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## Appeal Decision

Hearing held on 9 June 2015

Site visit made on 9 June 2015

by **L Gibbons BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 July 2015

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**Appeal Ref: APP/V2255/A/14/2223765**

**Parklands Village Residents Association, Parklands Village, The Broadway, Minster on Sea, Sheerness ME12 2DH**

- 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 carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mrs M Mace (Parklands Village Residents Association) against the decision of Swale Borough Council.
  - The application Ref SW/13/1546, dated 16 December 2013, was refused by notice dated 14 February 2014.
  - The application sought planning permission for proposed construction of 160 holiday cottages without complying with a condition attached to planning permission Ref SW/87/1191, dated 17 February 1988.
  - The condition in dispute is No 2 which states that: *The chalet hereby permitted shall not be occupied between 2<sup>nd</sup> January and March 1 in any year.*
  - The reason given for the condition is: *As the area is considered unsuitable for permanent residential development.*
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Council refer to Policies CP1 and DM5 of the Swale Emerging Local Plan (Bearing Fruits) 2013. The Bearing Fruits document has been the subject of consultation and the Examination will begin in September 2015. The Council requested that significant weight should be given to these policies and I note that there was a very limited number of objections to Policy DM5 in particular. Given the stage that it has reached and noting that there were potentially significant objections to the rest of the document, I have given this only moderate weight.
3. The grounds of Appeal refer to a 'fall-back position' being open to the occupiers of Parklands Village to locate caravans on a temporary basis on the appeal site during the months of January and February. At the Hearing, the appellant confirmed that they were no longer intending to pursue this fall-back position. I have dealt with the appeal on this basis.

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### Background and Main Issues

4. Parklands Village consists of 76 terraced and semi-detached single storey properties and they were built on the basis of planning permission for 160 holiday cottages which was granted for a larger site in 1988. Part of the land relating to the planning permission remains undeveloped. The properties were occupied from 2003.
5. The appeal site has a planning history which includes enforcement appeals relating to 58 of the properties and a planning appeal which were dismissed in 2010. The Council explain that the development was always intended for holiday accommodation to help improve the quality and quantity of that type of accommodation on the Isle of Sheppey. There is no limit on a maximum stay, so the accommodation could be occupied for the full 10 months. The planning permission and legal agreement requires the gates to be locked and services to be switched off during January and February, although I understand that services remain switched on.
6. The appellant is seeking to remove the disputed condition to allow 12 months occupancy. The Parklands Village Residents Association (PVRA) argues that Parklands Village has never been occupied as holiday accommodation, and that the standard of construction of the properties which are brick built suggests that the accommodation was only ever intended to be for permanent use. Whilst I accept that the occupants may have bought the properties on the basis that they could live there permanently, it remains the case that this is not what the planning permission or condition allows. Taking the above historical background into account, the main issues are:
  - a) Whether permitting the properties to be used as permanent residential accommodation would represent an unacceptable flood risk to the occupiers;
  - b) The effect of removing the condition on the stock of holiday accommodation and the tourist economy of the Borough; and,
  - c) Whether there are any other material considerations which mean that the appeal should be determined other than in accordance with the development plan.

### Reasons

#### *Flood risk*

7. Paragraph 100 of the National Planning Policy Framework (the Framework) states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. The appeal site is located within Flood Zone 3a; these areas have a high probability of flooding. The site is at risk from flooding from tidal and fluvial flooding. At the Hearing, the Environment Agency (EA) confirmed that the sea defences have been improved significantly and that the new shingle embankment is much higher than the original embankment. The Scrapsgate Drain flows to the south-east of the appeal site out to the sea and although the drain is cleared and managed on a regular basis, should this overflow, the appeal properties would not be defended from this.
8. The Flood Risk Assessment (FRA) submitted with the planning application classifies the properties as 'vulnerable' on the basis of their brick construction

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and that they were already in use as permanent residential accommodation. The EA do not agree with the conclusions in the FRA. Table 2 of the Framework's Technical Guidance states that 'Caravans, mobile homes and park homes intended for permanent residential use' can only be considered as highly vulnerable. The EA acknowledges the method of construction of the properties which were built to the relevant building regulations at that time, would be more robust than caravans located on sites adjacent. However, at the Hearing the EA confirmed that it would be unable to consider them as anything other than holiday accommodation in line with the 1988 planning. Based on the evidence before me, I therefore agree that there is no basis on which to apply the Exception Test as set out in the FRA.

