

COMMITTEE REPORT

Date: 4 March 2021 **Ward:** Wheldrake
Team: East Area **Parish:** Wheldrake Parish
Council

Reference: 20/01546/FUL

Application at: North Selby Mine New Road Deighton York YO19 6EZ

For: Variation of condition 4 of permitted application 19/00078/OUTM (redevelopment of the former North Selby Mine site to a leisure development comprising of a range of touring caravan and static caravans with associated facilities) to remove limit of 28 nights occupation in any one calendar year

By: Mr Peter Massie

Application Type: Full Application

Target Date: 18 December 2020

Recommendation: Approve

1.0 PROPOSAL

UPDATE

1.1 This application was reported to Planning Committee on 7 January 2021, recommended for approval. It was deferred by the Committee in order that further discussion take place with the applicant with regards the wording of condition 4 and the provisions for preventing the holiday accommodation becoming permanent residences. These discussions have taken place and the proposal is now to amend the wording of condition 4 to require reference to preclusion of use within Use Classes C2 (residential institutions), C3 (dellinghouses) and C4 (houses in multiple occupation) of the Use Classes Order and a requirement for a Site Management Plan to be submitted prior to occupation that would demonstrate how the site owner/operator would ensure that the holiday accommodation is not occupied as permanent, unrestricted accommodation, including a 6 week period of site closure from 15th January to 1st March each year. The revised wording seeks to ensure that there are sufficient safeguards in place to prevent permanent residential occupation, whilst meeting the tests required of planning conditions in paragraph 55 of the NPPF. The suggested wording is as follows:

“Notwithstanding Classes C2 (Residential Institutions), C3 (Dwellinghouses) and C4 (Houses in multiple occupation) of the Use Classes Order, the caravans shall be occupied for holiday accommodation purposes only and shall not be occupied as permanent residential accommodation as a person's sole or main place of residence.

A Site Management Plan shall be submitted to and approved in writing by the Local Planning Authority before any occupation of the site commences. The Plan will demonstrate how the site owner/operator will ensure, in perpetuity, that the holiday accommodation is not occupied as permanent, unrestricted accommodation or as a primary place of residence. The Plan shall include, but not be restricted to:

- the site owner/operator maintaining an up-to-date register of the names and main home addresses of all owners/occupiers of the accommodation on site, including dates and durations of each stay by each occupier, and shall make this register available for inspection at all reasonable times when requested by the Local Planning Authority;

- confirmation of a continuous period of six weeks from 15th January until 1st March each calendar year that the site will be completely closed.

Reason: This condition is imposed to ensure that approved holiday accommodation is not used for unauthorised permanent residential occupation. The site is not considered appropriate for full time residential use due to its remote position in the Green Belt and to prevent increased pressure on health and education services in the City.”

PROPOSAL

1.2 The application is made under Section 73 of the Town and Country Planning Act 1990 (as amended) and seeks to vary condition 4 of planning permission 19/00078/OUTM granted on 7.8.2020 for a leisure development of touring and static caravans at the former North Selby Mine site. Condition 4 imposed an occupancy restriction of a 28 day duration of stay in each year for each individual, family or group of people to prevent the caravans being used for permanent residential accommodation. It currently reads as follows:

“The static and mobile caravans shall be occupied for holiday letting purposes only and not as a person's sole or main place of residence. For the purpose of this

condition, "holiday letting" means letting to the same person, group of persons or family for period(s) not exceeding a total of 28 nights in any one calendar year.

No individual caravan, motor home or tent (whether occupied or otherwise) shall be located on the site hereby permitted for a total of more than 28 nights in any one calendar year.

The site owner/operator shall maintain an up-to-date register of the names and main home addresses of all occupiers of the accommodation on site, including dates and durations of each stay by each occupier, and shall make this register available for inspection at all reasonable times when requested by the Local Planning Authority.

Reason: This condition is imposed to ensure that approved holiday accommodation is not used for unauthorised permanent residential occupation. The site is not considered appropriate for full time residential use due to its position in the Green Belt.”

