

PLANNING COMMITTEE – 11 APRIL 2024**PART 3**

Report of the Head of Planning

PART 3Applications for which **REFUSAL** is recommended

3.1 REFERENCE NO - 22/505778/FULL		
PROPOSAL Retrospective application for change of use from a holiday park (10 months occupancy) for the siting of 21no. residential retirement park homes for use all year round.		
SITE LOCATION Beverley Camp, Warden Road, Eastchurch, Sheerness, Kent ME12 4ES		
RECOMMENDATION Refusal of planning permission.		
APPLICATION TYPE Major application		
REASON FOR REFERRAL TO COMMITTEE The application raises difficult issues which warrant Member determination.		
Case Officer Simon Greenwood		
WARD Sheppey East	PARISH/TOWN COUNCIL Eastchurch	APPLICANT Beverley Park Action Group AGENT Mrs Wendy Benton
DATE REGISTERED 26/01/23	TARGET DATE 27/04/23	
BACKGROUND PAPERS AND INFORMATION: Documents referenced in report are as follows: - Application form (uploaded on 26.01.2023) Site location plan (uploaded on 26.01.2023) Design and Access Statement (uploaded on 26.01.2023) Planning Statement (uploaded on 26.01.2023) The full suite of documents submitted pursuant to the above application are available via the link below: - https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RMKIMETY0XI00		

SITE LOCATION AND DESCRIPTION

1.1. Beverley Holiday Park is situated on Warden Road, within the countryside near Eastchurch. The site is bordered by residential dwellings to the southwest, Eden Leisure Park

to the northeast, The Wold Caravan Park to the northwest (rear), and open countryside to the south-east on the opposite side of Warden Road.

- 1.2. The wider area primarily comprises the larger holiday / caravan park area of Eastchurch along with a number of private residential dwellings, in particular to the southwest of the site. There are some limited / seasonal services and amenities on Fourth Avenue to the west of the site including 2 public houses and a fast-food takeaway.
- 1.3. The application site is a designated holiday park under Policy DM4 of the Local Plan. The site is located outside of any built confines and is therefore classed as open countryside under Policy ST3 of the Local Plan.
- 1.4. The site is located within Flood Zone 1 and therefore has a low probability of flooding.

PLANNING HISTORY

- 2.1. Planning permission was granted for the site in 1949 under application reference NK/8/49/199. Condition 6 of the consent prohibited occupancy between 31st October and 1st March, other than for the purposes of caretaking.
- 2.2. A lawful development certificate was granted in 2008 for residential use of the bungalow on the holiday park site (ref. SW/08/0295). Subsequently, application reference SW/08/0554 granted permission for the demolition and rebuilding of the bungalow.
- 2.3. Planning permission was granted in 2008 for the change of use of the whole site from chalets to caravans under application ref. SW/08/1279. The site layout indicated 28 caravans and a site office in a similar arrangement to the current development. Condition 2 of the consent restricted the occupancy of the site between 31st October and 1st March, in line with the 1949 consent.
- 2.4. Application ref. SW/10/0865 sought the removal of condition 2 of planning permission ref. SW/08/1279 to allow 12 month residential use of the caravans. Consent was granted subject to a revised condition 2 which maintained the restriction on occupancy between 31st October and 1st March except for 11 days at Christmas (23rd December to 2nd January). The decision did not reflect the application proposal and was the subject of a subsequent appeal which is detailed below.
- 2.5. Approval was granted under application ref. SW/11/0945 for variation of condition 2 of planning permission SW/08/1279 to allow 10 month holiday use. The consent was subject to a revised condition 2 which stated:

No caravans shall be occupied except between 1st March and 3rd 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) *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 licence.*

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

Grounds: 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.

Enforcement History:

- 2.6. There is no relevant history of formal enforcement action in relation to the unlawful development and use of the site.

Appeal History:

- 2.7. Application ref. SW/10/0865 which sought removal of condition 2 of planning permission ref. SW/08/1279 to allow year-round residential use of the park was granted subject to a revised condition 2 permitting occupation from March to October with an additional 11 days and nights over the Christmas period. The application was the subject of a subsequent appeal (ref. APP/V2255/A/11/2143536) on the basis that the consent did not reflect the application proposal. The inspector also gave consideration to planning permission ref. SW/08/1279 for change of use from chalets to caravans on the basis of the appellant's assertion that this application had also sought year-round residential use. The appeal was dismissed in May 2011 and the Inspector noted the following in reaching his decision:

- Permanent habitation would change the rural character of the area in the tranquil winter months when the surrounding chalets and mobile homes are empty with no associated movement of occupiers.
- Planning permission would set a precedent for extended occupancy of other nearby parks.
- Families and single workers would look to take advantage of low-cost permanent occupation with increased pressure on the transport network, local facilities, local schools and social services.
- The site occupies an unsustainable location with poor public transport and pedestrian access, limited local shops and amenities, and poor access to jobs, key services and infrastructure.

Background and Withdrawn Applications

- 2.8. Withdrawn applications would not normally be detailed within a planning history and do not constitute a material planning consideration. However, these are detailed for background purposes in the context of the development of the site for residential use, which is understood to have been undertaken several years ago, and the unlawful year-round use of the site which followed. The application has not been accompanied by evidence relating to the specific timing of the development. The timings and specific circumstances of the year-round occupation of individual homes are also unclear and may have been related in some cases to restrictions and shielding during the Covid 19 pandemic.

- 2.9. Application reference 14/501853/AMRCON sought removal of condition 2 and variation of condition 3 of planning permission SW/10/0865 to allow year-round residential use of caravans and a revised layout. The application was withdrawn in January 2015 and the reason for the withdrawal of the application is not clear from the Council's records.
- 2.10. Application reference 20/503067/FULL sought removal of conditions 2, 3 and 4 (all related to the occupancy restriction) pursuant to application SW/11/0945 to allow for year round residential use. The application was submitted under Section 73 of the Town and Country Planning Act which provides for minor material amendments to existing consents. The application was withdrawn in December 2020. The correspondence on file suggests the applicant was advised that the proposal would not constitute a minor material amendment under Section 73 and they should submit a full planning application for permanent residential park homes.
- 2.11. Application reference 21/501474/FULL sought retrospective planning permission for the change of use from a holiday park (10 months occupancy) for the siting of 21no. residential retirement park homes for use all year round. The application was withdrawn in March 2022 and the reason for withdrawal is not clear from the Council's records.
- 2.12. It is understood that the above withdrawn applications were submitted by or on behalf of the site owner (Mr William Love) who undertook the current development of the site. The current application has been submitted by a resident of the park, on behalf of all of the residents of the park, whilst it was under the ownership of Mr Love. The site is subsequently understood to have changed ownership 3 times. The applicant provided written notice of the application to Mr Love in line with statutory requirements as confirmed through completing Certificate B on the planning application form. There is no statutory requirement to inform or serve notice on subsequent owners when site ownership changes following an application submission. However, the case officer has written to Cosgrove Leisure Parks, the current owners of the site, advising of the present application.

