



---

## Appeal Decision

Site visit made on 18 April 2024

**by R Bartlett PGDip URP MRTPI**

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

**Decision date: 7 May 2024**

---

**Appeal Ref: APP/E9505/W/23/3332687**

**Pampas Lodge Holiday Park, The Street, Haddiscoe, NR14 6AA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Barham Leisure Ltd against the decision of The Broads Authority.
  - The application Ref is BA/2023/0343/COND.
  - The application sought planning permission to allow year-round occupation of caravans, removal of condition 5 of permission BA/2021/0242/COND.
  - The condition in dispute is Condition No.4 of planning permission BA/2022/0251/COND, which states that: With the exception of the warden's lodge in the location shown on the Location Plan, any static caravan or lodge stationed on the site shall be occupied for holiday purposes only and shall not be occupied as a person's sole, or main place of residence. The owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans on the site, and of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority.
  - The reason given for the condition is: To ensure that the static caravans are restricted to holiday use only and not used as permanent residential accommodation in accordance with Policies DM30 and DM35 of the Local Plan for the Broads.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Applications made under s73 of the Act are often referred to as being for the removal or variation of a condition attached to a planning permission. However, the removal of a condition does not amount to 'development' as defined by s55(1) of the Act. Thus, planning permission is not required to remove a condition per se. Planning permission is required to carry out 'development' without complying with conditions subject to which a previous permission was granted.
3. The effect of an approval is to grant a new planning permission which stands alone from the previous permission which remains unaltered. An applicant will then have the choice as to which permission to implement. When granting permission under s73 a planning authority, or Inspector, has the option of removing conditions attached to the original permission, varying the terms of conditions, adding new conditions and reinstating conditions imposed on the original permission. A permission granted under s73 does not alter the nature of the development for which planning permission was originally granted, merely the conditions subject to which that development must comply.

4. I have not been provided with decision notices and plans for the original planning permission and subsequent amendments. However, based upon the evidence before me, the original planning permission for the development of the site is Ref BA/1998/6988/HISTAP. All subsequent applications I have been referred to were granted under s73, thus they sought consent for the original development, without complying with a condition that was attached to it.
5. The original development for which planning permission was granted was *"reorganise the caravan/camping areas at the site to accommodate 23 touring, 18 seasonal and 6 static caravans and 10 tents and to convert a store to holiday accommodation for 3 no. disabled persons"*. I am satisfied that this permission must have been implemented, otherwise it would have expired prior to the first s73 application relating to it being submitted in 2013.
6. This case is however somewhat further complicated by the fact the description of development appears to have been altered at some stage to *"replace existing 23 touring, 18 seasonal and 6 caravan pitches with 33 static caravan pitches"*. This implies that the original development was carried out and that the re-development of the site currently underway, which I saw involves a significant amount of new operational development and does not appear to include a conversion or space for tents and touring caravans, is a new development and not that originally approved.
7. The description of development in the banner heading above is taken from the application form. It is incorrect as it does not describe an act of development. Instead, it carries forward the errors from the previous s73 applications and permissions. Had I been minded to allow the appeal, it would have been necessary to describe the act of development that is being applied for without complying with a previously imposed condition. This would cause some difficulty given that the development currently underway is not that described in the original planning permission and that the development originally described is no longer possible due to physical changes that have been made to the site.
8. Consequently, based upon the limited evidence before me relating to the background of the site, I am not convinced that the continued use of s73 is the most appropriate way to deal with the changes sought by the appellant. However, this would be a legal matter and is not for me to decide. Given that the Council validated and determined the application under s73, and given the stage the appeal has reached, I have assessed the proposal on the basis that it was submitted. In doing so I am mindful of the fact that the submission of a fresh application to enable caravans on the appeal site to be occupied for residential purposes, would raise the same main issues.

### **Main Issues**

9. The removal of condition 4 of the latest planning permission, would enable any caravan on the site to be occupied at any time for either holiday or residential use. As the caravans can already be occupied at any time for holiday use, the main issues in this appeal are:
  - the loss of holiday accommodation;
  - whether the caravans are in a suitable location for residential use, having regard to the accessibility of local services and facilities;

- flood risk to future residential occupiers of the caravans; and
- drainage.