1.3 The application is supported by a Planning Statement, which sets out the reasons for the request to vary the condition. The applicant considers that the wording of condition 4 is overly restrictive and not in accordance with other similar sites in the locality and suggests a less restrictive form of wording, namely:

“The caravans on the site shall not be occupied otherwise than in accordance with the following terms:

- (i) the caravans shall be occupied for holiday purposes only;
- (ii) the caravans shall not be occupied as a person’s sole or main place of residence; and,
- (iii) the owners/operators shall maintain an up to date register of the names of all owners/occupiers of individual caravans on the site, and their main home addresses, and shall make this information available at all reasonable times to the local planning authority.”

1.4 The application has been called-in to Committee by the local ward member, Councillor Vassie. This is on the basis that the site is of major strategic importance to the whole city as a potential source of renewable energy and should not be used as a caravan park.

1.5 The original outline application was accompanied by an Environment Statement as it was considered to be ‘EIA development’ following the publication of a screening and scoping opinion by the local planning authority. This Section 73 application, whilst related, would not have any significant further environmental impacts over and

above those considered as part of the original application. Also, given the short passage of time since the original application was considered and determined, there has been no substantial material change to the local environment or policy that requires the submission of further environmental information. The original EIA remains valid.

2.0 POLICY CONTEXT

2.1 Yorkshire and Humber Regional Spatial Strategy policies:

YH9(C)

Y1(C1 and C2)

2.2 City of York Draft Local Plan Incorporating the 4th set of changes – Development Control Local Plan (Approved April 2005) – relevant policies:

V5 – Caravan/Camping Sites

2.3 City of York Local Plan – Publication Draft February 2018 (Regulation 19 Consultation) (“2018 Draft Local Plan”) – relevant policies:

EC4 – Tourism

EC5 – Rural Economy

3.0 CONSULTATIONS

INTERNAL

Strategic Planning

3.1 The overall principles of the development, particularly in relation to the proposed development in the Green Belt and impact on the rural economy, were established through the granting of planning permission 19/00078/OUTM, and therefore do not form part of the policy analysis of this application.

3.2 The 2018 Draft Local Plan supports the principle of self-catering chalet type accommodation, but aims to restrict occupancy of this type of unit to ensure that they are not used as permanent residential accommodation. Justification for Policy EC5 provides the rationale identifying that whilst self-catering holiday provision supports the local tourism economy, it may be located in areas not supported for residential development in accordance with the plan. For this reason, occupancy

conditions are imposed on such developments to ensure that they are not used for permanent accommodation, and consequently, remain only available for holiday provision.

3.3 The 2019 outline application was granted consent for leisure development and considered appropriately against policy SS1 'Delivering Sustainable Growth for York'. In considering the application, the policies and analysis provided to the overarching application will have considered the temporary nature of people's stay at the site and likely activities/impacts as a result. As a leisure application and giving moderate weight to the provisions in policy EC5, permanent occupation of the site would not have been supported.

3.4 The Development Management Officer must consider whether the suggested revision to the condition wording would result in a greater risk of the caravans not being used for holiday accommodation, and potentially a greater risk of them being used as permanent residences.

Design Conservation and Sustainable Development

3.5 Development Management to assess.

Public Rights of Way

3.6 No objection.

Councillor Vassie

3.7 Raises concern at the disregard and disinterest given to the potential value of this site, which is of major strategic importance to the whole city as a potential source of renewable energy, and the approval to use the site for pitching of caravans.

- The site's significant power connection to the Grid means that it is ideally suited to be a generator of electricity.
- There are several potential renewable energy sources available on the site, from wind power to geothermal energy.
- CYC is committed to delivering a zero carbon future, as is the nation, and ensuring that all potential renewable energy sources are properly audited and exploited is key to delivering that zero carbon future.

- The University of Leeds Earth Sciences department has identified the site as a potential source of geothermal energy and discussed this with the climate change policy and scrutiny committee in the past few weeks, and senior officers are aware of this.

