The Planning Inspectorate

# Appeal Decision

Hearing held on 23 November 2010
Site visit made on 23 November 2010

**by Jessica Graham BA(Hons) PgDipL**

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

**Decision date: 9 December 2010**

**Appeal Ref: APP/X1735/A/10/2119630**
**14 Fishermans Walk, Hayling Island, Hampshire PO11 9QU**

- 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 Oliver Lund against the decision of Havant Borough Council.
- The application Ref 09/72215/002, dated 24 March 2009, was refused by notice dated 25 August 2009.
- The development proposed is the construction of 1 No. 2 bed tourism-related detached property, including ground floor car and boat storage facility, and utilising existing access to Eastoke Avenue.

## Decision

1. I dismiss the appeal.

## Procedural matter

2. While the proposed development was originally described on the application form as a dwelling, the appellant subsequently explained that the intention was not to create a permanent residence, but a property that would be restricted to use for holiday accommodation. My determination of the appeal proceeds on that basis, and in the interests of clarity, I have adopted the revised description of the proposal as it appears on the Council's Refusal Notice.

## Main Issues

3. The Council's second reason for refusal concerned the absence of any financial contribution toward local transport infrastructure. In advance of the hearing the appellant provided a S.106 Undertaking to make such a contribution in the event that the proposed development were permitted, and the Council confirmed at the hearing that this overcame its second reason for refusal. However, I must still be satisfied that this planning obligation would meet the relevant statutory tests. On that basis, there are two main issues in this appeal:

   (a) whether the proposed development would be at significant risk from flooding, and if it were to flood, whether its occupiers would be able to make a safe exit; and

   (b) whether the proposal generates a need to make a financial contribution toward improvements to local transport infrastructure.

## Reasons

4. The appeal site is a coastal plot in the south-east part of Hayling Island, with a foreshore frontage that includes a private slipway into Chichester Harbour. It lies between a two-storey dwelling at No. 12 and a bungalow at No. 16, but the development pattern of the area is predominantly characterised by the siting of caravans. The proposed development would have two storeys, with boat storage space and car parking provided at ground level, and living accommodation on the first floor.

*Flood risk*

5. The appeal site lies within Flood Zone 3a; that is, land assessed by the Environment Agency as having a 1 in 200 (or greater) annual probability of tidal flooding. National planning advice set out in Planning Policy Statement (PPS) 25: *Development and Flood Risk* explains that where a proposed development site is at risk of flooding a Sequential Test should be applied, to demonstrate that there are no reasonably available alternative sites in areas with a lower probability of flooding, that would be appropriate to the type of development proposed.

6. The Practice Guide that accompanies PPS 25 explains that it is the developer's responsibility to provide evidence that there are no reasonably available alternative sites. No such evidence has been provided. The appellant pointed out that the Council had failed, despite requests, to provide assistance in identifying possible alternative sites, and that is to be regretted. Nevertheless, the fact remains that the responsibility to provide the necessary evidence for the Sequential Test rests with the appellant, rather than with the Council.

7. In the absence of such evidence, it cannot be adequately demonstrated that there are no other available sites, at lower risk of flooding than the appeal site, where the proposed tourist accommodation could be located instead. The proposal would therefore fail to satisfy the requirements of the Sequential Test and so would conflict with the guidance set out in PPS 25, which makes it clear that only where there are no reasonably available alternative sites in Flood Zones 1 or 2 should a decision maker consider the suitability of a site in Flood Zone 3.

*Fallback position*

8. However, an important material consideration in this particular case is the appellant's contention that he is entitled to station a caravan on the appeal site, by virtue of Caravan Site Licence No. 225. The Council accepts that the Site Licence is extant, but considers that the planning use of the site for the stationing of a caravan has been abandoned.

9. I note that in connection with a grant of planning permission made in 1993 to construct a bungalow on the appeal site, the (then) owner of the site entered into a legal deed that would have obliged her to surrender the Site Licence prior to the first occupation of that bungalow. However, the legal obligation would only have taken effect had the 1993 planning permission been implemented, and it is common ground that it was not. I also note the Council's contention that the caravan that was the subject of Site Licence No. 225 was removed at some time between 1995 and 1999, and no caravan was subsequently stationed on the site until 2010.

