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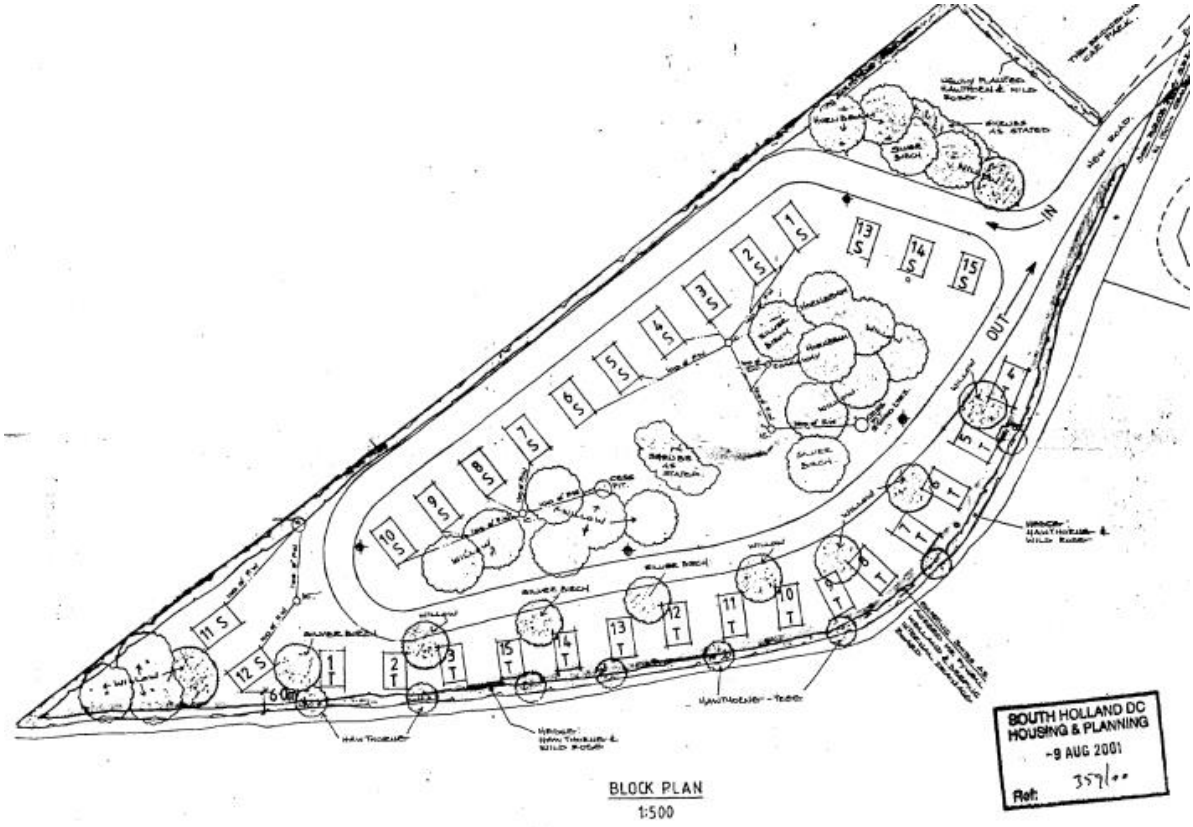
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1. Introduction

1.1 This statement is produced to support a S.73 application which seeks modify condition 6 of a previous planning approval (reference: H02-0359-00: Appendix 1) which obtained permission for the use of land as a static and touring caravan park including a toilet block and access road.

1.2 Application H02-0359-00 (Appendix 1) obtained permission for the housing of 15 static caravan pitches alongside 15 touring caravan pitches. However, condition 6 was placed on this approval stating that the static caravans shall not be occupied during the month of January and the first two weeks of February each year to ensure that the caravans are not permanent residences.

1.3 The number and location of the pitches is shown in the approved block plan below.



1.4 This S.73 submission only relates to 5 caravans of the approved 30 pitches. This S.73 application seeks to amend condition 6 to allow 5 static holiday caravans of the 30 (which currently have permission as per application H02-0359-00, Appendix 1, for the use by one occupier for 321 days) to be utilised by one occupier for the full 365 days of the year, an additional 44 days.

1.5 South Holland District Council have requested that a sequential test is submitted alongside this submission due to the location of the site within Flood Zone 3. However, this statement has been drafted to evidence that a **sequential test is not required** in this instance due to the specific nature of this site in line with planning policy.

1.6 It is important to note that this statement is not a planning statement to support the submission, in which an additional document will be submitted. This statement is to evidence that a sequential test is not required in relation to this submission with reference made to national and local policy alongside case law determinations.

