



## Appeal Decisions

Inquiry Held on 26 April 2018

Site visit made on 27 April 2018

**by Paul Freer BA (Hons) LLM PhD MRTPI**

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

**Decision date: 06 July 2018**

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### **Appeal A Ref: APP/W0530/X/17/3183811**

#### **Appleacre Park, London Road, Fowlmere, Cambridgeshire SG8 7RU**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
  - The appeal is made by Mr J Hart of Park View Group Ltd against South Cambridgeshire District Council.
  - The application Ref: S/3293/16/LD is dated 30 November 2016.
  - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is sought is occupation of caravans on the site for more than 28 days in total in any one calendar year otherwise than in accordance with Condition 4 of planning permission S/1155/92/F and Condition 4 of planning permission S/1156/92/F.
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### **Appeal B Ref: APP/W0530/W/17/3183813**

#### **Appleacre Park, London Road, Fowlmere, Cambridgeshire SG8 7RU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 J Hart of Park View Group Ltd against South Cambridgeshire District Council.
  - The application Ref S/1385/17/VC is dated 6 April 2017.
  - The application sought planning permission for 15 touring caravans without complying with conditions attached to planning permission Ref S/1155/92/F, dated 17 August 1993 and for 5 touring caravans or tents without complying with conditions attached to planning permission Ref S/1156/92/F, dated 17 August 1993.
  - The conditions in dispute are No 2 attached to planning permission Ref S/1155/92/F and No 2 attached to planning permission Ref S/1156/92/F which state that the site shall not be used other than as a touring caravan site and/or tent site and shall not be occupied by mobile homes used either for seasonal use or permanent residential accommodation.
  - The reasons given for the conditions are to satisfy the need for touring caravan sites and/or tent sites and to minimise the visual upon the area of permanently stationed mobile homes.
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## **Summary Decisions: Appeal A is dismissed and Appeal B is dismissed.**

### **Background and preliminary matters**

1. These appeals both relate to the same site, specifically a caravan site known as Applecare Park. The site is operated under a number of separate planning permissions, each relating to different areas within the site. These areas were generally referred to at the Inquiry as Areas A, B, C, D and E. The planning permissions to which these appeals relate are S/1155/92/F and S/1156/92/F, both granted on 17 August 1993. The former granted planning permission, subject to conditions, for 15 touring caravans and equates to Area A. The latter granted planning permission, subject to conditions, for 5 touring caravans or tents, and equates to Area D.
2. In my Pre-Inquiry Note, I requested submissions as to whether the defined parts of Applecare Park, each with their separate planning permissions, comprised a single planning unit. The parties made their respective submissions at the Inquiry, and expressed opposing views. However, given how the Inquiry unfolded and the evidence before me, I do not need to reach a firm conclusion on that point.

### **Appeal A – the Section 195 appeal**

3. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the use are not relevant to this appeal and the main issue is whether the application for the Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is firmly on the appellant to show that, on the balance of probability, the use would have been lawful at the time the application was made to the Council.
4. The appeal seeks to demonstrate that the caravans on Areas A and D have been occupied for more than 28 days in total in any one calendar year, otherwise than in accordance with Condition 4 of planning permission S/1155/92/F and Condition 4 of planning permission S/1156/92/F. The wording of these two conditions is for practical purposes identical and, because the precise wording of these conditions may be determinative as to whether there was occupation continuing in breach of them, it is helpful to set out the conditions here:  
  
*Any caravan (and/or tent<sup>1</sup>) shall not be occupied on this site for more than 28 days in total in any one calendar year.*
5. In both cases, the construction of the conditions is such that they seek to restrict occupation for no more than 28 days in *total*, as distinct from 28 days in succession or between certain times of the year (my emphasis). Both Mr Eiser for the appellant and Ms Twyford for the Council agreed that the 28 days could be widely dispersed throughout the calendar year and separated even by

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<sup>1</sup> S/1156/92/F only

