



The Planning Inspectorate

Appeal Decision

Site visit made on 6 January 2020

by **R Sabu BA(Hons) MA BArch PgDip ARB RIBA**

an Inspector appointed by the Secretary of State

Decision date: 16th January 2020

Appeal Ref: APP/V2255/W/19/3235390

Seaview Holiday Camp, Warden Bay Road, Leysdown ME12 4NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Wickland (Holdings) Ltd against the decision of Swale Borough Council.
 - The application Ref 19/500303/FULL, dated 15 January 2019, was approved on 21 March 2019 and planning permission was granted subject to conditions.
 - The development permitted is erection of 7no. chalets to replace existing units 13, 14, 31, 32, 33, 34, and 77.
 - The conditions in dispute are Nos 5, 6 and 7 which state that:
 - 5) The chalets hereby approved on plots 13 and 14 shall not be occupied except between 1st March and 2nd January in the following calendar year, and shall not be occupied unless there is a signed agreement between the owners or operators of the Park and the owners of those chalets within the application site, stating that:
 - (a) The chalets on plots 13 and 14 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 they are being used as the sole or main residence; and
 - (b) The chalets on plots 13 and 14 shall not be used as a postal address; and
 - (c) The chalets on plots 13 and 14 shall not be used as an address for registering, claiming or receipt of any state benefit; and
 - (d) The chalets on plots 13 and 14 shall not 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 the owners of chalets 13 and 14 are 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.
 - 6) If chalets 13 and 14 are not the subject of a signed agreement pursuant to condition 5 they shall not be occupied at any time.
 - 7) 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 reason given for the conditions is: In order to prevent the chalets from being used as a permanent place of residence.
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Decision

1. The appeal is allowed and the planning permission Ref 19/500303/FULL for the erection of 7no. chalets to replace existing units 13, 14, 31, 32, 33, 34, and 77 at Seaview Holiday Camp, Warden Bay Road, Leysdown ME12 4NB granted on 21 March 2019 by Swale Borough Council, is varied by deleting Conditions 5, 6 and 7.

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Background and Main Issue

2. In 1963 the appeal site was granted planning permission at appeal which established the permanent use of the land as a holiday park for the stationing of caravans and the erection of chalets. The chalets were not subject to a limited occupancy condition whereas the caravans on the site were subject to limited occupancy. I note the planning history of the site which confirm that subsequent planning permissions relating to the site continued this principle.
3. The planning permission subject of this appeal grants planning permission for the erection of 7no. chalets to replace existing units 13, 14, 31, 32, 33, 34, and 77. Units 13 and 14 are caravans which are to be replaced with chalets. Conditions 5, 6 and 7 including the schedule referred to in Condition 7 that is appended to the decision notice, which are subject of this appeal, restrict the occupancy of units 13 and 14 to 10-months of the year and prevent the use of the chalets as permanent residences.
4. The appellant considers that these Conditions do not meet the six tests set out in the National Planning Policy Framework (Framework). Therefore, the main issue is whether Conditions 5, 6 and 7 of planning permission ref: 19/500303/FULL are necessary, relevant to planning and to the development to be permitted, enforceable, precise or reasonable in all other respects.

Reasons

5. The Council has stated that if 12-month occupancy were granted for these two new chalets it could open the Council up to applications to replace all of the caravans with unrestricted chalets, which would be unacceptable in flood risk terms. With regard to future applications, each case must be assessed based on its individual merits and this particular point does not justify the use of Conditions 5, 6 and 7.
6. With respect to flood risk, from the evidence before me, the part of the holiday park in which units 13 and 14 are sited lies within flood zone 1. Therefore, the proposed units would not be subject to a significant risk of flooding. While I note that the access and egress points of the holiday park lie within flood zones 2 and 3, given the fall-back position of the existing planning permission, there would be little effect on flood risk when comparing 10-month with 12-month occupancy. Consequently, Conditions 5, 6 and 7 are not necessary with particular regard to flood risk.
7. The reason given for Conditions 5, 6 and 7 in the decision notice state that they are in order to prevent the chalets from being used as a permanent place of residence. However, no evidence is before me to set out the harm that would result in this respect and I have no reason to believe that the lack of occupancy limitations on the chalets subject of the original permission was an oversight on the part of that Inspector. Therefore, I am not persuaded that these conditions are justified in this respect.
8. Consequently, Conditions 5, 6 and 7 of planning permission ref: 19/500303/FULL are not necessary. They would therefore be contrary to paragraph 55 of the Framework.

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Other Matters

9. I note Policy DM5 of the Bearing Fruits 2031 The Swale Borough Local Plan Adopted July 2017 (LP). However, while the removal Conditions 5, 6 and 7 would result in de facto development plan conflict, given the fall-back position of the previous planning consents, and the evidence before me, I see no justification for the Conditions.

Conclusion

10. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed conditions.

R Sabu

INSPECTOR