

Application No: 10/3805M

Location: RODE HEATH WOOD, BACK LANE, EATON

Proposal: APPLICATION TO REMOVE CONDITION 3 ON PLANNING PERMISSION 09/1509M (APPEAL REFERENCE APP/R0660/A/10/2121609/NWF) AND 09/3544M (APPEAL REFERENCE APP/R0660/A/10/2121614/NWF) FOR CHANGE OF USE OF LAND TO ALLOW SITING OF 32 TIMBER CLAD TWIN UNIT CARAVANS (EXTENSION TO PREVIOUSLY APPROVED SITE)

For MR DAVID NOAD & MRS YVETTE NOAD

Registered 27-Sep-2010

Policy Item No

Grid Reference 387417 366440

Date Report Prepared: 10 December 2010

SUMMARY RECOMMENDATION

Refuse

MAIN ISSUES

- Whether the removal of condition 3 on appeal references APP/R0660/A/10/2121609 and APP/R0660/A/10/2121614 would allow permanent residential occupation of the caravans.

REASON FOR REPORT

The application has been brought to the Committee by the Head of Planning & Housing as it relates to the removal of a condition on a site that has previously been considered by the Committee.

DESCRIPTION OF SITE AND CONTEXT

The application site comprises an area of open land currently used for the grazing of animals. The appeal decision allowed the siting of 23 timber clad twin unit caravans in addition to the 32 currently under construction with the adjacent woodland. The site is located within Countryside Beyond the Green Belt as identified in the MBLP.

DETAILS OF PROPOSAL

This application seeks to remove condition 3 on appeal references APP/R0660/A/10/2121609 and APP/R0660/A/10/2121614 to allow all year round occupation of the caravans.

Condition 3 states, *“No caravan shall be occupied between 14 January and 1 March in any year”*.

An accompanying application 10/3803M appears elsewhere on the agenda, which seeks to remove the same condition from appeal reference APP/C0630/A/07/2033939 that relates to the original part of the site.

RELEVANT HISTORY

09/3544M - Change of use of land to allow the siting of 23 timber clad twin unit caravans – Not determined, Appeal allowed 12.07.2010 (Costs awarded against the Council)

09/1509M – Change of use of land to allow the siting of 23 timber clad twin unit caravans - Refused 14.08.2009, Appeal allowed 12.07.2010 (Costs awarded against the Council)

08/2729P - Creation of temporary access (in location of existing field access) to allow delivery of static caravans, and erection of boundary fence and gates - Approved with conditions 26/03/09

08/2291P - Variation of conditions 5 (lighting), 7 (ecology) and 21 (drainage) on application 06/2254P (pre-commencement conditions) to allow works to commence on the internal road only, in accordance with the badger licence granted by Natural England - Withdrawn 18.11.2008

06/2254P - Change of use of land to site 32 timber-clad twin-unit caravans, alterations to access and landscaping - Refused 06.11.2006, Appeal allowed 03.12.2007 (Costs awarded against the Council)

POLICIES

Regional Spatial Strategy

DP1 - Spatial Principles

DP4 - Make the Best Use of Existing Resources and Infrastructure

DP5 - Manage Travel Demand; Reduce the Need to Travel, and Increase Accessibility

DP8 - Mainstream Rural Issues

RDF2 - Rural Areas

W7 - Principles for Tourism Development

Local Plan Policy

RT13 - New Tourist Attractions
GC5 - Countryside Beyond the Green Belt

Other material considerations

- Good Practice Guide for Tourism
- PPS7 (Sustainable Development in Rural Areas)
- PPG13 (Transport)
- Tourism Matters – A report on Tourism in Macclesfield Borough (2002)
- A Vision and Strategy for tourism to 2015 - Cheshire and Warrington Tourism Board (2004)
- PPS4 (Planning for Sustainable Economic Growth)
- Circular 11/95 Use of Conditions in Planning Permission

CONSULTATIONS (External to Planning)

Environmental Health – The removal of the conditions would not materially affect the licensing of the site.

North Rode Parish Council – Object as the application relates to one of the most important conditions requiring a closed season, and which lies at the very heart of the permission, in what would otherwise be the building of a permanent village of timber clad caravans.

Eaton Parish Council – Object on the grounds that the removal of these clauses could lead to permanent housing for residential purposes and the closed season does limit the possibility of this. At each of the public inquiries, the inspectors have considered that the imposition of a closed season was necessary to stop the development becoming occupied for the full twelve months giving a lead in to permanent residency.

