The Planning Inspectorate

Appeal Decision

Hearing held on 25 July 2017

Site visit made on 25 July 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 22 August 2017

Appeal Ref: APP/A2525/W/17/3172908
Woodlands Caravan Park, Jekils Bank, Moulton Eaugate, Spalding PE12 0SX

- 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 Mr S Smith against the decision of South Holland District Council.
- The application Ref H23-1225-16, dated 29 November 2016, was refused by notice dated 23 January 2017.
- The application sought planning permission for use of land for siting of one residential caravan and three holiday caravans and installation of septic tank without complying with a condition attached to planning permission Ref H 23/628/81/1271, dated 8 September 1981.
- The condition in dispute is No 1 which states that: *"The occupancy of the residential caravan hereby permitted shall at all times be restricted to the applicant."*
- The reason given for the condition is: *"The site is in a rural area where it is the policy of the local planning authority not to permit residential development except in the interests of agriculture or where related to the use of the land. This permission has only been granted having regard to the circumstances of the applicant and this condition is imposed accordingly."*

Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted in September 1981 for use of the land for siting of one residential caravan and three holiday caravans, together with the installation of a septic tank under planning permission ref H 23/628/81/1271 as per the original decision notice. I have corrected the description of development accordingly in the interest of certainty as to the planning permission subject to this appeal. The grant of planning permission in September 1981 superseded any requirements of conditions of a previous temporary planning permission granted in July 1977[1] which included that four caravans be removed from the site after a period of five years from the date of the permission and that the site be reinstated to its former condition.

3. Planning permission ref H 23/628/81/1271 was subject to two conditions. The disputed condition 1 restricted the occupation of the residential caravan to the

[1] Planning permission ref H23/0615/76 – 28 July 1977

original applicant (I M Mimmack) by reason of personal circumstances. Condition 2 restricted the occupancy of the three holiday caravans to the period commencing 1 April and ending 31 October in any one year.

4. Planning permission ref H 23/628/81/1271 was implemented and the disputed condition is extant. The Council have subsequently granted a Certificate of Lawful Development (CLD) in November 2016 for the use of the three holiday caravans (caravans 1, 3 and 4 as indicated on the submitted plans) for residential purposes. Breach of the seasonal occupancy restriction in condition 2 relating to each of those holiday caravans was considered to be immune from enforcement action based upon the passage of time.

5. The caravan subject of this appeal, denoted as caravan 2 on the submitted plans, was not included in the CLD as it was occupied by the original applicant in accordance with condition 1 for a period of approximately 31 years until her death in August 2013. It is not contended by the Council that a breach of condition has occurred and caravan 2 was not occupied at the time of my visit, despite recent renovations and ongoing maintenance of its immediate surroundings having taken place. The appellant has applied to remove the disputed condition, as the residential use for which caravan 2 has been sited since the implementation of the planning permission can no longer take place in compliance with it.

6. Having regard to the above, the main issue is whether removing the disputed condition would be consistent with the objectives of local and national planning policies relating to the location and supply of housing in rural areas and whether there are any other considerations relevant to whether it would be necessary and reasonable.

Reasons

Location and supply of housing in rural areas

7. The appeal site includes a traditional building in a rural location and surrounding land now occupied by 4 static caravans with a shared access from Jekils Bank. The site is bounded by mature hedges which prevent open views into the site from public vantage points, aside from very limited views from the site access of the building and caravans 2, 3 and 4 within a setting of intervening ornamental trees and landscaping. The site adjoins a residential property known as Woodland Lodge to the west and has a gated access into an enclosed parcel of land to the north. However, that land does not form part of the appeal site and its use is unrelated to the application subject to this appeal.

8. The South Holland Local Plan (LP), adopted July 2006, and the National Planning Policy Framework (the Framework) do not include policies which specifically relate to the use of caravans for permanent residential use. However, the removal of the disputed condition would allow the occupation of the residential caravan previously granted permission to be unconstrained and therefore, capable of permanent occupation as a sole/main residence or as a second home. An appeal decision[2] has been drawn to my attention relating to a proposal to remove a condition from a planning permission, which imposed a seasonal occupancy restriction, to allow permanent residential occupation of static caravans. Based on the evidence before me, I have no reason to take a

[2] APP/L3245/W/15/3140321 - 25 April 2016

different approach to that Inspector. A permanent residential use of caravans, although a use of land, should be assessed against relevant policies in the development plan and the Framework relating to the supply of housing, including those relevant to rural areas.

