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## Appeal Decision

Site visit made on 31 March 2022

by **O S Woodward BA(Hons.) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 July 2022

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**Appeal Ref: APP/V2255/W/21/3274740**

**Brookside Park, First Avenue, Eastchurch, Sheppey, Kent, ME12 4JN**

- 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 Brookside Leisure Limited against the decision of Swale Borough Council.
- The application Ref 20/504175/FULL, dated 7 September 2020, was refused by notice dated 24 March 2021.
- The application sought planning permission for the detailed layout of caravan camp without complying with conditions attached to planning permission Ref SW/11/1521, dated 3 February 2012.
- The conditions in dispute are Nos 2 and 3 which state that:
  - 2 – No caravans shall be occupied except between 1<sup>st</sup> March and 2<sup>nd</sup> January in the following calendar year, and no caravan shall be occupied unless there is a signed agreement between the owners and 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 license. 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.
- The reason given for both conditions is:  
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.

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### Decision

1. The appeal is dismissed.

### Application for Costs

2. An application for costs was made by Brookside Leisure Limited against Swale Borough Council. This application is the subject of a separate Decision.

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### **Preliminary Matters**

3. The description of development in an existing planning permission cannot be amended as part of a s73 planning application or appeal. This is as set out in the Finney<sup>1</sup> judgement. The original description of development is set out in the original planning permission Ref NK/4/74/71<sup>2</sup>, dated 25 March 1974, as the "detailed layout of caravan camp". I have therefore adopted this description for the appeal proposal.
4. In more detail, the proposal relates to the more recent s73 planning permission Ref SW/11/1521, dated 3 February 2012. It is proposed to remove conditions 2 and 3 which would allow permanent occupation of the caravans but would not make any other changes to the permission. No alterations to the caravans or the appeal site itself are proposed. However, the permanent occupation of the caravans would likely lead to future changes to the appearance of the appeal site. I deal with this as appropriate in my Decision.

### **Main Issues**

5. The main issues are:
  - the effect of the proposal on the character and appearance of the area, particularly during the 'closed season' (January to February inclusive);
  - the effect of the proposal on the tourism industry on the Isle of Sheppey;
  - whether or not the site is in a suitable location for permanently occupied housing, with adequate access to public transport and services; and,
  - the effect of the proposal on local infrastructure.

### **Reasons**

#### *Character and appearance*

6. The appeal site is a holiday park, with many caravans set out around service roads. The majority of the existing caravans are temporary structures and are laid out close to one another with limited, if any, private outside space. I observed a small number of more permanent looking buildings, including brick structures, on my site visit, but even these were holiday style chalets. There is prominent signage advertising the site as a holiday park, and a site office. The appeal site is clearly of a holiday use, and character.
7. The appeal site is surrounded by an extensive area of tourism accommodation, including several large caravan parks, and several facilities and services to support them. There is also some permanent residential accommodation nearby but this is relatively limited and is not the defining characteristic of the area.
8. The conditions securing the closure of the appeal site during the winter months ensure that permanent residents locally are able to experience the tranquillity of the area when it is free from visitors. Their proposed removal would mean that the site would remain open during the currently closed winter months, harming this existing character by removing the respite and tranquillity during

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<sup>1</sup> John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, Energiekontor (Uk) Limited

<sup>2</sup> It has been confirmed that Ref NK/4/79/71 as listed on the Ref SW/11/1521 decision notice is a typographical error

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this period. In addition, if permanent residential use were allowed of the caravans, then this would make it likely that the character of the site would change when in occupation during the summer months, and even further over time. Owners of the caravans would likely seek to create more permanent features outside of their caravans. The signage and supporting facilities, such as the site office, would likely be removed.

9. The layout of the appeal site, with temporary caravans set close to one another and with limited outside space, is not appropriate for permanent accommodation at any time of the year. The density, layout, and design of the current development on the appeal site is of very poor quality for permanent accommodation. Allowing permanent occupancy could possibly provide the impetus to improve the quality of the accommodation. However, any changes substantial enough to materially improve the quality of the accommodation would require separate planning permission, because they would involve works to create permanent accommodation. These types of works do not form part of the appeal and are not before me to determine.
10. Overall, the defining characteristic of the appeal site and its surroundings is that of a holiday caravan park in a rural area. The loss of the site to unrestricted, permanent residential accommodation, including occupation during the winter months, would be materially harmful to the character and appearance of the site and the surrounding area. The proposal would therefore fail to comply with the relevant parts of Policies ST6 and DM14 of the Swale Borough Local Plan 2017 (the LP) which, amongst other criteria, seek high quality design, a high standard landscaping scheme, and proposals that are in-keeping with the defining characteristics of an area.

