



Appeal Decision

Site visit made on 1 November 2022

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24th April 2023

Appeal Ref: APP/J2210/W/22/3298520

Keat Farm Caravan Park, Reculver Road, Herne Bay, Kent CT6 6SR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Malcolm Kent of Keat Farm (Caravans) Ltd against the decision of Canterbury City Council.
 - The application Ref CA/22/00282, dated 2 February 2022, was refused by notice dated 3 May 2022.
 - The application sought planning permission described as 'the Extension of Use of the Existing Caravan Park from Eleven to Twelve Months Each Year for the Residential Use of no more than 10 Caravans' without complying with a condition attached to planning permission Ref CA/91/00414/HBA, dated 4 June 1991.
 - The condition in dispute is No 2 which states that: *this permission shall not authorise the use of the caravans for living accommodation except during the period from 1 February to 31 December in each year.*
 - The reason given for the condition is: *The site is intended to be used for recreational purposes only and is not within an area where permanent residential use would be permitted.*
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Decision

1. The appeal is allowed and planning permission is granted for the extension of use of the existing caravan park from eleven to twelve months each year for the residential use of no more than 10 Caravans at Keat Farm Caravan Park, Reculver Road, Herne Bay, Kent CT6 6SR in accordance with the terms of the application, Ref CA/22/00282, dated 2 February 2022, without compliance with condition number 2 previously imposed on planning permission reference CA/91/00414/HBA, dated 4 June 1991, but subject to the following condition:
 - 1) No more than 10 caravans shall be stationed on the land at any time.

Preliminary Matters

2. In the interests of clarity, I have taken the description of the proposal above in my decision from the application form, rather than from the 1991 consent, the description for which referred to use only for 11 months of the year. The Council's decision notice and the appellant's appeal form used a different description which referred to the original permission having a reference number of 'CA/91/0414/VAR'. However, both parties have confirmed that the reference number suffixed HBA is the correct one, and so I have used this in my decision.
3. Permission CA/91/0414/HBA was itself a variation of an earlier consent (ES/4/70/3 dated 8 May 1970) which approved use of the site as a recreational

caravan site and for winter storage but was subject to a condition that the caravans could not be occupied between 1 March and 31 October in each year. Therefore, the effect of the removal of condition 2 of permission CA/91/00414/HBA would be to allow the use of the site for caravans to be occupied throughout the year, for permanent occupation, rather than for just 11 months of each year or solely for recreational use.

Main Issues

4. The main issues are whether the condition is reasonable and necessary having regard to:
 - the need to require use of the site only for tourist accommodation,
 - the suitability of the location for unrestricted residential use having regard to its accessibility to services and facilities, and
 - the effect of the proposal on the Thanet Coast and Sandwich Bay Special Protection Area and RAMSAR site (TCSBSPA) and the water quality of the Stour Valley river.

Reasons

Tourist Accommodation

5. Policy TV3 of the Canterbury District Local Plan, adopted July 2017 (CDLP) states that the loss of visitor accommodation will not be permitted unless (relevant to this proposal) there is clear evidence that it is no longer needed and is no longer viable, having been actively marketed for at least one year with no interest. It also requires that every reasonable effort has been made to secure other appropriate cultural, tourism, economic or community uses. CDLP Policy TV4 does not permit the loss of a caravan tourist site unless it makes no positive contribution to the local economy.
6. There are some existing holiday caravan parks within the wider Herne Bay area and many more across Canterbury District as a whole. These already provide a large number of static caravan pitches in addition to touring caravan and camping pitches. The area around the appeal site is relatively suburbanised and distant from the sea, so is perhaps less attractive than other locations. Even so, although relatively small, the proposal would still result in the loss of potential holiday accommodation.
7. I have been provided with evidence of the current price for holiday caravans for sale and for the construction work said to be necessary to implement holiday caravan use. This reflects the need for larger caravans demanded by customers. This evidence, which is not disputed by the Council, shows that the costs would be significantly higher than the total income generated.
8. However, CDLP Policy TV3 requires that a marketing exercise is undertaken to demonstrate demand for holiday or alternative uses. The site was actively marketed for holiday caravan use most recently until 2010, I understand with less and less interest and with fewer pitches being occupied. Even so, no recent marketing has been undertaken and the Covid pandemic has taken place since then, with its increase in demand for 'staycation' holidays. It is not therefore sufficiently clear to me that the site is no longer viable for holiday use.

9. Furthermore, despite its proximity to residential uses, I have no substantive evidence to suggest that the site would not be suitable or viable for the alternative uses set out in Policy TV3. In its present largely vacant state, the site makes little positive contribution to the local economy. Even so, it is possible that it could do so (whether for holiday or other non-residential use) in the future.
10. I therefore conclude that the condition is reasonable and necessary to require use of the site only for tourist accommodation. As such, its removal conflicts with CDLP Policies TV3 and TV4. These policies are consistent with the aim of the National Planning Policy Framework (the Framework) to support a prosperous rural economy including sustainable rural tourism, and so the proposal would conflict with this aim too.
11. However, despite its reason, the wording of the condition does not prevent use of caravans on the site for non-holiday residential accommodation, a fact confirmed by a Certificate of Lawfulness¹. The potential for such use of the site, albeit for 11 months of each year, limits the degree of conflict with policies TV3 and TV4, and so I give this conflict only moderate weight.

