



Planning Statement

Mill Rythe Holiday Park, Havant Road, Hayling Island, Hampshire, PO11 0PB

3 August 2023

Contents

1. Introduction 3

2. Planning History 5

3. Legislation Background..... 11

4. Proposal 13

5. Planning Considerations 15

6. Conclusions 18

Report title: Planning Statement

Prepared by: Paul Harwood MRTPI

Status: Planning Lead

Contributors: Penny Moss MRTPI

Status: Associate Director

Draft date: 1 August 2023

For and on behalf of Avison Young (UK) Limited

1. Introduction

- 1.1 This application is made on behalf of Mill Rythe Limited, a subsidiary of Away Resorts, the registered freehold owners of Mill Rythe Holiday Park. This statement is submitted in support of an application seeking a non-material amendment to planning permission APP/16/01237 under section s.96A of the Town and Country Planning Act 1990.
- 1.2 Away Resorts are the long-term owners of Mill Rythe Holiday Park overseeing its transition away from a former 260 chalet holiday village towards a formalised caravan and lodge holiday park. More recently a planning review has been undertaken of the planning position for the site which has revealed that a minor planning conflict exists between the limitations of the two extant planning permissions (APP/16/01237 & APP/20/01127) that govern the site. This application seeks to amend the first planning application under a non-material amendment to align both consents together, in view of the development that has been granted by the second application.
- 1.3 This statement has been prepared by Paul Harwood an Associate Planner within the Leisure division of Avison Young. Paul is retained by Away Resorts in a seconded role as the company's in-house planning lead wherein he co-ordinates planning applications and strategy across the estate portfolio.
- 1.4 Avison Young is the specialist tourism and leisure advisory arm of Avison Young. Our special planning and development team has extensive experience of providing viability, need assessments and development consultancy, planning advice, applications, appeals and expert witness evidence at planning inquiries for development in tourism, leisure and retirement sector. We are retained as national planning advisors to the British Holiday and Home Park Association, the representation body for the caravan park industry.
- 1.5 This s.96A application seeks a non-material amendment of planning permission APP/16/01237 which was granted on 5th May 2017 for the following development:

Demolition of 6,111 square metres of redundant chalets and facilities buildings, use of land for the siting of 203 holiday caravans including 5 caravans for use as staff accommodation, refurbishment of retained single and two storey holiday chalets to form 87 units of holiday accommodation, retain managers bungalow, sales area for 5 caravans, refurbishment of remainder of central facilities building, CCTV cameras, provision of new pedestrian concourse with terraces, splash and dry play areas, multi- games court, adventure golf course and outdoor theatre and new landscaping. Retaining existing pitch and putt golf course to the east of the site.

