



Appeal Decision

Hearing held on 22 March 2023

Site visit made on 24 March 2023

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 9 June 2023

Appeal Ref: APP/V2255/W/21/3279125

Estuary View Caravan Park, Bell Farm Lane, Minster-on-Sea ME12 4JA

- 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 Estuary View Caravan Park against the decision of Swale Borough Council.
- The application Ref 20/503268/FULL, dated 21 July 2020, was refused by notice dated 24 March 2021.
- The application sought planning permission for variation of condition (3) of NK/8/53/116A to allow 10-month holiday use without complying with conditions attached to planning permission Ref SW/12/0195, dated 4 April 2012.
- The conditions in dispute are Nos 2, 3, and 4 which state:
 - (2) No caravans shall be occupied between 1st March and 2nd January in the following calendar year unless there is a signed agreement between the owners or operators of the Park and all caravan owners within the application site, stating that:
 - (a) The caravans are to be used for holiday and recreational use only and shall not be occupied as a sole or main residence, or in any manner which might lead any person to believe that it is being used as the sole or main residence; and
 - (b) No caravan shall be used as a postal address; and
 - (c) No caravan shall be used as an address for registering, claiming or receipt of any state benefit; and
 - (d) No caravan shall be occupied in any manner, which shall or may cause the occupation thereof, to be, or become a protected tenancy within the meaning of the Rent Acts 1968 and 1974; and
 - (e) If any caravan owner is in breach of the above clauses their agreement will be terminated and/or not renewed upon the next expiry of their current lease or licence.
 - On request, copies of the signed agreement[s] shall be provided to the local planning authority.
 - (3) Any caravan that is not the subject of a signed agreement pursuant to condition 2 shall not be occupied at any time.
 - (4) The owners or operators of the Park shall at all times operate the Park strictly in accordance with the terms of the Schedule appended to this decision notice.
- The reasons given for the conditions are: In order to prevent the caravans from being used as a permanent place of residence, and in pursuance of policies E1 and E6 of the Swale Borough Local Plan 2008.

Decision

1. The appeal is dismissed.
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Preliminary Matters

2. Because this appeal, and the appeal¹ on the neighbouring site, Golden Leas, raised issues and concerned policies common to both, they were conjoined. While a single Hearing was held, and a single site visit made, each appeal has been considered on its own merits, and against its particular circumstances.
3. The implications of the operative part of the planning permission and the potential for conflict with the omission or variation of these conditions were discussed at the opening of the Hearing. The 2012 permission² which the appellant seeks to vary here, restricts occupancy to 10 months in a year. This 2012 permission was in effect a variation of the original permission NK/8/53/116A which granted development for 'use of land as caravan and chalet site' with a restriction on use to 8 months in a year. It is on this basis that I have considered the appeal.
4. On opening the Hearing, the acceptability of the Council's late documents and plans, referenced at the end of this decision letter were reviewed. The appellant did not object to their inclusion. I saw no risk of prejudice in accepting them. They have therefore formed part of the appeal. During the Hearing, both parties referred to documents either published or on public file with the Council, already familiar to them, as listed at the end of this decision. As these were not in the appeal, I accepted them after the Hearing.

Main Issues

5. These are whether the condition is reasonable or necessary having regard to:
 - the effect of the development on the character of the countryside;
 - the location of the development, in terms of access to services and facilities and the objectives of a sustainable pattern of development;
 - the effect of the development on tourism; and,
 - the living conditions of future occupiers.

Reasons

The effect of the development on the character of the countryside

6. Policy DM5 of the Local Plan³ (LP) says that to ensure a sustainable pattern of development and to protect the character of the countryside, wherein there is no dispute the appeal site lies, planning permission will not be granted for the permanent occupancy of caravans and chalets.
7. I have taken into account that the built-up area boundary in the development plan is only around 200m away. A housing estate has been built on the other side of Plough Road, within that boundary. Moreover, more established housing, again albeit within the settlement boundary, stands a few metres further to the west of that estate. This urban edge has a bearing on the character of the countryside which here is largely to the north of Plough Road.