- as much as eleven months. On my reading, the words 'any caravan' in these conditions must be taken as meaning any one individual caravan.
6. In order to succeed, it is necessary for the appellant to show that the period of occupation exceeded 28 days in each of ten years prior to the date of the application. This does not necessarily have to be the same individual caravan and could be different caravans on different years. But, as the Council points out, because the application and subsequent appeal covers two planning permissions, it is necessary for the appellant to show that both of the conditions were breached continuously over that period. To be considered continuous for this purpose, the local planning authority must have been able to have served an enforcement notice at any point during the 10 period of the alleged breach<sup>2</sup>.
  7. The appellants' evidence comprises a statutory declaration from Mr Anthony John Bearpark, the manager of Appleacre Park; letters from several residents of Appleacre Park; Council Tax records; and booking sheets. I shall consider these individually in the first instance before evaluating the totality of this evidence.
  8. In his statutory declaration, Mr Bearpark confirms that he has been the manager of Appleacre Park since 1992 and until the summer of 2016 lived in a static caravan on the site. Mr Bearpark explains that until 2016 that there were 13 static caravans on the site and that these were numbered 1-13. Any touring caravans were allocated numbers above 13 and it was part of Mr Bearpark's duties to collect post for the occupiers of those touring caravans. The numbers would be re-allocated when the residents left. It is Mr Bearpark's recollection that the touring caravans on the site have been consistently occupied in excess of 28 days by residents who were working in the local area and who would stay for a few months.
  9. I accept that Mr Bearpark's role as manager of Appleacre Park places him in a good position to know of the occupation of the touring caravans in Areas A and D. However, his statutory declaration is short on detail. For example, although it is clear that the touring caravans were stationed in either Area A or Area D, Mr Bearpark does not say which. Given that it is necessary for the appellant to show that the conditions were breached continuously over the relevant period in respect of both Area A and Area D, this is a significant omission.
  10. Moreover, Mr Bearpark indicates that there would be breaks in occupation whilst the occupiers returned home or were working elsewhere, although no indication is given as to how long these gaps in occupation were. The precise wording of the conditions is such that significant gaps in occupation would not necessarily constitute a break in that occupation. However, the implication of Mr Bearpark's statement is that the caravans could be considered to have been stored on site while the occupiers returned home or worked elsewhere. That, in my view, represents a different pattern of occupation and shifts the planning status.
  11. The statutory declaration provided by Mr Bearpark is supported by letters from several residents of Appleacre Park. In her letter, Mrs Wells explains that the touring caravans have never moved in the three years that she has been resident on the site. This is echoed in separate letters from by Ms Ogilvy and

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<sup>2</sup> *Thurrock BC v SSETR and Holding* [2002] EWCA Civ 226

Mr Porter, both of whom have been residents of the site for four years. Similarly, in his letter Mr Elton confirms that he lives in a touring caravan on the "front field" and has been paying Council Tax and rent for virtually four years. In his letter, Mr Merrick indicates that he has been resident in a touring caravan on the site for the last five years but does not say where on the site the caravan is stationed.

12. These letters strongly suggest that the authors have occupied their respective caravans for periods in excess of 28 days in each of the previous four or five years. The difficulty, however, is that none of these letters categorically state that the caravans are stationed in either Area A or Area D. The reference to the "front field" in Mr Elton's letter suggests that in all likelihood his caravan is stationed within Area A. However, Mrs Wells gives her address as 1 Appleacre Park which, according to Mr Bearpark's statutory declaration, would place it within Area E. Similarly, Ms Ogilvy's address is given as 9 Appleacre Park which, as Mr Eiser accepted, would also place it within Area E. It would appear that Mr Porter has moved around the site, but there is no indication whether the three different plot numbers he has occupied are within Area A or Area D. Although Mr Merrick indicates he lives in a touring caravan, he does not specify exactly where it is stationed on the site, although Mr Eiser believed that it is within Area A.
13. The fact that the touring caravans have never moved, mentioned by several of the residents in their letters, is immaterial to whether they have been occupied in excess of 28 days in any one calendar year. Furthermore, it is significant that these letters cover, at most, only the previous five years and therefore only half the relevant period. As such, they do not assist the appellant for the earlier part of that period.
14. The Council Tax Records reveal that 14 caravans over and above the 13 static caravans that have planning consent have been paying Council Tax, 10 for a period in excess of ten years. However, whilst supportive of the appellant's case, neither Council Tax records nor the Electoral Role are in themselves indicative of continuous occupation. Furthermore, although it is likely that these additional caravans are sited in either Area A or Area D, this evidence suffers from the same difficulty referred to above, in that it does not positively identify exactly where the caravans for which Council Tax has been paid are stationed on the site (i.e: whether in Area A or Area D).
15. The appellant has provided what are purported to be booking sheets for Appleacre Park, although nowhere on these booking sheets does it actually state that they relate to Appleacre Park. These booking sheets do not record the year to which they relate, but Mr Eiser conceded that they do not go back over the full ten year period. It is also not expressly stated on the booking sheets that they relate solely to the touring caravans on Areas A and D, and the individual plot numbers are not recorded. In cross-examination, Mr Eiser explained that it would be expected that the plot numbers would have been recorded if the sheets related to the static caravans and that the fact that there are more than 13 entries supports that interpretation.
16. Nevertheless, even if it is accepted that the booking sheets relate only to the touring caravans on Appleacre Park, the absence of plots numbers makes it impossible to determine where on the site, in terms of Area A or Area D, the caravans were stationed. Consequently, in the absence of precise dates in

