

Appeal Decision

Hearing Held on 10 November 2021

Site visit made on 10 November 2021

by David Spencer BA(Hons) DipTP MRTPI

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

Decision date: 22nd November 2021

Appeal Ref: APP/W0530/W/19/3232247

Appleacre Park, London Road, Fowlmere SG8 7RU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Park View Group Ltd against South Cambridgeshire District Council.
 - The application Ref S/0913/19/VC is dated 6 March 2019.
 - The application sought planning permission for 15 touring caravans without complying with a condition attached to planning permission Ref S/1155/92/F, dated 17 August 1993 and for 5 touring caravans or tents without complying with a condition attached to planning permission Ref S/1156/92/F, dated 17 August 1993.
 - The conditions in dispute are: (1) No. 2 attached to planning permission S/1155/92/F which states that: "The site shall not be used other than as a touring caravan site and shall not be occupied by mobile homes used either for seasonal use or permanent residential accommodation."; and (2) No.2 attached to planning permission S/1156/92/F which states that: "The site shall not be used other than as a touring caravan site and/or tent site and shall not be occupied by mobile homes used either for seasonal use or permanent residential accommodation.";
 - The reasons given for the conditions is: "To satisfy a need for touring caravans sites and/or tent sites and to minimise the visual impact upon the area of permanently stationed mobile homes."
-

Decision

1. The appeal is allowed and planning permission is granted for 15 touring caravans and 5 touring caravans or tents at Appleacre Park, London Road, Fowlmere SG8 7RU in accordance with application Ref S/0913/19/VC dated 6 March 2019, without compliance with condition number 2 previously imposed on planning permissions Ref S/1155/92/F and S/1156/92/F dated 17 August 1993 and subject to the following conditions:

For Area A under Ref S/1155/92/F

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan at 1:1250 scale dated 08 September 2016.
- 2) The number of caravans which shall be stationed on the site shall not exceed 15.

For Area D under Ref S/1156/92/F

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan at 1:1250 scale dated 08 September 2016.
- 2) The number of caravans and/or tents which shall be stationed on the site shall not exceed 5.

Preliminary Matters and Main Issue

2. The appeal relates to two separate parcels of land within the wider Appleacre Park site. The larger of the two parcels is referred to as 'Area A' and relates to the consented site for 15 touring caravans under reference S/1155/92/F. The smaller site is referred to as 'Area D' and relates to the consented site for 5 touring caravans / tents under reference S/1156/92/F. A similar appeal against the disputed conditions was dismissed in summer 2018 under reference APP/W0530/W/17/3183813 alongside a separate appeal relating to non-determination on an application for a certificate of lawful use.
3. Since the 2018 appeals the Local Planning Authority (LPA) has granted a Certificate of Lawful Use under reference S/3048/18/LD establishing that touring caravans on Areas A and D can be permanently occupied on an all-year round basis. Consequently, touring caravans on Areas A and D can lawfully be occupied as a person's sole or main place of residence. This is a significant material consideration, contrasting with the circumstances in 2018. Additionally, as part of this appeal, a statement of common ground¹ between the appellant and LPA confirms permitted development rights provide for hardstanding bases on which the caravans and parking areas are located. There is also common ground that there are no planning controls which would prevent fencing or other means of enclosure being erected to demarcate individual caravan plots within Areas A and D.
4. This appeal against the disputed conditions arises because the LPA did not make a decision on the application within the necessary time period. A report to the LPAs Planning Committee on 13 November 2019 comprehensively deals with the key matters relating to this appeal against conditions at Appleacre Park. In light of the findings in the 2018 appeal², the LPA accepts that the reason for the disputed conditions to satisfy a need for touring caravan sites and/or tents no longer serves a justified planning purpose. I queried this at the hearing but heard very little to suggest that there is a clear need, above existing alternative provision in the area, or that circumstances have changed since the 2018 appeal, to justify retaining Areas A and D at the appeal site for tourist related occupation.
5. With regard to the visual impact of mobile homes in Area D, the LPAs position is that notwithstanding a spatial conflict with the development plan, there would be material considerations, including the 2018 appeal decision³, to conclude that the disputed condition no longer serves a justified planning purpose in respect of character and appearance. With regards to Area A, the LPA maintains that the disputed condition remains necessary to safeguard the character and appearance of the locality from the visual impact of permanently

