



## Appeal Decision

Hearing (Virtual) held on 13 September 2022

Site visit made on 14 September 2022

**by Robert Parker BSc (Hons) Dip TP MRTPI**

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

**Decision date: 9<sup>th</sup> January 2023**

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**Appeal Ref: APP/W1850/W/21/3281572**

**Sapey Golf Club, Upper Sapey, Worcester WR6 6XT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr John Preston of Wyldecrest Parks Management Limited against the decision of Herefordshire Council.
  - The application Ref 203925, dated 11 November 2020, was refused by notice dated 16 March 2021.
  - The development is change of use of land to caravan site for three caravans.
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### Decision

1. The appeal is allowed and planning permission is granted for change of use of land to caravan site for three caravans at Sapey Golf Club, Upper Sapey, Worcester WR6 6XT in accordance with the terms of the application, Ref 203925, dated 11 November 2020, subject to the conditions set out in the attached schedule.

### Application for costs

2. An application for costs was made by Mr John Preston of Wyldecrest Parks Management Limited against Herefordshire Council. This is the subject of a separate decision.

### Preliminary Matters

3. The site address in my formal decision is taken from the decision notice and appeal form as this more accurately describes the location of the development.
4. The site has an extensive history which began with the granting of planning permission for four holiday chalets in 2006 under Reference DCNC2006/2165/F. One chalet (No 2) was built but the remaining three were not. There have been various applications over the years seeking non-material amendments and variations to conditions on the original scheme. These are not directly relevant to the application before me which seeks planning permission for a different development comprising the change of use of the land for the siting of three caravans, whilst also retaining the existing timber chalet.
5. It is clear that development has already taken place with the siting of three 'units' of accommodation. The site also contains concrete bases for each unit, areas of raised decking and balustrading, and a hardened access track. None of these elements are mentioned within the description of development and thus they do not fall within the scope of the planning application.

## Main Issues

6. The matters in dispute between the main parties are:
  - a) whether or not the three units of accommodation meet the definition of 'caravans' set out within relevant legislation;
  - b) the effect of the development on the character and appearance of the area, with particular reference to the roof terrace and spiral staircase on the unit known as 'Carnoustie';
  - c) the effect on protected species; and
  - d) whether the development makes adequate provision for foul and surface water drainage.
7. I shall consider each of these matters in turn, before returning to the central issue of whether it would be appropriate to grant planning permission for the change of use of the land for the siting of three caravans.

## Reasons

### *Whether or not the three units of accommodation are statutory 'caravans'*

8. The Caravan Sites and Control of Development Act 1960 (CSCDA) defines a caravan as 'any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer)'. In the Caravan Sites Act 1968 (CSA) that definition was expanded to include a structure which (a) is composed of not more than two sections separately constructed and designed to be assembled on site by means of bolts, clamps or other devices and (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) even if to move it on the highway would be unlawful (due to its size).
9. The 1968 Act also sets down maximum dimensions for the assembled caravan – length not to exceed 20 metres exclusive of any drawbar; width not to exceed 6.8 metres and the overall height of the living accommodation, measured internally, not to exceed 3.05 metres when measured from the lowest level to the highest level.
10. The first reason for refusal suggests that there is doubt over whether any of the units meet the above definitions. However, the Council confirmed at the hearing that it was satisfied that the units known as 'Saunton' and 'Porthcawl' are caravans within the statutory meaning. The concerns relate solely to the unit known as 'Carnoustie' referenced on the decision notice as Chalet 4. Photographs indicate that this unit was delivered to the golf club in two halves, towed onto the site by tractor and then craned into position. Subsequent to this, a roof terrace comprising decking and glass balustrading was installed together with a spiral staircase to provide access. The staircase rests on a concrete slab and it is secured to the main accommodation using three bolts at the top. The base of the staircase is hidden beneath decking and therefore I was unable to establish at the site visit whether it was affixed to the slab.
11. The staircase and terrace were installed as a discrete operation after the unit was brought onto site. However, the existence of a section of flat roof on one of the halves would suggest that the structure was specifically designed and

intended to have the roof terrace and staircase. The appellant explained that the component parts were inside one half of the unit when delivered. The roof terrace and staircase are part and parcel of the unit and therefore in my view they should be considered as a whole.

