

Report to Head of Community Strategy & Development

East Beach Caravan Site – Application for a Variation of Licence Conditions

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1 Purpose of Report

- 1.1 To seek the Head of Service's determination of an application to revise the conditions attached to the current site licence for East Beach Caravan site so as to enable 'Permanent Residential' Park Homes, which would be permitted to be permanently occupied and sited, installed upon the North site. This would change the park from being a mixture of residential, static holiday and touring to 100% residential. To approve or refuse the application following this decision.

2 Recommendations

- 2.1 The Head of Service is recommended to determine the application having regard to the change in occupancy and period of use proposed by the applicant. The Head of Service is recommended to decide upon one of the course of action below
1. to approve the application
 2. to refuse the application
 3. to seek the Licensing Committee's determination of the application.

3 Background to the 2005 Application

- 3.1 The historic background information is stated within the Report dated 24th January 2005 prepared by the principal Environmental Health Officer, Mr Barclay and the then Head of Service, David Connor for the Licensing Sub-Committee and is believed accurate. The information below relates only to such actions occurring after the date of the sub-licensing committee report 24th January 2005.
- 3.2 The site comprises two areas divided by the railway. They are known as South site (near East Beach) and the North site.
- 3.3 On the 24th January 2005, the Councils licensing committee reached the decision to approve the variation of site licence conditions at East Beach, so as to permit not more than 50 caravans/mobile homes to the South side. These caravans could be static holiday, permanent residential or touring units. At present the operator has chosen to site permanent residential park homes. To the North field the site licence conditions were varied to permit not more than 15 static holiday caravans together with one caravan for whole time occupation by the employee of the licensee and not more than 35 touring units (this was defined as either a touring caravan or a tent). Note at this time, Asset Management attempted to prevent the operator proceeding with the development and the Council took it to the High Court. The Council subsequently lost.
- 3.4 Private Sector Housing received a copy of the principal solicitors letter to Cllr. Ascroft regarding the Ministry of Defence (MoD) intended restrictive covenant to prevent residential caravans on the land. The letter stated that the MoD never registered the restrictive covenant; therefore the lessee took free from this covenant the lease of the land. This matter appears never to have been resolved; however, it is not for the Council to become involved in a matter between the lessee and the MoD.
- 3.5 On the 24th May 2005 landlords (SBC) consent to the garage erection and demolition of ablution blocks was not granted. From 2005 – 2008, various correspondence has been filed relating to planning permission for garages and for storage sheds to be erected on the South site. On the 8th January 2008 a 'Notice of refusal of Application for Variation of Licence Conditions' regarding the application for storage sheds was drawn up. The Council refused the site operators application to vary the site licence conditions based upon advice from Essex County Fire & Rescue Service as the imposition of the proposed conditions within the site licence would be unreasonable.

