

Reason: In the interests of safeguarding the visual amenities of the site, which falls within the open countryside, the Metropolitan Green Belt and because an over intensive use of the site could give rise to additional undue highway hazards, in accordance with paragraphs 17 and 28 of the National Planning Policy Framework 2012 and Policies CP1, CP3, CP14 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007.

- 1.2 The section 73 application TM/15/03045/FL was granted by removal of the contested condition 1(c) but it was considered that this would have knock-on consequences for condition 2 so it was resolved at that stage to add further refinement to condition 2 to ensure adequate control commensurate with the use of the site primarily for tourism.
- 1.3 The agent has expressed concern with the changes to condition 2 which went beyond what was explicitly applied for. This current application is therefore a resubmitted Section 73 application which seeks to resist the changes to condition 2 made by the Council in the determination of TM/15/03045/FL.
- 1.4 Condition 2 on TM/13/00081/FL reads:

(i) the caravans shall be occupied for holiday purposes only with the exception of a maximum of 18 pitches that may be occupied at any one time as temporary accommodation by locally employed workers on fixed term contracts of employment;

(ii) the caravans shall not be occupied as a person's sole, or main place of residence;

(iii) the owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans on the site, and of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority.

Reason: To ensure the site is not used for unauthorised permanent residential occupation which would be inappropriate in the Green Belt or outside settlement confines and so thereby contrary to paragraphs 17 and 28 of the National Planning Policy Framework 2012 and Policies CP3 and CP14 of the Tonbridge and Malling Borough Core Strategy 2007.

- 1.5 Condition 2 on TM/15/03045/FL reads:
- (i) No caravan shall be occupied as a person's sole, or main place of residence*
- (ii) the caravans shall be occupied for holiday purposes only with the exception of a maximum of 18 touring caravans on workers pitches*

(iii) the workers pitches may be occupied only as temporary accommodation by locally employed workers on fixed term contracts of employment

(iv) the owners/operators of the caravan site shall maintain an up-to-date register of the names of all owners/occupiers/guests of individual caravans on the site, and of their main home addresses and the intended time and duration of the occupation.

(v) In respect of the workers pitches, the register shall also include details of the location of employment and length of the fixed term contract of employment.

(vi) The information in the register shall be made available at all reasonable times to the Local Planning Authority.

Reason: To ensure the site is not used for unauthorised permanent residential occupation which would be inappropriate in the Green Belt or outside settlement confines and so thereby contrary to paragraphs 17 and 28 of the National Planning Policy Framework 2012 and Policies CP3 and CP14 of the Tonbridge and Malling Borough Core Strategy 2007.

1.6 Objections to the new wording of condition 2 by the agent are in a supporting statement, summarised below:

- Any new conditions would have to be in response to the nature of the changes brought about by the changes to the condition(s) which the application seeks to vary - it is not intended to offer an opportunity to fundamentally review the whole issue, impose onerous new conditions or materially alter the nature of the original approval.
- The changes were not in the Committee papers published ahead of the meeting but added with little consideration as to whether such changes could reasonably be justified in the context of the application being determined which was to make beneficial use of existing static caravans during February.
- They place additional controls over the way the site can be used. If necessary, they should have been put on many years ago - further onerous and unnecessary controls are unacceptable and serve no good planning purpose.
- Planning Practice Guidance on the use of conditions requires that any amended/new conditions do not materially alter the development that was subject to the original permission – the use of the static caravans has been constrained so as to be materially different from that already allowed for by the extant consent. As long as the 18 unit threshold is not exceeded, there is no difference in planning terms if some are using touring vans and some use the hire fleet.

