

DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No: H02-0505-21 **Applicant:** Mr P Foster

Proposal: Use of land for touring caravans without limitation on the number of caravans for 12 months a year, except that this use shall not extend to cover the permanent residential occupation of any caravans on site, nor the standing of any static mobile homes.

Location: Wayside James Road Crowland

Terminal Date: 1st July 2021

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2019

Not applicable.

Representations:

	Object	Support	No Obj.	Comments
NORTH LEVEL INTERNAL DRAINAGE BOARD	0	0	0	1
RESIDENTS	1	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This is an application for a Lawful Development Certificate to confirm that the use of land for touring caravans without limitation on the number of caravans for 12 months a year does not require planning permission. It is explicitly stated that this use shall not extend to cover the permanent residential occupation of any caravans on site, nor the standing of any static mobile homes.

Site Description

The application site accommodates a bungalow, which sits in substantial grounds. The grounds comprise predominantly of grassed land and are bordered by a significant number of mature trees. The site is surrounded by agricultural land and is rural in character.

History

H02-1096-95 - Details of landscaping for touring caravan site (Conditions 2 and 3 of application H02/0858/95) (approved December 1995)

H02-0858-95 - Continuation of use of land for 9 touring caravans increasing to 15 touring caravans at Bank Holidays (approved October 1995)

H02-1068-94 - Increase of 9 touring caravans to 15 for annual bank holidays only (approved December 1994)

H02-0882-93 - Touring caravan park for 9 pitches (approved October 1993)

H02-0492-93 - Use of land as touring caravan site (refused August 1993)

Consultation Responses

North Level IDB - No comment.

Public (1 objection received, summarised) -

- Backdoor way of setting up a travellers site
- Visual impact
- Impact on property prices
- Potential for damage and fly tipping
- Touring caravanners are generally a feature of the summer months rather than all year

Planning Considerations

This application is a legal determination and planning policy is not relevant to the determination as to whether the proposed use would be lawful.

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The following has been submitted in support of the application:

- Application Form
- Site Location Plan
- Supporting Statement
- Decision Notice for H02-0858-95
- Judgment for I'm Your Man Ltd v Secretary of State for the Environment
- Judgment for R (Altunkaynak) v Northants Magistrates Court & Anr
- Judgment for Smout x Welsh Ministers and Wrexham CBC
- Judgment for Cotswold Grange Country Park LLP v Secretary of State for Communities and Local Government and Tewkesbury Borough Council

The background to the case is that planning permission was granted in October 1993 for the use of the site as a touring caravan park for 9 pitches (H02-0882-93). A s73a application was approved in December 1994 (H02-1068-94) which allowed for the increase of 9 touring caravans to 15 for annual bank holidays only until 15th October 1995. A further s73a application was approved in October 1995 (H02-0858-95) for the continuation of use of land for 9 touring caravans increasing to 15 touring caravans at Bank Holidays. This approval was not time limited.

The applicant is seeking a Lawful Development Certificate for the use of the land without limit on the number of caravans on site on the basis that the restriction on the number of caravans was only specified in the description of development and was not imposed as a condition.

In I'm Your Man Ltd v Secretary of State for the Environment, it was held that a time limit referenced in a description of development was a limitation and not descriptive of the use itself and such a limitation could only be imposed by a development order or otherwise imposed by condition. This approach is reinforced by subsequent case law.

On that basis, it is considered that the only reasonable conclusion is that a Lawful Development

Certificate should be granted for the use proposed.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).

C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Conclusion

In light of case law, it is concluded that the only reasonable determination would be to issue a Lawful Development Certificate for the use proposed.