
Appeal Decisions

Site visit made on 22 March 2017

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 May 2017

Appeal A Ref: APP/Z2505/C/16/3158727

Appeal B Ref: APP/Z2505/C/16/3158536

Willow Lodge Park, Chapel Hill Road, Chapel Hill, Lincoln LN4 4QB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Ronald Driscoll (Appeal A) and Mr Alan Forman (Appeal B) against an enforcement notice issued by Boston Borough Council.
 - The enforcement notice, numbered PENF051/16, was issued on 19 August 2016.
 - The breach of planning control alleged in the notice is failure to comply with condition No 6 of a planning permission Ref B/04/0793 granted on 17 December 2004.
 - The development to which the permission relates is described on the planning permission as: Timber lodge development (64 units) to include the formation of car parking and landscaped area. The condition in question is No 6 which states that: All lodges shall be used for holidaying and none shall be occupied between the 31 January and 31 March in any year. The notice alleges that the condition has not been complied with in that timber lodges have been occupied as permanent homes.
 - The requirements of the notice are: Cease the use of the timber lodges situated on the land for full time occupancy and only use them as holiday homes and not to occupy them for any purpose at all between 1st February and 31st March in any year.
 - The period for compliance with the requirements is 12 months after the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. The appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. Three appeals were initially submitted against the service of the enforcement notice. Mr and Mrs Driscoll, residents of one of the units at the site, were identified as appellants on the same appeal form. Where two appellants are named it is normal practice for the Planning Inspectorate to assign a reference number to each appellant, even though the grounds of appeal are the same. The Inspectorate refers to such cases as 'Mr and Mrs' appeals.
 3. Where an appeal is made on ground (a), a fee is payable and the appeal will only proceed when that fee has been paid. It is common that the fee will only be paid in relation to one appellant in the case of 'Mr and Mrs' appeals. In this case, the fee has been paid in relation to the appeal by Mr Driscoll (Appeal A). Given that no fee was paid in relation to the appeal by Mrs Driscoll and that
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there were no other grounds of appeal beyond ground (a), that appeal falls away. Appeal B was submitted by Mr Forman, the owner of the site. Although the appeals by Mr Forman and Mr Driscoll were submitted independently of one another they relate to the same notice and the grounds of appeal are very similar. Consequently, I have issued my decisions in relation to both appeals within a single letter.

4. The appeal forms indicated that the appeals were submitted on grounds (a) and (d). However, the appeals on ground (d) have subsequently been withdrawn and the appeals will proceed on ground (a) alone.

Costs

5. An application for costs was made by Boston Borough Council against Mr and Mrs Driscoll in relation to Appeals A and B and Mr Forman in relation to Appeal C. That application is the subject of a separate Decision.

The Appeals on Ground (a)

6. Where an appeal on ground (a) is submitted in cases relating to a breach of condition, planning permission is sought to carry out the original development without complying with the particular condition enforced. It is open to me to discharge the relevant condition and substitute any new conditions that may be required¹ and similarly to grant planning permission for the development subject to any necessary conditions².
7. Planning permission was granted for the formation of a lodge park containing 64 lodges in 2004. The permission has been implemented, the access to the highway has been formed, and the internal access arrangements are in place. Only a small number of lodges have so far been brought to the site. The effect of removing condition 6 would be to remove the holiday occupancy restriction to the entire development and not just those units.
8. Having regard to the information before me I consider that the main issues are:
 - i) Whether the permanent residential use of the holiday lodges at the site would represent a sustainable form of development with particular regard to the accessibility of local services and facilities and the effect on car usage;
 - ii) The effect on flood risk;

Whether any harm that may arise from the discharge of condition 6 could be off-set through the imposition of alternative conditions; and
 - iii) The effect of any decision on the human rights of the occupants of the site.

Reasons

i) Sustainability

9. The appeal site is situated in a rural location within the Lincolnshire countryside, to the south-west of Chapel Hill; the closest settlement. The area

¹ Under the provisions of s177(1)(b) and s177(4) of the Town and Country Planning Act 1990

² s177(3) and s70(1)(a) of the Act

is outside the settlement envelope of Chapel Hill and is designated as countryside in the Boston Borough Local Plan. The Chapel Hill Marina and Caravan Park is located immediately to the east, on the opposite side of Chapel Hill Road.