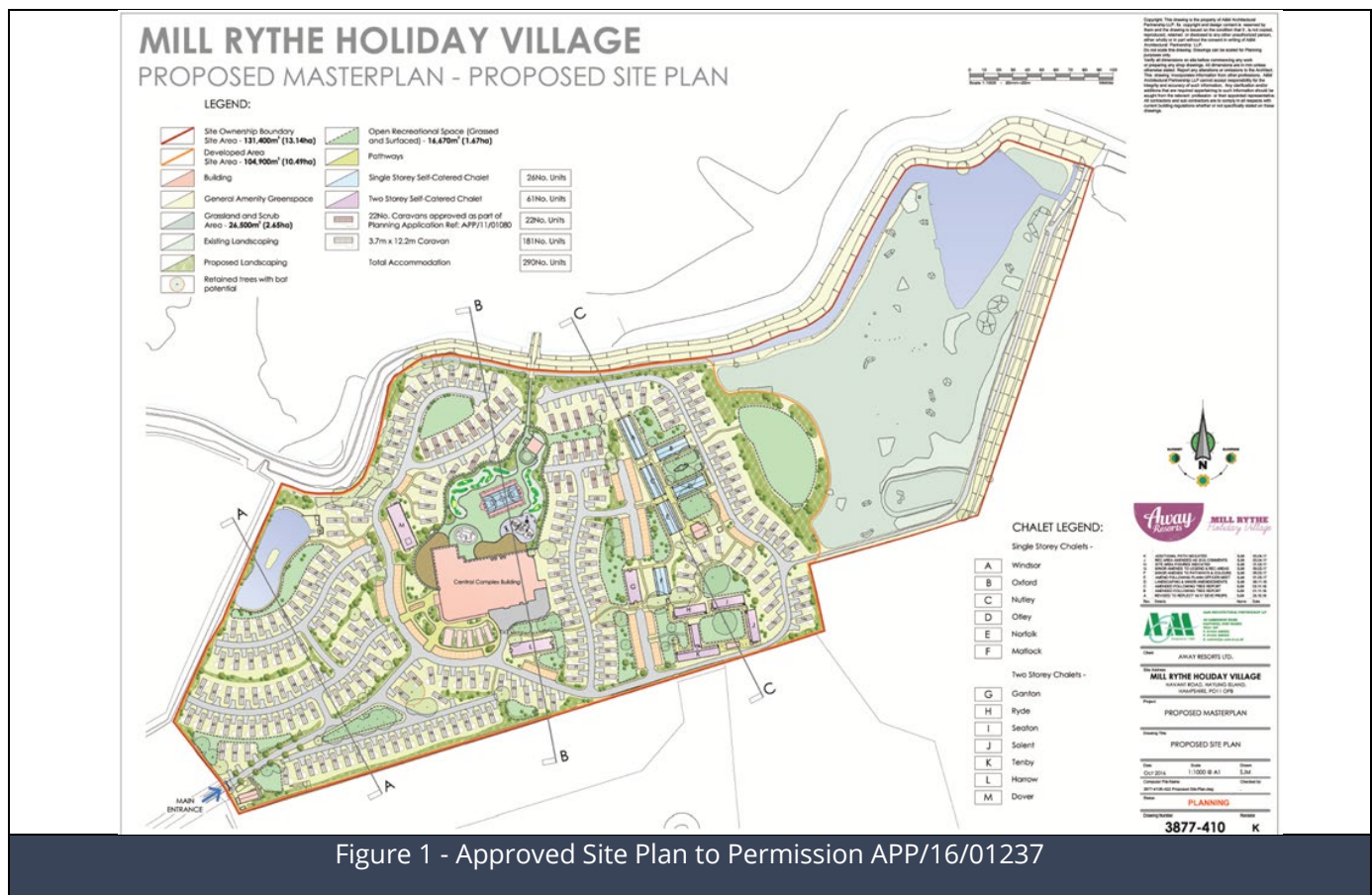
- 1.6 This application seeks a non-material change to the approved description of the above application and to vary Condition 2 and 4 attached to the planning permission to take account of a non-material alteration of the layout of the use previously approved.

2. Planning History

- 2.1 There are two extant planning permissions that together authorise the use of Mill Rythe Holiday Park as a holiday caravan site alongside its associated facilities. The first permission **APP/16/01237** was granted on 5th May 2017 and authorised a redevelopment of the entire site. The description of development as authorised was:

Demolition of 6,111 square metres of redundant chalets and facilities buildings, use of land for the siting of 203 holiday caravans including 5 caravans for use as staff accommodation, refurbishment of retained single and two storey holiday chalets to form 87 units of holiday accommodation, retain managers bungalow, sales area for 5 caravans, refurbishment of remainder of central facilities building, CCTV cameras, provision of new pedestrian concourse with terraces, splash and dry play areas, multi- games court, adventure golf course and outdoor theatre and new landscaping. Retaining existing pitch and putt golf course to the east of the site.

- 2.2 The planning permission removed the previously granted high ropes assault course as well as a holistic redevelopment of the built form on site in place of static holiday lodges. An extract of the approved Site Plan (drwg. No. 3877-410 Rev K) is shown below at **Figure 1**. The red line location plan follows that shown on this plan which covers the entire site and planning unit.



2.3 Planning permission APP/16/01237 was approved subject to the inclusion of fifteen planning conditions. The first condition required that the development be implemented within three years of the date of permission, the second required compliance with a list of submitted plans (Proposed Site Layout Plan -3877-410 Rev K as shown above is listed here) and the third limited the use of the caravans to holiday use only.