12. Whether a structure is a caravan or a building will be a matter of fact and degree. However, I consider that 'Carnoustie' would not comply with s29 of the CSCDA 1960 and s13 of the CSA 1968 because it is composed of more than two sections and exceeds the maximum allowable width of 6.8 metres<sup>1</sup>. It also seems to me that the structure is not, when assembled, physically capable of being moved by road from one place to another. Lifting the unit to transport it would almost certainly cause structural damage as the staircase would, in all probability, snap off under its own weight without support to the base.
13. Based on the facts of the case, I conclude that the unit known as 'Carnoustie' does not constitute a caravan within the statutory definition.

#### *Character and appearance*

14. The site is located adjacent to the B4203, behind a dense screen of roadside hedging. A 9 hole golf course belonging to Sapey Golf Club lies to the east and there is a group of semi-mature oak trees to the north which hides the main body of the site in views through the site entrance. The Council has already granted permission for a scheme of four timber holiday chalets on the land. There was debate at the hearing over whether this permission is extant; local residents contended that development had not taken place in accordance with the approved plans. It is not for me, in the context of a s78 appeal, to make a formal determination on matters relating to lawfulness. However, the fact that the Council has previously agreed to a particular form of development on the site is a relevant material consideration to which I have attached great weight.
15. The Council does not object to the principle of caravans as an alternative to buildings. Caravans are generally assembled in factories and their external wall and roof finishes are different to the traditional construction materials used on Chalet 2. However, the caravans on the appeal site are brown in colour and their walls are textured to mimic stained timber cladding. The effect may not be so convincing when viewed close-up, but from a distance it is fairly realistic. The caravans may be visible through the boundary hedging during the winter months, but such views will be heavily filtered and the appearance of caravans would not be so different, relative to the approved timber chalets, as to render them unacceptable. Carnoustie is slightly further up the slope compared with the permitted scheme, but that does not alter the visual impact significantly.
16. The Council's sole concern, in character and appearance terms, is in relation to the roof terrace and spiral staircase. These structures were not discernible from public vantage points at the time of my visit, but there is a strong possibility that their visibility will increase when the trees are bare. The elevated nature of the roof terrace makes this more likely. In my judgement, the design of these additions is visually incongruous and discordant in the context of a single-storey caravan or chalet type structure. The appellant pointed out the existence of a 'similar' balcony on the golf clubhouse, but this is a much larger building and its balcony is a more subservient addition. It is not directly comparable.

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<sup>1</sup> This is notwithstanding that measurements taken on site by the parties in my presence showed the main accommodation as being within the relevant size thresholds.

17. I conclude that the submitted scheme for three caravans on the site does not conflict with Policies SS6, LD1 and SD1 of the Herefordshire Local Plan Core Strategy 2011-2031 (CS) insofar as these seek to ensure that proposals respect their townscape and landscape context and contribute to local distinctiveness. The spiral staircase and roof terrace do give rise to policy conflict, but since they do not form part of a caravan, my decision will not turn on this point.

#### *Protected species*

18. There is no ecology report before me to inform an assessment on whether the development has impacted on protected species. The proposal is retrospective, as the units have been in place for some time (up to four years) and therefore it is impossible to identify the extent of protected species impacts. Local residents cite ecology concerns, but I have no evidence to indicate the likely presence of protected species. In the event of permission being granted, it would be reasonable to impose a condition to secure details of external lighting to prevent harm to bats (if present). Subject to this, I find no evidence to substantiate any material harm to biodiversity, such as to give rise to conflict with CS Policy LD2.

#### *Drainage*

19. The appellant was unable to supply any details of the foul and surface water drainage arrangements. However, the site has been operating satisfactorily for a number of years with no evidence of any flooding or other problems. The application form for the approved chalets stated that surface water would be disposed of by soakaways and foul water using a package treatment plant. I was told that the caravan site has adopted the same approach, and that the units have been attached to the original package treatment plant.
20. The Council states that in line with CS Policies SD4 and LD2 and best practice on phosphate management, the outfall from any package treatment plant should be managed through an onsite soakaway drainage field on land under the appellant's control. I have no reason to think this cannot be achieved. However, given the uncertainty involved in knowing what has actually been installed, it is reasonable to impose a condition requiring details of surface water and foul drainage to be submitted and agreed with the Council.

#### **Other Matters**

21. At the hearing I heard various references to the fact that the units are connected to services, including electricity, gas and water. This in itself does not take them outside the statutory definition of a caravan. Unlike with touring caravans, utility connections are a normal expectation of a static caravan site. Disconnecting the services to remove the caravans from the land would be a straightforward operation.
22. Residents contend that the development is the 'thin end of the wedge'. They are concerned that allowing the appeal would open the door to proposals for a larger caravan site of the type operated by the appellant elsewhere, including at nearby Saltmarshe Castle Park which I visited after the hearing. Whilst I am aware that previous applications for an additional 6 and 14 holiday lodges surrounding the golf course have been refused, these decisions are not before me for consideration. I must deal with the current appeal on its merits.