10. With the exception of the public house/ restaurant, Chapel Hill contains very few services or amenities and any residents would need to travel further afield to gain access to a full range of shops or for employment opportunities, leisure facilities, healthcare services or higher order amenities. The closest villages with any shops and services of note are Tattershall and Coningsby which are located a few kilometres to the north. The larger settlements of Lincoln, Boston, Sleaford, Horncastle, Woodhall Spa and Horncastle are all a substantial distance from the site, accessed on rural roads. No evidence of any public transport links is before me and it is highly likely that those living at the site will be required to make lengthy journeys by private car to access a full range of shops and services. Similarly, residents will be somewhat isolated from community and healthcare facilities.
11. The definition of sustainable development, as set out at paragraph 7 of the National Planning Policy Framework (the Framework) is based on three, mutually dependent, strands; economic, social and environmental. Due to the poor levels of accessibility described above I find that the site performs poorly in all three. The heavy reliance upon the private car would lead to unsustainable transport patterns and would not foster a move to a low carbon economy. I note that Lincolnshire is a predominantly rural county where, in all probability, one may expect greater reliance on the car than, for example, a densely populated metropolitan area. Nonetheless, even by local standards, the site is located a large distance from the towns and villages that contain the services required for day to day living. Thus, notwithstanding the rural nature of the area, the likely travel patterns associated with permanent residential use would be unsustainable.
12. Similarly, in social terms, residents would have poor access to local services and they would also be poorly placed to support the local economy due to the restricted access to local shops. All in all, the site is located in the midst of an extremely rural area and the creation of an unfettered planning permission for 64 residential units would represent an extremely unsustainable development given those locational constraints.
13. Paragraph 55 of the Framework identifies that housing should be located where it will enhance or maintain the vitality of rural communities in order to promote sustainable development in rural areas. For the reasons given, I conclude that those aims would not be met by the development. Paragraph 55 also states that isolated homes in the countryside should be avoided unless there are special circumstances. The term 'isolated' is not defined. In a physical sense, the proposal would not be isolated, being situated next to existing development, including the Marina and Caravan Park.
14. However, one of the aims of paragraph 55 is to promote sustainable development in rural areas. In the context of sustainable development, I see no reason why the term isolated should be restricted merely to the physical form of a building. To my mind, the site is isolated from shops and services due to its remote location and, it seems to me that the thrust of paragraph 55 is to avoid housing in such locations. Thus, in the absence of condition 6 I

have no doubt that the development would be highly unsustainable, contrary to the fundamental aims of the Framework.

15. It is clear that the application was only approved having regard to the proposed use as holiday accommodation. It strikes me that there are fundamental differences between holiday accommodation and permanent residential units in terms of the effect on the rural economy, the effect on travel patterns and the implications for the needs of any occupants in terms of access to health and community facilities. Those on holiday are more likely to visit local attractions more regularly than permanent residents and to spend money at local attractions, restaurants etc whilst on holiday. I have not been provided with a copy of the committee report/ or delegated officer report relating to the original approval but I consider it likely that the economic argument in favour of tourist related accommodation was a matter that weighed in favour of approving the scheme, at that point in time. I am not satisfied that those benefits apply equally to permanent residential accommodation.
16. Moreover, if the occupancy restriction were to be removed, the units could be occupied by a wide range of people, including those in full-time employment, those with children or the elderly. The associated travel patterns would necessitate regular journeys to and from work, school or healthcare appointments and, to my mind, that pattern of travel is markedly different to the way in which holiday units would be used. In addition, those on holiday would be less likely to feel the need to access community facilities or to integrate with the local community when compared to a permanent resident.
17. Therefore, I find substantial differences between holiday accommodation and permanent residential accommodation having regard to the social, economic and environmental dimensions of sustainable development. Having regard to the comparison between the two permanent residential accommodation would be much less sustainable and, in the absence of condition 6, the resultant development would be inherently unsustainable.

ii) Flood Risk

18. Although not referred to within the reasons for issuing the enforcement notice, the Council has noted that the site is located within Flood Zone 3, with reference to the Environment Agency flood zone maps. Flood Zone 3 is identified as being an area with a high probability of flooding³. In such areas a site specific flood risk assessment is required for any application for new development⁴. The thrust of national planning policy, as identified within section 10 of the Framework is to direct vulnerable development away from the areas of highest flood risk, following a sequential approach.
19. In this case, the development for which planning permission is sought under ground (a) is the formation of a residential park, without any occupancy restriction. I appreciate that the holiday park benefits from planning permission but it is not clear if any flood risk assessment was undertaken prior to the grant of permission.
20. In any event, permanent residential use would see occupation throughout the year and would entail residents living at the site along with their domestic

