



Appeal Decisions

Site visit made on 18 January 2022

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th March 2022

Appeal A Ref: APP/U1105/C/21/3283353

No 2 Long Range Park, Whimble, EXETER, EX5 2QT

Appeal B Ref: APP/U1105/C/21/3283357

No 3 Long Range Park, Whimble, EXETER, EX5 2QT

Appeal C Ref: APP/U1105/C/21/3283359

No 4 Long Range Park, Whimble, EXETER, EX5 2QT

Appeal D Ref: APP/U1105/C/21/3283362

No 5 Long Range Park, Whimble, EXETER, EX5 2QT

Appeal E Ref: APP/U1105/C/21/3283364

No 6 Long Range Park, Whimble, EXETER, EX5 2QT

Appeal F Ref: APP/U1105/C/21/3283367

No 10 Long Range Park, Whimble, EXETER, EX5 2QT

Appeal G Ref: APP/U1105/C/21/3283370

No 12 Long Range Park, Whimble, EXETER, EX5 2QT

- Appeals A-G are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Darren Squires against enforcement notices issued by East Devon District Council ('the Notices').
- The enforcement notice, numbered 18/0048/VAR, was issued on 18 August 2021.
- The breach of planning control as alleged in the notice is failure to comply with the condition of the planning permission 12/2444/VAR which requires the Land to be used for holiday accommodation only, by using the land as permanent residential accommodation.
- The development to which the permission relates is: Variation of conditions 2 and 7 of 10/2338/FUL to allow independent occupation of holiday accommodation and alternative access arrangements.
- The condition in question is no 2 which states that: "The mobile homes hereby permitted shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence. A register (including names and main home addresses) of all occupiers of the holiday units shall be collated and maintained by the owners or manager of the site, and this information shall be available at all reasonable times on request by the Local Planning Authority".
- The reason given was "To ensure that the cabins/chalets hereby permitted are used for holiday purposes only and are not used as a separate dwelling in this open countryside location where new development is restricted in accordance with national and local planning policy and policies TO3 (Tourism Development in Rural Areas) and TO4 (Touring Parks and Camping Sites) of the Devon Structure Plan and Policies D1 (Design

and Local Distinctiveness), S5 (Countryside Protection), and TO4 (Caravan, Chalet and Camping Sites) of the East Devon Local Plan”.

- The notice alleges that the condition has not been complied with in that there has been: Failure to comply with the condition of the Planning Permission 12/2444/VAR which requires the Land to be used for holiday accommodation only, by using the Land as permanent residential accommodation.
 - The requirements of the notice are to: comply with condition 2 of Planning Permission 12/2444/VAR by permanently ceasing the occupation of the Land as permanent residential accommodation and returning it to use as holiday accommodation only.
 - The period for compliance with the requirement is: 12 months
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by: the deletion of the words "the condition" and the substitution of the words "condition 2" in section 3 of the Notices, 'The matters which appear to constitute the Breach of Planning Control'. Subject to the correction, appeals A, B, C, D, E, F and G are dismissed, the enforcement notice is upheld and 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. The matters which appear to constitute the Breach of Planning Control in the Notices refer to "the condition attached to planning permission 12/2444/VAR". They do not refer to the number of the condition. Later in the Notices, in the reasons for issuing it and its requirements, the number of the condition, 2, is given and both parties have approached the appeals on that basis. Notwithstanding that level of understanding, for the sake of clarity I will correct the 'matters' section of the Notices by inserting the condition number. This will not prejudice either party.
3. Although I was not given a copy of planning permission 12/2444/VAR, its terms were set out in the Notices. This is agreed by the parties, so I take it to be correct.
4. I note that an application¹ for planning permission for the unrestricted use of the caravans, as alleged in the Notices, was made prior to the issuing of the Notices. I have taken this into account in my decision.

Reasons

Ground (a)

5. An appeal under this ground is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.

¹ Council reference 20/1246/VAR

6. The Notice alleges the use of Nos 2, 3, 4, 5, 6, 10 and 12 Long Range Park without compliance with condition 2 attached to planning permission 12/2444/VAR. The appeals are made under ground (a), which is to say that planning permission should be granted for their use without complying with the condition.
7. The Main Issue is whether: whether the site is suitable for the proposed development, having regard to a) relevant policies for the location of housing/the Council's spatial strategy and/or b) its accessibility to services and/or facilities.

