

<b>2.4 REFERENCE NO - 21/505404/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
An application submitted under Section 73 of the Town & Country Planning Act 1990 for a minor material amendment in connection with the planning permission SW/11/1432 for a variation of Condition 2 to allow chalet/caravans to be occupied from 02/01/22 to 01/03/22.			
<b>ADDRESS</b> Copperfield Holiday Park Fourth Avenue Eastchurch Sheerness Kent ME12 4EW			
<b>RECOMMENDATION:</b> Grant subject to conditions			
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b>			
The proposed temporary relaxation of the occupancy conditions associated with the site from January to February 2022 reflect the government guidance in response to covid-19 recovery. Whilst this would ordinarily be contrary to the local plan, namely Policy DM5, the publication of the Written Ministerial Statement that encourages LPAs to consider such applications favourably and discourages enforcement action during this time, forms a material consideration to which great weight is attached. On this basis the temporary consent would be considered acceptable subject to appropriately worded conditions being attached ensuring the occupation period reverts back to the standard 10-months.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Parish Council objection.			
<b>WARD</b> Sheppey East	<b>PARISH/TOWN</b> Eastchurch	<b>COUNCIL</b>	<b>APPLICANT</b> Mr Chris Pugh <b>AGENT</b> John Burke Associates
<b>DECISION DUE DATE</b> 11/01/22	<b>PUBLICITY EXPIRY DATE</b> 16/11/21	<b>OFFICER SITE VISIT DATE</b>	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
20/505905/FULL	Section 73 - Application for a temporary variation of condition 2 (occupancy restriction) pursuant to application SW/11/1432, to allow occupancy of the caravans and chalets on the park during January and February 2021 (after which the park will revert back to a 10-month holiday occupancy restriction).	Approved	10.02.2021
<i>Summarise Reasons: In accordance with Government guidance.</i>			
SW/11/1432	Variation of condition (2) of Planning Permission SW/89/0044 to allow 10-month holiday use	Approved	09.01.12
<i>Summarise Reasons: In accordance with Local Plan.</i>			

SW/98/0041

Change of Use Part Existing Chalet Site to Holiday Caravan Site including 27 no. Caravan Bases.

Grant of Conditional PP

SW/91/1217

Variation of Condition SW/89/44 to Extend Period of Occupancy from 7th December - 21st December  
Appeal Allowed and or Notice Quashed 04.11.1992

## **MAIN REPORT**

### **1.0 DESCRIPTION OF SITE**

- 1.1 Copperfield Holiday Park is situated on Fourth Avenue, within the context of the larger Eastchurch holiday park area, which is a designated holiday park under policy DM5 of the Local Plan. It lies adjacent to Sunnymead Caravan Park to the northwest and southwest, and Hazeldene Chalet Park to the northeast. The Dickens Inn is located to the south east, along with open ground and a small number of residential dwellings that front onto Warden Road.
- 1.2 The site extends to approximately 1.5ha and comprises a mix of 14 brick chalets to the front part of the site, and caravans elsewhere. Whilst within the wider holiday park area of Eastchurch, the site lies outside of the built-up area boundary, as defined by the adopted Local Plan. Warden Road is a designated rural lane.
- 1.3 The site ordinarily operates under a 10-month opening season and is closed during the months of January and February. The site was granted temporary consent to open for the full 12 months of the year for 2021 under a previous section 73 application which currently requires the park to revert back to the 10-month opening season.

### **2.0 PROPOSAL**

- 2.1 The application seeks permission to allow the park to remain open for the full 12 months of the year for 2022, meaning the park can open in January and February 2022 whereby they would currently be required to close.
- 2.2 The application has been made based on the Government's response to the Covid pandemic, and the guidance which is an extension to the guidance issued last year. This effectively offers encouragement to holiday park owners to submit Section 73 applications to allow parks to remain open in the closed season for this year only. It recommends that the Local Planning Authority should prioritise such applications and make early decisions and should consider the benefits of longer opening season times for a temporary period to the local economy as it recovers from the impact of Covid.

