Burrell, Becky

From: Emily Temple <Emily.Temple@etplanning.co.uk>
Sent: 15 January 2024 14:40
To: _planningadvice
Cc: brett@libresolutions.co.uk
Subject: H02-1123-23 Bridge Inn caravan park
Attachments: 20240115 Sequential Test Not Required Statement SPET.pdf; Appendix 1 H02-0359-00 Decision Notice.pdf; Appendix 2 H02-0700-09 Decision Notice.pdf; Appendix 3 H02-0700-09 Appeal Decision.pdf; Appendix 4 H02-0251-17 Decision Notice.pdf; Appendix 5 H02-0251-17 Appeal Decision.pdf; Appendix 6 H02-1174-19 Decision Notice.pdf; Appendix 7 H02-1174-19 Officer Report.pdf; Appendix 8 H02-1174-19 Appeal Decision.pdf; Appendix 9 Hertfordshire County Council v SSCLG and Metal and Waste Recycling Limited [2012] EWHC 277(Admin) (1st February 2012) ('MWRL').pdf

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FAO Mark Niland

I note our company report is online for the above application.
However, the document online is not the full report with appendices.

Please find the full report attached for the officer's consideration.

Do let me know if there are any queries.

Kind regards

Emily Temple BSc (Hons) MSc MRTPI
Executive Director and Founder | ET Planning

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ET Planning

Sequential Report

Client:
John O'Connor

Bridge Inn Caravan Park

Common Drove, Crowland, Spalding, PE6 0HJ

Sam Peacock **BA (Hons) MSc**
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Appendix 6: Application H02-1174-19 Decision Notice

Appendix 7: Application H02-1174-19 Officer Report

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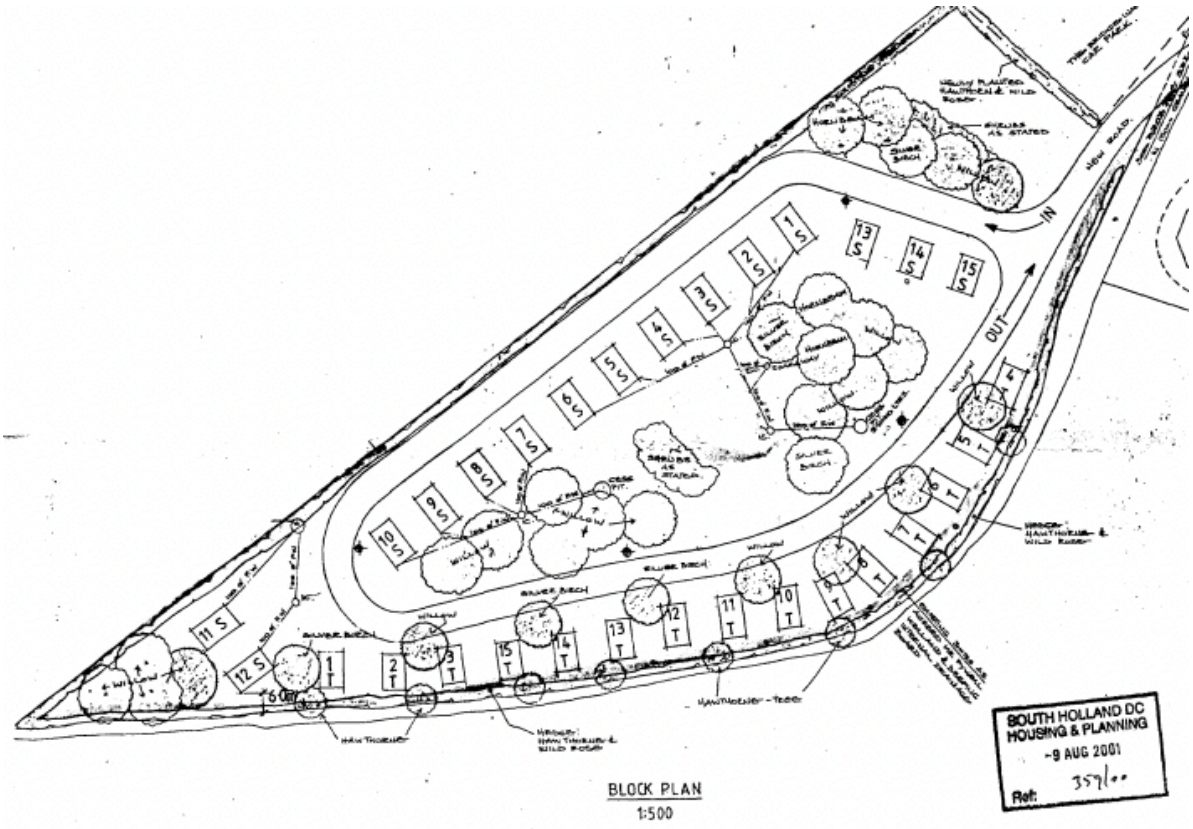
Appendix 9: Relevant Case Law

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.

H02-1174-19 & APP/A2535/W/20/3249950

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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FILE COPY

SOUTH HOLLAND DISTRICT COUNCIL
HOUSING & PLANNING SERVICES DEPARTMENT

Town and Country Planning Act 1990

Planning Permission

Reference: H02/0359/00 Received: 06-APR-00 Type: FULL

Name: Messrs C & M Parkin
6 Manor Close
Baston
Peterborough

Agent: Avocet Design
c/o West View Farm
The Fen
Baston
Peterborough

Description: Proposed static and touring caravan park, inc. new toilet block and access road

Location : Land to the rear of The Bridge Inn Crowland Peterborough

South Holland District Council hereby give notice that PERMISSION HAS BEEN GRANTED for the development in accordance with the application and plans submitted, subject to any condition(s) set out below:

1 The development must be begun not later than the expiration of five years beginning with the date of this permission.

Reason: As required by Section 91 of the Town and Country Planning Act 1990.

2 Notwithstanding the submitted scheme and before any development is commenced, a scheme of landscaping and tree planting for the site, including details of positions, heights on planting and species of trees and shrubs, shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of visual amenity.

3 The approved scheme of landscaping and/or screening shall be carried out in its entirety within a period of two years beginning with the date on which development of the land is commenced. The trees, shrubs or bushes shall be adequately maintained by the owner(s) of the land on which they are situated for a period of ten years beginning with the date of completion of the scheme, and all losses shall be made good during that period.

Reason: In the interests of visual amenity and to ensure that the approved scheme is implemented satisfactorily.

4 The number of pitches on site shall be restricted to 15 static and 15 touring pitches.

SALLY WALTHAM
BA (Hons) F.C.I.H.
Director of Housing & Planning Services

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SOUTH HOLLAND DISTRICT COUNCIL
HOUSING & PLANNING SERVICES DEPARTMENT

Reason: In the interests of rural amenity.

5 Before development commences the colour of the static caravans shall be submitted to and approved in writing by the Local Planning Authority and the caravans shall thereafter be retained in accordance with the approved details.

Reason: To ensure that there is a co-ordinated scheme for the site.

6 The static caravans shall not be occuped during the month of January and the first two weeks of February in each year.

Reason: The application has been submitted for holiday use and this condition is imposed to prevent a permanent residential occupancy occurring which would be contrary to residential development policies in the Development Plan.

7 There shall be no touring caravans on the site from the 1st November in any one year and the following Easter weekend.

Reason: In the interests of rural amenity by reducing the number of structures on the site when the landscaping scheme is at its least effective, and to prevent permanent residential occupancy, contrary to residential development policies in the Development Plan.

The determined plans are:-
1:2500 site location plan received on 27 Mar 00.
Dwg no. PI/B/001A received on 8 May 00.

The amended landscaping scheme should provide for further boundary screening adjacent the Bridge Inn and its car park, a hedge between the car park and the caravan site, and extra planting between the touring pitches to soften views of the site from Welland Bank.

Director of Housing and Planning Services
22 JUN 2000

H02/0359/00

This decision refers only to that required for the purposes of the Town and Country Planning Acts and not for Building Regulations or any other legislation. See enclosed notes relating to rights of appeal.

Town and Country Planning Act etc

DRAFT PERMISSION

Reference H02/0359/00 Received: 06-APR-00 Type: FULL

Name: Messrs C & M Parkin
6 Manor Close
Baston
Peterborough

Agent: Avocet Design
c/o West View Farm
The Fen
Baston
Peterborough

Description: Proposed static and touring caravan park, inc. new toilet block and access road

Location : Land to the rear of The Bridge Inn Crowland Peterborough

South Holland District Council hereby give notice that permission has been granted (or equiv) on the following condition(s):

1 The development must be begun not later than the expiration of five years beginning with the date of this permission.

Reason: As required by Section 91 of the Town and Country Planning Act 1990.

2 Notwithstanding the submitted scheme and before any development is commenced, a scheme of landscaping and tree planting for the site, including details of positions, heights on planting and species of trees and shrubs, shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of visual amenity.

3 The approved scheme of landscaping and/or screening shall be carried out in its entirety within a period of two years beginning with the date on which development of the land is commenced. The trees, shrubs or bushes shall be adequately maintained by the owner(s) of the land on which they are situated for a period of ten years beginning with the date of completion of the scheme, and all losses shall be made good during that period.

Reason: In the interests of visual amenity and to ensure that the approved scheme is implemented satisfactorily.

4 The number of pitches on site shall be restricted to 15 static and 15 touring pitches.

Reason: In the interests of rural amenity.