¹ Document H1

² APP/W0530/W/17/3183813 paragraphs 28-29

³ APP/W0530/W/17/3183813 paragraphs 38-39

stationed mobile homes. Consequently, the LPA recommends a split decision. I have taken this into account, but I also recognise there are objections before me, from the Parish Council and others, objecting to the removal of the contested condition on both areas.

6. I have also taken into account recent case law⁴ in respect of whether Section 73 may be used to obtain a permission that would require a variation to the terms of the operative part of the planning permission and heard submissions from both parties. As the description of the development has not changed and the use of the site remains as a caravan (mobile home) park, I am satisfied that Section 73 remains valid for the intended purpose of this appeal.
7. Taking all of the above into account, the main issue in this appeal is the effect of the removal of the disputed condition for Area A on the character and appearance of the surrounding area.

Reasons

Character and Appearance at Area A

8. Appleacre Park, including the addition at Appleacre Lodge, is a sizeable development, comprising of a notable number of efficiently arranged mobile homes, situated at the south-west edge of the village of Fowlmere. It is beyond the development framework for Fowlmere identified in the South Cambridgeshire Local Plan 2018 (*the SCLP*). That said, due to the number of authorised mobile homes, the entrance and exit road layout including the tarmac footway along part of London Road, the various boundary treatments including solid fencing and sturdy gateway entrances and evergreen boundary planting, the character of Appleacre Park is distinctly different from the open arable farmland and thin woodland belts which generally characterise the countryside to the south-west of Fowlmere. In character terms, Appleacre Park is a transitional area between the overtly residential character to the east along London Road and Chrishall Road and the wider patchwork of expansive open arable fields generally beyond the two established dwellings within their sylvan setting to the west and north-west of Area A.
9. There is open arable farmland opposite Area A, visible through various gaps in the hedgerow, to the north of London Road. Existing evergreen boundary planting and wide verge at the appeal site maintains the overall verdant character on this part of London Road, such that the existing mobile homes, especially on Area B⁵, which is also directly adjacent London Road, are not conspicuous when entering and leaving the village at this location. For similar reasons, due to the extent of the existing evergreen boundary planting, the taller solid timber fencing, the brickwork piers to the entrance to the site and evergreen planting (laurel) alongside the entrance driveway within the Appleacre Park site to the west of Area A, any sense of openness at Area A is not evident from within London Road. The same factors would have a similar effect in the screening mobile homes on Area A such that they would not be noticeable in the viewpoint from the footway at the London Road/Chrishall junction or more generally when entering into Fowlmere from the south-west.

⁴ The 'Finney' case [2019] EWCA Civ 1868

⁵ Which may be lawfully used for up to 15 static/mobile homes for the purposes of a person's sole or main place of residence (Site Licence ref 359689, document H3)