Relevant cases

- 2.13. The Council has refused a number of planning applications seeking year-round occupation of holiday parks over recent years, with a number of subsequent appeals being dismissed, including the following:
- Shurland Dale Holiday Park, Warden Road, Eastchurch (refs. 21/506565/FULL, 21/506566/FULL, 20/505317/FULL & 20/505304/FULL) - Permission refused for year-round use as a holiday park;
 - Ashcroft Caravan Park, Plough Road, Eastchurch (refs. 21/506558/FULL & 20/505316/FULL) - Permission refused for year-round use as a holiday park;
 - Central Beach Caravan Park, Grove Avenue, Leysdown (refs. 21/506563/FULL & 20/505388/FULL) - Permission refused for year-round use as a holiday park;
 - Sheerness Holiday Park, Halfway House, Minster on Sea (refs. 21/506564/FULL & 20/505387/FULL) - Permission refused for year-round use as a holiday park;
 - Warden Spring Caravan Park, Thorn Hill Road, Warden (ref. 21/505423/FULL) - Permission refused for year-round use as a holiday park;
 - Meadow View Park, Irwin Road, Minster on Sea (ref. 20/505122/FULL) – subsequent appeal dismissed (ref. APP/V2255/W/21/3287086) - Permission refused for permanent year-round residential use;

- Brookside Park, First Avenue, Eastchurch, Sheppey (ref. 20/504175/FULL) – Permission refused for permanent year-round residential use and subsequent appeal dismissed (ref. APP/V2255/W/21/3274740);
- Golden Leas Holiday Park, Bell Farm Lane, Minster on Sea (ref. 20/503267/FULL) – Permission refused for permanent year-round residential use and subsequent appeal dismissed (ref. APP/V2255/W/21/3279116);
- Estuary View Caravan Park, Bell Farm Lane, Minster on Sea (ref. 20/503268/FULL) – Permission refused for permanent year-round residential use and subsequent appeal dismissed (ref. APP/V2255/W/21/3279125);
- Ives Holiday Camp, Park Avenue, Leysdown (ref. 20/502813/FULL) - Permission refused for permanent year-round residential use;
- Plough Leisure Caravan Park, Plough Road, Minster on Sea (ref. 20/502811/FULL) – Permission refused for permanent year-round residential use subsequent appeal dismissed (ref. APP/V2255/W/21/3277288).

PROPOSED DEVELOPMENT

- 3.1. Retrospective planning permission is sought for the change of use from a holiday park (10 months occupancy) for the siting of 21 residential retirement park homes for use all year round. It is understood that the siting of the caravans on the park took place several years ago and the homes are now occupied on a year-round basis as the primary and sole residences of the majority of the occupants. As noted above, the timings and specific circumstances of the year-round occupation of individual homes are unclear. The siting of the caravans would have been lawful under the current permitted use of the site as a holiday park. The application therefore primarily falls to be considered in terms of the acceptability of the occupancy of the site on a year-round basis. The occupants of the park are all understood to be aged over 55 and if planning permission were granted a condition restricting occupancy of the park to individuals of retirement age could be applied.
- 3.2. Six of the park homes are arranged either side of a vehicular access into the site and the remainder are arranged in a rectangle around the site. The site has been block paved which provides vehicular access to the homes which generally benefit from one or two car parking spaces, with some additional, informal visitor car parking to the centre of the site. One home has no car parking and makes use of the visitor car parking. The homes have had skirts installed around the bases and there are areas of soft landscaping around some of the homes. Most of the homes have a small rear garden / yard area with some shed / storage structures to the rear of the park homes. There is an open grassed amenity area to the centre of the site.
- 3.3. The applicant asserts that the structures on the site are ‘park homes’ which are distinct from caravans. However, whilst the structures are identified as park homes and are large structures and of higher specification (which meet British Standard BS3632), they still fall within the definition of a caravan and are not building operations. There is no development involved in removing a smaller caravan and replacing it with a larger caravan – provided the structure remains a caravan as defined under the Caravan Sites Acts of 1960 and 1968. It is the nature of the use of the land and caravans – i.e. for permanent residential occupation and not holiday purposes – that forms the basis of this application.

Additional Information

- 3.4. The majority of the occupants of the site have been paying Council tax on their homes since 2022 after a voluntary declaration that the homes were occupied year-round as primary

residences. The Council's records indicate that 15 of the units on the site are identified as the main homes of the occupants.

CONSULTATION

- 4.1. One round of written consultation has been undertaken, during which letters were sent to neighbouring occupiers; a notice was displayed at the application site and the application was advertised in the local newspaper in accordance with statutory requirements. Full details of representations are available online.
- 4.2. 40 letters of representation in support of the application were received following the consultation. 10 letters were from addresses within the application site. All the comments received were in support of the application, comments were raised in relation to the following matters: -

Comment	Report reference
Units on the site are now permanent retirement homes purchased by the occupants who are settled and should be able to remain on a year-round basis.	Paras. 6.5-6.11
Vacating the units for 2 months each year would be highly stressful, disruptive and expensive for occupants.	Para. 6.104
Residents do not have other homes and would be homeless during period when the homes must be vacated.	Paras. 6.90-6.96 & 6.104
Uncertainty over occupancy to date has caused great stress and affected the health and wellbeing of the elderly and vulnerable residents of the site.	Paras. 6.90-6.96 & 6.104
A strong and mutually supportive retirement community has been established on the park.	Noted. However, refer to paras. 6.5-6.11
Park and homes are well maintained.	Noted. However, refer to paras. 6.5-6.11
Residents contribute to the local community and economy.	Noted. However, refer to paras. 6.5-6.11
Park occupies a perfect location for a retirement community.	Noted. However, refer to paras. 6.5-6.11
Site is secure and benefits from ample car parking.	Noted and para. 6.43
All residents are over 55 and there are other examples of over 55s park home sites.	Para. 6.105
Residents were promised 12 months occupancy when they purchased the units.	Para. 6.104
Year-round occupancy would result in no additional adverse impacts and would benefit the area.	Paras. 6.5-6.11
Year-round occupation of the park took place during covid restrictions.	Noted.
Residents sold their homes and moved to park to free up family housing.	Para. 6.105
Residents all own their individual park homes.	Para. 6.104
Park homes on the site are intended for residential use and are not suitable for a holiday camp use; Park Homes are built to a recognised standard for permanent occupancy (BS3632).	Para. 6.16

Site no longer has characteristics of a holiday park and does not include holiday facilities such as clubhouse, restaurant, swimming pool and amusements.	Noted. However, refer to paras. 6.5-6.11
Approving the application would not set a precedent as neighbouring holiday parks all have holiday facilities and therefore would not require year-round occupation.	Noted. However, refer to paras. 6.5-6.11
Ample holiday park accommodation in the locality.	Noted. However, refer to paras. 6.5-6.11
Residents were fraudulently advised that homes could be occupied year-round.	Para. 6.104
Sales of homes were subject to a verbal agreement that application seeking year-round occupancy would be submitted and approved. Application was subsequently withdrawn.	Para. 6.104
Same application has been submitted previously and withdrawn / Previous application for year-round occupancy was withdrawn by accident.	Noted.
Previous site owner knew that residents were selling their homes to move onto park.	Para. 6.104
Previous site owners agreed to buyer using a third party address on park home purchase agreement.	Para. 6.104
Subsequent site owners (site since sold on again) demanded evidence of separate main address with threat of eviction and intimidated, threatened and harassed residents.	Para. 6.104
Grant of year-round occupancy would be morally correct in the circumstances.	Noted. However, refer to paras. 6.5-6.11

- 4.3. No representations have been received objecting to the proposals.
- 4.4. The representations include various allegations regarding the conduct of previous site owners, including in relation to the sale of the park homes. The comments do not represent material land use planning considerations which should inform the decision-making process. It is understood that there are ongoing legal proceedings and, in view of the nature of the comments, it is considered that a detailed summary of the conflicting accounts of events would be unhelpful in terms of the decision-making process. It is clear from the planning permissions granted on site that conditions restricting occupancy of caravans / chalets have always been in place.
- 4.5. The sale of the park homes appears to have been undertaken by the previous owner of the site and did not involve the current owners of the site. As noted above, the site is understood to have changed ownership 3 times since this application was submitted.