2. Site Location and Description

2.1 The site is located in an isolated position, adjacent to the Bridge Inn and River Welland but outside of the settlement of Crowland and is not close to any facilities except one public house.

2.2 The site is located in a countryside location as is not within a Defined Settlement Limit. The site is located on land considered to be within Flood Zone 3a.

2.3 The land is protected from the River Welland by Deeping High Bank and on the opposite side of the River Welland are the Crowland and Cowbit Washes, which are intended to provide protection against the 1 in 100 year plus climate change flood events.

2.4 The use of the site is as a caravan park with condition control for 15 static caravans and 15 touring caravans, with no occupancy of the site between 1 Jan to 14 Feb each calendar year imposed by condition 6 of application H02-0359-00 (Appendix 1).

2.5 Site plans and drawings have been submitted within the formal planning package alongside this report.

3. Planning History and The Requirement for a Sequential Test

3.1 The appeal site has a complex planning history and, as such, the planning history is showcased in the below table to highlight the chronological order of applications on site.

Application Reference	Description of Development	Decision
APP/A2535/W/20/3249950	Appeal of the below…	Dismissed 11/01/2023
H02-1174-19	Proposed static and touring caravan park including new toilet block and access road – approved under H02-0359-00. Modification of Condition 6 to allow permanent residential use throughout the year for 5 plots to be occupied by gypsy/travellers	Refused 31/01/20
APP/A2525/W/17/3187637	Appeal of the below…	Dismissed 29/08/18
H02-0251-17	Change of use to allow for permanent residential use throughout the year. The proposal includes 24 static caravan plots for residential use, and 1 static caravan plot for use by the site manager.	Refused 28/04/17
APP/A2535/A/10/2128849	Appeal of the below…	Allowed 10/11/10
H02-0700-09	Modify layout for existing holiday caravan park (linked to H02-359-00)	Refused 20/01/10
H02-0359-00	Proposed static and touring caravan park, inc. new toilet block and access road.	Approved 22/06/00

3.2 The clearest way to evidence that a sequential test is not required is to assess the planning history separately evidencing why and how a sequential test is not required. Therefore, the context is provided alongside the policy and case law evidence which clearly evidences why a sequential test is not required.

H02-0359-00

3.3 Firstly, the original application for 15 static and 15 touring caravans within a caravan park was approved in the year 2000. This application sought permission for the caravan park itself and was approved by South Holland District Council.

3.4 As this application was in the year 2000, this pre-dated the release of the first Local Development Scheme and Local plan released by the planning authority in 2005. In addition, this application also predated the national planning policy framework (NPPF) which was released in 2012.

3.5 Therefore, no sequential test was required in relation to this parent permission in which permission was granted for 30 caravans within a caravan park.

3.6 This permission was implemented again, before the release of the local plan within 2005 and the NPPF and as such a caravan park was created on site lawfully.

3.7 Therefore, a caravan park has been created lawfully. **A sequential test cannot be requested retrospectively**. Paragraph 162 of the NPPF states that "The aim of the sequential test is to steer **new development** to areas with the lowest risk of flooding from any source". This application is seeking to remove a condition attached to application H02-0359-00 (Appendix 1) and is, thus, not seeking any

"new development" or any additional built form by any means. Therefore, a sequential test is not required in this instance.

3.8 This makes sense in reality from a more practical and logical perspective. If something has already been constructed and built how can a sequential test be carried out to assessed whether another location is more suitable? The development has already commenced and has been constructed, we cannot now go back in time and change the location of the development which has obtained permission lawfully.

3.9 For example, if an application was approved in Flood Zone 3 for 20 dwelling in the year 2000 within the South Holland District Borough this would not have been subject to a sequential test. If development commenced and these 20 buildings were constructed, if a S.73 submission was sought on this current day to amend some design aspects of the building, or even to alter the nature of their use to HMO's for example sake, a sequential test would not be required for this because the development has been approved lawfully and constructed, it cannot be deconstructed and relocated to a piece of land not within the Flood Zone.

3.10 The exact same logic is relevant in this instance, the caravan park has lawfully been constructed in line with the application H02-0359-00 (Appendix 1). It would not be viable, practical, sensible to demolish these caravans (which are lawful) and relocate them. That is why sequential tests cannot be sought retrospectively and must relate to "*new development*" as per planning policy.

3.11 To play devil's advocate, a sequential test should have been sought in the year 2000 in relation to the original application H02-0359-00 (Appendix 1); however, this was not a practice at this time and was not sought. This planning application in the year 2000 has, however,

been approved and that is final; therefore, the caravan park is lawful in this location. If a S.73 is now sought to amend the 2000 application, the council cannot now seek a sequential test to question the lawfulness of the original submission.

