

# **DELEGATED DECISION REPORT**

## **APPLICATION NUMBER**

### **203925**

**Sapey Golf Club, Upper Sapey, Worcester, WR6 6XT**

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**CASE OFFICER: Mr Josh Bailey**

**DATE OF SITE VISIT: 17<sup>th</sup> December 2020 and 5<sup>th</sup> February 2021**

**Relevant Development  
Plan Policies:**

**Herefordshire Local Plan – Core Strategy  
Policies:**

SS1 – Presumption in favour of sustainable development  
SS4 – Movement and transportation  
SS5 – Employment provision  
SS6 – Environmental quality and local distinctiveness  
SS7 – Addressing climate change  
RA6 – Rural economy  
MT1 – Traffic management, highway safety and promoting active travel;  
E1 – Employment provision  
E4 – Tourism  
LD1 – Landscape and townscape  
LD2 – Biodiversity and geodiversity  
LD3 – Green infrastructure  
SD1 – Sustainable design and energy efficiency  
SD3 – Sustainable water management and resources  
SD4 – Waste water treatment and river water quality

**Upper Sapey are not considering a NDP**

**National Planning Policy Framework (February 2019)**

**Sections:**

2 (Achieving sustainable development),  
4 (Decision making),  
5 (Delivering a sufficient supply of homes)  
6 (Building a strong, competitive economy)  
8 (Promoting healthy and safe communities)  
9 (Promoting sustainable transport),  
11 (Making effective use of land)  
12 (Achieving well-designed places)  
15 (Conserving and enhancing the natural environment)  
16 (Conserving and enhancing the historic environment)

**Relevant Site History:** DCH960767/F: Construction of 9 hole golf course and associated landscaping (Approved with conditions – 1996);  
 DCN2006/2165/F: Erection of 4 holiday chalets (Approved with conditions – 29th August 2006).  
 P141812/F: Chalet No.2 Sapey Golf Course, Vary Condition 3 attached to planning permission DCNC2006/2165/F, (Approved 7<sup>th</sup> April 2015);  
 P150374/F: Proposal to use the existing chalet as changing facilities for footgolf (Approved 7th April 2015);  
 P160471/AM: Non-material amendment to permission DCN2006/2165/F: Erection of 4 holiday chalets – alterations to cabin 1, 2, 3 and 4 (Approved 24th March 2016);  
 P160271/AM: Non-material amendment to planning permission DCN2006/2165/F (Erection of 4 holiday chalets) amendment to vary the design of cabin nos. 1, 3 and 4 (Approved 24th March 2016);  
 P160272/F: Variation of condition 3 of planning permission DCN2006/2165/F (Erection of 4 holiday chalets) – permission to vary the occupancy condition (Approved 4th April 2016);  
 P160273/F: Change of use of chalet from footgolf facilities building to holiday accommodation (Approved with conditions 4<sup>th</sup> April 2016);  
 P191008/F: Provision of 14 lodges for holiday let within and adjoining the 9 hole golf course (Refused 9th July 2019);  
 P190617/AM: Non-material amendment to amend detailed positioning and orientation, amendments to decked areas, inclusion of a balcony and fenestration alterations (Refused 25<sup>th</sup> September 2019);  
 P193263/F: Removal of condition 2 (approved drawing numbers) in connection with application 062255/F and variation of siting, design and external decking areas of chalet nos. 1, 3 and 4 (retrospective) (Refused 1<sup>st</sup> May 2020); and  
 P193480/F: Erection of six further holiday lodges (Refused 29<sup>th</sup> May 2020)

## CONSULTATIONS

	Consulted	No Response	No objection	Qualified Comment	Object
North Bromyard Group Parish Council	XX				XX
Transportation	X		X		
Ecology	X	X			
Trees Officer	X		X		
Welsh Water	X		X		
Severn Trent	X		X		

Forestry Commission	X	X			
Site Notice	XX				XX(14)
Local Member for Bromyard Bringsty	X* (updated)		X		

## **PLANNING OFFICER'S APPRAISAL:**

### Site description and proposal:

Sapey Golf Course straddles either side of the B4203 at the traffic lights within the settlement of Upper Sapey. The well-established main golf complex lies to the west and other side of the public highway and comprises an 18 hole golf course, car park, pro shop and club house. To the east is the existing 9 hole golf course and of particular relevance to this application are four chalets which were originally granted planning permission in 2006 and had a somewhat tumultuous history over the last 7 years or so in terms of variations applications, many retrospective to do with siting, design and their use.

