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## Appeal Decision

Site Visit made on 31 August 2021

**by Alexander O'Doherty LLB (Hons) MSc MRTPI**

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

**Decision date: 1<sup>st</sup> October 2021**

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**Appeal Ref: APP/Y3940/W/21/3275426**

**Lake 25, Spine Road East, land to the south of Cotswold (Hoburne) Ltd,  
Broadway Lane, South Cerney GL7 5UQ**

- 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 Cotswold Hoburne Limited against the decision of Wiltshire Council.
  - The application Ref 20/10558/VAR, dated 26 November 2020, was refused by notice dated 4 March 2021.
  - The application sought planning permission for change of use of land to site 92 holiday lodge caravans with a 11 month season without complying with a condition attached to planning permission Ref 18/03300/FUL, dated 27 March 2020.
  - The condition in dispute is No 17 which states that: No person shall occupy the holiday accommodation hereby permitted for a continuous period of more than 42 days in any calendar year and it shall not be re-occupied by the same person/s within 28 days following the end of that period.
  - The reason given for the condition is: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to site 92 holiday lodge caravans with a 11 month season at Lake 25, Spine Road East, land to the south of Cotswold (Hoburne) Ltd, Broadway Lane, South Cerney, GL7 5UQ in accordance with the application Ref 20/10558/VAR dated 26 November 2020, without compliance with condition number 17 previously imposed on planning permission Ref 18/03300/FUL dated 27 March 2020 and subject to the conditions set out in the attached schedule.

### Preliminary Matters

2. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published, which replaced the February 2019 version. The parties were provided with an opportunity to comment on its relevance to this appeal. I have had regard to the 2021 version of the Framework in my decision.
3. I have taken the site address postcode from the appeal form, as this is the most accurate version provided.

## **Background and Main Issue**

4. The appellant is seeking the removal of condition No 17, which was imposed by the Council due to the site being located in an area where permanent residential accommodation would not normally be permitted. Therefore, the main issue is whether condition No 17 is necessary having regard to planning policies which restrict residential development in the countryside.

## **Reasons**

5. The appeal site is an extension to a holiday park. At the time of my site visit it was an undeveloped field. Due to its location outside of any settlement boundary, the site is in the open countryside. Core Policy 2 of the Core Strategy<sup>1</sup> provides that, amongst other things, development will not be permitted outside the defined limits of development. In this context, it is common ground between the parties that conditions are necessary to prohibit permanent residential accommodation. As such, the dispute between the main parties centres on the mechanism by which this aim is achieved.
6. Both the Council and the appellant have been able to draw on an extensive array of grants of planning permission which support their respective positions as to whether the disputed condition is necessary to prevent permanent residential accommodation on site. From this, it is sufficiently clear that there is no uniform approach, but each case must be considered on its own merits. In this regard, it can be seen from the Council's decision notice that conditions Nos 17 to 20, as a group, were imposed to prevent the approved holiday lodge caravans being used as permanent residential accommodation. As such, the nub of the issue is whether the three conditions numbered 18 to 20, without condition No 17, would achieve the same aim.
7. Condition No 18 has the effect that the approved caravans could only be occupied for 11 months in any one year. Condition No 19 explicitly states that the caravans shall not be occupied as a persons' sole or main place or residence. Condition No 20 similarly states that the accommodation shall be used to provide holiday accommodation only, which shall not be occupied as permanent, unrestricted accommodation or as a primary place of residence. To support this, condition No 20 requires an up-to-date register of names and main home addresses of all occupiers to be maintained, to be made available at all reasonable times to the Council.
8. Condition No 18 therefore makes permanent residential accommodation less likely. More importantly, condition No 20 provides an unequivocal statement that the accommodation must not be occupied as permanent, unrestricted accommodation. Condition No 20 also provides the mechanism for the enforcement of this provision. Accordingly, in the event that any caravan were to be occupied on an unrestricted basis, or as permanent residential accommodation, it is likely that the Council would be able to use the register as evidence, and draw on the provisions of condition No 20 in instigating enforcement action, should it be considered expedient.
9. Similarly, if a caravan was being occupied continuously for 11 months of the year and the Council considered this to be tantamount to permanent and unrestricted residential occupation, the Council could draw on the provision of

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<sup>1</sup> Wiltshire Core Strategy 2015

condition No 20 which states that the accommodation shall be used to provide holiday accommodation only, when considering any enforcement action. Condition No 20 requires that a register of all occupiers is kept, which would also cover the situation where a caravan is sub-let.

