



Appeal Decision

Site visit made on 20 June 2023

by J Williamson BSc (Hons) MPlan MRTPI

and John Morrison BA (Hons) MSc MRTPI

Inspectors appointed by the Secretary of State

Decision date: 09 November 2023

Appeal Ref: APP/A2335/W/23/3316477

Greendales Farm Caravan Park, Carr Lane, Middleton LA3 3LH

- 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 M McCarthy against the decision of Lancaster City Council.
 - The application Ref 22/01264/FUL, dated 12 October 2022, was refused by notice dated 24 January 2023.
 - The development proposed is described as change of use of 2 holiday pods to static caravans, 9 new static caravans, gym area and upgrade to landscaping.
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Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. The description of development on the decision notice differs to that on the application form. The Council's acknowledgement letter for the planning application confirms that it slightly altered the description. The appellant was given the opportunity to raise any concerns with the change and there is no indication they did. The appellant has used the amended description on the appeal form.
3. The application form also includes reference to the proposal partly being for a change of use. The replacement of holiday pods with holiday static caravans does not involve any change of use of land or buildings. Paragraph 3 of the Design and Access Statement (DAS) says that the proposal includes the repositioning of existing caravans. The plans illustrate that two existing static caravans would be repositioned. For the avoidance of doubt, this element has also been considered.
4. The appellant questions the accuracy of the reason for refusal which says that the proposal would result in the provision of new residential holiday accommodation. The appellant contends that, as noted in the DAS, the proposed development is solely for holiday use, not for residential purposes. It is sufficiently clear that this is the case.
5. This decision has been partly written by J Williamson and partly by John Morrison. This has been due to the former Inspector retiring from the organisation having undertaken the site visit and made a determination on flood risk matters. Information pertaining to Habitat Regulation matters was outstanding at that time. This section has been completed by John Morrison.

Main Issues

6. The main issues are a) whether the proposed development would be at an unacceptable risk of flooding; and b) its effect on the integrity of the Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site and a Site of Special Scientific Interest (SSSI).

Reasons

Flood Risk

7. The aspect of the proposed development that is at issue is the additional nine static caravans. No concerns have been raised regarding the other elements of the proposal in regard to this main issue and there is no compelling reason for me to disagree.
8. Paragraph 3.8 of the FRA¹ provides an extract of the Environment Agency's, (EA), flood zone map, noting that the approximate site boundaries are provided on the map. The Council has provided extracts of maps taken from its systems showing where the flood zones are in relation to the Greendales Farm Caravan Park, of which the site forms a part. Taking account of all the evidence, virtually all the nine additional static caravans proposed would be sited within Flood Zone 3, i.e., the zone at greatest risk of flooding.
9. The Council Officer's Report (OR) states that caravans, mobile homes and park homes are defined as highly vulnerable development in Annex 3 of the National Planning Policy Framework. However, Annex 3 confirms that such accommodation is only highly vulnerable if it is used for permanent residential purposes. The appellant has reiterated that the proposal is for holiday use, and contends that it therefore falls within the more vulnerable classification. This includes sites used for holiday or short-let caravans and camping, subject to a specific warning and evacuation plan. The reason for refusal refers to the proposed development being more vulnerable to flood risk. The FRA confirms that the site is in an area benefitting from the EAs flood service alert.
10. As accepted by the main parties, a Sequential Test (ST) is required to be undertaken in such circumstances. The aim of the ST is to steer new development to areas with the lowest probability of flooding. The Council suggest no ST or Exception Test (ET) were submitted. However, the appellant submitted a document² which clearly relates to both tests. It seems to me that the Council have questioned the robustness of this document.
11. One of the purposes of a ST is to demonstrate that there are no reasonably available sites in areas within flood zones with a lower probability of flooding that would be suitable for the type of development proposed. Paragraph 4.1 of the DAS confirms there are no suitable brownfield sites in the immediate locality where sites of an equivalent or corresponding size to the application site are available, have an implementable planning consent, or/are actively marketed for sale or availability. However, no information is provided to substantiate this claim.