terms of the calendar year to which they relate and individual plot numbers, the booking sheets can be afforded only minimal weight.

17. Having regard, then, to the appellant's evidence as a whole, there is limited evidence to suggest that some of the touring caravans have been continuously occupied for the last four or five years. Of those touring caravans, at least two can with some certainty be placed within Area A. None can be positively placed within Area D. However, there is no similar evidence for the first half of the relevant period, either in relation to Area A or Area D.
18. Moreover, just as significant as the evidence that has been provided is the evidence that has not. In situations such as, I would have expected documentary evidence to have been provided in terms of utility bills and other correspondence over the relevant period. I recognise that ownership of the caravan park changed hands in or around 2015, but the absence of company records and accounts from before that date is also surprising.
19. In giving her evidence, Councillor Roberts explained that she has known the Appleacre Park site for over ten years, and has delivered election material and community information to residents on the site throughout that period. Her evidence was that she had never been advised that she had to deliver to anyone other than the occupiers of the static caravans, on the basis that others were living permanently on the site in the touring caravans.
20. However, whilst I have no reason to doubt the evidence that Councillor Roberts gave, I must nonetheless treat this evidence with some caution. Having regard to their written evidence, it is in my view probable that both Mr Elton and Mr Merrick have permanently occupied touring caravans within Area A for the past four or five years. It is also likely that Mr Porter lived in a touring caravan somewhere on the site during that same period. The fact that Councillor Roberts has not delivered election material and community information to those individuals is therefore not necessarily indicative that these or other individuals have not lived on the site on a permanent basis. For that reason, I must attach only limited weight to this evidence.
21. This is a situation where the local planning authority has no evidence of its own to contradict that of the appellant or make his version of events less than probable. Nevertheless, I find that the appellant's evidence is not sufficiently precise and unambiguous to demonstrate on the balance of probability that the touring caravans have been occupied for a period exceeding 28 days in each of the ten calendar years prior to the date of the application, and therefore in breach of Condition 4 of planning permission S/1155/92/F and Condition 4 of planning permission S/1156/92/F.
22. I acknowledge that there is more evidence in relation to the occupation of the touring caravans in Area A than for Area D, and accordingly have given careful consideration as to whether a split decision would be appropriate. However, whilst it is in my view probable that touring caravans in Area A have been permanently occupied for the past four or five years, I have concluded on the balance of probability that there is insufficient evidence to show that the touring caravans in Area A have been occupied in excess of 28 days during any one calendar year in the early part the relevant period. It follows that a split decision relating to Area A only would also not succeed.

23. I conclude that the application for the certificate of lawful use or development in respect of the occupation of caravans on the site for more than 28 days in total in any one calendar year otherwise than in accordance with Condition 4 of planning permission S/1155/92/F and Condition 4 of planning permission S/1156/92/F was not well-founded and that the appeal should not succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended accordingly .

### **Appeal B – the Section 78 appeal**

24. Although the right of appeal is derived under Section 78 of the 1990 Act, the application was initially made under Section 73 of that Act. Section 73 is drafted widely and therefore, in addition to considering the disputed conditions, it is open to me to also consider whether the previous conditions imposed upon the original planning permissions, or modified versions of them, should be re-attached. In so doing, I shall consider whether the conditions accord with the tests set out in the Framework and Planning Practice Guidance and, in particular, whether the conditions are necessary.