- District heating derived from heat exchange systems using flooded tunnels in old mines is now an established technology exploited in British and European countries.

EXTERNAL

Natural England

3.8 No comments to make.

Highways England

3.9 No objection.

Ouse and Derwent Internal Drainage Board

3.10 As condition does not relate to drainage, the Board does not feel it is appropriate to comment.

North Yorkshire County Council

3.11 No comments.

Selby District Council

3.12 No comments.

Deighton Parish Council

3.13 Object on grounds that the original planning permission was given for residential use only and not residential use as site sits firmly within the Green Belt.

Escrick Parish Council

3.14 Qualified support in principle to amend the imposed condition. Following comments made:

- applicant agreed to the number of units being the maximum number required. Would strongly object if a further application to vary condition 3 (restricting number of caravans) was made in the future;
- supported change of use to leisure development in principle on basis that no permanent occupation of the holiday accommodation;
- no site management plan is provided to state whether the site will operate the full 12 months a year and what occupancy restriction will be imposed;
- important that accommodation is not used as use class C3 (residential) as occupants living permanently on the site would have implications for education, health and social provision;
- applicant's comment of wanting parity with other holiday parks in surrounding area is difficult to reconcile as not aware of any other holiday parks of this large scale;
- parish councillors have knowledge of local examples where children living in caravans and holiday lodges at holiday parks on a full time basis as their only home and attend schools or retired people who live full time;
- 5 of the 14 dwellings for sale in Escrick on Rightmove are for holiday lodges at Hollicarrs;
- a replacement condition is proposed which restricts use to holiday accommodation and to same person, group or family for no more than 6 months in any one calendar year with occupation restricted to 12 weeks with 4 week break period; a site management plan to be submitted; and confirmation of a continuous 4 week annual closure period.

4.0 REPRESENTATIONS

4.1 Representations from 3 local residents – comments summarised as follows:

- Leisure development should not become residential site the size of a village;
- Environmental impact needs to be reviewed;
- Massive impact on road and dangerous junction with impact on local residents.

5.0 APPRAISAL

5.1 The main considerations relevant to the determination of this Section 73 application are as follows:

- Impact on local services
- Impact on tourism and rural economy

LEGISLATIVE BACKGROUND

5.2 Section 73 of the Town and Country Planning Act 1990 (as amended) allows for development of land that has planning permission without compliance with conditions attached to the previous approval. It allows for modification of approved proposals where these are not fundamental or substantial.

POLICY CONTEXT

Development Plan

5.3 Section 38(6) of the Planning and Compensation Act 2004 requires determinations be made in accordance with the development plan unless material considerations indicate otherwise. There is no development plan for York other than the retained policies in the Yorkshire and Humber Regional Spatial Strategy ("RSS"), saved under the Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013. These policies, YH9(C) and Y1(C1 and C2), relate to York's Green Belt and the key diagram, Figure 6.2, insofar as it illustrates the general extent of the Green Belt around York with an outer boundary about 6 miles from the City Centre. The policies state that the detailed inner and the rest of the outer boundaries of the Green Belt around York should be defined to protect and enhance the nationally significant historical and environmental character of York, including its historic setting, views of the Minster and important open areas.

Development Control Local Plan

5.4 The Development Control Local Plan Incorporating the Fourth Set of Changes was approved for development management purposes in April 2005 (DCLP). Whilst the DCLP does not form part of the statutory development plan, its policies are considered to be capable of being material considerations in the determination of planning applications where policies relevant to the application are consistent with those in the NPPF. However, such policies can be afforded very limited weight. Relevant policies are listed in section 2. The site falls outside the main urban area of the City and within the general extent of Green Belt on the proposals map accompanying the 2005 Draft Plan.