¹ Appeal Ref: APP/V2255/W/21/3279116

² LPA Ref: SW/12/0195 of April 2012

³ Bearing Fruits 2031: The Swale Borough Local Plan, adopted July 2017

8. However, the mature and generally dense line of trees which enclose Plough Road contains the estate spatially and lessens its visual bearing on the countryside beyond the boundary. From what I could see, the countryside here is characterised as much by its isolation and its open, exposed form, which foregrounds views to the coast and the sea, as it is by its mature trees, hedgerows, fields, and grazing animals. That landscape character is underpinned by the surviving tranquillity of the countryside here, which is largely undeveloped, and which is an equally important component of its character.
9. I appreciate that there are dwellings in this countryside and to the north there is a residential park homes site with permission for nine units. However, homes are relatively few and scattered, unlike the concentrated housing in the built-up area to the south. The number and location of homes have not changed to any significant degree the character of the countryside identified above.
10. I have taken into account that the proposal would be largely contained, visually, by caravans. But holiday parks containing caravans are characteristic of the countryside, especially here. They are perhaps now as much part of the character of this part of the countryside as the other landscape features which define it. The proposal would not appear out of place.
11. Regarding the restriction on occupancy in terms of character, I appreciate that the caravans here are largely owner-occupied, unlike the caravans in the corporate holiday parks with a brisker turnover of occupiers. In terms of external or landscape changes or personalisation and their effect on character, I accept the appellant's argument that here the distinction between a caravan in permanent occupancy and one restricted, is too narrow to distinguish.
12. I acknowledge the appellant's point that a caravan in permanent occupancy may create fewer trips and less activity than a caravan not in permanent occupancy. However, the opposite may be equally true. Unfortunately, there is no substantive evidence from either side to draw comparisons on the profiles of caravan occupancy here in terms of frequencies of visits, lengths of stays, modes of transport, numbers of occupiers, trips, visitors, and the activity generated. In these circumstances, the logic of the Council's argument, that a caravan in permanent occupancy must for the most part, by definition, have more activity or comings-and-goings than a caravan which is not in permanent occupancy, and not occupied at all for two months of the year, is compelling.
13. Moreover, the occupancy restriction provides a 2-month long respite from the effects of occupation on the character of the countryside, particularly its isolation, and its exposure and tranquillity, which may perhaps be reasons the area is such a draw for holidaymakers, visitors, and residents alike, in the first place.
14. Given the location of the site in the countryside, the intrinsic character and beauty of which the Framework says⁴ policies and decisions should recognise, I

⁴ National Planning Policy Framework, paragraph 174(b)

find that restricting the caravans from permanent occupancy is necessary to protect the tranquillity of the countryside, which is part of its character.

15. I conclude that, without the conditions, the proposal would cause very significant harm to the character of the countryside, placing it in direct conflict with LP policy DM5 where it seeks to protect the character of the countryside by not granting planning permission for the permanent occupancy of caravans or chalets. It would also run against the Framework which indicates that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

The location of the development

16. The Local Plan, in policy ST3, does not generally permit development in the open countryside outside the built-up area boundaries. Instead, it seeks through policies ST6 and CP3, to make settlements within the West Sheppey Triangle the focus of development, and to steer housing to within the built-up area boundary or to allocated sites. The Framework, in paragraph 80, indicates that decisions should avoid the development of isolated homes in the countryside, unless particular circumstances apply, none of which pertain in this case.
17. The parties agree that the area is characterised by undeveloped countryside, holiday parks and scattered dwellings. I saw that the site is surrounded on three sides by caravans. Though the location of the development would not, strictly, follow the locational policies of the development plan, in these circumstances I cannot find that the development would be isolated. Because of the factors above, the weight I can accord this locational conflict with the development plan is limited.
18. The closest settlement with a range of services and facilities is Minster, around 1.9km to the west. It is classified in the Local Plan as an 'other urban local centre,' with a limited or variable range of services, but likely to be the focus of developments seeking to meet the needs of their own and wider needs. There is also a convenience shop, around 1km from the site, close to the road to Minster.
19. To the east, around 2.1km away, is Eastchurch, described in the Local Plan as a rural local service centre, and likely to serve rural populations for day-to-day services. Sheerness, a borough centre, is around 6km away. The Local Plan recognises that populations will travel to different centres for different needs. These are the closest settlements that could serve the needs of future occupiers.
20. The roads to Minster and Eastchurch are long, and they do not have footways or streetlights for their entire lengths, making them unlikely destinations to reach by walking. Given the road widths and amount of traffic on these roads, cycling, for those able and inclined, appeared to me a reasonable option in both directions.

