Recommendation Report for Planning Permission

REF NO: BE/46/19/PL

LOCATION: The Marigolds
Shripney Road
Bognor Regis
PO22 9PB

PROPOSAL: Removal of condition 1 following the grant of BE/79/77 relating to restriction of number of caravans.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	This application is to remove the existing condition no 02 on BE/79/77 which currently limits the number of caravans to 60.
SITE AREA	N/A.
TOPOGRAPHY	Predominantly flat.
TREES	None affected by the proposed development.
BOUNDARY TREATMENT	To the front (the road), there is a 2-3m high hedge above a low fence, with a 1m high close boarded fence along the caravan park entrance driveway and a 1m high fence to the rear of the cottage. Notwithstanding the defined boundaries, the cottage curtilage is very much open in nature to the caravan park.
SITE CHARACTERISTICS	Existing residential mobile home park currently occupied by 60 caravans (all with parking & small gardens) plus a pitched roof yellow rendered bungalow with associated gardens at the front of the site.
CHARACTER OF LOCALITY	Semi-rural location, directly opposite the Robin Hood public house and hotel. Some linear housing along the A29. Agricultural land surrounding the site.

RELEVANT SITE HISTORY

BE/11/14/	Application for a variation of condition 1 imposed on planning reference BE/79/77 to increase number of caravans to be stationed from 60 to 63	ApproveConditionally 09-05-14
BE/101/13/CLP	Application for a Certificate of Lawfulness for a proposed demolition of existing property subject to any required prior approval and continued use of land as part of wider caravan park	PP Not Required 20-01-14

BE/79/77	Renewal Of Temporary Permission Be/7/50/K For Caravan Site And Ancillary Works And Buildings	ApproveConditionally 01-02-78

It is material that planning application BE/11/14/ allowed a variation to condition 02 on BE/79/77 to increase the number of permitted caravans to 63. This was on the basis of the removal of the existing bungalow. Although the demolition of this has not yet taken place, there was no time limit imposed on this planning permission.

Prior to this, BE/101/13/CLP confirmed the Marigolds bungalow and its curtilage as being part of the caravan park. None of the previous consents relating to the use of the land as a caravan park were restricted by condition to a particular layout. For this reason, the applicant could move caravans from one part of the site to another without the need for a new planning permission.

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

No response from the Parish Council and no letters from residents.

COMMENTS ON REPRESENTATIONS RECEIVED:

Noted.

CONSULTATIONS

Scotia Gas Networks

Environmental Health

WSCC Strategic Planning

Engineering Services Manager

Engineers (Drainage)

Environment Agency

CONSULTATION RESPONSES RECEIVED:

ENVIRONMENT AGENCY - Note that the site is partly within Flood Zone 2 and that there have been localised flooding in the immediate vicinity. However, have no objection to the removal of the condition subject to implementation of the flood resilience measures proposed in the Flood Risk Assessment.

WSCC HIGHWAYS - Do not support the removal of condition 1 based on the potential for greater traffic movements onto and off the 29. However as an alternative, advise that the Planning Authority vary the condition to state that no more than 70 Caravans are permitted to be stationed at the site at any time. This will ensure that the development remains below the WSCC classification of a Major development and does not generate the requirement for additional documentation to enable assessment of the proposal.

HEALTH & SAFETY EXECUTIVE - Advise against granting permission on safety grounds. State that if the Planning Authority is minded to approve the application despite the HSE position then it will be

necessary to give the HSE 21 days to decide whether or not to request that the Secretary of State for Communities and Local Government call in the application for determination. This is in accordance with paragraph 072 (reference ID: 39-072-20161209) of the online Planning Practice Guidance.

ADC DRAINAGE ENGINEERS - State that the site lies within the Lidsey catchment and an area at risk of fluvial and pluvial flooding. Object to the proposals as inadequate information has been submitted to demonstrate that there will be sufficient space for sustainable drainage and that the proposals will not increase flood risk elsewhere.

ADC ENVIRONMENTAL HEALTH - Request that the condition not be deleted but instead varied to state that no more than sixty-five (65) caravans can be stationed on the land at any time with the reason to protect the visual amenity of the local area.

COMMENTS ON CONSULTATION RESPONSES:

ENVIRONMENT AGENCY - The resilience measures will be secured by a condition.

WSCC HIGHWAYS - It would not be possible to impose such a condition as the application is to remove not vary the condition which specified the maximum number of caravans. The applicant advised in an email dated 21/05/19 that "The application is to remove a condition, and it is considered that it should be assessed against the six tests. Whilst it might be a short term pragmatic solution to vary the numbers that is not the preference."

