framework and the Planning Practice Guidance (PPG) indicate that residential development should be directed to areas of lowest flood risk. The site has been identified as being within an area at risk from surface water flooding. Paragraph 162 of the Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
26. The use of a site for holiday or short-let caravans and camping is classified as a more vulnerable development as defined within the PPG and caravans, mobile homes and park homes intended for permanent residential use are classified as highly vulnerable. The proposed use of the site is therefore considered to be highly vulnerable.
27. The appellant considers that the current use of the site is in the same highly vulnerable flood risk category. However, even if I were to accept the lack of occupancy conditions mean that the site could be occupied permanently, the evidence before me suggests that the site has historically been used for tourism and short term lets and not as someone's sole or main residence. As such, the evidence before me indicates the occupation of touring caravans as permanent homes has not been the predominant use of the site and therefore the existing use should be considered more vulnerable.

28. Norfolk County Council as Lead Local Flood Authority (LLFA) have produced the Norfolk LLFA Statutory Consultee Guidance Document Version 5.1, October 2021. This sets out that if there is a risk of flooding from surface water flooding, the LLFA expects that this risk is assessed (and where appropriate modelled) to show how more vulnerable development (as per Table 2 and 3 of the PPG) is placed outside of the risk of surface water flooding for the 1% Annual Exceedance Probability (AEP) rainfall event plus climate change allowance.
29. In the case of surface water overland flow routes, if the areas cannot be avoided, sufficient information should be provided to demonstrate how this overland flow route will be managed within the site without creating a risk to people or property and not increasing the risk elsewhere.
30. The LLFA suggests that Table 1 of PPG which defines Flood Zones (only based on river and sea flooding) can be supplemented with the Indicative EA's Risk of Flooding from Surface Water maps (extent, depth, velocity and Hazard layers) for both the 1% AEP and 0.1% AEP to identify potential risk of flooding from surface water flow paths and/or significant ponding.
31. Having used this approach the LLFA considers that large parts of the site are tantamount to being within Flood Zone 2 and that as such the exception test is required for highly vulnerable development, such as that proposed. In addition, the PPG requires the appellant to carry out a sequential test first, which steers new development to areas with the lowest risk of flooding from any source.
32. In the absence of a sequential test, the proposed development is in conflict with the sequential approach in the Framework, and therefore it is not necessary for me to consider any flood mitigation proposals. It is only if the appellant could demonstrate that there are no reasonably available sites in Flood Zone 1 that I would go on to consider any mitigation as part of the exception test.
33. Paragraph 167 of the Framework sets out that when determining any planning application, development should only be approved in areas at risk of flooding where it can be demonstrated that the most vulnerable development is located in areas of lowest flood risk. Whilst the appellant has submitted a Flood Risk Assessment and Conceptual Surface Water Drainage Strategy, the LLFA have identified a number of reservations regarding the evidence used and the assumptions made in this document. I am content that these concerns are plausible and therefore am content to rely on the views provided by the LLFA in this regard.
34. Therefore, even if I had excepted the appellant's position as to whether or not the site needs to be subject to either a sequential test or exception test, there is insufficient evidence before me to be satisfied that the risks from surface water flooding have been properly assessed and that any required mitigation has been considered.
35. As it has not been demonstrated that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding the proposal is contrary to the Framework and the PPG.

Planning Obligations

- Affordable Housing

36. Policy HOU07 states that proposals for residential development with capacity for ten units or more will be expected to deliver a proportion of the development as affordable housing on-site to help meet existing and future affordable housing needs of the District, as set out in the Central Norfolk Strategic Housing Market Assessment 2017 (SHMA). Twenty five percent of qualifying development should be affordable housing, with a tenure split of 70:30 rented to shared ownership. This should be secured in perpetuity with provision expected to be made on site.
37. The supporting text to the policy sets out that where residential park homes and caravans are not subject to occupancy conditions, as in this case, they constitute residential development for the purposes of the policy. The Council have suggested that in the absence of any mechanism to secure affordability of the residential caravans on site in perpetuity an equivalent financial contribution towards meeting this need off site is required.
38. The proposal does not make any provision for affordable housing either on site, or through an off site contribution. No case has been made to demonstrate that the site is not viable if affordable housing were to be provided.
39. The SHMA indicates that the greatest need is for 2 and 3 bedroom affordable housing and the appellant has indicated that the site is likely to accommodate units of either two or three bedrooms.
40. I have been referred to a linked appeal decision² where the Inspector considered whether mobile homes would meet the definition of affordable housing as set out in Annex 2 of the Framework. This includes other low cost homes for sale, at least 20% below local market value. However, the appellant has not provided me with any evidence to indicate whether the mobile homes would be offered at a price which would meet that definition and has made a case that there is no requirement to provide affordable housing.
41. The Framework, at paragraph 62, anticipates that local plan policies will set out the size, type and tenure of housing needed in the community. However, the LP policy predates the widened definition of affordable housing and therefore does not set out a threshold for the percentage of low cost homes for sale that should be considered.
42. Paragraph 65 of the Framework indicates that at least 10% of the total number of homes to be provided on site should be for affordable home ownership, as part of the overall affordable housing contribution from the site. Even if I were to accept that mobile homes were considered low cost housing, there would still be a requirement to meet the needs of those who require social housing for rent, whether that be through delivery on site or via a financial contribution towards off site provision.
43. In conclusion the development fails to make appropriate provision for affordable housing, contrary to policy HOU 07 of the LP which sets out the requirements of affordable housing provision in light of the local need. As a result, this is a matter to which I attach significant weight.