- In the post New Year period, holiday bookings are modest but the facilities offered in a fully winterised static caravan are so much better compared to a tourer both in terms of user comfort and overall sustainability (lower heating costs/no caravan towing movements to/from the site etc). Off-site impacts are lower for statics than with tourers.
- Will benefit the business/local economy with no unacceptable impacts/effect on the Green Belt.
- The conditions on the extant consent and site licence will ensure that the site is used appropriately and not as anyone's full time residence which is in line with general policy including the NPPF.
- That all guests of the main users of the caravans have to be logged in and out is perverse – this approach has been adopted anywhere else and this park has been singled out - does it matter, say, if grandparents are having their children down for the day or grandchildren for a couple of weeks?
- Making the register difficult to administer serves no beneficial purpose beyond the form of control already in place.
- The changes fail various of the 'tests' relevant to judging if conditions are reasonable/enforceable. It is simply too late to move the goalposts by imposing something disproportionate with and unrelated to what is effectively a modest change in the way part of an approved caravan park operates which gives rise to no demonstrable harm whatsoever.

The agent has made a follow up statement summarised below:

- the site was approved as a caravan park without any limit in terms of use by workers but sought to ensure the site was not used to provide permanent residential accommodation.
- Static caravans were first allowed on site by way of a 1994 planning permission. Up to and including the 2001 permission increasing static numbers to 30, the whole site could still be used excepting the TPO areas with the static area being limited to that approved and only the statics being limited to holiday use. The plan submitted then was only relevant in defining where the static vans were to go.
- this 2001 permission remains extant and capable of being a fallback option for this site – as long as the park is not used in February in the future and the statics are used for holiday purposes.
- it seems ironic that the LPA 'has been more than reasonable in allowing that form of occupation' when 150 pitches always could be used for such purposes albeit for 11 months only.

- From 2010 everything here has been a greater struggle than it should have been, contrary to everything that was happening elsewhere and as supported by government policy guidance.
- when year round use was sought again in 2011 TMBC endeavoured to impose a fresh raft of conditions way out of proportion with what was being sought to impose wide ranging controls which were not previously in place and difficult to justify in the circumstances of the application.
- The current application arose as a consequence of a last minute Committee update which no one had the courtesy to run past the applicant beforehand and which imposed a further set of unjustified constraints.
- To suggest bringing a touring van to site in winter - even if fully winterised – involves unnecessary caravan towing movements and inherently use of a less thermally insulated /heating and hot water efficient and lower general comfort levels touring caravans: the option is to utilise an otherwise empty hire fleet caravan with greater comfort levels, no caravan towing
- In any common-sense evaluation using some of the statics as part of the 18 worker unit 'allowance' is more sustainable and brings various benefits whilst causing no harm.

2. Reason for reporting to Committee:

2.1 The site has a complex planning history.

3. The Site:

3.1 It is an established camping park from the 1980s, featuring both static caravans and pitches for touring caravans and tents. It has ancillary facilities such as a club house and shower/toilet blocks etc. Following the 2013 planning permission, the camping and touring caravans can be occupied for holiday purposes year round but the 30 static caravans are conditioned to be not occupied residentially in the month of February.

3.2 The land slopes down from SE to NW. It is set in an elevated position above Plaxdale Green Road and surrounded by open farmland but with tourism accommodation at Hilltop and residential properties at Labour in Vain Road. The main caravan site includes some trees and there is a wooded area to the western side and also features tree screening along its boundaries subject to a long established Area TPO. The slope of the land means that new evergreen landscaping at the lowest NW corner does not hide the caravans sited on higher parts of the site.

- 3.3 The eastern side of the site is designated as ancient woodland and this is subject to a recently re-served and now confirmed Woodland TPO
- 3.4 The site is in the countryside and the MGB. It abuts the AONB but is not within it.
- 3.5 A Public Footpath runs N-S through the site, including through an approved caravan storage area. The site lies on a Water Gathering Area.

4. Planning History (relevant):

TM/81/00886/FL grant with conditions 7 December 1981

Use of land for camping site including trailer tents, dormobiles, touring caravans, and winter storage incorporating site with existing permission for tented camping.