5 Before development commences the colour of the static caravans shall be submitted to and approved in writing by the Local Planning Authority and the caravans shall thereafter be retained in accordance with the approved details.

Reason: To ensure that there is a co-ordinated scheme for the site.

6 The static caravans shall not be occuped during the month of January and the first two weeks of February in each year.

Reason: The application has been submitted for holiday use and this condition is imposed to prevent a permanent residential occupancy occurring which would be contrary to residential development policies in the Development Plan.

7 There shall be no touring caravans on the site from the 1st November in any one year and the following Easter weekend.

Reason: In the interests of rural amenity by reducing the number of structures on the site when the landscaping scheme is at its least effective, and to prevent permanent residential occupancy, contrary to residential development policies in the Development Plan.

The determined plans are:-

X 1:2500 site location plan received on 27 Mar 00.
Dwg no. PI/B/001A received on 8 May 00.

X The amended landscaping scheme ~~shall~~ should provide for further boundary screening adjacent the Bridge ~~Farm~~ Inn and its car park, a hedge between the car park and the caravan site, and extra planting between the touring pitches to soften views of the site from Welland Bank. ~~[illegible]~~

Director of Housing and Planning Services
20 JUN 2000

H02/0359/00

SOUTH HOLLAND DISTRICT COUNCIL

Council Offices
Priory Road
Spalding
Lincolnshire
PE11 2XE

tel: 01775 761161
fax: 01775 710772
web: www.sholland.gov.uk

FILE COPY

Town and Country Planning Act 1990

Planning Permission

Reference: H02-0700-09 Received: 10-SEP-09 Type: FULL

Name: Mr S Jefford
The Bridge Caravan Site
c/o Matrix Planning Ltd
36 Stamford Road
Market Deeping Cambs PE6 8AB

Agent: Matrix Planning Ltd
36 Stamford Road
Market Deeping
Peterborough
Cambs PE6 8AB

Description: Modify layout for existing holiday caravan park (originally approved under H02-0359-00)

Location : The Bridge Caravan Site The Common
Crowland Peterborough

South Holland District Council hereby give notice that PERMISSION HAS BEEN GRANTED for the development in accordance with the application and plans submitted, subject to any condition(s) set out below:

1 No touring caravans shall remain on the site for any continuous period exceeding fourteen days, or for a total of more than twenty-eight days in any calendar year without the prior written approval of the Local Planning Authority.

Reason: To ensure that touring caravans visiting the site are used for short-term holiday use only, and to prevent the site being used to store unoccupied touring caravans, in the interests of the character and visual amenity of the locality.
This Condition is imposed in accordance with Policy LT7 of the South Holland Local Plan 2006.

2 The development hereby permitted shall be carried out in accordance with the following approved plans 1:1250 site location plan, dwg. no. 2349-2 and landscape planting plan, received 9 September 2009, static caravans and tourers layout plan, received 10 December 2009, unless otherwise agreed in writing by the Local Planning Authority.

Reason: For the avoidance of doubt and in the interests of proper planning.

3 Static and touring caravans on the site shall only be occupied during the period 14 February in any one year to 01 January in the following year unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the caravans are not used for permanent residential occupation and to

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reduce the risk of flooding to occupants.
This Condition is imposed in accordance with national guidance contained in Planning Policy Statement 25 'Development and Flood Risk', and Policy LT7 of the South Holland Local Plan 2006.

4 Static and touring caravans on the site shall not be used other than for holiday purposes. In the context of this condition, 'holiday purposes' means occupancy by the same person, groups of persons or family for period(s) not exceeding a total of 28 days in any one calendar year. No caravan shall be used as the main residence of any occupant, and a register of occupants on the site shall be kept at all times and made available to the Local Planning Authority upon request.

Reason: To ensure that the development is restricted to short-term holiday use only and that caravans are not used for residential purposes. Residential use would be contrary to the provisions of national and local guidance and policies which seek to restrict residential development in the open countryside.
This Condition is imposed in accordance with national guidance contained in Planning Policy Statement 3 'Housing' and Planning Policy Statement 7 'Sustainable Development in Rural Areas, and with Policies HS7 and LT7 of the South Holland Local Plan 2006.

5 Before the commencement of the development hereby permitted, and notwithstanding the submitted details or planting already undertaken, the approval of the Local Planning Authority is required to a scheme of boundary hedge planting, landscaping and tree planting for the site indicating, inter alia, the number, species, heights on planting and positions of all the trees, together with details of post-planting maintenance. Such scheme as is approved by the Local Planning Authority shall be carried out in its entirety within a period of 12 months beginning with the date on which development is commenced, or within such longer period as may be agreed in writing with the Local Planning Authority. All trees, shrubs and bushes shall be maintained by the owner or owners of the land on which they are situated for the period of five years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary, unless the Local Planning Authority gives written consent to any variation.

Note: The applicant is recommended to employ a qualified and experienced landscape designer to produce a landscaping scheme for the development, which should also maintain a 5 metre clear access strip adjacent the Welland and Deepings Internal Drainage Board maintained drain which bounds the Southern boundary of the site.

Reason: To ensure that the development is adequately landscaped, in the interests of its visual amenity and that of the area in which it is set.
This Condition is imposed in accordance with Policies SG18 and LT7 of the South Holland Local Plan 2006.

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Reason For Approval
The proposal is in accordance with national and local policies as set out in;
Planning Policy Statement 1 'Delivering Sustainable Development'.
Planning Policy Statement 3 'Housing'.
Planning Policy Statement 7 'Sustainable Development in Rural Areas'.
Planning Policy Statement 25 'Development and Flood Risk'.
Planning Policy Guidance Note 21 'Tourism'.

The issues relating to permanent residential occupation are material considerations but not sufficient in this case to indicate against the proposal and to outweigh the policies referred to above. The Council considers that any harm to relating to permanent residential occupation can be addressed by these conditions.

Head of Planning & Development
20 JAN 2010 H02-0700-09

This decision refers only to that required for the purposes of the Town and Country Planning Acts and not for Building Regulations or any other legislation.

Appeal Decision

Site visit made on 19 October 2010

by John Murray LLB, Dip.Plan.Env, DMS, Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date:
10 November 2010

Appeal Ref: APP/A2525/A/10/2128849
The Bridge Caravan Site, The Common, Crowland, Peterborough, PE6 0HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr S Jefford against the decision of South Holland District Council.
- The application Ref H02-0700-09, dated 27 August 2009, was approved on 20 January 2010 and planning permission was granted subject to conditions.
- The development permitted was described in the application as "Modified layout for existing holiday caravan park, approved under planning permission reference H02-0359-00" and the description in the permission was substantially the same.
- The conditions in dispute are Nos 1 and 4 which state that:
  1) No touring caravans shall remain on the site for any continuous period exceeding fourteen days, or for a total of more than twenty eight days in any calendar year without the prior written approval of the local planning authority.
  4) Static and touring caravans on the site shall not be used other than for holiday purposes. In the context of this condition, 'holiday purposes' means occupancy by the same person, groups of persons or family for period(s) not exceeding a total of 28 days in any one calendar year. No caravan shall be used as the main residence of any occupant, and a register of occupants on the site shall be kept at all times and made available to the local planning authority upon request.
- The reasons given for the conditions are:
  1) To ensure that touring caravans visiting the site are used for short-term holiday use only, and to prevent the site being used to store unoccupied touring caravans, in the interests of the character and visual amenity of the locality. This condition is imposed in accordance with Policy LT7 of the South Holland LP 2006.
  4) To ensure that the development is restricted to short-term holiday use only and that caravans are not used for residential purposes. Residential use would be contrary to the provisions of national and local guidance and policies which seek to restrict residential development in the open countryside. This condition is imposed in accordance with national guidance contained in Planning Policy Statement 3 'Housing' and Planning Policy Statement 7 'Sustainable development in Rural Areas' and with Policies HS7 and LT7 of the South Holland Local Plan 2006.

Decision

1. I allow the appeal, and vary the planning permission Ref H02-0700-09 for a modified layout for an existing holiday caravan park, approved under planning permission reference H02-0359-00 at The Bridge Caravan Site, The Common, Crowland, Peterborough, PE6 0HJ granted on 20 January 2010 by South Holland District Council, deleting conditions 1 and 4 and substituting for them the following conditions:

   1) No touring caravan shall remain on the site for any continuous period exceeding 42 days, or for a total of more than 56 days in any calendar year.

4) Static and touring caravans on the site shall not be used other than for holiday purposes. In the context of this condition, 'holiday purposes' means occupation of any one or more of those caravans by the same person, group of persons or family for period(s) not exceeding 42 consecutive days and not exceeding a total of 56 days in any one calendar year. No caravan shall be used as the main residence of any occupant, and a register of occupants on the site shall be kept at all times and made available to the local planning authority upon request

Preliminary matters and background

2. Permission Ref H02-0359-00 (the original permission) was for a "static and touring caravan park, inc. new toilet block and access road." A condition attached to that permission restricted the number of pitches on the site to 15 static and 15 touring pitches and other conditions required completion of landscaping and tree planting in accordance with an approved scheme. Although submitted plans indicated the layout of caravan pitches, no conditions on the original permission specified their layout, as opposed to their number, though this may well be influenced by the approved landscaping scheme.