³ As identified by the Environment Agency and set out in the table reproduced within the Planning Practice Guidance at paragraph: 065 Reference ID: 7-065-20140306

⁴ Paragraph 103 of the National Planning Policy Framework

belongings and possessions. That is a different scenario than holiday use where occupation is temporary and the units would not be used as a main place of residence. The Planning Practice Guidance (PPG) provides advice on the 'vulnerability classification' of specific types of development in relation to flood risk⁵. The development classification scale is set out in the following order: 'water compatible', 'less vulnerable', 'more vulnerable', 'highly vulnerable' and 'essential infrastructure'. Caravans, mobile homes and park homes intended for permanent residential use are identified as 'highly vulnerable' whereas holiday units aimed at short term holiday lets are identified as 'more vulnerable'. In other words, the PPG identifies the level of vulnerability of permanent park homes as greater than holiday accommodation.

21. The PPG also provides a table of compatibility between the flood zone level and the level of vulnerability⁶. That matrix identifies that 'highly vulnerable' development should not be permitted within Flood Zone 3. 'More vulnerable' development may, theoretically, be permitted in Flood Zone 3a but only where an exception test has been applied. It is not clear whether such a test was applied at the time the holiday park was approved or if the test was applicable at that point. In any event, the PPG draws a clear distinction between the use of caravans, mobile homes and park homes for holiday use and use for permanent residential accommodation. The 'exception test' does not apply to 'highly vulnerable' development within Flood Zone 3. Rather, the PPG is unequivocal in that such forms of development should not be permitted. The risk based approach within the PPG is supported by the contents of paragraphs 100 to 103 of the Framework.
22. Therefore, having regard to the combination of risk and vulnerability the PPG and the Framework would indicate that development should not be permitted on grounds of flood risk. No site specific flood risk assessment or other information has been presented to indicate that a contrary approach would be appropriate in this case. Thus, it is clear that a use for permanent residential accommodation would be contrary to national policy with regard to flood risk and would result in a highly vulnerable form of development with associated risks to any occupants of the units at the site.

iii) Whether Any Harm Could be Overcome the Grant of Planning Permission Subject to Conditions

23. The appeal form in relation to Appeals A and B identifies that the primary aim of the appeal is to remove condition 6 altogether but two further alternatives are also suggested, firstly to remove the requirement that the units are occupied for holiday purposes and secondly to amend and/or remove the requirement that the units shall not be occupied between 31 January to 31 March. In relation to the latter, Mr and Mrs Driscoll contend that a period of one month would be more reasonable. The subsequent appeal statement put forward two further alternatives; a condition to restrict the number of lodges that may be used for permanent accommodation and the imposition of a requirement to provide local convenience shopping on site.
24. There would appear to be no local policy approach to the formulation of holiday occupancy conditions in terms of the precise details of any wording, nor have I been referred to any specific national guidance relating to the construct of

⁵ Paragraph: 066 Reference ID: 7-066-20140306, Table 2: Flood Risk Vulnerability Classification

⁶ Paragraph: 067 Reference ID: 7-067-20140306, Table 3: Flood risk vulnerability and flood zone 'compatibility'

holiday occupancy conditions. In my experience it is common practice to exclude use between certain periods to prevent the unit becoming a permanent dwelling. I am not persuaded that the three month period contained within condition 6 is unreasonable in that respect. In effect, the condition prevents use over the winter months when it is reasonable to assume that there will be less demand for holiday accommodation and it seems to me that the excluded period of three months strikes a reasonable balance between the need to make good use of accommodation for holiday purposes and the need to avoid the units being used for permanent accommodation. To my mind, a shorter period of vacancy would not have the same effect.