TM/89/00007/FL Grant 20 March 1989

Variation of condition (iv) of permission TM/81/886 to permit winter storage of 50 touring caravans (instead of 30).

TM/90/00073/FL grant with conditions 13 June 1990

Application to vary condition (v) of permission TM/81/886 (use of land as camping site) to extend season from 1st March to 31 January of the ensuing year.

TM/94/01581/FL grant with conditions 8 February 1995

Formation of hardstanding, variation of condition (ii) of TM/90/0073 to allow for siting of 150 touring units and 10 static holiday caravans, and variation of condition (iv) TM/81/886 to allow for the winter storage of 50 touring units and 10 static holiday caravans

TM/95/01654/FL Application Withdrawn 4 February 1997

variation of condition 02 of planning permission TM/94/1581FL to allow caravan park to operate throughout the year

TM/98/01268/FL Grant With Conditions 15 October 1998

variation of cond. (ii) of TM/90/0073 to allow for siting of 150 touring units and 20 static holiday caravans and variation of cond. (iv) of TM/81/886 to allow winter storage of 50 touring and 20 static caravans

TM/01/02373/FL Grant With Conditions 14 December 2001

Variation to condition (v) of planning permission TM/81/886 to allow siting of 150 touring and 30 static caravans, and winter storage of 50 touring and 30 static caravans

TM/10/01069/FL Refuse 18 June 2010

Variation of Condition 4 of planning consent TM/01/02373/FL (variation to condition (v) of planning permission TM/81/886 to allow siting of 150 touring and 30 static caravans, and winter storage of 50 touring and 30 static caravans)

TM/11/03055/FL Approved 13 August 2012

Section 73 application to vary the conditions of TM/01/02373/FL to allow the use of touring units on a year round basis with the original condition 4 of TM/01/02373/FL remaining in force in respect of the 30 approved static caravans (TM/01/02373/FL being Variation to condition (v) of planning permission TM/81/886 to allow siting of 150 touring and 30 static caravans, and winter storage of 50 touring and 30 static caravans)

TM/12/02706/RD Approved 16 October 2012

Details of landscaping submitted pursuant to condition 3 of planning permission TM/11/3055/FL (Section 73 application to vary the conditions of TM/01/02373/FL to allow the use of touring units on a year round basis with the original condition 4 of TM/01/02373/FL remaining in force in respect of the 30 approved static caravans (TM/01/02373/FL being Variation to condition (v) of planning permission TM/81/886 to allow siting of 150 touring and 30 static caravans, and winter storage of 50 touring and 30 static caravans))

TM/13/00081/FL Approved 2 April 2013

Section 73 variation of condition 1 of TM/11/03055/FL to allow land marked C41-C46 to be associated with static caravans and to allow storage area to accommodate touring caravans (Section 73 application to vary the conditions of TM/10/01069/FL)

TM/13/03923/FL Refuse 7 November 2014
 Appeal Dismissed 19 March 2015

Section 73 application to vary condition 1 of TM/13/00081/FL to increase number of static holiday caravans to maximum of 66 (Section 73 variation of condition 1 of TM/11/03055/FL to allow land marked C41-C46 to be associated with static caravans and to allow storage area to accommodate touring caravans)

TM/15/03045/FL Approved 17 December 2015

Section 73 application for the variation of condition 1 of planning permission TM/13/00081/FL (to allow land marked C41-C46 to be associated with static caravans and to allow storage area to accommodate touring caravans) to provide for year round use in line with other parks in the area and 1 (c) to be deleted

5. Consultees:

- 5.1 Stansted PC: Stansted Parish Council objects strongly to this application. It was only recently that approval with conditions was given for application TM/15/03045/FL, with exactly the same description. The conditions were imposed for very good reasons and the Parish Council supports the Local Planning Authority in requiring these conditions. The current application should be refused and all the conditions of permission TM/15/03045/FL be adhered to and monitored by the Enforcement Officer to ensure compliance.
- 5.2 Wrotham PC. Objection; WPC doesn't consider it unreasonable for the caravan holiday park to adhere to the conditions imposed pursuant to TM/15/03045/FL to ensure that caravan owners have permanent accommodation elsewhere. These conditions ensure that the facility is managed appropriately, i.e. for holiday accommodation and should remain unchanged.