3. For various reasons, the appellant has not been able to adopt the layout shown on the plans submitted in relation to the original permission and says that he wishes to change the position of about 4 pitches. Notwithstanding the description of the proposal in the application the subject of this appeal, that application was not to vary any conditions under the original permission. It was treated by the Council as a 'stand alone' application for planning permission for a caravan site and it led to a new permission. In the course of this appeal, it is not for me to determine whether or not the appellant could achieve what he wants under the terms of the original permission. However, it remains open to the appellant to apply for a Lawful Development Certificate if he so wishes.

Main issue

4. The main issue is whether the conditions in dispute are reasonable and necessary having regard to policies aimed at restricting residential development in the countryside.

Reasons

5. The appellant contends that, in restricting the occupation of touring and static caravans to 28 days in any calendar year, conditions 1 and 4 are far more onerous than conditions 6 and 7 attached to the original permission. (In fact, so far as touring caravans are concerned, condition 1 actually restricts the presence, not just the occupation, of any caravan to a total of 28 days in the year). Condition 6 on the original permission merely said that static caravans shall not be occupied during the month of January to the first two weeks of February in each year, but otherwise did not restrict the length of occupation. Condition 7 on that permission said that there should be no touring caravans on site from the 1 November in any one year to the following Easter weekend. On one level, this condition is more restrictive than the new permission, under which condition 3 provides that static and touring caravans on the site shall only be occupied during the period 14 February in any one year to 01 January in the following year. However, condition 7 did not restrict the length of time

during which any particular touring caravan could be occupied or present on the site to any particular number of days.

6. I must determine this appeal in the context of the current development plan. The South Holland District Local Plan (LP) was adopted in 2006, after the original permission was granted. Accordingly, the fact that the conditions in dispute are in some respects more onerous than those on the original permission does not necessarily mean that they should not have been imposed, as there has been a material change in circumstances. Saved LP Policy HS7 says that in locations such as this, outside certain defined settlement limits, new housing development will only be permitted in specified circumstances, none of which applies in this case. This is consistent with advice in Planning Policy Statement (PPS) 3 (Housing) and PPS7 (Sustainable Development in Rural Areas). However, saved LP Policy LT7 indicates that holiday sites for touring and static caravans will be permitted, if certain criteria are met, including that occupancy is restricted to genuine holiday and not permanent accommodation.

7. The Good Practice Guide on Planning for Tourism (GPG), issued by the Department for Communities and Local Government after the original permission was granted, recognises the benefits that tourism and caravan sites in particular can bring for local economies. It also acknowledges that the nature of holidays has become increasingly diverse, in location, in season and in duration. However, it indicates the need to ensure that holiday accommodation is used for its intended purpose and does not become part of the local housing stock, both to avoid additional pressure on local services and to safeguard the countryside. LP Policy LT7 is consistent with that advice and its aim can be achieved through the use of occupancy conditions.

8. The appellant contends that conditions 6 and 7 on the original permission were adequate to ensure genuine holiday use. I also note that the conditions in dispute are more restrictive than the examples given in the GPG, which do not limit the occupation or presence of caravans to specific numbers of days or weeks. Nevertheless, in seeking to determine what genuine holiday use is, I consider it reasonable to limit the duration of stay. Certainly, occupation of a static caravan by an individual, group or family for a continuous period of 10 ½ months could not normally be regarded as a holiday. Indeed, even occupation of a touring caravan continuously between Easter and 1 November could effectively result in that caravan becoming the occupant's main residence. I also consider that the presence of unoccupied touring caravans for lengthy periods is to be avoided, as this would reduce the number of pitches available for tourists over the course of the holiday season, diminishing the benefit to the surrounding economy and resulting in a use more akin to caravan storage.

9. However, the GPG recognises that many people go away several times a year. Furthermore, holidays in excess of 14 days are not uncommon or unreasonable and indeed I accept the appellant's contention that some people may even wish to stay for the whole of the school summer holidays. In these circumstances, the limits imposed by the Council are unduly restrictive and would be likely to seriously hinder the legitimate operation of the appellant's business.

10. I therefore conclude that the conditions in dispute are not reasonable or necessary having regard to policies aimed at restricting residential

development in the countryside. Taking account of all matters raised, I am satisfied that the permission should be varied by replacing the conditions in dispute with others limiting any continuous period of occupation of a static or touring caravan to 42 days, which is the approximate length of the school summer holidays, and restricting the total period of occupation by a person, group or family to 56 days in any one calendar year. I consider that this will provide sufficient flexibility, whilst reasonably defining genuine holiday use in accordance with LP Policy LT7.

11. The new condition 4 will refer to occupation of any one or more caravans to prevent the restriction being circumvented by people switching from one caravan to another. I will also require a register of occupants to be kept, in line with the example in the GPG, as I consider this to be an important practical aid to enforcement. A 42 day consecutive limit and a 56 day total annual limit on the presence of a touring caravan on the site should also be sufficient to prevent mere storage use. Having regard to advice in circular 11/95, I consider it inappropriate to add the qualification "without the prior written approval of the local planning authority", as per condition 1 in dispute. Such wording would provide an unofficial way of circumventing the provisions of section 73 of the 1990 Act (as amended). Section 73 provides the proper mechanism for the reconsideration of the conditions that should be attached to a permission.

J A Murray

INSPECTOR

Council Offices
Priory Road
Spalding
Lincolnshire
PE11 2XE
Admin 01775 764723
DC Officers 01775 764703
facsimile 01775 762937
planningadvice@sholland.gov.uk
www.sholland.gov.uk

Grays Surveying Services Ltd
90 Cavendish Road
Highams Park
London
E4 9NG

TOWN AND COUNTRY PLANNING ACT 1990

FULL

Reference: H02-0251-17 **Date of Decision:** 28th April 2017

Applicant: Mr O'Connor
Hale Brinks North
North Circular Road
Woodford Green
London
IG8

Location: Bridge Inn Caravan Park Bridge Inn Common Drove Crowland

Description: 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

South Holland District Council hereby give notice that this application has been REFUSED for the above proposal for the following reason(s):

1 In the opinion of the Local Planning Authority this site would be unsustainable for residential use. There are no footpaths or street lights and the site is 0.9 miles from the centre of Crowland, where the residents would need to travel in order to access shops, amenities and the bus service to Peterborough or Spalding. The route into the town would be across the river Welland, along the unlit, treelined B1166, which is subject to the national speed limit, along the river bank. This would be considered dangerous in daylight, and especially so in the dark.

The plot is located in a countryside location as it not within a Defined Settlement Limit as outlined on the Proposals Maps of the South Holland Local Plan 2006. The relevant policy within the Local Plan is Policy SG4 of the South Holland Local Plan, 2006 only makes provision for new development in the open countryside if it is essential in that location and cannot reasonably be located in a more sustainable location. In addition, Local Plan Policy HS7 New Housing in the Countryside indicates that new housing will

only be permitted in such locations where there is an essential need (especially in relation to agriculture).

2 The development is proposed within an area identified as Flood Zone 3 (high probability). The submission has not demonstrated a Sequential Approach to steer development to areas with the lowest probability of flooding or demonstrated if there are other reasonably available sites appropriate for the proposed development. The development does not meet the Sequential Test and is therefore, contrary to the provisions of the National Planning Policy Framework 2012 and does not meet the presumption in favour of sustainable development. It has not been demonstrated that the development provides wider sustainability benefits to the community that would outweigh flood risk, and the development would not therefore meet the National Planning Policy Framework 2012, Exceptions Test (para 102). Furthermore, the proposed development has not provided an adequate Flood Risk Assessment and suitable mitigation measures to demonstrate the safety of the development and safeguard its future occupants. The development is therefore, contrary to the provisions of the National Planning Policy Framework 2012, in particular Section 10, and does not meet the presumption in favour of sustainable development.

Notes:

The Local Planning Authority has acted positively and proactively in determining this application by assessing it against all material considerations, including national guidance, planning policies and representations that have been received during the public consultation exercise. However, the issues are so fundamental to the proposal, due to the harm which has been clearly identified within the reason(s) for the refusal, that approval has not been possible.

This decision notice, the relevant accompanying report and the determined plans can be viewed online at http://planning.sholland.gov.uk/OcellaWeb/planningSearch

The determined plans are: Drwg No. 001, Drwg No. 002 and Drwg No. 003.



Paul Jackson
Place Manager
South Holland District Council

BUILDING REGULATIONS:
This decision refers only to planning permission as granted under the Town and Country Planning Act 1990. The works that you are proposing may also require Building Regulations and this planning permission does not give authority under Building Regulations to commence work. Please contact the Building Control section for further information on 01775 764557 or bcadmin@sholland.gov.uk

RIGHTS OF APPEAL

Appeals to the Secretary of State

If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development or grant consent subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990 or Section 20 of the Planning (Listed Building and Conservation Areas) Act 1990.

Timescales for appealing

The deadlines for appeals are calculated from the **date of decision** and are as follows for the types of applications below:

12 Weeks	6 Months	8 Weeks
Householder Applications	Planning Permission	Consent to Display Adverts
Minor Commercial Development	Listed Building Consent	
Agricultural Determinations	Other Prior Approval Applications	
Householder Prior Approval Applications		

Enforcement Notices

If an enforcement notice was served prior to the planning application being determined then the deadline for appealing is 28 days from the date of the **planning refusal**

If an enforcement notice is served after the planning application is determined then the deadline for appealing is 28 days from the date of the **enforcement notice** OR **the timescales stated above for each application type** from the date of the planning refusal - whichever is sooner.