3.12 To highlight this further the description of development for the 2000 application states in full "*proposed static and touring caravan park, inc. new toilet block and access road*". There is **no reference to whether the touring and static caravans are residential caravans or holiday caravans** within the description.

3.13 Therefore, this S.73 application is acceptable as the nature of the 2000 approval (appendix 1) will not change through this submission. If the nature, character, and description of the 2000 is not changing a sequential test cannot be sought for something that has already been approved.

3.14 In essence, the 2000 application has been approved. This new S.73 submission does not alter the description and does not change the nature and material character of the 2000 approval. Therefore, a sequential test cannot be sought for something that already has approval. Subsequently, South Holland District Council cannot question the lawfulness of an approval which they granted themselves retrospectively, especially by imposing new processes on old permissions retrospectively.

3.15 Otherwise, whenever any Council adopted new policies which conflicted with old decisions, the Council would simply have the power to impose new policies on old schemes and tell people to remove approved built form as policy requirements have now changed. This is not how the planning system works and is an abuse of power. This is a S.73 application related to the parent permission and must be seen as such and assessed correctly within this context.

H02-0700-09

3.16 Following the original permission in 2000 (reference: H02-0359-00: Appendix 1) an application was made to modify the site layout in 2009 (Reference: H02-0700-09: Appendix 2). This was granted subject to a number of conditions which included restrictions on the occupation of the site for holiday use and the time periods for occupation.

3.17 However, within the most recent appeal decision on site (APP/A2535/W/20/3249950: Appendix 8), the Inspector confirmed in paragraph 4 the following statement, which is extremely relevant to this submission.

"The appeal site has a complex planning history. Following the original permission in 2000, an application was made to modify the site layout in 2009. This was granted subject to a number of conditions which included restrictions on the occupation of the site for holiday use and the time periods for occupation. An appeal was made against the imposition of two of these conditions which was subsequently allowed on appeal. It was confirmed at the hearing that the 2009 permission was not implemented and has now expired. Therefore, the extant permission for the caravan park is that granted in 2000."

3.18 Therefore, it is clear that this 2009 permission was not implemented and is not relevant to the situation on site. The caravan site erected in line with the 2000 permission (reference: H02-0359-00: Appendix 1) is lawful in line with the permission and due to its existence for in excess of 10 years on site.

3.19 Therefore, this 2009 permission (Reference: H02-0700-09: Appendix 2) is not relevant, the caravan site is completely lawful, and this S.37

submission is correct in addressing the 2000 permission (reference: H02-0359-00: Appendix 1).

3.20 For clarity South Holland District Council confirmed in the 2009 submission that "*the principle of a caravan site in this location was established through the grant of planning permission in June 2000*". ET Planning agree that yes, the principle of the caravan site was established in the year 2000 and, thus, there is no requirement for a sequential test to re-establish the principle now.

H02-0251-17 & APP/A2525/W/17/3187637

3.21 An application was then submitted to change the use of the caravan site itself to allow permeant residential plots throughout the whole year (Reference H02-0251-17: Appendix 4). This application also included a new layout to the site in which caravans were relocated, removed, altered with a new number of caravans proposed on site.

3.22 Therefore, in essence, a new caravan site itself was proposed with a completely new layout and number of pitches.

3.23 This application was refused for 2 reasons with the 1st being that the location was not suitable for full residential caravans whilst the 2nd being that a sequential test was not submitted and approved by the local authority.

3.24 In this instance, ET Planning can understand the argument that a sequential test is required in relation to this 2017 submission (H02-0251-17: Appendix 4). This is because application H02-0251-17 in essence sought permission for a new caravan park which is inherently different from the 2000 permission physically with a new layout and new number of pitches which needed to be justified.

3.25 In turn, the proposal sought to materially change the use of the original 2000 permission and some sort of "*development*" was then

proposed. Development which is then subject to a sequential assessment.

3.26 However, this S.73 Submission is inherently different to this 2017 submission (Appendix 4) for a number of reasons which are extremely relevant in the reasoning as to why a sequential test is now not required. These are listed for clarity:

1. A change of use is now not being sought on site as the proposed S.73 seeks to alter a lawful and approved permission in which a sequential test cannot be sought retrospectively.

2. A new caravan site is not being created as there is no proposed physical change in the location of pitches, number of pitches, style, or design of pitches etc. The S.73 seeks to amend a condition relating to the existing caravan site, and there will be no material change to the caravan site itself, thus, it is the same caravan site, and a sequential test is not required for something that lawfully exists.