## **Reasons**

### *Loss of holiday accommodation*

10. The originally approved development related to a mixture of tent pitches, touring caravan and season pitches, static caravans, and the conversion of an existing building to holiday accommodation. Whilst the use of the caravans is not referred to in the description of development, tent and season pitches would not provide permanent residential homes, and the conversion was specifically described as holiday accommodation. An occupancy condition was imposed to control the use of the caravans.
11. The approved use of the site to provide holiday accommodation would create jobs on the site. Holiday makers would have supported the public house on the site, when it was open, as well as supporting surrounding tourist attractions and facilities. People on holiday are more likely to visit tourist attractions and to support local services than permanent residents, who would eat out less frequently and would clean and maintain their own caravans and pitches. Holiday makers unlike permanent residents do not require access to employment, local schools and healthcare and place less pressure on public services. The use of the caravan site for holiday purposes, regardless of whether the caravans are privately owned or regularly rented out as short term lets, brings people into the local area that do not live there normally. This increases local expenditure, creates jobs and supports the tourism sector of the local economy.
12. Whilst I acknowledge that the existing conditions do not prevent the caravans from being occupied as holiday homes at anytime throughout any year, the conditions are clear that the caravans must be occupied for holiday use only and not as a person's sole or main place of residence. Accordingly, the caravans could not be occupied by persons claiming to be on holiday for 12 months per year, without the caravan becoming their sole or main place of residence.
13. At the time of my visit the site was in the process of being re-developed. In addition to the warden's lodge there were six new static caravans. Part of the site had new tarmac access roads and new serviced plots with no caravans on them as yet. Each of these plots had a concrete base, gravel parking space, paved footpaths and patio areas, and associated landscaping. New boundary fencing and lighting has been erected around parts of the site and there was a small sales office opposite the entrance gates. The land on the northern side of the entrance was being used to store building materials and contained some concrete bases. There was no building in the north-east corner of the site as shown on the submitted location plan.
14. Whilst I have not been provided with any site layout plans, the planning history indicates that permission has been granted for the siting of 33 static caravans on the site (including a warden's lodge). Except for the warden's lodge, the condition in dispute restricts the use of these caravans to holiday purposes only, and prevents them from being occupied as a person's sole or main place of residence. This condition was imposed to ensure the development would

comply with Policies DM30 and DM35 of the Local Plan for the Broads 2015-2036 (the local plan). These policies seek to ensure that residential development of appropriate scale is located within the defined development boundaries of specific settlements, which do not include Haddiscoe, and that holiday accommodation is retained for its intended purpose other than in exceptional circumstances.

15. There is no substantive evidence before me to demonstrate that the caravan site is not viable for holiday use or that it has been appropriately marketed for such a use for a suitable period of time. Whilst there is some email correspondence confirming that the six caravans currently on the site were delivered in June 2022 and that advertising of these began straight away, I have not been provided with any details of what form of advertising took place.
16. I have no information regarding how or where the caravans were marketed by Howards, other than that this company were employed for 20 weeks, from March 2023, and sold one holiday unit. Abbotts commenced marketing on 14<sup>th</sup> July 2023 until the end of November 2023. Their letter advises that they undertook a nationwide marketing campaign on Rightmove, Zoopla, Propertywide and social media, alongside local marketing from their branch in Beccles, and that no interest was generated. However, when searching for holiday accommodation, most people would not contact an estate agent or look on property sites such as Rightmove.
17. There is no evidence before me, and it has not been suggested that any attempts have been made to let the caravans for short term holiday use. I have also not been provided with any advertising material or details of the caravan sale prices, ground rents or any terms and conditions relating to the use of the caravans on the site that may deter private sales or rentals, or to confirm that the sale prices and ground rents being sought reflect the restricted holiday use of the site.
18. The absence of demand to purchase a privately owned holiday home is not sufficient to demonstrate that there is no longer a demand for caravan and camping holiday accommodation in this area or that the tourism use of the site is unviable.
19. I acknowledge that removing the occupancy condition would not prevent the caravans from being used as holiday homes. However, as the permission would allow all of them to potentially be occupied as permanent residential homes, I must consider the implications of that occurring. Given that it is claimed the caravans are not selling due to the holiday occupancy condition, it is clearly anticipated that the demand for caravans that can be occupied as permanent residential homes will be greater, and therefore it is likely that this will become the predominant use.
20. I therefore conclude that the removal of condition 4, which would enable the caravans to be occupied for permanent residential use, would be highly likely to result in the loss of holiday accommodation, which is essential to supporting the tourism sector of the local economy. This would be contrary to Policy DM30 of the local plan, which seeks to protect holiday accommodation and sets out that its use as a permanent residence will only be permitted in exceptional circumstances and where it has been satisfactorily demonstrated that there is no demand for tourist use, following marketing for a sustained period of 12 months.