OTHER REPRESENTATIONS

Eight letters of representation have been received from local residents objecting to the proposal on the following grounds:

- The conditions were imposed to prevent permanent residential accommodation, and their removal would weaken this restriction.
- The condition is still included in Circular 11/95 where emphasis is placed on appropriate restrictions to prevent permanent residential use of accommodation.
- Good Practice Guide was in effect at time of both appeals, as it is today, and both Inspectors had regard to this at the time of their decisions.
- No condition was attached in the submitted appeal decision relating to a site in Tavistock, however, this does not appear to have been an issue that was argued at the appeal. The second submitted appeal decision relates to a site in Denbeigh, which is of a much smaller scale (8 caravans) and any work required to monitor such a site is minimal.

- Removal of condition will place significant pressure upon existing Local Authority resources to monitor the holiday use of the site.
- Original conditions not yet complied with.
- Two Inspectors considered the condition to be necessary after giving the matter independent consideration in light of relevant policy advice.
- Nothing in Good Practice Guide that advises against use of both holiday occupancy and closed season conditions in appropriate cases.
- No reason given why the applicant requires the removal of the condition, only that it duplicates restrictions.
- Issues of drainage still to be resolved for holiday use, let alone permanent residential use.

An additional letter has been received from two Eaton residents in reply to the applicant's written response to the letters of objection stating that:

- If the conditions were removed then the development would become an unauthorised residential development in the open countryside.
- The applicant's agent refers to that "standard holiday occupancy conditions", however, what he is actually referring to is an example given in The Good Practice Guide of the approach by East Riding of Yorkshire Council. Paragraph 1.3 of the Good Practice Guide addresses the use of examples in this policy document, which ensures that such examples do not become regarded as standard conditions.
- The distinction between occupancy and seasonal conditions is fully understood, however the applicant's agent believes conditions (that are the subjects of these applications) were seasonal and not occupancy, and suggests that on this basis there is no justification for their imposition.

APPLICANT'S SUPPORTING INFORMATION

A supporting letter has been submitted on behalf of the applicant outlining the policy background to holiday and seasonal occupancy conditions. Two recent appeal decisions have also been submitted, one of which relates specifically to the matter of a seasonal occupancy condition. The other is a proposal for a similarly sized caravan site to the application site where a closed season condition was not attached.

A second letter on behalf of the applicant has been submitted in response to the letters received in representation, reiterating the distinction between occupancy and seasonal conditions as outlined in the Good Practice Guide. It is the seasonal conditions that the applicant is seeking to remove as there is no special reason for their imposition (such as impact upon breeding birds etc). The holiday occupancy conditions alone can ensure that the static caravans do not become permanent dwellings.

A third letter has also been submitted, again in response to a letter of representation that suggested the closed season condition was not challenged in relation to the appeals in June 2010. The applicant's letter states that this was incorrect and the issue of the condition was addressed. Contrary to the letter of objection, the applicant states that the whole permission would not be challenged on the basis of such a condition; rather

the condition is being challenged through the current applications. Circular 11/95 advises that an applicant's agreement to a condition does not mean that it should be imposed. A condition would still need to meet the relevant tests in the circular. The applicants did offer the condition in relation to the first appeal (in 2007), but they did not in relation to the second appeals in 2010.

OFFICER APPRAISAL

Principle of Development

The suitability of the site and the principle of the development have already been assessed by two Planning Inspectors against the policy framework outlined above, and both concluded that the site was appropriate for tourism purposes. In terms of the current application, it is necessary to examine whether there will be any significant harm to the objectives of relevant planning policy or other matters of public interest arising from the removal of the condition.

The existing permission for the change of use of land to allow the siting of 23 timber clad twin unit caravans includes a set of conditions designed to prevent the caravans being occupied as a main place of residence. In addition to the condition that is the subject of this application, the appeal decision includes the following condition:

- 2) *The caravans shall be occupied for holiday purposes only. The caravans shall not be occupied as a person's sole or main place of residence; the owner/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 and shall make this information available at all reasonable times to the local planning authority.*

Potential for permanent residential accommodation

It is clear that the key concern with this application is that the removal of the condition would result in the use of the site for permanent residential accommodation. Due to its countryside location, there is a fundamental national and local policy objection to an unrestricted residential use of the site. However, it should be noted that this proposal does not seek a permanent and unrestricted residential use, as conditions relating to the occupancy of the caravans for holiday purposes only will remain.

Within appeal decision letters in general, Inspectors do not provide specific reasons for each individual condition as the Council would when issuing a planning approval, rather they justify them in the body of their report/letter. In this case the Inspector noted, *"I have also imposed a condition requiring a 'close season'. The previous Inspector considered such a condition to be necessary to establish the appropriate degree of restriction of use for the caravans in combination with the condition referred to above [holiday occupancy condition]. The 'close season' condition has not been formally*

challenged by the appellants and there has been no material change in circumstances in the interim. I also consider a similar condition is necessary in these cases."