² APP/C3810/C/19/3222033 and APP/C3810/W/18/3214487

- *Education*

44. The proposed development is expected to generate the need for 11 primary school and 4 early years sector places, at a cost of £14,022 per place. This equates to a total contribution of £210,330. The contributions have been calculated based on the evidence provided by Norfolk County Council and I am satisfied that this planning obligation meets all three planning obligation tests and so is necessary.
45. The evidence before me indicates that the existing Primary School is already at capacity once other permitted developments in Swaffham have been taken account of. Therefore, any shortfall in the Education Contribution would place an unreasonable burden on the County Council in light of the scale of the deficit identified and be harmful to future occupiers of the development who could be required to look beyond Swaffham for education provision.
46. The appellant has indicated that they would be willing to accept a condition restricting the occupation of the units to those over 55 years old, and that therefore the development would be exempt for education contributions, as it is assumed that the development would therefore produce no requirement for education. Any condition would also have to restrict occupiers with dependent children from living on the site.
47. As the site has previously operated with an adults only restriction this would not result in changes for existing occupiers of the site and the Council have agreed that if the condition was imposed it would no longer consider an education contribution to be necessary. Therefore I have concluded on the basis of the evidence before me that the contribution towards education provision is not required.

- *Library Contributions*

48. Swaffham has the closest library to the site and will need to increase capacity to meet the demands arising from the proposed development. This is calculated at £75 per dwelling, with a total contribution of £3,000. The contribution would be used towards providing a library facility to cope with the size of population arising from the development in the area. I am satisfied that this obligation passes the statutory tests.
49. The development fails to make appropriate provision for infrastructure contributions for libraries, contrary to policy INF02 of the LP which sets out the requirements for the delivery of community infrastructure, including libraries. As a result, this is a matter to which I attach significant weight.

- *Public Open Space*

50. Policy ENV04 requires all new residential development of 25 or more to provide outdoor playing space within the development site. The supporting text to the policy accepts that certain development will not create demand for all elements of open space requirements. However, it is worth noting that although children's play areas may not be appropriate, there is an element of amenity area or other forms of open space such as communal space that could benefit residents of the new proposal.

51. Where on-site provision is provided it should be appropriate to serve the needs of the development. Contributions in lieu of on-site provision will be the exception and will need to be supported by robust evidence that on site provision is not appropriate and/or viable. In addition to onsite and off site contributions, a contribution will be required for 10 years maintenance of the facility.
52. The appellant has indicated that the site will be required to provide 10% of the site as open space as part of the conditions of any future site licence. However, based on the estimates discussed at the hearing where the site would accommodate 2 and 3 bedroom units, at a ratio of either 30/70 or 70/30 the policy requirements for open space would be greater than that required by the site licence.
53. The illustrative site layout plan indicates how the site could accommodate 40 static caravans with associated access roads but does not include any area of open space, even at the lower level that would be required under the terms of any future site licence. This leads to a degree of uncertainty that the site could in fact accommodate 40 caravans. However, there is nothing in the evidence before me to suggest that the site would be unviable if open space were to be provided on site.
54. Even if I were to accept that there are other mechanisms available to secure the provision of open space on site and that the lower level of provision sought by the licence was acceptable, there is nothing to ensure that this would be maintained in perpetuity for the lifetime of the development.
55. Therefore, the development fails to make appropriate provision for open space, contrary to policy ENV04 of the LP which sets out the requirements for the delivery of open space. This is a matter to which I attach significant weight.

Other Considerations

56. As previously outlined the site benefits from an extant planning permission and therefore, I have to consider whether the existence of the permitted fallback position is a material consideration which would enable a decision to be taken other than in accordance with the development plan.
57. It was agreed between the parties during the hearing that the site could, as illustrated on the site layout plan dated 3 January 1984, accommodate up to 54 touring caravans, rather than the 80 originally suggested within the appellant's evidence. The proposed development of 40 static caravans would therefore result in 14 less caravans on the site. Moreover, there is no dispute that these touring caravans can be placed on the site for an indefinite period.
58. With this in mind, the appellant submits that the touring caravans can be occupied as permanent residences and therefore the appeal scheme would not have a greater impact when considering the spatial strategy, infrastructure contributions and flooding. As a result, the appellant considers this fallback position justified the appeal scheme.
59. It has been established in the Courts that there should be a "real prospect" of a fallback being implemented for it to be a material consideration and that the decision-maker should exercise their planning judgment as to whether that would be the case depending on the particular circumstances.