Previous applications to date have been in relation to the holiday chalets previously erected which were to be used in relation to the golf course enterprise before subsequently being granted use for holiday accommodation purposes only.

This current application before me differs considerably from previous applications and seeks planning permission, retrospectively, for the change of use of the land of three of the chalets, albeit sited in incorrect positions (namely chalets 1, 3 and 4) to be used as a caravan site for three caravans, which in the view of the applicant, would apply to the chalets currently on site.

In consideration of this application, I have noted the following documents and plans in submission:

- Application Form;
- Support Statement;
- Sapey Golf Course Planning History;
- Arboricultural Survey Report;
- The signed notice and letter to the owner of site;
- Site Location Plan 1:5000 dated 15/1/2021;
- Site Location Plan 1:2500 dated 15/1/2021;
- Site Plan 1:500 dated 11/11/2020; and
- Topographical Survey (G 9401/1)

### Representations:

**North Bromyard Group Parish Council** – Objection to both consultations

**Transportation** – No objections

**Ecology** – No response

**Trees Officer** – No objections

**Welsh Water** – No objections

**Severn Trent** – No objections

**Forestry Commission** – No response

**Site Notice/Press** – 14 letters of comment, all objecting to the application. They raise the following material considerations:

- Chalets do not fall within the definition of a caravan;
- Inappropriate form of development;
- Location and siting;
- Highway safety;
- Sufficient accommodation locally;
- Landscape harm;
- Residential Amenity;
- Viability of Sapey Golf Club;
- Drainage Arrangements; and
- Application inaccuracies

**Local Member** – Application discussed with Cllr Shaw on multiple occasions. Delegated authority agreed by email on 8<sup>th</sup> March 2021 (19:06).

Pre-application discussion:

None with planning officers, contrary to paragraphs 39 and 40 of the NPPF (Feb 2019), with continued enforcement on-going in context of Sapey Golf Club

Constraints:

B4203

SSSI Impact Zone

Natural England Priority Habitat adjacent

MoD Cleehill Yellow

Appraisal:

*Policy context*

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows: *“If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”*

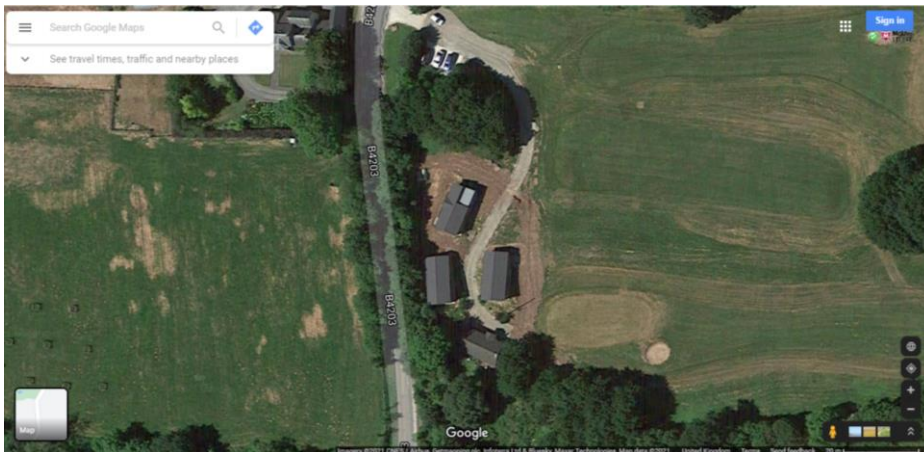
In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS). The National Planning Policy Framework 2019, which itself is a significant material consideration. The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (the 2012 Regulations) and paragraph 33 of the National Planning Policy Framework requires a review of local plans be undertaken at least every five years in order to determine whether the plan policies and spatial development strategy are in need of updating, and should then be updated as necessary. The Herefordshire Local Plan Core Strategy was adopted on 15 October 2015 and a review was required to be completed before 15 October 2020. The decision to review the Core Strategy was made on 9th November 2020. The level of consistency of the policies in the local plan with the NPPF will be taken into account by the Council in deciding any application. From reviewing those policies most pertinent to the

determination of this application, they are viewed to be entirely consistent with the NPPF and as such, significant weighting can be afforded.