25. Moreover, the rationale for approving the scheme was on the basis of the provision of tourism related accommodation. The appellants contend that demand is low for holiday homes but limited information is before me to support that assertion. No evidence of any attempts to market the site for holiday purposes has been presented. In any event, even if demand is low for holiday accommodation, it does not follow that there is a rationale for removing the holiday occupancy requirement from condition 6. If there is insufficient demand for holiday units there is no requirement within the planning permission to fully occupy the site to its maximum permitted level of 64 units. Given the differences between permanent residential occupation and holiday occupation, as set out above, no compelling reason for the removal of the holiday occupancy requirement has been presented.
26. Neither can I see any justification, in planning terms, to permit the development subject to a condition that would permit a proportion of the units to be used as permanent accommodation. Fundamentally, the site is unsustainable and the PPG and Framework identify that permission should not be granted for highly vulnerable developments within Flood Zone 3. Those constraints would apply to permanent residential development whether that be for one or more units. The Planning Practice Guidance (PPG)⁷ identifies that planning permission runs with the land and states that conditions that seek to limit the benefit of any permission to specific individuals will rarely be justified. No information has been presented to indicate that it is essential for the appellants to reside at the site and I am not satisfied that a condition to limit numbers of permanent residential units or a personal permission would be justified in planning terms.
27. No details have been put forward as to how the suggested condition relating to the operation of a convenience store would work in practice. It is not clear where such a unit would be located, who would operate it or whether it would be commercially successful. In any event, planning permission would be required for the provision of a retail unit and it is outside the scope of my decision to grant permission for such a use by condition. Therefore, the suggested condition would not overcome my concerns regarding the poor levels of accessibility to local shops and services.

iv) Human Rights

28. Mr and Mrs Driscoll contend that they have occupied their caravan/ lodge, referred to as Holly Lodge, as a permanent dwelling since February 2012. Although no documentary evidence has been submitted to support that claim, the Council has served the enforcement notice on the basis that condition 6 has

⁷ Paragraph: 015 Reference ID: 21a-015-20140306

- been breached and there is no dispute between the parties in that regard. It is not clear if Mr and Mrs Driscoll researched the planning restrictions relating to the site before they entered into a lease with Mr Forman.
29. If I were to refuse to discharge the condition and/or refuse to grant planning permission and uphold the notice Mr and Mrs Driscoll would be required to cease the use of the unit for anything other than holiday accommodation and to cease to use the unit between 31 January and 31 March in any given year. I have no doubt that the consequences could be quite severe, resulting in the inability to use the unit as their permanent home and disrupting family life.
30. Article 8(1) of the European Convention on Human Rights, as enshrined in the Human Rights Act (1998) states that everyone has the right to respect for his private and family life, his home and his correspondence. To my mind this is undoubtedly a case where Article 8 is engaged because a decision to refuse planning permission and uphold the enforcement notice would interfere with the home and family life of the occupants.
31. Article 8(2) identifies that there shall be no interference by a public authority with the exercise of Article 8 rights except as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, the economic well-being of the country, the prevention of crime and disorder, the protection of health or morals, or for the protection of the rights or freedoms of others.
32. In other words, rights under Article 8(1) are qualified rights and, in appropriate circumstances, interference may be justified in the public interest. Regulation of land use through development control measures is recognised as an important function of Government and is necessary to ensure the economic well-being of the country. In that sense, the regulation of development for legitimate planning aims can be said to be in the public interest. The aim is to strike the right balance between the general interests and rights of the wider community and the requirement to protect an individual's private rights. Central to the principle of a fair balance is the doctrine of proportionality.
33. I have identified that the use of the site for permanent residential accommodation would represent an unsustainable form of development, contrary to the over-arching aims of the Framework. It is in the interest of the public and the local community to ensure proper regulation of land and to prevent unsuitable development within the countryside. In terms of the location of the site I have concluded that access to local shops, services and employment opportunities is poor and that such access would be heavily reliant on the private car. The site is also located within an area of high flood risk.
34. Those matters of public and community interest attract substantial weight in the planning balance. The constraints also apply to Mr and Mrs Driscoll themselves, for example, the risk of flooding and poor access to services. In particular, the area is within Flood Zone 3 which has a high probability of flooding and the proposed use for permanent residential accommodation is a highly vulnerable use, as identified within the PPG. The PPG and the Framework identify that the location of the site is not suitable for the proposed use and that permission should not be granted on those grounds. In the absence of a site specific flood risk assessment I can only conclude that there is a significant risk of flooding; a risk that could damage property and put the safety of any residents at risk. To my mind, those concerns attract substantial