¹ Flood Risk Assessment, dated July 2022, produced by Reford Consulting Engineers Limited

² Sequential Test in Support of Planning Application for an Extension to the Existing Caravan Park at Greendales Farm Caravan Park, Carr Lane, Middleton, Heysham', dated 30th November 2022, produced by Reford Consulting Engineers Limited

12. Additionally, it is clear from the ST that the geographical area considered consisted only of the wider caravan park and adjacent land in flood zone 1. It was concluded that the only area that the nine new static caravans could be sited within the existing caravan park was as proposed; and that land adjacent to the site within flood zone 1 was not in the ownership of the appellant. It is on this basis that the appellant concludes that there are no reasonably available sites within a lower flood zone that would be suitable for the type of development proposed.
13. The OR contends that the site-specific ST information submitted is not acceptable, suggesting that the geographical area for the ST should be district-wide. The appellant contends that a district-wide approach is not required; and notes that the approach they adopted has been accepted within other authorities. Although this may be the case, it is for the specific Council to decide what is required or acceptable within its area.
14. Advice is provided to developers regarding application of the ST and ET within the Council area in the AFRST&ET³. Amongst other things, it advises that for all applications other than developments that have a sub-regional, regional, or national significance, the normal area of search is the whole of the district. The advice allows for departure from the district-wide approach, though any departure is required to be robustly justified taking account of several factors. One of which is the functional requirements of the development. The proposal is for operational development within an existing caravan park, and the appellant notes that a site elsewhere within the district would be impractical to manage.
15. The AFRST&ET also provides advice regarding the range of alternative sites to be considered, and an explanation of what constitutes reasonably available. Paragraph 6.12 states that for non-residential schemes, the Council will make a case-by-case judgement. It has been made clear that the proposed static caravans are not intended to be used for residential purposes. Paragraph 6.21 explains that the Council considers reasonably alternative sites to be sites that are available and deliverable, which is as included in the Planning Practice Guidance⁴ (PPG) and meets the criteria outlined in paragraph 6.21.
16. Nevertheless, section 7 of the AFRST&ET acknowledges guidance in the PPG, which states that a pragmatic approach needs to be taken where proposals involve comparatively small extensions to existing premises (relative to their existing size), where it may be impractical to accommodate the additional space in an alternative location. As the proposal is for additional operational development within an existing site, the extent of which is small relative to the size of the wider site, this is an instance where a pragmatic approach to the application of the ST should be adopted.
17. The AFRST&ET advises that applicants should agree such matters with the Council prior to submitting a planning application. Having reached such an agreement, applicants are advised to address the matter within an application with reference to, for example, operational circumstances and land ownership arrangements. Although the appellant and Council did not agree on this matter prior to the planning application being submitted, in the appeal evidence the

³ Application of the Flood Risk Sequential Test and Exception Test, Planning Advisory Note 6, updated version dated October 2020, Lancaster City Council

⁴ Paragraph: 028 Reference ID: 7-028-20220825, Revision date: 25 08 2022

appellant has referred to operational circumstances and land ownership arrangements.

18. Consequently, a district-wide approach is not necessary in this instance and that the identification of alternative sites beyond the parameters considered by the appellant is not required. The ST is therefore passed. In such circumstances the AFRST&ET advises that consideration of the ET may still apply. The Framework follows this approach in any event.
19. The Framework advises that the ET should be informed by a site-specific FRA and that to pass it should be demonstrated that a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and b) the development will be safe for its lifetime, without increasing flood risk elsewhere.
20. The site specific FRA concludes, among other things, that the main risk to flooding is tidal; the flood zone is defended, though areas where the additional static caravans would be sited is affected by undefended tidal events; flood risk is considered to be low; the site benefits from defences that lie along the western bank of the River Lune; the site is in an area that benefits from the EAs flood alert service; drainage ditches collect surface water in the area and there is one around 120m west of the site; surface water runoff from the site discharges to ground via infiltration; the potential to alter the surface water runoff regime on site resulting in an adverse effect on flood risk elsewhere in the wider catchment is low; there are no previous incidences of flooding occurring on the site.
21. The EA has confirmed that it is satisfied that the development would be safe without exacerbating flood risk elsewhere, subject to the proposed mitigation measures outlined in the FRA being implemented. There is no compelling reason for me to disagree. The second part of the ET is therefore passed. The appellant contends that the proposal would provide economic benefits that would contribute to the viability of the community by providing additional holiday let accommodation for visitors all year round. Bearing in mind the conclusions reached in the FRA, such wider community benefits would outweigh the low risk of flooding. The first part of the ET test is therefore passed.
22. The proposed development would thus not be subject to an unacceptable risk of flooding. It would therefore accord with Policy DM33 of the Local Plan for Lancaster District – Part Two: Review of the Development Management DPD 2020 (LP) and guidance in the AFRST&ET, Framework and PPG. Collectively, and among other things, these policies and guidance require development to minimise the risk of flooding, ideally by directing development away from areas at highest risk; if this is not possible, ensuring that the proposal can be made safe for the lifetime of the development without increasing flood risk elsewhere.

