The Planning Inspectorate

Appeal Decision

Site visit made on 22 August 2024

by C Harding BA (Hons) PGCert PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2024

Appeal Ref: APP/A2525/W/24/3343051
Heron Orchard Caravan Park, Frostley Gate, Holbeach, Lincolnshire PE12 8SR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr John Conners against the decision of South Holland District Council.
- The application Ref is H05-0980-23.
- The application sought planning permission for change of use of land for an extension to existing caravan site without complying with a condition attached to planning permission Ref H05-0027-21, allowed upon appeal, decision dated 6 July 2022.
- The condition in dispute is No 3 which states that: *"The touring caravans shall be used as holiday accommodation only and shall not be located on site between 1 November and 14 March of the following year. They shall not be occupied as a person's sole or main residence"*.
- The reasons given for the condition are: *"To limit the use of the site to seasonal use only, to comply with the appellant's flood risk and landscape impact assertions, advice within the PPG and to comply with LP policy 4."*

Decision

1. The appeal is allowed and planning permission is granted for an extension to existing caravan site at Heron Orchard Caravan Park, Frostley Gate, Holbeach, Lincolnshire PE12 8SR in accordance with the application H05-0980-23, without compliance with condition number 3 previously imposed on planning permission Ref H05-0027-21 dated 6 July 2022 and subject to the following conditions:

    1. The development hereby permitted shall begin no later than 22 July 2025.

    2. The development hereby permitted shall be carried out in accordance with the following approved plan: location plan reference: 1543-001-02.

    3. The touring caravans hereby permitted shall be available for year-round holiday occupation until 31 December 2049. From 1 January 2050 onwards, no caravan shall be occupied between 1 November in any year

and 14 March in the succeeding year. They shall not be occupied as a person's sole or main place of residence.

4. An up-to-date register of the names, main home addresses, visiting dates and length of stay of all visitors to the site shall be maintained at all times and be available for inspection by the local planning authority.

5. Prior to the commencement of use, a landscaping and tree planting scheme (indicating, the number, species, heights of planting and positions of all the trees, together with details of post-planting maintenance), shall be submitted and approved in writing by the local planning authority. The approved scheme shall be carried out and completed in its entirety during the first planting season following the site being brought into use. All trees, shrubs and bushes shall thereafter be maintained by the owner or owners of the land on which they are situated, and all losses shall be made good as and when necessary.

6. The development hereby permitted shall be carried out in accordance with the provisions of the Flood Risk Assessment and Flood Warning & Evacuation Plan, by RPS Consulting Services Ltd (RCEF78147 001) dated 04 December 2020.

7. Prior to the commencement of use, details of ecological biodiversity measures to be installed in conjunction with the use, shall be submitted to and approved in writing by the Local Planning Authority. The measures shall thereafter be constructed/installed in accordance with the details so approved prior to the use being brought into use and shall thereafter be retained.

8. Prior to the commencement development, foul water drainage details shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage scheme shall be implemented prior to the first use of the site.

Background and Main Issue

2. Planning permission was granted, on appeal[1], for the change of use of the appeal site as an extension to an existing caravan site. In granting permission, that Inspector attached a condition preventing occupancy of the proposal between 1 November and 14 March. This was indicated as being on the basis of managing flood risk and landscape impact.

3. The Council refused to vary the condition solely on the basis of managing flood risk. It has raised no concerns in relation to the effect that varying the condition would have upon the landscape. Accordingly, I consider that the main issue is whether the condition as originally worded is reasonable and necessary in the interests of managing flood risk only.

Reasons

4. The appeal site is an area of grassed land situated between an existing caravan site and Little Holland South Drain. It is not disputed between the parties that it lies within Flood Zone 3.

[1] APP/A2525/W/21/3281764

5. The previous Inspector considered that the proposal passes the sequential test set out at Paragraph 168 of the National Planning Policy Framework ('the Framework'), as it would not be possible to locate the development elsewhere. I have no reason to disagree.

6. Paragraph 169 of the Framework sets out that where it is not possible to locate the development in areas at a lower risk of flooding, that the exception test may have to be applied. As the proposal would relate to 'More Vulnerable' development as defined within Annex 3 of the Framework, the exception test applies in this instance.

7. To pass the exception test, Paragraph 170 of the Framework states that it should be demonstrated that the development would provide wider sustainability benefits to the community that outweigh the flood risk, and that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing, and where possible, reducing flood risk elsewhere.

8. The previous Inspector found that the proposal would pass both parts of the exception test, in part, due to the fact that the site would only be occupied in summer months when the risk of flooding is lower. As a result, the Inspector attached a condition requiring that no caravans should be located on the site between 1 November and 14 March of each year. This reflects Policy 4 of the South East Lincolnshire Local Plan ('SELP') which states that occupancy of caravan sites at risk of tidal flooding will not be permitted outside of these dates.