All appeals must be made using an Appeal Form which you can get from The Planning Inspectorate at Temple Quay House, 2 The Square, Bristol, BS1 6PN (tel: 0303 444 5000) or you can submit your appeal online at:

http://www.planningportal.gov.uk/planning/appeals/online/makeanappeal

The Secretary of State can allow a longer period for giving notice of an appeal but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the

provisions of the development order and to any directions given under the order. In practice the Secretary of State does not refuse to consider appeals solely because the Local Planning Authroity based its decision on a direction given by him.

For detailed information on appeals, appeal types and guidance on the appeals process please visit:

http://www.planningportal.gov.uk/planning/appeals/planningappeals

Purchase Notices

If either the Local Planning Authority or the Secretary of State refuses permission to develop land or grant it subject to conditions the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of the Part VI of the Town and Country Planning Act 1990 or Section 32 of the Planning (Listed Building and Conservation Areas) Act 1990.

Compensation

In certain circumstances compensation may be claimed from the Local Planning Authority if permission is refused or granted subject to conditions by the Secretary of State on appeal or on reference of the application to him.

These circumstances are set out in Section 114 and related provisions of the Town and Country Planning Act 1990 and Section 27 of the Planning (Listed Building and Conservation Areas) Act 1990.

The Planning Inspectorate

Appeal Decision

Hearing Held on 14 August 2018

Site visit made on 14 August 2018

by S Harley BSc(Hons) MPhil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 29th August 2018

Appeal Ref: APP/A2525/W/17/3187637
Bridge Inn Caravan Park, Bridge Inn, Common Drove, Crowland, Spalding PE6 0HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr O'Connor against the decision of South Holland District Council.
- The application Ref H02-0251-17, dated 10 March 2017, was refused by notice dated 28 April 2018.
- The development proposed is 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.

Decision

1. The appeal is dismissed.

Procedural Matters

2. At the Hearing the appellant put forward amendments to the proposal. The revised description of development is agreed as "the use of the land as plots for the siting of 17 static caravans for residential use and 1 static caravan for use by the site manager for occupation throughout the year". The 'Proposed Site Plan 003' dated 9 March 2017 has been formally withdrawn. I have considered the appeal on this basis.

3. An up-to-date site specific Flood Risk Assessment dated June 2017 (the FRA) was submitted with the appeal evidence. I have taken this into account.

4. Since the decision on the planning application was made a revised National Planning Policy Framework 2018 (the revised Framework) has replaced the original Framework of 2012.

Main Issues

5. The main issues are: whether or not the proposal would comply with national and local planning policy relating to flood risk and countryside location; and if not, whether there are any material planning considerations that would justify a decision other than in accordance with planning policy.

Reasons

Planning Policy

6. The development plan for the area includes the Saved Polices of South Holland Local Plan 2006 (the LP) and the emerging South East Lincolnshire Local Plan 2011-2036 (the emerging LP). The former pre-dates the Framework. The latter has not progressed to a stage that attracts weight in the context of this appeal.

Flood Risk

7. The appeal site is within Flood Zone 3a of the Environment Agency (the EA) Flood Zone Map, the zone with the highest probability of flooding ignoring the presence of defences. The site is also shown within Flood Zone 3 of the South Holland Strategic Flood Risk Assessment in year 2115 (SFRA). The site is located within the Welland and Deepings Internal Drainage Board (the WDIDB) district, protected from the River Welland by the Deeping High Bank located along the southern boundary. On the opposite side of the River Welland are the Crowland & Cowbit Washes which provide protection against the 1 in 100 year plus climate change flood event.

8. Based on the South Holland Updated SFRA flood maps 2017, the EA advises that the predicted flood depths over some 70% of the appeal site are 0.5-1m, considered 'Danger for Most', in year 2115 and some 1-2m, considered 'Danger for All', on the remainder of the site if there were to be a breach of the Deeping High Bank with a 0.1% event probability.

9. Part 14[1] of the revised Framework makes it clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. In relation to planning applications the revised Framework, together with the Planning Practice Guidance (the Guidance) seeks to ensure that development is kept out of medium (Flood Zone 2) and high risk (Flood Zone 3) flood areas.

10. Caravan sites intended for permanent residential use are classified as a "highly vulnerable" use in Table 2 "*Flood risk vulnerability and flood zone*" of the Guidance[2]. As such development should not be permitted according to Table 3 "*Flood risk vulnerability and flood zone compatibility*" of the Guidance.

11. The appellant asserts that, taking account of the defences, the site is effectively Flood Zone 2. However, I have seen no policy guidance that provides for such an approach, as the flood risk would remain the same in the event of a breach of the defences.

12. In terms of a Sequential Test the FRA states there is no other development land in Crowland at a lower risk of flooding. However, the Council says that residential planning permissions have been granted and sites are being delivered through the emerging plan. In the absence of a more detailed consideration by the appellant of alternative sites, including potential windfall sites, and a comparison of flood risk, I consider that the submitted information does not demonstrate that the Sequential Test has been passed, whether or not the appellant owns the particular appeal site and practically wishes to use it

[1] Replaces Part 10 of the original Framework
[2] Paragraph: 066 Reference ID: 7-066-20140306

for the development proposed. Accordingly it is not necessary to proceed formally to the Exception Test.

13. The PPG advises that a change in use may involve an increase in flood risk if the vulnerability classification of the development changes[3]. In Table 2 sites used for holiday or short-let caravans and camping, subject to a specific warning and evacuation plan (FWEP), are classified as "more vulnerable". The proposal is classified as "highly vulnerable" which would appear be an increase in classification, although I acknowledge there is no FWEP required by planning condition for the permitted caravans.

14. The submitted FRA explains the maintenance standards of flood defences within the WDIDB district are good and that therefore the probability of flooding due to overtopping or failure of the flood defence embankment is low/remote. This is considered to especially be the case as Deeping High Bank supports a main road; there are lower defences on the other side of the river; and improvements have been made to defences since earlier flood events.

15. However, this does not mean there is no probability of flooding. The PPG[4] recognises that areas behind flood defences are at particular risk from rapid onset of fast-flowing and deep water flooding, with little or no warning if defences are overtopped or breached.

16. The inspection and warning systems in place in the local area could provide for the caravans to be vacated in circumstances where there was sufficient warning and slow ingress of water. The EA advises that a breach could occur at any time without warning. Although I acknowledge the probability of this is low the consequences are potentially significant in terms of risk to life and safety; loss of property; inconvenience; and burden on local services. Moreover, the need to leave the site, whether due to a warning or an actual flood event, would have more serious consequences for those who have a realistic expectation of living permanently in a caravan sited in a particular place than for those who live in a caravan where the period of occupancy is significantly time restricted.

17. The appellant offers flood risk mitigation. Raising the finished floor levels of the caravans 1m above existing ground level would not address the SFRA predicted 1-2m flood depth over some 30% of the site. I acknowledge that a topographical survey would give more accurate information against which to assess the height at which caravans should be placed were the proposal to be acceptable in all other respects and also that would be more flexibility for siting a reduced number of caravans. However, no topographical survey has been provided and, whilst it might show less of the site is subject to such deep predicted flood levels, the opposite could be the case.

18. Moreover, the height that caravans would be raised and the method of raising them could increase visual intrusion in a countryside location and may amount to operational development in the flood plain. To fully assess the effects it is necessary to have this information before reaching a planning decision rather than as a planning condition after permission had been granted. Tethering of the caravans is also proposed. Few details of how this would be achieved and the likely effectiveness in a flood event have been provided. However, I

[3] Paragraph: 048 Reference ID: 7-048-20140306
[4] Paragraph: 041 Reference ID: 7-041-20140306

acknowledge it may be possible to address the means of tethering by way of a planning condition if the proposals were otherwise acceptable.

19. A further 300mm flood resilient construction would be provided. However, I see no reason to suppose that a FWEP or other mitigation measures, such as raised power points within static caravans (when they are renewed) or an overhead electricity supply, could not be put in place independently of the proposed development. This would have the advantage of mitigating conditions for occupants of the permitted caravans.

20. A restriction of development within 5m of the WDIDB main drain to the south of the site to maintain access for operational purposes is offered. The No 7 WDIDB Drain has a protection byelaw preventing the placing of structures, fences, trees, shrubs etc. within a 9m strip on the southern side of the site. This has been relaxed in the past to allow the hard core bases for touring caravans on the understanding that if access is required for maintenance then all obstacles would be removed. This would be less likely to be practical in respect of static caravans, although it may be possible to site the reduced number of caravans outside the maintenance strip. Whilst a condition could be imposed to prevent fences etc. being erected the protected area would in all probability need to be 9m rather than 5m wide.

21. A Flood Plan would normally be provided as part of the exception test to accord with Paragraph 160 of the revised Framework and the absence of one conflicts with this requirement. However, should the proposal be acceptable in all other respects, I consider one could be secured by way of planning condition though this is less desirable

22. The EA Standing Advice at Appendix C of the SFRA is that areas classified as Danger for All/Most which are at risk of fluvial inundation are not suitable under today's standards for any form of caravan development even with mitigation. For the reasons set out above, and exercising the precautionary principle, I cannot confidently predict that the mitigation as proposed would be sufficient protection for the proposed development.