Site Description and Planning History

8. Long Range Park is a small caravan site that is located within an attractive countryside setting. It is a landscape of rolling hills with a mix of farmland and woodland in which small settlements are linked by a network of roads and lanes. It was formed from part of the grounds of the former Long Range Hotel. Planning permission, Council reference 10/2338/FUL, was granted for the use of the land for the stationing of 12 holiday lodges in 2011. Subsequently, a number of applications were made to the Council to vary conditions 2 and 7 of the original permission. That of interest to this appeal is that which was granted permission, Council reference 12/2444/VAR. In essence, varied condition 2 allows for the use of the site for holiday purposes on a year-round basis; its reference to a register of guests has no direct bearing on this appeal. Similarly, the variation to condition 7 allowed by 12/2444/VAR has no bearing either.
9. The site lies immediately adjacent to, and shares an access with, the former Long Range Hotel. It appeared that this was being converted to a dwelling when I visited; planning permission having been recently granted for this. The A30(T) runs close-by the site, roughly to its south and southeast.
10. The former hotel is separated by a no through road, seemingly created as a result of the building of the A30(T), from a large development of what appear to be caravans, 'Willow View Park'. Adjacent to this is a small estate of industrial and commercial businesses. Beyond this is land that, I am told, benefits from planning permission for a holiday park of 49 caravans, fishing lake, manager's accommodation and farm shop. I am also told that this planning permission has commenced with an application to increase the number of holiday caravans on the site being processed by the Council.
11. Therefore, whilst the appeal sites lie in the open countryside, they are not isolated in the *Braintree*² sense.

(a) Site Location

12. The deemed planning application is to use the seven caravans as residential accommodation that is not restricted to holiday occupancy. The Appellant proposes that their use is, however, restricted to people of 50 years of age or over.

² *Braintree District Council v. SSCLG and others* [2018] EWCA Civ 610

13. The evidence shows that, given the sites' location in the open countryside, the use of the caravans in this manner would not normally be allowed.
14. Section 38(6) of the Planning and Compulsory Purchase Act 2004, mirrored in paragraph 2 of the Framework, sets out that decisions should be made in accordance with the development plan unless material considerations indicate otherwise. In terms of the principle of the development, Strategy 7 of the East Devon Local Plan 2013-2031, adopted 28 January 2016, ('LP'), sets out that development in the countryside will only be permitted where it is in accordance with a specific Local or Neighbourhood Plan policy that explicitly permits such development. It, further, contains the caveat that there should be no harm to the character and appearance of the area. The Council makes no case in respect of this caveat. Although the change in the nature of occupation from holiday to full-time occupation would have some discernible effects, in this case I find that this would not have any adverse effects on the character and appearance of the area.
15. Policies E17 and E18 refer to circumstances where permissions for changes of use of holiday accommodation to other uses would be allowed. Although there would be no change of use here, as the use would remain within Use Class C3³, their terms relating to the lifting of the holiday occupancy condition on the appeal sites are germane. As the sites do not lie in a 'Principal Holiday Accommodation Area', that part of LP Policy E17 is not relevant. However, they set out the Council's adopted approach to the lifting of holiday occupancy conditions. Amongst their terms, they require that it should be clearly demonstrated that there is no longer a need for such use and that the site has been marketed for at least 12 months, and up to 2 years depending on market conditions, at a realistic price.
16. Evidence has been submitted of the marketing of Nos 7 and 4. In a statutory declaration, the Appellant states he bought No 7, together with the freehold of the site in September 2019. Prior to his purchase, he understands that No 7, which is not subject to the terms of the Notice, was marketed since the middle of 2018, though no evidence of this was submitted. Initially, he put No 7 on the market at £145,000. In November 2020, he reduced the price to £115,000. It has had three viewings.
17. Mr Dudley-Prout makes a statutory declaration in which he says that No 4 was marketed at £140,000 in November 2018 and then reduced to £130,000 in September 2019. There was limited interest in it. He took it off the market for much of 2020, before re-marketing it in November 2020 at £115,000. By the date of his statutory declaration, he had received two offers of £117,500; one had been accepted, but the sale had not gone through.
18. Holt and Scott, the estate agency that has been marketing the two caravans, acknowledge the difficulty in setting a price for them as there are no other similar properties in the Whimple area. The Appellant has submitted sales brochures for what he says are three other similar properties; he suggests these support the prices that have been asked at Long Range Park.