2.4 The specific wording of Condition 2 is as follows:

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

PROPOSED SITE LAYOUT PLAN - 3877-410 REV K

HABITAT REGULATIONS ASSESSMENT: STAGE 1 SCREENING REPORTbReport No: RT-MME-123420-06-Rev C undertaken by Middlemarch Environmental

Endoscope Bat Survey at Mill Rythe Holiday Village, Havant Road, Hayling Island - RT-MME-124714-Rev A

Preliminary Roost Assessment by Middlemarch Environmental (Ref: RT-MME-123420-02)

Preliminary Ecological Appraisal by Middlemarch Environmental (Ref: RT-MME-123420-01)

Tree Survey, Arboicultural Impact Assessment, Tree Protection Plan & Heads of Terms for the Arboricultural Method Statement by MJC Tress Services Ltd. (Ref: MJC-16-0182)

MILL RYTHER HOLIDAY VILLAGE- LANDSCAPE PLAN - 16030-CO-LP-0-01-REV-3

Site Location and Ownership Plan by A & M (Ref: 3877-300)

Existing Site Plan by A & M (Ref: 3877-110)

Proposed Site Plan by A & M (Ref: 3877-410 Rev D)

Existing Plans, Elevations and Sections as follows:

Main Complex (3877-320 & 3877-321)

Dover (3877-330)

Harrow (3877-331)

Ganton (3877-332)

Ganton (3877-333)

Ryde, Seaton & Solent (3877-334)

Matlock (3877-335)

Oxford, Nutley, Otley & Norfolk (3877-336)

Windsor (3877-337)

Section A-A (3877-340 Rev A)

Existing Section B-B (3877-341 Rev A)

Existing Section C-C (Ref: 3877-342 Rev B).

Proposed Plans, Elevations and Sections as follows:

Proposed Elevations Plan (3877-400)

Main Complex Building (3877-420)

Main Complex Building- Proposed Elevations (3877-421)

Central Area (3877-422)

Adventure Play (3877-423)

Splash Play Area (3877-424)

Adventure Golf Area (3877-425)

Dover (3877-430)

Harrow (3877-431)

Ganton (3877-432)

Tenby (3877-433)

Ryde, Seaton & Solent (3877-434)

Matlock (3877-435)

Nutley, Otley and Norfolk (3877-436)

Windsor (3877-437)

Section A-A (3877-440 Rev A)

Sections B-B (3877-441 Rev A)

Section C-C (3877-442 Rev A)

Design & Access Statement by A & M (Ref: 3877, Issue 1)

Landscape and Visual Impact Assessment by EBLA (Ref: 16030)

Flood Risk Assessment and Outline Drainage Strategy by H20K (Ref: J-10847)

Further information Flood Risk Assessment and Surface Water Drainage Strategy J-10847-01-HS

2.5 The specific wording of Condition 4 is relevant which states:

4. No more than 87 units of holiday accommodation and 203 static caravans shall be stationed on the site.

- 2.6 As set out within the description and the plans, the permission removed a large number of the previous chalet buildings to make way for the use of land for the stationing of holiday caravans. All conditions attached to the Decision have since been discharged and the permission has been implemented as accepted by the Local Planning Authority but the development is not yet complete.
- 2.7 More recently, planning permission **APP/20/01127** was approved on the 21st of October 2021 and related to two of the residual areas remaining undeveloped by prior permission APP/16/01237. This permission has been implemented and this has been accepted by the Local Planning Authority. The description of development attached to this permission was:

Application for full planning permission, pursuant to APP/16/01237, for the redevelopment of the holiday site including the demolition of redundant chalets, use of land for the siting of 112 holiday caravans with areas of open recreational space, cease the use of the land for pitch and putt purposes and retain the remaining pitch and putt area as a managed wildlife area including the provision of an ecology bund & ditch, landscaping, the siting of three bird hides with bat roost in their roof spaces and a mown 'circular wildlife walkway'

- 2.8 It appears the application in being pursuant to application APP/16/01237 sought to accord with the development granted by that permission to fit in with that already approved, it can therefore be seen as a 'drop-in' permission.
- 2.9 It should be noted that it is not actually possible to have a planning application pursuant to another and therefore application APP/20/01127 represented a fresh planning permission. In this regard the permission sought to replace the remaining chalets on site, replace them with additional caravans and further expand the eastern edge of the site. It should be noted that this planning permission only related to three separate parts of the site; a chalet block to be demolished, the replacement of chalet blocks in the centre of the site with caravan and the expansion of caravans eastward. A copy of the Site Location Plan approved under the permission and the associated Masterplan is shown at **Figure 2** and **Figure 3** respectively below.