23. To summarise: the site is in a zone with the highest probability of flooding ignoring the presence of defences. Should a flooding event occur the risk on the site is classified as 'Danger for Most/Danger for All'. The up-to-date planning policy is quite clear that in such areas residential development should not be allowed. I acknowledge that the probability of significant flooding of the appeal site is low and would not be increased, in terms of probability, by the proposed development. However, the proposal would result in 17 static caravans becoming the main residence for the occupants for the whole year and the consequences could be significant. I have found that the proposed mitigation would not be sufficient protection. Other than for a site manager I have seen no evidence of a particular need for permanent residents on the site itself or immediately nearby that would overcome the flood risk.

24. Taking all the above into account I conclude that the proposal would not comply with national and local planning policy relating to flood risk.

Countryside Location

25. The appeal site is in the countryside about 1km from the outskirts of Crowland. Saved Policy SG4 of the LP limits development in the countryside to that which

is essential in the proposed location and cannot be reasonably accommodated within defined settlement boundaries. Where there is an unacceptable impact on the landscape character of the area development will only be permitted where the need for the development in that area outweighs its impact and no other site exists to accommodate the proposed development. Saved Policy HS7 of the LP further limits new housing development outside defined settlement limits to that essential to meet the needs of agricultural, forestry or other workers or small scale rural exception affordable housing in compliance with Saved Policy HS9.

26. Paragraph 213 of the revised Framework states that existing policies should not be considered to be out-of-date simply because they pre-date the Framework. However, the parties agree that the Council cannot demonstrate a five year supply of deliverable housing sites as required by the Framework. Accordingly the development plan is not delivering housing sites to meet local needs and those policies that restrict housing attract relatively little weight.

27. The proposal would provide much needed permanent housing that would add to the choice of housing in the area. In all probability a static caravan would be more affordable than a brick built house. Although no restrictions are proposed the caravans could provide housing for those gypsies, travellers and travelling showmen who do not meet the definition set out in Annex A of the Planning Policy for Traveller Sites and for seasonal, migrant or other agricultural workers, of which there is a need in the wider Housing Market Area, albeit not specifically linked to this particular site or immediate locality. The proposal would help boost the supply of housing and help build inclusive and mixed communities. I give these social benefits substantial weight.

28. Occupants of the proposed caravans could help boost the local economy by expenditure and as employees in local enterprises. However, these benefits would be off-set to some extent by the loss of accommodation for holiday makers and the economic benefits provided through tourism. On balance I give the economic benefits of the proposal relatively little weight.

29. Crowland is identified as an Area Centre under Saved Policy SG3 of the LP, a second tier settlement in a hierarchy of four tiers, where development will be permitted to support its role as a service centre for the surrounding rural area. The centre of Crowland, which contains shops, including a small supermarket and post office, doctor's surgery and a primary school, is about one mile away by foot. There are bus services from Crowland, giving access by public transport to the wide range of community services and facilities available in Peterborough. There is a public house adjacent to the appeal site.

30. The appeal site is separated from the Defined Settlement Boundary by the River Welland and intervening fields/a small linear park. Access between the site and Crowland is via The Gravel Causeway (part of the B1166). Most of the route, up to the edge of Crowland, relies on the carriageway or the wide grass verges along it. This part of the B1166 is subject to the national speed limit until the edge of built development in Crowland.

31. The grass verges are uneven under foot and contain a number of willow trees and their trailing branches are likely to deflect pedestrians from the verges into the carriageway particularly in inclement weather. There is no defined footpath although several narrow wooden foot bridges, with a railing on one side, have been erected to allow access over marshy areas. There are no street lights and

no defined cycle paths. Walking or cycling would be unlikely to be a safe, feasible, alternative to the private vehicle, particularly during hours of darkness, for many future occupants of the proposed caravans for day to day services and facilities regardless of whether Gravel Causeway is identified as part of the wider leisure cycle network.

32. Paragraph 103 of the revised Framework advises that significant development should be focussed in locations which are, or can be, made sustainable through limiting the need to travel and offering a genuine choice of transport modes. A proposal for 17 units of permanent residential accommodation is not an insignificant development in a countryside location. I acknowledge that holiday makers would have the same physical access constraints but there would be less day to day needs for services and facilities. Whilst recognising that the opportunities to maximise sustainable transport solutions will vary between urban and rural areas, I do not consider the appeal site to be a particularly sustainable location in terms of access to services and facilities for permanent residents even though the necessary car journeys would be relatively short.

33. The appeal site is highly visible from that part of the B1166 which runs along Deeping High Bank adjacent to the appeal site and the existing caravans can be clearly seen. The proposal would result in two more static caravans. However, as there would be no touring caravans as a result of the proposal I consider the siting of two more static caravans would not be overly intrusive visually. However, I cannot confidently conclude that there would be no unacceptable visual intrusion in this open countryside location in the absence of details relating to the height to which caravans would be raised and the means by which this would be achieved.

34. The proposal would make use of previously developed land which would be an environmental benefit. However, the appeal site is not a particularly sustainable location in terms of access to services and facilities; I have been unable to conclude there would be no unacceptable visual intrusion; and the site is in an area of high flood risk. On balance I conclude that the proposal would not meet the environmental objective of sustainable development.

35. Paragraph 11 of the revised Framework says that where objectively assessed housing needs are not provided for planning permission should be granted unless the application of policies in the Framework provides a clear reason for refusing the development proposed. Footnote 6 of Paragraph 11 states risk of flooding is one such policy. In essence, if specific Framework policies indicate that development should be restricted, that effectively disengages the so called 'tilted' Paragraph 11 balance, leaving the policies to be applied on their own terms on an unweighted basis.

36. On a straight forward balance I conclude that the benefits do not outweigh the adverse impacts I have identified. In particular the wider sustainability benefits to the community would not outweigh the flood risk. I conclude that the proposal would not comply with national and local planning policy relating to flood risk and countryside location.

Material Planning Considerations

37. The planning history of the site and the so-called "fall-back position" can be material planning considerations. There is a separate permission for the siting of a static caravan for the owner/manager of The Bridge Caravan Site

Ref H02-0998-11. This already provides for year round occupation of one caravan in recognition of the need for on-site management.

38. There have been a number of planning permissions for holiday caravans, at the appeal site, the earliest being granted permission in 1979. The most relevant are discussed below.

39. Application Ref H02-0700-09, which granted permission for a proposal described as "Modify layout for existing holiday caravan park (original approved under Ref H02-0359-00)" on 20 January 2010, was modified by the appeal decision APP/A2525/A/10/2128849 dated 19 October 2010. This varied Conditions 1 and 4 of H02-0700-09. In essence these combined decisions grant permission for the siting of 15 static and 15 touring caravans, as shown on the approved layout plan, provided that, in summary:

    - No touring caravan remains on the site for any continuous period exceeding 42 days, or for a total of more than 56 days in any calendar year.
    - Static and touring caravans on the site are not occupied between the 1 January and 14 February.
    - Static and touring caravans on the site are not used other than for holiday purposes. In this context, "holiday purposes" means occupation of any one or more of those caravans by the same person, group of persons, or family, for any continuous period exceeding 42 days, or for a total of more than 56 days in any calendar year.
    - No caravan is used as the main residence of any occupant, and a register of occupants on the site is kept available for inspection.

40. Ref H02-0359-00 was granted at a time when there was little specific planning guidance on development and flood risk and before flood risk and the effects of climate change became the pressing matters in relation to decisions on planning proposals that they are today. There are no planning conditions requiring a FWEP or other flood resilience or flood resistance measures as would be likely to be sought under the PPG[5] for similar new proposals in flood risk areas today.

41. The occupants of the permitted holiday caravans would therefore potentially be at greater risk than occupants of the development now proposed provided all the relevant flood risk precautions were in place and adhered to. However, as permitted no occupant(s) can currently regard the caravans as their main place of residence; there are periods in the year when there are no touring caravans on the site (as indeed was the case at the date of the Hearing); and there are 45 days in January and February when occupation of any of the holiday caravans is not permitted. Moreover, the proposed development, as amended, whilst it would result in no touring caravans would increase the number of permitted static caravans by two, and, as set out above I see no substantial reason that some mitigation measures, particularly a FWEP could not be put in place, whether or not required under a planning condition.

42. I acknowledge visitors to the site may be less aware of local conditions than permanent residents. However, the PPG clearly envisages that FWEPs can

[5] Paragraph: 056 Reference ID: 705620140306 onwards

operate successfully in requiring them for "…for sites at risk of flooding used for holiday or short-let caravans and camping and are important at any site that has transient occupants…". Accordingly I consider that management of a FWEP for non-permanent residents should be possible.

43. For a combination of the reasons set out above I give the "fall-back" position minimal weight in my consideration of the proposal. Nor does the permission granted by the Council at the Hawthorns Caravan Park Ref H16-0367-16 attract much weight. This is because, unlike in the appeal before me, the Council advises that it considered that the planning history indicated that, although only transit caravans could be sited there, there were no currently enforceable restrictions preventing their use as the main residence of the occupants all year round.

44. Gravesham BC vs. SSE [1982] P & CR 142 established that in case law there is no distinction in land use terms between a dwelling house used as a family dwelling, and a dwelling house used for a series of short-term holiday lets. It seems to me that the stationing of caravans is a use of land and that caravans are not buildings. It has been held in law, that a structure which satisfies the definition of, for example, a mobile home under s13(1) of the Caravan Sites Act 1968 could never be a building for the purpose of the 1990 Act. The case is therefore not directly comparable to the appeal before me. Even if I am wrong the touring caravans would not, in all likelihood, provide all the facilities necessary for day to day domestic existence. Accordingly I do not consider this case sets an overriding precedent in the appeal before me.