9. The FRA indicates that as the primary source of flooding is tidal with improved sea defences the properties are therefore well protected and in addition that the highest tides are in March and September when the properties are already occupied. At the Hearing, the EA disagreed with this assessment and argued that the greatest risk is in the winter months, where low pressure can result in storm surges that may result in sea levels significantly higher than usual. The EA also indicated that due to recent modelling undertaken by them, spending on defences would be needed in future years, although I note nothing is planned immediately.
10. I note that the appellant refers to 1 in 6 homes being subject to flood risk. I acknowledge that the current occupiers of Parklands Village, who spoke at the Hearing, accept the risk associated with flooding and that their houses and lives are insured against flood risk. However, this may not be applicable to future occupiers either in terms of acceptance of risk or future levels of insurance.
11. I understand that there is now no Island flood siren warning system in place. The appellant refers to the occupiers of Parklands Village having signed up to the EA's Floodline Service, and although I was not provided with a copy, I understand that Minster Parish Council has produced an Evacuation Plan. In addition, the PVRA have developed a Flood Evacuation Plan and this is managed by the local occupiers themselves. The plan includes amongst other things, the provision of information on flooding to occupiers, sandbags to each property and vehicles to help move people off the site in case of flooding. The residents are also aware of who within Parklands Village would need some help to move out. I also accept that the Abbey Motel which some of the occupiers stay at during the winter months is also in the same Flood Zone, although I note this is slightly closer to higher ground and Flood Zone 1, than the appeal site.
12. The FRA states that the site could be affected by a breach in the Island's sea defences to a level which could result in approximately 2 metres of internal flooding within the properties. Despite their brick built construction, the buildings are single storey with eaves heights of around 2 metres and are not specifically designed to be flood resilient. Access to the loft of the properties via a pull down ladder is possible. However, there is no means of escape from the roof or proper ventilation within the roofspace and the EA confirmed that this would not be suitable as a safe refuge in the event of flooding. Notwithstanding the mitigation measures and plans in place, human failings and errors can and do occur, including failures in technology, illness, accidents,

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delayed departure and an understandable natural personal reluctance to move out rapidly.

13. I accept that the site did not flood in January 1953 when there was an example of severe flooding in the East of England, nor did it flood in recent winter months. Nevertheless, the risk of the tidal defences being overtopped or breach during an extreme tidal event remains. Having regard to the comments of the EA and the vulnerability of the occupiers, some of whom I was advised have health and mobility difficulties, I consider that to remove the condition would cause unacceptable risk from flooding to the occupiers of Parklands Village and it would be contrary to the provisions of the Framework in relation to flood risk.

*Holiday accommodation and the tourist economy*

14. The supporting text at paragraph 5.1.20 of the Bearing Fruits document refers to tourism being an important part of the local economy of Swale Borough. The Borough's principle tourism assets are referred to and this includes holiday parks and the Isle of Sheppey. Policy CP1 of Bearing Fruits amongst other things seeks to safeguard the Borough's tourism assets and Policy DM5 seeks to resist the permanent occupancy of caravans and chalets. Policy B5 of the LP seeks to retain existing tourist facilities, including holiday accommodation. Policy B7 of the LP relates to seasonal occupancy periods for holiday parks.
15. I accept that the properties have never been marketed as holiday homes and were purchased as freehold residences, although the majority of the occupiers at the Hearing were aware of the condition restricting the occupancy period when they purchased the property. The appellant also refers to the closure of the ferry link from Sheerness to Holland (the Olau Line) and that the properties were built after this and would have never have supported the tourism industry as a result. However, there is no doubt that the properties were only permitted as holiday homes and not permanent dwellings, nor is there any evidence before me to suggest that they could not be used as holiday accommodation.
16. I note that the number of bed spaces within the Borough which could be provided would be more than other tourist resorts such as Blackpool. At the Hearing I was referred to recent meetings between the local Member of Parliament for Sittingbourne and Sheppey and local caravan park owners. Although I have not been provided with details of the meetings, I understand that matters under discussion included occupancy rates, users of the properties not being holiday makers and the lack of entertainment facilities at some holiday parks making them a poor offer to tourists.
17. The brick built method of construction and appearance of the properties does differ from the neighbouring holiday accommodation at Meadow View for example, which are more akin to caravans and which are more common on the island. I understand that there are over 50 operational holiday parks on the Isle of Sheppey and the appellant indicates that the appeal site would only make a small contribution in terms of bed spaces. Nevertheless, whilst the layout also appears to be more akin to that within a residential development, the appearance and construction of the properties also makes a high quality contribution to the tourism offer on the Isle of Sheppey.