4 The 2005 Consultation Findings

- 4.1 Whilst the 2005 consultation was concerned with changing the South site to residential and keeping the North site to static holiday and touring residential, it is felt that some of the comments made by the consultees then, could be relevant to the proposed amendments now.
- 4.2 **Anglian Water:** Upon commenting upon the 2005 application, Anglian Water did not wish for any caravans to be sited over the foul sewer or the 150mm rising main, and ideally not within 3 metres of the pipes. The caravans at the time were static holiday or touring. In the new application it is intended that they will be permanent static twin units, which will sit on a concrete raft, with brick skirting. Therefore in line with Building Regulation applications for new buildings and extensions that include building over or within 3 metres of a public sewer, no bases or above ground load should be permitted without the park operator first receiving Anglian Water's formal agreement.
- 4.3 The operator and Anglian Water have discussed this matter and this has been agreed. Anglian Water have also agreed that caravans could be located within 8 metres of the existing pumping station. It has been agreed that if the application is approved the above is adhered to on the grounds of public health.
- 4.4 **Essex Fire and Rescue Service:** Should the application receive approval, the park operator is recommended to consult with them regarding additional water supplies. It is recommended that if the application is to be approved the Council shall make an application to insert new site licence conditions relating to fire, so as to bring the site licence conditions in line with the Regulatory Reform Order. It is proposed that the fire related condition of the Model Standards 2008 be imposed.
- 4.5 **Defence Rail & Container Services (The agency responsible for the private MOD line crossing the site):** Advised that the crossing of the rail line was due to be upgraded in March 2005, however this upgrade was on the basis of low level use. It was recommended to the park operator to provide evidence that the Defence Rail & Container Services are content for the increased use of the crossing prior to formal approval being given. However, it is noted that the 2005 application states that *'it is not envisaged that there will be any additional problem in this respect due to any extended winter use'*.
- 4.6 **Southend Primary Care Trust:** Felt that the 2005 application would place additional demands upon the local primary care services, however they stated that they could absorb such demand.
- 4.7 **Director of Education and Lifelong Learning:** Raised no objection to the 2005 proposal. It is understood that the proposed park shall primarily be for retired persons, therefore the impact upon schools should be negligible given, the low number of homes proposed.
- 4.8 **Highways Maintenance and Waste Management:** Advised that the 2005 site application should bear in mind the roadways being suitable for waste refuse vehicles, if approved the proposed application, would be subject to the same stipulations and are covered in the existing site licence conditions under Roads, Gateways and Footpaths. The application meets their requirements.
- 4.9 **Local Residents:** For the 2005 application, local residents were consulted; of the 24 written replies we note that none supported the application. The breakdown for the grounds of objection are given in the 2005 licensing committee report; as per the 2005 it is expected that if local residents were to be consulted over the proposed application, similar objections would be raised, but to a lesser degree as only the premises near to the North field would be affected. However, as in 2005, many of the objections are likely to be nullified under the site licence conditions.
- 4.10 Given, that there is no statutory requirement for such consultation, consultation has not been considered for the variation of site licence conditions. In addition, it was found that the site licence conditions attended to many of the concerns raised in 2005, with other concerns being outside of the licensing authorities remit. On that basis we considered it appropriate to consider the grounds of objection in 2005 and whether they impacted upon the health and safety of the caravan site users, residents or general

public or could be considered as valid objections under site licensing as being “in the public interest”. Of those objections the following are considered applicable to the current application:

- Loss of touring facility to visitors to town,
- Loss of available static sites for other local residents and visitors.
- Commercial development, increased all year level of local traffic (giving rise to noise, street parking and/or potential accidents.
- Possible light pollution.
- Increased noise from site.

4.11 **Shoebury Residents Association:** As per the 2005 consultation with local residents, it is expected that if Shoebury RA were to be consulted over the proposed application, similar objections would be raised. In 2005, the applications raised relating to health & safety and site licensing, these have been considered for the new application and the following could be considered applicable:

- All year round occupation will remove any holiday resort facility.
- Shared site roadways between pedestrians and vehicles would be against road safety advice.

5 History of Site

5.1 The history of the site is as stated in the sub-licensing committee 2005 report. The history following the 24th January 2005 includes the decision by the Councils licensing committee to approve the application for variation of site licence conditions. As such, the licence conditions were amended to reflect this decision. Over the course of time the park operator has physically altered the landscape through the addition of roadways, lighting and permanent residential park homes. In addition, static touring caravans had been moved onto the North site so as to comply with the amended site licence conditions. However, none were present on a site visit on the 21st February 2011.

