

Mr P Isbell
Chief Planning Officer
Mid Suffolk District Council
Endeavour House
Russell Road
Ipswich
IP1 2BX

My Ref: 3030

19 December 2023

Dear Mr Isbell,

Town and Country Planning Act 1990
Section 73
Variation of condition 3 of planning permission DC/21/01973
Oak Lodge Retreat, Nicks Lane, Brome, IP23 8AN

On 24th January 2022, the Council granted planning permission for use of land for the stationing of 15 holiday lodges at Oak Lodge Retreat, Nicks Lane, Brome under planning permission DC/21/01973.

Condition 3 of planning permission DC/21/01973 states: *“The units hereby approved shall not be occupied other than for holiday purposes and shall not be used as residential dwellings, including any use within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended). No person/s shall occupy any of the unit/s during the month of February each year. Details of the name, permanent home address, vehicle registration shall be kept in a register a copy of which shall be made available to the Local Planning Authority for inspection at any time”.*

The reason for the condition states: *“The site of the permission is outside any area where a planning permission would normally be forthcoming for residential development and is permitted only as a unit for holiday purposes in the interests of contributing to tourism and the economy of the area”.*

The purpose of this application is to vary condition 3 to delete the condition which states “No person/s shall occupy any of the unit/s during the month of February each year”.

The reason for this application is to allow 12 month holiday occupation of the units in order to allow all-year occupation which will improve the viability of the business.

Planning Inspectors generally support applications to amend conditions to allow for greater flexibility in the operation of sites such as these. The following examples illustrate this point.

In 1995, an Inspector deleted two conditions in relation to occupancy and the keeping of a register, while refusing to remove a separate condition relating to the use of two holiday accommodation units in a stable at Knap Farm, Buckland Newton (Appeal Reference: T/APP/F1230/A/95/247587/P7 – attached at Appendix 1). Conditions Nos. 2 (holiday use), 3 (time-limited occupancy restriction) and 4 (keeping of a register) among others were sought to be removed from planning permission granted in 15 July 1994 for the conversion of a stable into 2 holiday units (Permission reference 1/E/94/0286F), and West Dorset District Council refused the development of the land without compliance with those conditions.

The Inspector concluded in relation to Condition 2, that the condition was required otherwise the units would become permanent residential. However, the Inspector allowed the appeal with regard to Conditions 3 and 4 considering them unnecessary. In Paragraph 13, the Inspector stated that there is no planning justification for limiting the length of a holiday (to 4 weeks), and that sufficient control regarding the visual impact of domestic paraphernalia is provided by Condition 2. The Inspector went on to state that it could prove difficult to enforce Condition 3 in view of detecting any breach, although they acknowledged the Condition 4 would assist in this regard.

In 1996, following a referral back to the Inspectorate by the High Court, an inspector deleted an occupancy condition controlling the length of stay relating to built holiday accommodation located within the Lake District National Park (Appeal Reference: T/APP/Q9495/A/94/238068 & 238069/P2 – attached at Appendix 2), replacing it with a simple condition indicating that the premises shall only be used to provide holiday accommodation (now Condition 3). Permission had originally been granted in 1982 to restore a listed farmhouse to form a self-contained 2-bedroom holiday cottage associated with a converted building at Highpark, Loweswater, and a subsequent application was made to vary Condition 3 of the relevant permission, which stated that: “*no person, member of the same family or group of persons shall occupy the building hereby granted permission for a period in excess of four weeks in any period of three months calculated from the first day of occupation*”. The Special

Planning Board subsequently refused permission for non-compliance with Condition 3 (alongside Condition 2, which is not relevant here).

The Authority argued that the condition was required to maximise the tourism potential of the use of the holiday accommodation, but the Inspector questioned whether such a condition would be necessary to refuse the application, as there would need to be a particularly pressing reason to justify the imposition of a more onerous condition (Paragraph 23). The Appellant then went on to question whether the condition would make a material contribution to the desired objective, as most stays would be constrained by cost and factors such as annual holidays, school holidays, etc, particularly noting that the evidence before the Inspector suggested most lets were short in nature (Paragraph 24). In Paragraph 26, the Inspector discussed the concerns regarding the use of the unit as a second home, which was relevant in its location. The Inspector states that “ *there would be no question of its being used as a permanent home within the terms of the permissions...the authorities should normally be able to establish from the general lifestyle of the occupants whether the accommodation is being used exclusively by holiday makers and consequential contravention could be detected. The simpler holiday condition would not in my opinion give rise to problems in enforcement.*”

Importantly, the Inspector noted in Paragraph 28 that the adopted policy indicates that: “permission will normally only be granted subject to a condition to ensure that accommodation is not occupied other than for holiday purposes. There is no mention of more onerous conditions restricting the length of occupancy.”