25. The conditions in dispute are No 2 attached to planning permission Ref S/1155/92/F and planning permission Ref S/1156/92/F which state that:

*The site shall not be used other than as a touring caravan site (and/or tent site<sup>3</sup>) and shall not be occupied by mobile homes used either for seasonal use or permanent residential accommodation.*

The reason for conditions is:

*To satisfy the need for touring caravan sites (and/or tent<sup>4</sup>) sites and to minimise the visual upon the area of permanently stationed mobile homes.*

#### *Main Issues*

26. Although the appeal is against the non-determination of the application, the Council has resolved that it would have refused the application for two putative reasons. In summary, these reasons are (i) that the development is located outside the village framework, resulting in loss of income to the village through loss of visitor accommodation, and (ii) that the development would result on 20 new residential dwellings but without adequate provision for affordable housing. In giving her evidence, Ms Twyford voluntarily conceded that there would be no harm arising from a loss of employment or economic income should Condition 2 be removed, and indicated that the Council did not intend to pursue putative reason (i).

27. Having regard to the original reasons for issuing the conditions, the remaining putative reason for refusal and the evidence before me, I consider that the main issues are:

- whether there is a need for touring caravan sites in the area
- the effect of permanently stationed mobile homes on the character and appearance of the area
- whether the appeal site is a suitable location for residential development

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<sup>3</sup> S/1156/92/F only

<sup>4</sup> S/1156/92/F only

- whether the development would make adequate provision for affordable housing.

*Need for touring caravan sites*

28. By reading Condition 2 and Condition 4 of both permissions together, it is apparent that the Council was seeking at the time to ensure that there was adequate provision for short-stay caravan pitches in the area. The objective behind that approach appears to have been the provision of a recreational or tourism based facility with the potential to attract holiday visitors.
29. However, the location of the site itself has no obvious holiday potential. As the Parish Council points out, the site is close to the Imperial War Museum at Duxford and to Wimpole Hall both of which, I accept, are likely to attract visitors in significant numbers. Nevertheless, in the absence of details about the precise number of visitors that attend these attractions and factors such as average duration of visits, I am not persuaded that these destinations are in themselves sufficient to sustain a tourism-based facility. Furthermore, I have not been advised of any other visitor attractions in the area. Accordingly, on the evidence available to me, I conclude that Condition 2 is no longer necessary in this respect.

*Character and appearance*

30. The landscape surrounding Appleacre Park is gently undulating, comprising mostly of open fields with isolated pockets of trees. One of the main characteristics is a general absence of enclosure, resulting in long vistas and a sense of openness.
31. Applecare Park occupies an important position within this landscape context. When approaching Fowlmere village from the south-west, the site serves as a transition between the open countryside and the built form of the village. The site is set back from the highway behind a grass verge and close boarded fence. A line of trees in front of the fence allows only glimpsed views beyond and is effective in screening the interior of the site from view. The set back from the highway and the line of trees both assist the transition from countryside to built form.
32. However, within the site itself, the character is very different. Within those parts of the site occupied by static mobile homes, specifically Areas B, C and E, the individual mobile homes are closely spaced around the estate road. There is the usual paraphernalia associated with a domestic environment, including flower beds, refuse bins, close-boarded fencing and car parking spaces. Some of the mobile homes exhibit features typically associated with residential properties, including bay windows, decorative columns, porches and stepped entrances. By reason of their size, appearance and spacing, these static mobile homes present a character that is essentially sub-urban.
33. By contrast, those parts of the site occupied by touring caravans, specifically Areas A and D, have a very different character. The touring caravans in these areas tend to be spaced apart with significant areas of grass between them and in front of them. Aside from the vehicles associated with those caravans, there is a lack of domestic paraphernalia. The character and appearance of these areas is therefore generally open, and more in keeping with the character of the surrounding countryside.