6. Determining Issues:

- 6.1 In the period 2006 to 2012, applications for caravan sites such as these were determined in the light of the "The Good Practice Guide on Planning and Tourism". However, that was revoked following the publication of the NPPF in 2012. There is nothing in terms of tourism in the National Planning Practice Guidance that relates to tourist caravan sites so it is the NPPF which is relevant.
- 6.2 However, there is National Planning Practice Guidance which requires planning conditions to meet 6 tests: being necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The NPPG also states that conditions should not be used that unreasonably impact on the deliverability of a development, if they unnecessarily affect an applicant's ability to either bring a development into use or allow a development to be occupied or otherwise impact on the proper implementation of the planning permission.
- 6.3 The main national policies relevant to this application are as follows:
- Paragraph 17 (Core Principles) requires LPAs to protect the Green Belt, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it.
 - Paragraph 28 requires LPA support for sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres

- Paragraphs 80 and 81 on Green Belts state that one purpose of Green Belts is to assist in safeguarding the countryside from encroachment. Local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to provide for outdoor sport and recreation; to retain and enhance landscapes and visual amenity
- Paragraphs 89 and 90 on Green Belts states that certain forms of development are not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These do not include change of use (which is the form of the original decision to which this application seeks a variation).

6.4 The difference between what the applicant seeks in this application and what was granted by TM/15/03045/FL is based on 3 main issues:

- 18 workers only to occupy touring caravans on pitches (ie not static caravans)
- an up-to-date register to also include the intended time and duration of the occupation of the all owners/occupiers and now also their guests
- In respect of the workers pitches, the register shall also include details of the location of employment and length of the fixed term contract of employment.

6.5 The first determining issue associated with the application is whether the proposal for scope for workers to occupy up to 18 of the static caravans would partly create what would be tantamount to a conventional residential estate in the Green Belt and outside established settlement boundaries. In this scenario, the development would be contrary to national Green Belt and countryside policy and the related TMBCS policies of CP3 and CP14 respectively.

6.6 The sustainability of the location is a consideration under policies CP1 and CP2 of the TMBCS. A significant non-holiday/tourism use would be contrary to policies that require new residential uses to be in environmentally sustainable locations.

6.7 The other consideration is whether such a proposal would reduce the number of pitches available for holiday purposes, which in turn would affect the holiday industry and increase pressure on health and education facilities.

6.8 The original proposals for the use as a caravan site and for additional pitches/caravans permitted over the years had been justified on the basis that it would be used for tourism. Any proposal for year round *residential* use of a caravan within the MGB would be contrary to policy and should normally be refused (save for some exceptions such as agricultural/horticultural worker's accommodation).

6.9 In this case, the explicit allowance by condition for non - holiday use of 18 units is unique to this site and warrants tight control being a clear non-tourism form of

occupation. Without conditional control on the nature of the occupation of the 2 types of caravan on the site, there is a concern that the proposal would be contrary to the requirement of the NPPF and Policy CP3 of the TMBCS.

