The Planning Inspectorate

Appeal Decision

Site visit made on 5 December 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 29th December 2017

Appeal Ref: APP/W1715/W/17/3181377
Riverside Caravan Park, Satchell Lane, Hamble-Le-Rice SO31 4HR

- The appeal is made under section 78 of the Town Country Planning Act 1990 against the failure of the local planning authority to give notice within the prescribed period of a decision on an application for planning permission following the failure of the applicant to submit further information, plans, drawings or other evidence required by a direction made by the local planning authority under section 62 of the Town and Country Planning Act 1990 and Regulation 4 of the Town and Country Planning (Applications) Regulations 1988.
- The appeal is made by Birch's Group against Eastleigh Borough Council.
- The application Ref F/17/80285 is dated 21 March 2017.
- The development proposed is change of use of land to residential caravan park.
- The information alleged by the Council to be necessary is: a location plan scale 1:1250 with the site outlined in red without infringing copyright; a proposed site layout plan showing exact numbers of caravans, parking and bin storage, to scale; details of boundary treatment and landscaping, to scale; and a topographic survey to scale.

Decision

1. The appeal is dismissed and planning permission for the use of land within the residential caravan park for permanent year round residential use is refused.

Procedural Matters

Validity

2. This appeal has been made because of the Council's failure to determine the planning application, with there being a dispute about the validity of the application. Section 62 of the Town and Country Planning Act 1990 (as amended) states that a development order may make provision for the content of a planning application. Pursuant to Section 62 The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO) outlines the mandatory requirements for a planning application (Article 7) and additionally makes provision for local planning authorities to publish their own lists of requirements (Article 11(3)).

3. Under Article 7 it is necessary for an application to be accompanied by: a form published by the Secretary of State; particulars specified or referred to on the form; and a plan identifying the application site, any other plans, drawings and information necessary to describe the development subject to the application. Local lists published pursuant to Article 11 provide local planning authorities with an opportunity to identify additional particulars or evidence that they require to be included with applications, so long as the additional material is reasonable having regard to the nature and scale of the proposal

and the material '… it is reasonable to think will be a material consideration in the determination of the application…'. Article 11(3)(d) makes clear that a list published pursuant to this article may only be taken into consideration if it was published or republished during the two year period immediately before the date of the application.

4. The Council considered the submitted application to be invalid because: it was accompanied by a site plan breaching the Council's copyright; it lacked a scaled layout plan showing the exact number of caravans to be sited and details for parking and bin storage; no boundary treatment and landscaping details were provided; and there was no topographic survey.

5. The Council wrote to the appellant outlining the alleged deficiencies in a letter dated 11 April 2017. The appellant responded to the Council on 12 April, in effect following the procedure pursuant to Article 12, and advised that apart from providing a different site plan no further information would be submitted. The appellant contended that the additional information requested by the Council was unnecessary to make the application valid because it concerned a use of land for which planning permission had already been granted for related operational development (planning permission F/14/74903) and the siting of caravans on the land was lawful following the issuing of a certificate of existing lawful use (CELU) under reference U/16/78020.

6. The Council did not respond to the appellant's Article 12 notice and the non-determination appeal was made after the expiry of the eight week period following the application's submission on 21 March 2017.

7. The matters requested by the Council relating to parking and a topographic survey appear as items 16 and 23 in the Council's local validation list (LVL). However, the LVL is dated August 2013 and was therefore more than two years old on the date of the application's submission. Accordingly for the purposes of Article 11(3)(d) the Council's LVL would appear to be out of date. Reliance on the absence of information relating to parking and a topographic survey should therefore not have rendered the application as being invalid. The site is essentially level and I therefore consider that the absence of a topographic survey is of little consequence for the purposes of determining an application for the proposed development.

8. The development is quite modest in scale and planning permission already exists (F/14/74903) for the undertaking of operational development for alterations and improvements to an access road and the formation of new parking spaces for six mobile home plots. A block plan (Site Plan as Proposed) having been included with the appealed application. I consider sufficient information is shown on the block plan with respect to the intensity of the development (ie the likely level of residential occupation), parking and hard and soft landscaping for an application for the development to have been validated. I therefore see no reason why following the receipt of the appellant's Article 12 notice the Council did not validate the application and proceed to determine it.