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18. I have been referred to park home developments at Leysdown, Pilgrims Retreat, Maidstone and Four Horseshoes Park, Graveney which are now occupied during 12 months of the year and which I understand are not built to the same type of construction as the appeal site. There was some discussion at the Hearing about what factors led to the change in the occupancy condition, some of the examples were clearly affected by the failure of the Council to take enforcement action, which is not the case here. I have not been provided with any further details in relation to the other examples in order to be able to make a comparison between them and the appeal proposal. As such, I am unable to give this weight in considering the proposal before me.
19. I was referred to a lack of any recent assessment of the tourism need within the Borough and that the Council's policy towards tourism has been in a similar form for a number of years. Nevertheless, the Council's strategy and policies in respect of tourism, including holiday parks remains in place and I have not been provided with detailed evidence to suggest that these are no longer appropriate.
20. The Council refer to the potential effect of removing the condition to allow 12 month occupation on other places which provide holiday accommodation. Taking into account the numbers of holiday parks within the area even if they are not constructed in the same manner as those within the appeal site, I agree with the Council that this would be likely to lead to further pressure for the removal of occupancy conditions at other holiday parks, which the Council would find very difficult to resist. This would undermine the Council's well established tourism strategy and the contribution that holiday parks on the Island make to the local economy.
21. For the reasons given above, I conclude that the removal of the condition would have an unacceptable effect of the stock of holiday accommodation and tourist economy within the Borough. It would be in conflict with Policies B5 and B7 of the LP and would be contrary to emerging policies CP1 and DM5 of the LP.

*Other material considerations*

22. Paragraph 47 of the Framework indicates that in order to boost significantly the supply of housing, local planning authorities should ensure that they meet their full and objectively assessed needs for market and affordable homes. At the Hearing the Council confirmed that it was not able to demonstrate a five year supply of housing land, with a shortfall of 831 dwellings amounting to approximately 3.5 years supply. This would be a substantial and significant shortfall. The appellant argues that the Local Plan is out of date and that the accommodation in use as permanent residences is sustainable development.
23. The Framework identifies three dimensions to sustainable development – economic, social and environmental. The appellant refers to the lack of accommodation for the elderly and retired people within the Borough, including a waiting list for people for bungalow type accommodation. The proposal would bring a benefit in terms of meeting the social role by assisting in the supply of housing, including for smaller homes. I also accept that the occupiers of Parklands Village use the local facilities and spend money locally. The properties are also subject to Council Tax. The appeal site is within walking distance of shops and services and bus stops.

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24. In social terms, the appellant also refers to the properties being vulnerable to crime if the appeal site was closed during the months of January and February, and I accept that this would be of a serious concern to the occupiers. However, I have not been provided with any evidence to indicate that this would be a significant risk.
25. Whilst I note that the occupiers may be spending money over a longer period of time, it is not clear that the contribution would be more to the local economy than that gained through the use of the properties as holiday accommodation for 10 months. In addition, the proposal would be contrary to the Council's tourism strategy and would have a negative impact on the tourism economy. In respect of the environmental role, there is a significant risk in terms of flooding. I conclude that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.

### **Conclusion**

26. I have taken account of the effect on occupiers of the need to move from their homes during the winter months. I accept that some occupiers find it very difficult to move off the site during January and February for reasons of ill health for example and that others may choose to stay on the site. I also note that other occupiers of the appeal site do move away at this time. At the Hearing, there was discussion that if the appeal were to be dismissed, this would interfere with the occupiers right to a home, which comes within Article 8 of the European Convention on Human Rights. The right to a home is a qualified right where interference is permissible including in respect of public safety or the economic well-being of the country. Having regard to my significant concerns for public safety relating to flood risk and the effects on the tourism economy, I conclude that the interference that arises from the occupancy condition is limited and proportionate and does not amount to a violation of the human rights of the occupiers.
27. For above reasons and having regard to all matters raised, I conclude that the appeal should be dismissed.

*L Gibbons*

INSPECTOR

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APPEARANCES

FOR THE APPELLANT

Mrs M Mace	Parklands Village Residents Association
Mrs J Roullier	Parklands Village Residents Association
Mr J Burke	Constituency Manager for Gordon Henderson, Member of Parliament, Sittingbourne and Sheppey
Mr M Wood	Parklands Village Residents Association (Flood Committee)
Mrs P Abela	Parklands Village Residents Association (Chair)

FOR THE LOCAL PLANNING AUTHORITY

Mr M Goddard	Planning Consultant acting on behalf of Swale Borough Council
Mr J Byne	Flood Risk Officer, Environment Agency
Ms G Mitri	Planning Adviser, Environment Agency

INTERESTED PERSONS

Mrs M Brett  
 Mr C McMahon  
 Mr R Wickwar  
 Mrs S Sage  
 Mr A Wisdon  
 Mr Hubbard  
 Mrs M Crain  
 Mrs M Hooper  
 Mrs Baker  
 Mr R Salt  
 Mr V Guyver  
 Mr J Pieri

DOCUMENTS AND PLANS SUBMITTED AT THE HEARING

- 1 Statement to the Hearing by Gordon Henderson, Member of Parliament  
supplied by Mr J Burke

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- 2 Statement to the Hearing by Mrs M Mace and Mrs J Roullier supplied by the appellant
- 3 Parklands Village Flood Evacuation Plan supplied by Mr Wood on behalf of the Parklands Village Residents Association
- 4 Flood Map – Defences (Minster) supplied by the Environment Agency