

## Appeal Decision

Hearing Held on 14 August 2018

Site visit made on 14 August 2018

**by S Harley BSc(Hons) MPhil MRTPI ARICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 29<sup>th</sup> August 2018**

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**Appeal Ref: APP/A2525/W/17/3187637**

**Bridge Inn Caravan Park, Bridge Inn, Common Drove, Crowland, Spalding PE6 0HJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr O'Connor against the decision of South Holland District Council.
  - The application Ref H02-0251-17, dated 10 March 2017, was refused by notice dated 28 April 2018.
  - The development proposed is change of use to allow for permanent residential use throughout the year. The proposal includes 24 static caravan plots for residential use, and 1 static caravan plot for use by the site manager.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. At the Hearing the appellant put forward amendments to the proposal. The revised description of development is agreed as "the use of the land as plots for the siting of 17 static caravans for residential use and 1 static caravan for use by the site manager for occupation throughout the year". The 'Proposed Site Plan 003' dated 9 March 2017 has been formally withdrawn. I have considered the appeal on this basis.
3. An up-to-date site specific Flood Risk Assessment dated June 2017 (the FRA) was submitted with the appeal evidence. I have taken this into account.
4. Since the decision on the planning application was made a revised National Planning Policy Framework 2018 (the revised Framework) has replaced the original Framework of 2012.

### Main Issues

5. The main issues are: whether or not the proposal would comply with national and local planning policy relating to flood risk and countryside location; and if not, whether there are any material planning considerations that would justify a decision other than in accordance with planning policy.

## Reasons

### Planning Policy

6. The development plan for the area includes the Saved Policies of South Holland Local Plan 2006 (the LP) and the emerging South East Lincolnshire Local Plan 2011-2036 (the emerging LP). The former pre-dates the Framework. The latter has not progressed to a stage that attracts weight in the context of this appeal.

### Flood Risk

7. The appeal site is within Flood Zone 3a of the Environment Agency (the EA) Flood Zone Map, the zone with the highest probability of flooding ignoring the presence of defences. The site is also shown within Flood Zone 3 of the South Holland Strategic Flood Risk Assessment in year 2115 (SFRA). The site is located within the Welland and Deepings Internal Drainage Board (the WDIDB) district, protected from the River Welland by the Deeping High Bank located along the southern boundary. On the opposite side of the River Welland are the Crowland & Cowbit Washes which provide protection against the 1 in 100 year plus climate change flood event.
8. Based on the South Holland Updated SFRA flood maps 2017, the EA advises that the predicted flood depths over some 70% of the appeal site are 0.5-1m, considered 'Danger for Most', in year 2115 and some 1-2m, considered 'Danger for All', on the remainder of the site if there were to be a breach of the Deeping High Bank with a 0.1% event probability.
9. Part 14<sup>1</sup> of the revised Framework makes it clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. In relation to planning applications the revised Framework, together with the Planning Practice Guidance (the Guidance) seeks to ensure that development is kept out of medium (Flood Zone 2) and high risk (Flood Zone 3) flood areas.
10. Caravan sites intended for permanent residential use are classified as a "highly vulnerable" use in Table 2 "*Flood risk vulnerability and flood zone*" of the Guidance<sup>2</sup>. As such development should not be permitted according to Table 3 "*Flood risk vulnerability and flood zone compatibility*" of the Guidance.
11. The appellant asserts that, taking account of the defences, the site is effectively Flood Zone 2. However, I have seen no policy guidance that provides for such an approach, as the flood risk would remain the same in the event of a breach of the defences.
12. In terms of a Sequential Test the FRA states there is no other development land in Crowland at a lower risk of flooding. However, the Council says that residential planning permissions have been granted and sites are being delivered through the emerging plan. In the absence of a more detailed consideration by the appellant of alternative sites, including potential windfall sites, and a comparison of flood risk, I consider that the submitted information does not demonstrate that the Sequential Test has been passed, whether or not the appellant owns the particular appeal site and practically wishes to use it

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<sup>1</sup> Replaces Part 10 of the original Framework

<sup>2</sup> Paragraph: 066 Reference ID: 7-066-20140306

for the development proposed. Accordingly it is not necessary to proceed formally to the Exception Test.