4.6. **Eastchurch Parish Council** object to the application on the following grounds: -

Comment	Report reference/ clarification
Any permanent occupation would be a breach of planning conditions and enforcement.	Paras. 6.5-6.11
Councillors strongly resisted the change of use from holiday status to residential, particularly for non-permanent structures which are the equivalent of light build housing.	Paras. 6.5-6.11
The Planning Inspector stated that the site would in effect become a residential housing estate and that 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 would be noticed by permanent residents of which there are several in the area.	Paras. 6.5-6.11
The Planning Inspector was concerned that if permanent occupation was allowed this would set a precedent for other nearby parks to seek year-round occupancy with serious implications for the character and appearance of the area and potentially for the whole of the rural part of Sheppey.	Paras. 6.5-6.11
<p>Inspector pointed out that:</p> <ul style="list-style-type: none"> • there is no footway along most of Warden Road to access the village; • the bus service is infrequent and does not run everyday or in the evenings; • the site is not a good location for access to jobs, key services and infrastructure; • other sites in Kent/Swale with less restricted occupancy periods do not provide justification for Sheppey, where different circumstances pertain; • mobile home parks have a role to play in the housing market but not at the expense of other well established planning policies; • it has not been demonstrated that new residential mobile home parks on Sheppey need to be sited in relatively isolated rural areas where there are limited public services; • limiting the age of occupiers to over 55s would be un-enforceable and would conflict with housing policies. 	Paras. 6.5-6.11
Councillors agreed that encouraging mobile homes as a suitable alternative to permanent housing should be resisted.	Paras. 6.5-6.11

4.7. **SBC Conservation:** - Development has not resulted in any impacts upon heritage assets.4.8. **SBC Urban Design:** - The development is considered to result in a neutral impact in landscape and visual amenity terms. If planning permission were to be granted it would be appropriate to attach a condition securing a scheme of landscaping which could include tree and shrub

planting in the central grassed area and additional planting along the site frontage on Warden Road.

- 4.9. **Mid Kent Environmental Health:** - no objections raised.
- 4.10. **KCC Ecology:** - This is a retrospective application, and any ecological impacts of the development will already have occurred. However, if the development were yet to be undertaken it is unlikely that an ecological assessment would have been required on the basis that the site is a long-established caravan park and has contained regularly managed grassland.
- 4.11. The development includes proposals for new dwellings within the zone of influence (6km) of the Swale Special Protection Area, and Wetland of International Importance under the Ramsar Convention (Ramsar Site). The Council should ensure that the proposals fully adhere to the agreed approach within the North Kent Strategic Access Management and Monitoring Strategy (SAMMS). This is to mitigate for additional recreational impacts on the designated sites. As the application is to increase the residential use of the site from 10 to 12 months, it is recommended that a contribution of 1/3rd of the SAMMS payment should be made for this application.
- 4.12. **KCC SUDs:** - no objections raised.
- 4.13. **KCC Highways:** - no comments.
- 4.14. **Environment Agency:** - no comments.
- 4.15. **Natural England:** - no objection subject to securing appropriate mitigation for recreational pressure impacts on habitat sites.
- 4.16. **Southern Water:** - no objections raised.
- 4.17. **Lower Medway Internal Drainage Board:** - no comments.
- 4.18. **Kent Police:** - no comments.
- 4.19. **NHS Integrated Care Board:** - no contributions are sought towards local healthcare infrastructure and services.

DEVELOPMENT PLAN POLICIES

5.1. **Bearing Fruits 2031: The Swale Borough Council Local Plan 2017**

- Policy ST 1 - Delivering sustainable development in Swale
- Policy ST 3 - The Swale settlement strategy
- Policy ST 6 - The Isle of Sheppey area strategy
- Policy CP 3 - Delivering a wide choice of high quality homes
- Policy CP 4 - Requiring good design
- Policy CP 7 - Conserving and enhancing the natural environment – providing for green infrastructure
- Policy DM4 - Holiday Parks
- Policy DM 5 - The occupancy of holiday parks
- Policy DM 6 - Managing transport demand and impact
- Policy DM 7 - Vehicle parking
- Policy DM 8 - Affordable housing
- Policy DM 14 - General development criteria

- Policy DM 17 - Open space, sports and recreation provision
- Policy DM 19 - Sustainable design and construction
- Policy DM 21 - Water, flooding and drainage
- Policy DM 26 - Rural lanes
- Policy DM 28 - Biodiversity and geological conservation
- Policy DM 29 – Woodland, trees and hedges.

Supplementary Planning Guidance/Documents

- Housing Land Supply Statement
- Parking Standards SPD
- Developer Contributions SPD
- Strategic Access Management and Monitoring Strategy (SAMMS)
- Interim Park Homes Policy.

ASSESSMENT

- 6.1. This application is reported to the Committee because the application raises difficult issues which warrant Member determination.
- 6.2. The main considerations involved in the assessment of the application are:
 - The Principle of Development
 - Size and Type of Housing
 - Affordable Housing
 - Landscape and Visual
 - Heritage
 - Character and Appearance
 - Ecology and Biodiversity Net Gain
 - Transport and Highways
 - Community Infrastructure
 - Open Space
 - Flood Risk, Drainage and Surface Water
 - Living Conditions
 - Sustainability / Energy.

Principle

- 6.3. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 sets out that the starting point for decision making is the development plan unless material considerations indicate otherwise.
- 6.4. The National Planning Policy Framework provides the national policy context for the proposed development and is a material consideration of considerable weight in the determination of the application. The NPPF states that any proposed development that accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.
- 6.5. The site is a designated holiday park under the Local Plan, and the main relevant local plan policy is DM5 which relates specifically to the occupancy of holiday parks. The policy explicitly states that planning permission will not be granted for the permanent occupation of caravans

and chalets on such parks, and limits occupancy to a maximum of 10 months per year. The policy contains a number of criteria that need to be met to support a 10-month occupation period.