10. Be that as it may, Site Licence No. 225 is not specific to the caravan that was on the site on the date of its issue, and neither does it have an expiry date. Since caravans are by their very nature moveable objects, I am not convinced that the removal of the caravan from the site for a number of years necessarily amounted to the abandonment of that use, particularly since the Site Licence would have remained extant throughout. As to the planning obligation entered into by a previous owner of the site, any interpretation of that legal deed as evidence of intention to abandon the site's use for stationing a caravan must be subject to the proviso that the use would only have been surrendered once the permitted bungalow was in place. Similarly, I do not take the appellant's current and previous attempts to gain permission for a permanent building on the site as evidence of definite intent to abandon its use for stationing a caravan; he has made no secret of his intention to continue that use if the current appeal should be dismissed.

11. Taking all of this into account, I conclude that on the basis of the evidence currently before me, it remains open to the appellant to station a caravan on the appeal site in accordance with the terms of Site Licence No. 225. I saw at my site visit that he has already done so. I consider that the legitimate presence of such a caravan constitutes a valid fallback position against which the current proposal should be considered.

*Safety of occupiers*

12. A comparison of the current proposal with the fallback position was not undertaken by the Environment Agency, since its consultation response was based on the Council's understanding that the appeal site had no permitted use for the stationing of a caravan. At the hearing, the Environment Agency accepted that the proposed provision of first-floor living accommodation at a level of 5.45m AOD would be an improvement over the fallback provision of living accommodation within a caravan, since it would provide occupiers with a safe refuge during an extreme tidal event of 4.6m AOD.

13. The Environment Agency nevertheless maintained its concern about the lack of safe access to and from the proposed development during tidal flooding, and the additional pressure this could place upon the emergency services. It also expressed concern that permitting year-round occupation of the new development, so that occupiers might be present during winter storms, would increase the risk above that associated with the terms of the extant Site Licence, which restrict occupancy of any caravan on the site to dates between 1 March and 31 October.

14. In terms of access, the appeal site is at 2.9m AOD, and while the existing sea defences provide effective protection against flooding to 3.61m AOD, overtopping during an extreme event could lead to water pooling behind them. However, I saw at my visit that the site benefits from a floodgate, operable by the occupier. Since any incidence of overtopping would be likely to occur when the tide was high, there would be an opportunity to open the floodgate when the tide was low, to allow the water to drain from the land back into the harbour. While there is no safe route that would enable occupiers to evacuate the premises and reach higher ground during an extreme tidal event, the proposed two-storey building would be an improvement upon a single-storey caravan in that occupiers would be able to take refuge in the first-floor living accommodation while waiting for the tide to fall, without necessarily requiring rescue by the emergency services.

15. I appreciate that during a severe storm, water levels may not drop sufficiently between consecutive high tides to allow safe and effective operation of the floodgate. It may well be that if such an event were to occur at short notice, the occupiers would require rescue by the emergency services. But since the occupiers of a permitted caravan on the site would also require rescue in those circumstances, and with a great deal more urgency, I find that the proposed development would not place any additional pressure upon the resources of the emergency services.

16. As to the question of year-round use of the building, I share the Environment Agency's concern that permitting occupation during the winter months would expose occupiers to the weather and tidal conditions experienced during the worst of the winter storms. The provision of first-floor living accommodation would help to reduce the safety risks associated with flooding, but I am not convinced that this benefit would be sufficient to justify year-round use. I also note the Council's point that in order to reduce impact upon the Chichester Harbour Area of Outstanding Natural Beauty, and upon over-wintering birds, it would be desirable to prevent occupancy during winter months. As discussed at the hearing, restricting occupation of the development to dates between 1 February and 30 November appears to me to be an appropriate approach; this would avoid occupation during the worst of the winter storm period, while still enabling extensive use to be made of the proposed holiday accommodation.

*Future use*

17. My consideration of the fallback position has been based on the premise that the proposed development would provide a safer form of accommodation, in terms of flood risk, than a caravan stationed on the site. However, it is important to note that in the absence of a legal deed tying the surrender of the extant Caravan Site Licence to the construction of the new building, that Site Licence would remain in force. It contains provisions preventing any caravan from being stationed within 20 feet of any dwelling on the site or within 10 feet of any site boundary, but the dimensions of the plot are such that there would still be room for a modestly-sized caravan to be stationed in the garden area between the proposed development and the sea wall.