13. The PPG advises that a change in use may involve an increase in flood risk if the vulnerability classification of the development changes<sup>3</sup>. In Table 2 sites used for holiday or short-let caravans and camping, subject to a specific warning and evacuation plan (FWEP), are classified as "more vulnerable". The proposal is classified as "highly vulnerable" which would appear to be an increase in classification, although I acknowledge there is no FWEP required by planning condition for the permitted caravans.
14. The submitted FRA explains the maintenance standards of flood defences within the WDIDB district are good and that therefore the probability of flooding due to overtopping or failure of the flood defence embankment is low/remote. This is considered to especially be the case as Deeping High Bank supports a main road; there are lower defences on the other side of the river; and improvements have been made to defences since earlier flood events.
15. However, this does not mean there is no probability of flooding. The PPG<sup>4</sup> recognises that areas behind flood defences are at particular risk from rapid onset of fast-flowing and deep water flooding, with little or no warning if defences are overtopped or breached.
16. The inspection and warning systems in place in the local area could provide for the caravans to be vacated in circumstances where there was sufficient warning and slow ingress of water. The EA advises that a breach could occur at any time without warning. Although I acknowledge the probability of this is low the consequences are potentially significant in terms of risk to life and safety; loss of property; inconvenience; and burden on local services. Moreover, the need to leave the site, whether due to a warning or an actual flood event, would have more serious consequences for those who have a realistic expectation of living permanently in a caravan sited in a particular place than for those who live in a caravan where the period of occupancy is significantly time restricted.
17. The appellant offers flood risk mitigation. Raising the finished floor levels of the caravans 1m above existing ground level would not address the SFRA predicted 1-2m flood depth over some 30% of the site. I acknowledge that a topographical survey would give more accurate information against which to assess the height at which caravans should be placed were the proposal to be acceptable in all other respects and also that there would be more flexibility for siting a reduced number of caravans. However, no topographical survey has been provided and, whilst it might show less of the site is subject to such deep predicted flood levels, the opposite could be the case.
18. Moreover, the height that caravans would be raised and the method of raising them could increase visual intrusion in a countryside location and may amount to operational development in the flood plain. To fully assess the effects it is necessary to have this information before reaching a planning decision rather than as a planning condition after permission had been granted. Tethering of the caravans is also proposed. Few details of how this would be achieved and the likely effectiveness in a flood event have been provided. However, I

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<sup>3</sup> Paragraph: 048 Reference ID: 7-048-20140306

<sup>4</sup> Paragraph: 041 Reference ID: 7-041-20140306

acknowledge it may be possible to address the means of tethering by way of a planning condition if the proposals were otherwise acceptable.

