



Appeal Decision

Site visit made on 2 July 2025

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th July 2025

Appeal Ref: APP/V2255/W/24/3356382

Vanity Farm Camp, Leysdown Road, Leysdown, Kent ME12 4LN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Sharon Noble against the decision of Swale Borough Council.
 - The application Ref is 22/505752/FULL.
 - The application sought planning permission for Caravan Camp without complying with a condition attached to planning permission Ref SW/11/1608, dated 7 March 2012.
 - The condition in dispute is No 2 which states that: No chalets shall be occupied except between 1st March and 2nd January in the following calendar year, and no chalets shall be occupied unless there is a signed agreement between the owners or operators of the Park and all chalet owners within the application site, stating that:
 - (a) The chalets are to be used for holiday and recreational use only and shall not be occupied as a sole or main residence, or in any manner which might lead any person to believe that it is being used as the sole or main residence; and
 - (b) No chalet shall be used as a postal address; and
 - (c) No chalet shall be used as an address for registering, claiming or receipt of any state benefit; and
 - (d) No chalet shall be occupied in any manner, which shall or may cause the occupation thereof, to be or become a protected tenancy within the meaning of the Rents Acts 1968 and 1974; and,
 - (e) If any chalet owner is in breach of the above clauses their agreement will be terminated and/or not renewed upon the expiry of their current lease or licence.On request, copies of the signed agreement(s) shall be made available to the Local Planning Authority.
 - The reason given for the condition is: In order to prevent the chalets from being used as a permanent place of residence, and in pursuance of policies E1 and E6 of the Swale Borough Local Plan 2008.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal application seeks the variation of condition 2, by deleting the part that states 'except between 1st March and 2nd January in the following calendar year', which would allow year-round occupation subject to the other restrictions set out in conditions 2, 3 and 4 and the accompanying schedule. The application does not seek a material change of use or permanent residential accommodation.
3. The appellant has suggested a temporary permission to allow the effects of the proposal to be fully considered. Based upon the advice in paragraph 21a-014-20140306 in the Planning Practice Guidance, I see no reason why I could not grant a temporary permission were I minded. I have had regard to this in determining this appeal.

4. The appellant has proposed the appeal proposal is amended to propose occupation for 11½ months of the year. The Procedural Guide¹ states the appeal process should not be used to evolve a scheme, and it is important that what is considered by an Inspector is essentially the same scheme considered by the LPA and by interested parties at the application stage. The amendment would conflict with the wording of the proposed change on the application form, and a number of persons consulted upon the scheme have expressed strongly held views for and against the proposal, based on a year-round occupancy as per the application.
5. In consequence, were I to determine the appeal upon the amendment I have concerns that it would deprive interested parties who were entitled to be consulted on the amended application, of the opportunity to make any representations that, given the nature of the changes, they may have wanted to make on the amended scheme. Therefore, I have determined appeal based on the scheme determined by the Council and which I can be assured that interested parties are fully aware of, and have had the opportunity to comment upon.

Main Issues

6. The main issues are:
 - the effect of the proposed variation of condition 2 upon designated habitats sites;
 - the effect of the proposed variation of condition 2 upon the character of the area, and securing and monitoring an appropriate standard of accommodation; and,
 - in the event of any harm or policy conflicts being identified in respect of the above issues, whether or not there are any other considerations that justify the proposed variation.

Reasons

Designated habitats sites

7. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require where a plan or project is likely to result in a likely significant effect (LSE) on a designated habitats site, a competent authority is required to make an appropriate assessment of its implications on the integrity of the designated site, in view of its conservation objectives. Any LSEs need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
8. The appeal site is in proximity to the Swale Special Protection Area (SPA) and Ramsar site and the Medway Estuary and Marshes SPA and Ramsar site. The sites are designated because they provide important habitats for wintering, migratory and breeding waders, seabirds, waterfowl and other birds (the qualifying features). Their conservation objectives are to maintain or restore their integrity by maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats of the qualifying features, the population of each of the qualifying features, and the distribution of the qualifying features within the site.