10. Thus, whilst the Council have stated that condition No 17 appears on the Council's list of model conditions and is consistently applied, in this particular case condition No 17 is not necessary, due to the presence of conditions Nos 18 to 20, which collectively would achieve the aim of prohibiting permanent residential accommodation on site. I therefore find that condition No 17 is not necessary having regard to planning policies which restrict residential development in the countryside, including Core Policy 2 of the Core Strategy, which is summarised above.

### **Other Matters**

11. I note that during the application process the Council demonstrated flexibility by changing the initially proposed 28 day period to 42 days in condition No 17. Nonetheless, in the light of my reasoning on the main issue, this matter does not change my findings in relation to the necessity of condition No 17 in this instance.
12. I have very carefully considered all the evidence and arguments put forward by both parties as to the potential effect of condition No 17 on the competitiveness of the appellant's business in the context of the wider tourism sector. However, I have found above that conditions Nos 18 to 20 would be sufficient to prohibit permanent residential accommodation in the countryside and therefore it is not necessary for me to provide further analysis as to the potential effect of condition No 17 in this respect.

### **Conditions**

13. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have minimal information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In doing so, I have had regard to the conditions suggested by the Council via the appeal process and I have considered those suggested conditions against the advice on conditions set out in the Framework and the Planning Practice Guidance. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
14. Several of the conditions are pre-commencement conditions. As the appellant provided their written agreement to all of the draft conditions proposed by the Council, the requirements of s100ZA(5) of the Town and Country Planning Act 1990 (as amended) have been met.

### **Conclusion**

15. For the reasons given above, the appeal should be allowed and planning permission granted, subject to the conditions in the attached schedule.

*Alexander O'Doherty*

INSPECTOR

## Conditions Schedule

- 1) The development hereby permitted shall be begun before 27<sup>th</sup> March 2023.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Site Location Plan and Site Ownership, Drawing No. Lake 25-001-010518
  - Proposed Site Plan, 1614-CO-019 Rev H, 11.09.18
  - Lake 25 Botanical Survey of Grassland, 25 October 2019
  - Biodiversity Protection Plan, 04/11/19
  - Tree retention and protection Plan, COTHBTRP-Sept 2018
  - Tree Survey and Method Statement, 11 July 2018
  - Landscape Mitigation Strategy 17032-CO-LP-0-01-Rev 1, 12/09/18
  - Flood Risk Assessment and Outline Drainage strategy, March 2018.GVA
  - 7706/003 Rev C - Proposed footpath/cycleway route, received 16/02/2021.
- 3) No development shall take place until an Ecological Mitigation and Monitoring Plan has been submitted to and approved in writing by the Local Planning Authority which details the measures to be undertaken and their timing in relation to progress with the construction works, to achieve the following:
  - i) Habitat net gain along the Cerney Wick Brook including measures to secure a net conservation benefit for water voles;
  - ii) Enhancement of retained grassland, scrub and woodland including the criteria and timescale by which enhancement will be judged to have been achieved;
  - iii) Protection and enhancement of wildlife associated with the lake and its perimeter habitats; and
  - iv) A rolling 5 year management plan to maximise ongoing biodiversity benefits of the retained habitat.

Details will also be provided of monitoring and compliance visits to ensure the delivery of the above by a professional ecological consultant. The development will be undertaken in accordance with the approved Plan for the lifetime of the development and this condition will be discharged when a report prepared by a professional ecological consultant has been submitted to and approved in writing by the Local Planning Authority to confirm that the works have been completed and achieved in full accordance with the Plan.