10. There are no footways along London Road directly parallel to Area A facilitating lingering public views into the appeal site. The principal visual receptors passing Area A on London Road would be the occupants of transient vehicular traffic. Within the speed limit, close to the 30mph within Fowlmere, traffic would be passing Area A in a matter of seconds. Consequently, and as described above, occupants of vehicles would not sense any material change to the character and appearance of the locality as a result of the appeal proposal.
11. I note that within London Road, having purposefully looked, existing mobile homes further within the site on Areas C, E and the Applepark Lodge area can be occasionally glimpsed through the trees in front of the two dwellings to the west and down the existing entrance driveway to the site. In these perspectives, the existing mobile homes are not prominent. Any very fleeting glimpses of mobile homes on Area A would be experienced in the context of these existing structures on the site. They would not perceptibly extend development into open countryside being confined to the transitional character of Appleacre Park as described above. In those parts of London Road closest to Area A there would be no perceptible impact to the character and appearance of the area. In coming to this view, I attach significant weight to the fact that similar circumstances already exist for the adjacent Area B.
12. As set out above, Area A can be occupied on a permanent basis. As such, and in contrast to the previous 2018 appeal, there would be a reasonable prospect of domestic paraphernalia associated with such occupation. Consequently, the appeal proposal would not materially impact the character and appearance of the area in this regard. The LPA is not unreasonable in its general assertion that touring caravans are likely to be smaller than mobile homes, but some modern touring caravans, including those with pull-outs, can be comparable to the scale of mobile homes. This is likely to be the case for touring caravans being occupied on a more settled basis. Accordingly, I find that mobile homes would not necessarily introduce significantly larger structures onto Area A compared to how the site can be lawfully occupied. The size, design, layout and orientation of mobile homes, including overall height, would be capable of control under the separate site licencing regime. I have taken this into account in my assessment of the visual impact.
13. The LPA also submits that there would be more movement with touring caravans resulting in a less permanent occupation of Area A and a more open character. Additionally, and notwithstanding the certificate of lawful use, the likelihood of touring caravans being permanently occupied on Area A all year round is also queried. Be that as it may, as set out above, I have found that Area A makes a negligible contribution to any sense of wider openness in this part of London Road due to its increasingly enclosed nature. This includes the common ground that the use of Area A for touring caravans can be internally sub-divided with fencing between the plots. Accordingly, there would be no harmful loss of openness resulting from removal of the disputed condition.
14. In terms of density, and perceived loss of spaciousness, again, matters of site licencing would ensure appropriate distances would be maintained between the mobile homes. A condition already exists limiting the number of caravans on Area A and this would be retained. In terms of the impact on the living conditions of occupiers of the site, again, given the site can already be occupied on a permanent basis, and that the arrangement on Area A would be

comparable to that found elsewhere on Appleacre Park, this would not be a justified reason for continuing to impose the condition.

15. The previous 2018 appeal, which identified harms in relation to the character and appearance of mobile homes on Area A is a material consideration. For the reasons set out above I have arrived at my own assessment based on the particular circumstances before me. These are materially different to those in 2018, such that I give only very limited weight to the 2018 appeal decision. I note the 2018 appeal decision was concerned about the loss of the vegetation on the London Road frontage (paragraph 36). There is no evidence that the existing dense planting is unhealthy or under threat of removal. I share the appellant's view that this landscaping provides benefits for Appleacre Park in terms of the quality and appearance of the site and providing a buffer to protect the amenity of occupants of Area A from London Road. I see little reason why the existing landscaping would be removed as a consequence of the appeal proposal.
16. I therefore conclude that in respect of Area A, the use of the land for mobile homes would not have a significantly harmful effect on the character and appearance of the surrounding area. Whilst the proposal would conflict with Policy S/7 of the SCLP by virtue of its countryside location, due to the transitional character of Appleacre Park at the edge of the village and the fact that caravans on Area A can be lawfully occupied on a permanent basis, these are significant material considerations that outweigh this policy conflict. In respect of Policy HQ/1 of the SCLP the proposal would preserve the character of the area and would be compatible with its location in terms of scale, density and design in relation to the surrounding area. Accordingly, condition No.2 to planning permission Ref S/1155/92/F no longer serves a justified planning purpose in relation to the visual impact upon the area of permanently stationed mobile homes.

Other Matters

17. With regards to Area D, I observed that existing mobile homes on adjoining parts of the Appleacre Park are readily visible within the streetscene. Due to the tall, solid boundary fence and the roofscapes of adjoining mobile homes there is no strong sense of openness or countryside character at Area D. Area D is directly opposite existing housing on the eastern side of Chrishall Road. Additionally, two-storey housing, on an entry-level exceptions site, is currently being constructed to the south of Appleacre Park within the same streetscene on this part of Chrishall Road. This new housing would further enclose the Appleacre Park site and consolidate the pattern of development in this part of Fowlmere. Accordingly, I share the LPAs assessment that condition No.2 to planning permission Ref S/1156/92/F is no longer necessary in respect of the visual impact upon the area of permanently stationed mobile homes.
18. Concerns are expressed that the changes in the format of accommodation at Appleacre Park means that residential accommodation would come forward in Fowlmere without making a contribution to affordable housing or towards local infrastructure, in contrast to what would normally be required of housing developments. I am mindful my colleague dealt with this in some detail in the 2018 appeal but as set out above, matters have materially changed following the LPAs consideration through the Certificate of Lawful Use that Areas A and D can be used for permanent occupation. As such, removing the disputed