¹ Paragraph 16.1 of the Procedural Guide: Planning appeals – England (2025).

9. Studies have found that increased visits and recreational use by occupiers within proximity to the habitats sites, with activities including walking, dog walking, cycling, and jogging are likely to disturb the qualifying features. This can affect their ability to feed, rest, and nesting², constituting LSEs upon them. Though the magnitude of LSEs would be dependent upon occupancy rates, this appeal proposal would result greater occupation of up to 151 chalets, for either a temporary or permanent period, within a distance of habitats sites where it is identified there would likely be increased visits from occupiers, with LSEs, upon the qualifying features.
10. A strategic package of measures to mitigate LSEs from recreational pressure and disturbance are set out in the Thames, Medway and Swale Strategic Access Management and Monitoring Strategy³. It is based upon a costed tariff, to fund mitigation measures for each unit or scheme. To effectively mitigate LSEs, the contributions must be secured, and mitigation undertaken prior to occupation. The Council's view is this proposal should contribute one third of the total per unit cost, because it seeks occupation for an additional third of the wintering bird season.
11. The appellant contests the appeal proposal conflicts with development plan policies cited, because it is not an act of development, and also that it does not conflict with the NE advice⁴ and the Council's website⁵, which refer to development and/or housing. Plan policies refer to 'development proposals', and the criteria refer to 'projects'. This proposal is to alter a development, and is an independent project, so the policies are applicable to this appeal proposal. The NE advice is clear that the underlying research is that all activities likely to result in additional recreational pressure, should be addressed with mitigation⁶, and it refers to relevant Regulations⁷ which any project needs to comply with.
12. In response to this appeal NE has confirmed its view this proposal would impact upon the integrity of the habitats sites and qualifying features, if un-mitigated. I attribute the views of NE, as the Statutory Nature Conservation Body significant weight. In-light of the research and evidence, increased occupation from this proposal would be likely to result in increased visitors and LSEs. There is not evidence demonstrating LSEs can be ruled out, beyond all reasonable scientific doubt. Any increase in the occupation period and a temporary consent would still mean there are some LSEs, and so proportionate mitigation needs to be secured.
13. There is no planning obligation, or other means of securing mitigation before me, to prevent LSEs. The scheme makes no other provision to mitigate the LSEs and maintain the integrity of the habitats sites. In consequence, this proposal does not make adequate provision to mitigate the LSEs, and maintain or restore the integrity of the habitats sites, so would fail to adhere to their conservation objectives.
14. Imperative reasons of overriding public interest do not exist, and it is not demonstrated there are no alternative solutions, or that other adequate measures are secured. Section 63(5) of the Regulations states the competent authority may agree to a plan or project, only after having first ascertained that it will not adversely affect the integrity of habitats sites. Therefore, it would not be appropriate or

² Phase I Bird Disturbance Report by Footprint Ecology (July 2012).

³ The Thames, Medway & Swale Estuaries – Strategic Access Management and Monitoring Strategy (22 July 2014).

⁴ Letter from Natural England dated 6 January 2015.

⁵ Appendix H of the Appellant's Appeal Statement – Strategic Access Management and Monitoring Strategy extract.

⁶ Ibid, Page 2, 4th bullet point.

⁷ Ibid Footnote 3, Page 1.

acceptable to address this matter by conditions, and, in-light of the legislative duties this matter precludes the proposal from proceeding.

15. For the reasons set out above, the appeal scheme would have LSEs upon designated habitats sites. This is in conflict with Policies CP7 and DM28 of the Swale Borough Local Plan (2017) (the SBLP), which seek that it is ensured that there are no LSEs upon designated habitats sites and where there is any adverse effects, permission will only be granted where there are no less ecologically damaging alternatives, there are imperative reasons of overriding public interest and damage can be fully compensated.