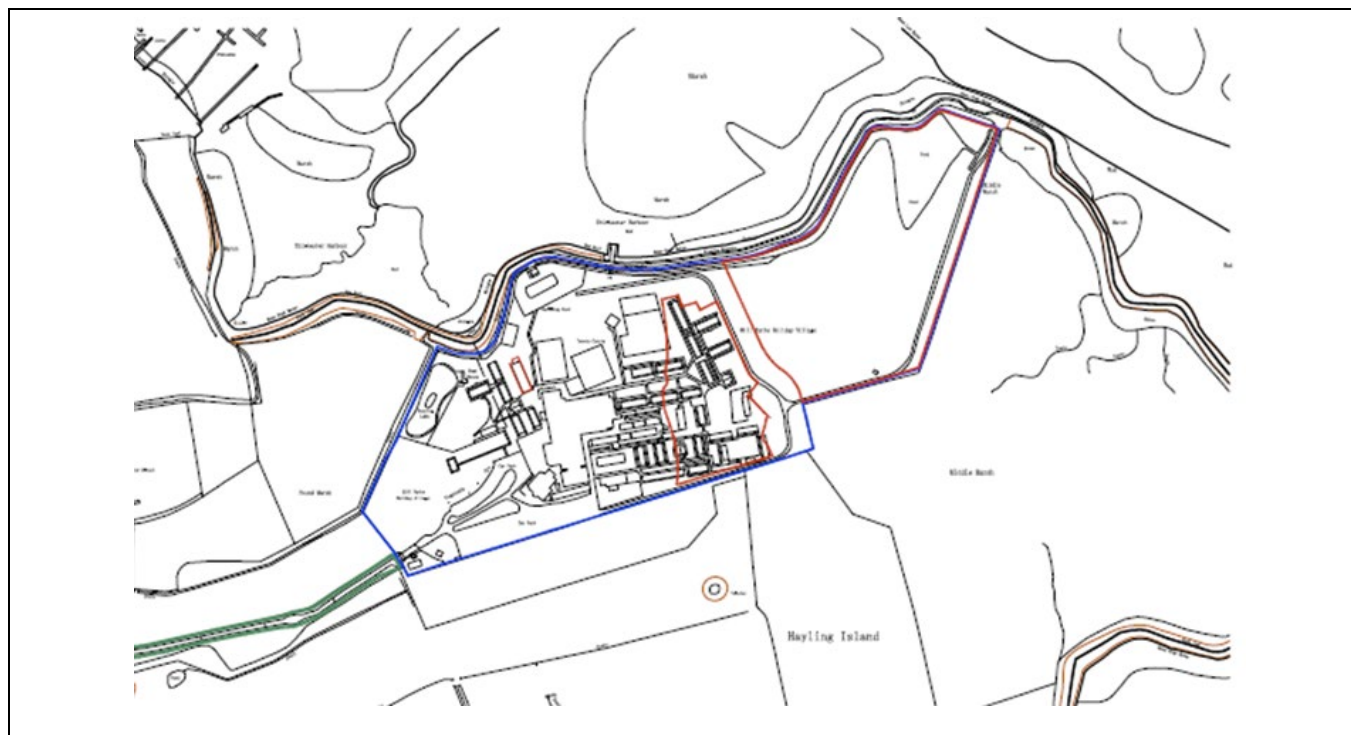


Figure 2 – Location Plan to Planning Permission APP/20/01127



Figure 3- Masterplan to Planning Permission APP/20/01127

2.18 Despite the application site being limited to three specific areas of the park and not the entire planning unit, Conditions was included to control the use of the site to a maximum of 309 static caravans, it stated:

11. No more than 309 static caravans used for holiday accommodation shall be stationed on the site.

2.19 The above condition was included despite the description permitted by the development being for 112 holiday caravans. It is assumed that the Council sought to logically add the number of units authorised by the first permission to the number of units authorised by the second permission.