18. The implications of this are that rather than functioning as safer 'replacement' accommodation, the proposed development would instead increase the overall accommodation available at the appeal site, with an attendant increase in the number of occupiers at risk of flooding.

19. This is not a situation that could reasonably be resolved by the imposition of a condition requiring the Site Licence to be surrendered, or its provisions disregarded. The conflicting views of the Council and the appellant concerning the current permissibility of stationing a caravan on the site demonstrate the discrepancies that can arise over the interaction of the planning system and the Site Licensing regime, and Circular 11/95 *The Use of Conditions in Planning Permissions* recognises that even where a condition does not actually duplicate or conflict with another control, differences in requirements can cause confusion. In my judgment, the appropriate means of ensuring that the proposed development constituted a replacement for, rather than an addition to, any caravan on the site would be the execution of a S.106 planning obligation, as was required in connection with the 1993 grant of planning permission. No such planning obligation has been provided.

*Conclusion on the first main issue*

20. The appeal site could currently be used to provide single-storey living accommodation at a lower level than the predicted extreme tidal event, and its replacement with first-floor living accommodation at a higher level than the extreme tidal event would reduce the safety risks to occupiers. However, in the absence of any mechanism to ensure the proposed accommodation would function as a replacement for (rather than an addition to) the existing permitted use for a caravan, the development would conflict with the key objectives of national guidance set out in PPS 25, which aim to reduce flood risk overall. It would also conflict with the aims of Policy F1 of the Havant Borough District Wide Local Plan 1996 – 2011, which seeks to ensure that development in areas at risk of tidal flooding satisfactorily mitigates that risk.

*Second main issue*

21. In the course of the appeal, the appellant submitted a Unilateral Undertaking to make a financial contribution of £3,745.00 toward local transport infrastructure. The Council based its request for this contribution on the provisions of policies T10 and IMP1 of the Local Plan. The former states that where existing highway infrastructure is unable to accommodate the demands generated by the development, the Council will seek agreement from the developer to secure the necessary improvements. The latter states that development will only be permitted where a contribution toward funding the necessary infrastructure, where this does not exist, is made.

22. I have not been provided with any evidence that the existing highway infrastructure would be unable to cope with demands generated by the development. Further, the required contribution was calculated by reference to a county-wide formula, and although the Council provided a list of highway schemes proposed for Hayling Island only two of these, involving the provision of cycle routes, were identified as being directly relevant to the proposed development. While I do not underestimate the importance of these schemes in promoting sustainable travel, I have not seen any convincing evidence that they are necessary to make the development acceptable in planning terms.

23. For these reasons I am not convinced, in this particular case, that the transport infrastructure contribution required by the Council is necessary, directly related to the development, or fair and reasonable in scale and kind. On that basis, while the S.106 planning obligation to secure payment of the transport contribution does not of course weigh against the proposed development, neither does it constitute a reason to grant planning permission.

*Other matters*

24. A neighbouring resident expressed concern that the first-floor balcony of the proposed development would mean the rear garden of No. 12 could be overlooked. The eaves-height side walls of the balcony would direct views toward the harbour, and while some overlooking of part of No. 12's garden may occur, this is not an uncommon situation between neighbouring properties and would not, in my view, have a significant adverse impact upon the privacy of No. 12. I also note the concern about increased noise and disturbance arising from the close proximity of the new development and a potential increase in the number of vehicles, but I am satisfied that any such increases would not be so substantial as to harm the living conditions of neighbouring occupiers.

*Conclusion*

25. As a result of my consideration of the first main issue, I find that the construction of the proposed development without an attendant surrender of the extant Caravan Site Licence would conflict with national and local policies that seek to reduce the risks associated with flooding. This conflict is not outweighed by any other material considerations, and is sufficient and compelling reason to refuse planning permission.

26. I determine that the appeal should be dismissed.

*Jessica Graham*

INSPECTOR

## APPEARANCES

FOR THE APPELLANT:

| | |
|---|---|
| Mr L Weymes DipTP MRTPI | Planning consultant |
| Mr M Critchley | Architect |
| Mr O Lund | Appellant |

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|---|---|
| Mr D Williams BA DipTP MRTPI | Senior Planner |

INTERESTED PERSONS:

| | |
|---|---|
| Ms J Woodbridge | Environment Agency |
| Ms C McLeod | Environment Agency |
| Cllr D Collins | Ward Member |