- 6.6. This policy is designed to potentially allow existing holiday parks in the borough (which are almost all located on the Island) to operate a longer season that had historically been allowed by the Council. Previously, these holiday parks have operated under an 8 month per year opening limitation, but Policy DM5 provides the potential to increase opening to 10 months, and many parks have successfully applied for this. This is considered by the Council to strike an appropriate balance to offer further support to the holiday and tourism industry, whilst still safeguarding the amenity of rural areas and preventing the risk of use of caravans as permanent and sometimes substandard housing, often in poorly accessible parts of the Borough, as well as the potential increased risk to life in areas liable to flooding. The use of a condition restricting the length of the opening season is operated on all holiday park sites and is a very well established and longstanding tool used by the Council to manage the impacts from such parks – the effect of which is of particular relevance to the Isle of Sheppey, where there are almost 7,000 caravans and chalets on holiday parks.
- 6.7. The proposed development would clearly be contrary to this policy even without consideration of the supporting criteria, as it would result in the year-round occupation of the park, contrary to the longstanding policies to control the length of holiday park opening seasons. The Council has taken a consistent position to restrict year-round residential occupation of holiday parks, and the reasons for this are clearly set out in the supporting text to Policy DM5 of the Local Plan. This position has been consistently upheld at appeal, including the decisions referred to in paragraph 2.13.
- 6.8. Policy ST3 of the Local Plan, which states that at locations in the open countryside outside the defined built-up area boundaries, development will not be permitted unless supported by national policy and where 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.
- 6.9. Almost all of the holiday parks on the Island, including the application site, are outside existing built-up areas in locations where permanent residential development would be resisted in line with Local Plan policy ST 3. In this instance, the application site is poorly located to all but very limited and seasonal amenities on Fourth Avenue and within nearby holiday parks. The limited facilities at Eastchurch are approx. 1.8km along an unlit national speed limit road with no footpath for much of its length, or 1.7km by public right of way. Residents of the park are therefore highly reliant on car use for most needs and the site is not sustainably located for residential development. The development is contrary to Local Plan policy ST 3 as it has not been demonstrated that the criteria specified in part 5 to justify residential development in this location would be met. The development is also contrary to policies ST 1, CP 2 and CP 3 which support policy ST 3 in terms of ensuring that developments are sustainably located. It is important to note that in the case of the Brookside Park appeal (which forms part of the same holiday park complex as Beverley Park) referred to in paragraph 2.13, the Inspector concluded that the Brookside Park was in an unsuitable location for permanently occupied housing for the same reasons as set out above.
- 6.10. Policy DM5 of the Local Plan makes clear that occupancy conditions attached to holiday park consents are intended to protect the quiet, rural character of these areas by providing a breathing space and a period of tranquillity for full time residents and to protect the character

of the rural area. Traffic, congestion, noise and tranquillity all vary according to the season and the restriction on occupancy is intended to provide local residents with a quiet period to appreciate the rural surroundings, free of holidaymakers. Occupation of the Beverley Park throughout the year would bring about activity, noise and traffic in winter months that would be harmful to rural character and would clearly conflict with Policy DM5 of the Local Plan. Again, it is important to note that the Inspector in the Brookside Park appeal came to the same conclusion.

- 6.11. The lawful use of the site is a holiday park. Policy DM 5 of the Local Plan is very clear 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 holiday parks. Likewise, policies ST1, ST3, CP2 and CP3 are clear that development should be provided in sustainable locations which minimise the need to travel.

Housing Supply

- 6.12. The Council is presently able to demonstrate a 5 year housing supply. The latest Housing Monitoring report identifies 5.13 years supply of housing.

Loss of Tourism

- 6.13. Policy CP1 of the Local Plan seeks to safeguard or enhance Swale's 'Principal Tourism Assets' and to consolidate or widen the tourism potential of the borough. Holiday parks are listed under the borough's 'Principal Tourism Assets' and the supporting text sets out that these should be protected from inappropriate development. Policy ST6 seeks to support the existing tourism offer on the Island, and the supporting text to this policy emphasises the importance of tourism to the economy of the Island. Policy DM3 promotes rural tourism and makes clear that residential development should not be permitted at the expense of rural employment. The supporting text to policy DM4 states that holiday parks provide direct employment and support shops, pubs, restaurants and visitor attractions.
- 6.14. The change of use of the site has resulted in the loss of holiday accommodation and has reduced the tourism offer on the Island which is contrary to the above policies that seek to safeguard and enhance tourism, and to prevent the permanent occupation of holiday parks. No information has been provided to demonstrate why the accommodation is not suitable for holiday use. It is noted that the homes on the site are all in private ownership, but this is not a unique situation with holiday parks on the Island, and there is no evidence to demonstrate why this would create insurmountable difficulties to use the units as holiday accommodation. The residential use of the site has undermined the clear strategies in the adopted local plan to promote and increase the tourism offer in the borough and on Sheppey, where tourism plays a vital role in the local economy, and may also risk setting a precedent that could lead to further pressure for removal of occupancy conditions on other holiday parks. In this regard the change of use is contrary to policies CP1, ST6, DM3, DM4 and DM5 of the Local Plan.

Size and Type of Housing

- 16.15 The NPPF recognises that to create sustainable, inclusive and diverse communities, a mix of housing types, which is based on demographic trends, market trends and the needs of different groups, should be provided. The supporting text to Local Plan Policy CP3 sets out requirements for market and affordable housing by size. The Council has a Housing Market Assessment (HMA) prepared in 2020, i.e., more recently than the Local Plan, and after the introduction of the standard method for calculating the objectively assessed need. The assessment identifies that 2 and 3 bed units are the house sizes in greatest need for the Borough. All units on the site would provide 2 bedrooms.

16.16 Paragraph 5.3.16 of the Local Plan states that:

The population aged 65 or over is likely to increase dramatically over the plan period to 38,132 in 2031, a rise of 46.2%. The Strategic Housing Market Assessment (SHMA) highlights the greatest future demand is for two/three bedroom owner-occupied dwellings and one/two bedroom private rent and affordable dwellings. Development for housing specifically aimed at occupiers over 65 should, in the first instance, aim to reflect this.

16.17 The development would provide a type of housing that would be suitable for older persons. It would also be possible to impose planning conditions to restrict occupation of the development to persons over 55 years. This would contribute to the provision of older persons housing in the Borough, although it is important to note that the residential accommodation would be poorly located and divorced from services and facilities, as set out in the sections above. The application sets out that all of the homes on the site meet BS3632 (2015) standards which relates to park homes suitable for year-round occupation. BS3632 covers the construction, size and design of the park home and matters including water, gas and electric supplies and ventilation. BS3632 provides minimum specifications in relation to thermal insulation, stability and room sizes and ensures that the homes are energy efficient.

16.18 Manufacturer model details have not been provided for all of the homes on the site; however, the applicant advises that the majority of the homes on the site are the Pembroke (20ft x 40ft) model manufactured by Stately Albion. These homes have a floor area of approx. 74.3m² (GEA) and feature a living room; separate dining area; master bedroom with dressing room and en-suite bathroom; a second bedroom; a second bathroom; and a kitchen. 5 of the homes are 52m² (GIA) 2 bedroom 3 person units. Overall, the units on the site are of good internal layout and size for caravans/park homes. The majority of the homes benefit from small rear yards / gardens and there is a grassed communal amenity area to the centre of the site.

16.19 It is considered that the development provides a reasonable standard of residential accommodation which meets British Standards for year-round occupation. Accordingly, the standard of accommodation is not considered to represent grounds for refusal of planning permission.

16.20 If the proposal were acceptable in principle then it would be appropriate to place a restriction on the occupation of the homes to over 55s only. This would ensure that the homes remain available for older people looking to downsize and free up larger homes to meet the needs of families and would accord with Policy CP3 in providing for older persons accommodation.

Affordable Housing

16.21 The NPPF sets out the requirement for setting appropriate affordable housing levels for new development based on up-to-date evidence. Policy DM 8 of the Local Plan gives rise to a requirement for nil affordable housing from developments on the Isle of Sheppey. No affordable housing is proposed, and the application is therefore in not in conflict with policy DM 8.