It is also not considered possible for the applicant to get more 70 caravans on the site due to the lack of free space (excepting the site of the bungalow on which the applicant considers they could get 4 more caravans) and the need to adhere to the conditions of the site licence (which sets out rules on distances between caravans & distances to site boundaries).

HEALTH & SAFETY EXECUTIVE - The detail of the HSE response states that they consider the proposal to represent a more than 10% increase in the site population. However, it is clear that a 10% increase would be 66 caravans and the applicant has stated that they can only get a further 4 caravans on the site of the bungalow. Whilst it is accepted that it may be possible to achieve additional caravans on the site through the replacement of twin unit caravans with singles, it is very unlikely that more than 66 caravans could be achieved in the short term.

The HSE were informed that it was the intention of Arun District Council to grant planning permission for this application contrary to the stated position. They were asked whether they wished to request that the Secretary of State for Communities and Local Government call in the application for their own determination. The HSE responded on the 25th September to state that:

"HSE would not wish to pursue the matter further. However, the HSE's land use planning advice remains that there are sufficient reasons, on safety grounds, for advising against the granting of planning permission in this case, and HSE's decision does not mean that this advice is withdrawn."

ADC DRAINAGE ENGINEERS - Objection noted however it is material that this is an existing caravan park with a bungalow and that there is no increase in the site boundaries or a likely material increase in the 'built' footprint. Furthermore, the Environment Agency have not raised any objections on flooding grounds.

ADC ENVIRONMENTAL HEALTH - It would not be possible to impose such a condition as the application is to remove not vary the condition which specified the maximum number of caravans (and the applicant will not agree to a change in the application description). Furthermore, given that any new

caravans would be located within an existing site, it is not clear how an increase beyond 65 caravans (assuming this is possible given the space constraints and the need to comply with the site licence conditions) would be harmful to the visual amenity of the local area.

POLICY CONTEXT

Designations applicable to site:

Outside Built Up Area Boundary;
Area of Special Control of Adverts;
Within consultation buffer zone for nearby major gas pipeline;
Class A Road;
No Public Sewer; and
PD Restriction.

DEVELOPMENT PLAN POLICIES

Arun Local Plan 2011 - 2031:

CSP1	C SP1 Countryside
SDSP1	SD SP1 Sustainable Development
QESP1	QE SP1 Quality of the Environment
TDM1	T DM1 Sustainable Travel and Public Rights of Way
TSP1	T SP1 Transport and Development
WDM2	W DM2 Flood Risk
WDM3	W DM3 Sustainable Urban Drainage Systems

Bersted Neighbourhood Plan 2014 Policy ES2 Surface water management

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan 2011 - 2031, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

The Neighbourhood Development Plan

Where applicable, Neighbourhood Development Plan's (more commonly known as a neighbourhood plan or NDP), once made by Arun District Council, will form part of the statutory local development plan for the relevant designated neighbourhood area.

The only relevant Bersted Neighbourhood Development Plan (BNDP) policy is ES2 "Surface Water Drainage".

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The proposal is considered to conflict with the Development Plan policies in that it proposes more residential dwellings in the countryside and is considered by consultees to be insufficient in respect of information to satisfy highway safety and drainage policies.

OTHER MATERIAL CONSIDERATIONS

Notwithstanding the conflict with the Development Plan, it is material that as according to the 6 condition tests (para 55 of the NPPF & paragraph: 003 (reference ID: 21a-003-20190723) of the PPG), the condition on the maximum number of caravans is not appropriate and should be removed.

CONCLUSIONS

RELEVANT DEVELOPMENT PLAN POLICIES:

The following is a discussion/analysis of the relevant Arun Local Plan (ALP) and Bersted Neighbourhood Development Plan (BNDP) policies.

Principle

The caravan park lies outside of the defined settlement boundary (built up area boundary or BUAB) as shown within the ALP and therefore falls within the countryside. ALP policy C SP1 "Countryside" states that outside of the defined BUAB, development will only be permitted here where it is:

a. for the operational needs of agriculture, horticulture, forestry, the extraction of minerals or the management of waste as part of a waste site allocation within the West Sussex Waste Local Plan; or
b. for quiet, informal recreation; or
c. for green infrastructure; or
d. for the diversification of the rural economy; or
e. for road and/or cycle schemes; or
f. in accordance with other policies in the Plan which refer to a specific use or type of development.

