



Appeal Decision

Site visit made on 22 August 2017

by Mike Fox BA (Hons) DipTP MRTPI

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

Decision date: 30 August 2017

Appeal Ref: APP/Q3305/W/17/3175799

Old Down Caravan Site, Old Down, Emborough, Wells, Somerset, BA3 4SA

- 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 JBS Park Homes against the decision of Mendip District Council.
 - The application Ref 2017/0151/VRC, dated 19 January 2017, was refused by notice dated 28 March 2017.
 - The application sought planning permission for use of land for holiday static caravans and touring vans as confirmed by letter of 22 April 1988 without complying with two conditions attached to planning permission Ref 030534/003, dated 16 May 1988.
 - The conditions in dispute are Nos 2 and 5 which state that: (2) *No more than ten touring caravans and twenty static caravans shall be stationed on the site at any one time;* and (5) *Between 1 April and 31 October in any one year, none of the caravans hereby permitted shall be in the same occupation for a continuous period exceeding 31 days, with no return within the following 31 days by the previous occupier.*
 - The reasons given for the conditions are: (2) *in the interests of visual amenity, highway safety and because of the limited capacity of the septic tank;* and (5) *The permanent residential occupation of the site would be contrary to Structure Plan policy SP8 and would exacerbate the drainage constraints of the site.*
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Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. The Appellant's planning application was for the removal of conditions (2) and (5), whereas its appeal statement seeks to vary the conditions. The Council contends that if I accept this change, third parties originally consulted on the application would be prejudiced, as they would not have the opportunity to comment on the changed terms of reference. Given that the statements from the main parties are in the public domain, and that no third party comments, apart from statutory consultees, were received, I am determining the appeal based on the Appellant's revised application to vary the conditions, and I consider that the interests of no party are prejudiced by this course of action.
3. Both main parties refer to a recent appeal decision which issued a certificate of lawful use or development (LDC) for the purposes of siting of caravans for the purposes of human habitation, excluding the months of May, 2 July to 1 August

and 2 September to 2 October¹. The site edged in red in the LDC plan is identical to the appeal site.

4. The Appellant contends that, in the light of the LDC, condition (5), to control occupancy, can now be considered to be wholly inadequate for its original and stated purpose. The Appellant also argues that there is no practical purpose served by maintaining any distinction between static and touring caravans, as condition (2) does, and that a limit of 30 caravans permitted on the site could be inserted into a rewritten condition.
5. Whilst the granting of the LDC is a material consideration, it restricts itself to determining whether a use is lawful, and therefore what use benefits from planning permission. The LDC is not concerned with planning merits, which are clearly relevant in this appeal.

Main Issue

6. The main issue is whether the disputed conditions are reasonable or necessary, having regard to the principles of sustainable development, impact on the character and appearance of the surrounding countryside and highway safety.

Reasons

7. The appeal site is a recognised caravan site, in open countryside, with access off the B3139, close to its junction with the A37. The boundaries of the site are partly defined by these two main roads.
8. Condition (2) restricts the capacity of the site to no more than ten touring caravans and twenty static caravans. The Appellant states that there would be no practical purpose served by maintaining any distinction between static and touring caravans, whilst the condition could be rewritten to state that there shall be no more than 30 caravans on the site. However, even if the condition were varied to a limit of 30 caravans, the number of touring caravans could increase by up to threefold; this would significantly change the nature and volume of traffic movements at the junction with the B3139, which is a classified road where the national speed limit operates, with the additional hazard of cars towing caravans entering and egressing from the site.
9. The highways authority has advised that there is poor visibility at the egress to the B3139 and that if the use of this substandard access to the site intensified visibility splays of 2.4m x 4.3m would need to be provided. This, however, would necessitate acquiring land which is not in the ownership of the Appellant, including part of a stone wall. The lack of the Appellant's ability to demonstrate safe access/egress is a sufficient reason on its own to dismiss the appeal in relation to condition (2). The proposed variation of condition (2) would therefore harm highway safety and as such would be contrary to Local Plan² policy DP9 (transport impact of new development).
10. Any intensification of caravans would result in a more urbanised appearance, but because the site is relatively well screened by trees from public views, there would be little impact on the character and appearance of the surrounding countryside.

¹ Appeal Ref: APP/Q3305/X/16/3155196 Old Down Caravan Site, Emborough, Wells, Somerset, BA3 4SA allowing a certificate of lawful use for the purposes of siting of caravans for the purposes of human habitation, excluding the months of May, 2 July to 1 August and 2 September to 2 October; dated 5 January 2017.

² Mendip District Local Plan Part 1: Strategy and Policies 2006-2029; adopted 15 December 2014.

11. Condition (5) has the intention of restricting the use of the caravans to certain times of the year, so as to prevent permanent, year-round residential occupation. This objective is appropriate for such an isolated area, where access to shops, employment, schools and other facilities would have to be by private car. Such development would be highly unsustainable, contrary to national planning policy, as expressed in paragraph 55 of *the Framework*³, which states that local planning authorities should avoid new isolated homes in the countryside, and clearly, none of the exceptional special circumstances apply in this appeal. It would also be contrary to Core Policies⁴ 1 (Mendip spatial strategy) and 2 (provision of new housing).
12. Although national planning policy and the strategic policies of the local planning authority are clear, condition (5) is less so. As the Appellant states, condition (5) does not prevent the caravans being occupied as a person's sole or main place of residence, and all the condition can do is to require the residents having to 'swap' or move between caravans between 1 April and 31 October.
13. Whilst the LDC Inspector opined that the condition might prove very labour intensive to enforce, he also stated that there is no reason why it cannot be enforced. I agree with this opinion. I also disagree with the Appellant that the primary purpose of the condition is to frustrate rather than prevent the achievement of a planning purpose. If condition (5) were to be removed, there is no doubt in my mind that there would be an unfettered residential use of the site, which inevitably would result in more private car journeys to access facilities and services, contrary to the principles of sustainability as set out in national policy and the development plan.
14. The Appellant suggests varying the condition by limiting occupation to persons over 50 years of age, so as to reduce traffic movements to and from the site. However, the current retirement age for a person aged 50 is 67 years, and this is likely to increase in the foreseeable future. Residents in their 50s are still likely to commute to work and make a wide range of other trips for shopping, schools, health and other community facilities and for leisure/private purposes. I therefore do not consider that the proposed variation would significantly affect traffic movements in a sustainable direction.

Other matters

15. Any concerns regarding foul and surface water drainage could be overcome by a suitably worded condition, had I been minded to allow the appeal.

Conclusion

16. The proposed variation of condition (2) would remove the effective limit on the number of caravans allowed on the site, which would give rise to an unacceptable highway safety risk. The proposed variation of condition (5) would result in an unfettered residential site in an unsustainable location; whilst this condition is limited in its effectiveness to achieve the sustainable aims of planning policy, its removal would make permanent residential development even more likely and therefore on balance I consider that the condition should remain.

³ DCLG: National Planning Policy Framework (*the Framework*); March 2012.

⁴ Mendip District Local Plan Part 1: Strategy and Policies 2006-2029; adopted 15 December 2014.

17. In conclusion, I have found that both conditions (2) and (5) are necessary and reasonable in the interests of highway safety and sustainability, in accordance with national policy and the development plan. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should fail.

Mike Fox

INSPECTOR