*Principle of Development – including Meaning of ‘Development’; Operational Development and Definition of a Caravan*

The dimensions of the ‘caravans’ have not been provided although I have seen them for myself on site. There is clear doubt as to whether the structures on site do truly satisfy the definition of a caravan, in terms of whether they fall within the definition of a caravan and caravan site as contained within the Caravan Sites and Control of Development Act 1960 section 29(1) as extended by the Caravan Sites Act 1968 section 13, or whether they constitute operational development. Whilst described by the applicant structures falling within the definition of a caravan, the summation is effectively reliant on a letter from a manufacturer of mobile homes that they are of the opinion that a mobile home with a roof terrace and spiral staircase does comply with the statutory definition of a caravan.

In my review of site history, the aerial photograph below taken would appear to be at odds with site conditions:



Google Aerial Photo



Photo by case officer

5/2/21

Clearly, the spiral staircase appears to have been added at a later date since the chalet was brought onto site. But, in any event, it must be assessed first of all as to whether what is being proposed are caravans within the definition and subsequently caravan site.

The Act defines a caravan as ‘any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and ....’ In the 1968 Act that definition was expanded to include a structure which (a) is composed of not more than two sections separately constructed and designed to be assembled on site by means of bolts, clamps or other devices and (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) even if to move it on the highway would be unlawful (due to its size). The Caravan Sites Act 1968, as amended in England 2006 and Wales 2007 also has several criteria for what constitutes the definition of a caravan. First, maximum dimensions: Length (excluding any drawbar) 20 m (65.6’); Width 6.8 m (22.3’) and Overall height (internally, from the floor at its lowest to the ceiling at its highest) 3.05 m (10’).

There is no confirmation as to whether the structures here are affixed to the ground or whether they remain there by their own weight. There appears to be connections to services but that is no different to many ‘caravans’. However, in my view the addition of the staircase takes it outside the definition of a caravan and constitutes operational development. The staircase materially changes the external appearance of the building and therefore cannot be considered to accord with Section 55(2) of the TCPA Act 1990.

The Council has no details of whether there are foundations or whether it has been built on site as one would construct any building and no information has been provided by the applicant in this regard. Whether a building operation has taken place depends on whether the work which has taken place results in a material physical alteration to the land and in practice involves the tests of size, permanence and physical attachment. In my view the size, permanence and physical attachment to the ground are such in this case that it is reasonable to conclude that a building operation has taken place.

Taken as a whole it appears to me that the overall structures, have to be substantially fixed into the ground and would not easily be moved without being deconstructed and that this is an operation that is likely to be undertaken by a builder or similar professional. This is particularly the matter with the staircase. The longevity of the posts will also depend on the type of preservative treatment given to the wood. This is clearly a significant period and it does not suggest that the structure is transient or temporary. In considering the nature of the chalets and the likely period in which they have been in place, it could have sufficient permanence so as to be regarded as a permanent structure. Indeed the applicant confirms that the buildings require a base and pipes and cables to be installed to support it, exhibiting further permanency.

On the nature of the chalets and as a matter of fact and degree, they would, in my view, constitute 'operational development' as defined in section 55(1)(A) of the Act and their construction on the land therefore constitutes development which requires planning permission under section 57 of the Act.

It does not in my view satisfy the definition in the 1968 Act which refers to two separate sections separately constructed but which 'are designed to be assembled on site by means of bolts clamps or other devices'. In my view that is a different exercise to actually constructing the whole thing on site rather than it arriving on site already constructed and simply being assembled by being bolted or clamped together once it has reached a site.

Additionally, as set out in paragraph 18 above, the definition in part (b) of s13 of the 1968 Act (and indeed s29 of the 1960 Act) requires that a 'caravan' is when assembled, capable of being moved by road from one place to another (whether by being towed or transported). There is no evidence concerning the actual method of construction of the individual parts of the log cabin or of how they would be joined together.

