



Appeal Decision

Site visit made on 24 November 2015

by **Cullum J A Parker BA(Hons) MA MRTPI AIEMA**

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

Decision date: 28 January 2016

Appeal Ref: APP/V2255/W/15/3133538

Howt Green Farm, Sheppey Way, Bobbing, Sittingbourne ME9 8QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by AC Goatham & Son against the decision of Swale Borough Council.
 - The application Ref 14/505985/FULL, dated 18 November 2014, was refused by notice dated 4 March 2015.
 - The development proposed is described as 'proposed change of use of land for creation of hardstanding to site 16 mobile homes for 52 weeks of the year for occupation by seasonal agricultural workers along with associated engineering works'.
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Decision

1. The appeal is allowed and planning permission is granted for proposed change of use of land for creation of hardstanding to site 16 mobile homes for 52 weeks of the year for occupation by seasonal agricultural workers along with associated engineering works at Howt Green Farm, Sheppey Way, Bobbing, Sittingbourne ME9 8QP in accordance with the terms of the application, Ref 14/505985/FULL, dated 18 November 2014, subject to the conditions set out in Appendix A of this decision.

Procedural Matter

2. At the appeal statement stage, the local planning authority informed the Planning Inspectorate that *'having reappraised the decision of the Planning Committee, Members have resolved that the Council is unable to present a case defending the reason for refusal of the application. Therefore, Swale Borough Council has decided not to contest the appeal.'* Nonetheless, there is no indication that the original decision notice has been quashed and therefore the appeal submitted by the appellant remains to be determined. I have proceeded on this basis.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

Character and appearance

4. The appeal site is located adjacent to Sheppey Way with the area to be used for the stationing of caravans currently an orchard. There are a number of
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larger warehouse type buildings on the site, which appear to be used for the storage of produce grown on the adjoining and nearby land. I also saw that the area surrounding the buildings is used for the storage of produce in wooden crates and for the turning and storage of tractors and other vehicles with areas of hardstanding. To the rear of the site there are 16 existing mobile homes, with associated parking area. Public vantage points are provided from Sheppey Way and the restricted Byway ZU48A, from which, it is clear that the site is used for agricultural purposes.

5. The proposed location of the mobile homes would be in the south-eastern corner of the site. This is partially screened by an established hedge along the road. The appellant has indicated on the submitted drawings that further landscaping would be provided within the appeal site, and this would further reinforce the screening of the mobile homes when viewed from Sheppey Way and from the byway near to the entrance into the site. Furthermore, I consider that a planning condition could reasonably be used in order to ensure that the current landscaping is reinforced, which would lessen the visual impact. The visibility of the proposal also needs to take account of the backdrop of the larger agricultural buildings to their rear; which would also lessen their prominence within the street scene. Both of these factors would reduce the visual impact, and would mean that the proposed development would not appear as an incongruent feature at odds with the agricultural and rural landscape adjacent to the Sheppey Way.
6. I therefore conclude that the provision of 16 mobile homes for seasonal agricultural workers and associated engineering works would not result in material harm to the character and appearance of the area. Accordingly the proposed development would accord with Policies E1, E9 and E19 of the Swale Borough Local Plan 2008, which, amongst other aims, seek to ensure that developments are well sited and of a scale, design and appearance that is appropriate to the location with a high standard of landscaping. It would also accord with the aims of the National Planning Policy Framework, which seeks to ensure that planning policies support economic growth in rural areas in order to create jobs and prosperity.

Other Matters

7. A number of concerns have been raised by neighbours; I now consider these before coming to an overall conclusion. Concerns have been raised as to the collection and drop off point for seasonal workers, however it is clear from drawing 2254/P/10C that it would be located near to the existing mobile homes and a condition requiring this to be the sole pick up and drop off point would not be unreasonable in order to protect nearby residential amenity. I am also mindful that the local highways authority is satisfied that the proposal would have more than an insignificant impact on the highway, and I see no reason not to concur given the scale of the development proposed.
8. In terms of localised flooding, there is little evidence before me that demonstrates that the appeal site or nearby is affected by specific flooding issues. Nevertheless, a condition requiring details of surface and foul water drainage could be used to ensure that the development does not introduce any specific issues in this respect from the proposed development. Concerns have been raised in terms of the need for further mobile homes on the site and the general management of the site. However there is no indication from the

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Council, through evidence such as environmental health or police complaints for example, that any reported anti-social or site management issues have occurred in the past or would arise from the 16 mobile homes sought in this case.

