The Planning Inspectorate

Appeal Decision

Site visit made on 16 August 2022

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 NOVEMBER 2022

Appeal Ref: APP/Z2505/W/22/3293182
Land off Common Side Road, Leake Commonside, Boston PE22 9RR

- 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 J Haxby against the decision of Boston Borough Council.
- The application Ref B/21/0428, dated 15 September 2021, was refused by notice dated 9 February 2022.
- The development proposed is described on the application form as 'Change of use from Agriculture to a glamping site including provision of 11 units'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has raised concerns regarding the Council's handling of the case, and in particular about the length of time taken to process the application and a perceived lack of clarity relating to the provision of relevant information. However, in determining the appeal I have only had regard to the planning merits of the case.

3. In their statement the Council highlighted an error in the officer's report relating to flood risk and the application of the sequential test. As the appellant has had an opportunity to comment on this statement, I do not consider that any party has been prejudiced in relation to this matter.

4. The Council also advise they no longer wish to defend the reason for refusal in respect of the effect of the proposal on drainage. I therefore do not address this matter in the reasoning below.

Main Issue

5. The main issues are:

- whether the appeal site is a suitable location for tourism development;
- whether the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of the Framework; and
- the effect of the proposed development on the living conditions of neighbouring occupiers having regard to noise and disturbance.

Reasons

Whether a suitable location

6. The appeal site comprises a parcel of agricultural land that is located outside of any defined settlement boundary. I therefore consider it to be within the open countryside something which both main parties appear to agree on.

7. Policy 9 of the adopted South East Lincolnshire Local Plan (SELLP) supports tourism and visitor development within the boundaries of settlements identified by policy 1 which utilise and enrich the natural and built environment and existing attractions to the benefit of the local economy, visitors and local communities. Outside of identified settlements small scale development that supports the visitor economy will be permitted subject to several criteria including the demonstration of a functional link with an existing rural attraction or farm enterprise. Larger development outside settlement boundaries is only supported in exceptional circumstances.

8. Policy 1 of the SELLP stipulates that development in the countryside will only be permitted where it is necessary to such a location and/or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community and environmental benefits.

9. Consequently, the proposed tourism development would need to meet the relevant requirements set out within policies 1 and 9 of the SELLP for it to be acceptable in principle.

10. According to the appellant's statement the reason for the proposal being located at the appeal site is because it is in the countryside an that this is in and of itself the attraction for visitors. However, even so, I have no substantive evidence before me, such as a business plan, to demonstrate why the proposal is necessary for its location at the appeal site or to demonstrate a functional link between it and an existing rural attraction or farm enterprise.

11. The appeal site is situated in a rural location that is a good distance from the more built-up area of Leake Commonside and while the appeal site is located within a reasonable cycling distance of this area, I have no evidence before me to show what services are situated there, although given its small size and rural location I consider it likely that these would be limited. Furthermore, not everyone would choose this mode of transport particularly in the darker winter months and at other times where daylight would be limited given the nature of the rural roads that would need to be travelled which are not well lit. I also have no evidence before me to show that the more built-up area of the village can be accessed from the appeal site location by foot.

12. As a result, given the limited range of services and facilities in Leake Commonside and the rural nature of the area, I consider it likely that people using the proposed huts would need to travel to a larger settlement such as Old Leake, to obtain their goods and services.

13. Consequently, and being mindful of paragraph 105 of the National Planning Policy Framework (the Framework), I do not consider that the proposed development would reduce the reliance of potential tourists on the private car. Furthermore, whilst paragraph 81 of the Framework attaches significant weight to the need to support economic growth, it is also clear from paragraph 84 that this growth should comprise sustainable development such as sustainable tourism.

14. According to the evidence before me, the appeal site and the land surrounding it is classed as grade 1 agricultural land meaning that it is the best and most versatile agricultural land. The appellant has cited the size of the appeal site as the sole reason why it can no longer be used for agricultural purposes due to it no longer being viable. However, no substantive evidence such as financial statements have been submitted to support this. Consequently, the proposal would lead to the loss of the best and most versatile agricultural land which would be contrary to paragraph 174 b) of the National Planning Policy Framework (the Framework).