³ Town and Country Planning (Use Classes) Order 1987 (as amended)

19. As I have only been given limited details of those properties, it is difficult to make accurate comparisons. I note that, in respect of those at Devon Hills and Holmans Wood, a wide range of facilities are available. Details of the facilities at Hornbeam Country Park have not been given. However, it is described as being on the edge of the Blackdown Hills, in the heart of the East Devon countryside overlooking an inspirational landscape. Whilst Long Range Park lies within a pleasant area of East Devon, its location is seemingly of a different character to that of Hornbeam Country Park.
20. I find that this evidence shows that the earlier, higher prices asked for Nos 4 and 7 were unrealistic, not being reflective of their location and the lack of facilities on the site. Although I can understand why the area lacks the attraction of a coastal location, its position in rural East Devon would still be an attractive holiday destination to many people. Indeed, the fact that a new holiday park has been approved very close to the Long Range Park site would appear to be testament to this.
21. Thus, eventually, Nos 4 and 7 were marketed at a realistic price. However, LP Policies E17 and E18 also require that the accommodation should be marketed at a realistic price for at least 12 months, and up to 2 years depending on market conditions.
22. The asking price for Nos 4 and 7 were not reduced to what I consider the evidence shows to be a realistic price until November 2020. That led to two offers in excess of that asking price, one of which was accepted, for No 4.
23. Market conditions were far from normal for much of the period from November 2020 to the date of the issuing of the Notice. The many effects of the Covid-19 pandemic are well-known, including periods of national lockdown and other restrictions on personal life. Given these quite exceptional circumstances, I find that it would be reasonable to require a marketing period of 2 years from when a realistic figure was first asked, to be reasonable, especially as all restrictions in England have now been lifted.
24. On this issue, I find that the site lies in a location where the form of development arising from the appeal proposal would not normally be allowed. In certain circumstances, LP Policies E17 and E18 support the lifting of holiday occupancy conditions, subject to appropriate marketing. This has not been undertaken and, therefore, the use of the caravans without compliance with condition 2 attached to 12/2444/VAR would be contrary to the terms of LP Strategy 7 and Policies E17 and E18.

(b) Accessibility

25. Long Range Park has no facilities. Although it is said that the approved scheme for holiday caravans close to the site will have a farm shop, it is not there presently. The closest shop is in the petrol filling station at Hand and Pen. It has a limited range of goods for sale. Whimple lies about a half a mile away from this and has further shops and services. Otherwise, I am told that residents would need to travel to West Hill or Ottery St Mary, reportedly 1.7 and 2.8 miles distant; I am not sure what service provision these places have, however.