9. With respect to the development relating to permission F/14/74903, on the day of my site visit it was apparent that some recent development involving the formation of six concrete bases and the siting of two caravans had taken place. In association with the development that has taken place six parking spaces, one per plot, have been laid out. However, the parking that has been

provided does not accord with the details shown on the block plan submitted with the application. Given the disparity between what I observed on site and the details shown on the submitted block plan, I have considered the appeal as one concerning development that has not been commenced.

Description of the development

10. The application seeks planning permission for the 'change of use of land to residential caravan park'[1]. From references made in the Council's appeal statement I understand that the site has been occupied by eight mobile homes in the past.

11. The appellant contends that the CELU issued by the Council did not certify the year round residential use that had been applied for, with the CELU certifying the lawful use as 'use of the land for the stationing of mobile homes all year round for holiday use only'. The appellant has stated that the appealed application was submitted to remove the 'ambiguity' concerning the use certified by the CELU. However, any issues that the appellant has with the CELU's provisions could have been addressed by appealing the certificate at the appropriate time. Paragraph 1.3 of the appellant's grounds of appeal further explains the permission sought is '… for a permanent year-round caravan use, having regard to … (a) the potential to provide permanent homes; (b) the likely requirements of purchasers, who may want second homes that would not necessarily comply with "holiday use" …'. In paragraph 2.20 of the grounds of appeal it is further stated that '… there is no question of the lawfulness of the use of the site for year-round mobile home use, and there is no condition requiring that use to be limited to "holiday use", there is merely an unresolved ambiguity about the lawfulness of an unrestricted use'.

12. Having regard to the explanation of the use for which permission is being sought provided in the appellant's grounds of appeal (paragraphs 1.3 and 2.20), as echoed in paragraphs 1.2 and 2.5 of the statement accompanying the originally submitted application, I consider the application seeks permission for the site's use as an unrestricted residential caravan park. I have therefore determined the appeal on the basis of the development being for the site's year round occupation for an unrestricted residential use.

Proximity to national, European or internationally designated nature conservation sites

13. Given the site's proximity to the river Hamble, and further to my site visit, the Council was requested to provide clarification as to whether the site was within or adjoining any nationally, European or internationally designated nature conservation site or sites. The Council has confirmed that the site is within the zone of recreational influence for the Solent and Southampton Water Special Protection Area for Birds (the SPA) and I have had regard to that designation and shall refer to it in greater detail in my reasoning below.

Emerging Local Plan

14. The Council has commenced the process of replacing the Eastleigh Borough Local Plan Review of 2006 (the Local Plan). Paragraphs 5.2 and 5.3 of the Council's appeal statement outline the current position with respect to the

[1] As described in section 3 of the application form

replacement plan's preparation. On the basis of the information available to me I consider that the emerging Local Plan has not reached a sufficiently advanced stage in its preparation for me to take account of it. I shall therefore make no further reference to the emerging Local Plan for the purposes of the determination of this appeal.

Main Issues

15. The main issues are: the effect of the development on the SPA; and whether the site would be an appropriate location for unrestricted residential occupation, with particular regard to the provision of tourist accommodation in the area, the effect on the character and appearance of the area and accessibility to everyday local facilities and services by a range of modes of transport.

Reasons

Effect on the SPA

16. To safeguard the integrity of the SPA a bird disturbance avoidance strategy to mitigate the effects of new development is in operation. The most up to date version of that strategy is the Solent Recreation Mitigation Strategy (SRMS) which was endorsed by the Solent Recreation Mitigation Partnership (SRMP) on 5 December 2017. The Council being a member of the SRMP[2]. The SRMS operates on the basis of financial contributions being made by developers for the strategic mitigation of recreational pressure that would otherwise occur within the SPA arising from new residential development. Contributions collected under the terms of the SRMS are to be directed towards the provision of strategic greenspaces, as alternative recreational destinations for the SPA, and the operation of management and monitoring initiatives (MMI) for the SPA. The MMI include measures such as: the deployment of rangers during the overwintering period for birds; the use of communications, marketing and education initiatives; the promotion of responsible dog walking; and site specific visitor management and bird refuge projects. The SRMS identifies an average developer mitigation contribution of £564.00, with the actual level of contribution for every net additional dwelling to be determined by reference to the bedroom numbers for the dwelling in question (paragraphs 6.1 and 6.3).