3. The 2017 application H02-0251-17 (appendix 4) sought to change the use of the caravan site and subsequently change its description of development. This S.73 does not seek to change the description of the 2000 (H02-0359-00: Appendix 1) approval and, as such, is not creating a new camp site which is subject to a sequential test.

4. The S.73 application simply seeks to alter a condition, this does not even constitute development. No development is proposed on site now and, thus, no sequential test is required.

3.27 These arguments are reinforced by Case Law, which is discussed further within the below section, in which a S.73 was previously

submitted to the Council. A S.73 that is not subject to a sequential assessment wherein this change of use submission was.

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3.28 A S.73 submission was submitted under the application reference H02-1174-19 (Appendix 6) to modify condition 6 to allow for the permanent residential use throughout the year for 5 plots to be occupied by gypsy/travellers.

3.29 This application was again refused for two reasons with the 1st being that the location was not suitable for full residential caravans whilst the 2nd being that a sequential test was not submitted and approved.

3.30 As this statement seeks to evidence that a sequential test is not required this statement will address the 2nd reason for refusal attached to this document.

3.31 The officer report associated with application H02-1174-19 (Appendix 7) simply states that as the site is located within Flood Zone 3 a sequential test is required in accordance with Policy 4 of the Local plan (2019) and the NPPF (2021).

3.32 If we first assess local policy, Policy 4 of the Local plan states the following;

*"**Development** proposed within an area at risk of flooding will be permitted, where:*

It can be demonstrated that there are no other sites available at a lower risk of flooding (i.e., that the sequential test is passed). The sequential test will be based on a Borough or District wide search area of alternative sites within the defined settlement boundaries, unless local circumstances relating to the catchment area for the development justify a reduced search area, i.e., there is a specific need for the development in that location. The sequential test is not required for sites allocated in the Local Plan, minor

development[1] *or change of use (except for a change of use to a caravan, camping, or chalet site, or to a mobile home or park home site).”*

3.33 Therefore policy 4 states that a sequential approach is required in relation to **development** within the Flood Zone in which this S.73 is not. No new development is proposed in this instance as we are seeking to amend the existing permission and as such no new *“development”* is proposed.

3.34 As discussed above, section 55 of the Town and Country Planning Act 1990 defines what “development” means in the scope of planning with the definition being shown below.

“*The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of* ***any material change*** *in the use of any building or other land***”**

3.35 In this instance this S.73 seeks to amend a condition associated with an old permission in which the carrying out of building, engineering, mining, and other operations have already taken place. As such no further “***development***” of this nature is proposed.

3.36 In addition, no **material** change is sought via the suggested amendments to condition 6 sought via application H02-1174-19 (Appendix 6) or this new submission.

3.37 When we assess the planning situation that currently existing on site, 30 caravan plots can currently lawfully be used for every day of the year except in January and the first two weeks of February. Therefore, the caravans on site could be used by the same occupier currently for 321 days in a row before vacating the pitch for January and the first two weeks of February (44 days).

3.38 Therefore, when compared to the existing situation on site, there is no material change between what is proposed within the S.73

submission and what is currently lawful. Therefore, there is no material impact of someone occupying the building for an additional 44 days on top of the 321 days they can already utilise.

3.39 In addition to this, the caravan pitches are to be in the exact same location, they will be of the exact scale, and they will be of the exact same appearance. The only change that this S.73 submission creates is that they can be occupied for a further 44 days when compared to the 321 that someone can currently live there for.

3.40 Case law states that the intensification on site or the relocation of built form does not always constitute a material change of use of a site.

3.41 For example, within the ***Hertfordshire County Council v SSCLG and Metal and Waste Recycling Limited [2012] EWHC 277(Admin) (1st February 2012) ('MWRL') (Appendix 9),*** the judge (Ouseley J) concluded that even though the intensification of the land use increased that did not warrant a "material" change in the use of the land.

3.42 Relevant to the situation at Bridge Inn Caravan Park, within paragraph 36 Ouseley J states "*in judging whether an increase in activity has led to an intensification of such a nature or degree as is necessary to constitute a material change of use,* ***the level at which that activity did or could occur without giving rise to a change of use has to be ascertained*** *[my emphasis]. It is only what happens above that no doubt not very clearly defined baseline which can contribute to the material change of use. In so far as the change in effect is relied on, the change in effect must exceed that which could be caused by the permitted use.*"

3.43 It is strongly argued that the intensification of the use for an additional 44 days when the use of the caravan for 321 days is

already acceptable, does not warrant a material intensification that warrants a material change on site.

