



Appeal Decision

Site visit made on 14 December 2010

by Jean Russell MA MRTPI

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

Decision date: 19 January 2011

Appeal Ref: APP/E2340/A/10/2137243

Forest of Bowland Leisure Park, Roughlee, Nelson, BB9 6NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Tom Hill against the decision of Pendle Borough Council.
 - The application (ref: 13/10/0260P) dated 13 May 2010, was refused by notice dated 15 July 2010.
 - The application sought planning permission for 'variation of condition 1 of planning permission 10379 to allow year round operation of holiday park' without complying with conditions attached to planning permission (ref: 13/09/0539P), dated 9 February 2010.
 - The conditions in dispute are nos. 1 and 6 which state that:
 - 1) The use of the land as a caravan site may be continuous, but no caravan, with the exception of two warden's caravans, shall be occupied for more than 11 months in a year. This period of vacancy shall be a 4 week consecutive period each year.
 - 6) A register shall be maintained on-site indicating the time periods (which shall not be less than a 4 week (consecutive) period in each year) when each of the units will be un-occupied and the details of each occupant's/owner's residence. The register shall be made available, at all reasonable times, for inspection by Council officers.
 - The reasons given for the conditions are:
 - 1) To prevent permanent residential use of the units in an area where permanent residences are not supported by planning policies.
 - 6) To ensure that a unit does not become a permanent residence, which [would] be contrary to policy for the area.
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Decision

1. I allow the appeal, and vary the planning permission (ref: 13/09/0539P) for 'variation of condition 1 of planning permission 10379 to allow year round operation of holiday park' at the Forest of Bowland Leisure Park, Roughlee, Nelson, BB9 6NR granted on 9 February 2010 by Pendle Borough Council, by deleting conditions 1 and 6 and substituting for them the following conditions:
 - 1) All caravans, other than the two warden's caravans, shall be occupied for holiday purposes only and not as any person's sole or main place of residence.
 - 2) The owners/operators of the site 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. The register shall be made available at all reasonable times for inspection by officers of the local planning authority.

Clarifications

2. Planning permission (ref: 10379) was granted for the use of land as a caravan site with two caravans for permanent residence on 18 January 1965, subject to a condition which restricted the use of the site except the wardens' caravans to the period of 1 March to 31 October. The permission (ref: 13/09/0539P) allows for the site to be open all year, but the disputed conditions set different limits on the periods of occupancy.
3. In my view, the planning permission (ref: 13/09/0539P) is not clearly worded. Under s57(1) of the *Town and Country Planning Act 1990* as amended, permission is required for development, which is defined in s55. "Variation of condition 1..." does not describe development within the meaning of s55.
4. Where a planning application or appeal is made in relation to s73, the existing permission remains extant and unaltered, whatever decision is made in respect of conditions. Thus, it is not for me to change the description of development as permitted under ref: 13/09/0539P. I would interpret the permission, however, as relating to the use of land for a caravan site with two caravans for permanent residence, without compliance with a condition attached to permission ref: 10379 but subject to new conditions.
5. It is proposed to vary conditions 1 and 6 attached to permission ref: 13/09/0539P so as to delete the references to four week consecutive periods of vacancy.

Main Issue

6. I consider that the main issue is whether conditions 1 and 6 are reasonable and necessary, having regard to planning policies for development in the countryside.

Reasons

7. The appeal caravan site lies within open countryside as designated by the *Replacement Pendle Local Plan 2001-2016* (LP), and within the Forest of Bowland Area of Outstanding Natural Beauty (AONB). LP Policy 1 permits development for tourist accommodation, but not permanent market housing outside of defined settlement boundaries. Government guidance in *Planning Policy Statement 7: Sustainable Development in Rural Areas* (PPS7) suggests that the focus for new housing in rural areas should be on existing towns and identified service centres, and that new house building in the countryside should be strictly controlled.
8. *Circular 11/95: the Use of Conditions in Planning Permissions* (C11/95) and the *Good Practice Guide on Planning for Tourism* (GPGPT) note that demand for self-catering holiday accommodation may occur in areas where the provision of permanent housing would be contrary to local or national policies. In such circumstances, it may be reasonable for the local planning authority to permit the holiday accommodation as an exception to these policies, subject to a condition restricting its use to holiday (or seasonal) accommodation only.
9. I have found that permission ref: 13/09/0539P should be considered as relating to the use of land for a caravan site. The caravans are intended for holiday use and the permission was granted to provide for local benefits from tourism. However, I saw caravans for sale at the site; the units are generally owned privately rather than let out by the appellant. Given the policy context, it was reasonable and necessary for the Council to impose new occupancy conditions on the permission, so as to prevent the use of the non-wardens' caravans as permanent residences. The reasons for imposing the disputed conditions were sound.

10. That does not mean, however, that the conditions themselves are appropriate. In my view, condition 1 would fail to prevent 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, as their sole or main residences, so long as they also go away for a four week holiday. Such a scenario is not so unlikely in an AONB, where there are restrictions on house building but it would be desirable to live. Thus, condition 1 does not address the concerns of the Council or local residents, or the provisions of LP Policy 1, PPS7, C11/95 and the GPGPT.
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.
12. I also consider it unnecessary to limit occupation of the caravans to 11 months of the year. The Council has given little explanation for this part of condition 1, save that it would 'emphasise the holiday nature of the units'. The Council is not seeking to control *when* any caravan should be unoccupied. The appellant does not object to the 11 month clause, but C11/95 advises that agreement to a condition does not make it reasonable. 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.
13. The Council suggests that having fixed 'closed' periods would make condition 1 easier to enforce. But a holiday occupancy condition could be just as simply enforced in the same way – by requiring the operators of the site to maintain and allow inspections of a register of owners/occupiers and their main addresses. It is reasonable and necessary to retain condition 6 for such enforcement purposes, but I shall vary it to reflect the GPGPT and omit references to periods of occupation.
14. I conclude that it is necessary to prevent permanent residential use of the (non-wardens') caravans on this site, but condition 1 would be ineffective to that end. I shall replace condition 1 with a holiday occupancy condition, and vary condition 6 accordingly, so as to comply with LP Policy 1, PPS7, C11/95 and GPGPT. Doing so would not conflict with LP Policies 2 or 40, which aim to safeguard the AONB and support new tourist facilities of an appropriate scale in rural areas.
15. For the reasons given above, and having regard to all the other matters raised, I conclude that the appeal should be allowed in the terms set out in the formal decision above.

Jean Russell

INSPECTOR