Marigolds Park

Application to remove condition 01 of permission BE/79/77

There is an extensive planning history at this site, but perhaps the key decision was BE/79/77; the history is in the public domain on the Council's website.

This application concerns condition 01 of the decision BE/79/77 which has historically restricted the numbers of caravans on the site to 60. The reason for the condition was: In the interests of amenity. That permission was granted in February 1978.

It is noted that application BE/11/14 was approved on 9 May 2014 to vary condition 01 of BE/79/77 to increase the numbers from 60 to 63; in particular recognising that the extra 3 units would occupy the site of Marigolds Bungalow.

The report in that case made no reference to tests of planning conditions and imposed several further conditions.

It has not been implemented, although neither has it expired.

However, to remove the bungalow (which has a value) is not a cost effective proposition unless the replacement value exceeds that value having accounted for costs of demolition and construction, and a reasonable developer's profit. Accordingly more than 3 units are required

It would be open to the applicant to apply for a variation of condition to 64 or 65, but in analysing the condition against the relevant tests, it is considered that this application should be submitted.

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The Authority are politely reminded that an application to vary, amend or entirely remove conditions is not an application for planning permission, and is judged differently.

A Local Planning Authority can impose planning conditions that it thinks fit, primarily by virtue of section 70(1)(a) of the Town and Country Planning Act 1990 (as amended).

However, this ability to apply conditions is qualified by a number of tests which are of the effect to ensure that any condition attached to a permission is reasonable and proportionate.

Paragraph 55 of the National Planning Policy Framework (NPPF) 2018 gives the up to date advice; in particular that conditions should be kept to a minimum and only imposed where they are 1) necessary, 2) relevant to planning and 3) to the development to be permitted, 4) enforceable, 5) precise and 6) reasonable in all other respects.

Having regard to the Planning Practice Guidance the following comments are relevant in this case.

Necessary A planning condition controlling numbers of caravans on a site is not necessary. That is because such a site has to have a site licence under other legislation to be able to operate. The site licence controls the practical numbers of caravans that can be achieved on a caravan site by reference to distances from each caravan to other features such as boundaries, roads and other caravans and the densities which can be achieved. The site licence gives an adequate level of control. Indeed, some site licences have restrictions over numbers, but there is a Lands Tribunal decision CAM/38UE/PHR/2016/0001 that such a condition on a site licence is not necessary. Copy attached

Relevant to planning The planning permission in 1978 agreed the principle that the use of this land was acceptable as a caravan site. The ongoing control of the site should only need to be controlled by the site licence.

Relevant to the development to be permitted. The ongoing control of the site should only need to be controlled by the site licence.

Enforceable Restricting the number is capable of enforcement, although it raises the question that if 60 caravans were acceptable and one large caravan was removed and replaced with two smaller ones as to whether it would be expedient to take planning enforcement action.

Precise The exact meaning of what this condition was trying to control is not precise. Caravan sizes have grown over the years to encompass what are called twin units.

The impact of 60 small units compared with 60 twin units will clearly be different, as would any mixture of unit sizes. The limit did not restrict the numbers to small units.

The reason for the condition is very generalised; the site has several rural boundaries and one boundary to a small group of rural properties with quite large gardens. Closest to Marigolds Bungalow is a utility development, understood to be a sewage treatment works

It is not clear whether the number restriction was seeking to limit the numbers of caravans to protect the amenities of nearby residents, or whether it was seeking to limit numbers because of the presence of that utility or to restrict the numbers of caravans in the park to protect the park occupants amenities

The amenities of those adjacent residential occupiers, the occupants of the caravans have protection by the boundary distance requirements in the site licence, and the proximity of the sewage treatment works is what it is relative to the site.

Reasonable in all other respects. The planning system does not need to be involved in the day to day minutiae of managing a caravan site, and such a condition goes well beyond being a reasonable requirement in the circumstances.

Planning Practice Guidance makes clear that the testing of conditions so that they pass all six tests is a requirement of their imposition at first instance and each time whether a condition can be amended, varied or deleted at a later date. Paragraph: 004 Reference ID: 21a-004-20140306

The decision taker, in considering a condition, needs to have regard to its wording and what reasoning there is for the condition. There was no clear reasoning in this case.

Some capacity in the site exists because, for example, it has been agreed that demolition could take place and caravans could then be stationed within the same area presently occupied by Marigold Cottage, thus increasing housing supply. That area is within the boundary of the site for planning, licensing and practical purposes As previously developed space the height of a bungalow will be greater than a caravan if assessing visual impact.

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Having assessed this condition it is clear that it should be removed entirely, and the Authority are now asked to do that.