9. On commenting upon the planning application to remove this seasonal occupancy restriction, the Environment Agency ('the EA') raised objection on the basis that the site could experience flood depths of up to 0.5 meters arising from a breach in coastal defences during a flood event that has a 0.1% chance of occurring in any one year up to 2115. It also clarified that the likelihood of low-pressure weather systems and higher tides occurring significantly increases between November and March.

10. Subsequently, however, the EA has refined its position, stating that modelling data indicates that the site would not be affected by the breaching of defences in the present day (2006) scenario. It is further stated that it considers that the 2006 scenario is applicable to 2050. Beyond 2050, the EA indicates that the level of risk may increase, and the data provided by the appellant for the 2115 scenario demonstrates that this is likely to be the case. There is no indication that the level of flood risk in the 2006 scenario increases in winter months.

11. The Council has been afforded opportunity to comment on the EAs most recent position and has not disputed any of the conclusions reached, and I have no reason to reach a different conclusion myself.

12. The EA has indicated that it no longer objects to the proposal, on the basis that year-round occupation ceases in 2050, thereafter reverting to the seasonal restriction as it currently stands and has suggested a planning condition worded to this effect. The appellant has stated that such a condition would be acceptable.

13. As it has been shown that until 2050, the proposal would not comprise a caravan site at risk of tidal flooding, the application of the restriction of year-round occupation of the proposal set out in SELP Policy S4 would not be reasonable for this period. However, for the period beyond 2050, such a restriction would be both reasonable and necessary. I consider that Condition 3 can be adequately amended to reflect this. The fact that some flood mitigation measures would not be achievable on a use of this nature is of limited relevance, as the EA has indicated that the appeal site would not be at risk of flooding prior to 2050 in any event.

14. On this basis, I have no reason to disagree with the conclusion of the previous Inspector that the proposal would pass both parts of the exception test, as it has been shown that the level of residual flood risk following the amendment of the condition would remain the same. No changes are proposed to the Flood Warning & Evacuation Plan, adherence with which would remain secured by means of a planning condition.

15. I therefore conclude that flood risk would be adequately managed following the amendment of Condition 3. The proposal would accord with SELP Policies 2 and 4, which together seek to ensure that development meets sustainable design considerations in relation to flood risk, that the sequential and exception tests are passed, and that flood risk is adequately considered and mitigated.

Other Matters

16. Interested parties have commented in relation to the possible future intentions of the appellant, that no screening or noise abatement has been implemented, and perceived inaccuracies in the provided plans.

17. The future intentions of the appellant fall outside the scope of this appeal. Action in relation to any possible future deviation from planning permissions granted and conditions attached to them would be a matter to be considered by the Council at that time.

18. In relation to the provided plans, I was able to understand the extent of the existing caravan site at my visit. There is no substantive evidence before me to confirm that the provided site plan is significantly incorrect or includes land outside of the control of the appellant. Furthermore, matters relating to ownership of land would be separate to and would not ultimately influence the assessment of the planning merits of the proposal.

19. I am aware that the appeal site is situated close to a Grade II listed building known variously as Riverside House and Bloodfold House. I am required to pay special attention and have regard to the desirability of preserving the setting of listed buildings.

20. The previous Inspector considered that the proposal would not harm the setting of the listed building and would preserve its significance. Although the proposal would lead to the appeal site being occupied on a more regular and potentially longer basis, I have no reason to consider that this would lead to additional harm to the setting of the heritage asset, having regard to the findings of the previous Inspector. I also, therefore, conclude that the proposal would preserve the setting and significance of the listed building.

Conditions

21. In allowing this appeal, a new planning permission is created. Planning Practice Guidance advises that, for clarity, decision notices for the grant of planning permission under Section 73 should restate the conditions imposed on earlier permissions that continue to have effect, unless they have already been discharged.

22. It is stated conditions 5, 7 and 8 attached to the original permission have been discharged. However, I have not been provided with any information in relation to the subsequently approved details. As the Council has suggested the re-attaching of these conditions and the appellant has indicated that conditions suggested by the Council are acceptable, I have therefore attached the previously attached conditions.

23. Although it is stated that the use has already commenced, there is no evidence before me to substantiate this. Furthermore, on visiting the site in August when occupancy is permitted, I saw no evidence myself of the site being used. I cannot, therefore, be certain that the use has commenced. I have therefore also amended the original condition relating to the time limit for the commencement of the use in order to reflect the time period imposed in the original permission.

Conclusion

24. For the reasons given above, I conclude that the appeal should succeed and grant a new planning permission with the disputed condition amended and retaining those non-disputed conditions from the previous permission which appear to still be relevant.

C Harding

INSPECTOR