### *Access to services and facilities*

21. The day to day needs of permanent residents would be different to those of holiday makers. Haddiscoe is a small village with no development boundary and no local shops or services other than a village hall. Although there is a public house within the red line application site boundary, which according to the application form and certificate is within the appellant's ownership, this appears to have been closed for quite some time and I have not been advised of any plans for it to re-open. At the time of my visit, it appeared that the two uses had been sub-divided by new fencing, kerbing and landscaping.
22. The nearest service centre is approximately 5 miles from the site. A local bus service operates between Great Yarmouth and Bungay, calling at Haddiscoe. The earliest bus is at 08.40 arriving in Great Yarmouth after 9am, and the latest bus back from Great Yarmouth leaves at 17.21. Buses operate Monday to Saturday only. Whilst this may be sufficient for holiday makers, it could not be relied upon to get people to and from school, college and work.
23. The train station is almost 2 miles from the site and can only be accessed via a busy unlit main road with fast flowing traffic and no footpaths or cycleways. As accessing the train station on foot or by bicycle is not a safe or realistic option, most people would be likely to use their cars to access day to day services and facilities such as shopping, leisure, health care, employment and education in the nearest towns and service centres.
24. I acknowledge that holiday makers would also travel to the site by car, would use their cars whilst on holiday and would also have poor access to the train station and other services and facilities. However, travel to the holiday accommodation would be part of their overall trip to multiple tourist destinations and attractions in the area, which is different to the journeys linked with permanent residences.
25. Whilst I have had regard to Policy DM23 of the local plan, I am not convinced that the development would conflict with this policy as a direct result of the occupancy condition being removed. However, the removal of the condition in dispute would effectively introduce new residential development, outside of any defined development boundary, in a location with poor access to services and facilities. This would be contrary to Policy DM35 of the local plan and would also conflict with the aims of the Norfolk County Council Local Transport Plan and the National Planning Policy Framework (the Framework), which seek to ensure development is sustainable and only support rural housing where it would enhance or maintain the vitality of rural communities and support local services.

### *Flood risk*

26. The site is located in flood zone 3a and as such has a high probability of flooding. Although the site already has planning permission for the siting of caravans, this is subject to a condition that restricts the occupancy of all except the warden's caravan, to holiday use only and from being occupied as a person's sole or main place of residence. Annex 3 to the Framework classifies caravans, mobile homes and park homes intended for permanent residential use as highly vulnerable. It classifies sites used for holiday or short-let caravans and camping as more vulnerable. Consequently, the removal of the condition in dispute would increase the vulnerability of the development in

terms of flood risk. Table 2 of the Planning Practice Guidance (PPG) confirms that highly vulnerable development should not be permitted in flood zone 3, regardless of any sequential or exception test. As such, even if wider sustainability benefits to the community to outweigh flood risk had been identified, planning permission should still not be granted.