34. The part of the appeal site most visible from the highway, and therefore the most important in terms of affecting the transition between rural and built form, is Area A. It is this area that sits directly behind the close boarded fence, and which is glimpsed in views between the trees in front of that fence. The effect of removing Condition No 2 attached to planning permission Ref S/1155/92/F would be that the touring caravans in Area A could be replaced by static mobile homes. The character and appearance of this area would therefore change from the generally open area at present to a character that was essentially sub-urban, in which the mobile homes could be closely spaced and with the attendant paraphernalia associated with a domestic environment similar to that in Areas B, C and E at present.
35. I recognise that, at present, only glimpsed views are possible between the trees in front of that close-boarded fence in front of the site. Nevertheless, even in these glimpsed views the generally open character of Area A is readily apparent. It follows that closely-spaced mobile homes would not be equally visible from outside the appeal site in those glimpsed views, such that the transition between rural and built form when approaching Fowlmere from the south-west would be apparent. This would be significantly harmful to the generally open character of the countryside.
36. Moreover, should the line of trees die or be removed, the change in the character of Area A would be even more apparent. I have considered whether the visual impact of mobile homes in this area could be mitigated by additional landscaping, but it would not be prudent to rely on landscaping to screen a development that would itself be intrinsically harmful to the character of the area should the landscaping fail to take hold or subsequently die back.
37. I therefore conclude that, in respect of Area A, Condition No 2 attached to planning permission Ref S/1155/92/F remains necessary in order to minimise the visual upon the area of permanently stationed mobile homes.
38. I am not, however, persuaded that the same applies to Area D. Although visible from the properties that front Chrishall Road, this part of the site does not play the same role in terms of affecting a transition between rural to built form as does Area A. This is partly because the built form of Fowlmere village extends further south than Area D, partly because the mobile homes in Areas B and C already extend to the southern boundary of the site and partly because Area D is to some extent adjoined by the static mobile homes in Areas C and E.
39. In this context, the although the stationing of up to five permanently stationed mobile homes would significantly alter the character and appearance of this part of the site, I consider that this change would not unacceptably harm the character and appearance of the wider area. I therefore conclude that, in respect of Area D, Condition No 2 attached to planning permission Ref S/1156/92/F is no longer necessary.

*Whether the appeal site is a suitable location for residential development*

40. Appleacre Park site is located outside of, but immediately adjoining, the settlement boundary of Fowlmere as shown on the South Cambridgeshire Adopted Proposals Map published in January 2010<sup>5</sup>. The site is therefore in the countryside.

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<sup>5</sup> The appeal site is also shown as outside the Fowlmere settlement boundary on the emerging the South Cambridgeshire Submission Policies Map, July 2013



41. Policy DP/7 of the South Cambridgeshire Development Control Policies Development Plan Document (DPD) indicates that, outside urban and village frameworks, only development for agriculture, horticulture, forestry, outdoor recreation and other uses that need to be located in the countryside will be permitted. This policy is underpinned by Policy DP/1 of the DPD which, amongst other things, indicates that development will only be permitted where it is consistent with the principles of sustainable development.
42. The appellant contends that Policy DP/7 is inconsistent with the National Planning Policy Framework (Framework) insofar as, in the appellant's view, the focus in the Framework has moved away from protecting the general countryside towards protecting only valued landscapes. I do not agree. The Framework specifically recognises the intrinsic character and beauty of the countryside, and of supporting thriving rural communities within it, as core land-use planning principles. In my view, Policy DP/7 is not inconsistent with those core land-use planning principles.
43. The removal of Condition 2 imposed on planning permissions S/1155/92/F and Ref S/1156/92/F would potentially result in the stationing of up to 20 static mobile homes on Appleacre Park. This would not be one of the uses that need to be located in the countryside contemplated in Policy DP/7 of the DPD. Removing those conditions would therefore be immediately in conflict with Policy DP/7 of the DPD, and by extension Policy DP/1 that underpins it.

*Affordable housing*

44. Policy HG/3 of the DPD indicates that proposals for housing development will only be permitted if they provide an agreed mix of affordable housing to meet local needs. As originally drafted, the policy applied to all developments of two or more dwellings but this has now been overtaken by the threshold of 10 units set out in the Ministerial Statement delivered on 28 November 2014. A note to the policy explains that the definition of affordable housing for the purposes of Policy HG/3 is that set out in Planning Policy Statement 3 (PPG3) and includes social rented and intermediate affordable housing.
45. Planning Policy Statement 3 has been superseded and the definition of affordable housing is now set out in the Glossary at Annex 2 of the National Planning Policy Framework (Framework). The Framework defines affordable housing as social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market.
46. The mobile homes on Appleacre Park do not qualify as social rented or affordable rented housing, one reason being that the appellant, as the provider, is not a local authority or a private registered provider as defined in section 80 of the Housing and Regeneration Act 2008. Moreover, it is the appellant's case that registered social landlords would not accept static mobile homes as properties to rent.
47. The Framework describes intermediate housing as 'homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above ....' The static mobile homes on Appleacre Park are dwellings providing homes for people to live on a permanent basis, albeit the units have not been constructed of bricks and mortar. As such, they are a form of market housing and to my mind therefore fall squarely within the scope of Policy HG/3 of the DPD.