26. The start point for the assessment of this issue is LP Policy TC2. I note that paragraph 26.5 of its supporting text recognises that vehicular access will be an essential requirement for most developments, especially in rural areas. Its approach is, however, based on developments being located so as to be accessible by pedestrians, cyclists and public transport and also well related to compatible land uses so as to minimise the need to travel by car.
27. A bus service that links the site with the settlements of Sidmouth, Ottery St Mary and Whimble stops a short distance from the sites' access, in one of the entrances to Willow View Park. This is a short, gently uphill walk from the appeal sites. Although there are no footways and the lane does not benefit from street lighting, it would not likely deter occupants of the sites using the bus service. A copy of the timetable for this service shows that one bus per day in either direction stops here; at 09.34 and 14.43.
28. Statutory declarations⁴ show that at least two of the occupants of the caravans have used the service "on several occasions". Given that those people had lived at the site for just over 3 years and 5 years, several occasions does not indicate a high degree of usage. To my mind, this is a reflection of the very limited nature of the service.
29. I walked the route to the bus stop at Daisy Mount from the Long Range Park. The initial part of the route runs past the stop for the No 382. Beyond this, the nature of the route changes markedly. It is a narrow, unlit and secluded path running between an extensive garden to a dwelling and the top of a cutting above the A30(T). It crosses that road on a footbridge, from where an unlit road, which is fairly steep in parts and has no footways, runs through a wooded area to Daisy Mount. The nature of this route, allied to its reported length of 0.7 miles, would not be an attractive prospect to most users. This would especially be the case in the dark or poor weather.
30. The considerably longer walk to the bus stop at Hand and Pen, which involves a busy fast road without street lights and footways, would not be an attractive proposition. It is extremely unlikely that people living at the appeal sites would make what, to my mind, is a dangerous walk to access its bus services.
31. A 'Ring and Ride' bus service is available. However, this only offers a limited range of services, with one bus a day, twice-weekly, to shopping destinations, and a further two 'trips out' to various destinations.
32. As was the case in appeals⁵ that have been submitted, it is necessary to assess the material differences between the current use of the site and that which is proposed.
33. It has been said that the result of allowing the appeal would either be less or commensurate numbers of private vehicle movements to and from the site, though I have not been given empirical evidence on this matter. My experience is that holidaymakers aim to minimise trips to and from their accommodation, going out as early as they can and returning towards the day's end. By contrast, notwithstanding that there would be no 'school run' due to the proposed age restriction, my experience is that residents of dwellings make

⁴ By Mrs Gilbert and Mrs Woodman – Appendices 4 and 5, respectively, to the Appellant's statement

⁵ APP/U1105/W/18/3195007 and APP/U1105/W/21/3268125

more journeys, for example to access shops, services, health services and to socialise.

34. Furthermore, the suggestion that there would be fewer movements to and from work amongst the proposed age group is not backed up by empirical evidence. Whilst there might presently be residents who are retired or semi-retired, it cannot be assumed that all, or even most, residents who are 50 years old or more will not be working – especially, given the recent changes to the age of retirement. I give little weight to this argument.
35. I did see cycle routes within the area, including that marked on the road to the north of the site. Whilst the towns and villages I mention at the beginning of this issue are eminently cyclable, there is a limit to what might be carried home from those centres on a bicycle. They would, therefore give a limited degree of accessibility without reliance on car travel.
36. I note that the county highway department did not object to the planning application for the variation of the condition; the Council, as it was entitled to, disagreed.
37. On this issue, I find that the resultant dwellings would not be located in a sustainable location, where they would be accessible by pedestrians and public transport so as to minimise the need to travel by car. The proposal is, therefore, contrary to the terms of LP Policy TC2 which, amongst other things, requires this.

Other Matters

38. The Reasons for Issuing the Notice include a reference to a “change of use from holiday accommodation to a permanent residential dwelling”. I have taken note of the submitted appeals⁶ that determined that there was no material change of use. There may be occasions where a change in the type of occupant might lead to a material change of use (mcu) of the land through a change in the land’s character. Notwithstanding that reason given for the issuing of the Notices, the Council has supplied no evidence of a mcu. Its position, as set out in ‘The matters which appear to constitute the breach of planning control’, clearly relates to a failure to comply with a condition and this is reflected in its submissions. As such, I need not take the matter of a mcu further.
39. Reference is made to paragraph 62 of the Framework, which includes the term “those who require affordable housing”. Affordable housing is defined in the Framework, in its Glossary. What is before me does not accord with that form of housing. However, the Appellant also makes the point that if the appeal were allowed, the result would be the provision of more affordable accommodation in the area. This is evidenced in a letter⁷ from Holt and Scott, in which they say that the accommodation would be considerably cheaper than bungalows in the area. I afford this limited weight.
40. Three occupants have said in statutory declarations that the previous owner said they could live on the site when they purchased their caravans. As a

⁶ APP/X1118/X/19/3231022, APP/D3505/X/19/3227644, APP/B1225/X/15/3002181, APP/U1105/W/18/3195007

⁷ Dated 17 November 2021

result, they sold their former homes and say they would struggle to find alternative accommodation.