- 4) No development shall take place on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:
  - location and current canopy spread of all existing trees and hedgerows on the land;
  - full details of any to be retained, together with measures for their protection in the course of development;
  - a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
  - finished levels and contours;
  - means of enclosure;
  - car park layouts;

- other vehicle and pedestrian access and circulation areas;
  - all hard and soft surfacing materials;
  - minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting etc.);
  - proposed and existing functional services above and below ground (e.g. drainage, power, communications, cables, pipelines etc. indicating lines, manholes, supports etc.); and
  - Tree(s), of a size and species and in a location to be agreed in writing with the Local Planning Authority, shall be planted in accordance with BS3936 (Parts 1 and 4), BS4043 and BS4428.
- 5) All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of 5 years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the Local Planning Authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.
- 6) No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication GN01:2011, 'Guidance for the Reduction of Obtrusive Light' (ILP, 2011), have been submitted to and approved in writing by the Local Planning Authority. The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.
- 7) No development shall take place, including demolition, ground works, and vegetation clearance, until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include, but not necessarily be limited to, the following:
- a. Measures which will be used to avoid or reduce impacts to habitats and wildlife during construction;
  - b. Pollution prevention control measures to avoid impacts to water bodies;
  - c. The location and timing of sensitive works to avoid causing harm to species;
  - d. The times during construction when specialist ecologists including Ecological Clerk of Works, will be present on site to oversee works; and
  - e. Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.
- The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.
- 8) No caravan shall be positioned on the site until the proposed colour finishes for walling and roofing of the units has been submitted to, and approved in writing

by, the Local Planning Authority. The tones shall be darker natural earth tones. Only the approved colour shall be used thereafter.

- 9) No railings, fences, gates, walls, bollards and other means of enclosure shall be erected in connection with the development hereby permitted until details of their design, external appearance and decorative finish have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details prior to the development being occupied.
- 10) No development shall take place on site until a Landscape Management Plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas has been submitted to and approved in writing by the Local Planning Authority. The Landscape Management Plan shall be carried out in accordance with the approved details.
- 11) No holiday unit or use hereby permitted shall be occupied until the means of access for vehicles, pedestrians and/or cyclists as shown on drawing 7706/003 Rev C have been completed.
- 12) No part of the development hereby permitted shall be first occupied until the access, bridge, and a turning area and parking spaces for each caravan sited have been completed in accordance with the details shown on the approved plans. The roads, including footpaths and turning spaces, shall be constructed so as to ensure that, before it is occupied, each caravan unit has been provided with a properly consolidated and surfaced footpath and carriageway. The areas shall be maintained for those purposes at all times thereafter.
- 13) No development shall take place until full details of the bridge have been submitted to and approved by the Local Planning Authority. The bridge shall have been provided for use prior to construction phase and occupation of the caravans in accordance with the approved details. The bridge shall be kept clear of obstructions and made available for the passing of vehicles at all times thereafter.
- 14) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting or amending that Order with or without modification), no vehicular access shall be made direct from the site to B4696 Spine Road (East) (except emergency use).
- 15) No development shall take place until full details of the emergency link scheme to the B4696 have been submitted to and approved by the Local Planning Authority. The scheme shall include:
  - Physical obstruction for vehicles (non-emergency) at the junction of site with the B4696;
  - Physical obstruction for vehicles (non-emergency) at the point within the site near the start of the link by the closest caravans;
  - Full details of the surface of the link. This should not be a consolidated bound surface and should be a material that provides a suitable track surface;
  - The design of the scheme needs to be sympathetic to the rural character and occasional intended emergency use; and

- Provision for cyclists to access the shared cycleway on the B4696.

The approved scheme shall be completed prior to the first occupation of the development hereby approved. The emergency access link scheme shall be maintained and available for emergency access at all times thereafter.

- 16) No development shall take place (including any works of demolition), until a Construction Method Statement, which shall include the following:

- a) the parking of vehicles of site operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development;
- d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- e) wheel washing facilities;
- f) measures to control the emission of dust and dirt during construction;
- g) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- h) measures for the protection of the natural environment;
- i) hours of construction, including deliveries; and
- j) the routing of all construction traffic.