6 New Application

- 6.1 See the ‘Application for Variation of Site Licence Conditions’ form and 1:500 site plan.
- 6.2 On the 4th May 2010 E-mail from Private Sector Housing sent to Legal Services advising that the park operator had discussed with EHO Sarah Scotchmer, a proposal to develop the North site. The EHO sent an ‘Application for Variation of Licence Conditions’ form on the 4th May 2010. This form was returned filled out on the 14th May 2010.
- 6.3 Letter from PSH to park operator dated 28th October 2010 advising that their application in May was not clear in its intentions and that further information was required in order to progress with the application.
- 6.4 Further information received on the 5th & 24th November 2010, to aid the application. It became clear that the park operator’s intention is to make the park 100% residential by developing the North field in its entirety.
- 6.5 Legal and Asset Management reviewed the application over December and January. Legal advised that the site was historically very contentious. The three departments met on 2nd February 2011, PSH advised that they would provide a report to Head of Service stating various options. Asset Management would consider whether anything exists in the lease to prevent the application proceeding. At present, it appears that it does not and that the lease contains few enforceable terms.
- 6.6 From February to September various correspondence between the applicant, PSH, Legal, Planning and Asset Management was sent and received. As information was returned it began to mitigate many of the PSH initial concerns over the development application.
- 6.7 On the 14th September 2011 the Asset Management Group Manager e-mailed to advise that he had now received all information with regards to the application, for freeholder consent. Asset Management shall be looking for a members decision on the issue of consent, following the PSH site licensing decision;

even though, technically the Council cannot unreasonably withhold its 'freeholder' consent to the application.

7 Proposed Variation in Site Licence Conditions

7.1 The applicants proposals to vary the site licence conditions are as follows:

1. Remove any reference within the site licence conditions to the North field of the Caravan park being occupied only for seasonal use.
2. Replace the currently permitted 15 static holiday caravans and one site employee caravan with 32 caravans / mobile homes.
3. Remove all reference to Touring unit within the site licence conditions for the North field (The applicants' proposal is for the removal of any seasonal touring, camping facility. It is proposed that the park will become entirely residential).
4. Amend the site licence condition to permit caravans to be stationed within 8 metres of the Anglian Water pumping station.

8 Direct Impact of Permitting the Proposed Variation in Site Licence Conditions

8.1 The application is for the use of the North site on a year round basis, thus eliminating the existing condition relating to a closed winter season. This will remove the control over the North site being used for holiday purposes and permit the occupation of permanent residential park homes.

1. Removing the wording which permits the 15 static holiday caravans and one site employee caravan with 32 caravans / mobile homes. The applicant intends to install twin-units permanent residential park homes.
2. The applicant proposes that all reference to 'Touring Unit' within the site licence conditions for the North field be removed. The applicants' proposal is for the removal of any seasonal touring, camping facility. The impact will be that the park will become entirely residential. There will no longer be a facility to permit touring or camping facilities. This is the only publicly available site within the district for static holiday and touring and camping, although, the current park operator has verbally advised that they no longer offer the service of touring or camping.
3. To vary the condition to permit caravans to be placed within 8m of the pumping station, as agreed between Applicant and Anglian Water.

9 Additional Impact of Permitting the Proposed Variation in Site Licence Conditions

- 9.1 In permitting the application, the use of the North field currently designated for use as a holiday static caravan site and holiday touring caravan and camping site would change to a permanent residential caravan park.
- 9.2 The aesthetics of the North site would dramatically change, from being that of a predominantly green space to that of a residential park site.
- 9.3 It is understood that the proposal would have an impact on the view from some neighbouring 'bricks and mortar' properties in Gunners Road and Blackgate Road; the extent of the interruption of view from each property has not been ascertained.
- 9.4 The Model Standards 2008 introduce 'flooding' as a condition, if a site is in an area susceptible to flooding. Given, that part of the North site lies within an area designated at risk from sea level flooring by the Environment Agency, the site operator would be required to have in place procedures to ensure that all those on the site are alerted quickly, and that they are aware of any evacuation procedures that may be in place. The site operator would also be required to prominently display a notice with all relevant

information. In recent correspondence the operator has agreed to the insertion and adherence of these conditions.

- 9.5 One benefit of the proposal is that up to 32 new homes within the Borough would be made available. It is understood the homes shall be marketed for purchase and occupation primarily by retired persons. The thermal resistance or details of the type of caravans proposed have not been provided; but it is understood that only new park homes compliant to the latest British standards shall be installed on site.
- 9.6 Another benefit maybe that recent Government policy permits a New Homes Bonus to be paid to Councils for each new home brought back into use. It has yet to be determined if this development will qualify.