### **3.0 PLANNING CONSTRAINTS**

- The site is located in the SPA 6km Buffer Zone
- The site is a designated Holiday Park (DM4)
- The site is outside of built-up settlement boundary (ST3)
- Warden Road is a designated rural lane (DM26)

### **4.0 POLICY AND OTHER CONSIDERATIONS**

- Bearing Fruits 2031: The Swale Borough Local Plan 2017
- The National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (NPPG)
- Supplementary Planning Guidance:
  - Written Ministerial Statement and guidance.
  - The relevant policies are discussed within each section.

## 5.0 LOCAL REPRESENTATIONS

	COMMENTS RECEIVED	OFFICER RESPONSE
Parish/Town Council	<ul style="list-style-type: none"> <li>• The proposal would set a precedent for future years and for other holiday parks if allowed to open for 12 months</li> <li>• The use of the phrase ‘minor material amendment’ is misleading and ambiguous as the proposal would represent a major policy change</li> <li>• The addition of an extra two months will permit permanent occupation of holiday homes and in effect turn the sites into residential housing estates</li> <li>• It is difficult to ensure occupants are complying with the requirements</li> <li>• Use of the accommodation for permanent habitation would lead to a change in the rural character of the area in the tranquil winter months when the surrounding chalets and caravans are empty, because of the movement of the occupiers. This is of particular concern given that Warden Road is a rural lane and the fact that the tranquillity has already been eroded by the fact that the occupation has increased from 8 to 10 months.</li> <li>• The location is unsustainable and occupants would be reliant on vehicles</li> <li>• There is a pressure on the existing infrastructure and there is not capacity for further residents</li> <li>• By allowing permanent occupation, the site becomes a housing accommodation and reduced the tourist benefits</li> <li>• There would be an increase in vehicular movements to serve the needs of the residents</li> <li>• The proposal would be a breach of the planning conditions.</li> </ul>	<p>Whilst the concerns raised by the Parish Council are duly noted, it is considered that they relate more to a permanent allowance of 12 month occupation and the impact and precedent this would set for this site and the surrounding holiday parks rather than specific concerns related to the temporary occupation of the holiday park.</p> <p>As noted elsewhere in this report, the government published guidance stating that temporary relaxation of occupancy restrictions should be considered as acceptable where appropriate.</p> <p>This was originally intended to cover 2021 only. Subsequently, the Government has published guidance to Local Authorities stating that this is being extended and is applicable until 31 December 2022 and that, where possible, LPA's should give consideration to the economic benefits of longer opening season times for holiday sites, bearing in mind the impact of COVID-19. The government guidance states that an application should be made to amend conditions imposed on existing planning permissions for holiday parks to allow the temporary extension to the occupation periods. The government guidance suggests that this be made under Section 73 which relates to minor material amendments.</p> <p>It is recommended that if minded to permit the Section 73 application, the condition imposed should be worded to ensure that after the 01/03/2022, the occupation restrictions revert back to the 10-month occupation requirements in line with the Local</p>

		<p>Plan. If the applicant does not comply with this requirement, a breach of planning control would exist and the matter could be investigated by the enforcement team.</p> <p>Given the encouragement by the government to allow the temporary extension in light of covid recovery measures, it is considered that the application is acceptable in this instance. This is outlined in further detail in the following sections of this report.</p>
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No comments were received from neighbours or other third parties.

## 6.0 CONSULTATIONS

### 6.1 KCC Highways:

Referring to the above description, it would appear that this development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements. If there are any material highway safety concerns that you consider should be brought to the attention of the HA, then please contact us again with your specific concerns for our consideration.

An informative has been recommended which is included in later sections of this report.

### 6.2 Environmental Health:

No adverse comments or observations to make in connection with this application.

### 6.3 Southern Water:

Southern Water have no comments to make with regards to condition 02 submitted by the applicant.

Please note there is deed of easement for water distribution mains within the site. Contact details have been included on the response letter should the applicant wish to discuss this further. These details have been included as an informative in later sections of this report.

### 6.4 Kent Police:

Advised no comments to make from a crime prevention perspective.

### 6.5 Environment Agency:

We have no comments to make on this planning application as it falls outside our remit as a statutory planning consultee

## 6.6 Natural England:

Thank you for contacting Natural England regarding the above-mentioned development.