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved Construction Method Statement.

- 17) No caravan on the site shall be occupied between 6<sup>th</sup> January to the 5<sup>th</sup> February in any one year.
- 18) The caravans / lodges hereby permitted shall not be occupied as a persons' sole or main place or residence.
- 19) Notwithstanding Class C3 of the Schedule to The Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification), the accommodation hereby permitted shall be used to provide holiday accommodation only, which shall not be occupied as permanent, unrestricted accommodation or as a primary place of residence. An up-to-date register of names and main home addresses of all occupiers shall be maintained and shall be made available at all reasonable times to the Local Planning Authority.
- 20) No development shall take place until details of the works for the disposal of sewerage including the point of connection to the existing public sewer have been submitted to and approved in writing by the Local Planning Authority. No accommodation unit shall be first occupied until the approved sewerage details have been fully implemented in accordance with the approved plans.
- 21) No development shall take place until a scheme for the discharge of surface water from the site, incorporating sustainable drainage details, together with permeability test results to BRE365, and an updated final Flood Risk Assessment has been submitted to and approved in writing by the Local

Planning Authority. No accommodation unit shall be first occupied until the approved surface water drainage scheme has been fully implemented in accordance with approved details.

22) The development hereby permitted shall be carried out in accordance with the submitted Flood Risk Assessment (ref: 01B704146 Version 1.0 Final March 2018), and the following mitigation measures:

- Finished floor levels to be set at a minimum of 86.43m AOD;
- All static caravans to be anchored to the ground on at least 2 points to prevent movement should a flood event affect the site; and
- A flood warning and evacuation plan to be prepared setting out arrangements for flood warning, and safe escape routes from the site.

23) The development shall be carried out as specified in the approved BS5837 Tree Survey which incorporates Tree Constraints, Arboricultural Implications, Tree Retention and Tree Protection Method Statement prepared by B J Unwin Forestry Consultancy Revised on 11<sup>th</sup> July 2018 and Tree retention and protection Plan Sept 2018 and shall be supervised by an arboricultural consultant.

24) No development shall take place until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been carried out and all of the following steps have been complied with to the satisfaction of the Local Planning Authority:

Step (i) A written report has been submitted to and approved by the Local Planning Authority which shall include details of the previous uses of the site for at least the last 100 years and a description of the current condition of the site with regard to any activities that may have caused contamination. The report shall confirm whether or not it is likely that contamination may be present on the site.

Step (ii) If the above report indicates that contamination may be present on or under the site, or if evidence of contamination is found, a more detailed site investigation and risk assessment shall be carried out in accordance with DEFRA and Environment Agency's "Model Procedures for the Management of Land Contamination CLR11" and other authoritative guidance and a report detailing the site investigation and risk assessment shall be submitted to and approved in writing by the Local Planning Authority.

Step (iii) If the report submitted pursuant to step (i) or (ii) indicates that remedial works are required, full details have been submitted to the Local Planning Authority and approved in writing and thereafter implemented prior to the commencement of the development or in accordance with a timetable that has been agreed in writing by the Local Planning Authority as part of the approved remediation scheme. On completion of any required remedial works the applicant shall provide written confirmation to the Local Planning Authority that the works have been completed in accordance with the agreed remediation strategy.

- 25) No external lighting shall be installed on site until a scheme of external lighting, including the measures to be taken to minimise sky glow, glare and light trespass, has been submitted to and approved in writing by the Local Planning Authority. The external lighting scheme shall be designed so as to meet the criteria for Environmental Zone E1 as defined by the Institute of Lighting Professionals 'Guidance Notes for the Reduction of Obtrusive Light' 2012. The approved scheme shall be implemented in full before the development is first brought into use and shall be maintained in effective working order at all times thereafter. The Institute of Lighting Professionals "Guidance Notes for the Reduction of Obtrusive Light" can be found free online on the following website. [www.theilp.org.uk/](http://www.theilp.org.uk/)