41. I have not been given a copy of the sales particulars from their purchases of the caravans, nor evidence that land searches, if undertaken, were in any way misleading. Furthermore, it would have been open to prospective purchasers to make an application to the Council, under s192 of the Act, to ascertain whether it would be lawful to occupy the caravans on an unrestricted basis. I have no evidence that this was done; nor even that relatively informal approaches to the Council on this question were made. Whilst I of course sympathise with the positions that some occupants find themselves in, given the above I give very little weight to this argument.
42. Although not evidenced by the Appellant, I can see how allowing the appeal at Long Range Park might support nearby settlements. I also find merit in the arguments that the caravans provide accessible and adaptable homes that are safe and ideal for older people. I afford these points a little weight.
43. I have been given no evidence to support the contention that full-time residents would cause less noise and disturbance to the area's residents than would be the case with holiday makers. In any event, this would not outweigh the harm that I have identified.
44. Although some of the matters raised do lend support for the proposal, this is limited. It does not, whether taken individually or cumulatively, outweigh the harm that I have identified.

Human Rights

45. The actions of the Council would lead to occupants of caravans on the site, losing their home. Therefore, I find that there would be interference with their right under Article 8 of the Human Rights Act 1998; respect for private and family life, home and correspondence. I have taken account of the five tests set out by Lord Bingham⁸ in reaching this finding.
46. The Appellant claims that the Council's action in issuing the Notices is not justified under the terms of paragraph 2 of Article 8. I find that it is necessary, as it relates to the regulation of land use through the use of development control measures that are recognised as an important function of Government.
47. No specific argument regarding the proportionality of the Council's actions have been made. However, I cannot see how the objectives of the Council's policies would be met in a manner which would interfere less with the individual's rights. To my mind, the Council's actions do not constitute an excessive or disproportionate effect on the interest of the affected person.

Conclusion on Ground (a)

48. For the above reasons, I find that the case for the use of the caravans without complying with condition 2 of 12/2444/VAR is not justified. The Council's policies show that the site is not suitable for the proposed development and allowing the appeal would cause significant harm to its adopted policy approach

⁸ *AZ v SSCLG & Gloucestershire DC* [2012] EWHC 3660 (Admin)

to development in rural areas, set out in LP Strategy 7, taking into account the terms of Policies E17 and E18, and Policy TC2.

Ground (g)

49. The Appellant's case here is that the 12 months for compliance with the Notices is too short, and this should be extended to 24 months. His contention is based on the occupants not being able to move until they have first sold their caravans. He says that given the previous lack of interest in these with the holiday condition attached, and that a number of caravans will be placed on the market at much the same time, it is unlikely that they will be able to comply within the prescribed period. 24 months would, therefore, be a fairer and more reasonable period to comply with the requirements of the Notice.
50. That the Council had held off taking action during the period of restrictions arising from the Covid 19 pandemic was laudable. However, I do not find this to be a good reason for not allowing the Appellant's case put forward under ground (g), he is entitled to assume success on that part of his appeal.
51. Whilst I am told that 12 months was the period given in similar circumstances in an appeal at Blossom Hill Park, Dunkeswell, I am not aware of all of the details of that case. In any event, I have to assess the case before me on its individual merits.
52. As I have said, I sympathise with the plight of those occupants that have bought their caravans believing they could be occupied on an unrestricted residential basis. That they will have to either sell or move out of their homes is something that I am mindful of.
53. I have to assess this against the harm that the extended period of use of the caravans in breach of condition 2 of 12/2444/VAR causes through its conflict with the Council's adopted development plan housing strategy for rural areas. I find that this harm would be significant.
54. On balance, I find that the Council's time limit is reasonable, and I am aware that were I to allow the breach to continue for longer than the 12 months that the Council gives could call into question the expediency of the Council's action to issue the Notices in the first place. I am also aware of the Council's powers under s173A(1)(b) of the Act.
55. The Ground (g) is dismissed.

Overall Conclusion

56. I consider that condition 2 remains necessary for the reasons given above to make the development acceptable in planning terms. 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.

R Curnow

INSPECTOR