10 Legal Department View

- 10.1 In the e-mail dated 17th February 2011, Senior Solicitor Peter Tremayne makes the below comments:
1. This should be decided by Members as it has been a highly controversial issue in the past.
 2. It is fundamentally a decision for the licensing committee as to the exercise of it's discretion to vary the license conditions. Any refusal must be justified under the provisions of the Caravan and Sites and Central Development Act 1960
 3. If the conditions of the site license are varied the Council is unlikely to have grounds for objecting to the consequential works sort unless it can advance reasons based on property interests.
 4. It is unlikely planning permission will be required for the majority (if not all) of the alteration to the site as they can probably be done as permitted development.
 5. Subject to the licensing committee agreeing to the variation sort the lease by itself does not prevent the applicant putting permanent mobile homes on the site.

11 Planning Considerations and view

- 11.1 For the 2005 application, the 2005 licensing committee report, states that no additional planning approval is required for such a proposed change of use of the site. In short, if the proposed 'park home development' were to be implemented the park would remain a 'caravan site'. However, the application then was to continue with static holiday, touring and camping albeit only in the North field. The application now is to develop the site so that no static holiday, touring or camping remains. Yet the Planning Approval given on the 16th November 1970 is for 'Consent to use caravan and camping site as caravan and camping site'.
- 11.2 Area Planning Officer Dean Hermitage responded on the question posed, "Whether the planning permission of "Consent to use caravan and camping site as caravan and camping site, East Beach Caravan and Camping Site, Shoeburynes Ref: D/1226/70 would permit the removal of all camping and touring facilities so that no camping touring exists and so that the site is only occupied by caravans (permanent residential)". The response was that the permission would in his opinion allow this, provided the caravans met the 1968 definition and no further planning/operational development permission would be required. This seconds Legal's view on the matter.

12 Asset Management Comment for Licensing Report

- 12.1 Tingdene have made an application to the Council for Landlord's consent for alterations under clauses 7, 8 and 11 of the of the lease for East Beach Caravan Park dated 13th January 1998 to facilitate the proposed conversion of the site for 32 mobile homes.
- 12.2 It is important to note that Tingdene's request relates only to consent for alterations, not for change of use which is not required and the proposed change is already permitted under the provisions of the lease. In this case, Landlord's consent for alterations cannot be unreasonably withheld. Therefore, provided the relevant specifications and details are provided and are satisfactory, and the alterations comply with planning permission (most of works probably have permitted development rights anyway) there are unlikely to be reasonable Landlord and Tenant grounds for the Council to refuse consent provided the Site Licence is agreed to be varied. This follows the position held in the High Court case in 2005.
- 12.3 Asset Management has the relevant information to be able to assess the application for Landlord's consent and can deal with this once the Licensing decision has been made. The lease also requires compliance with the relevant Site Licence so consent would also enable compliance with the varied Licence. It is right that the Licensing decision is the leading decision and also the precursor to Landlord's consent to avoid the need for any consent given to subsequently be varied.
- 12.4 It is the view of Asset Management and Legal that due to the previous High Court decision, it will be preferable to have a member decision on the issue of Landlord's consent, even though the recommendation is likely to be that the Council cannot unreasonably withhold its consent for alterations. If the Site Licence variation is agreed, a report will therefore need to be prepared for the Cabinet recommending that consent for the proposed alterations is given.

13 Appraisal

- 13.1 It is submitted that there are two main issues in respect of the application:
1. Whether the change of use of the North site from static holiday and touring and camping is considered acceptable, given that the application is for 100% residential development of the North site. It must be ascertained whether the current rights of the static holiday and touring and camping (recreational) facility protected within the site licence conditions should remain protected and in the words of the Act, is something which is 'in the interest of the public at large'.
 2. Whether the health and safety of the residents, visitors and/or general public will be put at risk by approving the proposed application.

14 Conclusion

- 14.1 It is the Private Sector Housing team's recommendation to the Head of Service that the application is put to an Ad hoc meeting of the Licensing Committee to determine whether to approve or refuse the application having due regard to:

"the loss of holiday static caravan and touring caravan and camping facility being detrimental and not "in the interest of the public".