9. Saved Policy SG1 of the LP provides general principles of sustainable development to which proposals are expected to be consistent, with emphasis on preventing harm to quality of life for residents and South Holland's essential character and main environmental assets, together with energy and natural resource conservation. Having regard to the sustainable development principles, Saved Policy SG2 sets out the distribution of development which requires that all proposals, amongst other things, adopt a sequential approach that prioritises the use of previously developed land and buildings within defined settlement limits, then to greenfield land within defined settlement limits and finally to land adjacent to defined settlement limits. The policy also seeks to ensure that, wherever possible, development is served by a choice of transport modes including existing public transport or improvements thereto. Saved Policy SG3 sets out the settlement hierarchy, whereby Moulton Eaugate is not listed as a main town, area centre or group centre or within the defined settlement limit of other rural settlements shown on the LP Proposals Map.

10. Moulton Eaugate consists of a dispersed pattern of development with no village core or associated services and functions in the immediate vicinity of the appeal site. The site forms part of the intermittent presence of dwellings, farms and holiday lets within a predominance of open fields along Jekils Bank that leads towards Fenland Airfield and Holbeach St Johns to the east and Moulton Chapel to the west, where some local services and facilities are available including a post office, village store, community centre, primary school, places of worship and public houses. Nevertheless, the site and its immediate surroundings lie outside of and distant from built up areas within a setting of open fields and agricultural land that is reasonably defined as open countryside in the absence of a built envelope or village centre.

11. Saved Policy SG4 of the LP relates to development in the countryside which, amongst other things, indicates that planning permission will only be granted for development in the open countryside which is essential in the proposed location and cannot reasonably be accommodated within defined settlement limits. In addition, Saved Policy HS7 of the LP relates to new housing in open countryside including other rural settlements, and states that outside of the defined settlement limits of Spalding, area centres and group centres, new housing development will only be permitted where it is proven to be essential to meet the needs of agricultural, forestry or other workers or the proposal is for small scale, rural exception affordable housing.

12. With regard to the above, the occupation of the caravan would not be secured as affordable housing. The remaining criteria of Saved Policies SG4 and HS7 of the LP broadly relates to paragraph 55 of the National Planning Policy Framework (the Framework) which seeks to avoid new isolated homes in the countryside unless there are special circumstances. Paragraph 55 of the Framework lists examples of development types which constitute special circumstances as, amongst other things, those with an essential need for a rural worker to live permanently or near their place of work in the countryside, and where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting.

13. The existence of the disputed condition, although not specifically requiring removal of the caravan via its wording, reasonably intended through its enforcement that residential use of caravan 2 would not be a permanent feature of the site. The existence of the disputed condition does not permit the future occupation of caravan 2 following the death of I M Mimmack and the removal of the disputed condition would necessitate the grant of a new planning permission. It, therefore, follows that should the proposal be allowed, grant of planning permission for future occupation of the caravan would be as a new home. On that basis relative to the Framework, the proposal is reasonably assessed in terms of paragraph 55 and does not fall within the definition of empty housing as referred to in paragraph 51.

14. The caravan is within a group of other caravans and permanent buildings, where the dispersed nature of development in the locality is, nevertheless, isolated from services and facilities. During the hearing, the appellant did not dispute that the proposal would result in an isolated home in the countryside. Having regard to the criteria for new isolated homes in the countryside, the site falls within the definition of previously developed land in the Framework[3] by virtue of the site and the land upon which the caravans are located falling with the curtilage of developed land. However, caravan 2 would retain mobility in so far as it would be capable of being detached from services and the base upon which it sits to allow it to be removed from the site intact. The use of land to site the caravan as permitted in accordance with the disputed condition has not, therefore, consisted of operational development to date and it does not constitute a building. Consequently, the caravan would not satisfy the criteria for re-use of redundant or disused buildings under paragraph 55 of the Framework, irrespective of its previous occupation, its potential to permanently remain within the site or any potential future residential occupation should the disputed condition be removed.