Since this application will result in a net increase in residential accommodation, impacts to the coastal Special Protection Area(s) and Ramsar Site(s) may result from increased recreational disturbance. Your authority has measures in place to manage these potential impacts through the agreed strategic solution which we consider to be ecologically sound. Subject to the appropriate financial contribution being secured, Natural England is satisfied that the proposal will mitigate against the potential recreational impacts of the development on the site(s). However, our advice is that this proposed development, and the application of these measures to avoid or reduce the likely harmful effects from it, may need to be formally checked and confirmed by your Authority, as the competent authority, via an appropriate assessment in view of the [European Site's conservation objectives](#) and in accordance with the Conservation of Habitats & Species Regulations 2017.

This is because Natural England notes that the recent [People Over Wind Ruling](#) by the Court of Justice of the European Union concluded that, when interpreting article 6(3) of the Habitats Directive, it is not appropriate when determining whether or not a plan or project is likely to have a significant effect on a site and requires an appropriate assessment, to take account of measures intended to avoid or reduce the harmful effects of the plan or project on that site. The ruling also concluded that such measures can however be considered during an appropriate assessment to determine whether a plan or project will have an adverse effect on the integrity of the European site. Your Authority should have regard to this and may wish to seek its own legal advice to fully understand the implications of this ruling in this context.

Natural England advises that it is a matter for your Authority to decide whether an appropriate assessment of this proposal is necessary in light of this ruling. In accordance with the Conservation of Habitats & Species Regulations 2017, Natural England must be consulted on any appropriate assessment your Authority may decide to make.

Natural England has not assessed this application for impacts on protected species. Natural England has published [Standing Advice](#) which you can use to assess impacts on protected species or you may wish to consult your own ecology services for advice.

We recommend referring to our SSSI Impact Risk Zones (available on [Magic](#) and as a downloadable [dataset](#)) prior to consultation with Natural England. Further guidance on when to consult Natural England on planning and development proposals is available on gov.uk at <https://www.gov.uk/guidance/local-planning-authorities-get-environmental-advice>.

## 7.0 APPRAISAL

### Principle of development:

- 7.1 The Council's spatial strategy is set out in Policy ST3 of the Swale Borough Local Plan 2017 (Local Plan) which identifies a hierarchy of 5 types of settlement. Policy ST3(5) directs refusal of new developments in the open countryside, outside the built-up area boundaries unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the

vitality of rural communities. The application site is located outside of the built-up area boundary. Being outside the settlement boundary, the site is classified as open countryside and development in this location is not supported. The site is not allocated for redevelopment under Policy ST4.

- 7.2 The application site is a designated holiday park under Policy DM 4 of the Local Plan. Policy DM 5 sets out that in order to ensure a sustainable pattern of development and to protect the character of the countryside, planning permission will not be granted for the permanent occupancy of caravans and chalets. The policy goes on to allow 10-month occupation periods where specific criteria are met.
- 7.3 The supporting text makes clear that the limited occupancy period was imposed to ensure that the holiday parks were not used as permanent (and sometimes sub-standard) housing (many of which would be in poorly accessible parts of the Borough) and to protect the character of the rural area (paragraph 7.1.26).
- 7.4 The site is currently occupied for 10 months of the year, which is supported by Policy DM5 and is allowed in under SW/11/1432.
- 7.5 The development, which this application seeks to amend, has been judged to be acceptable in principle by virtue of the original consent. Paragraph 031 of the National Planning Policy Guidance states that, *'In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application.'* On this basis, an assessment under section 73 should be focused on the changes sought.
- 7.6 The Government has published a Written Ministerial statement to support the culture and tourism sectors. The statement encourages local planning authorities to exercise their discretion in relation to planning conditions for caravans, campsites and holiday parks. This statement encourages local planning authorities not to undertake enforcement action which would unnecessarily restrict the ability of caravan, campsites and holiday parks to extend their open season. This statement is an extension of that which was published IN July 202 and encouraged the same relaxation for the period of 2021.
- 7.7 The statement clarifies that where local authorities consider it appropriate to require an application to vary planning conditions, they should prioritise the application to make an early decision to provide certainty to caravan, campsite and holiday parks operators. In doing so they should consider the benefits of longer opening season times for a temporary period to the local economy as it recovers from the impact of COVID-19.
- 7.8 The NPPF already emphasises that planning enforcement is a discretionary activity, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Given the current situation, while local planning authorities must have regard to their legal obligations, they should not seek to undertake planning enforcement action which would unnecessarily restrict the ability of caravan, campsite and holiday parks to extend their open season.
- 7.9 Policy DM5 of the Swale Borough Council Local Plan provides a set criterion for holiday parks. The policy only permits a maximum opening season of 10 months of the year. The policy seeks to protect rural character, amenity levels, and prevent the caravans from being used as permanent dwellings. Further, the restrictions attempt to mitigate the impact associated with flood risks which can be greater in winter months.