#### *Tourism*

11. The appeal site is in tourism use, which would likely be lost following the removal of the conditions. The holiday park provides some supporting facilities on the appeal site, in particular a site office. There are also several other businesses and services nearby which cater to tourism. All of these businesses and services would be deprived of at least some of their existing custom.
12. Consequently, the proposal would harm the tourism industry on the Isle of Sheppey. The proposal would therefore fail to comply with Policies CP1, ST6, DM3 and DM5 of the LP which, amongst other criteria, seek to safeguard tourism assets, support a prosperous rural economy including tourism, and also explicitly prevent the change of use of rural employment facilities to residential development and the permanent occupancy of caravans and chalets.

#### *Accessibility*

13. The appeal site is in the countryside, as defined by the LP. There are sporadic services and facilities nearby, but these are mostly specifically aimed at the tourism industry, and not at the occupiers of permanent residential accommodation. The site is fairly distant from any nearby towns or retail and service centres. There are bus routes running along Fourth Avenue. Neither the bus stops nor the local centres are easily or safely walkable to the appeal site because they are fairly distant and only accessible along partially unlit roads with no pavements. The location of the appeal site therefore makes it likely that the majority of journeys by future occupants would be by car.

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14. The appeal site is therefore in an unsuitable location for permanently occupied housing, with inadequate access to public transport and services. The proposal fails to comply with Policies ST1, ST3, ST6 and CP3 of the LP which, amongst other criteria, require that development be focussed on accessible locations and to minimise the need for travel, and the creation of convenient routes and facilities for pedestrians. Policy DM5 is also quoted on the reason for refusal, however, this policy does not directly relate to accessibility and the site's suitability.

*Local infrastructure*

15. The proposal would allow permanent residential occupancy of the appeal site. This would give rise to an increased demand for, and pressure on, a range of local infrastructure, including, but not limited to, education, community facilities, and waste services. No on or off-site mitigation measures have been put forward by the appellant to combat these effects. A s106 Planning Obligation has not been submitted and no mitigation payments are offered. The proposal would therefore have an unacceptable effect on local infrastructure. It fails to comply with the relevant parts of Policy CP6 of the LP which, amongst other criteria, safeguards existing community services and facilities.

**Other Matters**

*Interim Planning Policy*

16. The Council agreed an Interim Planning Policy (IPP) on 17 June 2020 at a Full Council meeting. However, the IPP was not subject to full public consultation, and the consultation which did take place was largely with regard to a differently worded policy. The IPP conflicts with the adopted Development Plan Policy DM5 in the LP, which has a presumption against the permanent occupation of holiday homes. However, it was agreed at a Full Council meeting, and it also provides an indication of the possible direction of travel of future Development Plan policy. Overall, due to the amount and nature of the consultation and its direct conflict with adopted Development Plan policy, I attribute limited weight to the IPP. It is, however, a material planning consideration and I therefore assess the proposal against the IPP below.
17. The IPP states that converting holiday accommodation on holiday parks to permanent residence should be granted, provided that all of a number of criteria are met. The first criteria is that the site is in a sustainable location with access to services and facilities. The appeal site fails to meet this criteria, as set out above. The fifth criteria is that the layout is acceptable in terms of the privacy and amenity of occupants. At the appeal site, the caravans are currently laid out close to one another with limited private outside space, and in many instances with windows overlooking one another at close distance. It would therefore not protect the privacy and living conditions of future permanent occupiers.
18. The appellant has indicated that the intention is to re-organise the layout with fewer caravans, if permission is granted. This could be secured, in principle, by condition. However, no details of this revised layout are provided and it is not possible to assess if it would be possible to overcome these harms at a commercially viable layout and density. It would not, therefore be a reasonable condition to impose, without further information being provided. In any case,

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the proposal fails to comply with the IPP solely due to non-compliance with the first criteria, as set out above.

#### *Housing*

19. The site is partially previously developed land, because the roadways, hard standings and ancillary structures are permanent even if the caravans are not. Allowing residential development on some windfall sites is likely to be necessary for the Borough to meet its housing land supply targets. However, the appeal site is unsuitable for a number of other reasons, as set out above. This therefore weighs neutrally in the planning balance.
20. The Strategic Housing Market Assessment (SHMA) identifies that the greatest future demand for residential accommodation will be for two/three bedroom owner-occupied dwellings and one/two bedroom private rent and affordable dwellings. The proposed accommodation would largely fit this profile, as it would be for smaller, low cost market housing. Although not a formal affordable housing product, such as social rented housing, the accommodation would provide a form of affordable housing. However, part of the reason why the housing would likely be low cost is because of the poor quality of the accommodation and the overall character and appearance of the appeal site. The housing would also be in a location with poor accessibility to services and facilities. I therefore place limited positive weight on the provision of housing.
21. It is likely that, due to its nature and location, a proportion of the accommodation would be occupied by older persons. This would be a benefit in itself because the older persons population in the Borough is increasing, as confirmed in the SHMA. This would in turn release existing housing for younger persons and families to occupy and thereby contribute to meeting housing need. I therefore place moderate positive weight on these factors.

