



Appeal Decision

Site visit made on 18 August 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2020

Appeal Ref: APP/U1105/C/20/3249830

Land to the west of Crealy Meadows, Sidmouth Road, Clyst St Mary, Devon EX5 1DR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Chris Down of Maximum Fun Devon Ltd against an enforcement notice issued by East Devon District Council.
 - The enforcement notice was issued on 21 February 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the carrying out of a material change of use of the land from agricultural use to use for the siting of 12 No mobile homes used for residential purposes shown edged blue on the attached plan B.
 - The requirements of the notice are:
 - I. Permanently cease the use of the land for the siting of the twelve (12) mobile homes used for residential purposes and return the use to its use before the breach took place;
 - II. Permanently remove from the land the twelve (12) mobiles homes;
 - III. Permanently remove from the land any domestic paraphernalia;
 - IV. Permanently remove from the land all material and debris associated with compliance with steps II – III above.
 - The period for compliance with the requirements is Six (6) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) & (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. I have used the name for the appellant company as clarified by the appellant after the initial submission of the appeal form.
3. The appellant refers to the accommodation as being “ancillary” to the park. I have not taken this as an argument that planning permission is not required particularly given that they are professionally represented and that the appeal has not been lodged under ground (c).

The Appeal on ground (a) and the deemed planning application

4. Under this ground of appeal, I have to consider only the development as alleged on the notice. The allegation does not include the construction of

hardstanding and roadway, lighting and service connections on the land. Notwithstanding the appellant's request for those additional matters to be considered, they are beyond the scope of this ground of appeal and the deemed planning application.

The Main Issues

5. There is no dispute that the 12 mobile homes are occupied by workers employed at Crealy Adventure Park. The appeal site is within the area in the same ownership as the park, surrounded by land used for various functions which I understand are related to the park. The appellant has explained that the accommodation is not required for sole or main residences but for when members of staff need to stay on a short-term basis.
6. The reasons for issuing the notice refer, amongst other things, to the location of the appeal site being "unsustainable" and "outside of any designated built up areas boundary or strategic allocation". The Framework defines "sustainable development" within paragraph 11 and for decision making, this means:
 - approving development proposals that accord with an up-to-date development plan without delay; or
 - where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁶; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
7. I interpret the reference to sustainability in the manner set out on the notice, as meaning the accessibility of the site to services as well as the overall policy background for residential development.
8. The first main issue is therefore, having regard to planning policies which limit circumstances when accommodation can be provided in the countryside as well as the accessibility of the site, whether there is an essential need for the mobile homes to accommodate staff who work at the adventure park. The second is the effect of the development on the character and appearance of the surrounding area.

Reasons – Accessibility and Essential Need

9. Crealy Adventure Park is a well-established visitor attraction. This started over 30 years ago initially as a farm park but subsequently developed as an amusement and adventure park with animals, rides, shops, and catering facilities. In addition, there is holiday accommodation including a touring caravan and tented camping park.
10. The site is within a rural area albeit there are some sporadically located services such as industrial estates, a nearby public house and a farm shop scattered around the area. There is not a complete network of footpaths alongside the busy Sidmouth Road (A3052) linking the site with these facilities.

As the Council acknowledges, bus services to nearby settlements and beyond are reasonable and that the overall commuting trips are reduced with respect to those who occupy the mobile homes compared to their normal places of abode. However, this part of the countryside is physically separate and remote from any settlement and for planning policy purposes is isolated.

11. The Framework therefore states that homes in such a location should be avoided unless a number of circumstances apply. This includes when there is an essential need for a rural worker to live permanently at or near their place of work. The Local Plan¹ Policy H4 has some similar criteria and appears generally consistent with the Framework in these respects. It is worthwhile to point out that the Council, in taking enforcement action, could not have considered imposing a restriction on the nature of the occupation of these units because ongoing planning conditions cannot be included within the requirements on an enforcement notice.
12. Of the 12 mobile homes, the appellant refers to one unit being required by animal handlers. The park has over 200 animals. These range from domestic farm animals to exotic animals which necessitates a zoo licence. There are a range of essential duties that need to be undertaken which require a swift response from a suitably qualified member of staff at any time of the day or night, throughout the year. This can include being present for birthing, bottle feeding and various other emergencies. The point is made that this unit would not necessarily be occupied by the same person all of the time with a duty system in operation although the evidence about this is limited.
13. Occupation of this unit appears to be permanent and not seasonal. As such, I consider that the nature of accommodation is likely to be a permanent home for which there would appear to be some justification relating to animal welfare. The suggestion by the appellant of a seasonal occupancy restriction would not be reasonable in circumstances where a permanent home is required. The person or people looking after the animals would need to have some degree of specialist background and would have to live close to the animals. However, LP Policy H4 requires a more robust appraisal of the availability of existing accommodation across the site including other buildings that could be considered for conversion.
14. Another of the mobile homes is occupied by a site warden largely for security purposes but also to react to maintenance issues with equipment and other emergencies. A further warden is also resident within existing accommodation within the Crealy Meadows site and so this mobile home is an additional unit for another warden. The appellant considers that due to the size of the park which covers a wide area, the security of rides, buildings, animal houses and night-time fire alarms are not tasks that can solely be covered by the other warden who primarily takes responsibility for the health and safety of holiday residents of the park. Again, from the evidence submitted it appears that this accommodation would be required all year around rather than on a seasonal basis. This would appear to be a permanent place of residence albeit with the possibility of the actual occupants varying.
15. It is not clearly explained why technological solutions such as closed-circuit television in combination with a remote security company would not suit these purposes and the evidence that has been submitted about this is unconvincing.