Taking all of the above factors into account, I view the proposal as operational development. This was adopted as a similar approach in the county at appeal at Redwood Orchard, St Michaels, Tenbury Wells (APP/W1850/X/15/3002415), albeit whilst that particular appeal was for a CLEUD, it drew a similar conclusion as above. On the basis of the case advanced, I am not satisfied that the proposal meets this definition, particularly as the chalets do not fall into the defined parameters of a 'caravan'.

Establishing this understanding, the applicant seeks a change of use to a caravan site. For the avoidance of doubt, the meaning of "caravan site" is clearly defined in the Town and Country Planning Act 1990, as amended, has the meaning given in section 1(4) of the Caravan Sites



and Control of Development Act 1960. This states that, “the expression “caravan site” means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed” (Part I – Caravan Sites - Caravan Sites and Control of Development Act 1960).

In order to meet the definition, given this is a retrospective application, the use of the land is for a caravan site, would indicate that there is evidence that caravans would be stationed for human habitation. I would consider this meaning to be a two-fold test, not simply one would need to meet part in order to satisfy the definition of caravan site.

The site is enclosed with a separate access east off the B4203 with a stone wall on the approach to the parking area and 9-hole golf course and is in the same ownership. Undertaking operational development cannot fall within the in the context of the expression and meaning of ‘caravan site’ given in section 1(4) of the Caravan Sites and Control of Development Act 1960. Given that I have previously concluded that the proposal represents operational development I do not consider that it can be viewed as a caravan site under the meaning outlined above. Furthermore permitting this proposal would be at odds with the operative part of a planning permission, and inconsistent with the *Finney v Welsh Ministers* [2019] EWCA Civ 1868 Court of Appeal decision, ratified by the Supreme Court, as one would be conditioning plans in which operational development has taken place that would conflict with the operative part of the permission which only allows for a caravan site. A ‘caravan site’ means land on which a caravan is stationed for the purposes of human habitation and land used in conjunction with land on which a caravan is stationed and given operational development has taken place, chalet 4 at the very least cannot be considered a caravan or to form part of a ‘caravan site’. Effectively, the proposal description is at odds at what site conditions evidently show, particularly given this is a retrospective application.

The position alters if a caravan becomes a self-contained dwelling providing all the normal facilities for day to day living i.e. it is someone’s separate home. In this case it is normally held that a separate residential planning units have been created and planning permission is required. In the case of caravans there is no specific mention in planning law justifying such a conclusion as sec.55(3)(a) of the Planning Act only specifies that “the use as two or more separate dwellinghouses of a building previously used as a single dwellinghouse” is a material change of use. This site forms a separate planning unit and is distinctive from the 18-hole and 9-hole course. The chalets have acquired a degree of permanence through becoming physically attached to the ground, and is connected to main services, it can be distinguished from a caravan. It has become a building operation.

The main matter to be resolved is, of course, whether separate residences would be established on the land resulting in the creation of a new planning unit requiring planning permission. In this case, many of the indicators that the accommodation is separate, seem to be in place. Curtilages have not really been defined and service connections are separate, even though access is shared. Such buildings are certain to provide all the necessary domestic facilities enabling it used independently. The lifestyle question, namely how the accommodation is actually used, is also part of the matrix of considerations that may arise in evidence.



The applicant considers that the proposal is for holiday caravans however in being mindful of *Finney v Welsh Ministers [2019] EWCA Civ 1868* Court of Appeal decision, ratified by the Supreme Court as one would be approving plans in which operational development has taken place that would conflict with the operative part of the permission, which is merely a caravan park. Very tightly worded conditions would be required.

### *Location*

It is acknowledged that the Council has previously granted planning permission for the siting of four holiday lodges. However, the scheme has not been carried out in accordance with the approved plans and resulted in enforcement investigations, and the history of applications that has led to this current submission. Previous applications have related to the holiday chalets previously erected which were to be used in relation to the golf course enterprise, before subsequently being granted use for holiday accommodation purposes only. The applicant, as part of supporting justification, has indicated the intention is for holiday caravans and so very tightly worded conditions could resolve this, although the applicant's proposal description would seem otherwise.

### *Design*

The 2006 planning permission sought approval for the 'erection of four holiday chalets'. The documentation submitted at the time clearly references the chalets as 'buildings', as does the accompanying decision notice. As such, at that time the permission sought was for operational development and therefore the imposition of a condition requiring the buildings to be retained in accordance with the approved plans is an entirely reasonable one.

