



---

## Appeal Decision

Site visit made on 25 September 2020

**by Martin H Seddon BSc MPhil DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 February 2021**

---

**Appeal Ref: APP/X3540/W/20/3247022**

**6 Ipswich Road, Newbourne, Suffolk, IP12 4NS**

- 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 D Jones against the decision of East Suffolk Council.
  - The application Ref DC/19/3332/VOC, dated 22 August 2019, was refused by notice dated 12 November 2019.
  - The application sought planning permission for the use of land for two holiday lodges, without complying with a condition attached to planning permission Ref DC/19/1382/FUL, dated 25 July 2019.
  - The condition in dispute is No.6 which states that:  
"The premises herein referred to shall be used for holiday letting accommodation and for no other purpose (including any purpose in Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order (1987). The duration of occupation by any one person or persons of any of the holiday units shall not exceed a period of 56 days in total in any one calendar year unless the local planning authority agrees in writing to any variation. The owners/operators of the holiday units hereby permitted shall maintain an up-to-date Register of all lettings, which shall include the names and addresses of those persons occupying the units during each individual letting. The said Register shall be made available at all reasonable times to the local planning authority".
  - The reason given for the condition is: "To ensure that the development is occupied only as bona-fide holiday accommodation, having regard to the tourism objectives of the Local Plan and the fact that the site is outside any area where planning permission would normally be forthcoming for permanent residential development".
- 

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. There are two parts to the Local Plan in East Suffolk: the Suffolk Coastal Local Plan and the Waveney Local Plan. The Suffolk Coastal Local Plan (2020) was adopted on 23 September 2020. The Council referred to policy DM18-Static Holiday Caravans Cabins and Chalets of its Development Management Policies Development Plan Document (2013) in its decision notice. The Suffolk Coastal Local Plan supersedes the policies of the Development Management Policies Development Plan Document. The Council has advised me of a number of new policies in the newly adopted Suffolk Coastal Local Plan (referred to as the Local Plan). Of these policy SCLP6.5: New Tourist Accommodation is the most relevant. I have determined this appeal on the basis of policies in the adopted

Local Plan. The appellant was offered the opportunity to comment on the implications of the policies in the new Local Plan.

3. The appellant has submitted a claim against the East Suffolk Council for a full award of costs. This is the subject of a separate decision.

### **Main Issue**

4. The main issue is whether the proposed alteration to the occupancy duration for the two holiday lodges would be reasonable and necessary, having regard to relevant national and local planning policies, the potential implications for local services and effect on the tourist economy.

### **Reasons**

5. The appeal site lies within the open countryside and outside the settlement boundary for Newbourne as defined by Local Plan policy SCLP3.3. At the time of my site visit an access track had been formed to the appeal site from Ipswich Road but work on the holiday lodges had not commenced. Newbourne is classed as a Small Village within the settlement hierarchy under Local Plan policy SCLP3.2. The site is within an area defined as Former Land Settlement Holdings under Local Plan policy SCLP11.9. The proposed use of the site for two holiday lodges, subject to the existing conditions, does not conflict in principle with these Local Plan policies, or Local Plan policy SCLP10.1: Biodiversity, and Local Plan policy SCLP10.4: Landscape Character.
6. Local Plan policy SCLP6.1 indicates that proposals which improve the visitor experience and support opportunities for year-round tourism will be supported where increased tourism uses can be accommodated. Local Plan policy SCLP6.4 sets criteria for tourism development outside the Area of Outstanding Natural Beauty. I find no conflict with these criteria from the use of the site for two holiday lodges, subject to the existing conditions.
7. The appellant seeks to vary condition No.6 to state as follows:

"The holiday lodges shall be occupied for holiday purposes only and shall not be occupied between 05 January and 05 February in any calendar year. The owners/occupiers shall maintain an up-to-date register of all owners/occupiers of individual lodges on the site, and of their main home addresses and shall make this information available at all reasonable times to the local planning authority".
8. Newly adopted policy SCLP6.5 of the Suffolk Coastal Local Plan states:

*"New tourist accommodation will be restricted by means of planning conditions or obligations in accordance with national policy for planning conditions and obligations which permit holiday use only, restricted to a continuous period of 56 days by one person or persons within one calendar year, plus require a register of all lettings, to be made available at all times."*
9. The supporting text for the policy explains that "New tourism accommodation will be restricted by planning conditions/and or legal agreements to ensure that these uses can provide all year-round occupation for tourists and are not occupied by a person or persons as their main residence. Restricting occupation of new self-catering tourist accommodation units to a continuous period of 56 days by one person or persons within one calendar year retains

these units for the benefit of the tourist economy by providing a range of available accommodation for those wishing to visit the District.” Accordingly, the proposed variation to condition 6 would not comply with the newly adopted policy SCLP6.5.