Publication Draft Local Plan

5.5 The Publication Draft Local Plan ('2018 Draft Plan') was submitted for examination on 25 May 2018. Phase 1 of the hearings into the examination of the 2018 Draft Plan took place in December 2019. In accordance with paragraph 48 of the NPPF as revised in July 2018, the relevant 2018 Draft Plan policies can be afforded weight according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the previous NPPF published in March 2012. (NB: Under transitional arrangements plans submitted for examination before 24 January 2019 will be assessed against the 2012 NPPF).

5.6 Relevant policies are set out in section 2 and are attributed moderate weight. The evidence base underpinning the 2018 Draft Plan is capable of being a material consideration in the determination of planning applications. This evidence base includes the 2003 Approach to Green Belt Appraisal, Historic Character and Setting Technical Paper (Jan 2011) and update (June 2013) and the Green Belt Topic Paper TP1 Addendum (March 2019), which confirm that the site is within the general extent of York's Green Belt. As such, the site is shown on the proposals map accompanying the 2018 Draft Plan as being within the general extent of Green Belt.

5.7 Relevant policies in the 2018 Draft Plan are EC4 'Tourism' and EC5 'Rural Economy'. Policy EC4 acknowledges the role tourism plays in York in contributing to a diverse economy. To encourage this, proposals that improve the choice and quality of visitor accommodation are supported, especially higher spending visitors.

5.8 Policy EC5 states that York's rural economy will be sustained and diversified through, inter alia, permitting camping and caravan sites for holiday and recreational use where proposals can be satisfactorily integrated into the landscape without detriment to its character, are in a location accessible to local facilities and within walking distance of public transport to York, and would not generate significant volumes of traffic. It goes on to advise the attaching of a seasonal occupancy condition to permissions for visitor accommodation where it is not suitable for year-round occupation by nature of its location, design or proximity to a habitat that needs extra protection at certain times of the year. The supporting text to this policy explains that whilst the provision of self-catering chalet holiday home parks will be supported in principle where they will support the tourism industry in York. However, the occupancy of the units will be restricted to ensure that they cannot be used as residential accommodation as a sole or main place of residence and to ensure the accommodation is only available for holiday lettings.

5.9 Central Government guidance is contained in the National Planning Policy Framework (NPPF), which places emphasis on achieving sustainable development. Paragraph 11 establishes the presumption in favour of sustainable development, which runs through both plan-making and decision-taking. In decision-taking this means approving development proposals without delay that accord with an up-to-date development plan. In the absence of relevant development plan policies or where they are out-of-date, permission should be granted unless policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the proposed development or any adverse impacts of doing so would significantly or demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. The footnote to Paragraph 11 lists those areas and assets of particular importance where this presumption in favour of sustainable development does not apply, which include land in Green Belt.

5.10 Paragraph 80 of the NPPF states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. There is no specific guidance on 'holiday parks' in the NPPF, beyond general support for sustainable rural tourism and leisure developments which respect the character of the countryside (paragraph 83).

5.11 Paragraph of the NPPF makes clear that planning conditions should be kept to a minimum and only used where they satisfy the following six tests: necessary; relevant to planning, relevant to the development to be permitted; enforceable; precise; and, reasonable in all other respects.

APPLICANT'S CASE

5.12 The proposed variation to condition 4 of the original outline approval is sought because the applicant believes that it is overly restrictive and makes the scheme unable to compete successfully with other businesses of a similar size in the surrounding area. The applicant contends that the condition is not considered to be appropriate to the size of the scheme and its use as a holiday park, which it considers is less likely to be open to abuse than units unrelated to a holiday park. Further, an issue is raised relating to the siting of individual caravans, motor homes or tents for not more than 28 nights in any one calendar year, which it is pointed out is not precise as it includes static caravans, which by their nature would remain on site. The agent also confirms that the intention is for touring caravan pitches only, which owners can pay a seasonal fee for a pitch meaning the caravans can be sited permanently.

5.13 An alternative condition is suggested (see paragraph 1.2 above) that reflects the essence of the original condition and thereby ensures the proposal would not result in permanent residential accommodation. This condition seeks to restrict occupation to holiday purposes only and requires a register to be kept of names and addresses of owner/occupants.