2.20 However, the prior application was not amended to account for this new permission and the resultant planning position is that there is a minor conflict between the limitations of each permission.

2.21 The plans listed within Condition 2 were not altered to account for the subsequently approved development. This means that the layout approved and required to be delivered cannot be delivered, such that there is need to amend Condition 2 of permission APP/16/01237 to alter the layout of the overall site.

2.22 In the event that the development authorised by both permissions was completed, the total number of units on site would breach Condition 4 to permission APP/16/01237 and further, 309 caravan units will not fit with the application site to permission APP/20/01127 taking account of site licensing requirements. In this regard the demolition of the on-site buildings would also conflict with some of the approved plans authorised as part of planning permission APP/16/01237.

2.23 The purpose of this application is thus to amend the description of planning permission APP/16/01237 and Condition 2 to take account of the development granted by application APP/20/01127 and consolidate this latter drop in permission into the planning use. Planning permission APP/16/01237 is the appropriate permission to amend in view of the fact that the application site includes the entire site.

3. Legislation Background

- 3.1 The Town and Country Planning Act 1990 (as amended) allows for a local planning authority to make a change to a planning permission, or any permission in principle, relating to their area if they are satisfied that the change is not material under s.96A. The Act sets out that, in deciding whether a change is material, a local planning authority must have regard to the effect of the change together with any previous changes made under this section on the planning permission as originally granted.
- 3.2 The Act at s.96A also gives the power to impose new planning conditions or to remove or alter existing conditions. S.96A of the Act does allow or an application to amend the operative part of the consent (i.e. description of development) although not directly set out in statute.
- 3.3 In experience with other Local Planning Authorities, we have seen Officers consider the main key tests in deciding if a change is non-material to be defined into four questions, these being:
- 1) Is the proposed change inconsequential in terms of its scale in relation to the original application?
 - 2) Would the proposed change result in a detrimental impact either visually or in terms of amenity?
 - 3) Would the interests of any 3rd party or body who participated in or were informed of the original decision be disadvantaged in any way?
 - 4) Would the amendment be contrary to any policy of the Council?
- 3.4 The above considerations are therefore of guidance in assessing whether the proposed development would represent a material amendment.
- 3.5 In submitting this application, Mill Rythe Limited have had regard to the legal considerations made within recent Court decisions of *Finney v Welsh Ministers & Ors* [2019] EWCA Civ 1868 and *Hillside Parks v Snowdonia National Park Authority* [2022] UKSC 30 which are relevant when considering the description of development of a planning permission and the approach that should be taken with drop-in permissions.
- 3.6 In the case of *Finney*, the Courts ruled that changing the description of development as permitted by an application is outside of the power conferred by Section 73 of the Act. In view of the minor conflict between each application, this ruling means that the only avenue available to bring the two consents together is seeking an amendment of the description of development under s.96A.

- 3.7 The recent ruling in *Hillside Parks v Snowdonia National Park Authority* [2022] UKSC 30 clarifies the law on overlapping planning permissions and drop-in applications. The case confirms the legal effect of implementing subsequent permissions on an existing wider permission.
- 3.8 The judgement confirms that the lawfulness of existing development would be unaffected by the implementation of an inconsistent permission and any inconsistent drop-in permission does not adversely affect development already carried out. However, this element of the ruling applies if the development that has been carried out is completed so that the first planning permission does not need to be relied upon further.
- 3.9 In this instance, neither development authorised by planning permission APP/16/01237 or APP/20/01127 is completed and therefore the second part of the ruling is relevant. Here the judgment relies on the *Pilkington* principle to conclude that the ability to rely on the original consent will be lost where it becomes physically impossible to carry out the consented development because of the implemented later permission.
- 3.10 It will be set out in Chapter 5 that the applicant submits that the proposed amendments do not conflict with either of the legal rulings.

4. Proposal

4.1 This application seeks consent for a non-material amendment under s.96A of the Town and Country Planning Act to planning permission APP/16/01237 in three ways:

1. Alter the operative part or description of development to planning permission APP/16/01237
2. Vary Condition 2 to planning permission APP/16/01237 to substitute a number of the approved plans for an updated layout plan.
3. Vary Condition 4 to planning permission APP/16/01237 to increase the limit on the number of holiday caravans.