19. A further 300mm flood resilient construction would be provided. However, I see no reason to suppose that a FWEP or other mitigation measures, such as raised power points within static caravans (when they are renewed) or an overhead electricity supply, could not be put in place independently of the proposed development. This would have the advantage of mitigating conditions for occupants of the permitted caravans.
20. A restriction of development within 5m of the WDIDB main drain to the south of the site to maintain access for operational purposes is offered. The No 7 WDIDB Drain has a protection byelaw preventing the placing of structures, fences, trees, shrubs etc. within a 9m strip on the southern side of the site. This has been relaxed in the past to allow the hard core bases for touring caravans on the understanding that if access is required for maintenance then all obstacles would be removed. This would be less likely to be practical in respect of static caravans, although it may be possible to site the reduced number of caravans outside the maintenance strip. Whilst a condition could be imposed to prevent fences etc. being erected the protected area would in all probability need to be 9m rather than 5m wide.
21. A Flood Plan would normally be provided as part of the exception test to accord with Paragraph 160 of the revised Framework and the absence of one conflicts with this requirement. However, should the proposal be acceptable in all other respects, I consider one could be secured by way of planning condition though this is less desirable
22. The EA Standing Advice at Appendix C of the SFRA is that areas classified as Danger for All/Most which are at risk of fluvial inundation are not suitable under today's standards for any form of caravan development even with mitigation. For the reasons set out above, and exercising the precautionary principle, I cannot confidently predict that the mitigation as proposed would be sufficient protection for the proposed development.
23. To summarise: the site is in a zone with the highest probability of flooding ignoring the presence of defences. Should a flooding event occur the risk on the site is classified as 'Danger for Most/Danger for All'. The up-to-date planning policy is quite clear that in such areas residential development should not be allowed. I acknowledge that the probability of significant flooding of the appeal site is low and would not be increased, in terms of probability, by the proposed development. However, the proposal would result in 17 static caravans becoming the main residence for the occupants for the whole year and the consequences could be significant. I have found that the proposed mitigation would not be sufficient protection. Other than for a site manager I have seen no evidence of a particular need for permanent residents on the site itself or immediately nearby that would overcome the flood risk.
24. Taking all the above into account I conclude that the proposal would not comply with national and local planning policy relating to flood risk.

#### *Countryside Location*

25. The appeal site is in the countryside about 1km from the outskirts of Crowland. Saved Policy SG4 of the LP limits development in the countryside to that which

is essential in the proposed location and cannot be reasonably accommodated within defined settlement boundaries. Where there is an unacceptable impact on the landscape character of the area development will only be permitted where the need for the development in that area outweighs its impact and no other site exists to accommodate the proposed development. Saved Policy HS7 of the LP further limits new housing development outside defined settlement limits to that essential to meet the needs of agricultural, forestry or other workers or small scale rural exception affordable housing in compliance with Saved Policy HS9.

26. Paragraph 213 of the revised Framework states that existing policies should not be considered to be out-of-date simply because they pre-date the Framework. However, the parties agree that the Council cannot demonstrate a five year supply of deliverable housing sites as required by the Framework. Accordingly the development plan is not delivering housing sites to meet local needs and those policies that restrict housing attract relatively little weight.
27. The proposal would provide much needed permanent housing that would add to the choice of housing in the area. In all probability a static caravan would be more affordable than a brick built house. Although no restrictions are proposed the caravans could provide housing for those gypsies, travellers and travelling showmen who do not meet the definition set out in Annex A of the Planning Policy for Traveller Sites and for seasonal, migrant or other agricultural workers, of which there is a need in the wider Housing Market Area, albeit not specifically linked to this particular site or immediate locality. The proposal would help boost the supply of housing and help build inclusive and mixed communities. I give these social benefits substantial weight.
28. Occupants of the proposed caravans could help boost the local economy by expenditure and as employees in local enterprises. However, these benefits would be off-set to some extent by the loss of accommodation for holiday makers and the economic benefits provided through tourism. On balance I give the economic benefits of the proposal relatively little weight.
29. Crowland is identified as an Area Centre under Saved Policy SG3 of the LP, a second tier settlement in a hierarchy of four tiers, where development will be permitted to support its role as a service centre for the surrounding rural area. The centre of Crowland, which contains shops, including a small supermarket and post office, doctor's surgery and a primary school, is about one mile away by foot. There are bus services from Crowland, giving access by public transport to the wide range of community services and facilities available in Peterborough. There is a public house adjacent to the appeal site.
30. The appeal site is separated from the Defined Settlement Boundary by the River Welland and intervening fields/a small linear park. Access between the site and Crowland is via The Gravel Causeway (part of the B1166). Most of the route, up to the edge of Crowland, relies on the carriageway or the wide grass verges along it. This part of the B1166 is subject to the national speed limit until the edge of built development in Crowland.
31. The grass verges are uneven under foot and contain a number of willow trees and their trailing branches are likely to deflect pedestrians from the verges into the carriageway particularly in inclement weather. There is no defined footpath although several narrow wooden foot bridges, with a railing on one side, have been erected to allow access over marshy areas. There are no street lights and

no defined cycle paths. Walking or cycling would be unlikely to be a safe, feasible, alternative to the private vehicle, particularly during hours of darkness, for many future occupants of the proposed caravans for day to day services and facilities regardless of whether Gravel Causeway is identified as part of the wider leisure cycle network.