17. Paragraph 2.13 of the SRMS states '… that mitigation should be required from all dwellings built within 5.6 kilometres of the boundaries of the SPAs. This is the zone from which 75% of coastal visitors live. The zone boundary is defined by using straight line distances from the SPA boundary …'. Paragraph 6.4 of the SMRS provides a definition of dwelling for its purposes and this definition includes 'second homes' and 'dwellings to be used as holiday accommodation'.

18. On the basis of the information provided by the Council relating to this issue it is unclear to me whether the Council has already formally adopted the SRMS, as a supplementary planning document (SPD), or whether a formal adoption procedure will need to be undertaken prior to the SRMS coming into force in the Council's area. However, it is clear from the Council's correspondence on this issue[3], whatever the status of the SRMS currently is in its area, prior to

[2] Contents page of the SRMS
[3] Email of 19 December 2017

5 December 2017 the Council has been operating a version of a disturbance avoidance strategy, with contributions of £181.00 per dwelling historically being sought.

19. The appellant contends that in terms of the development's effects on the SPA no distinction should be drawn between the site's existing lawful year round holiday use and the proposed use. The occupation of the mobile homes for holiday use would be likely to involve a more sporadic occupation of the site, compared with a permanent or second homes use, with there being greater potential for site to be used throughout autumn and winter periods. The appellant has also submitted that the proposed occupation of the mobile homes should be treated as contributing to the overall supply of housing within the Council's area. When those factors are taken into account I consider that the appeal development should be treated as being one accommodating residents who would be capable of creating recreational pressure in the SPA.

20. Given the statutory duty to safeguard the habitat in the SPA I am content that mitigation would be necessary, with that mitigation needing to take the form of a contribution either meeting the requirements of the SRMS or any predecessor SPD, in the event of the SRMS having not yet been adopted by the Council. As the application provides no mitigation for the development's effects on the SPA I can only conclude that it would unacceptably harm the SPA. The development would therefore be contrary to paragraphs 109 and 118 of the National Planning Policy Framework (the Framework) and would not meet the requirements of the SRMS or the predecessor SPD adopted by the Council.

21. In the absence of suitable mitigation for the development's effects on the SPA, I consider the requirements of The Conservation of Habitats and Species Regulations 2017[4] cannot be discharged. That is because insufficient information is available with the application for to me to be able to undertake a Habitats Regulation assessment for the unmitigated effect of this development, in combination with others, on the SPA.

Appropriateness of the site for unrestricted residential occupation

22. As part of the Council's case it has argued that the development would result in the unacceptable loss of holiday accommodation, citing conflict with saved Policies 159.TA and 160.TA of the Local Plan. While Policies 159.TA and 160.TA address the provision of new or expanded tourism facilities, including 'inspected and registered accommodation' neither of those policies make provision for the retention of existing facilities. While I recognise that the unrestricted residential occupation of the site would give rise to the loss of tourism accommodation, that loss, of itself, would not give rise to conflict with Policies 159.TA and 160.TA. I am of the opinion that there would be no conflict with saved Policy 14.CO because there would be no loss of a mobile home park. I also consider that the loss of the tourist accommodation would not conflict with Framework because for the purposes of decision making it does not include policies that address the retention of tourism accommodation. In that regard while section 3 of the Framework states policy in the context of supporting a prosperous rural economy that is only in

[4] Regulations that came into force on 30 November 2017, consolidating the 2010 Regulations and the subsequent amending statutory instruments

the context of local and neighbourhood plans including policies relating to the rural economy.

