



Appeal Decision

Site visit made on 2 November 2022

by **David Smith BA(Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 November 2022

Appeal Ref: APP/V2255/W/21/3287086

Meadow View Park, Irwin Road, Minster On Sea, ME12 2DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Boswell Park Homes against the decision of Swale Borough Council.
 - The application Ref 20/505122/FULL, dated 29 October 2020, was refused by notice dated 17 May 2021.
 - The application sought planning permission for the stationing of 37 static caravans including associated hardstanding and landscaping without complying with conditions attached to planning permission Ref 18/506323/FULL, dated 3 June 2019.
 - The conditions in dispute are Nos 3, 4 and 5 which state that:
 - 3) No caravans or chalets shall be occupied except between 1st March and 2nd January in the following calendar year, and no caravan or chalet shall be occupied unless there is a signed agreement between the owners or operators of the Park and all caravan or chalet owners within the application site, stating that: (a) The caravans and chalets are to be used for holiday and recreational use only and shall not be occupied as a sole or main residence, or in any manner which might lead any person to believe that it is being used as the sole or main residence; and (b) No caravan or chalet shall be used as a postal address; and (c) No caravan or chalet shall be used as an address for registering, claiming or receipt of any state benefit; and (d) No caravan or chalet shall be occupied in any manner, which shall or may cause the occupation thereof, to be or become a protected tenancy within the meaning of the Rent Acts 1968 and 1974; and (e) If any caravan or chalet owner is in breach of the above clauses their agreement will be terminated and/or not renewed upon the next expiry of their current lease or licence. On request, copies of the signed agreement[s] shall be provided to the Local Planning Authority.
 - 4) Any caravan or chalet that is not the subject of a signed agreement pursuant to condition 2 shall not be occupied at any time.
 - 5) The owners or operators of the Park shall at all times operate the Park strictly in accordance with the terms of the Schedule appended to this decision notice.The reason given for the each of the conditions is: In order to prevent the caravans from being used as a permanent place of residence, in pursuance of policies St1, DMS, and DM14 of the Swale Borough Local Plan 2017.
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Decision

1. The appeal is dismissed.

Applications for costs

2. The application for costs made by the appellant against the Council is the subject of a separate decision.

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Preliminary Matters

3. The appeal site is a static holiday caravan site that has been in use for many years and operates under the terms of the planning permission granted in 2019. It is proposed to remove conditions attached to that permission which limit the use to holiday accommodation and not as a person's main home or registered address and also limit occupation to 10 months of the year. The effect would be that the units could be occupied for residential purposes all year round. Therefore the proposal is for 37 permanent park homes.

Main Issues

4. These are:
 - Whether the proposed development would be in a suitable location having regard to the risk of flooding and the effect on a Coastal Change Management Area;
 - The effect of the proposal on the tourism industry and the economy of the Isle of Sheppey; and
 - The effect on the integrity of the Medway Estuary and Marshes Special Protection Area (SPA).

Reasons

Flood risk

5. The National Planning Policy Framework establishes that development should be directed away from areas at highest risk of flooding. Where development is necessary in such areas then it should be made safe for its lifetime. Policy DM21 of the Swale Borough Local Plan reiterates national policy. The appeal site is within Flood Zone 3 where there is a high probability of flooding.
6. As part of the appellant's sequential test 310 sites were reviewed. No potential alternatives for the proposed residential park homes were identified. The Council suggests that further sites may come forward through the call for sites associated with the on-going Local Plan review. However, nothing reasonably available has been referred and the methodology and findings of this document have not been challenged.
7. Even if it is not possible for the development to be located in an area with a lower risk of flooding, the exception test also needs to be applied. Park homes intended for permanent residential use are classified as Highly Vulnerable in Annex 3 of the Framework. Table 2 of the Planning Practice Guidance (PPG) on *Flood risk and coastal change* indicates that such development should not be permitted within Zone 3 and the proposal is therefore incompatible with this flood zone. This position is not altered if the exception test is satisfied.
8. The flood modelling indicates that the majority of the site would be unaffected up to and including the 1 in 200 year defended event, including an allowance for climate change. In this scenario two plots in the south-west corner would be liable to flood to a maximum depth of about 330mm. However, all homes would be raised 800mm above ground level. Similar results are predicted for the 1 in 200 year (2016) defence breach flood event. Furthermore, in the 1 in 200 year defended event in the present-day epoch (2016), the site is not predicted to flood.