The proposal seeks to provide for more residential mobile homes which does not fall into any of these categories and the proposal is therefore contrary to adopted countryside policy.

The BNDP does not set a BUAB and there are no policies within the Plan specifically regarding new housing development.

Flooding and Drainage

According to mapping on the Environment Agency's website, the site is partly within Flood Zone 2 which is designated as having a medium risk of flooding. ALP policy W DM2 states that:

"Development in areas at risk from flooding, identified on the latest Environment Agency flood risk maps and the Council's Strategic Flood Risk Assessment (SFRA), will only be permitted where all of the

following criteria have been satisfied:

a. The sequential test in accordance with the National Planning Policy Guidance has been met.
b. A site specific Flood Risk Assessment demonstrates that the development will be safe, including access and egress, without increasing flood risk elsewhere and reduce flood risk overall.
c. The sustainability benefits to the wider community are clearly identified.
d. The scheme identifies adaptation and mitigation measures.
e. Appropriate flood warning and evacuation plans are in place; and
f. New site drainage systems are designed to take account of events which exceed the normal design standard i.e. consideration of flood flow routing and utilising temporary storage areas."

ALP policy W DM3 states that: "To increase the levels of water capture and storage and improve water quality, all development must identify opportunities to incorporate a range of Sustainable Urban Drainage Systems (SUDS), appropriate to the size of development, at an early stage of the design process." In addition, BNDP policy ES2 requires that new development should aim to reduce the overall level of flood risk in the area and achieve this through surface water management measures and SUDS.

Only a small part of the site falls within Flood Zone 2 and this roughly corresponds with the site of the bungalow on which the applicant proposes to redevelop with up to 4 new homes. The application is accompanied by a Flood Risk Assessment (FRA) which sets out the following in support of the application:

- The caravans whilst defined in the NPPG as highly vulnerable, all have their floors set 0.9-1m above ground level;
- The application concerns the infill/partial redevelopment of an existing site and therefore not the creation of a new site in a flood zone;
- Caravans on such a site may have a life expectancy of between 20 to 50 years;
- The flood risk is related to the culverted stream to the east of the site (on the other side of Shripney Road);
- The existing bungalow has standard foundations, air bricks and no flood resilience measures;
- The flat nature of the site suggest that flooding is unlikely to be of any particular depth and therefore evacuation from the site will still be possible;
- The space under the caravans will allow water to flow through thus not affecting the amount of flood storage;
- The replacement of the bungalow with 4 caravans with their floor levels above ground level will be an improvement; and
- Consideration can be given to creating a swale behind the hedge at the front of the site to avoid any backing up from the culvert extending as far as it has done.

The Environment Agency have written to state that they have no objection to the removal of the condition subject to implementation of the flood resilience measures proposed in the FRA. The applicant has not provided a sequential assessment or set out the sustainability benefits of the proposal but these are not considered to be necessary given that the proposal concerns an existing site.

The application also currently attracts an objection from the Councils drainage engineers in that no information has been provided to demonstrate that there will be sufficient space for sustainable drainage and that the proposals will not increase flood risk elsewhere. However, it is material in this determination that this is an existing caravan park with a bungalow and that there will be no increase in the site boundaries or a likely material increase in the 'built' footprint. These factors are considered to allow a decision to be made other than in accordance with the drainage policies in the Development Plan.

Highway Safety

Policy T SP1 seeks to ensure that development provides safe access on to the highway network and explains how the development has been designed to create safe and secure layouts for traffic, cyclists and pedestrians. Paragraph 108 of the NPPF states: "In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that: (b) safe and suitable access to the site can be achieved for all users". Regard should also be had to para 109 which states that: "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."

West Sussex Highways have concerns that an increase in the number of caravans at the site will result in additional traffic movements to the detriment of local highway safety. They have therefore stated that they will not support the removal of the condition and instead request that it be amended so as not to allow more than 70 caravans.

However, it would not be possible to impose such a condition as the application is to remove not vary the condition (and the applicant will not agree to change this) and to do so regardless could lead to an appeal and potentially costs being awarded. However, it is not considered possible for the applicant to get more 70 caravans on the site due to the lack of free space (excepting the site of the bungalow on which the applicant considers they could get 4 more caravans) and the need to adhere to the conditions of the site licence (which sets out rules on distances between caravans & distances to site boundaries). Therefore, it is considered acceptable to allow the application despite the objections and potential conflict with ALP policy T DM1. It is also not considered likely that 5-10 caravans could result a highway impact that is severe in nature.