32. Paragraph 103 of the revised Framework advises that significant development should be focussed in locations which are, or can be, made sustainable through limiting the need to travel and offering a genuine choice of transport modes. A proposal for 17 units of permanent residential accommodation is not an insignificant development in a countryside location. I acknowledge that holiday makers would have the same physical access constraints but there would be less day to day needs for services and facilities. Whilst recognising that the opportunities to maximise sustainable transport solutions will vary between urban and rural areas, I do not consider the appeal site to be a particularly sustainable location in terms of access to services and facilities for permanent residents even though the necessary car journeys would be relatively short.
33. The appeal site is highly visible from that part of the B1166 which runs along Deeping High Bank adjacent to the appeal site and the existing caravans can be clearly seen. The proposal would result in two more static caravans. However, as there would be no touring caravans as a result of the proposal I consider the siting of two more static caravans would not be overly intrusive visually. However, I cannot confidently conclude that there would be no unacceptable visual intrusion in this open countryside location in the absence of details relating to the height to which caravans would be raised and the means by which this would be achieved.
34. The proposal would make use of previously developed land which would be an environmental benefit. However, the appeal site is not a particularly sustainable location in terms of access to services and facilities; I have been unable to conclude there would be no unacceptable visual intrusion; and the site is in an area of high flood risk. On balance I conclude that the proposal would not meet the environmental objective of sustainable development.
35. Paragraph 11 of the revised Framework says that where objectively assessed housing needs are not provided for planning permission should be granted unless the application of policies in the Framework provides a clear reason for refusing the development proposed. Footnote 6 of Paragraph 11 states risk of flooding is one such policy. In essence, if specific Framework policies indicate that development should be restricted, that effectively disengages the so called 'tilted' Paragraph 11 balance, leaving the policies to be applied on their own terms on an unweighted basis.
36. On a straight forward balance I conclude that the benefits do not outweigh the adverse impacts I have identified. In particular the wider sustainability benefits to the community would not outweigh the flood risk. I conclude that the proposal would not comply with national and local planning policy relating to flood risk and countryside location.

#### Material Planning Considerations

37. The planning history of the site and the so-called "fall-back position" can be material planning considerations. There is a separate permission for the siting of a static caravan for the owner/manager of The Bridge Caravan Site

- Ref H02-0998-11. This already provides for year round occupation of one caravan in recognition of the need for on-site management.
38. There have been a number of planning permissions for holiday caravans, at the appeal site, the earliest being granted permission in 1979. The most relevant are discussed below.
39. Application Ref H02-0700-09, which granted permission for a proposal described as "Modify layout for existing holiday caravan park (original approved under Ref H02-0359-00)" on 20 January 2010, was modified by the appeal decision APP/A2525/A/10/2128849 dated 19 October 2010. This varied Conditions 1 and 4 of H02-0700-09. In essence these combined decisions grant permission for the siting of 15 static and 15 touring caravans, as shown on the approved layout plan, provided that, in summary:
- No touring caravan remains on the site for any continuous period exceeding 42 days, or for a total of more than 56 days in any calendar year.
  - Static and touring caravans on the site are not occupied between the 1 January and 14 February.
  - Static and touring caravans on the site are not used other than for holiday purposes. In this context, "holiday purposes" means occupation of any one or more of those caravans by the same person, group of persons, or family, for any continuous period exceeding 42 days, or for a total of more than 56 days in any calendar year.
  - No caravan is used as the main residence of any occupant, and a register of occupants on the site is kept available for inspection.
40. Ref H02-0359-00 was granted at a time when there was little specific planning guidance on development and flood risk and before flood risk and the effects of climate change became the pressing matters in relation to decisions on planning proposals that they are today. There are no planning conditions requiring a FWEP or other flood resilience or flood resistance measures as would be likely to be sought under the PPG<sup>5</sup> for similar new proposals in flood risk areas today.
41. The occupants of the permitted holiday caravans would therefore potentially be at greater risk than occupants of the development now proposed provided all the relevant flood risk precautions were in place and adhered to. However, as permitted no occupant(s) can currently regard the caravans as their main place of residence; there are periods in the year when there are no touring caravans on the site (as indeed was the case at the date of the Hearing); and there are 45 days in January and February when occupation of any of the holiday caravans is not permitted. Moreover, the proposed development, as amended, whilst it would result in no touring caravans would increase the number of permitted static caravans by two, and, as set out above I see no substantial reason that some mitigation measures, particularly a FWEP could not be put in place, whether or not required under a planning condition.
42. I acknowledge visitors to the site may be less aware of local conditions than permanent residents. However, the PPG clearly envisages that FWEPs can

