



Appeal Decision

Site visit made on 24 March 2025

by J Pearce MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2025

Appeal Ref: APP/U2235/W/24/3350797

Neverend Farm, Pye Corner, Ulcombe, Kent ME17 1EF

- 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 Mr J Gilham against the decision of Maidstone Borough Council.
 - The application Ref is 24/501629/FULL.
 - The application sought planning permission for the use of land for the stationing of holiday log cabins (13 twin-unit caravans) and associated bases, roads, decking, veranda, lighting and drainage details, plus use of existing vehicular access on to Pye Corner without complying with a condition attached to planning permission Ref APP/U2235/W/23/3323307, dated 2 February 2024.
 - The condition in dispute is No 8 which states that: The holiday accommodation hereby permitted shall only be occupied continuously by any persons for a period not in excess of 28 days and not for more than 112 days in any calendar year.
 - The reason given for the condition is: For clarity.
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Decision

1. The appeal is allowed and planning permission is granted for the use of land for the stationing of holiday log cabins (13 twin-unit caravans) and associated bases, roads, decking, veranda, lighting and drainage details, plus use of existing vehicular access on to Pye Corner at Neverend Farm, Pye Corner, Ulcombe, Kent ME17 1EF in accordance with the application Ref 24/501629/FULL, without compliance with condition number 8 previously imposed on planning permission Ref APP/U2235/W/23/3323307 dated 2 February 2024 and subject to the conditions in the attached Schedule.

Background and Main Issue

2. The appeal site forms part of a wider parcel of land comprising Neverend Farm. Planning permission was granted under reference APP/U2235/W/23/3323307 for the use of land for the stationing of holiday log cabins (13 twin-unit caravans) and associated bases, roads, decking, veranda, lighting and drainage details, plus use of existing vehicular access on to Pye Corner. This included, at condition number 8, a restriction on the period of occupation of the holiday accommodation. Application reference 24/501629/FULL sought to delete condition number 8 to remove the restriction on the occupation period.
3. The reason for the condition restricting the days of occupation is for clarity in order to support the tourism industry and prevent their occupation as permanent dwellings. Accordingly, the main issue is whether the condition is necessary having regard to supporting the tourism industry and preventing permanent occupation of the units.

Reasons

4. Condition number 8 seeks to restrict the period of occupancy of the approved holiday accommodation. The condition states that the holiday accommodation is not permitted to be occupied continuously by any persons for a period not in excess of 28 days and not for more than 112 days in any calendar year. The removal of the condition would allow for the accommodation to be occupied for an unrestricted period of time.
5. Nevertheless, condition number 7 would be retained and ensures that the accommodation is occupied for holiday purposes only in order to support the tourism industry and to prevent their occupation as permanent dwellings. Condition number 7 states that the development shall be occupied for holiday purposes only and no such accommodation shall be occupied as a person's sole or main place of residence. Moreover, condition number 7 requires an up-to-date register of the names, main home addresses and the duration of stay to be maintained, and to be made available at all reasonable times to the Council.
6. Condition number 7 therefore provides an explicit statement that the accommodation must be occupied for holiday purposes only and not as permanent, primary residential accommodation. The condition is clear that occupants must not solely or mainly reside at the site. It also provides the mechanism for the enforcement of this provision. Accordingly, in the event that any unit were to be occupied as permanent residential accommodation, including as a person's sole or main place of residence, it is likely that the Council would be able to use the register as evidence, and draw on the provisions of condition number 7 in instigating enforcement action, should it be considered expedient to do so.
7. Condition number 8 provides clarity in respect of the temporary nature of the occupancy of the accommodation and its removal could lead to the accommodation being occupied for extended periods of time. In addition, condition number 8 makes permanent residential accommodation less likely. However, condition number 7 includes a robust and enforceable mechanism that safeguards the occupation of the accommodation for holiday purposes only and prevents the use of the accommodation as permanent residential units. Given that the key requirement is that the proposal should not be the occupant's sole or main place of residence, condition number 8 is not necessary.
8. The National Planning Policy Framework (the Framework) states that any conditions should only be imposed where they meet the six tests, as set out in Paragraph 57 of the Framework. As such, due to the presence of condition number 7, I conclude that condition number 8 restricting the duration of occupancy of the accommodation is not necessary and therefore does not meet the six tests set out in the Framework.

Conditions

9. I have considered the conditions having regard to the tests in the Framework. I have imposed the conditions from the original permission, including the time limit for commencement.
10. The Council consider that the details submitted in respect of condition numbers 3, 4 and 5 of the original permission, relating to a site construction management plan,

ecology and lighting are acceptable. Based on the evidence before me, I see no reason to disagree. Accordingly, I have adjusted the wording of these conditions.

Conclusion

11. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition but substituting others and restating those undisputed conditions that are still subsisting and capable of taking effect.

J Pearce

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin before 2 February 2027.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3635/01; 3635/02; 3635/03; 3635/04 Rev E; 3635/05 Rev E and 3635/06 Rev A.
- 3) The development hereby permitted shall be carried out in accordance with the approved Site Construction Management Plan (drawing number 4053 01).
- 4) The development hereby permitted shall be carried out in accordance with the Ecological Enhancement and Mitigation Plan dated 4th April 2024. Prior to the first occupation of the development hereby permitted, the enhancements detailed within the Ecological Enhancement and Mitigation Plan shall be provided and shall thereafter be maintained and retained.
- 5) No external lighting shall be installed other than in accordance with the approved Lighting Scheme Plan (drawing number 4053 02), Horizontal Illuminance (lux) plan revision P01, Outdoor Lighting Report dated 7 March 2024 and Lighting Strategy dated 11 March 2024. The external lighting shall thereafter be retained.
- 6) No unit shall be occupied until the implementation of a Secured By Design scheme that shall first have been submitted to and approved in writing by the local planning authority. Thereafter the approved scheme shall be adhered to in full throughout the life of the development.
- 7) The development hereby permitted shall be occupied for holiday purposes only and no such accommodation shall be occupied as a person's sole or main place of residence. The operators of the site shall maintain an up-to-date register of the names, main home addresses and the duration of stay of all future occupants, and this information shall be made available at all reasonable times upon request to the local planning authority.
- 8) No trees and/or hedgerows on the site, unless dead or dangerous, shall be felled, reduced, pruned or destroyed without the consent in writing of the local planning authority. Furthermore, the following work shall not be carried out within the root protection area (RPA) of any tree or hedgerow, except with the consent of the local planning authority:-
 - levels shall not be raised or lowered in relation to the existing ground level within the RPA of the tree or hedgerow;
 - no roots shall be cut, trenches dug or soil removed within the RPA of the tree or hedgerow;
 - no buildings, roads or other engineering operations shall be constructed or carried out within the RPA of the tree or hedgerow;
 - no fires shall be lit within the RPA or in a position where the flames could extend to within 5 metres of the foliage, branches or trunk of the tree or

hedgerow as per the requirements of BS5837:2012 Trees in relation to design, demolition & construction – Recommendations;

- no vehicles shall be driven over the area within the RPA of the tree or hedgerow; and
- no materials or equipment shall be stored within the RPA of the tree or hedgerow as per the requirements of British Standard 5837:2009 'Trees in Relation to Construction'.

End of Schedule