45. The appellant considers that the limitation of period of occupation results in security issues; vandalism; and with caravans being left in a poor condition when vacated. However, these matters seem to me to relate to the way the site is managed and carry relatively little weight in my considerations.

46. Whether or not the permitted caravans are in the same vulnerability zone for flood purposes does not lead me to conclude that the siting of caravans for year round occupation should be permitted in this location.

47. Taking all the above into account I conclude that there are no material planning considerations that would justify a decision other than in accordance with planning policy.

Conclusion

48. For the reasons set out above I conclude the appeal should not succeed.

S Harley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr P Brown	Philip Brown Associates Limited
Mr G Beel	Geoff Beel Consultancy
James and Mary O Connor	Appellants

FOR THE LOCAL PLANNING AUTHORITY:

Mark Simmonds	South Holland District Council
Marie Asher	South Holland District Council
Angela Harrison	South Holland District Council
Annette Hewitson	Environment Agency
Emma Kirk	Environment Agency
Sharon Nolan	Environment Agency

DOCUMENTS

1 Inset 2 Crowland - Plan of the Defined Settlement Limit
2 Policies HS9 and LT7 South Holland Local Plan 2006
3 Planning permission Ref H16-0367-16
4 Extract Appendix C Standing Advice Matrix South East Lincolnshire Strategic Flood Risk Assessment
5 Email dated 24 August 2018 confirming revised description of development
6 Plan showing the Internal Drainage Board easement

Mr Spencer Copping
Ws Planning & Architecture
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Bancroft Road
Reigate
RH2 7RP

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TOWN AND COUNTRY PLANNING ACT 1990
SECTION 73A CONTINUATION

Reference: H02-1174-19 **Date of Decision:** 30th January 2020

Applicant: Mr J O'Connor
C/O Ws Planning & Architecture
Europe House
Bancroft Road
Reigate
RH2 7RP

Location: Bridge Inn Caravan Park Bridge Inn Common Drove Crowland

Description: 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

South Holland District Council hereby give notice that this application has been REFUSED for the above proposal for the following reason(s):

1 The development is proposed within an area identified as Flood Zone 3a. The use proposed is classified as Highly Vulnerable as described in Table 1 of the National Planning Practice Guidance (NPPG), (Flood Risk and Coastal Change - paragraph 65). The application proposes the provision of accommodation for gypsy/travellers that would be occupied 12 months of the year, upon land identified as being within Flood Zone 3, which could present a danger for all if flooded.

The submission has not demonstrated a Sequential Approach to steer development to areas with the lowest probability of flooding or demonstrated if there are other reasonably available sites appropriate for the proposed development. The development does not meet the Sequential Test and is therefore, contrary to the provisions of the National Planning Policy Framework 2019 and does not meet the presumption in favour of sustainable development.

Furthermore, the proposed development has not provided an adequate Flood Risk Assessment and suitable mitigation measures to demonstrate the safety of the development and safeguard its future occupants.
The development is contrary to the provisions of the National Planning Policy Framework 2019, and policies 2, 3, 4 and 20 of the South East Lincolnshire Local Plan 2019.

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

It is considered that this site would be unsustainable for temporary or permanent residential use for gypsy and traveller use.

The proposals are unacceptable in the opinion of the Local Planning Authority as this site would be unsustainable for temporary or permanent use by gypsies and travellers. The proposal would fail to provide occupants with access to education, health care and recreational facilities, shops and employment within reasonable travelling distances, preferably by walking, cycling or public transport. There are no footpaths or street lights and the site is 0.9 miles from the centre of Crowland, where the residents would need to travel in order to access schools, shops, amenities and the bus service to Peterborough or Spalding. The route into the town would be across the river Welland, along the unlit, treelined B1166, which is subject to the national speed limit, along the river bank. This would be considered dangerous in daylight, and especially so in the dark.

The application is considered to be contrary to the provisions of Policies 1, 2, 3, and 4 of the South Lincolnshire Local Plan, Planning Policy for Traveller Sites. The DCLG and the provisions of the National Planning Policy Framework 2019.

Notes:

The determined plans and documents are:
Application form
Site Location Plan
Block Plan 2349-2
Decision Notice H02-0359-00
WS Planning & Architecture Letter ref J003420

The Local Planning Authority has acted positively and proactively in determining this application by assessing it against all material considerations, including national guidance, planning policies and representations that have been received during the public consultation exercise. However, the issues are so fundamental to the proposal, due to the harm which has been clearly identified within the reason(s) for the refusal, that approval has not been possible.

This decision notice, the relevant accompanying report and the determined plans can be viewed online at http://planning.sholland.gov.uk/OcellaWeb/planningSearch



Phil Norman
Planning and Building Control Manager
South Holland District Council

BUILDING REGULATIONS:
This decision refers only to planning permission as granted under the Town and Country Planning Act 1990. The works that you are proposing may also require Building Regulations and this planning permission does not give authority under Building Regulations to commence work. Please contact the Building Control section for further information on 01775 764557 or bcadmin@sholland.gov.uk

RIGHTS OF APPEAL

Appeals to the Secretary of State

If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development or grant consent subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990 or Section 20 of the Planning (Listed Building and Conservation Areas) Act 1990.

Timescales for appealing

The deadlines for appeals are calculated from the **date of decision** and are as follows for the types of applications below:

12 Weeks	6 Months	8 Weeks
Householder Applications	Planning Permission	Consent to Display Adverts
Minor Commercial Development	Listed Building Consent	
Agricultural Determinations	Other Prior Approval Applications	
Householder Prior Approval Applications		

If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planning inspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.

Enforcement Notices

If an enforcement notice was served prior to the planning application being determined then the deadline for appealing is 28 days from the date of the **planning refusal**.

If an enforcement notice is served after the planning application is determined then the deadline for appealing is 28 days from the date of the **enforcement notice** OR **the timescales stated above for each application type** from the date of the planning refusal - whichever is sooner.

Appeals can be made online at: https://www.gov.uk/planning-inspectorate. If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to the Secretary of State that the

Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under the order.

Purchase Notices

If either the Local Planning Authority or the Secretary of State refuses permission to develop land or grant it subject to conditions the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of the Part VI of the Town and Country Planning Act 1990 or Section 32 of the Planning (Listed Building and Conservation Areas) Act 1990.

Compensation

In certain circumstances compensation may be claimed from the Local Planning Authority if permission is refused or granted subject to conditions by the Secretary of State on appeal or on reference of the application to him.

These circumstances are set out in Section 114 and related provisions of the Town and Country Planning Act 1990 and Section 27 of the Planning (Listed Building and Conservation Areas) Act 1990.

DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No:	**H02-1174-19**	**Applicant:**	**Mr J O'Connor**
Proposal:	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		
Location:	Bridge Inn Caravan Park Bridge Inn Common Drove		
Terminal Date:	31st January 2020		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
04	Approach to Flood Risk
05	Meeting Physical Infrastructure and Service Needs
11	Distribution of New Housing
19	Rural Exception Sites
20	Accommodation for Gypsies, Travellers and Travelling Showpeople
28	The Natural Environment
30	Pollution
32	Community, Health and Well-being
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2019

National Planning Policy Framework (NPPF), 2019

2. Achieving sustainable development
4. Decision-making
5. Delivering a sufficient supply of homes
8. Promoting healthy and safe communities
11. Making effective use of land
12. Achieving well-designed places
14. Meeting the challenge of climate change, flooding and coastal change
15. Conserving and enhancing the natural environment

DCLG Planning Policy for Traveller Sites. August 2015.

Policy A: Using evidence to plan positively and manage development
Policy B: Planning for traveller sites
Policy C: Sites in rural areas and the countryside
Policy D: Rural exception sites
Policy H: Determining planning applications for traveller sites

Policy I: Implementation
Annex 1

The Housing and Planning Act, 2016

Planning Practice Guidance (PPG)

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	1
WARD MEMBER	0	0	0	0
ENVIRONMENT AGENCY	1	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
WELLAND AND DEEPINGS INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	1	0	0	1
OTHER STATUTORY BODIES	0	0	0	2
RESIDENTS	17	0	0	0

CASE OFFICER ASSESSMENT

Proposal

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.

The application is supported by information in the form of a covering letter. Within this letter the agent has stated that a number of the proposed occupants are in "dire personal need of accommodation" however no evidence has been submitted to support this assertion, and the application is considered on the information that has been provided.

Site Description

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

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

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.

The use of the site is as a caravan park for use by holiday makers, for holiday use only, and restricted by conditions to 15 static caravans and 15 touring caravans, none of which have unfettered occupation, with no occupancy of the site between 1 Jan to 14 Feb each calendar year.

Relevant History

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. APPEAL DISMISSED. 29 August 2018.

H02-0817-11. Details of landscaping scheme (Condition 5 of H02-0700-09). APPROVED. 08-11-11.

H02-0998-11. Siting of static caravan for owner/manager accommodation (retrospective). APPROVED. 07-03-12.

H02-0700-09. Modify layout for existing holiday caravan park (originally approved under H02-0359-00). REFUSED. APPEAL ALLOWED.

H02-0776-01. Siting of unit for site management & security. APPROVED. 08-10-01.

H02-0359-00. Proposed static and touring caravan park, inc. new toilet block and access road. APPROVED 22-06-00.