23. I have noted the concern that the development is an underhand means of securing residential use on the site. However, the main parties are agreed that the development should be subject to an occupancy condition which would ensure that no person or group of persons could occupy the accommodation for more than 28 consecutive days at a time and no same person or group of persons could occupy it for more than 156 days in any one calendar year. This would prevent use of the caravans as dwellings and ensure compliance with the Council's policies for countryside protection and tourism. There are no planning grounds on which to insist that occupancy is restricted to users of the golf club. To the extent that the caravans may already be advertised for sale, this does not prevent the condition from being enforceable against future purchasers.
24. Objectors have expressed frustration at planning breaches at the site. They state that the appellant would be unlikely to comply with the requirements of any fresh permission. However, the Council has enforcement powers under the Town and Country Planning Act. My consideration of this appeal is based on the planning merits and not on the motives or intentions of the appellant.
25. Nearby residents report having been disturbed by noise from occupants of the development. These are likely to have been isolated events rather than the norm, as the distance between neighbouring properties and the caravan plots is sufficient to prevent general nuisance. Intervening trees and vegetation help to minimise light intrusion for neighbours. Conditions can be imposed to give the Council control over the design of external lighting on the site.
26. The site benefits from an existing access onto the B4203. The original planning permission for chalets included a condition stating that the access must not be used for vehicular access by occupants of the caravans. That condition was omitted from the list of conditions submitted for discussion at the hearing. The Council has since indicated that it considers the condition to be unenforceable. Permission was not refused on highway grounds and there is no technical evidence before me to demonstrate that the access is unsafe. I noted at the site visit that there is adequate visibility for drivers exiting the site. As I understand it, the intention is for occupants of the chalets to park their vehicles in the golf club car park and then cross the road on foot using the controlled crossing. However, the use of the access for loading and unloading, or by disabled guests, would not give rise to an unacceptable highway safety risk.
27. Interested parties drew my attention to the Grade II listed building known as Lower Field to the north. The distance between this building and the appeal site is somewhere in the order of 200 metres and there is no intervisibility due to the two modern bungalows in between. Based on my observations at the site visit, I am satisfied that there has been no harm to the setting of the listed building.
28. I have taken account of all other matters raised, including suggestions that the development has involved earthworks to reprofile the land and the removal of trees and a pond, but these matters do not alter my overall conclusions.
29. The Council cite the case of *Finney v Welsh Ministers & Carmarthenshire CC & Energiekontor (UK) Ltd* [2019] EWCA Civ 1868 in its officer report. However, this related to a s73 application to vary a condition on an existing planning permission which is not the case here.

## Conditions

30. The parties provided a list of conditions in the Statement of Common Ground for discussion at the hearing. Some were still the subject of disagreement. I have considered the conditions against the six tests set out in paragraph 56 of the National Planning Policy Framework. Where necessary, I have amended the wording to improve precision and enforceability. The latter is particularly important in cases such as this, where development has already taken place and the submission of further details is being required for approval.
31. I have attached a condition identifying the approved plans to provide certainty. This requires the caravans to be sited in the positions shown on the approved plans. A further condition is necessary to restrict the number of units on the site to four, including Chalet No 2 (marked as 'The K Club' on the plans).
32. In the interests of the character and appearance of the area, it is reasonable to impose a condition requiring the submission, for the Council's written approval, of details of any new or replacement caravans on the site, including details of external materials and coloration and any external lighting for that unit.
33. Details of foul and surface water drainage can also be secured through an appropriately worded condition. A condition can also be used to control external lighting on the site, in the interests of the amenities of the area and protecting bats (if present).
34. An occupancy condition is necessary to ensure compliance with development plan policy on development in the countryside, given that the site does not occupy a location where housing would ordinarily be permitted.
35. The Statement of Common Ground lists additional conditions which require a protected species mitigation report and the finished levels of the base on which each caravan is stationed. Neither of these conditions passes the test of necessity.