21. The closest bus stops to the site are around 350m away, on Eastchurch Road, served by school morning and afternoon buses, and by approximately, hourly public buses in both directions between 07:30 and 19:30. The frequency of the buses would offer an alternative means of access to the services and facilities in the neighbouring settlements.
22. However, I saw that part of the route to these bus stops passes along a byway with extremely poor surfacing and no street lighting. Reaching the bus stops would be challenging for those with poor sight, poor mobility, or those with small children to push. This makes the bus an unlikely choice in poor weather or poor light.
23. There are alternative bus stops a little further to the west. However, Bell Farm Lane is a narrow, unlit country lane with hedgerows, with little refuge for pedestrians from vehicles. Moreover, the corner on Plough Road by Bell Farm Lane is a relatively tight bend with limited intervisibility, on rising ground, without footway or lighting. Even taking into account the infrequency of traffic here, this bend exposes walkers directly to traffic from behind, in each direction, with little or no refuge. It is not a suitable option to rely on for access to bus services.
24. For this reason, and notwithstanding that the site has access to supermarket deliveries and broadband, future occupiers would depend largely on the private car to reach the services and facilities they need to meet their daily needs. The proposed development would not be a sustainable pattern of development. It would therefore conflict with LP policies ST3, ST6, and CP3 above, as well as LP policies ST1, DM5 and DM14 which, to ensure a sustainable pattern of development do not grant permission for the permanent occupancy of caravans and chalets and seek sustainable development and convenient routes and facilities for pedestrians. It would also conflict with section 9 of the Framework which encourages the planning system to actively manage patterns of growth in support of the objectives of promoting sustainable transport.
25. Notwithstanding this, in favourable conditions there would be access to public transport. Moreover, trips could result from the permitted use of the land for occupation during 10 months of the year, and without more permissions. Taking these factors and the physical circumstances into account, as well as the Framework, which indicates in paragraph 105 that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, the adverse impact of the location of the development, in terms of access to services and facilities and the objectives of a sustainable pattern of development would be no more than moderate.

The effect of the development on tourism

26. The appellant pointed out that there is no prohibitive policy in the Local Plan protecting existing holiday accommodation. However, LP policy ST6 requires development to support the existing tourism offer or to help its modernisation and diversification. LP policy CP1 requires development to consolidate or widen

the Borough's tourism potential, and LP policy DM3 requires residential development not to reduce the potential for rural employment. The Framework also says in paragraph 84 that decisions should enable sustainable rural tourism and leisure developments which respect the character of the countryside.

27. The change of these caravans to permanent residential occupancy would diminish the tourism offer. Similarly, there would be some adverse effects on rural employment and the tourist economy as a result of diminished demand for services and facilities that cater for tourists. Without substantive evidence to the contrary, I am not convinced that caravans in permanent occupancy would make up for the economic benefit lost to the tourism industry from the consented use.
28. Notwithstanding this, the area of the site involved compared to the extensive area of the remainder of the holiday park and the number and area of holiday parks in this area, is comparatively limited. The appellant counted 1,239 caravans within 1.5km of this site.
29. Without evidence that there is a pressing tourism need for these caravans, the effect on tourism and rural employment would be relatively minimal. In these circumstances, while I acknowledge the conflict of the proposal with the Local Plan, specifically policies ST6, CP1, and DM3, in terms of its effect on tourism, for the reasons above, any adverse impact would be minimal.

The living conditions of future occupiers

30. The Council is concerned that the caravans would be surrounded at close quarters by holiday accommodation, that the caravans would be insufficiently separated, and that they would have insufficient amenity space.
31. The appellant maintained at the Hearing that the proposal would have to meet the Model Standards 2008 for Caravan Sites in England, the standards normally to be expected as a matter of good practice on caravan sites, and considered in connection with site licences. The Council insisted that while the development may have to meet these licence standards, they do not relieve it of its statutory duty under section 38(6) of the Planning and Compulsory Purchase Act 2004, and the requirement of LP policy DM14, which says proposals should cause no significant harm to amenity.
32. Notwithstanding this, and whichever the case, the site is enclosed by close-boarded fencing and the caravans are set back sufficiently from the boundaries. They retain an appropriate degree of privacy from the surrounding caravans, in holiday use. While the separations may not meet the distances expected between houses, I have to have regard to the nature of caravan occupation and the location in a caravan park in the countryside, which provides other amenity benefits. The caravans appeared to have small, raised terrace decks beside and in front of them which provide private amenity space, albeit overlooked. There would also be a common area of amenity space in the field to the north, and the facilities of the Golden Leas Caravan Park would be available to future occupiers.

33. Moreover, the present situation, which is similar, allows for ten months occupancy of the caravans, albeit not as a main residence. In these circumstances, and taking into account the nature of caravan occupation and the location of these in the countryside, I find, on balance, that there would in any event be no conflict between the amenity standards of the proposal with LP policy DM14. Nor would the proposal conflict with the Framework, which says in paragraph 130(f) that developments should provide a high standard of amenity for future users.