Landscape and Visual Impact

16.22 The NPPF requires decisions to ensure that development is '*sympathetic to... landscape setting*' The Local Plan reinforces this requirement.

16.23 The siting of the park homes does not require planning permission and the use of the site as a holiday park is long established and originally comprised 36 holiday chalets. The development is not considered to result in any harm in landscape and visual impact terms. If planning permission were to be granted there would be potential to secure improvements to the appearance of the site through a landscaping condition. The development is in accordance with the Local Plan and the NPPF in landscape and visual amenity terms.

Heritage

16.24 The National Planning Policy Framework states that local planning authorities should identify and assess the particular significance of any heritage asset and consider the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits that may arise and this is endorsed by the Local Plan.

16.25 The Council's Conservation and Design Manager has confirmed that no designated or non-designated heritage assets would be materially impacted by the development, either directly or indirectly. Furthermore, there is not evidence to suggest that the application site holds any historic interest.

Character and appearance

16.26 The National Planning Policy Framework attaches great importance to the design of the built environment and that design should contribute positively to making places better for people. The Local Plan reinforces this requirement.

16.27 The immediate locality is characterised by a number of holiday parks which may be considered to have negative impacts in character terms, particularly where the parks are of poor quality and in need of modernisation and improvement, as was previously the case with the application site. As noted above the siting of the park homes does not require planning permission and physical changes to the site and ancillary development associated with the siting of the homes is considered minor. Overall, any impact in character and appearance terms is considered neutral.

16.28 In view of the neutral impact on the character and appearance of the area the park as developed is not considered to conflict with the provisions of the Local Plan and the NPPF.

Ecology

16.29 The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') affords protection to certain species or species groups, commonly known as European Protected Species (EPS), which are also protected by the Wildlife and Countryside Act 1981. This is endorsed by policies CP 7 and DM 28 of the Local Plan, which relates to the protection of sites of international conservation importance including Special Areas of Conservation (SAC), Special Protection Areas (SPA) or Ramsar Sites.

16.30 Under the Natural Environment and Rural Communities Act (2006), the authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions for the purpose of conserving biodiversity. Furthermore, the National Planning Policy Framework states that 'the planning system should contribute to and enhance the natural environment by minimising impacts on biodiversity and delivering net gains in biodiversity where possible'. The National Planning Policy Framework states that 'if significant harm resulting from a development cannot be avoided (through locating on an alternative site with

less harmful impacts), adequately mitigated, or as a last resort, compensated for then planning permission should be refused.'

- 16.31 National planning policy aims to conserve and enhance biodiversity, and encourages opportunities to incorporate biodiversity in and around developments. Under the Natural Environment and Rural Communities Act (2006), "every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of these function, to the purpose of conserving biodiversity".
- 16.32 In terms of the Local Plan policy DM 28 sets out that development proposals will conserve, enhance, and extend biodiversity, provide for net gains where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated.
- 16.33 The KCC Ecology Officer noted that this is a retrospective application and any ecological impacts of the development will already have occurred. However, if the development were yet to be undertaken it is unlikely that an ecological assessment would have been required on the basis that the site is a long-established caravan park and has contained regularly managed grassland.
- 16.34 The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') affords protection to certain species or species groups, commonly known as European Protected Species (EPS), which are also protected by the Wildlife and Countryside Act 1981. This is endorsed by policies CP 7 and DM 28 of the Local Plan, which relates to the protection of sites of international conservation importance including Special Areas of Conservation (SAC), Special Protection Areas (SPA) or Ramsar Sites.
- 16.35 Since this application has resulted in a net increase in residential accommodation on the site, impacts to the SPA and Ramsar sites may have occurred from increased recreational disturbance. Due to the scale of the development there is no scope to provide on site mitigation and in such circumstances off site mitigation is normally required by means of developer contributions at the rate of £314.05 per dwelling. In this case, the KCC Ecology officer has recommended that, as the application is to increase the occupation of the park from 10 months to 12 months, a contribution of one third of the SAMMS payment should be secured. On this basis a contribution of £2,198.35 would be sought for the development ($(£314.05 / 3) \times 21 = £2,198.35$).
- 16.36 Natural England raise no objection to the development subject to securing appropriate mitigation for recreational pressure impacts on habitat sites.
- 16.37 A SAMMS contribution has not been pursued in this case as it is recommended that planning permission be refused. SAMMS contributions would normally be secured through a Section 106 agreement for a development of this scale. A ground of refusal is recommended to address the absence of a Section 106 agreement to secure the requested contributions. However, if Members were minded to grant planning permission, a Section 106 agreement could be prepared to overcome the recommended ground of refusal. If planning permission is refused and the application appeals the Council's decision, the Council would withdraw the ground of appeal relating to the absence of a Section 106 agreement upon the submission of a satisfactory Section 106 agreement.
- 16.38 If planning permission were to be granted ecological and biodiversity enhancements on the site could be secured through a condition.

Transport and Highways

16.39 The NPPF promotes sustainable patterns of development and expects land use and transport planning to work in parallel in order to deliver such. A core principle of the NPPF is that development should:

“Actively manage patterns of growth to make the fullest use of public transport, walking and cycling and to focus development in locations which are sustainable.”

16.40 The NPPF also states that:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

16.41 Local Plan policy promotes sustainable transport through utilising good design principles. It sets out that where highway capacity is exceeded and/ or safety standards are compromised proposals will need to mitigate harm.

16.42 The locational sustainability of the site has been assessed in earlier sections of this report. In terms of traffic generation, the residential use is unlikely to result in materially different movements than as a holiday park. Although these movements would extend into the winter months, no highways safety matters have been identified regarding the unsustainable location of the site from a transport perspective.

16.43 The change of use is not considered to have involved an increase in the intensity of use of the vehicular access such that there would be adverse technical highways impacts. Furthermore, in view of the age related occupancy restrictions that could be secured if planning permission were granted it can be accepted that the use of the site as a retirement park is making a limited contribution to traffic generation at peak times.

16.44 The change of use is not considered to have involved an increase in the intensity of use of the vehicular access such that there would be adverse technical highways impacts. The site does not have formally laid out car parking but has a large block paved area of hardstanding which provides a roadway and informal car parking. The homes on the site benefit from adjacent informal parking spaces and adequate space to manoeuvre vehicles from the spaces. 9 of the homes have two car parking spaces, 11 have one car parking space and 1 home does not benefit from a car parking space and makes use of an informal area to the centre of the site which provides 6 or 7 visitor car parking spaces. The Swale Parking Standards SPD (April 2020) sets out a requirement for 2 spaces for two bedroom homes in this location. The parking provision will generally fall short of this requirement; however, it can be noted that the homes are occupied by retired individuals or couples and not by family units or shared households. Furthermore, the application seeks retrospective consent for permanent occupation of the homes and the car parking provision appears demonstrably adequate to serve the development. The central grassed amenity area could be used to increase car parking provision but this would be at the expense of residential amenity and opportunities to improve biodiversity on the site. It is considered that the parking provision on the site can be accepted.

16.45 The site benefits from a wide paved roadway which would allow vehicles to adequately manoeuvre around the site and service all homes within the site.