Character and accommodation

16. Policy DM5 of the SBLP sets out criteria for permitting a 10-month occupancy, which the appeal site, like many others on Sheppey currently benefits from. It also states that in order to ensure a sustainable pattern of development and to protect the character of the countryside, permission will not be granted for the permanent occupancy of chalets. The supporting policy text explains that limited occupation also affords the opportunity to retain a period of tranquillity in rural and other areas, and the Council refers to a nearby dismissed appeal⁸ citing respite to an area and residents. Reading the policy in-light of the supporting text, I take this part of the policy to be applicable to proposals seeking permanent availability for occupancy.
17. Policy DM5 is consistent with National Planning Policy Framework (2024) (the Framework) objectives in respect of protecting local character, and seeks to strike a balance with other competing policy objectives such as in respect of economic development and tourism. Though DM5 is now of some age, I cannot conclude that updates to the Framework, and the other wider societal and economic changes referred to, result in this policy being out of date.
18. The site is outside designated development plan settlement boundaries in the open countryside, accessed via the main road to the Rural Local Service Centre of Leysdown. It is adjacent and close to other park and caravan sites in east, north and north westerly directions, as well as what appeared to be a residential institution, and a few dwellings, with largely open fields to the south and west.
19. I have noted the appellant's views that the settlement boundaries are out of date with reference to changes to the Framework, and buildings and uses just outside the designated built-up area. However, having considered these, it does not lead me to the view the site should be deemed to be within the settlement boundary. The appeal site is a verdant site with many single storey buildings and sizeable greenspace areas, being of established holiday park character. It is located close to other parks and buildings, but is also close to open fields on two sides. In my judgement its character relates more closely to the local rural area, and not the established built-up area.
20. While the occupation may be limited during the additional period, weather conditions may limit outdoor site activity, and the site appears well-managed, it is unclear how the appellant can ensure negligible activity. Notwithstanding nearby facilities, it would seem inevitable that some vehicular travel to larger centres would be needed. Moreover, whether by walking, cycling, public or private vehicles, travelling to local services and facilities would still create some additional activity.

⁸ Ref. 3165477.

21. Considering what has been put to me, even with quite a low level of occupancy, the appeal scheme would result in some increases in activity, some additional traffic, lighting in chalets, and also potentially some increased use of lighting within the park. This all might have a limited discernibility above those from local residents, the limited sites with year-round occupation, streetlamps, businesses and other buildings. Nevertheless, there would be some adverse effects upon the character of the area during this traditionally quieter and darker time of the year.
22. While the effects these would be limited, these would be likely to be perceptible from a limited part of Leysdown Road, and land, rights of way and properties that can gain some visibility of the site where its boundaries are not fully screened by vegetation or closed boundary treatments. Though the Council has referred to effects upon the settlement of Leysdown, given the distance and intervening development, the effects of this appeal alone would be likely to be very minor.
23. The two previous temporary year-round consents⁹ were considered against the need to support the operation of parks in-light of the pandemic and a Written Ministerial Statement (WMS) as material considerations that outweighed policy conflicts. The WMS placed a very high importance upon initially ensuring the movement of people was limited, then economic recovery. Given the WMS is no longer in force, and occupiers may have exercised more caution with certain movements and activities due to restrictions and the virus, I cannot regard those decisions as demonstrative there would be no adverse effects from this scheme.
24. The Interim Park Homes Policy has not been through a full public consultation or an examination, and it is primarily aimed at proposals for residential park homes. This proposal is not for such a use, and it is unclear how chalets comply with criteria 3, 4 and 6¹⁰. As a material consideration, its existence attracts limited weight.
25. Of the appeal cases in the Council's appeal statement¹¹, most were related to the removal of conditions to allow permanent residential occupation, involved caravan sites, and some differing issues to those in this appeal. Though there is some discussion of Policy DM5 and the effects upon the character of the area, the cases are of limited relevance.
26. Though the appellant refers to some approvals¹² and some sites operating without restriction, very little of the details and circumstances to allow a direct and fully reasoned comparison are provided. It appears all but one approval was for small schemes and lawful development certificates. The scheme granted planning permission was for temporary construction workers dwellings. So none seem directly comparable this proposal, which must be considered on its own merits.
27. The appellant informs me the Council has been knowingly allowing a site to be occupied year-round for 7 years, indicating a lack of appetite to enforce against its own policies. Similar is advanced in respect of a retrospective application¹³. Whether or not the Council has ascertained breaches, is gathering evidence, or contemplating action is unclear. Therefore, this matter attracts limited weight.

