



Appeal Decision

Site visit made on 23 October 2017

by J Ayres BA Hons, Solicitor

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

Decision date: 4th December 2017

Appeal Ref: APP/B1740/W/17/3180081

Hoburne Naish, Christchurch Road, New Milton BH25 7RE

- 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 Hoburne Ltd against the decision of New Forest District Council.
 - The application Ref 17/10014, dated 30 December 2016, was refused by notice dated 7 April 2017.
 - The application sought planning permission for re-development and re-organisation of site (overall increase of 22 units) without complying with a condition attached to planning permission Ref 81/NFDC/19551 dated, 9 July 1981.
 - The condition in dispute is No 4 which, as per planning permission Ref 81/NFDC/19551 states that: The holiday caravans and chalets shall not be occupied at any time between 1st November and 1st March, except at weekends between Friday and Monday and on public holidays.
 - The reason given for the condition is: The LPA is not prepared to permit use of the holiday caravans and chalets as normal living accommodation within this caravan park.
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Decision

1. The appeal is allowed and planning permission is granted for re-development and re-organisation of site (overall increase of 22 units) – Hoburne Naish Christchurch Road, New Milton BH25 7RE in accordance with the application Ref 17/10014, dated 30 December 2016 without compliance with condition number 4 previously imposed on planning permission Ref 81/NFDC/19551 dated, 9 July 1981 and subject to the following conditions:
 - (1) Caravans and chalets on the holiday park shall be occupied for holiday purposes only.
 - (2) The caravans shall not be occupied as a person's sole or main place of residence.
 - (3) The owners/operators of the site shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans on the site and of their main home addresses and shall make this information available at all reasonable times to the local planning authority.

Procedural Issue

2. There is an extensive planning history to the site. Both parties agree that the whole of the site was authorised for the siting of caravans under planning permission 81/NFDC/19551.

3. In 1998 condition 4 of that permission was varied pursuant to Ref 98/NFDC/65076 to read;

"the holiday caravans and chalets shall not be occupied at any time between 10th November and 10th December and 10th January and 10th February in any year except at weekends between Friday and Monday and Bank Holidays."

4. However, the application form explicitly refers to condition 4 of the 1981 planning permission. The grant of the 1981 permission essentially results in 2 permissions for the appeal site, either of which might be implemented. On the basis of the initial documentation, it is my view that this appeal seeks to vary the 1981 planning permission and I have determined it on that basis.

Background and Main Issue

5. Both parties have agreed that the condition attached to the 1981 planning permission does not comply with the test set out in paragraph 206 of the National Planning Policy Framework (the Framework). For the sake of completeness, both parties also are amenable to the variation of the 1998 condition. The dispute relates to the wording of the appellant's proposed condition.
6. In my view the main issue is whether or not the appellant's proposed variation would satisfy the tests of paragraph 206 of the Framework to ensure that the units are not used as either a main or sole residence.

Reasons

7. The appellant does not dispute that the site should not be used for anything other than holiday and tourism purposes. The appellant already operates a separate park for 143 permanent residential caravans, and that appears to be a separate operation to the holiday park to which this appeal relates.
8. The PPG advises that conditions should not unreasonably impact upon the deliverability of a development. On the basis of the evidence I have no reason to conclude that the holiday accommodation is not suitable for occupation during the winter. The appellant asserts that the restriction puts them at a disadvantage to other parks that have 12 month seasons, and that the removal of the condition would boost local trade. Having assessed the evidence it is clear that the current condition restricts the park from operating in the same manner as its competitors, and I agree with the appellant that this matter should be addressed.
9. The appellant applied for the condition to be varied to read;
 - (i) Caravans and chalets on the holiday park shall be occupied for holiday purposes only.
 - (ii) The caravans shall not be occupied as a person's sole or main place of residence.

- (iii) The owners/operators of the site shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans on the site and of their main home addresses and shall make this information available at all reasonable times to the local planning authority.
10. This suggested condition is based on the model holiday occupancy conditions originally set out in the Good Practice Guidance on Planning for Tourism (GPGPT). Circular 11/95 also dealt with the use of seasonal and occupancy conditions. Both of these documents have now been superseded by the PPG and I therefore attach very little weight to them. However, the appellant has referred to a number of appeal decisions, the general thrust of which are that the advice contained in the cancelled guidance and circulars remains relevant. I agree that the proposed condition would be in accordance with the advice contained in the Framework and PPG relating to the use of conditions, although the PPG does not specifically address the use of holiday or occupancy conditions. These 'standard' conditions of the past are still widely used as a means of preventing permanent residential use.
11. The Council's main objection is to the first of the appellant's suggested conditions. They argue that it would be administratively onerous and difficult to enforce, with specific regard to the general reference to holiday use. This, the Council asserts, would lead to units being used as permanent residential living accommodation which would be contrary to Policy DM20 of the Council's Local Plan Part 2 and Policy CS19 of the Council's Core Strategy.
12. The Council has suggested that the condition be varied to read;
- (i) The caravans shall be occupied for holiday purposes only and shall not be occupied for more than 11 months in any 12 month period with the exception of weekend occupation, which may take place in any 12 month period.
 - (ii) The caravans shall not be occupied as a person's sole or main place of residence.
 - (iii) The owners/operators of the site shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans on the site and of their main home addresses and shall make this information available at all reasonable times to the local planning authority.
13. Enforceability is not referred to in paragraph 206 of the Framework, and case law referred to by both parties has established that a condition contained in the grant of planning permission is not invalid simply because in practice the condition is difficult to enforce.
14. I appreciate the Council's concerns, and have considered the appeals they refer to in their statement of case. However I remain unconvinced that an additional period of absence would be necessary to avoid permanent occupation, above and beyond the restriction to holiday use. The permanent use of a unit would in my mind result in a physical change in the character of that unit with regards to residential paraphernalia, intensification of use, postal issues, and registering for the purposes of the electoral register. A number of these matters could be identified and investigated, if necessary, through the Council's enforcement powers by using methods such as Planning Contravention Notices.

15. The key planning purpose of preventing the permanent residential use of units on the appeal site could be satisfactorily achieved by the proposed condition. In my view the proposed condition would satisfy the six test set out in paragraph 206 of the Framework.
16. Accordingly, I find that removing the disputed condition to allow year round occupancy of the caravan park, subject to the condition proposed by the appellant, would comply with Policy DM20 of the Council's Local Plan Part 2 which seeks to control new development in the countryside, and Policy CS19 of the Council's Core Strategy which seeks to support the local tourism industry by retaining existing serviced tourist accommodation.

Other Matters

17. I have had regard to other matters raised relating to issues such as highway safety, parking, wifi, and maintenance. However, these are not matters that are before me as part of this appeal, and concerns over these issues should be raised with the Council in the first instance.

Conditions

18. For decision notices for the grant of planning permission under S73 of the Town and Country Planning Act 1990 the PPG makes it clear that the relevant conditions from the original planning permission should be repeated, unless they have been discharged.
19. The 1981 planning permission has been implemented and there is no need for the time limit condition. I have given careful consideration to the remaining conditions attached to that planning permission however it would appear that they would have been discharged since the grant of the planning permission.

Conclusion

20. For the reasons set out above I conclude that condition 4 on the 1981 permission, as varied by condition 4 on the 1998 permission, is unnecessary and does not meet the tests set out in paragraph 206 of the Framework.
21. I agree with the parties that it is necessary to ensure that the site is not occupied as a person's sole or main residence. Therefore I conclude that the appeal should be allowed and a new permission granted for the site to be used in accordance with the conditions set out in my formal decision.

J Ayres

INSPECTOR