In 2000, and aware of the increasing trend for greater diversity of holidays in this country in terms of their season and duration, an Inspector was strongly critical of conditions applied by a local authority to a rural holiday home permission (The Boat House Eastbourne Road Seaford East Sussex BN25 4AB, application reference LW/99/0072, decided on appeal on 28th April 2000). The conditions restricted occupation to "short term lettings" and not for more than 28 days consecutively by an individual or group. The Inspector concluded that whilst it was right to control the use of a Class C3 dwellinghouse to holiday use only, it was the nature of the holiday makers which would influence the impact on the area rather than the length of stay. The council had imposed conditions which were not justified in policy terms, having essentially adopted conditions used by other authorities. This was held to represent "opportunistic importation" and an "entirely inappropriate approach" comprising a "singular lack of openness in policy formulation" which could lead to inconsistency and unfairness. The conditions were deleted and a further condition imposed restricting use to holiday accommodation only with no limit on the length of stay.

In 2010, an appeal was allowed on the 25 January 2010 (Appeal Ref: APP/P1615/A/09/2103429 – attached at Appendix 3) concerning a section 73 application for the erection of 22 holiday lodges at Whitecliff Holiday Lodges, Whitecliff, Coleford, Gloucestershire, GL16 8NB without complying with a condition attached to planning permission Ref DF.9752/A, dated 14 May 1993. That condition stated in part that the holiday accommodation should only be occupied for a period not exceeding 4 weeks for any single letting and a return within 4 weeks by the same household should not be permitted. The Inspector imposed the following new condition instead: *“The lodges shall be occupied for holiday purposes only and shall not be used as a person’s sole or main place of residence. The owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual lodges on the site, and of their main home addresses and shall make this information available at all reasonable times to the local planning authority.”*

In Paragraph 10, the Inspector recognises that the removal of the occupancy condition would actually widen the positive economic tourism benefits, not reduce it, as had been suggested by the Council: *“The Council has also indicated that the proposed variation in the length and frequency of occupation of the holiday lodges would harm the tourism strategy for the area. However, it is clear to me that the lodges would contribute to available visitor accommodation within the area. Whether occupied by shorter or longer stay visitors or for more frequent visits throughout the year the accommodation would continue to be capable of meeting the needs of visitors to the area. I have not been provided with any substantive evidence that there is any unmet demand for short term only accommodation. Indeed, in this particular case the removal of the current restriction would allow for both shorter and longer term holiday usage thereby appealing to a wider visitor market and allowing more flexibility of use during different periods throughout the year in response to the changing demand for holiday accommodation.”*

For these reasons I do not consider that the proposal would not undermine any of the objectives in respect of the promotion of sustainable tourism contained in the policy highlighted above.”

In 2011, an inspector deleted a condition prohibiting the occupation of caravans on a site in the Lancashire countryside (Forest of Bowland Leisure Park, Roughlee, Nelson, BB9 6NR, Appeal Reference APP/E2340/A/10/2137243 – attached at Appendix 4) for more than 11 months in a year, finding that it was unreasonable and unnecessary. The Inspector considered that the condition failed to achieve the objective of preventing the use of caravans as permanent dwellings. It would allow the caravans to be occupied by the same persons for 11 months of the year, she reasoned, as their sole or main residences, so long as they also went away for a four week holiday. She also considered it unnecessary to limit the occupation of the caravans

to 11 months a year, noting that the council had given little explanation for this part of the condition other than that it would emphasise the holiday nature of the units. She reasoned that the council was not seeking to control when any caravan should be unoccupied and since a holiday occupancy condition would prevent use of the caravans as permanent dwellings other occupancy constraints could not be justified. Paragraphs of the decision relevant to this case include where the Inspector clearly states that a condition preventing residential use is all that is reasonably needed (Paragraph 11): *“ I consider that condition 1 should be replaced with a standard holiday occupancy condition, drafted in accordance with the GPGPT, which expressly states that caravans on the site shall only be used for holiday purposes and not as a person’s main or sole place of residence. Such a condition would suffice to prevent any permanent residential use. It is not necessary to also require that the caravans be unoccupied for four week consecutive periods– and imposing such a condition would in my view place an unreasonable restriction on the appellant.”*

Importantly, the Inspector advises that, if the Council’s aim is to prevent residential occupation then to impose occupancy/length of stay restrictions would be unreasonable and not meet the tests for conditions, as simpler conditions would achieve the same end result:

“Since a holiday occupancy condition would prevent use of the caravans as permanent dwellings– the Council’s key objective – I find that other occupancy constraints could not be justified.” (Paragraph 12).