That said, having reviewed the approved plans for the chalets it is acknowledged the dimensions of the originally approved chalets would have fallen within the size dimensions specified in the Caravan Site and Control of Development Act 1960 (As amended). Additionally, it is acknowledged that since the original 2006 planning permission, the LPA has permitted a non-material amendment relating to three of the chalets to be pre-fabricated park homes (Ref: 160471/AM). The submitted documentation at that time specified the development was to be of the same footprint and layout as originally approved in 2006.

The proposals are retrospective and therefore officers must consider the current scheme on its merits. This includes assessing the relevant planning policy context. The planning history of the site is also a material consideration. Clearly the existing chalets at the site are larger than originally approved and also as specified in the 2016 non-material amendment. However, it is recognised that the originally permitted scheme falls within the dimensions of the Caravan Act. I have set out why the this current proposal is untenable in that operational development has taken place taking it beyond the scope of the reasonable meaning of caravan site. The same also applies in respect of any fenestration alterations.

The overall siting and orientation as shown in the revised layout is considered acceptable in terms of Core Strategy Policies RA6, SD1 and LD1. Additional balcony areas have been

installed at ground floor level to Chalets 1, 3 and 4. Given those are located at ground floor level and respond to the topography immediately surrounding the chalets, this element of the scheme is acceptable in design terms. The other concerning element of the proposal remains the raised terrace area and spiral staircase to the roof of Chalet 4. The erection of this structure does constitute operational development and requires the benefit of planning permission. The roof terrace comprises a metal spiral staircase located externally, with glass and metal balustrading to enclose the terraced area. Core Strategy Policy SD1 seeks to ensure development proposals take account of local context and site characteristics, and are designed to maintain local distinctiveness. This includes through appropriate architectural detailing, scale, height and proportions. Policy LD1 also seeks to ensure proposals demonstrate the character of the landscape has positively influenced the design. The National Planning Policy Framework advised development should be visually attractive as a result of good architecture. As set out in Paragraph 130, permission should be refused for development of poor design which fails to take the opportunities available for improving the character and quality of an area.

In my view, the spiral staircase and roof terrace to Chalet 4 represents operational development and is also an unacceptable addition by virtue of siting, incongruous design and materials. In doing so, it fails to satisfactorily respond to the local context and site characteristics within this rural setting and represents poor design. As such, it is considered contrary to Core Strategy Policies SD1, LD1 and also advice contained within Chapter 12 of the NPPF, which promotes and advocates good design.

### *Landscape*

It is considered there is no considerable medium or long distance landscape harm as a result of the proposals and would accord with Policies SS6, RA6, SD1 and LD1. However, from short distances, the proposal fails to satisfactorily respond to the local context and site characteristics within this rural setting and results in adverse material harm to the immediate landscape and local distinctiveness of the area. It is therefore contrary to Policies SS6, LD1 and SD1 of the Herefordshire Local Plan – Core Strategy (adopted 2015) and represents poor design in the context of Paragraph 130 of the National Planning Policy Framework.

### *Residential Amenity*

Policy SD1 also seeks to ensure the amenity of adjacent land users is safeguarded and this is consistent with paragraph 180 of the NPPF, which also accounts for cumulative impacts. Due to the siting of the roof balcony, it is likely there will be an increase in noise levels to surrounding occupiers. However given it is just one of the units, and based on the distance between Chalet 4 and adjacent residential dwellings, it is not considered this would be unacceptable and conditioning of a noise management plan could also provide additional mitigation. Furthermore, there will not be an unacceptable increase in overlooking.

### *Highways*

The highway arrangements for the proposals will not be altered as part of the application and therefore there are no highways implications in respect of these particular proposals, as confirmed by the area engineer. The application is acceptable in highways terms and satisfies Policies MT1 and SS4 of the CS, which is consistent with the NPPF at Section 9 and not contravening paragraph 109.

### *Ecology*

Whilst the Council's ecologist has not formally responded, a biodiversity report has not been submitted for consideration. BS42020 requires that surveys are "sufficiently up to date (e.g. not more than two/three years old or as stipulated in good practice guidance)".