3.44 As such, the existing approval and situation on site is relevant and must be considered. And due to this existing permission, what is proposed does not warrant a material change on the site.

3.45 Therefore, no "*development*" is being proposed on site at all, simply permission to alter a condition associated with a previous development which is lawful and has commenced. Therefore, no sequential test can be sought in line with a previously approved development, a sequential test cannot be sought retrospectively and there is no requirement for a sequential test in line with Policy 4.

3.46 Again, if we look at National Policy instead of local policy, paragraph 162 of the NPPF states that "*the aim of the sequential test is to steer* ***new development*** *to areas with the lowest risk of flooding from any source*". As discussed above this is a S.73 application seeking to amend/vary a condition attached to an existing approval and existing caravan site, there is no "*new development*" proposed and as such, there is no requirement for a sequential test in line with national policy.

3.47 As mentioned above, within the officer report associated with application H02-1174-19 (Appendix 7) there is no justification as to why a sequential test is required. In addition, the appeal decision associated with application H02-1174-19 (Appendix 8) also does not highlight any further justification as to why a Sequential test is required.

3.48 The only reference made as to why a sequential test is required is within paragraph 30 of the appeal decision in which the Inspector states the following;

"*In line with current planning policy, specifically paragraph 167 of the Framework and Planning Practice Guidance (PPG), a sequential test needs to be satisfied. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source.*"

3.49 As we have discussed above, the NPPF only seeks a sequential assessment in relation to "new development" whilst paragraph 167 of the NPPF, which is referred to by the inspector, states the following;

"When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment[55]. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;

b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;

c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;

d) any residual risk can be safely managed; and

e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

3.50 Therefore paragraph 167 of the NPPF is stating that a flood-risk assessment is required, and that development should only be allowed in areas of risk of flooding where this assessment is thorough and suitable in evidencing that there will be no impact. The paragraph

states that the sequential and exception tests must also be completed "**as applicable**"; and as we have discussed above, the sequential test is only applicable for "new development" as per the NPPF.

3.51 This statement agrees with the Inspector that a thorough Flood Risk Assessment is required on the site and the applicant must evidence through that there will be no impact on flooding in line with paragraph 167 of the NPPF. If the FRA cannot evidence this, the application should be refused, and significant justification must be provided alongside this planning submission to evidence this. However, planning policy is clear that this is a flood risk assessment and a planning matter… this assessment is not a sequential matter that triggers a test.

3.52 Therefore, the Council and the Inspector have previously incorrectly stated that a sequential test is required on site. By all means, the application could still be refused if the Council do not think that a thorough FRA has not been submitted to evidence that there will be no flooding impact, or the Council can stand by their other refusal reason in which they argue that the site is not in a suitable location.

3.53 However, refusing this application for the reason that a sequential test is not required is inaccurate and not a correct interpretation of policy.

3.54 This statement seeks to evidence this reasoning clearly, so that the correct interpretation of policy can be made, and the proposed S.73 can be assessed correctly in line with policy.

4. Conclusion

4.1 To summarise, as made clear within the discussion above, one of the following 3 conclusions can be made in relation to the s.73 proposed on first.

1) The proposed S.73 does not seek "**new development**" as is required within the NPPF to trigger a sequential test. The submission is a S.73 in relation to a caravan park that has already has approval, and as such no sequential test is required to justify the appropriateness in principle of something that has already been approved lawfully and constructed.

2) Secondly, leading on from the above A sequential test cannot be sought retrospectively. The 2000 permission obtained approval for the caravan site in the year 2000. A sequential assessment should have been undertaken in line with this submission, but this is the past. As the approval has commenced and been constructed and the caravan site use is formalised, a retrospective sequential test cannot be sought.

3) Finally, it is strongly argued that the S.73 application does not even constitute "**development**" in any form. No building, engineering, mining, and other operations are proposed whilst no "**material**" change in the use of any building or other land is proposed. Therefore, no "**development**" is proposed in line with Section 55 of the Town and Country Planning Act, and this is reinforced by Case Law. If no development is taking place no sequential test can be sought.

4.2 Material planning policy has been carefully considered and analysed, as evidenced in section 3 of this statement and the supporting plans and documents. It is considered that in relation to this S.73

submission, a sequential test is not required to justify the suitability of the proposal.

4.3 It is still noted, and it is clear within policy, that a thorough flood risk assessment (FRA) must be submitted to justify the proposal, and the proposal made be shown to have no impact on flooding via assessment of these planning practices. However, it is clear within policy that this is not a sequential issue and matter.

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