48. I recognise that the Council was not able to show that Policy HG/3 has been used to secure affordable housing in similar situations in the 11 years or so years that the policy has been in operation. As the appellant points out, there is no reference to caravans or mobile homes in the evidence base leading to the adoption of Policy HG/3. Indeed, the Council was not able to explain how a contribution to provide affordable housing off-site would be calculated. The implication to be drawn from this is that Policy HG/3 was not originally drafted with mobile homes specifically in mind.
49. Nevertheless, the meaning of planning policy is a matter of law<sup>6</sup>. There is no dispute that static mobile homes constitute dwellings and therefore, in the terminology of Policy HG/3, constitute 'housing development'. On any plain reading of Policy HG/3, the provision of additional mobile homes as a consequence of removing condition 2 on planning permissions S/1155/92/F and S/1156/92/F would require the provision of affordable housing if the number of mobile homes exceeds the threshold set out in the Ministerial Statement.
50. The removal of condition 2 on planning S/1155/92/F would allow for up to 15 mobile homes, and removal of condition 2 on planning S/1156/92/F up to 5 mobile homes. The removal of those conditions would exceed the threshold set out in the Ministerial Statement, both collectively and individually in respect of planning permission S/1155/92/F. A planning obligation has not been provided to address the affordable housing requirement but would be necessary to make the development acceptable in planning terms.
51. The appellant has suggested that the matter could be dealt with through an appropriately worded condition. However, the Planning Practice Guidance indicates that planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation under section 106 of the 1990 Act. The Planning Practice Guidance also indicates that no payment or other consideration can be positively required when granting planning permission. Consequently, I consider that it would not be appropriate to rely upon a condition to secure affordable housing.
52. I therefore conclude that the development fails to comply with Policy HG/3 of the DPD.

*Other considerations*

53. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that 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 in accordance with the plan unless material considerations indicate otherwise. Having regard to the above, I conclude that the removal condition 2 on planning permissions S/1155/92/F and S/1156/92/F would fail to comply with the development plan when read as a whole. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
54. The Council concedes that it cannot demonstrate a five year supply of housing indicating that there is presently a six-month shortfall in its five-year supply. The relevant policies for the supply of housing in the development plan must be

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<sup>6</sup> *Tesco Stores Ltd v Dundee City Council (ASDA Stores Ltd intervening)* [2012] UKSC 13; 2012 SLT 739

considered to be out of date by reason of paragraph 49 of the Framework, and it follows that the fourth bullet point of paragraph 14 of Framework is therefore engaged. That paragraph indicates that, where relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or where specific policies in the Framework indicate development should be restricted.

55. This is not a situation where specific policies in the Framework indicate development should be restricted. Consequently, the first task is to determine whether the policies relevant to this appeal must be considered as being policies for the supply of housing and therefore considered to be out of date. In this respect, the Supreme Court has confirmed that the phrase 'policies for the supply of housing' in the Framework should be given a narrow interpretation<sup>7</sup>.
56. In terms of those policies in the development plan with which I found there is conflict, Policy DP/7 of the DPD aims to restrict development within the countryside. Adopting the distinction drawn by Lord Carnwath in the *Suffolk Coastal* judgment, it is therefore a policy that affects the supply of housing, as opposed to a policy for the supply the housing. For that reason, I do not consider this policy can be considered as being out of date for the purposes of paragraph 49 of the Framework. Moreover, the Framework specifically recognises the intrinsic character and beauty of the countryside. Policy DP/7 is consistent with that core land-use planning principle in the Framework, and accordingly I attach substantial weight to this conflict with the development plan.
57. The development also conflicts with the development plan in that it would not provide any affordable housing, contrary to Policy HG/3 of the DPD. This is a policy that affects the type of housing provided, as opposed to a policy for the supply the housing. I do not consider this policy can be considered as being out of date for the purposes of paragraph 49 of the Framework. The provision of affordable housing is also consistent with the Framework, and accordingly I also attach substantial weight to the conflict with the development plan in this respect.
58. In reaching that conclusion, I am mindful that the emerging Local Plan is likely to include policies that would seek to resist development outside village frameworks<sup>8</sup> and would require the provision of affordable housing in housing schemes of over 11 dwellings<sup>9</sup>. This indicates the intended direction of travel that the Council is taking, and reveals no significant departure from the approach taken in the adopted DPD. This underlines that policies in the adopted DPD relevant to this appeal may still be considered up to date.
59. For the same reasons as with policies in the development plan, the development subject to this appeal would be contrary to Policies S/7 and H/9 of the emerging Local Plan. The emerging the Local Plan is still subject to examination and, I understand, some objections to the plan have yet to be

