



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 20 October 2022

Appeal Ref: APP/V2635/C/21/3283816

Jennys Cove, 64 South Beach, Heacham, Norfolk, PE31 7LH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Levi Frostick against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The notice, numbered 19/00209/UNAUTH, was issued on 18 August 2021.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to mixed use of domestic and the siting of a commercial kiosk.
 - The requirements of the notice are: i) The unauthorised kiosk is permanently removed from the Land and ii) The land is restored to its former condition.
 - The period for compliance with the requirements is 4 weeks.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a) and the deemed application for permission

2. The main issue is whether the proposal would comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding.
3. The development is the material change of use of the appeal site to a mixed use by the siting of a commercial kiosk selling take-away sandwiches and drinks in addition to the pre-existing residential use as part of the caravan site.
4. The appeal site is located next to the beach and within Flood Zone 3 and the Coastal Flood Risk Hazard Zone as defined in Policy DM18 of the "Site Allocations and Development Management Policies Plan 2016" ("the SADMP"). Policy DM18 identifies that coastal development is likely to be exposed to a much higher risk of flooding within 10 to 15 years, but this could be sooner, and aims to adopt a precautionary approach to development within that area as a result.
5. The site is also within the area covered by the "Norfolk County Council, Town and Country Planning General Development Order 1963 Direction Restricting Permitted Development" dated 16 March 1967. This direction removes permitted development rights for the temporary use of land for the purposes of public amusement or entertainment or for camping or the sale of goods, including beach requisites, foodstuffs and refreshments; and the erection or

placing of moveable structures, including motor vehicles, caravans or trailers on the land for the purposes of that use.

6. Policy DM18 advises that any proposed change or use will not be permitted if, as a result of the change, the flood risk vulnerability (as defined by the National Planning Policy Framework ('the Framework')) would be increased. In this case, and as alleged in the notice, the use of the planning unit has changed to a mixed use of domestic and siting of commercial kiosk. This change of use has not increased the flood risk vulnerability in the terms set out in the Framework as it remains the same (because the less vulnerable commercial use has been added to the pre-existing residential use). It is therefore not contrary to the wording of Policy DM18.
7. However, the Framework itself is a material planning consideration and states that: "Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere."¹
8. In the terms set out in the Framework the development as a change of use in Flood Zone 3 is not subject to the sequential or exception test. However both the Framework and Policy DM21 of the SADMP require the appellant to provide a site specific flood risk assessment² and there is not one before me in this case. Planning Practice Guidance explains that a flood risk assessment should establish the risk of flooding from all sources, the potential of the development to increase flooding elsewhere, what measures will be taken to deal with these effects and risks, and that the information provided needs to be credible and fit for purpose. This information has not been provided as part of the appeal.
9. Whilst the development itself is minor in terms of scale, the anticipated degree of flood risk in this location is high, as identified in the Strategic Flood Risk Assessment for the area. The information submitted by the appellant, whose main argument is that there are already other caravans and mobile units in the vicinity, is therefore not sufficient or proportionate when assessing the development regarding the flood risk. The mitigation measure identified by the appellant, to chain the kiosk down with concrete to prevent movement, is also insufficiently detailed so as to be able to assess whether it would be appropriate to mitigate the effects and risks of potential flooding and tidal surges. Policy DM21 requires the appellant to satisfactorily demonstrate that the development will be safe for its lifetime, taking climate change into account, and with regard to the vulnerability of its users, without increasing flood risk elsewhere before the grant of planning permission. This has not happened in this case.

Other matters

10. There is no evidence before me regarding the effect of the development on the European designated sites of the Wash and North Norfolk Coast SAC and the Wash SPA.
11. The Framework advises that development on land within or outside a SAC which is likely to have an adverse effect should not normally be permitted. If I were minded to grant permission, I would need to be satisfied that the

¹ Paragraph 159

² The National Planning Policy Framework, paragraph 168 and footnote 55

development would not adversely affect the SAC. However, as I am dismissing the appeal for another reason, I do not need to make a finding in this matter.

Conclusion of ground (a)

12. The development is therefore in conflict with Policy DM21 of the SADMP and the Framework. In the absence of any other material considerations of sufficient weight to overcome this conflict the appeal does not succeed and the deemed application for permission should not be granted.

Zoë Frank

INSPECTOR