
Appeal Decision

Hearing held on 18 November 2014

Site visit made on 18 November 2014

by Mark Caine BSc (Hons) MTPL MRTPI

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

Decision date: 17 December 2014

Appeal Ref: APP/B2002/A/14/2221051

The Fitties Chalet Park, Cleethorpes, N.E.Lincolnshire DN36 4HB

- 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 Paul Harwood on behalf of the Humberston Fitties Community Group against the decision of North East Lincolnshire Council.
 - The application Ref DM/0025/14/FUL, dated 20 January 2014, was refused by notice dated 4 June 2014.
 - The application sought planning permission to continue the use of land for holiday purposes by extending the holiday season such that, no unit of accommodation shall be used for holiday purposes for at least eight consecutive weeks during the months of November, December, January, February and March each year without complying with a condition attached to planning permission Ref 08/92/0213, dated 25 June 1992.
 - The condition in dispute is No 2 which states that: *for at least one complete period of eight consecutive weeks each year between the months of November and March all units of accommodation shall be unused or unoccupied for any purpose between the hours of 4.00 pm on any day and 9.00 am the following morning inclusive.*
 - The reason given for the condition is: *To ensure that the units remain for holiday purposes only and that a proper and universal closed season continues to be proposed on the whole Chalet Park at the same period of time.*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The name of the applicant is given as FORAB in the original planning application form, but the appellant's details are specified as Mr Paul Harwood of the Humberston Fitties Community Group in the submitted appeal form. A letter has been submitted to confirm that FORAB has recently disbanded and replaced by two community groups, of which one is the Humberston Fitties Community Group. I have therefore amended the appellant's details in the banner above to be consistent with those provided in the appeal forms.
3. During the Hearing the appellant queried the status of the original planning application (Ref: 08/92/0213) which was granted for the continued use of the land for holiday purposes under Regulation 4 of the Town and Country Planning (General Regulations) Act 1976. Nonetheless, this is not a matter for me to determine in the context of an appeal made against a refusal to grant planning permission under section 78 of the Town and Country

Planning Act 1990. It is open to the appellant to apply for a determination under sections 191/192 of the Act to determine this matter, and any such application would be unaffected by my determination of this appeal.

4. I understand that at the present time the two month break in night time occupation is from January to February and that this is administered through the lease.
5. The appellant is seeking to vary the disputed condition in order to remove the current occupation time restrictions on the chalets and replace them with evacuation procedures and plans.

Main Issues

6. The main issues in this appeal are:
 - (i) Whether the users of the site would be at unacceptable risk from flooding if the condition was varied.
 - (ii) Whether the proposal would preserve or enhance the character or appearance of the Humberston Fitties Conservation Area.

Reasons

Flood Risk

7. Humberston Fitties chalet park comprises a number of traditional single storey chalets, predominantly of timber construction that are bounded by the River Humber estuary to the east, a caravan site known as Thorpe Park Holiday Centre to the north and west, and a Yacht Club and wildlife ponds to the south.
8. The appeal site is protected against flooding by a sea defence which comprises a sand dune frontage that is reinforced by stone filled gabion boxes at their base. An embankment is also set back from the shore and acts as a secondary line of defence. A raised grass bund defence which is maintained by the Environment Agency (EA) also runs through the centre of the site.
9. The site is situated within Flood Zone 3a of the EA's Flood Zone Maps which is defined in paragraph 065 of the Planning Practice Guidance: *Table 1: Flood Zones* (PPG) as having a high probability of flooding with a 1 in 200 or greater annual probability of sea flooding. EA coastal hazard mapping also shows the site, even in a current day scenario, to be located in a zone classified as 'danger to all' based on variables such as the depth and velocity of predicted flood events.
10. The proposal, if allowed, would result in the site falling within the PPG's 'Highly Vulnerable' flood risk classification as shown in *Table 2: Flood Risk Vulnerability Classification* of paragraph 066. This is because the removal of the time restrictions is likely to result in the chalets, which I am satisfied come within the caravans, mobile homes and park homes category, being permanently occupied. The flood risk-vulnerability and flood zone 'compatibility' matrix of paragraph 067 of the PPG: *Table 3: Flood risk vulnerability and flood zone 'compatibility'* indicates that highly vulnerable development on sites within Flood Zone 3a, such as this, should not be permitted.