Visual Amenity

The development plan policies relevant to this determination refer to the impacts associated with new or extended buildings/houses and caravans are not buildings. There are policies which refer to the impact of development on character, such as D DM1 and D SP1 of the ALP. However, the effect of the removal of the condition would be to allow additional caravans to be sited within an existing caravan park. It is not considered that would harm the character of the site, the surrounding area or the streetscene and as such, there would be no adverse impact on visual amenity.

OTHER MATERIAL CONSIDERATIONS:

The above analysis refers to material considerations in respect of highway safety and drainage matters. However, there is material consideration of greater weight to consider in respect of these issues and also in respect of the location of the site in countryside.

The application proposes the removal of an existing condition and the applicant considers that this condition is not valid as it fails to accord with the 6 condition tests set out in planning law.

Paragraph 55 of the NPPF states that "Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects."

In addition, paragraph 003 (reference ID: 21a-003-20190723) of the National Planning Practice Guidance (PPG) states that each of these 6 tests must be satisfied for each condition which an authority intends to apply. Paragraph 031 (reference ID: 21a-031-20180615) states that in deciding an application to remove conditions, the local planning authority must only consider the disputed condition/s that are the subject of the application and is not allowed to re-consider the whole application.

The applicant's supporting statement sets out the following in respect of the 6 tests:

(1) Necessary - a planning condition controlling numbers of caravans on a site is not necessary because the separate 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.

(2) 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.

(3) Relevant to the Development to be Permitted - (again) the ongoing control of the site should only need to be controlled by the site licence.

(4) Enforceable - although the condition is currently enforceable, would it be expedient to take enforcement action if one large caravan was removed and replaced with two smaller ones.

(5) Precise - the exact meaning of what this condition was trying to control is not precise. It does not control the size of the caravans (so allows single or twin units). Furthermore, the reason for the condition is very generalised and is not precise as to why the condition was imposed.

(6) Reasonable in all other Respects - the planning system does not need to be involved in the day to day management of a caravan site, and such a condition is considered to go well beyond being a reasonable requirement in the circumstances.

It is agreed that the condition is not necessary as the number of caravans on the site is separately restricted by the conditions of the site licence and at the time of the original application, there was no clear justification for the restriction. In addition, the condition is not relevant due to site occupancy being separately governed by the site licence. The condition is considered to be enforceable and also the condition (but not the reason) is considered to be precise (i.e. 60 caravans). It is not considered that the condition was reasonable in other respects and it would have prevented relatively small scale changes to the site (with minimal harm) from being achieved without a planning permission.

It is not considered that the condition fails to meet some of the tests but it is clear that it does not meet all of them. As noted above, the PPG is clear that in deciding an application to remove conditions, the local planning authority must only consider the disputed condition and not reconsider the wider planning situation. On this basis, it is considered that the non-compliance with the 6 tests is capable of allowing for a decision to be taken other than in accordance with the Development Plan and this outweighs all of the issues discussed in this application.

SUMMARY:

For the above reasons, it is recommended that planning permission be granted subject to following two conditions, the first of which is a repeat of a condition present on the original decision, and the second is the conditions requested by the Environment Agency. The other conditions present on the original decision have either been removed by other subsequent decisions, relate to separate legislation (and are no longer necessary) or are no longer relevant due to the passage of time. It is not therefore appropriate to reimpose these on this amended decision.

HUMAN RIGHTS ACT

The Council in making a decision should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

APPROVE CONDITIONALLY

1 This consent is not to be construed as implying permission to obstruct or divert any public rights of way crossing the application site.

Reason: In order to preserve claimed or actual Public Rights of Way in accordance with policies T DM1 and T SP1 of the Arun Local Plan.

2 The development permitted by this planning permission shall only be carried out in accordance with the submitted Flood Risk Assessment (FRA) as received on the 212st May 2019 and the following mitigation measures detailed within the FRA:

- All new/replacement caravans to be positioned on concrete bases with the floor level of the caravan at least 0.9m above ground level;
- The style of low wall to be provided around new or replacement caravan bases should allow water to pass through; and
- Provision of a swale behind the hedge at the front of the site to avoid any backing up from the culvert.

The mitigation measures shall be fully implemented prior to occupation of any caravans which take the total number on site above 60.

Reason: To ensure safe occupation of the caravans and to reduce the risk of flooding to the existing caravan park and present/future occupants in accordance with policy W DM2 of the Arun Local Plan and the National Planning Policy Framework.

3 INFORMATIVE: Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure)(England) Order 2015. The Local Planning Authority

has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.