- 7.10 The application to allow the park to be open for a 12-month period in the winter 2022 would be contrary to local policy DM5. However, the governments Written Ministerial Statement and associated guidance is a material consideration which must be given a significant degree of weight.
- 7.11 The guidance identifies that the extension of the opening period of such parks would have a potential economic benefit to the local economy. The opening of the parks for a further two months provided the opportunity for a greater footfall for local business, including park operators, shops and restaurants. Even if the degree of spending was limited to the purchasing of essentials it offers a small benefit to the local economy.
- 7.12 The proposed variation would only be temporary relating solely to the winter months in 2022. Given the temporary nature of the proposal and the significant weight afforded to the Written Ministerial Statement, the principle of the variation of condition is considered acceptable.

#### Neighboring Amenity:

- 7.13 Policy DM14 of the Local Plan requires that development causes no significant harm to amenity and other sensitive uses or areas. There are residential properties that adjoin the application site and whilst the proposal may lead to some temporary increase noise and movement across the site, given the adjacent road and existing commercial uses the impact would be limited and this relationship between the park and properties already occurs for 10 months of the year. As the relaxation of occupancy would only relate to the year 2022 the proposal would be considered compliant with policy DM14.

#### Highways:

- 7.14 Paragraph 111 of the National Planning Policy Framework is clear that planning applications can only be refused on highway grounds where there would be a serve impact.
- 7.15 The proposal would only see occupation of the site for a further 2-month period over January to February 2022. KCC Highways been consulted and have not raised any concerns with the proposal. The temporary additional occupation is not considered to result in an unacceptable impact on the highway network.

#### Flood Risk:

- 7.16 Using the Environment Agency flood risk map, it can be seen that the application site is located within Flood Zone 1, meaning it is an area with a low probability of river or sea flooding. Planning Practice Guidance confirms that the aim is to steer new development to Flood Zone 1. In respect of the Flood Risk Vulnerability Classification caravans, mobile homes and park homes intended for permanent residential use are classified as 'highly vulnerable'. Alternatively, sites used for holiday or short-let caravans and camping, subject to a specific warning and evacuation plan are classified as 'more vulnerable'. Within Flood Zone 1, Table 3 of the Planning Practice Guidance confirms that both 'highly vulnerable' and 'more vulnerable' uses in Flood Zone 1 are appropriate and an exception test is not required. The Environment Agency has been consulted and advised that it is outside their remit to comment.