⁹ Refs. 20/505526/FULL and 21/505773/FULL.

¹⁰ Latest version of Policy dated 17 June 2020.

¹¹ Refs. APP/V2255/W/21/3287086, APP/V2255/W/21/3274740, PP/V2255/W/21/3279116, APP/V2255/W/21/3279125, APP/V2255/W/21/3277288.

¹² Refs. 21/502544/LAWPRO, 15/509233/LDCEX, 18/503870/LAWPRO, 19/502979/LAWPRO, 17/505693/LDCEX, 18/505980/FULL.

¹³ Ref. 22/505778/FULL.

28. Presently, when the site is closed to occupants, gaining a reasonable idea of compliance with closure requirements might be through a simple visual inspection, which would not be possible were this appeal allowed. However, the conditions would still require copies of agreements upon request. Requesting and checking would be more onerous, but I am not satisfied the Council has demonstrated the amended condition would be either unenforceable, or unreasonably onerous such that monitoring compliance would be practically impossible.
29. While each appeal proposal must be treated on its individual merits, I can appreciate the Council's concern that approval of this proposal could be used in support of such similar schemes. I consider this is not a generalised fear of precedent, but a realistic and specific concern because of the number of parks and units of occupation upon them, and from previous applications and appeal decisions, there appears to be a clear desire to pursue extended opening.
30. On its own the effect of this appeal scheme would be limited. However, allowing it would make it more difficult to resist further planning applications for similar proposals, and their cumulative effects could be greater and widespread. The potential for further harm to the character of the area described above attracts some increased weight. However, imposing a greater burden upon the Council to regulate and monitor compliance with consents, attracts limited weight.
31. Nevertheless, for the reasons set out above, were condition 2 to be varied as sought by the appellant, the amendments would result in adverse effects upon the character of the area. This would conflict with Policy DM5 of the SBLP, the relevant provisions of which I have set out above. It would also conflict with Policies ST3 and ST6 of the SBLP insofar as they seek to protect the tranquillity of the countryside and quality of the landscape.
32. Though the Council's first reason for refusal refers to National Planning Policy Guidance, their evidence does not refer me to a specific paragraph or section. Therefore, I have not concluded against the guidance.

Other considerations

33. Schengen arrangements following exit of the EU require non-EU visitors to leave a Schengen country after 90 days in any 180-day period, which the appellant states causes difficulties for a small number of chalet owners. The appellant refers to the occupiers of one chalet as including someone with severe disabilities, for whom disruption should be minimised, and familiarity is important, and the combination of Schengen with the two-month closure, has caused hardship. There are other occupiers who have difficulty with travel due to health and age-related problems, or are classed as vulnerable, and the 12-month occupation would give more flexibility, including for family arrangements and saving costs.
34. Articles 1, 8 and 14 of the European Convention on Human Rights as transposed into the Human Rights Act 1998 (the HRA), set out rights in respect of the protection of property, respect for private and family life, and prohibition of discrimination. Articles 1 and 8 are qualified rights rather than absolute rights. In respect of Article 14, there is some overlap with the Public Sector Equality Duty (PSED) under s149 of the Equality Act 2010 (the EA). There are occupiers of the appeal site that have protected characteristics under the EA.