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<sup>7</sup> *Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents); Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant)* [2017] UKSC 37

<sup>8</sup> Policy S/7

<sup>9</sup> Policy H/9

- resolved. Accordingly, in accordance with paragraph 216 of the Framework, I attach only limited weight to the conflict with those emerging policies.
60. In undertaking the 'tilted' balance' required by the fourth bullet point of paragraph 14 of Framework, I note that the removal of condition 2 on planning permissions S/1155/92/F and S/1156/92/F would allow for up to 20 mobile homes to be stationed on Applegrove Park. This is a benefit that weighs in favour of granting planning permission, albeit that benefit is tempered by the lack of any affordable housing associated with those additional dwellings. It is also tempered by the fact that the shortfall in the Council's housing five-year housing only extends to some six-months. Nevertheless, it is a benefit to which I attach significant weight.
61. Although Applegrove Park is located outside the settlement boundary of Fowlmere, it does immediately adjoin it. The provision of up to 20 mobile homes to be stationed on Applegrove Park could therefore not be described as constituting isolated homes for the purposes of paragraph 55 of the Framework. The objective of paragraph 55 is to promote sustainable development in rural areas, indicating there that housing should be located where it will enhance or maintain the vitality of rural communities. In this context, the word 'vitality' is broad in scope and includes contributing to social sustainability because of proximity to other homes.
62. In this case, the closest other homes are located on the opposite side of Chrishall Road, although much of the village of Fowlmere must be considered to be proximal to the appeal site. In that context, the provision of up to 20 new dwellings on Applegrove Park would enhance the vitality of the rural community of Fowlmere, and must be said to be consistent with paragraph 55 of the Framework to that extent.
63. Fowlmere is categorised as a Group village in the Core Strategy, a status that it would retain in the emerging Local Plan. The Council defines Group villages as providing some services to accommodate the day-to-day needs of its residents. In terms of facilities, there is a primary school but no secondary school. There are no medical facilities in the village, no food store and no post office. There are two public houses and a restaurant. There is a village hall close to the appeal site and there two recreation grounds in the village.
64. I have been provided with a copy of the current bus timetable for route 31, which shows that there are up to six services on Mondays to Fridays and on Saturdays that stop at Fowlmere. There are no bus services on Sundays and Public Holidays. Route 31 serves Cambridge, Barley and Thriplow, the latter being the closest village to Fowlmere with a convenience store. The bus stop is located at the junction of London Road with Chrishall Road, close to Applegrove Park. The nearest railway stations are at Shepreth and Foxton, with half-hourly connecting services to Cambridge from both.
65. Taking into account the facilities within Fowlmere itself and the lack of employment opportunities in the village, the occupiers of the 20 mobile homes that could be stationed on Applegrove Park should condition 2 on planning permissions S/1155/92/F and S/1156/92/F be removed would be heavily reliant upon the private car for most day-to-day activities, including to reach the railway stations at Shepreth and Foxton.

66. The Framework recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. I am also mindful that the appeal site adjoins a Group village that does provide some services to accommodate the day-to-day needs of its residents. Nevertheless, for the reasons given above, it seems to me that the scale of the development that would result from the removal of condition 2 on planning permissions S/1155/92/F and S/1156/92/F would not be consistent with the objective of promoting sustainable development in rural areas set out in the Framework.
67. I have found that the change in the character of Area A would be significantly harmful to the generally open character of the countryside outside of Fowlmere. The Framework specifically recognises the intrinsic character and beauty of the countryside. The removal of condition 2 on planning permissions S/1155/92/F and S/1156/92/F would not be consistent with that core land-use planning principle.
68. To conclude in relation to the 'tilted balance', I attach substantial weight to the conflict with the development plan. I attach significant weight to the harm that would result to the generally open character of the countryside outside of Fowlmere from the change in the character of Area A. Similarly, I attach significant weight to the failure to accord with the objective in the Framework of promoting sustainable development in rural areas.
69. In terms of benefits arising from the removal of condition 2 on planning permissions S/1155/92/F and S/1156/92/F, I attach significant weight to the provision up to 20 mobile homes to be stationed on Applegate Park.
70. Having regard to the above, I conclude that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. It follows that the presumption in favour of sustainable development set out in paragraph 14 of the Framework does not apply.

