



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 25 October 2022

Appeal Ref: APP/V2635/C/21/3273006

50B North Beach, Heacham, KING'S LYNN, PE31 7LJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Michael Rowell against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The notice, numbered 18/00414/UNAUTH, was issued on 3 March 2021.
 - The breach of planning control as alleged in the notice is the material change of use of the Land for the stationing of a caravan for residential use.
 - The requirements of the notice are: 1. The use of the land for the stationing of a caravan for residential use permanently ceases. 2. The caravan is permanently removed from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) 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.

Site History and Preliminary Matters

2. The most important parts of the planning history of the site for the purposes of this appeal are:
 - Enforcement notice issued dated 29 November 2017 alleging unauthorised erection of two outbuildings.
 - Appeal decision APP/V2635/C/18/3193571 (dated 10 October 2018), enforcement notice upheld and planning permission refused.
 - Enforcement notice issued dated 31 August 2018 alleging material change of use of the land for the stationing of a caravan for residential use.
 - Appeal decision APP/V2635/C/18/3213686 (dated 9 October 2019), enforcement notice quashed and planning permission for the deemed application granted.
 - High Court order by consent quashing the grant of planning permission granted on APP/V2635/C/18/3213686 but not quashing the decision regarding the enforcement notice.
 - Second appeal decision APP/V2635/C/18/3213686 (dated 12 November 2020). Planning permission refused.

- Enforcement notice issued dated 14 April 2021 and alleging material change of use of the land for the stationing of a caravan for residential use.
3. The permission granted under the deemed application by the decision in APP/V2635/C/18/3213686 was quashed. A ground (a) appeal is brought on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. It is therefore intrinsically linked to the deemed application for permission and a ground (a) appeal cannot succeed without permission being granted (at least in part). The Council is not estopped from issuing a further notice notwithstanding that the original notice was quashed, and is still well within time to issue a notice for the alleged breach.

Ground (b)

4. An appeal on this ground is on the basis that the matters stated in the notice have not occurred. The appellant argues there has not been a change of use of the site as it has been used for a continuous period of time for residential purposes, and states this is demonstrated by the fact that there have been council tax payments dating back to 2016. It is for the appellant to prove its case on the balance of probability. A material change of use of land is not immune from enforcement action unless it has taken place for a substantially uninterrupted period of 10 years¹, although this argument is more properly considered as an appeal under ground (d).
5. The site was previously part of a larger planning unit known by the postal address of 50 North Beach (Lauretta Chalet), and the material change of use of the land occurred when the smaller planning unit of 50B North Beach was created with the unauthorised siting of the caravan for residential purposes. This created a separate unit with residential use which is materially different to that of the previous use of the land associated with the original residential use of Lauretta Chalet.
6. The new postal address, as applied for by the appellant, was created in February 2018, and this taken with the initial enforcement action undertaken by the Council in 2017, and the appellant's assertion that Council Tax has been paid since 2016 mean that it is likely that the use as a separate planning unit began around 2016. This also accords with the finding in appeal decision APP/V2635/C/18/3193571 that Plot 50B was a separate unit in August 2016, and a representation received from a third party which states that the caravan was brought onto the site within the last 10 years.
7. The appellant has therefore not proven on balance that there has not been a material change of use of the site within the last 10 years. The appeal on ground (b) (and the associated appeal on ground (d)) cannot therefore succeed.
8. The appellant also disputes whether a second notice could be served in relation to the same breach, and I have dealt with that as a preliminary matter above.

¹ Section 171B(3) of the 1990 Act.

Ground (a) and the deemed application for permission

9. The main issue in this ground is whether the development would comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding.
10. The deemed application for planning permission is for the material change of use of the land for the stationing of a caravan for residential use. The appellant has not argued that anything has changed in terms of the facts or policy since the previous appeal APP/V2635/C/18/3213686 dated 12 November 2020. Instead, the appellant's case is that there has not been a change of use of the site, and he accepts that this does not change the vulnerability of the site in any way. However, I have found that there has been a material change of use of the site for the reasons as set out in relation to ground (b).
11. The site is within Coastal Flood Hazard Zone (and Tidal Flood Zone 3) defined in policy DM18 of the Site Allocations and Development Management Policies Plan 2016 ('the SADMP'). The policy provides that the development is not permitted as it is a new caravan within Tidal Flood Zone 3.
12. In addition, the National Planning Policy Framework 2021 ('the Framework') advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. The Framework requires that a site-specific flood risk assessment should be provided for all development in Flood Zone 3 and this has not been done in this case. It is clear from the decision in APP/V2635/C/18/3213686 dated 12 November 2020 that more information, including a site specific flood risk assessment and detailed comments from the Environment Agency was submitted by the parties during that appeal. There is nothing additional before me to be considered regarding this issue and I therefore have no reason to doubt the inspector's findings relating to the flooding issues in that appeal. I therefore find that the development fails to accord with paragraphs 159 and 167 of the Framework.

Other considerations

13. The appellant argues that the residential use is not new on the site and should therefore be permitted. However, the siting of the caravan for residential purposes is a materially different use to the previous use of the land associated with the chalet. It creates more habitable accommodation and has resulted in the caravan being placed on the site which could create an additional danger in a flood. And whilst I also accept that there are many other caravans including for seasonal use in the vicinity, and also within Flood Zone 3, this does not overcome the fact that the use of the land for siting of the caravan is inappropriate development in the terms set out in the Framework.
14. Appeal decision APP/V2635/C/18/3213686 dated 9 October 2019 granted permission for the seasonal use of the caravan on the appeal site and whilst this decision was quashed, I have considered the reasoning in that decision. The inspector found that the use of the land for the stationing of a caravan for residential use does not accord with Policy CS08 and Policy DM18, and went on to consider whether the material consideration of the restricted seasonal use outweighed this conflict.

15. However, the current Framework and Planning Practice Guidance require that the sequential test and both limbs of the exception test are met for this site if used for the siting of a holiday caravan (as it is classified as a More Vulnerable use and is within Flood Zone 3). As set out above, I have not been provided with a site-specific flood risk assessment in this appeal and these tests have therefore not been met. I also have no reason to dispute any of the findings in the decision dated 12 November 2020.
16. These considerations, including the proposed seasonal use, do not therefore outweigh the conflict with the local and national policies that I have identified above.

Conclusion

17. The development is in conflict with Policy DM18 of the SADMP, Core Strategy Policy CS08 (which form part of the development plan for the area) and section 14 of the Framework. These policies between them aim to direct development away from areas with the highest risk of flooding and mitigate flood risk. As there are no other considerations of sufficient weight to overcome this conflict the ground (a) appeal fails and the deemed application for permission is refused.

Zoë Franks

INSPECTOR