#### *Habitats*

22. The site falls within the Zone of Influence of the Swale and Medway Estuary Special Protection Areas and Ramsar sites. Had the proposal been acceptable in planning terms, it would have been necessary for me to have undertaken an Appropriate Assessment (AA) as the competent authority. However, the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an AA is only necessary where the competent authority is minded to approve planning permission, so I have therefore not undertaken one.

#### **Planning Balance and Conclusion**

23. The proposed unrestricted, permanent residential accommodation, and the loss of the existing tourism use, would be materially harmful to the character and appearance of the site and the surrounding area, particularly, but not only, during the winter months when the park is currently closed. Policies ST6 and DM14 of the LP are consistent with the National Planning Policy Framework (the Framework) and its support for protecting character and appearance, as set out in chapter 12. I therefore place significant weight to the conflict with these policies.
24. The loss of the existing tourism use would deprive supporting businesses and services of trade and custom, harming the tourism industry on the Isle of Sheppey. There would, conversely, be an increase in demand and expenditure

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on some services and to some local businesses due to the year round occupancy from permanent residents. The services and businesses in the area are geared towards the tourism industry and the harm from the loss of this trade and custom would likely outweigh the benefits from permanent residents. Policies CP1, ST6, DM3 and DM5 of the LP are consistent with the Framework and its support for a prosperous rural economy, as set out in chapter 6. I therefore place significant weight to the conflict with these policies.

25. The proposed permanent residential occupancy would give rise to an increased demand for, and pressure on, a range of local infrastructure, including, but not limited to, education, community facilities, and waste services. No on or off-site mitigation measures have been put forward by the appellant to combat these effects. Policy CP6 of the LP is consistent with the Framework and its desire to link development with appropriate supporting infrastructure, which is set out at various paragraphs in the document. I therefore place significant weight to the conflict with this policy. Taking the above into account, I conclude that the proposal conflicts with the Development Plan as a whole.

*Tilted balance*

26. The Council acknowledge that they can only demonstrate a 4.6 year supply of housing land. The proposal would create permanent residential accommodation. Paragraph 11d(ii) of the Framework is therefore engaged and the 'tilted balance' applies.
27. As established above, I place significant weight on the harm to the character and appearance of the area, to the tourism industry, and to local infrastructure. The benefits from the provision of permanent housing would be tempered by the poor quality and location of the accommodation, and I place only limited weight on this factor. The release of existing housing stock is of moderate positive weight.
28. Consequently, the many adverse impacts of the proposal would significantly and demonstrably outweigh the relatively minor benefits. I therefore conclude that conditions 2 and 3 are reasonable and necessary and continue to serve a useful purpose. There are no material considerations which indicate a decision other than in accordance with the Development Plan. The appeal should therefore be dismissed.

*O S Woodward*  
INSPECTOR



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## Costs Decision

Site visit made on 31 March 2022

by **O S Woodward BA(Hons.) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7<sup>th</sup> July 2022

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### **Costs application in relation to Appeal Ref: APP/V2255/W/21/3274740 Brookside Park, First Avenue, Eastchurch, Sheppey, Kent, ME12 4JN**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Brookside Leisure Limited for a full award of costs against Swale Borough Council.
  - The appeal was against the 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 2 and 3 of planning permission for the detailed layout of caravan camp.
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#### **Decision**

1. The application for an award of costs is refused.

#### **Reasons**

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The appellant indicates that the application for costs is made on the basis that the Council behaved unreasonably in refusing planning permission in respect of all refusal reasons. The basis of the claim is largely on the lack of weight provided to the Interim Planning Policy (IPP), dated June 2020.
3. The reasons for refusal are reasonable and are adequately justified, as can be seen from my decision on the appeal. The IPP, despite being agreed at Full Council meeting, only has limited weight. This is because it has not undergone a full public consultation and it is not part of the Development Plan, and in fact conflicts with Policy DM5 of the Swale Borough Local Plan 2017. In addition, I have found that the proposal conflicts with the IPP in any event. Full details of this are set out in my decision on the appeal. The conditions therefore meet the tests set out in the Framework, and are necessary, relevant, enforceable, precise and reasonable in all other respects. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the Applicant was put to unnecessary or wasted expense.

#### **Conclusion**

4. Taking all of the above into account, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*O S Woodward*

INSPECTOR

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