23. The Council is concerned that the year round occupation of the site would detract from the character and appearance of the countryside, given that the site lies outside a settlement boundary defined by the Local Plan. There is history of the site being occupied by eight mobile homes, a potentially more intensive form of physical occupation of the site, compared with the siting of six mobile homes. While the development would enable the site to be occupied on a continuous basis throughout the year, it is necessary to have regard to the fact that there is no restriction on the continuous siting of mobile homes on this piece of land, given the provisions of CELU. The CELU allows the mobile homes to be occupied by holiday makers and when they were present I consider it unlikely that there would be an appreciable visual difference between their use of the site and that of permanent residents.

24. I also consider that it is of note that there is an extant permission for the site's re-engineering, which means that the physical works required to support the site's occupation either as holiday accommodation or as dwellings for year round occupation would be very similar.

25. In character and appearance terms, when the proposed and prevailing situations are compared, I am not persuaded that the potential for the site to be occupied more intensively during the winter months would have a significantly different impact in the area. While the outdoor spaces might be used more actively by year round residents, I do not consider that would have any greater urbanising effect on the area's character and appearance than the presence of the many nearby permanent dwellings on and leading from Satchell Lane. I therefore consider that the visual impact of the development would not be of such significance as to give rise to conflict with saved Policies 1.CO and 59.BE of the Local Plan. That is because the development, while being in the countryside, would not be of a scale or appearance that would be incompatible with its surroundings.

26. The site lies outside Hamble-Le-Rice or any other settlement and Satchell Lane is a road without footways. The site is clearly within a rural location, however, I consider that this would not be an isolated location for six dwellings to be occupied on an unrestricted basis. That is because there are a significant number of dwellings nearby on Satchell Lane and in Fry Close, St Agatha's Road and Mercury Gardens.

27. I recognise that this is a location where accessibility to everyday local facilities and services by a range of modes of transport is not of the highest order. I therefore accept that there would be a likelihood of high private motor vehicle dependency amongst the occupiers of the site. However, that is a situation that is equally likely to be true for people using the site for holidaying as well as the residents of the dwellings in the previously mentioned streets. Any additional vehicular movements associated with the development would not be particularly sustainable in transportation terms. However, the number of additional vehicle movements generated by the development would be comparatively modest compared with the numbers generated by the significant number of nearby properties.

28. Taking account of the above mentioned factors I consider that the development's accessibility to everyday local services and facilities by a range

of modes of transport would not be so poor as to preclude the occupation of the site on an unrestricted residential basis. In this regard I consider that there would be no conflict with saved Policies 1.CO and 59.BE of the Local Plan and paragraphs 17 (the eleventh core planning principle), 32, 35 and 55 of the Framework. That is because the development would not generate a significant amount of additional movements and the degree of isolation from everyday local services and facilities would be comparable with the numerous other nearby dwellings in the immediate area and would not be unreasonable.

29. For the reasons given above and in the absence of conflict with local or national policy, I conclude on this issue that this site would be an appropriate location for unrestricted residential occupation.

Conclusions

30. The appellant contends that the Council cannot currently demonstrate the availability of a five year supply of deliverable housing land sites (an HLS). The Council in its appeal case, drawing on a recent appeal decision, has submitted that it can now demonstrate the availability of an HLS, a claim that the appellant has not subsequently contested.

31. On the evidence available to me I am more inclined to accept that there is currently an HLS in the Council's area. In any event because of the nature of the harm that I have identified in relation to my first main reason, I consider the tilted balance in favour of sustainable development referred to in the first sub-bullet in the fourth bullet point in paragraph 14 of the Framework does not apply. That is because the second sub-bullet in the fourth bullet point in paragraph 14 states that planning permission should not be granted when '… specific policies in this Framework indicate development should be restricted'. The Framework's ninth footnote gives examples of its policies that indicate development should be restricted. Amongst other things the Framework's policies relating to the Birds and Habitats Directives are listed in the ninth footnote. Paragraph 119 of the Framework similarly refers to the presumption in favour of sustainable development not being applied when an appropriate assessment under the Habitats Regulations is required.

32. Having concluded that in the absence of there being mitigation for the development's effects on the integrity of the SPA there would be unacceptable harm to the SPA, that harm gives rise to conflict with policies of the Framework which indicate that development should be restricted. I therefore conclude that planning permission should not be granted. The appeal is therefore dismissed.

Grahame Gould

INSPECTOR