- weight both in terms of the public interest of directing development to appropriate locations and personal interest of any residents in terms of avoiding damage to property or risk to personal safety.
35. Whilst the impact of any decision would no doubt be significantly disruptive for the appellants, no information has been presented to suggest that they would be rendered homeless or unable to find permanent accommodation elsewhere if the notice was upheld. I accept that limited information is before me in relation to those matters. However, in the context of the significant risk of flooding and the associated risks to property and personal safety, whatever the personal circumstances of the appellants, I cannot conclude that those circumstances would outweigh the very strong public policy presumption against locating highly vulnerable development within areas with a high probability of flooding.
36. Put simply, a grant of planning permission could endanger life and property and I cannot conclude, on the information before me, that it would be in the personal interests of Mr and Mrs Driscoll, or any other occupants, to take that course of action. Therefore, when considered in the round I conclude that the interference of the human rights of Mr and Mrs Driscoll, including the effect on their home and family life would be lawful, necessary and proportionate.
37. I have also noted reference to the fact that other units on the site may have been occupied as permanent residential homes, in contravention of condition 6. The enforcement notice was served on all those with an interest in the land and the right of appeal extended to all of those individuals. In the absence of an appeal from specific individuals I cannot be certain of their individual circumstances, or the degree to which they rely upon accommodation at the site as their primary accommodation or main home. Consequently, I can only deal with the appeals before me on the information that has been presented by the respective parties and, having regard to that information, I am satisfied that the impact of any decision to retain condition 6 would be proportionate, when set against the Human Rights of those concerned.

Other Matters

38. Reference has been made to the fact that the units provide affordable accommodation. However, there is no planning mechanism to control the level of affordability as would be the case in traditional affordable housing and, in any event, my concerns relating to the unsustainable location of the development would apply equally to those in need of affordable housing as any other tenure. Consequently, even if there is a shortage of low cost housing in the area – an assertion that has not been demonstrated – the provision of permanent housing on the appeal site would represent an unsuitable and unsustainable location in comparison to sites closer to larger villages with services and other urban centres.
39. I have also been referred to other caravan parks within the local area which, it has been suggested, include units that may be occupied on a permanent basis. I have not been provided with full details of the planning permissions relating to those sites but have no reason to doubt that permanent accommodation may be available. Nonetheless, I cannot be certain of the circumstances relating to those sites or the reasons why permission may have been granted. I must assess the appeal before me on the basis of current planning policy and

guidance and the existence of permanent residential accommodation at other parks does not affect my judgement in that regard.

40. Policy CO1 of the Boston Borough Local Plan (1999) states that development will not be permitted in the countryside unless it is supported by other local plan policies. The rationale for the policy is to protect the countryside in environmental terms, albeit that the policy does recognise the need for certain kinds of development within the countryside. The policy pre-dates the Framework by at least 15 years and the Council accepts that the policy is not up to date, having regard to its five-year housing land supply position and the terms of paragraph 49 of the Framework.
41. In addition, the policy states that development will not be permitted 'unless it is supported by other local plan policies'. Thus, it is clear that the policy is intended to be read as part of a suite of local policies within the plan as a whole. Given the age of the Local Plan many of its policies have no longer been 'saved' and it seems to me that the ability to draw support from other plan policies has been diminished as a result, such that it would be difficult for any development to comply with the terms of the policy. On the limited information provided it is difficult to attach anything but limited weight to the policy.
42. Regardless of the above, the Council has granted planning permission for the development of the site and, in visual terms, the effect on the character and appearance of the countryside would be little different if the site were developed for permanent residential homes as opposed to holiday accommodation. Consequently, whilst the proposal to develop the site without complying with condition 6, would appear to conflict with policy CO1 due to the lack of support from other Local Plan policies, I attach little weight to that conflict for the reasons set out.

Overall Conclusion

43. The use of the site for permanent residential accommodation represents an unsustainable form of development that is contrary to the over-arching aims of the Framework. In the absence of a FRA I cannot conclude that permanent residential accommodation would be appropriate, having regard to the potential for flood risk at the site. Having regard to the six tests set out at paragraph 206 of the Framework I find that condition 6 serves a necessary planning function in restricting the residential use of the site to holiday related purposes. I also find that the restrictions imposed by the condition are reasonable and no evidence has been presented that would lead me to conclude that the condition should be discharged, having regard to the terms of the Framework, taken as a whole.
44. Moreover, the suggested alternative conditions put forward by the appellants would not overcome my concerns with regard to the unsustainable impact of the development in the absence of condition 6. I am also satisfied that the requirements of the notice are proportionate, having regard to the human rights of the appellants.
45. Accordingly, I conclude that the condition should not be discharged and planning permission should not be granted for the development in the absence of the condition. For those reasons, the appeals on ground (a) fail and I conclude that the appeals should not succeed. I shall uphold the enforcement

notice, refuse to discharge the condition and refuse to grant planning permission on the deemed applications.

Chris Preston

INSPECTOR