9. The general demand for apples in the market place has been questioned, but it is unclear how this is relevant when the appellant, who appears to have farmed local land for a number of years, clearly considers that they require further accommodation for seasonal workers. Furthermore, there is no cogent evidence before me which supports this assertion. Questions have been raised in terms of the fact that workers may not be local and could come from across the European Union. However, the origination point of seasonal workers and the right to work within the UK is not a planning justification for refusing permission.
10. Having taken into account the other matters raised, I do not find, whether individually or cumulatively, they amount to justification for the refusal or planning permission and therefore the dismissal of the current appeal scheme.

Conditions

11. The Council have suggested a number of conditions. I now consider in light of the Planning Practice Guidance and Paragraph 206 of the National Planning Policy Framework in terms of the use of planning conditions. A condition requiring the proposal to be carried out in accordance with the submitted drawings is necessary for the avoidance of doubt. Details of the disposal of foul and surface water are necessary in order to prevent ground water pollution and flooding. Conditions requiring details of wildlife mitigation measures, soft landscaping and that a dark green colour is used are reasonable to ensure that the proposal enhances local biodiversity and does not adversely affect the character or appearance of the rural location. This should also include conditions relating to the boundary treatments proposed, including the acoustic fence.
12. A condition restricting hours of construction work is necessary in order to reduce noise, disturbance and nuisance levels for local residents at evenings, weekends and bank holidays. However the hours suggested, from 07:30 to 19:00 would be a large part of the day and it would not be unreasonable to impose a shorter time period of 08:00 to 18:00 in order to protect nearby residential amenity. For similar reasons, conditions requiring precautions to limit construction vehicles depositing mud on the highway, restricting the use of external lighting, and that a single pick up and drop off point is used would be reasonable and necessary in this case. Conditions restricting occupation of the mobile homes, the numbers and remediation measures when they are no longer required are necessary and reasonable in order to protect the rural character of the area.

Overall Conclusion

13. For the reasons given above, and having taken into account all matters raised into account, I conclude that the appeal should be allowed.

Cullum J A Parker

INSPECTOR

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Appendix A – List of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2254/P/10 C and 3307/DR 001 rev A.
- 3) Prior to the commencement of development hereby approved, full details of the method of disposal of foul and surface waters shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to occupation of the development hereby approved and thereafter retained.
- 4) Prior to the commencement of development hereby approved, a report demonstrating how the proposal will incorporate measures designed to encourage and promote local biodiversity and wildlife shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to occupation of the development hereby approved and thereafter retained.
- 5) No construction work, including demolition or engineering operations, shall take place outside 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays, nor at any time on Sundays or Bank or Public Holidays.
- 6) Prior to the commencement of the development hereby approved, full details of adequate precautions to be taken during the period of construction to prevent the deposit of mud and or other debris on the public highway arising from the development hereby approved shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented as approved until the works have been completed.
- 7) No development shall take place until full details of soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include details of fencing, planting schedules of plants, (including indigenous species and of a type that would enhance or encourage local biodiversity), plant sizes and numbers where appropriate and an implementation programme. Such details shall also include planting to reinforce the existing mature hedgerow to the south west of the proposal and the proposed mixed native species hedgerow to the north west of the proposal as shown on drawing 3307/DR001 rev A.
- 8) All soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority. Any trees, shrubs or other plants that die, is removed or becomes seriously diseased within 10 years of planting shall be replaced with one of an original similar size and type.
- 9) Prior to the commencement of the development hereby approved, details of a 3 metre high acoustic fence to be located along the boundary with Sheppey Way, shall be submitted to and approved in writing by the local planning authority. The approved details shall be erected prior to occupation of any of the mobile homes and thereafter retained.

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- 10) The mobile homes hereby permitted shall be used for the purpose of seasonal workers accommodation in association with agriculture as defined by Section 336(i) of the Town and Country Planning Act 1990, as amended (or any definition which replaces it) and for no other purpose including Class C3 (residential) of the Use Classes Order 1987, as amended. The total number of seasonal agricultural workers accommodated within the mobile homes hereby permitted shall not exceed 50 persons (including immediate family members). Such accommodated seasonal workers should undertake work for AC Gotham & Son only (or any successor in title).
- 11) Prior to occupation of the mobile homes hereby permitted, details of the dates of occupation of the mobile homes shall be submitted to the local planning authority. Such details shall include a period of five months in any year during the apple and pear harvest between 1 July and 30 November where all 16 mobile homes may be occupied. It shall also contain details of which of the four of the mobile homes shall be used for human habitation until 31 December of that same year. Thereafter, none of the mobile homes should be used for human habitation until the start of the next harvest season, unless stated otherwise in the submitted details. The submitted details should also include details of how occupancy would be monitored so as to ensure that the condition is reasonably complied with, such as a log book of occupation dates and this shall be made available for inspection by the local planning authority.
- 12) Should any of the mobile homes become redundant or unused for two consecutive years for the purposes set out in Condition 10, they shall be removed from the site and the land restored to its original conditions; that is the hardstanding removed and the land restored to its natural state as farmed land. Should all the mobile homes be removed under this condition, the fences subject to condition 7 and 9 of this permission shall be removed within 3 months of the cessation of the use and removal of the mobile homes.
- 13) At no time shall there be more than 16 mobile homes stationed or stored within the area of the appeal site. Furthermore the caravans shall only be sited in the area shown on drawing 2254/P/10 C.
- 14) The mobile homes shall be coloured dark green in colour as set out in the Landscape and visual impact assessment and thereafter retained in such colour.
- 15) No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details submitted and agreed in writing by the local planning authority. Such details shall include a statement as to the need for the lighting, the hours and frequency of operation, the areas of illumination and beam angles, and the number and location of any lighting. Thereafter any lighting details shall be installed as agreed and retained in that condition.
- 16) Details in the form of cross-sectional drawings through the site, of the existing and proposed site levels shall be submitted to and approved in writing by the local planning authority before work commences and the development shall be completed strictly in accordance with the approved levels.