- 6.10 The 18 pitch non-holiday use was based upon a request made in relation to planning application TM/11/03055/FL in that planning permission TM/01/02373/FL had a plan showing an area as specific provision for an element of worker accommodation “as and when required”. The applicant stated at the time that there was a need for worker accommodation (which was said to be in a state of flux depending on factors such as major developments ongoing in the area); the workers bring their own touring caravans or motor-homes on to a normal pitch (or units provided by the employer) and stop for the length of their work contract, generally going home for weekends. It was claimed that the site had always operated in this way with tourism very much the focus of the business but allowing workers to stay also being important to this enterprise and in facilitating other businesses in meeting their short term need to bring in staff from outside the local area.
- 6.11 In determining the last application when the static caravans were, for the first time ever, being allowed to be occupied year round, it was considered that if a significant number of the 30 statics were to be occupied year round by workers, that would alter the character of that part of the site. The statics are all clustered together centrally on the site as it is entered. It is considered that worker accommodation concentrated in up to 60% of the statics would be a very different type of use and harmfully impact on character of the site overall compared to up to 18 tourer units or camper vans amongst the 150 units of the touring element of the site.
- 6.12 It is also potentially the case that if there were to be a predominance of worker accommodation in the area of the statics in the centre of the site, then the attractiveness of the site for tourists may be detrimentally affected overall. The risk of the character of that part of the site changing away from tourism is reflected by the length of the contracts in that there will be a less obvious rate of turnover than if the static owners let to genuine holiday makers.
- 6.13 I remain of the view that this control is necessary and relevant to planning and to the development (which going back to the original planning permission is a change of use to tourism). I also consider that it is reasonable, enforceable and precise. Whilst it is the case that a static may be more desirable for the workers to occupy, I am not persuaded that this part of the condition unnecessarily affects the development in terms of the use, its overall occupation or otherwise impacts on the proper implementation of the planning permission. The agent does comment that statics offer user comfort and overall sustainability (lower heating costs/no caravan towing movements to/from the site etc) and that off-site impacts are lower for statics than with tourers. Those comments do not relate to any of the tests of the NPPG in terms of conditions. Whilst there are some benefits if tourer

occupation or use is displaced, I am of the opinion that they are outweighed by the harm caused by scope for a predominant occupation of statics by contract workers for the reasons detailed above.

- 6.14 It has repeatedly been claimed that the touring units can be fully winterised when the applicant has applied for year round holidaying at this site. In TM/13/00081/FL, there was no permission for year round occupation of static caravans, only of the tourers. It would have interrupted the occupation by workers if they had to relocate between the 2 van types if their contracts happened to span the month of February.
- 6.15 Similarly in terms of the workers, asking for details of their location of employment and length of the fixed term contract of employment is not considered unduly onerous. It was considered that this aspect could benefit from clarification in the controlling condition to be included in the register that is available for regular inspection. The reason for the applicant's resistance to logging this information for such a small number of caravans is not clear.
- 6.16 The use of the site by workers is contrary to the tourism use and is not accounted for in any national guidance on the subject. The Borough Council has been more than reasonable in allowing that form of occupation and to refine the condition to ask for more information to ensure that the use is indeed genuinely of that nature is not unjustified in my view.
- 6.17 The previous decisions based control of the approved tourism use by adopting the approach set out in national guidance to impose the log book style of restriction in lieu of a vacant time period in the calendar of occupation which had been the traditional form of control. The Council has refined the "standard" condition to also require a register of guests of individual caravans on the site, and of their main home addresses and the intended time and duration of the occupation. It is not considered that this is unduly onerous where the guest is staying on the site overnight and so a further refinement of the condition to make that distinction is suggested. There is nothing that says that the standard condition cannot to be refined to the circumstances of the case in hand provided it still meets the 6 tests of the NPPG and other NPPG criteria. I am of the view that it does.
- 6.18 It is logical in my view that registering guests who reside on site overnight benefits the site manager eg in case of evacuation emergencies. It is not clear why the applicant claims this is difficult to administer.
- 6.19 In response to the agent's argument that there is a fall back to the 2001 planning permission, this is an incorrect interpretation of the legal position in my view.
- 6.20 The discussion centres around whether, assuming the later planning permission TM/13/00081/FL has been implemented, the applicant could now "revert" to the earlier planning permission TM/01/02373/FL (or indeed any other earlier planning permission). The planning history set out above is that there is a line of

"amendments", including to 01/02373/FL, each of which creates a stand-alone permission. A planning permission under s.73 is a stand-alone planning permission granting permission for *development*, in this case a change of use. The continuation of an existing lawful use is not development, and so what the consent is granting is a change from the *original* lawful use in existence before the first change of use permission. When a change of use permission is implemented, the change is made and the authorisation for the change of use is spent (*Cynon Valley*). Similarly, where a s.73 permission authorises a change of use subject to a set of conditions, when that permission is implemented, the permission is spent but the conditions subject to which the change is permitted, remain.