### The Conservation of Habitats and Species Regulations 2017:

- 7.17 The application site is located approximately 2.9km from the Swale Special Protection Area (SPA) and Ramsar sites. The SPA provides habitat for wintering birds, which suffers from recreational disturbance from visitors. As a result of this, applications for residential development, including holiday park proposals and the increase to occupancy periods would ordinarily be required to make a financial contribution to manage these impacts through the Council's established SAMMS strategy.
- 7.18 In this case, Natural England has provided comments and refer to need for a financial contribution to manage the impacts. The comments also set out that it is for the LPA to determine whether significant effects would occur. As a result, an assessment under the Habitats Regulations has been conducted below.
- 7.19 The coastline of North Kent encompasses three Special Protection Areas (SPAs): the Thames Estuary and Marshes SPA, the Medway Estuary and Marshes SPA and the Swale SPA. They are classified in accordance with the European Birds Directive which requires Member States to classify sites that are important for bird species listed on Annex 1 of the European Directive, which are rare and / or vulnerable in a European context, and also sites that form a critically important network for birds on migration.
- 7.20 All three sites listed above are also listed as Wetlands of International Importance under the Ramsar Convention (Ramsar Sites). For clarity, and the purpose of this assessment, 'European Sites' refers to both the SPA(s) and Ramsar Site(s). Studies have shown marked declines in key bird species, particularly in areas that are busiest with recreational activity.
- 7.21 Research conducted in 2011 found that additional dwellings were likely to result in additional recreational activity, causing disturbance to protected bird species that over-winter or breed on the SPA and Ramsar Site. The studies found that 75% of recreational visitors to the North Kent coast originate from within 6km of the SPA boundary and Ramsar Site. The impacts of recreational disturbance can be such that they affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the European sites. Further studies suggest that similar impacts are likely from caravan / holiday park sites.
- 7.22 The site is an established holiday park that operates under a 10-month opening / occupancy season. The application seeks temporary permission to allow occupancy of the holiday park for an additional 2-month period for this year only, and not on a permanent basis. The application is specifically in response to Government guidance to assist holiday parks in light of the Covid pandemic.
- 7.23 The applicant has not provided any evidence to demonstrate whether the proposal is likely to result in significant effects on these sites. However, the site is located approx. 1.3km from the SPA and given that this application only seeks an extension to the occupancy of the park for a 2-month period for this year only, it is not considered that the proposal would result in any likely significant effects on the European sites, and mitigation is not required (which would require an Appropriate Assessment). Further, the guidance provided in light of the Written Ministerial Statement discourages enforcement action relating to such sites in the wintering months of 2022.
- 7.24 On this basis, the application can be screened out under the HRA process and a financial contribution is not sought as mitigation.



## 8.0 CONCLUSION

- 8.1 The proposed temporary relaxation of the occupancy conditions associated with the site from January to February 2022 reflect the government guidance. Whilst this would ordinarily be contrary to the local plan, namely Policy DM5, the publication of the Written Ministerial Statement that encourages LPAs to consider such applications favourably and discourages enforcement action during this time, forms a material consideration to which great weight is attached. On this basis the temporary consent would be considered acceptable subject to appropriately worded conditions being attached. These are set out in further in the following sections of this report.

## 9.0 RECOMMENDATION – GRANT Subject to the following conditions:

CONDITIONS to include

- 1) Occupation of the chalets/caravans upon Copperfield Holiday Park during the period 2<sup>nd</sup> January 2022 to 1<sup>st</sup> March 2022 shall be for this specified temporary period only, and this planning permission shall cease to have effect on 2<sup>nd</sup> March 2022, after which the occupancy of the caravans / chalets shall revert back to the conditions imposed upon planning permission SW/11/1432. No chalet/caravan shall be occupied unless there is a signed agreement between the owners or operators of the Park and all chalet/caravan owners within the application site stating that:
  - (a) The Chalets/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 chalet/caravan shall be used as a postal address; and
  - (c) No chalet/caravan shall be used as an address for registering, claiming or receipt of any state benefit; and
  - (d) No chalet/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 Rents Acts 1968 and 1974; and
  - (e) If any chalet/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 leases or licence.

On request, copies of the signed agreement(s) shall be provided to the Local Planning Authority.

Reason: To prevent the permanent year-round occupation of the park which would be contrary to Policy DM5 of Bearing Fruits – The Swale Borough Local Plan..

- 2) Any chalet/caravan that is not the subject of a signed agreement pursuant to condition 1 shall not be occupied at any time.

Reason: In order to prevent the chalets/caravans from being used as a permanent place of residence.

- 3) 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 the decision notice of application SW/11/1432.

Reason: In order to prevent the chalets/caravans from being used as a permanent place of residence.

INFORMATIVES:

Informative: Southern Water

Please note there is deed of easement for water distribution mains within the site.

For further advice, please contact Southern Water, Southern House, Yeoman Road, Worthing,

West Sussex, BN13 3NX (Tel: 0330 303 0119).

Website: [southernwater.co.uk](http://southernwater.co.uk) or by email at: [SouthernWaterPlanning@southernwater.co.uk](mailto:SouthernWaterPlanning@southernwater.co.uk)

Informative: Kent Police

If the applicant wishes to discuss site-specific security with us, please contact us on [pandcr@kent.police.uk](mailto:pandcr@kent.police.uk)

Informative: KCC Highways and Transportation

It is important to note that planning permission does not convey any approval to carry out works on or affecting the public highway.

Council's Approach:

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF) the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application. In this instance the application was acceptable as submitted and no further assistance was required, and the application was approved without delay.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