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9. However, although the appeal site benefits from coastal flood defences, neither their existence, nor the predicted impact of flood events nor the use of a flood evacuation plan affects the inherent unsuitability of the proposed use within Flood Zone 3.
10. In June 2020 the Council adopted a new interim planning policy which outlined how planning applications for park homes across the Borough would be considered. This followed consultation with operators to establish if there was demand for 12 month occupancy. One of the criteria was that if a site is within an area at high risk of flooding, the risks must be mitigated through design solutions to the satisfaction of the Environment Agency. This policy was taken forward as draft Policy DM18 in a pre-submission consultation on the Local Plan review which commenced in February 2021.
11. However, the Council decided not to proceed with this version of the draft Plan but has undertaken further consultation on issues and options with a view to producing a further draft Plan. It is unclear whether the Council anticipates that a specific policy for park home sites will be progressed. Nevertheless, because of its informal status and as the previous draft Local Plan is not being pursued, the interim policy can only have limited weight as a material consideration. These findings broadly concur with those of the Inspector in the Plough Leisure Caravan Park appeal (Ref: APP/V2255/W/21/3277288).
12. Consequently this interim policy does not justify an exception to national policy which establishes that the proposal is objectionable in principle.
13. The appellant also refers to a decision from Chelmsford in 2014 where park home development was permitted in Flood Zone 3 notwithstanding Environment Agency objections. An isolated example such as this does not represent a good reason to set aside the provisions of the Framework.
14. Based on the evidence provided, the actual risk of flooding affecting future occupiers of the development is not great given the defences in place. Nevertheless, the additional occupation proposed would occur in the winter months when the likelihood of flooding events is at its highest. Furthermore, national policy in the Framework, which is reflected in the Local Plan, seeks to avoid flooding issues occurring by adopting a strict approach to the location of this type of development. There is no good basis to depart from this at Meadow View Park.
15. The appeal site is also within a Coastal Change Management Area (CCMA) as defined in the Local Plan. The Framework establishes that plans should reduce risk from coastal change by avoiding inappropriate development in vulnerable areas. Local Plan Policy DM23 sets out the type of development that will be granted permission within the CCMA but this does not include residential park homes. Furthermore, the PPG advises that permanent new residential development (including through change of use) will not be appropriate within a CCMA. These considerations reinforce the objection on flooding grounds.
16. Therefore the proposed development would not be in a suitable location having regard to the risk of flooding and the effect on a CCMA. It would be contrary to Policies DM21 and DM23 and is not justified by any of the other considerations put forward in this respect.

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Tourism and the economy

17. Local Plan Policy CP1 on building a strong, competitive economy seeks to safeguard or enhance Swale's 'Principal Tourism Assets' which includes holiday parks. It also aims to consolidate or widen the Borough's tourism potential. Support for the existing tourism offer is reiterated in Policy ST6 which contains the Isle of Sheppey area strategy. Policy DM3 establishes that planning permission for residential development will not be permitted where this would reduce the potential for rural employment. However, the existing caravan park is not an employment site as such.
18. Nevertheless, holiday parks provide direct employment and their users support shops, pubs, restaurants and visitor attractions. That said, residents of the proposed park homes would also spend money locally on goods and services and there is no evidence that expenditure would be less than at present. There is therefore no clear economic objection to the proposal.
19. The tourism industry is particularly significant for Sheppey with the island containing the largest concentration of holiday parks in Kent and also around 2% of the United Kingdom total. It is estimated that there are some 7,000 chalets and caravans on Sheppey so that the loss of 37 units would have a negligible overall impact. It is also suggested that the management does not allow the hiring out of caravans for holiday or recreational use and so the benefits for wider tourism are currently modest. There are no on-site leisure facilities but the site is well placed to access the sea and local services and despite its comparatively small size there is no evidence that it is not viable.
20. The loss of a holiday park to another use would run counter to the general strategies that seek to promote and increase tourism. Accepting the proposal would also send a message to other operators that similar changes may be possible elsewhere and so potentially dilute the wider value of the tourism sector. However, there are no specific policies that directly oppose the loss of existing static holiday caravan sites. As the actual harm to the tourism sector arising from the proposal would be limited the objection relates solely to the conflict with the broad thrust of relevant policies and is not a strong one.
21. Policy DM5 provides that planning permission will not be granted for the permanent occupancy of caravans and chalets in order to secure a sustainable pattern of development and to protect the character of the countryside. Given the location of the site and the existing permitted use, no objections are raised in either of these respects. Nevertheless, the breach of the specific terms of the policy also counts against the proposal.
22. The appeal decision at Harts Holiday Park is not directly comparable as it sought occupation of the holiday park for 11 and a half months of the year (Ref: APP/V2255/W/16/3165477). The decision in the Beverley Caravan Park appeal is somewhat dated and the concern was that all year round occupancy would be contrary to policy objectives of limiting new residential development to sustainable locations and protecting the character and appearance of the countryside (Ref: APP/V225/A/11/2143536/NWF). None of those objections apply in this case.
23. At the end of the day, the loss of holiday accommodation would be contrary to the Council's aspirations in Policies CP1 and ST6. There would also be conflict with the terms of Policy DM5. There is no objection purely on economic

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grounds. The effect of the proposal on the tourism industry would nonetheless be a negative one but the actual impact of this would be limited.