4.2 The first part of the application seeks permission to alter the description of the approved development to the following wording:

*Demolition of former holiday chalets and facilities buildings, use of land for the siting of **up to 315 holiday caravans** including 5 caravans for use as staff accommodation, sales area for 5 caravans, refurbishment of remainder of central facilities building, CCTV cameras, provision of new pedestrian concourse with terraces, splash and dry play areas, multi- games court, adventure golf course and outdoor theatre and new landscaping. **Use of the pitch and putt area as a managed wildlife area including the provision of an ecology bund & ditch, landscaping, the siting of three bird hides with bat roost in their roof spaces and a mown 'circular wildlife walkway'***

4.3 The above revised description increases the number of caravans that can be sited on the park to up to 315 caravans, this being the sum of the total amount granted by each application respectively. The change also incorporates and preserves the use of the eastern area of the site for a managed wildlife area and the wording used in this expanded description is copied directly from that of application APP/20/01127. The remainder of the description preserves the development granted by the original application and does not deviate from that granted permission to date.

4.4 The second part of the application seeks to amend the wording of Condition 2 to extant permission APP/16/01237 which currently requires that the development hereby permitted shall be carried out in accordance with a list of approved plans. This application proposed to amend the description to remove reference with the following plans:

- *Drwg. no. PROPOSED SITE LAYOUT PLAN - 3877-410 REV K*
- *Drwg. no. Proposed Site Plan by A & M (Ref: 3877-410 Rev D)*

- 4.5 The application seeks to replace these drawings with the following drawing which is submitted as part of this application:
- Drwg. no. 4896-200A – MLR Proposed 'End Plan'
- 4.6 This submitted plan combines the development authorised by both extant permissions and does not conflict with the proposed change of description, or indeed the totality of that granted planning permission.
- 4.7 Finally, Condition 4 to planning permission APP/16/01237 contains a limit on the number of holiday caravans that can be sited within holiday park, this limits permits 87 units of holiday accommodation and the siting of up to 203 static caravans. However as set out above, if both extant permissions were implemented the use of the site would artificially conflict with the terms of this planning permission.
- 4.8 The application therefore also seeks to vary the wording of Condition 4 to instead read:
- No more than 309 static caravans used for holiday accommodation shall be stationed on the site.*
- 4.9 The above wording copies Condition 11 to more recent planning permission APP/20/01127 and thus further represents any alignment of both extant permissions.
- 4.10 The inclusion of this condition would not authorise any intensification of the use previously granted across both permissions.

5. Planning Considerations

- 5.1 The description of development for Planning permission APP/16/01237 refers to the siting of 203 holiday caravans and the demolition of 6,111 square metres of redundant chalets and facilities buildings amongst other development.
- 5.2 Subsequent planning permission APP/20/01127 authorised the siting of a further 112 holiday caravans in place of the chalet remaining from the first permission. As the latter permission is a drop-in consent, it is necessary to amend the first permission to bring the use together and avoid any technical conflict between each consent.
- 5.3 Mill Rythe Holiday Park therefore has planning permission to demolish all holiday chalets and site 315 caravans on the site with 5 of them being staff accommodation. The planning permissions also exists for a holistic redevelopment of the existing facilities.
- 5.4 There is however a need to revise the original grant of planning permission APP/16/01237 to take account of the development granted permission by application APP/20/01127. This is to avoid any conflict with the planning conditions listed on the first decision notice.
- 5.5 The application proposes to revise the description of development. The revised description increases the number of caravans that can be sited on the park to up to 315 caravans, this being the sum of the total amount granted by each application respectively. The change also incorporates and preserves the use of the eastern area of the site for a managed wildlife area and the wording used in this expanded description is copied directly from that of application APP/20/01127. The remainder of the description preserves the development granted by the original application and does not deviate from that granted permission to date.
- 5.6 Considering first the legal aspect of this change in response to the recent ruling in *Hillside Parks v Snowdonia National Park Authority* [2022] UKSC 30 the ability to rely on planning permission APP/16/01237 has not been lost as a result of the grant of application APP/20/01127. Neither is it physically impossible to deliver the development granted by each application, instead the description of development is required to be amended to take account of that granted by the second permission. This will then allow this application to vary Condition 2 and 4 of the original consent to increase the number of caravans that could be sited within the site and secure the alternative layout of development avoid any technical breach of planning control. This would further be aligned with the ruling of *Finney v Welsh Ministers & Ors* [2019] EWCA Civ 1868. This approach will serve to bring the two applications as granted together and remedy any potential conflict between each.