6.21 It follows therefore that if the 2001 change of use permission was implemented, and subsequently 2013 was implemented, there is no ability to "go back" to the position in 2001 as the permission is already spent.

6.22 Furthermore, were an applicant able to rely upon multiple previous s.73 change of use permissions (for the same use but subject to different sets of conditions), they could do so at any time, for any period of time, *ad absurdum*, even for fractions of a day. This would make any meaningful planning enforcement impossible and is a position that a court is unlikely to allow.

6.23 Overall, in response to the resistance of 3 key elements of the rewording of condition 2, I am of the view that the condition 2 meets the 6 tests of the NPPG and does not breach the other elements of the NPPG. There is no evidence that there is any impact on the deliverability of the development, the applicant's ability to bring a development into use, allowing it to be occupied or otherwise impacting on the proper implementation of the planning permission. On that basis, I would not recommend any change except to clarify it is only overnight guests which should be included in the register.

7. Recommendation:

7.1 **Grant Planning Permission** in accordance with the following submitted details: Design and Access Statement dated 23.12.2015, Location Plan dated 23.12.2015, subject to the following

Conditions / Reasons

1. (a) The number of pitches on the site shall be restricted to a maximum of 150 for touring units (including touring caravans, campervans, motorhomes and tents) and 30 static caravan units;
- (b) the 30 static caravan units shall be located only on that part of the site shown cross hatched on the drawing attached to this permission;
- (c) the pitches for touring units shall be located only in the storage area or on that part of the site shown single hatched or cross hatched on the drawing attached to this permission

(d) any touring caravans being stored on the site shall be located either within that part of the site shown single hatched or cross hatched on the drawing or in the area annotated at "Storage Area";

(e) at no time shall the total number of caravans on the site (including those that are occupied, available for occupation and stored) exceed 180.

Reason: In the interests of safeguarding the visual amenities of the site, which falls within the open countryside, the Metropolitan Green Belt and because an over intensive use of the site could give rise to additional undue highway hazards, in accordance with paragraphs 17 and 28 of the National Planning Policy Framework 2012 and Policies CP1, CP3, CP14 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007.

2. (i) No caravan shall be occupied as a person's sole, or main place of residence
- (ii) the caravans shall be occupied for holiday purposes only with the exception of a maximum of 18 touring caravans on workers pitches
- (iii) the workers pitches may be occupied only as temporary accommodation by locally employed workers on fixed term contracts of employment
- (iv) the owners/operators of the caravan site shall maintain an up-to-date register of the names of all owners/occupiers/overnight guests of individual caravans on the site, and of their main home addresses and the time and duration of the occupation
- (v) In respect of the workers pitches, the register shall also include details of the location of employment and length of the fixed term contract of employment
- (vi) The information in the register shall be made available at all reasonable times to the Local Planning Authority.

Reason: To ensure the site is not used for unauthorised permanent residential occupation which would be inappropriate in the Green Belt or outside settlement confines and so thereby contrary to paragraphs 17 and 28 of the National Planning Policy Framework 2012 and Policies CP3 and CP14 of the Tonbridge and Malling Borough Core Strategy 2007.

3. The scheme of evergreen landscaping as approved by the Authority under ref TM/12/02706/RD shall be fully implemented and should be retained as approved and any trees or plants removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with others of similar size and species, unless the Authority gives written consent to any variation.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality.

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