As the application site is grassland, the JNCC guidance suggests that the optimum time for the survey would have been mid-summer, although given potential species-rich hedgerows, an earlier survey to identify nesting birds would be appropriate. BS 42020 also advises that ecological surveys should be: "undertaken over a sufficient period of time and at an appropriate time of year to reveal sufficient details of populations or habitat characteristics." This is an application for planning permission where retrospective operational development has occurred and it is therefore appropriate to consider the potential impact on protected species. It is clear that in the absence of a detailed ecological survey, including any identified 'optimal period' survey requirements which reflects current circumstances, the local planning authority is unable to assess the potential impact upon protected species. The proposal is therefore contrary to Policy LD2 of the Herefordshire Local Plan – Core Strategy, paragraph 99 of circular 06/2005 and the relevant aims and objectives of the National Planning Policy Framework. Whilst previous applications have been made with ecology comments, these are largely section 73 applications and not formal planning applications which allows the Council to consider all matters in consideration.

### *Drainage*

In line with Core Strategy SD4 and LD2 as well as NPPF Guidance and NERC Act the management of foul water should be approved. In line with SD4, LD2 and best practice on phosphate management the outfall from any Package Treatment Plant should be managed through an onsite soakaway drainage field on land under the applicants' control. Septic Tanks in line with General Binding Rules can now ONLY discharge to a soakaway field. Relevant confirmation for foul and surface water drainage, in line with Policy SD3, has also failed to materialise under this application.

### *Trees*

A copy of the topographic survey and a tree survey to BS5837 is attached to the application. The subject matter of this application has no impact on existing trees or their root systems. No trees are proposed to be removed and the Council's tree officer has no objection, and accords with the relevant provisions of Policies LD1 and LD3 of the CS.

### *Other considerations*

Business competition is not a material planning consideration.

I note the parish council and almost all local representations cite expressed concerns over potential future or more realistically further development. However each application must be assessed on its own merits and constraints. In any event, conflict has been identified with the development plan.

### *Summary, Planning Balance and Conclusion*

There is a requirement for planning applications to be considered in accordance with the development plan unless material considerations indicate otherwise. The development plan comprises the Herefordshire Local Plan – Core Strategy. The National Planning Policy Framework is also a material consideration.

The previously approved chalets in 2006 were referred to as ‘buildings’, and it is acknowledged the four units consented were within the specifications of a caravan in terms of size and dimensions. As such, in principle allowing flexibility for the four chalets moving forward is not considered unacceptable, providing one importantly falls into line with the definition.

But this application seeks change of use to a caravan site for three caravans and as I have discussed throughout, there is insufficient information submitted to satisfy officers that the chalets on site for which permission is sought retrospectively are considered to meet the parameters and definition of a caravan under the Caravan Sites Act 1968 (as amended in England 2006). This is given that the existing chalets comprise operational development, beyond the meaning of Section 55(2) of the Town and Country Planning Act 1990, as operations have been undertaken to materially affect the appearance of the buildings.

In analysing appeal decisions, it is considered that undertaking operational development cannot fall within the in the context of the expression and meaning of ‘caravan site’ given in section 1(4) of the Caravan Sites and Control of Development Act 1960, and given operational development has taken place to facilitate this, permitting this proposal would be at odds with the operative part of a planning permission.

Additionally, acknowledging that retention of these structures constitutes operational development and cannot be considered as a change of use of the land, the proposed roof terrace to Chalet 4 is considered unacceptable by virtue of its siting, incongruous design and materials. In doing so, it fails to satisfactorily respond to the local context and site characteristics within this rural setting and results in material harm to the immediate landscape. It is therefore contrary to Policies SS6, LD1 and SD1 of the Herefordshire Local Plan – Core Strategy (adopted 2015). With particular regard to the roof balcony and spiral staircase, this represents poor design in the context of Paragraph 130 of the National Planning Policy Framework.

Additional harm has been identified in not addressing biodiversity and drainage matters to a satisfactory degree and given the nature of the application, which significantly varies from any previous application made at Sapey Golf Club and the fact it is made as an application for planning permission, it invites me to consider these matters.

This identified harm above must be weighed against the benefits. The scheme would make a very small contribution to meeting needs although given the existing presence of the chalets, would not lead to any expenditure with construction. Socially, the proposal would allow for future occupiers to interact within the local community. These are limited benefits although I am mindful of paragraph 83 of the NPPF.