5.14 Other applications in the City's administrative area are cited that have similar worded conditions and not the restrictive wording of condition 4. Reference is also made to planning applications for developments of a similar scale and use in the surrounding area, such as Hollicarrs Holiday Park at Escrick (granted by Selby District Council) and the Allerthorpe Golf and Holiday Park Retreat (refused by ERYC but allowed on appeal), and nationally, particularly East Riding, which have less restrictive conditions along the lines suggested by the applicant. Further, numerous appeal decisions including the wording of conditions to restrict permanent residential occupancy by Inspectors are cited, which are also similar to the wording suggested by the applicant.

5.15 It goes to state that the variation of the condition would not affect the impact of the site on openness of the Green Belt as the current wording does not restrict occupation throughout the year. Nor would it affect visual amenity for the same reason and considering the extensive landscaping. The condition with a more frequent turnover is considered to lead to a higher level of comings and goings.

5.16 It highlights the diverse nature of holidays in the UK and the need for flexibility within the leisure sector in the UK, especially in light of Brexit and Covid-19. Advice from the selling agent (Savills) has advised that the 28 day stay limitation would considerably impact the economic viability and sale of caravans on the site. It refers to the move away from hire fleet sites by the large holiday park operators and move towards private ownership of holiday caravans.

ASSESSMENT

5.17 The principle of the use of the site with operational works for a leisure development providing holiday accommodation in static caravans and touring caravans has been established by the original outline planning permission 19/00078/OUTM. The proposal, which would remain in the same use, over the same area of land with the same overall number of units of accommodation, would have no additional impact on biodiversity, archaeology, access and highway safety, or contamination subject to the imposition of conditions to mitigate any previously identified harm.

Background for condition 4 and occupancy conditions

5.18 The application relates to a previously developed site located outside the main urban area of York, within the general extent of York's Green Belt close to Escrick village. The intention of condition 4 is to prevent the unfettered use of the permitted holiday accommodation for permanent residential occupation, which would not be supported given the site's rural and remote location. The use of holiday occupancy conditions is a response to the change in demand in recent years in the UK to self-catering accommodation of a standard that could equally support permanent residence. The conditions also address the potential impact on local health and education services as well as preventing the introduction of residential paraphernalia that can detract from openness of the Green Belt. It can also be useful to restrict occupancy in places near to fragile habitat to allow for seasonal breeding or winter feeding to take place.

5.19 Planning Practice Guidance (PPG) references model conditions contained Government Circular 11/95. This circular has been cancelled and replaced by the PPG with the exception of Appendix A (model conditions) which is retained. Appendix A includes a model condition that restricts occupation of caravans to a date range referring to a defined season (e.g. February to November), often the winter months, where the holiday accommodation was unsuitable for occupation all year round. However, a seasonal occupancy condition does not take account for improvements in caravan standards and increased interest in all-year round holidays, including visits to Christmas markets, seasonal events and visits in winter school holidays.

5.20 Policy EC5 of the 2018 Draft Plan advises attaching a seasonal occupancy condition to permissions where its location, design or proximity to special habitat make the site not suitable for year-round occupation. In the supporting text to the policy rather the wording of the policy itself, it affirms the support for a range of tourist accommodation and the growing interest in self-catering chalet holiday home parks that are available throughout the year, which is supported in principle by the Council on the basis that they will support the tourism industry in York. However, it refers to the imposition of occupancy conditions to ensure the accommodation is not used as a sole or main place of residence thereby ensuring it is only available for holiday lettings. The word 'lettings' suggests accommodation for rent/hire, but is not defined in the text.

Consideration of current condition 4

5.21 The wording of condition 4 as applied to the granted permission restricts permanent residential occupancy by limiting stay to a 28 night period for a person, family or group within any one calendar year. However, it would prevent the caravans being viable as holiday homes as periods of occupation permitted by the owner would be overly restricted to no more than 28 nights. The applicant has confirmed that there is no demand within the market for development of the site with such a restrictive condition as this is not reflective of the operation of holiday parks, with the exception of companies such as Centre Parcs whose draw is the setting and on-site facilities, such as swimming pools and activities. These facilities are not proposed within the outline application, with only a reception/shop and café/bar being indicated as likely provision on the indicative masterplan and parameters plan.