*Conclusion on the section 78 appeal*

71. I have found that the development is contrary to the development plan, and that the presumption in favour of sustainable development set out in paragraph 14 of the Framework does not apply. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. Accordingly, I conclude that the appeal should not succeed.
72. In view of my finding that the stationing of up to five permanently stationed mobile homes on Area D would not unacceptably harm the character and appearance of the wider area, I have considered whether a split decision would be appropriate. In this respect, the number of mobile homes would be below the threshold set out in the Ministerial Statement, such that an obligation would not be required to secure affordable housing. The reduction in the number of units would also reduce the extent to which the development would be inconsistent with the objective of promoting sustainable development in rural areas set out in the Framework. Nonetheless, Area D is still outside of the village framework of Fowlmere and would therefore still conflict with Policy DP/7. In view of the statutory force that applies to the development plan, I attach substantial weight to this conflict with Policy DP/7.

73. Having regard to the above, I conclude that the adverse impacts of granting planning permission for up to five mobile homes on Area D would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, such that the presumption in favour of sustainable development does not apply. There are no material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. Accordingly, it would not be appropriate to grant planning permission for up to five mobile homes on Area D, such that issuing a split decision is not open to me.
74. I have also carefully considered whether a lesser number of dwellings would be appropriate: the figure of 10 was raised in the discussion on conditions that might be imposed if I had been minded to allow the appeal. I accept that a reduced number of mobile homes would potentially have a lesser effect on the character of Area A, and would reduce the extent to which the development would be inconsistent with the objective of promoting sustainable development in rural areas set out in the Framework. It would also have the benefit of providing some additional dwellings to assist in meeting the shortfall against the five-year housing supply, and to some extent would enhance the vitality of the rural community of Fowlmere. Reducing the number of units to 10 would also overcome the requirement for affordable housing.
75. However, in the absence of a plan showing the disposition of the mobile homes in relation to Area A, it would not be possible for me to make an informed assessment of the visual impact. I would therefore not be able to undertake an informed 'tilted balance', as part of which the reduced number of dwellings would attract less weight than with the current proposal. I am also mindful that interested parties that expressed views at application stage, such as Fowlmere Parish Council, would not have had an opportunity to make comments on the proposal and would therefore be prejudiced. For all these reasons, I consider that it would not be appropriate for me to consider a reduced number of mobile homes as part of this appeal.

### **Formal Decisions**

76. Appeal A is dismissed and the application for the certificate of lawful use or development for occupation of caravans on the site for more than 28 days in total in any one calendar year otherwise than in accordance with Condition 4 of planning permission S/1155/92/F and Condition 4 of planning permission S/1156/92/F (Council Ref: S/3293/16/LD, dated 30 November 2016) is refused.
77. Appeal B is dismissed and the application for planning permission for 15 touring caravans without complying with conditions attached to planning permission Ref S/1155/92/F, dated 17 August 1993 and for 5 touring caravans or tents without complying with conditions attached to planning permission Ref S/1156/92/F, dated 17 August 1993 (Council Ref: S/1385/17/VC, dated 6 April 2017) is refused.

*Paul Freer*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mr Timothy Jones

Of Counsel, instructed by EJ  
Planning

He called:

Mr Ben Eiser BSc Hons  
MA Dip TP

EJ Planning

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Ashley Bowes

Of Counsel, instructed by Mr Richard  
Pitt, Principal Planning Lawyer, 3C  
Shared Legal Services

He called:

Ms Alison Twyford BA (Hons) MA

Senior Planning Officer

### INTERSTED PERSONS

Councillor Deborah Roberts

Councillor for Foxtton Ward, Vice Chair  
Fowlmere Parish Council

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1/ Rebuttal Proof of Evidence by Ms Alison Twyford.
- 2/ Consultation response by Fowlmere Parish Council in relation to planning application S/1385/17/VC.
- 3/ List of conditions favoured by the Council in the event that appeal APP/W0530/W/17/3183813 is allowed.
- 4/ Policy H9 of the emerging Local Plan for South Cambridgeshire.
- 5/ Policy HG/3 of the South Cambridgeshire Development Control Policies Development Plan Document.
- 6/ Approved Judgment for *Thurrock BC v SSETR and Holding* [2002] EWCA Civ 226.
- 7/ Copies of planning permissions S/1155/92/F and S/1156/92/F .
- 8/ Opening submissions on behalf of the Local Planning Authority.
- 9/ Bus timetables for Route 31.
- 10/ Outline Closing submissions on behalf of the Local Planning Authority.