## Conclusion

36. I have found that the unit known as 'Carnoustie' does not fall within the statutory definition of a caravan. Consequently, it cannot lawfully be located on land for which planning permission has been granted for change of use to a caravan site. Whether the unit can be made to comply by removing the spiral staircase and roof terrace is a matter for the parties to discuss outside of this appeal. The Council has powers to seek the removal of the unit should that become necessary.
37. None of this precludes me from considering the planning merits of a change of use of the land to a caravan site for three caravans. This is the description of development set out on the application form. Permission has not been sought for the accompanying operational development (set out in paragraph 5 above) which the appellant argued was part and parcel of a caravan site and necessary to meet licensing requirements. Whether a planning application is invited for those elements is a decision for the Council. My consideration of the appeal is limited to the principle of the change of use and the issues surrounding that. That two of the plots are already occupied by caravans does not affect my conclusions, although self-evidently it has made assessing the visual impact easier.
38. Having given careful consideration to the written and oral submissions, I find that there is no material conflict with any of the policies cited on the decision

notice. The scheme complies with the development plan taken as a whole and there are no material considerations to indicate a decision otherwise than in accordance with the development plan. Whilst I can appreciate the concerns of existing residents, many of the matters raised, notably in respect of future proposals, are not for me to consider in the context of this appeal.

39. For the reasons given above, I conclude that the appeal should be allowed.

*Robert Parker*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

|                    |                                                  |
|--------------------|--------------------------------------------------|
| Mr Graham Cridland | Solicitor for Appellant, Origin 3 Legal          |
| Mr John Preston    | Assistant Director of Planning, Wyldecrest Parks |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                |                                                |
|----------------|------------------------------------------------|
| Mr Josh Bailey | Senior Planning Officer, Herefordshire Council |
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### **INTERESTED PARTIES:**

|                     |                |
|---------------------|----------------|
| Mr Alan Edwards     | Local resident |
| Ms Jill Hardell     | Local resident |
| Mr Hardell          | Local resident |
| Ms Louise Pritchard | Local resident |
| Mrs Margaret Smith  | Local resident |
| Mr Philip Smith     | Local resident |
| Ms Natalie Smith    | Local resident |
| Mr Greg Spring      | Local resident |
| Mrs Sacha Treadwell | Local resident |
| Mr Ian Treadwell    | Local resident |
| Mrs Jane Tudge      | Local resident |
| Mr Nic Tudge        | Local resident |

### **SCHEDULE OF CONDITIONS**

- 1) The use hereby permitted shall be carried out in accordance with the following approved plans: Change of Use Application - Site Location Plan (drawing no. SGC111120) (Sheet 1 of 3), Change of Use Application - Site Location Plan (drawing no. SGC111120) (Sheet 2 of 3) and Change of Use Application - Site Plan (drawing no. SGC111120) (Sheet 3 of 3). The caravans shall be sited in the positions shown on the approved plans and in no other position.
- 2) No more than 4 units of accommodation (including Chalet 2, shown on the plans as 'The K Club') shall be stationed or exist within the red line boundary for the appeal site, as defined by the red line under Change of Use Application - Site Location Plan (drawing no. SGC111120) (Sheet 2 of 3), at any one time.
- 3) No new or replacement caravan shall be brought onto the site until details of the external materials and coloration of that caravan, and any external lighting to be installed on the caravan, have been submitted to and approved in writing by the local planning authority. The caravan shall thereafter be installed and maintained in accordance with the approved details.
- 4) No person or group of persons shall occupy the caravans for more than 28 consecutive days at a time, and no same person or group of persons shall occupy the caravans for more than 156 days in any one calendar year. The owners/operators of the site shall maintain an up-to-date register of the names of all occupiers of the caravans and of their main home address (i.e. place of residence) and shall make this information available at all reasonable times to the local planning authority.
- 5) Within 4 months of the date of this decision, there shall be submitted to and approved in writing by the local planning authority a scheme of foul and surface water drainage which shall include details of all works carried out to date and any works of alteration being required by the Council, together with a timetable for carrying out those works. The scheme shall be implemented in accordance with the approved details and retained thereafter.
- 6) Within 4 months of the date of this decision, there shall be submitted to and approved in writing by the local planning authority a scheme of external lighting for the site, which shall include lighting to be installed on individual caravans. The scheme shall be designed 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, and it shall incorporate measures to minimise sky glow, glare and light trespass, including motion sensors and timers where appropriate and consideration of the impacts on bats.

The approved scheme shall be implemented in accordance with a timetable to be first agreed in writing with the local planning authority. The lighting shall be retained in accordance with the approved scheme thereafter and no other lighting shall be installed on the site without the prior written permission of the local planning authority.

\*\*\* END OF CONDITIONS \*\*\*