15. Therefore, I find that the proposal does not proportionally support or enhance the enjoyment of an established visitor attraction where this cannot reasonably be achieved from a town or village location. Likewise, I also find that the proposal is not necessary to its location and that, for similar reasons, it also fails to contribute to the sustainable development needs of the area, in terms of economic, community and environmental benefits.

16. Accordingly, taking into account all of the factors discussed above, while I acknowledge that given its nature, the proposal would need to be located within the countryside, I am not satisfied that the appeal site is a suitable location for tourism development. I therefore conclude that the proposed development would fail to meet the requirements of Policies 1 and 9 of the SELLP thereby conflicting with them. It would also conflict with paragraphs 8, 84, 105 and 174 of the Framework which aim to achieve sustainable development, promote it in rural areas and enable sustainable rural tourism, amongst other considerations.

Flood Risk

17. The appellant has submitted a Flood Risk Assessment dated September 2021 (FRA) which states that the appeal site is located within Flood Zone 3. Policy 4 of the SELLP does not generally support development on sites within Flood Zone 2 whilst other development sites remain available in sequentially superior locations within the district. This is consistent with paragraphs 159 and 162 of the National Planning Policy Framework (the Framework) which sets out national policy relating to considering flood risk. It is therefore a requirement for an applicant to demonstrate that they have considered more suitable sites that are free from flood risk for development before considering a site within a zone of flood risk.

18. According to the submitted plans the proposal includes uses that would be either more vulnerable or highly vulnerable to flooding. Moreover, the FRA does not show that a sequential test has been undertaken by the appellant. Consequently, the proposal would fail to meet the relevant requirements of Policy 4 and paragraphs 159 and 162 of the Framework.

19. I note that the Environment Agency and the Witham Fourth District Drainage Board did not raise any objection to the proposal provided that it complied with the mitigation measures set out within the FRA. However, the fact remains that the sequential test was not undertaken by the appellant.

20. Consequently, taking into account all of the factors discussed above and the evidence before me, I cannot be satisfied that either the sequential or the exception tests have been passed and I therefore conclude that the proposal does not represent an acceptable form of development having regard to its flood zone location and the provisions of the Framework. The proposed development would therefore conflict with policies 2 and 4 of the SELLP and paragraphs 159, 162 and 167 of the Framework which aim to reduce and, where possible, mitigate flood risk.

Living Conditions

21. The Council have argued that the proposal would give rise to unacceptable levels of noise and disturbance to nearby residential properties. However, no substantive evidence has been submitted to support this. Indeed, the Council's environmental health officer has not raised an objection to the proposal and from the evidence before me I see no reason to disagree. I therefore conclude that the proposed development would not materially harm the living conditions of neighbouring occupiers having regard to noise and disturbance. Accordingly, the proposal would not conflict with Policy 2 of the SELLP in this regard.

Other Considerations

22. In support of the proposal the appellant has highlighted the fact that the proposal would provide social and economic benefits arising from its construction and subsequent occupation and use. I afford these benefits moderate weight in favour of the appeal scheme.

23. The appellant has also stated that the proposal would provide a benefit in relation to biodiversity net gain. However, no substantive evidence has been submitted to support this. As a result, I afford this consideration no weight.

24. The appellant has also briefly referred to the site potential providing electric vehicle charging points. However, no substantive evidence has been submitted to support this and consequently I afford this consideration no weight.

Planning Balance and Conclusion

25. Given its scale and nature, the proposal would provide social and economic benefits to the area to which I have afforded moderate weight. However, it would not provide any demonstrable net biodiversity gain or other environmental benefits. As a result, the proposal fails to contribute to the sustainable development needs of the area, in terms of economic, community *and* environmental benefits. It would also be in an unsustainable location prone to flood risk, and result in the loss of the best and most versatile agricultural land. All of these are harms in conflict with the Development Plan to which I afford substantial weight.

26. Therefore, notwithstanding its partial compliance with Policy 2 of the SELLP, the proposal would not accord with the Development Plan when read as a whole and the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies contained within it. Furthermore, there are no material considerations which indicate a decision otherwise than in accordance with the development plan. Accordingly, for the reasons set out above, I conclude that the appeal should be dismissed.

C Coyne

INSPECTOR