Accessibility to Services and Facilities

12. Although not referred to in the reason for refusal, both main parties have made comments in respect of CDLP Policy SP4, which states that the principle focus for development is the urban area of Canterbury, Herne Bay and Whitstable because of their size and the range of services they possess. It is common ground that the site is outside of the Urban Area Boundary (UAB) for Herne Bay. As such, the site is not within an area where permanent residential use would normally be permitted, and so is contrary to CDLP Policy SP4.
13. However, the site is on the edge of the UAB of Herne Bay and has other residential uses close by. There is a medical practice and pharmacy close to the site, together with a place of worship nearby and shops and a supermarket not far away. I saw that there are bus stops nearby which provide public transport access to other facilities. It would therefore have reasonable access to services and facilities. Furthermore, I have already found that the site can provide some form of residential accommodation at present, despite its location outside the UAB.
14. I conclude that the location would be suitable for unrestricted residential use having regard to its accessibility to services and facilities. As such, for the reasons given above, I give the conflict to CDLP Policy SP4 only limited weight.

SPA, RAMSAR and Water Quality

15. The site is within the zone of influence of the TCSBSPA. It is also outside of, but adjacent to, the catchment area of the Stour Valley River in respect of wastewater. The Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations) requires the decision maker to undertake a Habitat Regulations Assessment (HRA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. This responsibility falls to me as the competent authority in the context of this appeal.

¹ LPA reference CAE/07/00010/HBA

16. The TCSBSPA qualifying features include the protection of three bird species, namely Golden Plover (*Pluvialis apicara*), Turnstone (*Arenaria interpres*) and Little Tern (*Sterna albifrons*). The Council did not object to the proposal on biodiversity grounds, and there is already consent for use of the units for 11 months of the year.
17. However, occupation of the units is currently excluded for the month of January. The proposal means that residents would be present throughout the sensitive overwintering bird period. Furthermore, additional discharged wastewater from the proposal could cause deterioration to water quality. As such, alone and in combination with other development, the proposal is likely to have a significant effect on the TCSBSPA and the Stour Valley River.
18. In undertaking the HRA, I have sought advice from Natural England (NE). They commented that there is an agreed mitigation Strategic Access Management and Monitoring Strategy (SAMMS) with its measures funded through developer contributions. Subject to the appropriate financial contribution being made, NE's advice is that the proposal would not result in an adverse effect on the integrity of the coastal designated sites.
19. During the appeal, the appellant has submitted a Unilateral Undertaking (UU) making a financial contribution to SAMMS, on which the Council has commented and found its provisions acceptable. As such, the information before me indicates that the impact of the development could be mitigated by the financial contribution, secured through the UU. This would avoid adverse effects on the integrity of the TCSBSPA and on the water quality of the Stour Valley River catchment area, and so would accord with the Habitats Regulations.
20. For the reasons given above I conclude that the proposal, with the mitigation secured by the UU, would not harm the TCSBSPA or the water quality of the Stour Valley River. As such, it would not result in harm to biodiversity and so would comply with the Framework in this respect.

Other Considerations

21. The Council accepts that it has not met the Housing Delivery Test (HDT). This leads me to Paragraph 11(d) of the Framework, which states that in such cases planning permission should be granted unless specific circumstances apply. One circumstance is where its policies that protect areas or assets of particular importance, such as those relating to habitat sites, provide a clear reason for refusing the development proposed. However, as I have already found that the effect of the proposal in this respect is acceptable, this circumstance does not apply.
22. The other circumstance is set out by Paragraph 11(d)(ii) of the Framework. This is where the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
23. I have found that the proposal conflicts with CDLP Policies TV3, TV4 and SP4, for the reasons I have set out above. These are important policies that form part of the plan's spatial strategy, but in the context of the HDT, they are deemed to be out of date. I have also found that the conflict with CDLP policies

TV3 and TV4 carries only moderate weight, and that the conflict with CDLP Policy SP4 carries limited weight.

24. Against that, the proposal would make provision for up to ten units of accommodation. The site already has lawful use for residential occupation but the availability of the units, for full-time use, means that they would make a positive and much needed contribution towards housing supply. I have also considered Paragraph 60 of the Framework which seeks to significantly boost the supply of housing. I give these benefits significant weight.
25. In addition, the proposal would also provide associated social and economic benefits associated with the installation of the caravans and from the contribution of occupants of the caravans to the local community. I give these benefits limited weight. For the reasons given above, I conclude that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Conditions

26. The Council has suggested a condition requiring that no more than 10 caravans are occupied year-round, and that any other caravans are subject to the same restriction as condition 2. However, the proposal is for only 10 caravans, and it is on that basis that I have considered it. I will therefore impose a condition requiring that only 10 caravans are stationed on the land at any time.
27. The appellant has suggested limiting occupation of the caravans to people over 50 years of age, but I see no necessity to impose such a restriction. A condition as also been suggested by the appellant with regard to landscaping. However, I saw that the site is already well screened by thick hedging. As such, I see no need for such a condition.

Planning Balance and Conclusion

28. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise.
29. The proposal benefits from the presumption of sustainable development as outlined in Paragraph 11(d)(ii) of the Framework. I have found that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Therefore, despite the conflict with the development plan, material considerations indicate that the appeal should be allowed and a new planning permission granted without the disputed condition, but with the additional condition to which I refer above.

O Marigold

INSPECTOR