¹ East Devon Local Plan 2013 – 2031, adopted 28 January 2016

Even if I were to accept the appellant's case about the essential need for an additional warden to live on site, there would again need to be a more robust evaluation of the availability of existing accommodation and buildings.

16. Of the remaining units, 4 are required by seasonal members of staff between March and November, another 4 for entertainers from abroad requiring accommodation for less than 15 weeks per year, 2 for fixed term members of staff who wish to avoid commuting during their time working at the park. These 10 units are more clearly aimed at enabling seasonal workers who require temporary accommodation to live on site. Their occupation is somewhat fleeting in nature and it seems clear that they would not be living here with any intention establishing permanent homes.
17. The intended nature of the occupation of these 10 of the units therefore is very different from the other 2. The occupiers are people from outside of the area who could not reasonably be expected to purchase or rent housing locally due to problems with affordability of local housing. From the information provided, they also seem to be aimed at people who have a home-base elsewhere which is too far away to commute from. I would not describe this accommodation as being "ancillary" to the park, as the appellant has. However these people are staying at the site temporarily out of pragmatism rather than setting down roots or setting up a home. The occupation is only required during the holiday season. These are not permanent homes to which LP Policy H4 applies. These units do however in my view, support a high-quality tourism destination which seems to be consistent with the aims of LP Strategy 33, subject to the overall consideration of other matters addressed in that policy.
18. Notwithstanding this, it is unclear precisely what the seasonal restriction would need to be within a planning condition. The suggestion made by the appellants of 10 February to 27 December appears too long when compared with other evidence upon which I have based my assessment. I am also provided with little information about how a condition could be suitably worded to allow only occupancy by those working at the adventure park. The generalised wording provided by the appellants is not sufficiently precise to be used in a condition and the Council has not provided a list of suggested conditions.
19. In relation to this main issue, with respect to 2 of the mobile homes, from the evidence submitted I consider that it has not been sufficiently demonstrated how they meet an essential need to live on the site. This aspect of the development does not comply with LP Policy H4 or the advice of the Framework to avoid isolated homes in the countryside. With respect to the remaining 10 units, if their occupancy could be satisfactorily restricted, short-term seasonal accommodation may not breach the terms of LP H4 Policy in my view. However, in the absence of further information to provide me with the confidence that the occupancy of these mobile homes can be satisfactorily restricted these mobile homes are currently homes in the countryside which do not comply with LP Policy H4 and the Framework.

Reasons – Character and Appearance

20. The mobile homes are positioned within a compound enclosed by close-boarded fencing. The compound is adjoined on 2 sides by another enclosed outside space which appears to be used as a storage area. There are high, dense hedgerow trees surrounding these areas which help to screen them from wider views from the north-west, north-east and south-east. To the south-west,

there is a modest array of solar panels and the extensive car-parking areas are further to the south-west.

21. The mobile homes are not easy to see from the main road or public vantage points including the higher land to the east along the A3052. Whilst this is a rural location, the site is well integrated with albeit on the edge of the overall adventure park.
22. In relation to the second main issue, the development has an acceptable effect on the character and appearance of the surrounding area. To this extent, the development complies with LP Strategy 7.

Conclusion on ground (a)

23. My conclusion on the second main issue does not outweigh the harm I have identified in relation to the first. For the reasons given above and having regard to other matters raised, the appeal on ground (a) and the application for deemed planning permission fail.

The Appeal on ground (g)

24. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed.
25. The appellant suggests a 12 month period is necessary to ensure that the mobile homes do not have to be vacated during the season. Due to the timing of this decision, that is now less likely. Furthermore, 6 months seems to me to strike a reasonable balance between overcoming harm that the development causes but allowing sufficient time to comply.
26. Consequently, the appeal on ground (g) fails.

Conclusion

27. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A Harwood

INSPECTOR