60. In this instance, the Council does not share the view that the touring caravans can be occupied permanently. Nevertheless, for the purposes of my assessment I have assumed that the appellant is correct and therefore deemed the fallback position to be a material consideration.
61. The appellant has purchased the site with the intention to operate it as a residential site, with the use of the site for tourism purposes to cease. However, the evidence before me does not indicate that there is a demand for 54 touring caravans to be permanently used as primary residences. Furthermore, evidence has only been provided that a handful of residents are currently paying council tax as permanent residents. The Council also considers that the site is only regularly used by between 20-25 caravans at any one time and the appellant has not demonstrated that it is commonplace for people to live permanently in touring caravans as their sole or main home.
62. In other words, the fallback position of the touring caravans being permanently occupied is theoretical as opposed to being a realistic prospect. As a result, in exercising my planning judgement on the basis of the facts before me, this matter carries limited weight and would not justify the impacts of the appeal scheme.

Other matters

63. I have been provided with a large number of appeal decisions as part of the evidence produced by both the appellant and the Council and these were discussed in detail at the hearing.
64. Of those submitted with the appellants statement³, these two examples relate to certificates of lawfulness and in both instance there were no conditions restricting the type of caravan which could be sited on the appeal site and therefore the considerations were not the same as the Section 78 appeal that I am dealing with.
65. In the third case referred to by the appellant⁴ the Inspector notes that the site, whilst subject to restrictive conditions, was more akin to a residential site than a holiday park and therefore a permanent residential use would not be more harmful than the holiday use. These considerations are not the same as those that I am being asked to make in this case.
66. A further appeal⁵ was in connection with an enforcement notice and an appeal against restrictive occupancy conditions. I have had regard to this appeal in so far as it deals with affordable housing and infrastructure requirements, whilst recognising that in that instance the site was restricted to use as a holiday park so only has limited similarities to the case before me.
67. At the hearing the appellant also provided a further two appeal decisions, listed in the documents list at the end of this decision. Both of these appeals relate to lawful development certificates and enforcement notices. In the Fenside Caravan Park appeal the Inspector considered whether the use of the whole site as a touring caravan site, including occupation as a sole or main residence was lawful.

³ Appendix R – APP/U1430/X/16/3164696; Appendix S APP/Q3305/X/21/3273377

⁴ Appendix T – APP/W3520/W/18/3211466

⁵ Appendix V – APP/C3810/C/19/3222033

68. The Inspector found that a certificate could not be issued as there were conditions attached to an earlier planning permission which restricted occupation. I have had regard to the Inspectors findings within paragraph 17 of that decision where she considers that there is no reason why a touring caravan could not be occupied as a sole or main residence as a matter of principle. In the case before me I have had regard to this point when considering the weight to give to the fallback position presented.
69. In the Haytop Park appeal, a number of different enforcement notices and a lawful development certificate were under consideration and the findings are therefore lengthy and involve specifics of the site and the permissions that had been issued. Therefore, I have had regard to the decision in so far as it raises similar issues to those before me, but that the considerations and evidence presented would have been specific to that case.

Planning Balance

70. The proposal would conflict with the development plan for the reasons previously outlined.
71. The site is well located in terms of its proximity to services and is of a scale appropriate to the size of the existing settlement and as such lies within a sustainable location. The proposal would deliver low cost housing, however I have not been provided with any evidence of demand for this type of housing in the locality.
72. The access and parking arrangements would be satisfactory and there is no evidence that highway safety would be compromised. The development would also give rise to some economic benefits during the construction phase and provide support to local services.
73. However, these benefits are not of sufficient magnitude to outweigh the harm I have identified and the significant weight I afford to the conflict with the development plan in this instance.
74. Furthermore, the adverse impacts arising from the lack of affordable housing provision, lack of open space, lack of contribution towards infrastructure requirements and to the character and appearance of the area which I have also afforded significant weight, would significantly and demonstrably outweigh the benefits outlined above, even having regard to the limited weight I have attributed to the appellants fallback position.

Conclusion

75. The proposal would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict. For the reasons given above, I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Rudd, Barrister Kings Chambers
Nick Laister MRTPI, Managing Director Laister Planning Ltd
David Hancock MRTPI, Senior Planner Laister Planning Ltd
Ola Holmstrom, Director of Hydrology RPS Group
Charles Birch, Birch Park Homes Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Christopher Hobson, Principle Development Management Planner
Nikki Fonseca, Senior Associate Birketts LLP

DOCUMENTS

1. APP/M1005/X/19/3241549 Land at Haytop Country Park, Alderwasley Park, Whatstandwell (plus linked appeals)
2. APP/H0520/X/19/3235615 Fenside Caravan Park, Puddock Road, Warboys

PLANS

1. 3 84 0015 plan
2. 3PL 1999 0870 plan
3. 3PL 2020 0168 EU LP
4. 3PL_2020_0514_LU-LP