Consultation Responses

Crowland Parish Council

The Parish Council would refer you to the refusal letter H02-0251-17 dated 28 April 2017, and fully agree with the comments of this refusal.

The Parish Council therefore strongly object to this application on the same grounds.

SHDC Planning Policy

There are essentially two main policy considerations in relation to this proposal, first Policy 4 Approach to Flood Risk, and secondly Policy 20 Accommodation for Gypsies,Travellers and Travelling showpeople.

Policy 4 clearly states that development will only be permitted where three criteria are met. :
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).

As the proposal is supposed to contribute to meeting the need for Gypsy and Travellers throughout the district, it could be met anywhere within the District and there is no need for it to be within Crowland or any other particular part of South Holland. The application clearly fails to provide the necessary Sequential test, or show that it would meet such a test.

Criteria 2 and 3 also do not apply. The Policy also goes on to state:

Caravans, mobile homes and park homes intended for permanent residential use will not be permitted in areas at risk of flooding. Caravan, chalet, log cabin, camping and touring sites at risk of fluvial flooding where there is a 'danger for most' and 'danger for all' will not be permitted. Occupancy of caravan, chalet, log cabin, camping and touring sites at risk of tidal flooding will not be permitted to open between 1st November in any one year and the 14th March in the succeeding year.

Whilst the historic permission allows for longer occupancy than the most up to date advice does, this emphasises the increased risk of flooding and the need to carefully consider proposals within the flood zones and prevent unjustified development.

On this basis alone, planning permission should be refused for this proposal.

Turning to the second main policy consideration. Policy 20 - Accommodation for Gypsies, Travellers and Travelling Show people allows for additional needs to BE met through the development of unallocated sites provided that they meet a number of criteria. Whilst I consider that there are questions in relation to proving that the proposal meets an 'additional' need and how that has been measured and justified, the proposal clearly fails to meet Criteria G iii). for sites for permanent residential use, which requires that they: iii) are not located within Flood Zone 3a or 3b and, if located in Flood Zone 2, the Sequential and Exception Tests have been passed

The proposal is sited within Flood Zone 3a) and therefore the policy that would allow for such uses specifically excludes proposals such as this one.

Therefore the proposal is clearly not in accordance with the Development Plan in relation to Policy 4 and Policy 20, and should be refused.

SHDC Environmental Protection

No comment with respect to land contamination.

Environment Agency

Object in principle - the proposed development falls into a flood risk vulnerability category that is inappropriate to the Flood Zone in which the application site is located. Thus recommend that the application should be refused planning permission on this basis.

Reasons
The site is shown to be within the floodplain as detailed on the Environment Agency's Flood Zone Maps. The proposed development site lies within Flood Zone 3a as described in Table 1 of the National Planning Practice Guidance (NPPG), (Flood Risk and Coastal Change - paragraph 65).

Table 2 in the NPPG classifies development types according to their vulnerability to flood risk. In this case the development type in the proposed application is classified as 'highly vulnerable' as it is proposing caravans for permanent residential use. Table 3 in the NPPG looks at the flood risk vulnerability and flood zone 'compatibility'. This table makes it clear that 'highly vulnerable' development is not compatible with Flood Zone 3 and should not therefore be permitted.

Notwithstanding the above National Policy objection, the site is also shown in the South East Lincolnshire Strategic Flood Risk Assessment to be at risk should a breach of the adjacent River Welland defence occur in an event with a 1 in 1000 chance of occurring in any year to 2115. In such a scenario the flooding would pose a 'Danger to All' (which includes able bodied people and emergency service personnel), where depths between 0.5-2m could be experienced and water could be travelling at a significant velocity. The Environment Agency cannot provide warning of a breach of defences, which can happen at any time and without warning.

This risk was explained in detail during an Appeal Hearing for a previous application at this site, held on 29 August 2018 (Appeal ref: APP/A2525/W/17/3187637, your ref: H02-0251-17). The examining Inspector noted the flood risk and concluded that using caravans for a main residence for the whole year could have significant consequences. The Appeal was dismissed.

Since the time of this Appeal the South East Lincolnshire Local Plan has been adopted and the applicant's agent is referring to Policy 20 to support this application. It is the opinion of the Environment Agency that this application is clearly contrary to paragraph g.iii. of Policy 20 and significant weight should be given to this regardless of any compliance with other parts of the policy.

As the Environment Agency explained in their Hearing Statement for the 2018 Appeal, if an application for a new caravan site in such a location were to be submitted at the current time, without the benefit of previous permissions, the Environment Agency would strongly advise against them being granted even for holiday accommodation; a seasonal occupancy restriction would not be sufficient to manage the residual risk should a breach of the defences occur. The extensive

flooding that has occurred across our county during the last 6 months, following a period of significant rainfall, has clearly demonstrated that flooding can occur at any time of year and not just in winter months.

In summary, it is the view of the Environment Agency that this application is contrary to National and Local Planning Policy, and there would be a significant risk to the lives of occupants residing in caravans in this location.

If the LPA are minded to approve the application contrary to our objection, the Environment Agency request that they are re-notified, for you to explain which material considerations outweigh the objection and to give the Environment Agency the opportunity to make further representations. In the event that the applicant appeals a refusal of the planning application or non-determination the Environment Agency would be prepared to fully support the Local Planning Authority and provide evidence at any public inquiry or informal hearing.

Internal Drainage Board

Refer back to previous comments of 2017 regarding the IDB No7 Drain to the south of the site and relevant byelaws, as well as formal consents that would be required for discharge to a watercourse.

Public

Seventeen objections have been received, raising the following issues -

The site should not have any residents but car, washing and children's toys can be seen from the road on 10th January
The additional permanent pitches is not identified in the Local Plan
No sequential analysis to identify the requirement for any provision at the proposal site
Fails to demonstrate compliance with the requirements in Policy 20 of the adopted Local Plan
The site is on a flood plain - should not be used for any type of permanent nor temporary accommodation
Flood Zone 3 is deemed to be highly vulnerable
The area itself has no flood protection and is lower than the watercourse which is the river Welland
Flooding on this low lying land with no emergency exits for escape - only one route in and out
Other caravan and camping pitches are available elsewhere
Increase traffic at a very dangerous junction
No street lighting or footpaths for local access to Crowland and services
The route for a pedestrian to get to the nearest shops is along Gravel Courseway
This road is subject to the national speed limit (60 mph) and has no street lighting
A complete danger to pedestrians and motorists alike
Excess traffic on a already strained and deteriorating road system
Noise, rubbish and nuisance in a non residential area
This will not be good for the local community (of Crowland)
Nature of occupants
Families should be moved into more permanent and healthier environments as opposed to cheap caravans.
Waster and sewage
Noise/Movement/Disturbance of conservation area for rare wildlife.
Lack of amenities
Already overstretched public services eg schools, doctors etc.
Potential impact on neighbouring business
Increase in insurance premiums for neighbouring business
Potentially reduce house prices and put off potential buyers to the local area as well as reducing local trade and associated tourism for such a town with a deep history surrounding the Abbey

Planning Considerations

The National Planning Policy Framework (NPPF) is read in conjunction with the Government's Planning Policy for Traveller Sites. The DCLG document, Planning Policy for Traveller Sites, sets out that in determining planning applications for such sites, applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the National Planning Policy Framework and this planning policy for traveller sites.

Policy C of the DCLG document sets out that:

When assessing the suitability of sites in rural or semi-rural settings, Local Planning Authorities should ensure that the scale of such sites does not dominate the nearest settled community.

Policy H sets criteria for determining planning applications for traveller sites and in particularly paragraph 24 states:

Local Planning Authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:

a) the existing level of local provision and need for sites

b) the availability (or lack) of alternative accommodation for the applicants

c) other personal circumstances of the applicant

d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites

e) that they should determine applications for sites from any travellers and not just those with local connections

The South Lincolnshire Local Plan (SELLP) acknowledges there is both a 'known' and 'unknown' unmet need for additional Gypsy/Traveller residential accommodation within its district between the period 2011-36.

At 3.2.17, the SEELP states *Housing needs may also, by exception, be justified in the Countryside; for example, for Gypsy, Traveller and Travelling Showpeople accommodation (Policy 20: Accommodation for Gypsies, Travellers and Travelling Showpeople)...*

Below, Policy 20, Accommodation for Gypsies, Travellers and Travelling Showpeople, is set out in full.

The redevelopment or change of use of an Existing Residential Gypsy/Traveller Site or Existing Residential Travelling Showperson's Site (as identified on the Policies Map) will be permitted only if an assessment has been undertaken which has clearly shown that the site is no longer required to meet the accommodation needs of the Gypsy/Traveller or Travelling Showpersons communities.

Between 2011 and 2036, evidence suggests that, in South East Lincolnshire, there will be a need for the provision of:

4 new permanent residential pitches for gypsies and travellers; and
1 new permanent residential plot for travelling showpeople.

This need will be met through the development of the sites identified on the Policies Map and listed below:

Land at The Stables, Baulkins Drove, Sutton St James allocated as a 'Proposed Residential Travelling Showperson's Site', to provide accommodation for one additional household; and

Land at Bleu Raye Farm, Mill Gate, Whaplode Fen allocated as a 'Proposed Residential Gypsy/Traveller Site', to provide accommodation for four households.