Other Matters

34. I have noted the Council's Interim Planning Policy (IPP), adopted in June 2020. It says that proposals for residential park homes will be granted provided that, amongst other criteria, the site is in a sustainable location. This is inconsistent with policy DM5 of the Local Plan which has a presumption against the permanent occupancy of caravans and chalets. However, the IPP was not subject to the full public consultation and examination in public necessary for it to be part of the development plan. The IPP is a material consideration, but these factors limit the weight I can accord it.
35. I appreciate that a policy reflecting the IPP was included in the Council's emerging Local Plan Review. However, the Council confirmed at this Hearing that the LPR was postponed in October 2022. It is preparing a new timetable for the LPR and anticipates reaching Regulation 19 stage in spring 2024. I cannot be sure that the LPR will not be subject to significant change. This limits the weight I can accord its policies, including DM18 which reflects the IPP.
36. The appellant has referred to a similar appeal⁵ allowed in West Sussex. While the Inspector found the loss of twelve units was relatively moderate, she nonetheless concluded that the removal of the condition would be harmful to the provision of visitor accommodation. It is unclear if the housing supply situation in Arun which informed the planning balance in that case is similar to the circumstances in Swale. More decisively, my finding in this appeal of harm to the character of the countryside appears not to have factored in the planning balance in Arun. It is not possible to draw sufficiently close parallels between the appeals to change my planning balance.
37. Though one of the reasons for the refusal of the application in this appeal was the lack of any contributions to mitigate the impact of the development on local services and infrastructure, and on the Swale and Medway Estuary Special Protection Areas, a unilateral undertaking was provided after the Hearing. The Council has confirmed that this has resolved their concerns. However, as I am dismissing the appeal for other reasons, it has not been necessary for me to consider these other matters in any further detail.

⁵ Appeal Ref: APP/C3810/C/19/3222033

Planning Balance

38. The proposal would bring considerable benefits, particularly the additional housing it would provide, on previously developed land, at a time when the Council's latest, published 5-year supply of deliverable housing sites is only 4.83 years. Though the proposal may not resolve that policy gap and its contribution to housing supply may be relatively modest, to those suffering its ill effects, the development would be a shift towards a more balanced situation.
39. Moreover, the development, which, given its context, I have found would provide a high standard of amenity, would help to meet the identified, local need for low-cost, single-storey housing, attractive to the expanding demographic of those over 55 years of age, and in short supply. In addition, the proposal would release larger homes to the general housing market as older occupiers downsize. It would bring economic benefits too from employment during implementation, and the spending in the local economy of future occupiers.
40. Notwithstanding all the benefits of the proposal, and though I have found that the adverse impact of the location of the development would be no more than moderate, and that in terms of its effect on tourism, any adverse impact would be minimal, it would nonetheless cause very significant harm to the character of the countryside.
41. The development plan policies referred to by the Council in these respects are generally consistent with the Framework; I give substantial weight to the conflict with them. Despite the benefits, the proposal would not accord with the development plan when considered as a whole.
42. The lack of a 5-year supply of deliverable housing sites means that the tilted balance of the Framework is engaged. Permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
43. The Framework indicates that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. It encourages the planning system to actively manage patterns of growth in support of the objectives of promoting sustainable transport and to enable sustainable rural tourism which respects the character of the countryside.
44. Taking account of the shortfall in the 5-year supply of deliverable housing sites, the benefits of the development carry considerable weight in favour of the proposal. However, the harm resulting, in this case, leads me to conclude that the proposal would not contribute to or enhance the local and natural environment, promote sustainable transport, and enable sustainable rural tourism which respects the character of the countryside, as sought by the Framework.
45. The overall, combined level of harm that would arise in terms of the character of the countryside, the location of the development, and tourism would

cumulatively be highly significant. The adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Conclusion

46. The proposal would be contrary to the development plan and the other material considerations do not suggest that the decision should be taken otherwise than in accordance with the development plan. Accordingly, despite the absence of a 5-year supply of deliverable housing sites, the present conditions are reasonable and necessary to make the development acceptable. The appeal is therefore dismissed.

Patrick Whelan

INSPECTOR

Appearances

FOR THE APPELLANT:

Michael Rudd, of Counsel

instructed by Laister Planning Ltd

Peter Griffiths MRTPI

Laister Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Byrne MRTPI

Area Planning Officer, Swale Borough Council

Jill Peet MRTPI

Planning Policy Manager, Swale Borough Council

INTERESTED PARTIES:

Derek Wager

Local resident

Late evidence at the Hearing

From the Council:

1. Copy of appeal ref: APP/V2255/W/21/3274740 & Costs & aerial photo
2. Copy of appeal ref: APP/V2255/W/21/3287086
3. Copy of appeal ref: APP/V2255/W/21/3277288 & site layout and location plan
4. Aerial photo of Estuary View site

Evidence after the Hearing

From the appellant:

1. DCLG model standards for caravan sites in England 2008
2. Decision notices NK/8/57/82 & NK/8/53/116A

From the Council:

1. Swale Borough Council Open Spaces and Play Area Strategy 2018-2022
2. Swale Borough Council Developer Contributions SPD 2009
3. Bird Wise North Kent Mitigation Strategy 2018
4. Kent and Medway CCG consultation response on Golden Leas application