Integrity of the SPA

24. The Medway Estuary and Marshes SPA provides habitats for overwintering birds. Because the appeal site is within 6km of the SPA, the proposal has the potential to affect its features of interest. In combination with other development in Swale, the year round residential use of 37 caravans would be liable to lead to increased recreational disturbance compared to holiday occupation for 10 months of the year. There would therefore be a likely significant effect on the SPA. To mitigate this impact the Council expects that a financial contribution is made.
25. The appellant does not wish to avoid payment but there is no mechanism in place to achieve this should planning permission be granted. As a result, following an appropriate assessment, the proposal would adversely affect the integrity of the SPA. Moreover, in these circumstances, the Conservation of Habitats and Species Regulations preclude the proposal from proceeding.

Other Matters

26. The Council cannot demonstrate a five year housing land supply. As at spring 2021 this was equivalent to 4.6 years. However, paragraph 182 of the Framework confirms that the presumption in favour of sustainable development, set out in paragraph 11, does not apply in cases such as this, where it has been concluded that the plan or project would adversely affect the integrity of a habitats site. Furthermore, the proposal would be within an area at risk of flooding and this provides a clear reason to refuse the development proposed. Therefore the presumption does not apply for that reason too.
27. Nonetheless, the proposal would provide low cost housing contributing to the shortfall in supply. If occupation were age restricted, the park homes would meet the needs of older people as referred to at paragraph 62 of the Framework. The standard of the homes would be higher than that for caravans and would meet the specifications of BS 3632. The site is also well located for local amenities and access to public transport. All of these considerations favour the proposal.
28. The Council seeks financial contributions towards a range of services including education, community learning, youth services, libraries, social care, waste and bins. This is on the basis that permanent residential occupiers would use them but current occupiers do not. However, the 'take up' of the various services may not necessarily be zero at present. For example, if occupation were limited to over 55s by condition, then it is unlikely that those living at Meadow View Park would require education or youth services. However, as the appeal is to be dismissed, there is no need for further consideration to be given to this matter or firm conclusions reached.

Conclusions

29. The permanent accommodation proposed would not be in a suitable location having regard to the risk of flooding and the effect on a CCCMA. There would also be a limited adverse impact on the tourism industry. The benefits associated with 37 park homes for residential occupation do not override these objections. In particular, in meeting the challenge of flooding, national policy is

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clear that risks should be avoided. Furthermore, the proposal would adversely affect the integrity of the SPA. This is an overriding consideration.

30. Therefore, the proposed development would not accord with the development plan and there are no other material considerations which outweigh this finding. So, for the reasons given, the appeal should not succeed.

David Smith

INSPECTOR



Costs Decision

Site visit made on 2 November 2022

by **David Smith BA(Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **14 November 2022**

Costs application in relation to Appeal Ref: APP/V2255/W/21/3287086 Meadow View Park, Irwin Road, Minster On Sea, ME12 2DB

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Boswell Park Homes for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal planning permission for the stationing of 37 static caravans including associated hardstanding and landscaping without complying with conditions attached to planning permission Ref 18/506323/FULL, dated 3 June 2019.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. As explained in the appeal decision, the Council introduced an interim planning policy in June 2020 which outlined how it would consider planning applications for park home sites across the Borough. A similar policy was included in the pre-submission consultation on the draft Local Plan Review which commenced in February 2021. However, the Council subsequently decided not to proceed with that version of the draft Plan.
4. The report to the Council meeting in June 2020 explained that the interim policy would not have the full weight of adopted local plan policy but would nonetheless be a material consideration of some weight. The appellant indicates that information and news updates about the interim policy were all over social media and the Council's website. It is therefore understandable that the Council was seen as taking a positive approach to park home development, including in areas at high risk of flooding.
5. The Council was nevertheless perfectly entitled to bring forward an informal policy in response to issues identified in relation to, amongst other things, the affordability of housing in the Borough and the absence of a five year housing land supply. At the time the application was determined in May 2021, the park homes policy was included as Policy DM18 of the draft Local Plan. The delegated report refers to its status and it was technically correct that the policy should attract little weight when deciding the application. However, it seems strange that the Council gave it so little importance when considering

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the application, especially given that it was promoting the policy with the intention of supporting proposals for park homes.

6. The policy is no longer part of the draft Local Plan as progress on its preparation has been halted. Furthermore, the Council has explained its objections to the proposed development with regard to policies in the adopted development plan. Whilst it is possible to appreciate the applicant's disquiet about the way that the planning policy landscape changed after June 2020, there was no unreasonable behaviour. Rather what occurred was an evolution of policy, a change of tack on the draft Local Plan and a legitimate balancing of the interim policy against the development plan.
7. Given the way that events unfolded, it was reasonable for the Council to give primacy to the Local Plan over the interim policy. Therefore, a costs award is not warranted.

David Smith

INSPECTOR