condition would not generate additional permanent residents / households, with the number of caravans remaining the same. As such it would not be necessary to require the appeal proposal to provide affordable housing or contributions to infrastructure to make it acceptable in planning terms in accordance with paragraph 57 of the National Planning Policy Framework (NPPF) or the requirements of the development plan.

Conclusions and conditions

19. I conclude that, having regard to the development plan and all other material considerations, that the disputed condition 2 on both planning permissions no longer serves a justified planning purpose, and so their removal would be acceptable. Consequently, the appeal must succeed.
20. The Planning Practice Guidance (PPG) on the 'Use of Conditions' makes clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission⁶. I have considered the conditions attached to the original permissions⁷ in this vein and in light of paragraph 56 of the NPPF.
21. When both permissions were originally granted, they were personal to Mrs A M C Jackson. The LPA has confirmed that this condition has been separately removed under planning permission Ref S/1029/03/F. As such it is not necessary to attach the original condition 1 to both permissions. Condition 3 of the original permissions limited the number of caravans on Areas A and D to avoid overdevelopment of the site. I recognise that the separate site licencing regime stipulates separation distances between mobile homes, but I nonetheless consider the condition is necessary in order to maintain the character and appearance of the area in accordance with Policy HQ/1 of the SCLP. As such I have imposed it as condition no.2 in the schedule above.
22. Original condition No.4 limited occupation of the sites to no more than 28 days in total in any one calendar year in order to retain Areas A and D for seasonal / tourist use only. Taking into account that permanent residential occupation has been established under the grant of a certificate of lawful use (Ref S/3048/18/LD) it would not be necessary to re-impose this condition. Original condition No.5 dealt with foul drainage. This is a matter covered by the separate site licencing regime and as such it is not necessary to re-impose this condition. For similar reasons and noting the absence of objections from the local highway authority, it would not be necessary to re-impose original condition no.6 in respect of the one-way traffic flow arrangement.
23. The appellant suggested in respect of Area A that a landscaping condition could be imposed to maintain a verdant boundary to London Road. For the reasons set out above in paragraph 15, I do not consider such a condition would be necessary. The November 2019 LPA officer report suggests that a condition be imposed referring to the approved plans. In the interests of proper planning and for the avoidance of doubt I consider such a condition necessary and that it would not prejudice or be more onerous on the appellant's lawful use of the appeal site. In contrast to the reference to drawing 2806/10B from the original applications, I have taken the site location plan submitted with planning application Ref S/0913/19/VC dated 08 September 2016, which shows both

⁶ Paragraph 21a-040-20190723

⁷ Noting that conditions Nos 1, 4, 5 and 6 to the original permissions are identical in their numbering and content

Areas A and D. This is the same plan used for the recent Certificate of Lawful Development. As such I have imposed it as condition No.1 in the schedule above.

David Spencer

Inspector.

APPEARANCES

FOR THE APPELLANT:

Andrew Fraser-Urquhart	Of Queen's Counsel – Instructed by Mr Ben Eiser
Ben Eiser	EPDCS Ltd
George Moss	Managing Director, Park View Group Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Richard Fitzjohn	Senior Planning Officer
------------------	-------------------------

INTERESTED PERSONS:

Cllr Deborah Roberts – District Ward Councillor for Foxton Ward
Tony Bearpark – Local Resident

DOCUMENTS ACCEPTED AT THE HEARING

H1 Signed Statement of Common Ground
H2 Aerial Photograph of the Appeal Site
H3 Appleacre Park Site Licence. No. 359689