11. The EA advise that the site could experience depths of between approximately 1 and 2 metres arising from breaches in the defences that have a 0.1% chance of occurring in any one year. They consider the current standard of protection to be below what is normally considered to be safe for residential accommodation and have raised concerns about the future maintenance of the defences. It has also been put to me by the EA that factors which contribute towards extreme tidal events are more likely to coincide between the months of November and March than for the rest of the year. This has been substantiated by an EA fact sheet which shows substantial increases in recorded tide levels, surges, offshore and nearshore wave heights over this period. I appreciate that this fact sheet may have previously had a typographical error relating to a particular overtopping scenario, however this has been rectified and I have no substantive reason to conclude that the information before me is inaccurate or significantly flawed.
12. At the Hearing the EA argued that the 'danger for all' classification indicates that wading through water to rescue people is not an option because of the rate of rise, depth and velocity of flood waters. I also heard that this is an area where trained Emergency Services staff would have to carry out their own risk assessment to determine whether they could enter the site safely during such a flood event.
13. It is uncontested that the main source of flood risk to the site is from a breach of sea defences, and that some upgrading works to this defence have taken place. I recognise that there are differences in the EA's evidence when compared to other available information including that in the Council's Strategic Flood Risk Assessment (SFRA), the Weetwood report and the Three Counties Flood Risk Assessment. Uncertainties also exist regarding the various variables and factors involved in predicting breaches, the levels of defence and tide levels.
14. However the EA hazard maps are generated using published national data sets and localised information to provide greater accuracy and a best estimate. The statistical modelling work does not use joint probability analysis. These are produced for the Council to use alongside its SFRA as an evidence base for planning decisions. At the Hearing I heard that the difference in the recorded depths and velocities were because the SFRA was published in 2011 and had not been updated and I have no reason to question this. The Council commissioned Weetwood report was also published in 2007 and does not provide information as up-to-date as the EA hazard maps. In any case, this report concludes that the occupation should not be extended.
15. Whilst the appellant has submitted tidal data from Grimsby, this is only taken over a period of 1 year, whereas the EA's analysis is based upon recorded data from Immingham over a 50 year period and provides, in my opinion, a more robust data set.
16. I apportion little weight to the fact that the site, unlike other nearby areas, did not flood during the storms of 2013. Although the embankment was not overtopped, the dune and stone filled gabion baskets were breached. Coastal inundation is caused by a range of different factors which interact with the physical features of a specific area. As such it is unlikely that two points along a coastline would incur the same impact from an individual

storm event. In any case, the effects of climate change will only increase flood risk in the future.

17. There is little substantive evidence before me to demonstrate that Spurn Point, or the estuary setting offer the appeal site such a significant degree of protection to ensure that it would be likely to escape the worst effects experienced along the coastline of the rest of England. Indeed the EA's historic flood map indicates that this is not that case. In the absence of any substantive evidence to the contrary I am also unable to conclude that infiltration and seepage into drains and gullies would result in the appeal site absorbing at least 1 metre of flood water.
18. In light of the above, while I have had regard to the appellant's Flood Risk Assessment, I consider the EA's evidence to be the most accurate and reliable information available. Therefore, even with the defences in place, I consider the probability of flooding to be high based on the best and most up-to-date information and guidance now available.
19. Nonetheless, the appellant argues that the existing occupancy condition only covers a small part of the flood risk period, and that flood evacuation measures would totally mitigate against any residual flood risk. To this end, I have had regard to the Humberston Fitties Evacuation Plan 2014, which I was informed at the Hearing is still in draft format and subject to possible modification. I am also aware that Humberston Fitties has its own flood watch team, most of whom are members of the yacht club, and that the EA's early warning system could predict the likelihood of flooding at least 24 hours in advance.
20. The appellant also suggests that evacuation drills and practices, clear and precise directions and procedures and action plans which include evacuation routes and flood wardens would be provided. Furthermore a list of the benefits of flood evacuation procedures over occupancy restriction have also been put to me, to which I have had regard.
21. I do not doubt the value of Flood Evacuation Plans. Although the availability of flood warnings and evacuation plans are one of the considerations to ensure that any new development is safe, these are dependent on human action and compliance. Failings and errors can and do occur including illness, accidents, delayed departure, unexpected and dramatic changes in the conditions and natural personal reluctance to move out rapidly. I am mindful that such events can occur at night, when most people are asleep, and this would make contact and response difficult. The Council also refers to the difficulty of enforcing a flood evacuation plan. Given the predicted force, speed and depth of future flooding, and the fact that chalets are single storey I consider that this would also place residents in considerable danger. The risk that it could present to the emergency services were they obliged to attempt rescue cannot be overlooked. As such I do not consider that flood warnings and evacuation plans on their own, during the period when extreme tidal events are more likely would manage flood risk so that the development would remain safe throughout its lifetime.
22. I note that the appellant suggests a planning permission for a 25 year time period. However the appeal site has been identified by the hazard maps as "danger for all" in the current day. A 25 year planning permission would therefore not overcome this.

23. I also do not consider the fact that site is currently occupied during other periods of the year that experience high tides to justify the removal of this condition. The proposal relates to an existing development, and whilst the existing situation may place residents at some risk, to extend the occupancy times would only increase the danger to human life.
24. Given the above, I consider that the limitation of occupation to times when floods are less likely is the most effective tool in the present circumstances in reducing flood risk. I therefore conclude that the proposed change in the period of occupation would pose an extremely harmful risk to the users of the site from flooding if the condition were varied as the appellants propose. Consequently, it does not comply with the aims of Policy GEN2 of the North East Lincolnshire Local Plan 2003 (Local Plan) which, amongst other matters, requires the suitability of proposals to be assessed in relation to flood risk. It would also be inconsistent with the National Planning Policy Framework's (the Framework) approach of minimising vulnerability to flood risk.