5.22 Conditions which restrict holiday lettings to short periods or with specified intervals between occupation by the same occupier have been considered at appeal to be unnecessarily complicated with issues for enforceability or unreasonable, respectively. The wording of the conditions imposed by an inspector in allowing 150 holiday lodges and caravans on appeal at Allerthorpe in 2017 is of relevance. The conditions, which sought to address permanent occupancy, are as proposed by the applicant in that they require the accommodation to be for holiday purposes only, not occupied as a sole or main place of residence and require an up to date register to be provided. The Inspector was satisfied that the conditions would prevent occupation of the units as permanent residential accommodation, despite challenges by the authority to the efficacy of the conditions.

Discussions with applicant

5.23 Previously, a longer time period has been discussed with the applicant in an attempt to find a compromise that seeks to restrict the use to holiday accommodation to prevent permanent residential accommodation and to assist in its contribution to the local rural and tourism economy, whilst allowing longer periods of stay by owners of the caravans. However, imposing limits on periods of stay by owners of their caravans would be unduly restrictive and likely unreasonable in light of the intended operation of the site. Further, it is noted that there is no basis for such a restriction in an adopted Local Plan policy and there is a lack of such stringent conditions on other larger caravan sites in the local area or close to York's administrative boundary, such as Hollicarrs and Allerthorpe.

5.24 Following the deferral of the application at the January Planning Committee, there has been further discussion with the applicant as requested by Committee Members. The suggested wording of condition 4, as set out below, seeks to ensure that there are sufficient safeguards in place to prevent permanent residential

occupation, whilst meeting the tests required of planning conditions in paragraph 55 of the NPPF.

“Notwithstanding Classes C2 (Residential Institutions), C3 (Dwellinghouses) and C4 (Houses in multiple occupation) of the Use Classes Order, the caravans shall be occupied for holiday accommodation purposes only and shall not be occupied as permanent residential accommodation as a person's sole or main place of residence.

A Site Management Plan shall be submitted to and approved in writing by the Local Planning Authority before any occupation of the site commences. The Plan will demonstrate how the site owner/operator will ensure, in perpetuity, that the holiday accommodation is not occupied as permanent, unrestricted accommodation or as a primary place of residence. The Plan shall include, but not be restricted to:

- the site owner/operator maintaining an up-to-date register of the names and main home addresses of all owners/occupiers of the accommodation on site, including dates and durations of each stay by each occupier, and shall make this register available for inspection at all reasonable times when requested by the Local Planning Authority;
- confirmation of a continuous period of six weeks from 15th January until 1st March each calendar year that the site will be completely closed.

Reason: This condition is imposed to ensure that approved holiday accommodation is not used for unauthorised permanent residential occupation. The site is not considered appropriate for full time residential use due to its remote position in the Green Belt and to prevent increased pressure on health and education services in the City.”

6.0 CONCLUSION

6.1 The applicant considers the wording of condition 4 previously imposed to be unduly restrictive and, therefore, would not be attractive to the market; it would potentially make the development economically unviable and not on a level playing field with other large holiday sites in neighbouring authorities that the site would compete with.

6.2 It is considered that a condition is required to restrict occupancy in order to avoid permanent residential accommodation and, on the basis of the case put forward by the applicant, this could be achieved through similar wording to that suggested by

the applicant, but amended with the applicant's agreement to include a Site Management Plan and closure of the site for 6 weeks. Subject to the retention of an occupancy condition, there would be no further harm identified.

6.3 Overall, the changes are not substantial or fundamental in the context of the approved scheme and can therefore be dealt with as a variation to the original approval, and that the wording of the condition should be varied for the reasons set out above.