15. The appellant has not sought to demonstrate a need for a rural worker to live permanently within the site or near to their place of work in the countryside. A previous refusal of planning permission for use of land for siting of three additional mobile homes for permanent dwelling use in March 1981[4] implies that the subsequent inclusion of holiday lets as part of planning permission ref H 23/628/81/1271 may have introduced some need for an on-site residential presence for management purposes, particularly between 1 April and 31 October of each year. However, any such need for a rural worker to live within the site no longer exists following the grant of the CLD relating to caravans 1, 3 and 4 for residential purposes and their ongoing occupation as private residences as confirmed during the hearing.

16. The intention of the personal permission granted via the disputed condition was that the use of the caravan would cease once the personal circumstances of I M Mimmack were no longer being met. Planning Practice Guidance (PPG)[5] guides against the use of such conditions as planning permission runs with the land. However, it does indicate that there may be exceptional circumstances where granting planning permission for development that would not normally be permitted on the site could be justified on planning grounds because of who would benefit. The particular circumstances of I M Mimmack which led to the

[3] Annex 2: Glossary
[4] Planning ref H 23/117/81/883 – 17 March 1981
[5] Use of Planning Conditions, Paragraph: 015 Reference ID: 21a-015-20140306 Revision date: 06 03 2014

disputed condition are not before me due to unavailability of specific records given the passage of time. I, therefore, cannot conclude in the particular circumstances of this case that the disputed condition is an unreasonable or unnecessary restriction. The reasoning remains broadly consistent with the Framework in terms of avoiding new isolated homes in the countryside unless special circumstances exist.

17. The presence of caravan 2 within the site and its ability to remain in itself does not consist of special circumstances in the context of paragraph 55 of the Framework despite the bulleted list not being exhaustive, given the restrictions imposed by the disputed condition sought to prevent permanent residential development in the rural area. The presence of three existing residential caravans within the site reflects immunity from enforcement action rather than compliance with relevant policies in the LP and the Framework relating to the supply of housing in rural areas and do not constitute special circumstances.

18. I conclude that the removal of the disputed condition would not be consistent with the objectives of planning policies relating to the location and supply of housing in rural areas. The proposal conflicts with Saved Policies SG4 and HS7 of the LP and paragraph 55 of the Framework in so far as they seek to resist new isolated homes in the countryside, which also reflects conflict in terms of the sustainable development principles and sequential approach to distribution of development in Saved Policies SG1 and SG2 of the LP.

Other considerations

19. The adoption of the LP predates the Framework. However, the Framework[6] states that policies in Local Plans should not be considered out of date simply because they were adopted prior to the publication of the Framework, and advises that due weight should be given to such policies according to their degree of consistency with the Framework[7]. However, the Framework also requires local planning authorities to boost significantly the supply of housing[8] and makes clear that relevant policies for the supply of housing should not be considered up-to-date if local planning authorities cannot demonstrate a five-year supply of deliverable housing sites[9].

20. The main parties have indicated that the housing supply position is not a matter in dispute. The evidence before me, based upon extracts from the South Holland District Council 5-year Housing Land Supply Assessment (as at 31 March 2016), indicated a 2.9 year deliverable housing land supply which reflects a considerable shortfall. There is no substantive evidence before me that those figures have been previously tested. Nevertheless, the Council indicated that the ability to make up the shortfall and demonstrate a five-year supply of deliverable housing sites would be dependent on the allocation of sites within the emerging South East Lincolnshire Plan. That document has recently been submitted to the Secretary of State, but has yet to be examined in public and is subject to unresolved objections. In such circumstances, I can afford little weight to the emerging South East Lincolnshire Plan.

21. Having regard to the above, I, determine that, based on the evidence available to me, the Council cannot currently demonstrate a five-year supply of

[6] Paragraph 211
[7] Paragraph 215
[8] Paragraph 47
[9] Paragraph 49

deliverable housing sites and that the shortfall would be considerable at the present time. Taking account of paragraph 49 of the Framework, the relevant policies for the supply of housing are not up-to-date, and therefore, the weight to be given to Saved Policies SG1, SG2, SG4 and HS7 of the LP is a matter of judgement. The 4th bullet point of paragraph 14 of the Framework is also engaged. Consequently, the circumstances of the proposal before me are materially different to an appeal decision drawn to my attention by the Council[10] which related to a location for a single dwelling in a different district where different development plan policies applied and paragraph 14 was not engaged. I, therefore, attribute little weight to that appeal.