10. Unlike the previous and now superseded policy of the Development Management Policies Development Plan Document, the word “normally” when referring to the imposition of a condition to restrict the amount of time that a holiday unit can be occupied by the same person does not appear in policy SCLP6.5 of the Suffolk Coastal Local Plan. I consider that this reduces the amount of discretion for the decision maker when considering the need for conditions or legal agreements to include the 56 day per calendar year restriction.
11. I consider that allowing a variation of condition No.6 to a 11 month occupancy duration would result in an increased risk of temporary/permanent residential occupancy and use as a second home as opposed to use by genuine holiday makers.
12. Condition No.6 is necessary because without it the holiday lodges would be capable of being occupied effectively as permanent dwellings in the countryside and outside the settlement boundary for Newbourne where residential development is generally restrained. I find that condition No.6 would prevent any person or persons occupying the holiday lodges as their sole residence and it continues to serve a useful purpose having regard to the adopted development plan. Hence, it satisfies the purpose of being reasonable and necessary, and meets the other tests for conditions, as set out in paragraph 55 of the National Planning Policy Framework (the Framework).
13. Section 38 of the Planning and Compulsory Purchase Act (2004) requires that applications be determined in accordance with the development plan unless material considerations indicate otherwise. Policy SCLP6.5 has been the subject of an examination in public, has been found to be sound and is in a recently adopted Local Plan. The policy accords with national policy in the Framework and is up-to-date. The appellant’s proposed variation to condition No.6 could allow use by the same person or persons for much of the year, potentially restricting short term use by tourists. The proposal would therefore conflict with Suffolk Coastal Local Plan policy SCLP6.5.

#### *Other material considerations*

14. Turning to other material considerations, the Council has referred to its study regarding the *Economic Benefits of Tourism (2016)*. This indicated that the average stay of tourists in the District was 3.84 nights in 2015 and 3.86 nights in 2016. The Council believes that genuine tourists visiting a destination would be more likely to spend more time and money visiting local attractions and going out for meals than a longer term tenant. The appellant has submitted a report entitled *Pitching the Value, Economic Benefit Report: Holiday Parks and Campsites England. Report of the UK Caravan and Camping Alliance (2019)*. The visitor survey included in the report at table 4.6 indicated that visitors staying in rented and touring accommodation spent on average £100 per day, including £55 on-site and £45 off-site. Visitors who owned their holiday home spent on average, £92 per day, including £54 on-site and £38 off-site. The appellant has quoted from table 4.5 from the report which indicates expenditure per visit. This indicates a higher on and off-site spend per visit of

£482 for owners compared to £451 for renters and tourers. Some of this owner expenditure was because of a higher total cost of holiday accommodation and it is possible that the length of visit could have been longer in the case of owners. This survey data would no doubt vary according to available facilities, locality, and type of accommodation. However, I consider that it does not provide compelling support for the appellant's view that the appeal proposals will not damage the economic benefits derived from the tourist industry.

15. Reference is also made by the appellant to the Inspector's finding in appeal ref: APP/J3530/W/17/3187178 that operation of the 56 day limitation would be "more likely to curtail tourism outside the peak season in comparison with a month long winter break in the cabins' use." However, no evidence was referred to by the Inspector which would lead me to also support such a view.
16. The appellant has referred to the *Ministerial Statement-Coronavirus (COVID-19): Planning Update on Cultural Venues and Holiday Parks (2020)*. This indicates that local planning authorities should look favourably at holiday parks looking to extend their seasons during the winter months. The appellant states that the appeal seeks to extend the holiday season. However, condition 6 only restricts the duration of occupation by any one person or persons of any of the holiday units to not exceeding a period of 56 days in total in any one calendar year. It would not restrict the occupation of the lodges throughout the calendar year. For that reason, I see no conflict from the terms of condition No.6 with the Ministerial Statement or Local Plan Policy SCLP6.1 which supports opportunities for year round tourism.
17. The appellant advises that the 56 day restriction makes it difficult for people to get mortgages. However, that is a matter which depends upon market and individual circumstances and no financial information has been provided to support the contention.
18. The appellant has referred to several appeal decisions and decisions by the Council on planning applications which he considers relevant to this case. In appeal ref: APP/J3530/W/17/3187178 at Newbourne Park phase 1 the Inspector considered that the variation of a condition restricting the occupancy of the holiday cabins by a single person or persons to no more than 56 days in any single calendar year (the 56 day limitation) to a condition prohibiting occupancy between 5 January and 5 February would not give rise to any unacceptable conflict with policies DM18, SP1 or SP19 of the Local Plan. In reaching this finding the Inspector referred to the imposition of such a condition by the Council in relation to a 30 lodge scheme at Staverton Park a few months prior to the appealed application's determination. The Council indicates that this appeal decision was a material consideration in its decision to allow the variation of a previously imposed 56 day condition at The Firs, with the Council's Delegated report noting that it had not challenged the Inspector's decision. The Council also allowed 2 holiday lodges at Newbourne Park phase 2 with no occupancy restriction, although the Delegated report considered that a condition prohibiting occupancy between 5 January and 5 February would be appropriate. Such a condition would have been consistent with that imposed at Newbourne Park phase 1.
19. In commenting upon the now superseded policy (policy DM18) of the Development Management Policies Development Plan Document I note that the