16.46 Details of refuse collection have not been provided although the applicant has confirmed that refuse is collected by the Council. In view of the adequacy of the servicing arrangements and given that refuse is presently being collected from the site it is assumed that satisfactory

arrangements are currently in place. If planning permission were to be granted then further information could be obtained in this regard and controlled as necessary through conditions.

16.47 Details of cycle storage have not been provided, albeit it is noted that the homes generally benefit from rear garden / yard areas with some sheds which could accommodate bicycles. If planning permission were granted and it was considered appropriate to secure cycle parking for a retirement community in this location then an appropriate condition could be applied.

16.48 KCC Highways have not made any comments on the application.

16.49 The development would not encourage sustainable transport choices, and this is reflected in recommended reason for refusal No. 1. It is otherwise considered that the proposed development does not result in unacceptable impacts in highways terms and therefore the proposal can be considered to accord with the Local Plan and the NPPF.

Community Infrastructure

16.50 Local Plan policies CP 5 and CP 6 require that provision shall be made to accommodate local community services, social care and health facilities within new developments.

16.51 As with any planning application, the request for financial contributions needs to be scrutinised in accordance with Regulation 122 of the Community Infrastructure Regulations 2010 (which were amended in 2014). These stipulate that an obligation can only be a reason for granting planning permission if it is:

- Necessary
- Related to the development
- Reasonably related in scale and kind.

16.52 It can be noted that the residents of the park are all retired and therefore will not require access to schools and children's services which serve the needs of younger populations.

16.53 The following outline the financial contributions that have been sought by Kent County Council and Swale Borough Council to mitigate the impact of the development upon services, these contributions are all for specific capital projects which have been identified and assessed by Officers to comply with the Regulations (as amended).

Education

16.54 The development is occupied by a retirement community and has nil child yield. Accordingly, the development does not give rise to a requirement for an education contribution.

Libraries

16.55 £1,315.23 (£62.63 per dwelling) towards additional resources, equipment and book stock (including reconfiguration of space) at local libraries serving the development including Minster and Sheerness.

Adult Social Care

16.56 £3,798.48 (£180.88 per dwelling) towards specialist care accommodation, assistive technology systems and equipment to adapt homes, adapting Community facilities, sensory facilities, and Changing Places within Swale.

Community learning

16.57 £718.41 (£34.21 per dwelling) towards Community Learning Project details or additional equipment and resources for adult education centres on Sheppey, including outreach provision.

Integrated Children's Services

16.58 The development is occupied by a retirement community and does not accommodate a child population. Accordingly, the development does not give rise to a requirement to a children's services contribution.

Health care

16.59 Contributions have not been sought towards local healthcare infrastructure and services as the integrated care board have advised that residents will already be registered with local practices and there is unlikely to be any additional pressure on primary care.

Refuse

16.60 £1,092 (£52 per dwelling) towards additional capacity at Household Waste Recycling Centres.

16.61 £2,984.73 (£142.13 per dwelling) towards additional capacity at Waste Transfer Stations.

16.62 The above contributions would be sought to mitigate the additional impacts on local infrastructure and services which would arise from 21 new residential dwellings. It is recommended that planning permission be refused, therefore the Council has not pursued the requested financial contributions, which would normally be secured through a Section 106 agreement. A ground of refusal is recommended to address the absence of a Section 106 agreement to secure the requested contributions which are a requirement of Policies CP 5 and CP 6. However, if planning permission were to be granted, a Section 106 agreement could be prepared to overcome the recommended ground of refusal. If planning permission is refused and the applicant appeals the Council's decision, the preparation of a satisfactory Section 106 agreement would address the ground of refusal.

Open Space

16.63 Policy DM 17 of the Local Plan sets out that new housing development shall make provision for appropriate outdoor recreation and play space, including urban parks, children's play areas, open space for sport, allotments or community gardens proportionate to the likely number of people who will live there.

16.64 The change of use gives rise to the following open space requirements:

Typology	Policy DM17 requirement (ha per 1,000 person)	Scheme requirement (ha)	Proposed (ha)	Short fall (ha)
Parks and gardens	1.1	0.05	0	0.05
Natural and semi natural greenspace	4.36	0.18	0	0.18
Formal outdoor sport	1.09	0.05	0	0.05

Amenity Greenspace	0.45	0.02	0.06	No
Provision for children and young people	N/A	N/A	0	0
Formal Play facilities	N/A	N/A	0	0
Allotments	0.2	0.01	0	0.01
Total				0.29

16.65 Given the size and use of the site, parks and gardens, outdoor sports and allotments are not provided on site. There are no parks and gardens or allotments within a reasonable distance of the site which would benefit from a financial contribution to address the identified shortfall. The occupants of the park homes are of retirement age and so will not generate a requirement for play space. In view of the rural location of the site it is considered that the occupants have ample access to natural and semi-natural greenspace. The Council's Green Spaces Manager has advised that a contribution towards off-site formal sport provision at a rate of £681.81 should be secured.

16.66 It is recommended that planning permission be refused, therefore the Council has not pursued the requested financial contribution towards formal off-site sport provision which would normally be secured through a Section 106 agreement. A ground of refusal is recommended to address the absence of a Section 106 agreement to secure the financial contributions to mitigate the impacts of the change of use. As noted above, if planning permission were to be granted the preparation of a satisfactory Section 106 agreement would overcome the ground of refusal.

Flood Risk, Drainage and Surface Water

16.67 The NPPF states that local planning authorities should ensure that flood risk is not increased elsewhere and that any residual risk can be safely managed. This is reflected in policy DM 21 of the Local Plan.

16.68 The application does not involve new surface water drainage proposals and existing measures would appear to satisfactorily address surface water run-off. The KCC drainage officer raises no objections to the development and the Lower Medway Internal Drainage Board made no comments on the proposal. It is therefore considered that the development is in accordance with Policy DM 21 of the Local Plan and the NPPF.

Living Conditions

Existing neighbouring residents

16.69 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers. The application site adjoins holiday park sites to the north-east and northwest, with chalets on the neighbouring site in particularly close proximity adjacent to the northwest boundary. It is understood that the park homes on the site do not have windows on the north-west elevations which face the neighbouring site and therefore opportunities for direct overlooking of neighbouring occupiers should be limited. Any overlooking would occur to holiday accommodation which may be less sensitive than residential dwellings, in particular if it is let on a short term basis as occupiers will not be subject to a permanent loss of privacy. It is also noted that the site previously accommodated a holiday park comprising up to 36

chalets which may also have presented overlooking opportunities. It is therefore considered that the change of use does not give rise to increased harmful overlooking of occupants of adjacent sites.

16.70 There are neighbouring residential dwellings to the south-west of the site. It is considered that the additional occupation of the park homes during January and February would not give rise to any unduly harmful increased impacts upon the living conditions of the occupants of these dwellings.

Residents of application site

16.71 New development is expected to offer future occupiers a sufficient standard of accommodation.

16.72 There are chalets on the neighbouring sites to the north-east and north-west in very close proximity to homes on the application site which, given the holiday park uses, are considered likely to result in noise and disturbance which would be noticeable within the application site.