22. The Framework makes it clear that the policies that it sets out, taken as a whole, constitute what sustainable development means in practice for the planning system. Paragraph 7 of the Framework sets out three dimensions of sustainable development, namely the economic, social and environmental roles. These dimensions are mutually dependent and should be jointly sought.

23. The removal of the disputed condition would have benefits in terms of its contribution to housing supply and choice in South Holland through allowing unrestricted residential occupation of a caravan with social and economic benefits in terms of support for local services and facilities in the nearest settlements after occupation. The provision of a new home would carry significant weight in favour of the development in an area where there is currently a housing supply shortfall. However, individually and in cumulative, the social and economic benefits are no greater than moderate based on the scale of residential occupation associated to a single caravan.

24. There would be environmental benefits, albeit limited, to the character and appearance of the site through the ongoing maintenance and upkeep of a static caravan, in circumstances where the disputed condition does not necessitate its removal when no longer capable of occupation. Furthermore, it is reasonable that the removal of the disputed condition would not substantially alter the character of the site when taking account of the extent of existing domestic paraphernalia and hardstanding.

25. Notwithstanding the above, the routes which pedestrians would need to take to access the local services and facilities in Moulton Chapel or Holbeach St Johns are not of a good standard and would require pedestrians or cyclists to travel significant distances, in the absence of regular bus services. The linking section of Jekils Bank is a national speed limit road without a continuous footway and with unlit grass verges. It is, therefore, highly unlikely that occupiers of the proposed dwelling would regularly access the local services and facilities on foot or via bicycle, particularly at night or in inclement weather. The proposal would not, of itself, generate a large number of traffic movements and some dependency upon car use is inevitable in rural locations. However, the cumulative effect of allowing new homes in isolated locations in rural areas would lead to a harmful increase in the amount of unsustainable journeys made and a significant harmful environmental impact, which constitutes conflict with Policy SG1 of the LP.

26. In reaching the above findings, I give little weight to the precedent of the caravan having been occupied for a considerable period of time in the past as the disputed condition affords no fallback position for its future occupation.

[10] APP/L3245/A/14/2220577 – 11 February 2015

Similarly the presence of nearby caravans in residential use that are immune from enforcement action does not justify the harm that would arise from the removal of the condition and the provision of a new home that would result.

Planning Balance

27. The Framework does not change the statutory status of the development plan as the starting point for decision making. The proposal is not in accordance with Saved Policies SG1, SG2, SG4 and HS7 of the LP in so far as they are relevant to the location and supply of housing in rural areas. Development which conflicts with the development plan should be refused unless other material considerations indicate otherwise.

28. The Council cannot demonstrate a five-year supply of deliverable housing sites and paragraph 14 of the Framework is engaged in terms of the presumption in favour of sustainable development and decision taking. The conflict with the development plan in terms of the location and supply of housing in rural areas also reflects conflict with paragraph 55 of the Framework which seeks to restrict new isolated homes in the countryside. For the purposes of the 4th bullet point of paragraph 14 of the Framework, the list at the accompanying footnote 9 is not exhaustive and, to my mind, paragraph 55 is a specific policy in the Framework whereby development should be restricted in accordance with the second part of the 4th bullet point of paragraph 14. Consequently, the tilted balance of the first part of the 4th bullet point of paragraph 14 does not apply and, therefore, in accordance with footnote 10, planning permission should not be granted unless material considerations indicate otherwise.

29. In terms of the planning balance, there are specific policies in the LP and the Framework which indicate that development should be restricted. The conflict with the development plan and the policies of the Framework in so far as they seek to restrict isolated new homes in rural areas, together with the associated harm arising from dependency upon car use, are not outweighed by the other material considerations, including the identified benefits of a new home in the absence of a 5-year supply of deliverable housing sites. I conclude, therefore, that the proposal to remove the disputed condition would not result in sustainable development when considered relative to the LP and the Framework as a whole.

Conclusion

30. For the reasons set out above and having taken all other matters into account, I conclude that the appeal should be dismissed.

Gareth Wildgoose

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Syd Smith	Appellant
John Steedman	Steedman Planning

FOR THE LOCAL PLANNING AUTHORITY:

Mark Simmonds	South Holland District Council
Angela Simmonds	South Holland District Council (not present at site visit)

INTERESTED PERSONS:

Gary Hart	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

N/A