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<sup>5</sup> Paragraph: 056 Reference ID: 705620140306 onwards

operate successfully in requiring them for "...for sites at risk of flooding used for holiday or short-let caravans and camping and are important at any site that has transient occupants...". Accordingly I consider that management of a FWEP for non-permanent residents should be possible.

43. For a combination of the reasons set out above I give the "fall-back" position minimal weight in my consideration of the proposal. Nor does the permission granted by the Council at the Hawthorns Caravan Park Ref H16-0367-16 attract much weight. This is because, unlike in the appeal before me, the Council advises that it considered that the planning history indicated that, although only transit caravans could be sited there, there were no currently enforceable restrictions preventing their use as the main residence of the occupants all year round.
44. *Gravesham BC vs. SSE* [1982] P & CR 142 established that in case law there is no distinction in land use terms between a dwelling house used as a family dwelling, and a dwelling house used for a series of short-term holiday lets. It seems to me that the stationing of caravans is a use of land and that caravans are not buildings. It has been held in law, that a structure which satisfies the definition of, for example, a mobile home under s13(1) of the Caravan Sites Act 1968 could never be a building for the purpose of the 1990 Act. The case is therefore not directly comparable to the appeal before me. Even if I am wrong the touring caravans would not, in all likelihood, provide all the facilities necessary for day to day domestic existence. Accordingly I do not consider this case sets an overriding precedent in the appeal before me.
45. The appellant considers that the limitation of period of occupation results in security issues; vandalism; and with caravans being left in a poor condition when vacated. However, these matters seem to me to relate to the way the site is managed and carry relatively little weight in my considerations.
46. Whether or not the permitted caravans are in the same vulnerability zone for flood purposes does not lead me to conclude that the siting of caravans for year round occupation should be permitted in this location.
47. Taking all the above into account I conclude that there are no material planning considerations that would justify a decision other than in accordance with planning policy.

## **Conclusion**

48. For the reasons set out above I conclude the appeal should not succeed.

*S Harley*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

|                         |                                 |
|-------------------------|---------------------------------|
| Mr P Brown              | Philip Brown Associates Limited |
| Mr G Beel               | Geoff Beel Consultancy          |
| James and Mary O Connor | Appellants                      |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                  |                                |
|------------------|--------------------------------|
| Mark Simmonds    | South Holland District Council |
| Marie Asher      | South Holland District Council |
| Angela Harrison  | South Holland District Council |
| Annette Hewitson | Environment Agency             |
| Emma Kirk        | Environment Agency             |
| Sharon Nolan     | Environment Agency             |

### **DOCUMENTS**

- 1 Inset 2 Crowland - Plan of the Defined Settlement Limit
- 2 Policies HS9 and LT7 South Holland Local Plan 2006
- 3 Planning permission Ref H16-0367-16
- 4 Extract Appendix C Standing Advice Matrix South East Lincolnshire Strategic Flood Risk Assessment
- 5 Email dated 24 August 2018 confirming revised description of development
- 6 Plan showing the Internal Drainage Board easement