The proposal is ultimately contrary to the achievement of the environmental and social objectives of sustainable development as set out in the NPPF. The proposal is also inherently flawed as to how the application is being brought forward. The application should therefore be determined in accordance with the presumption at 11d) ii. Planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Considering the above, it is concluded that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the limited benefits. The scheme is hence not considered to be representative of sustainable development.

The applicant feels that the only issue is to do with the roof terrace and spiral staircase although that previous application was a s.73 application. This is an application for planning permission so the application should by making a new proposal, allow for the Council to consider accordingly. They have drawn my attention to an application at nearby Tedstone Delamere (P201242/F), although they are factually misleading in their interpretation of this to apply it to their application. Those lodges constituted permanent building operations unlike what has occurred here. Indeed the visual evidence I have provided more than backs this up view. On that basis, this application is recommended for refusal as set out below. The ward member is content for this application to be determined as a delegated matter.

**RECOMMENDATION:**    **PERMIT** ☐    **REFUSE** ☒

**REASON(S) FOR REFUSAL:**

1. There is insufficient information submitted to satisfy the Local Planning Authority that the retrospective structures and the land in which they are sited on, are considered to meet the parameters and definition of a caravan and caravan site as contained within the Caravan Sites and Control of Development Act 1960 section 29(1) as extended by the Caravan Sites Act 1968 (as amended in England 2006). It is viewed that the existing structures comprise operational development, beyond what would be permitted under Section 55(2) of the Town and Country Planning Act 1990. Undertaking operational development therefore could not fall within the in the context of the expression and meaning of 'caravan site' as described at section 1(4) of the Caravan Sites and Control of Development Act 1960. Given that operational development has taken place,

permitting such a proposal would be at odds with the operative part of granting planning permission, and thus inconsistent with the *Finney v Welsh Ministers [2019] EWCA Civ 1868* Court of Appeal decision, ratified by the Supreme Court.

2. On the basis that the retention of these structures constitutes operational development and cannot be considered as a change of use of the land, the proposed roof terrace and spiral staircase to Chalet 4 are considered unacceptable by virtue of their siting, incongruous design and material selection. In doing so, it fails to satisfactorily respond to the local context and site characteristics within this rural setting and results in adverse material harm to the immediate landscape and local distinctiveness of the area. It is therefore contrary to Policies SS6, LD1 and SD1 of the Herefordshire Local Plan – Core Strategy (adopted 2015) and represents poor design in the context of Paragraph 130 of the National Planning Policy Framework.
3. On the basis that retention of these structures constitutes operational development and cannot be considered as a change of use of the land, in the absence of a detailed and relevant ecological survey, including any identified ‘optimal period’ survey requirements which reflects current circumstances, the Local Planning Authority is unable to assess the potential impact upon protected species. The proposal is therefore contrary to Policies LD1 and LD2 of the Herefordshire Local Plan – Core Strategy, paragraph 99 of circular 06/2005 and the relevant paragraphs of the National Planning Policy Framework.
4. Acknowledging that retention of these structures constitutes operational development and cannot be considered as a change of use of the land, the application has failed to provide sufficient information to indicate a viable means of foul and surface water disposal which takes account of ground conditions on the site and ensures the proposed development would not be detrimental to the wider environment or undermine the achievement of water quality targets. As such, the Local Planning Authority is not satisfied that the proposal would comply with policies LD2, SD3, SD4 & SS6 of the Herefordshire Local Plan Core Strategy 2011 – 2031 and the provisions of the National Planning Policy Framework (NPPF).

## **Informative**

1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against local and national planning policy and any other material considerations within the time limit for determination. Whilst some elements of the application are acceptable, as identified in the accompanying officer delegated report, the fundamental issues identified as reasons for refusal mean that it is not possible to negotiate a satisfactory way forward, given the proposal is unacceptable in principle. Given the applicant has not sought formal pre-application advice and due to the harm which has been clearly identified within the reasons for the refusal, approval is not possible.

J.P.B.

Signed: ..... Dated: 12/3/21

**TEAM LEADER'S COMMENTS:**

**DECISION:**

**PERMIT** ☐

**REFUSE** ☒

Signed: A.B. .... Dated: 16/3/2021