Integrity of the SAC, SPA and Ramsar site and SSSI

23. The site is located roughly 800 metres from the Morecambe Bay SAC, Morecambe Bay and Duddon Estuary SPA and Morecambe Bay Ramsar site, European sites which the proposed development could potentially affect. The site is also in close proximity to the Lune Estuary SSSI. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) require the Competent Authority to consider whether the proposal could adversely affect

the integrity of the protected sites, either alone or in combination with other plans and projects.

24. Morecambe Bay is a large shallow and sandy bay at the confluence of the Leven, Kent, Lune and Wye. At low tide, areas of sand and mudflats are exposed. The sediments of the bay are mobile and support a range of sand types and large beds of mussels. There are small areas of reefs and extensive saltmarshes. It is a component in the chain of west coast estuaries of outstanding importance for passage and overwintering waterfowl, and breeding waterfowl, gulls and terns.
25. The bay is home to an extensive number of annex I habitats and annex II species including Greater Crested Newts for which the area is a SAC. In regard to the SPA, the bay is supportive of a wide array of breeding and non breeding Pink-Footed geese, Ringed and Grey plover and Common redshank to name a few. As well as an assemblage of waterbirds. The conservation objectives of these designations and the Ramsar site cover the maintenance and restoration of, amongst other things, the extent and distribution of habitat, population and qualifying features.
26. The appeal scheme would not directly affect the above designated sites in terms of physical development and there would be no functional link between them and the appeal site. That said, and given the location and nature of the proposed development, there is potential for future occupiers, putting aside the scale of the scheme, to use the above sites for recreational purposes. This would result in potential disturbance to habitats and species and therefore be a likely significant effect in isolation. Natural England (NE), as the relevant statutory body in this case, acknowledge that suggested mitigation in the form of homeowner and visitor information packs could be successful. Such packs could include details about the sites, the use thereof and where alternatives may lie.
27. However, NE has also requested further information pertaining to additional impact pathways. Specifically, they mention the potential for bird disturbance on surrounding fields during the construction phase of any development. Further assessment would therefore be required on any noise or visual disturbance impacts. Suitable bird survey evidence for overwintering and passage birds associated with the designated sites for the surrounding areas should inform the assessment, together with any required mitigation measures. In addition, NE are concerned about potential impacts on the water quality of designated sites through discharge entering watercourses during the operational phase. Furthermore, the evidence does not contain sufficient information to conclude that the proposed development is not likely to damage or destroy the features for which the above SSSI is identified.
28. The appellant was requested for their views on the above matters, but no comments were received. The additional information that is outstanding may involve surveys that are specific to the time of year, and it is not clear whether the time of the determination of this appeal would be appropriate for such. It is however clear that, in the absence of the above information, and the outstanding recognition of the effects on the SSSI specifically, I cannot be satisfied that the appeal scheme would not have further likely significant effects on the designated sites or the species that they support. If there were mitigation strategies available to address them, I remain unsure as to what

they are and whether they would need a mechanism more robust than planning conditions to secure them.

29. With the above in mind, the appeal scheme would conflict with Policy DM44 of the LP which sets out, amongst other things and in regard to designated sites specifically, adverse effects should be avoided and, where that is not possible, mitigated in the interests of the protection of their integrity. It would also fail to comply with the conservation objectives of the Framework and the protection aims of the Habitats Regulations.

Conclusion

30. Whilst the proposed development would not be at an unacceptable risk of flooding, this would be a lack of harm and thus neutral in any balance. It remains to be acceptably demonstrated that the scheme would not have a likely significant impact on the integrity of the SAC, SPA and Ramsar site alone or in combination with other schemes. This would result in conflict with the protection aims of the Habitats Regulations as well as the development plan. There are no material considerations, including the Framework and worthy of sufficient weight that would outweigh this finding. The only option is to therefore dismiss the appeal.

J Williamson & John Morrison

INSPECTORS