



Appeal Decision

Site visit made on 22 February 2024

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2024

Appeal Ref: APP/U1430/W/23/3321330

Sunview, Marsham Brook Lane, Pett Level, Pett

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Kathleen Amos against the decision of Rother District Council.
 - The application Ref is RR/2023/183/P.
 - The application sought planning permission for wooden lodge holiday home to replace existing static caravan without complying with conditions attached to planning permission Ref RR/2017/2197/P, dated 19 January 2018.
 - The conditions in dispute are Nos 6 and 7 which state that:
 - 6. The mobile home hereby approved on the site shall not be occupied between the 14th January and 1st March in any one year.
 - 7. The caravan is to be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence.
 - The reasons given for the conditions are:
 - 6. To prevent the permanent habitable occupancy of caravans which are set within Flood Zone 3, and are not considered suitable for permanent habitable accommodation, and to accord with Policies OSS4 (iii) and EN7 of the Rother Local Plan Core Strategy.
 - 7. To ensure that the caravan is not used for unauthorised permanent residential occupation in accordance with Policies EC6 (vi) and EN7 of the Rother Local Plan Core Strategy.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 19 December 2023, a revised National Planning Policy Framework (the Framework) was published. Those parts of the Framework most relevant to this appeal have not been materially amended. As a result, I consider that there is no requirement for me to seek further submissions and I am satisfied that no party's interests have been prejudiced by my taking this approach. I will refer to the updated paragraph numbers in this decision.
3. The Council have directed me to the 'Finney¹' ruling, citing concerns as to whether this application would change the operational aspects of this development. However, that decision was concerned with amendments to the approved development.

¹ Finney v Welsh Ministers [2019] EWCA Civ 1868, [2020] PTSR 455

4. The effect of the removal of conditions was specifically considered in the 'Freddie Reid'² case which also involved conditions restricting residential occupation to holiday use. This held that what can be done with a use of land arises from not only the description of development, but from the operation of law. A holiday home would fall within use class C3, and by the operation of law (i.e. a lawful change of use to another purpose within the same use class), it could be used as a permanent dwelling. The conditions restricted the occupancy of the dwellings, not the primary component of their use as dwellings. Consequently, the removal of such conditions would not conflict with the description of development and the application can be considered under s73A.

Background and Main Issues

5. Planning permission was granted in 2018 for a wooden holiday lodge to replace an existing static caravan. This has been implemented and the appellant has acknowledged in their evidence that they have occupied the lodge without complying with the disputed conditions since 1 August 2022.
6. The main issues are whether the conditions are reasonable and necessary having regard to:
 - the location of the site with respect to the development strategy, access to services and facilities, and reliance on the private car;
 - whether the lodge is at an unacceptable risk of flooding; and
 - whether the lodge provides acceptable living conditions.

Reasons

Suitable Location

7. Irrespective of how the appellant has chosen to occupy the site, in planning terms the lodge is restricted to use as holiday occupation. The appellant's case does not include any evidence to demonstrate there is no reasonable prospect of a continued use of the site as holiday accommodation. While it may be that the property has never been commercially let, that does not demonstrate that the unit is not capable of being financially viable as tourism accommodation.
8. The appellant has not disputed that the site lies in the countryside, nor sought to argue that occupiers of the property would be dependent on the private car to access services and facilities for day to day needs. I have no reason to find otherwise.
9. The proposed conditions are therefore reasonable and necessary to ensure compliance with the development strategy and to ensure permanent occupiers have access to services and facilities without reliance on the private car. Their removal would be contrary to Rother Local Plan Core Strategy (2014) (CS) Policy RA3 which allows suitable tourism opportunities to take place in the countryside but does not provide any policy support for unrestricted market housing. It would also be contrary to CS Policy EC6 which seeks to prevent the loss of tourism accommodation, and Development and Site Allocations Local

² Freddie Reid v Secretary Of State For Levelling Up, Housing And Communities and Newark And Sherwood District Council [2022] EWHC 3116 (Admin)

Plan (16 December 2019) (LP) Policy DCO1 which seeks to retain sites of social or economic value.