The Inspector during the appeal in 2007 on the adjacent site stated, *"The Good Practice Guide includes a set of conditions designed to prevent holiday homes and caravans being occupied as a main or sole place of residence. These conditions together with a 'close season' are sufficient, in my view, to prevent the caravans being occupied as a main place of residence."*

The condition that is the subject of this application prevents occupation of the caravans between 14 January and 1 March in any year. Such conditions are commonly referred to as seasonal occupancy conditions, as opposed to holiday occupancy conditions that restrict the use of the units to holiday purposes only. Circular 11/95: Use of Conditions in Planning Permission advises that a holiday occupancy condition is more appropriate than a seasonal occupancy condition in circumstances where holiday accommodation is acceptable, but where the provision of permanent housing would be contrary to planning policies relating to development in the countryside, as is the case with this current application. Paragraph 115 of Circular 11/95 states that seasonal occupancy conditions may be appropriate to *"prevent the permanent residential use of holiday chalets which by the character of its construction or design is unsuitable for continuous occupation."* In this case the applicants have stated that the caravans will be built to a minimum standard of BS3632, which does allow for all year round use of the caravans if required. The Circular maintains that seasonal occupancy conditions may also be appropriate to protect the local environment, such as fragile habitats required to allow seasonal breeding or winter feeding. Such environmental circumstances do not exist in this case.

The Good Practice Guide on Planning for Tourism provides further, and more up to date, advice on seasonal and holiday occupancy conditions. Paragraph 3 of Annex B to the Good Practice Guide states that the aim of holiday occupancy conditions is *"generally to ensure that the premises are used by visitors and do not become part of the local housing stock"*. Reference to seasonal occupancy conditions is made in terms of them protecting the local environment, as in Circular 11/95. Protection of important species of bird during its breeding season or when it is winter feeding, is cited as an example of when such a condition may be used.

The Inspector's reasoning for the close season condition in this case refers to the Inspector's comments in the original appeal, which considered that such a condition was necessary to establish the appropriate degree of restriction of use for the caravans in combination with the holiday occupancy conditions. The original Inspector considered that when taken together, all the stated conditions are sufficient to prevent the caravans being occupied as a main place of residence. The second Inspector considered a similar condition was also necessary in these cases.

The Lodges appear to provide a very high standard of accommodation, to the extent that they could lend themselves easily to use as permanent dwellings. It could also be argued that the nature and character of the site is also something that is not typical to more traditional ideas of caravan parks / sites where you might expect to see swimming pools, play facilities for children etc. The units would also be all individually owned. In addition to this, there is the fact that the Inspector imposed the seasonal occupancy condition in 2007, and a second Inspector imposed the same condition to an extension of this site as recently as July 2010. Both of these Inspectors had regard to the same policy framework and guidance at the time of the appeals that the current application must be assessed against today. These factors are specific to the application site, and therefore the key question is whether they are sufficient to justify the imposition of a seasonal occupancy condition in this case.

Members will also be aware of other similar caravan sites in the Borough where monitoring the restriction on permanent residential accommodation of caravans has proven to be difficult. Whilst it is acknowledged that the ability of the Council to provide adequate resources to investigate and enforce against potential breaches should not influence the decision, each case must be assessed on its merits. An Inspector has examined the details of this site, and a second Inspector looked at similar details for the extended site and both came to the conclusion that a “close season” condition was necessary in this case, in addition to the holiday occupancy conditions listed in the Good Practice Guide.

Paragraph 3 of Annex B to The Good Practice Guide advises that Planning Authorities will need to frame conditions *“so that they can be readily enforced by the authority but in a way that is not unduly intrusive for either owners or occupants”*. In this case the “close season” relates to a 6 week period between 14 January and 1 March in any year. Such a limited break can be readily enforced and is not considered to be unreasonable for either owners or occupiers.

Circular 11/95: Use of Conditions in Planning Permission lists 6 tests that all conditions should satisfy. In brief these explain that conditions should be:

- i. Necessary;
- ii. relevant to planning;
- iii. relevant to the development to be permitted;
- iv. enforceable;
- v. precise; and
- vi. reasonable in all other aspects

Of these 6 tests, the applicant maintains that the closed season condition is not actually necessary as it duplicates the controls, and is therefore not a valid condition.

In this case, having regard to all of the above details, it is considered that the ‘close season’ condition is necessary in addition to the holiday occupancy conditions. This combination of conditions is considered to provide the most

effective and appropriate safeguard to ensuring that the caravans are not occupied as a main or sole place of residence. All other tests of the circular are considered to be met.

Other material planning considerations

The proposed removal of the condition is not considered to have any significantly greater impact upon the character and appearance of the countryside, highway safety, residential amenity, or trees compared to the previous permission.

With regard to comments received in representation relating to previous conditions not yet being complied with, this will be the subject of further investigation.