27. Although the caravans can be occupied for holiday use all year round, they cannot be occupied as a person's sole or main place of residence. Accordingly, residents could not live there all year, to avoid it being their main place of residence, they would logically need to spend less time at their holiday caravan than at their main home.
28. The flexibility of the existing conditions allow owners to choose which days, weeks, months of the year they stay at their caravan. They also enable all of the caravans to be let out for holiday use all year round. Theoretically, all of the caravans could therefore be occupied all year round for holiday use. This is acceptable on the basis that they are not a sole place of residence and that therefore in the event of flooding or flood warnings being in place, holidays can be cancelled, and holiday makers can remain in or return to their main home. In reality, most holiday caravan sites are not fully occupied all year round and occupancy levels are generally lower over winter months when the risk of flooding is often higher. Removing the holiday occupancy restriction would therefore be likely to increase the winter occupancy levels. The PPG confirms that where developments contain different elements of vulnerability, the highest vulnerability category should be used.
29. The purpose of steering residential development away from flood risk areas is to avoid the risk to people and their homes and to avoid the need for people to leave their homes and to seek temporary accommodation, as suggested by the appellant, during or as a result of flooding. The onus is on the appellant to produce a flood risk assessment to demonstrate that development would be safe from flooding, including the identification of sources of flooding, flood depths and velocity, taking into account climate change. As such, evidence from the local planning authority on such matters is not necessary. The site is defined as being at high risk by Environment Agency data that has not been challenged.
30. I therefore conclude that the removal of the condition in question would result in residential caravans in an area where future occupiers of those homes would be at unacceptable risk of flooding. This would be contrary to policy DM5 of the local plan, which requires development in flood risk areas to be compatible with national policy. National policy states that highly vulnerable development should not be permitted in flood zones 3a or 3b.

### *Drainage*

31. I have not been provided with any details of how the site is drained or how foul water is disposed of. This should have been considered as part of the original application for planning permission. Whilst the change from grass tent and seasonal touring caravan pitches to 33 statics with 12 months occupancy, concrete pitches, parking and new roads, will no doubt increase foul and surface water discharge from the site, this has already been granted. All year-round occupancy of the caravans has also already been granted. The surface water run-off from the development would be the same whether the caravans are used for holiday or residential use. Condition 3 of the existing planning

permission suggests that foul water goes into a private treatment plant and is then discharged into a watercourse. I have not been advised whether discharge rates are controlled.

32. Given that the caravans can all be occupied all year round for holiday use, I would have expected the drainage implications of that to have been taken into account when considering the previous applications.
33. I accept that caravans occupied as permanent residences would be likely to have a higher occupancy rate than holiday caravans, particularly in winter months when watercourses have least capacity. However, there is no evidence before me to suggest that any drainage calculations and proposals for the original development of the site were previously considered acceptable on the basis that it was considered unlikely that the holiday caravans would be occupied all year round, despite all year use being applied for and permitted.
34. Based upon the evidence before me, I cannot conclude with any certainty that the removal of the holiday occupancy condition would result in the approved development of the site having an adverse impact on the foul sewerage network. Consequently, I find no conflict with Policy DM2 of the local plan.

### **Other Matters**

35. My attention has been drawn to appeal Ref APP/W3520/W/18/3211466, in which the Inspector granted planning permission for the use of land for the stationing of holiday homes without complying with a condition that restricted their use to holiday only. However, in that case there was no dispute about the use of s73, and as such it was not considered. That decision also pre-dates *Finney v Welsh Ministers & Ors* 5 November 2019, which confirmed that s73 cannot be granted for development that differs from that described in the original permission.
36. The residential use of the site would not result in economic benefits to local shops, services, pubs and other facilities as there are none currently trading close to the site in Haddiscoe or in any nearby settlements. Moreover, as already noted above tourists are likely to provide greater support to such facilities than residents. In terms of social benefits, it has not been demonstrated that the cost of purchasing a caravan, together with the cost of annual ground rent and maintenance fees, would be more affordable than an average two-bedroom dwelling in the area. In any event, even if the removal of the disputed condition would provide some lower cost housing for those wishing to get on the housing ladder or to downsize, this would not outweigh the fact that future occupiers of these homes would have poor access to services and facilities and would be at high risk of flooding.

### **Conclusion**

37. The condition in dispute remains necessary to prevent the caravans from being occupied as a sole or main place of residence due to the fact the site is not in a suitable location for new residential development having regard to its poor access to services and facilities. Whilst flood risk was not cited as a reason for imposing the original condition, its removal would result in residential caravans in a high flood risk area, which would in turn result in danger to future occupiers and would put their homes at unacceptable risk. Removing the

condition would also be highly likely to result in the loss of holiday accommodation, which would result in harm to the local tourist economy.

38. For the reasons given above, the appeal is dismissed.

*R Bartlett*

INSPECTOR