Flood Risk

10. The site lies within Flood Zone 3a although it benefits from flood defences. The original application was accompanied by a flood risk assessment (FRA) based on the use of the lodge as holiday accommodation. Annex 3 of the Framework advises that such development is classified as more vulnerable development. Permanent residential use of the lodge would be highly vulnerable and Table 2³ in the Planning Practice Guidance (PPG) sets out that such development should not be permitted in Flood Zone 3a.
11. There is no updated FRA before me considering this change in vulnerability or demonstrating that 14 January to 1 March is not at any greater risk for flooding. Although the lodge has been raised above ground level, I note the advice in the PPG⁴ that "flood resistance and resilience measures cannot be used to justify development in inappropriate locations".
12. The PPG is also clear that flood risk can come from a range of sources⁵. The FRA acknowledged the site was at a high risk of surface water flooding and the evidence of the appellant suggests the site is at risk from, effectively, overwhelmed sewers. The Framework at paragraph 168 confirms that development should be steered to areas at the lowest risk of flooding from any source. This strengthens my concerns with regard to the suitability of the site for highly vulnerable development.
13. I am therefore satisfied that the conditions are reasonable and necessary to ensure the lodge is not at an unacceptable risk of flooding. Without the disputed conditions, the development would be contrary to CS Policy EN7 and the advice in Section 14 of the Framework with respect to planning and flood risk which seek to direct development away from areas of highest risk and prevent highly vulnerable development within Flood Zone 3a.

Living Conditions

14. The LP was adopted following the grant of planning permission for the lodge. Policy DHG3 requires all new dwellings to meet the Nationally Described Space Standard (NDSS), including for changes of use.
15. It is not in dispute that the lodge does not meet the NDSS. The fact the lodge was designed to meet the definition of a caravan and that the appellant is satisfied with the accommodation would not justify the failure to meet the prescribed standard.
16. The lodge therefore would not provide acceptable living conditions for future occupiers and would be contrary to LP Policy DHG3 which adopts the NDSS and requires all new dwellings to provide adequate minimum internal space in line with the standard and CS Policy OSS4 which requires development to meet the needs of future occupiers.

³ Flood risk and coastal change Paragraph: 079 Reference ID: 7-079-20220825 Revision date: 25 08 2022

⁴ Flood risk and coastal change Paragraph: 068 Reference ID: 7-068-20220825 Revision date: 25 08 2022

⁵ Flood risk and coastal change Paragraph: 001 Reference ID: 7-001-20220825 Revision date: 25 08 2022

Other Matters

17. The public support for the proposed development shows the regard in which the appellants are held and I am mindful of the advice in the Framework which places value on creating communities. However, as the dwelling would be permanent and would remain after the appellant's personal circumstances ceased to be relevant, I attach limited weight to this.
18. The site lies within the High Weald Area of Outstanding Natural Beauty, now referred to as a National Landscape. Neither party has identified any harm to its natural beauty from the removal of the disputed conditions and I have no reason to disagree. Its natural beauty would therefore be conserved. No harm to biodiversity has been identified or to the character and appearance of the area. These amount to a lack of harm and would be neutral.
19. The occupancy status of other properties in the surrounding area would not alter my assessment of this appeal. It would be a matter for the Council to address any breaches of planning control. It is important what is considered at appeal is essentially the same scheme that was considered by the Council and interested parties and what was applied for. Consequently, it would not be appropriate for me to consider the amendment of the occupancy conditions rather than their removal. The development plan is to be read as a whole when assessing planning proposals. There is no requirement for every policy to identify every consideration or for a proposal to be contrary to every aspect of every policy. Building regulations and council tax are controlled by separate processes and are distinct from planning.

Planning Balance

20. It is common ground between the parties that the Council cannot demonstrate a deliverable five year supply of housing land. However, the flood risk harms I have identified mean that there are policies in the Framework that provide a clear reason for refusing the development proposed. Therefore, under paragraph 11d)i of the Framework, the proposal does not benefit from the presumption in favour of sustainable development.

Conclusion

21. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations, including the Framework, of sufficient weight to suggest the decision should be taken other than in accordance with the development plan. Therefore for the reasons given, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

J Downs

INSPECTOR