16.73 The site layout involves approx. 5m separation distances between the habitable room windows of neighbouring homes, resulting in overlooking opportunities. This issue has partly underpinned the Council's resistance to residential use of holiday parks as they are not laid out to meet privacy standards which would normally be sought for new residential development. It was observed that some residents on the site have used net curtains to mitigate overlooking. Furthermore, it is acknowledged that the residents on the site would have bought the homes aware of the lack of privacy arising from the site layout and have accepted any overlooking over the period that permanent residential occupation of the site has occurred.

16.74 The Council contested the Estuary View Caravan Park (PINS ref. APP/V2255/W/21/3279125) on grounds relating to insufficiently separated caravans with insufficient amenity space located in close proximity to holiday accommodation. The Inspector noted that, whilst the separation distances did not meet the distances expected between houses, caravan occupation within a countryside caravan park location offered other amenity benefits. Furthermore, the present situation provided for 10 months occupancy of the caravans (albeit not as a main residence) which is not dissimilar to permanent occupation in amenity terms. Accordingly, the Inspector did not consider that there would be any conflict between the amenity standards of the proposal with Local Plan policy DM 14 and the provisions of the NPPF. In view of the conclusions reached by the Inspector and the parallels with this application it is considered that the site layout and its relationship with adjacent holiday parks would provide a satisfactory standard of residential amenity.

Sustainability / Energy

16.75 Policy DM 19 of the Local Plan requires development proposals to include measures to address climate change.

16.76 The application does not propose new development and therefore does not present an opportunity to deliver new measures to address climate change. It is noted that the park homes meet BS3632 and therefore feature double glazing and a good standard of insulation and accordingly will provide energy efficient accommodation which represents an improvement over the chalets which previously occupied the site. It is therefore considered that, in the context of the opportunities on the site, the development delivers energy efficiency measures which sufficiently address Local Plan policy DM 19.

Equality and Human Rights

Human rights: overview

16.77 In line with the Human Rights Act 1998, it is unlawful for a public authority to act in a way which is incompatible with a Convention right, as per the European Convention on Human Rights. The human rights impacts that are most relevant to planning are Article 1 of the First Protocol (Protection of property), Article 8 (Right to respect for private and family life) and Article 14 (Prohibition of discrimination) of the Convention.

16.78 Where the peaceful enjoyment of someone's home and/or their private life is adversely affected, their Article 8 (Art 8) and/or Article 1 of the First Protocol (A1P1) rights may be engaged. The loss of other forms of property (e.g. business premises) may engage rights under A1P1. It should be noted that A1P1 applies to both natural and legal persons.

16.79 A1P1 and Art 8 rights are both what are known as 'qualified rights', that is, they are not absolute rights but involve some form of balancing exercise between the rights of the state to take various steps and the rights of the individual or other affected body/organisation.

16.80 In the case of Art 8 rights, the interference must be in accordance with law and be considered necessary in the interests of national security, public safety or the economic well-being of the country, for the prevention of crime/disorder, for the protection of health/morals or for the protection of the rights and freedoms of others.

16.81 In the case of *RLT Built Environment Ltd v Cornwall Council* (a judicial review from 2016), the Court drew out a number of points concerning how to approach the loss of a home in the context of the planning process. The points set out by the Court were as follows:

- I. *Article 8 does not give a right to a home, or to a home in any particular place.*
- II. *However, where someone has a home in a particular dwelling, it may interfere with the article 8 rights of him and/or his family to require him/them to move.*
- III. *Whilst those rights demand "respect", they are of course not guaranteed. In this context, as much as any other, the public interest and/or the rights and interests of others may justify interference with an individual's article 8 rights.*
- IV. *Where article 8 rights are in play in a planning control context, they are a material consideration.*

16.82 Any interference in such rights caused by the planning control decision has to be balanced with and against all other material considerations, the issue of justification for interference with article 8 rights effectively being dealt with by way of such a fair balance analysis.

- V. *That balancing exercise is one of planning judgment [...].*
- VI. *[...] Article 8 rights are, of course, important: but it is not to be assumed that, in an area of social policy such as planning, they will often outweigh the importance of having coherent control over town and country planning, important not only in the public interest but also to protect the rights and freedoms of other individuals [...].*

16.83 In terms of A1P1, this provides as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest and subject to conditions provided for by law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

16.84 There are three key rules. The first is the principle of peaceful enjoyment of property. The second covers the deprivation of possessions and subjects it to certain conditions. The third recognises that that property can be controlled in the general interest.

16.85 Claims under any of the three rules need to be examined under four heads:

- I. Whether there was an interference with the peaceful enjoyment of “possessions”,*
- II. Whether the interference was “in the general interest”;*
- III. Whether the interference was “provided for by law”;*
- IV. Proportionality of the interference.*

16.86 In terms of assessing the proportionality of the interference, domestic case-law (Thomas v Bridgend County Borough Council in the Court of Appeal [2011], applying the European case of Bugajny), has summarised the approach as follows:

“The cases show that the issue of proportionality can be expanded into the following question: “whether the interference with the applicants’ right to peaceful enjoyment of their possessions struck the requisite fair balance between the demands of the general interest of the public and the requirements of the protection of the individual’s fundamental rights, or whether it imposed a disproportionate and excessive burden on them.” (Bugajny [...] para 67).”

16.87 Article 14 of the Convention deals with the requirement for Convention freedoms to be available to all on a non-discriminatory basis. Article 14 is not a free-standing right in the same way as Art 8 and A1P1.

Equalities: overview

16.88 In line with the Public Sector Equality Duty (‘PSED’) the Council must have due regard to the need to eliminate discrimination and other forms of less favourable treatment such as harassment and victimisation, and to advance equality of opportunity and foster good relations as between persons who share a protected characteristic and persons who do not share it. The PSED is set out in section 149 of the Equality Act 2010. A protected characteristic for these purposes is age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. Advancing equality will amongst other measures remove or minimise disadvantages suffered by people due to their protected characteristic and taking steps to meet the needs of people from protected groups where these are different from the needs of other people.

16.89 In planning terms, the potential impacts of a proposal on an individual or on groups of individuals should be addressed by the decision-maker as a material consideration. In balancing this against other material considerations, the decision-maker should also ensure that they give due weight to what is required by their statutory duties, including the requirements of the PSED.

Existing occupiers

16.90 If planning permission were refused then occupation of the homes would be restricted to 1st March to 3rd January the following year, in line with planning consent ref. SW/11/0945 and Local Plan Policy. The occupiers would be required to vacate their units for most of January and all of February each year and would only be permitted to use the homes for holiday/recreational use in line with condition 2 of planning permission ref. SW/11/0945.