Inspector for appeal ref: APP/J3530/W/18/3211917 at Church Farm Holiday Park remarked that he was mindful that the policy was "not explicit on the 56 day limitation insofar as stating that it is the only way. The wording is expressed as being that such a condition would 'normally' be imposed. Normally does not to my mind, translate as 'always' or 'in every case'." However, as mentioned at paragraph 10 above, the word 'normally' does not appear in newly adopted Local Plan policy SCLP6.5.

20. The site subject to appeal ref: APP/J3630/W/19/3228198 at Carlton Meres Country Park already had permission to occupy static caravans between 6 March in any year and 8 January in the next year. The Inspector allowed the length of occupancy to be increased to between 1 March in any one year and 14 February in the following year. Reference was again made to the use of the word 'normally' in policy DM18 of the then adopted Development Management Policies Development Plan Document as meaning a general rule and not one that "needs to be applied in every single case no matter what the circumstances".
21. Appeal refs: APP/J3530/W/19/3225385 & 3225391 at Park Farm sought removal of the 56 day occupancy limitation and its replacement by a fixed break period from 5 January to 5 February in any calendar year on the basis of different permutations. Both appeals were dismissed. The Inspector found the existing 56 day occupancy condition reasonable and necessary. Whilst it prohibited a person(s) from occupying a static caravan for 56 days or more during a calendar year, the caravan was still capable of being occupied consecutively for up to a full year and its replacement by a fixed period of prohibition on occupancy would undermine the reason for imposition of the condition. The conditions under appeal and retained by the Inspector were essentially the same as those in the appeal before me. The Inspector had regard to the Newbourne Park phase 1 appeal decision and the Council's *Economic Benefits of Tourism* study. He considered that whilst a person(s) would be prohibited from residing for a full year, that did not automatically mean that such occupation would not amount to their main residence. In such a case there would be little, if any, opportunity to offset the decrease in tourism expenditure by allowing the static caravan to be rented out to others during the periods when it was not in use by the main occupant. Therefore, unlike the finding in the particular circumstances of the Newbourne Park phase 1 appeal, he found that the alternative condition sought, involving a month-long winter break, would be likely to curtail tourism expenditure overall. He also indicated that there was no evidence before him to suggest that the 56 day limitation made owner-occupancy unattractive, that marketing of the caravans with the existing restriction had been unsuccessful, nor that the appeal site was unable to commercially exist in the absence of owner-occupancy sales or where it is unable to receive a ground rent.
22. The above cases were determined on their individual merits and particular site circumstances having regard to the planning history for each site and relevant decisions regarding similar proposals. All of the decisions were taken prior to the recent adoption of the Suffolk Coastal Local Plan and policy SCLP6.5, which endorses the 56 day occupation restriction to ensure that new tourist accommodation can provide all year-round occupation for tourists and units are not occupied by a person or persons as their main residence. Policy SCLP6.5 applies to all relevant proposals regardless of differing scale and numbers of units.

23. The appellant has referred to *Supreme Court Judgement R (on the application of Gallaher Group and others) v the Competition and Markets Authority [2018] UKSC 25*. This concerned the issues of equal treatment and fairness. A copy of the *CMA Competition Impact Assessment part 2 Guidelines* has also been submitted in evidence. The appellant considers that the approach in deciding upon similar applications and appeals in the District has not been consistent and consequently the appeal site is unable to compete with other holiday parks. It is also submitted by the appellant that Condition no.6 is unreasonable because it makes the appeal site less able to compete with parks in the vicinity which have more limited occupancy restrictions. However, the appeal site is not in use and there is no submitted evidence, such as marketing information, to support any difficulty in competition with similar facilities. Local Plan policy SCLP6.5 now provides a basis for considering this appeal and any future applications or appeals.

### **Other Matters**

24. The Council's Delegated Officer Report was brief. However, the Council submitted a Statement of Case to which the appellant was able to make a response.

### **Conclusion**

25. The proposed variation of Condition No.6 would conflict with Local Plan policy SCLP6.5 and there are no material considerations which would indicate that the appeal should succeed. I have taken all other matters raised into account, including the 2 letters of support for the proposal. However, for the reasons given above the appeal is dismissed.

*Martin H Seddon*

INSPECTOR