The Inspector also states that including a requirement for a register negates the need for any occupancy length restriction or closure period because the register can be used for enforcement purposes(Paragraph 13).

In 2013, an Inspector deleted a seasonal occupancy condition relating to caravans on a holiday park in north Wales (Ocean Heights Caravan Park, Chwillog, Gwynedd, LL53 6NQ, Appeal Reference APP/Q6810/A/13/2198737 – attached at Appendix 5), replacing it with a condition stating that the caravans should be occupied for holiday purposes only. Permission had been granted by Gwynedd Council for the relocation of 12 static caravans and the siting of four additional caravans on an extension to the caravan park, subject to the condition which related to all 94 holiday caravans on the site and prohibited occupation between 10 January and 1 March. The Inspector identified the main issues as being the effect that removal of the condition would have on policies aiming to control the establishment of dwelling houses in the area.

The Inspector considered that such a condition would be no more difficult seasonal restriction condition, and found no fundamental contradiction with the relevant unitary development plan policy (which actually stated that a ten and a half r occupancy period should be used) since its aim was to prevent permanent residential occupation. The Inspector stated (Paragraph 7):

“..in my view, the objective of the policy could be met through the imposition of the types of conditions suggested by the Appellant. These would ensure occupation for holiday purposes and to prevent permanent residential occupation of the units.”

The Appellant offered to accept a planning condition requiring a written log of the occupiers of the caravans and their home addresses. Importantly for this case, the Inspector could see no difference between enforcing a 12-month holiday use compared to a more restricted situation:

“ A planning condition is valid even if it is difficult to enforce. The suggested conditions in my view are no more onerous or more difficult to detect a contravention than the seasonal restriction condition.” (Paragraph 9).

Cotswolds Hotel and Spa, Southcombe, Chipping Norton, Oxfordshire, OX7 5QH were refused permission to vary a condition limiting holiday occupancy of 20 selfcatering apartments to a condition which limited the use of the units to holiday occupancy only, and which required the owner to maintain a record of occupiers. The variation was allowed on appeal in April 2017 (APP/D3125/W/18/3205571 – attached at Appendix 6). In this case the Inspector found that although 6 weeks would appear to be longer than most holiday periods, there was no substantive evidence that identifies why 6 weeks would be an appropriate or necessary restriction beyond that achieved in the varied form of words, or that there was an indisputable need for the extra restriction. The Inspector found that in its varied form the condition would still restrict the use of the accommodation for holiday purposes only. and that the proposal would not be tantamount to the creation of new dwellings in the open countryside for which there would be no overriding justification.

Appeal decision APP/B3030/W/19/3239439 (Attached at Appendix 7). Was granted permission on appeal for the continued use of holiday accommodation without compliance with a condition requiring the accommodation to be occupied by the same person for no longer than 6 weeks in any calendar year. In this case, the Inspector found no compelling evidence that the development would lead to the creation of permanent residential use without the condition (paragraph 7), and that the removal of the condition would not change the nature

of the development, as originally assessed, as it would remain limited to the exclusive use of holiday accommodation (paragraph 9).

The market within the holiday/caravan park sector continues to evolve, particularly in the light of post-Covid 19 economic recovery, static holiday homes and lodges are more 'winter-friendly' than touring caravans and tents and bring in more revenue through the year.

In overall conclusion, there is no need for the period of occupancy of the lodges at Oak Lodge Retreat to be restricted, as stipulated under Condition 3 of planning permission DC/21/01973. Restricting it on this basis is unnecessary and unreasonable judged against the tests in PPG, as a condition that clearly states that the lodges can be used for holiday purposes only along with a requirement to maintain a register, will achieve the aim stated in the reason given for the condition. We have drawn attention to a number of Appeal cases where the approach proposed by this application has been tested by Inspectors and found to be reasonable.

Yours sincerely,

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Phil Cobbold