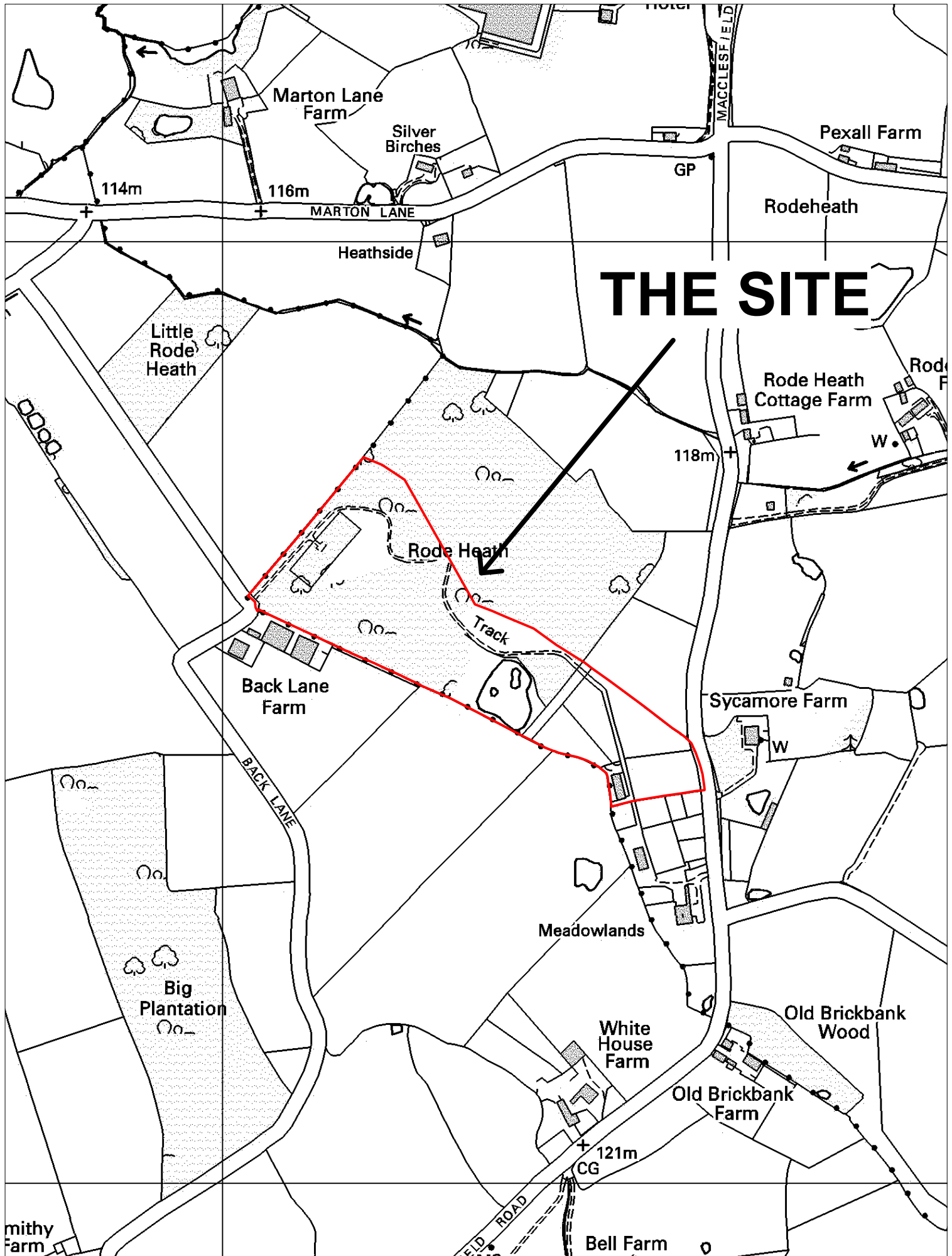
CONCLUSIONS AND REASON(S) FOR THE DECISION

The Inspector during the 2007 appeal and a second Inspector in 2010 on the extended part of the site both considered a “close season” condition to be necessary. These decisions were taken having regard to the Good Practice Guide on Planning for Tourism, and Circular 11/95, which were both as relevant then as they are today. Having regard to the specific circumstances of this case, and the details outlined above, the close season and the holiday occupancy conditions are required together to ensure that the caravans are not occupied as a main or sole place of residence. Accordingly, a recommendation of refusal is made.

Application for **Full Planning**

RECOMMENDATION : Refuse for the following reasons

1. Closed season condition required in conjunction with holiday occupancy conditions to prevent caravans being occupied as a main place of residence, contrary to policies controlling development in the countryside



THE SITE

10/3805M RODE HEATH WOOD, BACK LANE, EATON
NGR- 387,260:366,570

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