Costs Decision

Site visit made on 24 November 2015

by **Cullum J A Parker BA(Hons) MA MRTPI AIEMA**

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

Decision date: 28 January 2016

Costs application in relation to Appeal Ref: APP/V2255/W/15/3133538 Howt Green Farm, Sheppey Way, Bobbing, Sittingbourne ME9 8QP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by AC Goatham & Son for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for 'proposed change of use of land for creation of hardstanding to site 16 mobile homes for 52 weeks of the year for occupation by seasonal agricultural workers along with associated engineering works'.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The application for costs was made and responded to on the basis of the Planning Practice Guidance issued on 6 March 2014 (the Guidance). The Guidance, advises that costs may only be awarded against a party who has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The appellant considers that the Council has acted unreasonably by refusing planning permission when the agreed Statement of Common Ground (SOCG) agrees that *'there are no planning considerations which render the scheme unacceptable and that the appeal should be allowed without delay in accordance with the requirements of the National Planning Policy Framework'*. The appellant goes on to provide five areas where they consider the Guidance are relevant. Put simply, that the unnecessary and wasted expense incurred are a result of having to make a needless appeal.
4. The Council's response deals solely with the fact that they do not consider that high level legal advice sought by the appellant was necessary given the issues raised. They also point out that the appeal procedure was set by the Planning Inspectorate, not the Council, and therefore it would be unfair for the Council to cover the costs in preparing for a Hearing.
5. The Council refused planning permission on 4 March 2015, following a committee meeting on 19 February 2015 where the officer's recommendation was to grant permission subject to conditions. The motion leading to this refusal was limited to *'it was over-intensive and would have a detrimental impact on the visual amenity of the area'*. No other reasoning to support this

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stance has been provided within either the Council's statement of case or the planning committee minutes. Nor has any further reasoning been provided within the Council's rebuttal of the application for costs. It would, therefore, be difficult for the objective observer to understand firstly; what concerns the Council actually had in practice and secondly; whether conditions could be reasonably used to mitigate the impact.

6. These factors are further compounded by the apparent about-turn by the local planning authority, who's Planning Committee on 15 October 2015 decided, for an unspecified reason, not to contest the appeal. Instead, it is now considered by the Council that there are no planning considerations that render the scheme unacceptable. In practice, this means that the appellant has had to unreasonably incur the costs in preparing for the appeal due to this unsubstantiated lack of contesting the original decision. This is a completely unreasonable stance by the Council, which has not been adequately explained. Nor has any effort been made to either quash the original planning decision made in March 2015 or invite a further application from the appellant. Indeed, if permission had been granted by the Council in March 2015, as its uncontested stance implies, there would have been no need for the appellant to have appealed the decision. The Council has therefore acted unreasonably and the appellant has as a result incurred unnecessary and wasted expense.
7. I acknowledge that the appeal was to be considered by Hearing. However, after careful consideration of the case file, the various points raised, the issues at hand, and the views of local residents, the appointed Inspector considered that the Written Representations procedure would be appropriate and ensure a fair, impartial and open consideration of the appeal scheme. This change of procedure followed the Council's withdrawal of their sole reason for refusal somewhat late in the appeal process. In any case, the specific amount of any costs sought is a matter for the parties to resolve themselves, as detailed in the costs order.
8. I therefore find that the costs involved in addressing the key issue of the refusal, and the subsequent need to appeal, do represent an unnecessary expense for the applicant. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Swale Borough Council shall pay to AC Goatham & Son, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Swale Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Cullum J A Parker

INSPECTOR

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