35. Under the PSED, I must have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; and advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. I must also have regard to the need to minimise the disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.
36. Though there have been opportunities to provide substantive evidence during this written appeal process and the appellant has also made additional submissions, which I have accepted, the details set out and justifications are limited. The appellant has described the current situation as resulting in an excessive burden for a handful of owners. However, it has not been demonstrated that they are prevented from family or private life or would lose property or homes.
37. In respect of Article 14 and the PSED, allowing the appeal would result in some benefits and convenience for those with protected characteristics over the existing established arrangements. This includes individuals and their relatives who have lifestyles that involve travel and residency change from Schengen countries to the UK but do have difficulties with environmental change and for whom disruption should be minimised.
38. However, the appeal site units are not permitted to be a sole or main residence. Occupiers are allowed to Schengen countries for 90-days, but the appeal site closure period is only around two months, giving chalet occupiers sufficient scope to legally reside in a Schengen country over the site closed season, by some margin of time. It is not demonstrated how dismissing this appeal would in practice exacerbate adverse effects in-light of Schengen restrictions and the conditions that would remain in place at the appeal site in respect of residence, or that the effects of dismissing this appeal cannot be managed.
39. Allowing this appeal would advance equality for those with protected characteristics meeting the aims of the PSED, and contribute to protecting those with protected characteristics from discrimination and reduce disadvantage. However, its benefits in this regard are quite limited at best. It is also not demonstrated they the circumstances justify removing the condition for 151 chalets, which would appear a disproportionate response to address matters raised.

Planning Balance

40. The Council has not substantiated its case that the scenario would result in harmful effects upon local infrastructure or services. Indeed, it would appear the on-going spend and use of various services and facilities by chalet occupiers would be likely to result in potential economic and social benefits. It may improve the vitality and viability of local services and facilities, including some important ones, all of which gain support from some Framework and development plan policy objectives. The potential of up to 151 units being occupied for the additional proportion of the year, attracts moderate weight in favour of the appeal scheme.
41. I have legislative duties under the PSED to which I give due regard which are important principles, and rights under Article 14. The effects of maintaining the current situation would appear quite limited, and the benefits would appear to be quite limited, which do not appear to justify changing the restrictions upon 151 chalets. However, I attribute the need advance equality for those with protected characteristics, meeting the aims of the PSED, and the contribution to protection

from discrimination and disadvantage, moderate weight. Overall, the benefits of the appeal proposal attract moderate weight in its favour.

42. The proposal conflicts with development plan policies to protect the tranquillity and character of the area, which attracts limited weight overall against the appeal scheme. That the appeal scheme would result in LSEs upon the SPAs is a very important matter that attracts substantial weight against it. It means the tilted balance in Framework paragraph 11d) does not apply, but more fundamentally, section 63(5) of the Regulations precludes the scheme from proceeding.
43. In balancing the qualified rights of the occupiers against the legitimate interests of other individuals and the wider community or public interest, the closure of the site for 2 months constitutes an established, and limited disruption, where occupiers lose the use of their property so would have to reside at their main home or elsewhere. Its effect upon protection of property and respect for private and family life appear to be limited.
44. I conclude on balance, the interference with the rights of affected individuals are proportionate and necessary, and the wider community or public interest having regard to the conflict with development plan policy objectives of preventing adverse effects upon local character, and preventing in LSEs upon habitats sites in breach of the Regulations, is not outweighed by the qualified rights under Articles 1, 8 and 14. I therefore conclude it is proportionate and necessary to dismiss the appeal.
45. Overall, the benefits of the development are significantly outweighed by the policy conflicts and harm that would result. Moreover, section 63(5) of the Regulations precludes the scheme from proceeding. Therefore, the appeal should not succeed.

Conclusion

46. The proposal conflicts with the development plan read as a whole and the Regulations. There are no material considerations, including the policies of the Framework, which indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Mr D Szymanski

INSPECTOR