Character and appearance

25. The Humberston Fitties Conservation Area Chalet Design Guide 1997 (HFCADC) highlights the special interest of this area as deriving from its historical origins as an early twentieth century chalet holiday park that was developed in an irregular pattern. The plots vary in size, but are laid out in a generally open manner, and contain chalets which are described as comprising simple basic lightweight materials. These all contribute to its overall significance and unique character, acting as a reminder of its past.
26. I appreciate that an Article 4 direction already restricts development on this site, and that the lease provides the Council with separate powers to enforce against development. Nonetheless, the removal of the occupancy condition would result in the full time residence of the site which would be likely to increase the pressure for domestic alterations and improvements such as UPVC window, gutter and roof replacements, and new means of enclosure in the future. I have been made aware of the previous planning appeal on this site (Ref: APP/B2002/A/08/2091651) and I agree with the previous planning inspector in that domestic paraphernalia, such as an increase in traffic and parked cars, whilst not to the same degree as during peak summer times, would also incrementally change the unique character and appearance of the site from a chalet holiday park to a residential area.
27. I therefore consider that as a result of this pressure, the proposal would not preserve or enhance the character or appearance of the Humberston Fitties Conservation Area. Nonetheless, I consider that the harm caused would be less than substantial. Where any harm to the significance of designated heritage assets would be less than substantial, paragraph 134 of the Framework states that this harm should be weighed against any public benefits of the proposal.
28. It has been put to me that the proposal would increase tourism, visitor numbers and extra council tax contributions. I also heard that it would avoid economic and social blight, improve employment, security and maintain the general appearance of the area during the winter months when these chalets are currently vacant. Furthermore, I am aware of the residents' pride regarding the site's conservation status and their future plans for activities including, amongst other things, walk tours, treasure hunts and heritage

weekends. However, I do not consider these matters, to the extent that they amount to public benefits, would outweigh the harm that would be caused to the Humberston Fitties Conservation Area and its significance as a heritage asset.

29. I therefore conclude that the proposal would not preserve or enhance the character or appearance of the Humberston Fitties Conservation Area. As such it would be contrary to Policies BH1 and LTC9 of the Local Plan, which collectively require, amongst other matters, for development proposals to not have an unduly adverse effect on the character of the area, or cause visual problems, and have special regard to be had to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

Other Matters

30. The appellant argues that occupancy restrictions have been inconsistently applied between the Fitties, Thorpe Park and the Yacht Club, and that these do not include members of the public, or site staff. The unrestricted occupancy of an approved planning application for a Premier Inn and the use of the Pleasure Island car park for a Circus in January 2014 have also been highlighted as further examples of inconsistency. However I have not been provided with the full details of the circumstances that led to these cases being accepted by the Council so I cannot be certain that they represent a direct parallel to the appeal proposal. I have, in any case, determined the appeal based on its own merits. It has also been suggested that the holiday park status of the site makes its management and enforcement easier for the Council, and that flood risk was not the reason for the original condition. Be that as it may, all of these factors do not outweigh the concerns that I have identified above.
31. My attention has been drawn to an appeal (Ref: APP/Z2505/V/09/2119176) which related to the siting of 41 caravans for occupation by agricultural workers. The need and benefits associated with this proposal were considered to outweigh the failure to comply with Planning Policy Statement 25 (PPS25). Accordingly its circumstances are not directly comparable with those which apply in this appeal for the removal of an occupation time condition. I have, in any case, reached my own conclusions on the appeal proposal on the basis of the evidence before me.
32. In reaching my conclusions I have also taken into account the appellant's reference to the Framework's presumption in favour of sustainable development, the appeal sites sustainable location in regards to accessibility and all of the proposed benefits that have been put forward. However I do not consider these to outweigh the flood risk or the harm that the proposal would cause to the character and appearance of the conservation area. I have also had regard to the Framework's core principles, however the subject of "achieving sustainable development" has 3 dimensions, which are economic, social and environmental roles that are expected to be delivered equally. Clearly, a proposal has to comply with all three strands to declare a development sustainable. Given the risk from flooding and the harm caused to the conservation area it is not considered that the proposal satisfactorily addresses these requirements. It would therefore not constitute sustainable

development because it would not comply with the social and environmental roles of sustainability.

33. For the reasons given above, the appeal should therefore be dismissed.

Mark Caine

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Paul Harwood	Humberston Fitties Community Group
John Cordock	Humberston Fitties Community Group
Christopher Kendall Dip TP MRTPI	A friend to Humberston Fitties Community Group

FOR THE LOCAL PLANNING AUTHORITY:

Jonathan Cadd	North East Lincolnshire Council
Debbie Morris	Environment Agency

INTERESTED PERSONS:

Terence James	Local resident
Jack Smith	Local resident

DOCUMENTS AT THE HEARING

1. Appellant's table containing anomalies between difference sources of information and evidence.
2. North East Lincolnshire Council's Humberston Fitties Chalet Park Evacuation Plan, October 2014.

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