- 5.7 From the outset, it is important to note that the stationing of caravans is a use of land. Where permission is granted for a caravan site it authorises the use of the whole of the red line application site. Once that permission has been implemented, the lawful use of the whole of the application site is changed to use as a caravan site. The lawful use of the whole site has been changed since it is a single planning unit even though in practice different areas may be used for different purposes ancillary to the overall permitted (eg parking, amenity or landscaping) or may simply remain, as yet, unused.
- 5.8 Planning permission has been granted, via two applications, for the use of the entire planning unit for the siting of 315 caravan units in line with the terms of each application. This application under s.96A would not therefore materially change this use and the overarching use of the site would remain within the confines of the extant permissions, that being for the use as a caravan site. The proposed amendments would not therefore result in any material change to the baseline permitted use.
- 5.9 The proposed change of description can be secured through a s.96A application and represents a non-material change for the following reasons:
1. The proposed change would not increase the scale of use on site beyond the development approved by both planning applications. Planning permission has been granted for the use of land for 315 caravans across the entire site and this application is therefore inconsequential and simply is procedural.
 2. The impact of the completed development would remain the same as that granted by prior applications, there would not be any increase in the total amount of development on the site nor its spatial spread, the units granted would simply be rearranged. The application would have no tangible or material planning consequence.
 3. Both extant planning applications were subject to public and statutory consultation allowing third parties to offer a view of the merits of the redevelopment of the site. The amended description would not permit any development that has not already undergone public consultation.
 4. The Council have granted planning permission for the development proposed with the amended description and therefore the proposed amendment to bring two permissions together would not be contrary to any planning policy.
 5. The proposed change would conflict with the Planning Condition 2 and 4 included within the original permission in regard to compliance with the approved layout plan and the limit on the

number of holiday units to 203 and 87 holiday chalets however this application seeks to vary this condition to resolve the conflict and the conflict in fact demonstrates the need for this application.

- 5.10 In the above circumstances and applying the tests established by Local Planning Authorities in order to assess the materiality of change, it is submitted that this application and the amendments proposed within it can proceed under s. 96A of the Town and Country Planning Act. The proposed amendments are non-material.

6. Conclusions

- 6.1 The Town and Country Planning Act at section 96A allows for a local planning authority to make a change to a planning permission, relating to their area if they are satisfied that the change is not material under s.96A. Section 96A also gives power to alter existing planning conditions attached to a planning permission.
- 6.2 This application seeks consent for a non-material amendment under s.96A of the Town and Country Planning Act to planning permission APP/16/01237, the amendments proposed by this application are:
1. An alteration of the operative part or description development to planning permission APP/16/01237
 2. A variation of Condition 2 to planning permission APP/16/01237 to update the layout of caravans approved
 3. A variation of Condition 4 to planning permission APP/16/01237 to increase the limit on the number of holiday caravans in line with recent planning approvals.
- 6.3 The Act sets out that, in deciding whether a change is material, a local planning authority must have regard to the effect of the change together with any previous changes made under this section on the planning permission as originally granted.
- 6.4 This statement has set out the background to the application and the reasons why the amendments proposed by the application can be considered non-material. The effect of change proposed by the application is procedural and therefore can be secured under s.96A of the Act.

Contact details

Enquiries

Paul Harwood MRTPI
02079 112935
paul.harwood@avisonyoung.com

Visit us online

avisonyoung.com

Avison Young

65 Gresham Street, London EC2V 7NQ

Copyright © 2023. Avison Young. Information contained in this report was obtained from sources deemed reliable and, while thought to be correct, have not been verified. Avison Young does not guarantee the accuracy or completeness of the information presented, nor assumes any responsibility or liability for any errors or omissions therein. All opinions expressed and data provided herein are subject to change without notice. This report cannot be reproduced, in part or in full, in any format, without the prior written consent of Avison Young.