Effect of displacement – residential occupiers

- 16.91 As regards Art 8 rights (that is, the right to respect for the home and private life), for the purposes of assessing the application on the basis that the right is engaged by the loss of the use the homes on the park for most of January and February each year. The occupiers will be required to find alternative accommodation. The question is whether the interference with the rights of affected individuals can be considered proportionate and necessary and so able to be justified under the second limb of Art 8.
- 16.92 This involves weighing the interference against other material considerations in order to arrive at a fair balance between the interests of the individual and the interests of the community as a whole, as explained in RLT Built Environment Ltd.
- 16.93 Local Plan policy does not support year round occupation of the borough's holiday parks. Condition 2 of planning permission ref. SW/11/0945 states that the caravans are to be used for holiday and recreational use only and shall not be occupied as a sole or main residence. The occupants of the site would be required to move out of their park homes for at least two months of each year and would not be able to use the homes as a sole or main residence. Officers acknowledge that this would be disruptive for those affected.
- 16.94 Some groups (namely children, young people, older residents, those with disabilities and/or long-term health problems, pregnant women and those on maternity/paternity absence, ethnic minorities, and low-income households) are likely to be more sensitive than others to temporary displacement. In this case all of the residents of the park are of retirement age and some are elderly and are therefore would be identified as more sensitive to temporary displacement.
- 16.95 Taking into account the nature of the impact on the existing occupiers, officers consider the benefits of resisting unplanned residential development in an unsustainable location and protecting the rural character of this part of Sheppey, which is in the public interest, would outweigh any interference with the rights of the individual under Art 8.
- 16.96 As regards A1P1 rights in relation to residential occupiers, officers have proceeded for the purposes of assessing this application on the basis that this right is engaged by the temporary displacement from the 21 residential dwellings on the site each year and the restriction on occupation of the caravans as a sole or main residence. That interference can be regarded as being in the general interest, the operation of the planning system being a legitimate interest of the state.
- 16.97 In officers' assessment, taking account of the nature of the impact on residential occupiers, the proposed mitigation measures and the public benefits of the scheme, a fair balance is arrived at between the protection of the rights of affected individuals and the interests of the wider community and a disproportionate or excessive burden would not be imposed.

Other mattersThe Interim Park Homes Policy

- 16.98 The Full Council adopted an interim planning policy on park homes on 17 June 2020 as 'a material consideration that will hold some weight in the consideration of applications for park home proposals'. Nonetheless, following further legal advice on this matter, the interim policy is considered to hold limited weight given that it was not progressed via the development plan process, and has not been subject to scrutiny through consultation and examination.

- 16.99 The interim policy sets out a list of criteria for compliance. This includes the requirement that the site is in a sustainable location with access to services and facilities, and that the site layout provides acceptable privacy and amenity standards for residents. It has been set out above why these specific matters are a concern in relation to this application. Therefore, given the limited weight that should be attached to this interim policy, together with the conflict in any case with its criteria, it is still considered that the application is unacceptable.
- 16.100 It is also noted that the Inspectors considering the Plough Leisure Caravan Park, Brookfield Park, Golden Leas Holiday Park and Estuary View Caravan Park appeals (detailed in the Relevant Cases section earlier in this report) afforded limited or very limited weight to the Interim Park Homes Policy.

Conclusion

- 16.101 The application seeks retrospective planning permission for the change of use from a holiday park (10 months occupancy) to a residential retirement park for year round occupation. Local Plan policy DM 5 is very clear that in order to ensure a sustainable pattern of development, to provide a period of relief to local residents and to protect the character of the countryside, planning permission will not be granted for the permanent occupancy of holiday parks. The granting of planning permission would be likely to set a precedent for similar changes of use of holiday parks on the Island. The development is contrary to Local Plan policy DM 5 and is therefore unacceptable in principle and **significant weight** is placed on this disbenefit arising from conflict with Local Plan policy.
- 16.102 Policy ST 3 makes a presumption against residential development within the rural part of the borough where the site is located. The site is in an unsustainable location for residential development and it has not been demonstrated that the criteria specified in policy ST 3 part 5 to justify residential development in this location would be met. Furthermore, residents are reliant on private car use for transport and the development does not promote sustainable transport, as required by Policy CP 2. Accordingly, the development is contrary to Local Plan policies ST 3 and CP 2. The development is also contrary to Local Plan policy ST 1 and CP 3 (which support policy ST 3) and policy DM 14. **Significant weight** is placed on this disbenefit arising from the conflict with Local Plan policy.
- 16.103 The permanent year-round residential use of a designated holiday park has resulted in the loss of tourist accommodation contrary to Local Plan policies CP 1, ST 6, DM 3, DM 5 and DM 14 which together seek to promote the tourism potential of the borough and the related economic and employment benefits. **Significant weight** is placed on this disbenefit arising from the conflict with Local Plan policy.
- 16.104 A Section 106 agreement has not been prepared to secure community infrastructure contributions sought by KCC and an open space contribution as well as SAMMS payments to mitigate against ecological impacts upon the Medway Estuary and Marshes SPA. The application is therefore contrary to Local Plan policies CP 5, CP 6, CP 7 and DM 28 and **significant weight** is afforded to this disbenefit arising from the conflict with these policies. It is acknowledged that if the proposal was otherwise acceptable then the financial contributions would be sought through a Section 106 agreement and this disbenefit would be addressed.
- 16.105 It appears that the occupants have purchased their homes on the assumption that they would be able to occupy them on a year-round basis. Representations in support of the application advise that some of the residents of the park are experiencing health issues associated with old age and the community is close knit and mutually supportive. A refusal

of planning permission could have significant adverse personal and financial implications for the occupants of the homes on the site. However, the circumstances of the park home sales and the implications for these residents if planning permission were refused is unfortunately not a material land use planning consideration to which any significant weight can be afforded in the decision-making process.

- 16.106 The benefits of the change of use of the site include the provision of 21 low cost residential units which could be controlled for older persons and which would contribute towards the Borough's housing supply. The units would meet an identified need and would assist in freeing up family sized accommodation for occupation by families. However, the 21 units would only represent a small addition to the housing stock and the benefit is tempered by the unsustainable location of the accommodation. Accordingly, **limited** weight is afforded to this benefit. The release of existing housing stock is of **moderate** positive weight.
- 16.107 Planning decisions must be taken in accordance with the Development Plan unless material land use planning considerations indicate otherwise. Taking the above into account, it is considered that the development conflicts with the Development Plan as a whole and it is recommended that planning permission be refused.
- 16.108 In view of the ongoing breach of condition 2 of planning permission ref. SW/11/0945 it is also recommended that enforcement action is authorised to pursue compliance with condition 2.

RECOMMENDATION – Refusal of planning permission for the following reasons:

1. The site lies within the countryside of the Borough where permanent residential development is resisted in principle, and where the existing two month holiday park occupancy break, together with further restrictions during the open season, provides relief to local residents from noise, disturbance and other amenity concerns, and protects the character and appearance of the wider countryside associated with year round residential occupation of the site, as opposed to holiday use. Furthermore, the site represents an unsustainable location for permanent year round residential use by virtue of its remote location within the countryside and outside of any well defined urban boundary, its remoteness and lack of connectivity to services and facilities, its poor integration with existing communities and limited public transport to service the site. The proposal is therefore contrary to Policies ST 1, ST 3, CP 2, CP 3, DM 5 and DM 14 of the Swale Borough Local Plan 'Bearing Fruits 2031'.
2. The permanent year-round residential use of a designated holiday park has resulted in the loss of tourist accommodation harmful to the tourism industry, particularly on the Isle of Sheppey, and thereby contrary to Local Plan policies CP 1, ST 6, DM 3, DM 5 and DM 14.
3. In the absence of a Section 106 legal agreement to secure community infrastructure contributions and financial mitigation against ecological impacts upon the Swale Special Protection Area (SPA) and Wetland of International Importance under the Ramsar Convention (Ramsar Site), the proposal would be contrary to policies CP 5, CP 6, CP 7 and DM 28 of the Swale Borough Local Plan 'Bearing Fruits 2031'.

RECOMMENDATION – Authorise enforcement action in relation to the breach of condition 2 of planning permission ref. SW/11/0945.