Planning permission will be granted for the development of these sites, provided that proposals:

1. will be adequately provided with appropriate infrastructure such as electricity, drinking-water, waste-water treatment and recycling/waste management;

2. will not have a significant adverse effect on the amenities of existing local residents or adjoining land users (and proposals must therefore give careful consideration to layout, landscaping, external lighting schemes, and the type of business uses that would be appropriate (if mixed residential and business use is proposed); and

3. will be successfully assimilated into both their immediate environs and the wider landscape. The SELLP identifies 4 new permanent residential pitches for gypsies and travellers; and 1 new permanent residential plot for travelling showpeople, subject to criteria relating to appropriate infrastructure such as electricity, drinking-water, waste-water treatment and recycling/waste management; no significant adverse effect on the amenities of existing local residents or adjoining land users; and will be successfully assimilated into both their immediate environs and the wider landscape

Additional needs which may arise during the Local Plan period will be met through the determination of planning applications on other, unallocated sites. Planning permission will be granted for proposals on such sites, provided that they meet criteria 1 to 3 above, and they:

a. provide occupants with an acceptable standard of amenity;

b. are not located adjacent to uses likely to endanger the health of occupants, such as a refuse tip, water recycling centres or contaminated land;

c. respect the scale of the nearest settled community;

d. will not place undue pressure on local infrastructure;

e. will not adversely affect heritage assets or areas of importance to nature conservation;

f. will not prejudice highway safety or give rise to problems of parking or highway access;

g. for sites for permanent residential use they:

i. provide occupants with access to education, health care and recreational facilities, shops and employment within reasonable travelling distances, preferably by walking, cycling or public transport;

ii. are suitable (or capable of being made suitable) for mixed residential and business use;

iii. are not located within Flood Zone 3a or 3b and, if located in Flood Zone 2, the Sequential and Exception Tests have been passed; and

h. for sites for transit or stopping place use, are not located within Flood Zone 3b and, if located within Flood Zone 3a, the Sequential and Exception Tests have been passed.

The following policies of the SELLP are also relevant to the consideration of this application.

01 Spatial Strategy
02 Development Management
03 Design of New Development
04 Approach to Flood Risk
05 Meeting Physical Infrastructure and Service Needs
11 Distribution of New Housing
19 Rural Exception Sites
20 Accommodation for Gypsies, Travellers and Travelling Showpeople
28 The Natural Environment
30 Pollution
32 Community, Health and Well-being
36 Vehicle and Cycle Parking
APPENDIX 6 Parking Standards

Policies 2, 3 and 4 are of particular importance when looking at this proposal, and offer criteria to be considered.

Looking firstly at the principle of the use of part of this site for Gypsy and Traveller provision, Policy 20 sets out the framework for consideration and some of these criteria have an overlap with Policies 2, 3 and 4 of the SELLP:

Appropriate infrastructure

As the site has electricity, drinking-water, waste-water treatment and recycling/waste management facilities that could be augmented, it is considered that this criterion could be met;

Amenities of existing local residents or adjoining land users

Objection has been received raising the impact of the proposed use on local residents and businesses, however officers consider that if the application were considered acceptable in principle then conditions could be imposed to restrict commercial uses on the site to reduce noise and impact; the site would then have the character of a residential use.

Immediate environs and the wider landscape

The site is already used as a static and touring caravan park and is visible in the landscape, although the site sits at a lower level that the adjacent road and riverside path/access. It is not considered that the proposals would have a further detrimental impact on the character of the Immediate environs and the wider landscape.

Provide occupants with an acceptable standard of amenity

The pitches proposed are smaller than what is normally expected as a gypsy and traveller pitch; the site has a toilet block, but there would be insufficient space for each pitch to have a day room and other facilities usually provided on gypsy and traveller pitches. however there are now no national or local minimum standards for such provision.

The site is located in the countryside and has largely open views. The wider site is not cramped.

Adjacent to uses likely to endanger the health of occupants

There are no known adjacent to uses likely to endanger the health of occupants that are specified within this section of the policy. The impact of flooding is discussed elsewhere in this report.

Respect the scale of the nearest settled community

The nearest settlement is Crowland, which is allocated as a Main Service Centre in Policy 1: Spatial Strategy, of the SELLP. The provision of five gypsy and traveller pitches would not be of sufficient scale to impact upon the settled community.

Pressure on local infrastructure

Due to the scale of the application the proposal would not put pressure on local infrastructure.

Heritage assets or areas of importance to nature conservation

It is considered that the use of existing pitches would not have a detrimental impact on local heritage assets or areas of importance to nature conservation.

Crowland and Crowland Abbey are at such distance from the site that the use of existing pitches would not have a detrimental impact on local heritage assets.

It is also considered that eh proposals would not have a detrimental impact on nature conservation in the area.

Highway safety

It is not considered that the proposed use would give rise to a detrimental impact on highway safety or problems with access on to the highway network over and above the existing authorised use of the site; the wider site is already used by touring caravans and caravans and associated vehicles are able to access and leave the site safely.

For sites for permanent residential use

Access to education, health care and recreational facilities, shops and employment within reasonable travelling distances, preferably by walking, cycling or public transport

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

It is considered that this site would be unsustainable for permanent residential use for the settled community or for gypsy and traveller use.

There are no footpaths or street lights and the site is 0.9 miles from the centre of Crowland, where the residents would need to go in order to access shops, amenities and the bus service to Peterborough
or Spalding. The route into the town would be across the river Welland, along the unlit, treelined B1166 (national speed limit), along the river bank. This would be dangerous in daylight, and especially so in the dark.

The proposals are unacceptable in planning terms as the site is in an unsustainable location with regard safe access to services.

Suitable (or capable of being made suitable) for mixed residential and business use

A caravan park has been approved in this location because it is classed as a business rather than just residential accommodation, and would therefore contribute to rural economic growth. The conversion of holiday accommodation to gypsy and traveller provision with business uses and commercial vehicles allowed on the site for the gypsy and traveller pitches has the possibility of leading to a tension of uses and users on site.

If the use were acceptable in principle, then conditions could be imposed to preclude commercial use of the gypsy and traveller pitches.

Flood Zone 3a or 3b and, if located in Flood Zone 2, the Sequential and Exception Tests have been passed

The application supporting information expresses the view that as the site has been an established caravan park for a number of years and as such the siting of mobile homes is acceptable. This application goes significantly beyond the approved use of the site and the polices and considerations differ.

The application also suggests that as a significant proportion of the District is in Flood Zone 3 alternative sites are few and far between. This is not the case however, and although the District is indeed within varying flood zone levels, the polices of the Council are still delivering development, and pitches for gypsy and traveller use.

Caravans for permanent residential use are classified as a "highly vulnerable" use. As such, it is considered that the sequential test exercise has not been undertaken and no convincing exception case provided.

Paragraph 60 of the NPPF (2019) sets out that for the exception test to be passed it should be demonstrated that:

a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and

b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

It is not considered that an exception test would be passed on these criteria.

The site is shown to be within the floodplain as detailed on the Environment Agency's Flood Zone Maps. The proposed development site lies within Flood Zone 3a as described in Table 1 of the National Planning Practice Guidance (NPPG), (Flood Risk and Coastal Change - paragraph 65).

The NPPG classifies development types according to their vulnerability to flood risk. In this case the development type in the proposed application is classified as 'highly vulnerable' as it is proposing caravans for permanent residential use. The NPPG also looks at the flood risk vulnerability and flood zone 'compatibility'. This table makes it clear that 'highly vulnerable' development is not

compatible with Flood Zone 3 and should not therefore be permitted.

In addition, the site is also shown in the South East Lincolnshire Strategic Flood Risk Assessment to be at risk should a breach of the adjacent River Welland defence occur in an event with a 1 in 1000 chance of occurring in any year to 2115. In such a scenario the flooding would pose a 'Danger to All' (which includes able bodied people and emergency service personnel), where depths between 0.5-2m could be experienced and water could be travelling at a significant velocity.

This risk was discussed in detail during an Appeal Hearing for a previous application at this site, held on 29 August 2018 (Appeal ref: APP/A2525/W/17/3187637, your ref: H02-0251-17). The examining Inspector noted the flood risk and concluded that using caravans for a main residence for the whole year could have significant consequences. The Appeal was dismissed.

Since the time of this Appeal the South East Lincolnshire Local Plan has been adopted and the applicant's agent is referring to Policy 20 to support this application. It is the opinion of the Council and the Environment Agency that this application is clearly contrary to paragraph g.iii. of Policy 20 and significant weight should be given to this regardless of any compliance with other parts of the policy.

The Environment Agency explained in their Hearing Statement for the 2018 Appeal, that if an application for a new caravan site in such a location were to be submitted at the current time, without the benefit of previous permissions, the Environment Agency would strongly advise against them being granted even for holiday accommodation; a seasonal occupancy restriction would not be sufficient to manage the residual risk should a breach of the defences occur. The extensive flooding that has occurred across our county during the last 6 months, following a period of significant rainfall, has clearly demonstrated that flooding can occur at any time of year and not just in winter months.

In summary, it is the view of the Environment Agency that this application is contrary to National and Local Planning Policy, and there would be a significant risk to the lives of occupants residing in caravans in this location. This view is shared by the Council.

For sites for transit or stopping place use

Located within Flood Zone 3b and, if located within Flood Zone 3a, the Sequential and Exception Tests have been passed.

The site is not proposed for transit or stopping place use. However it is not considered that the application proposal accord with Policy 4 of the SELLP, specifically, as the application is not supported by a sequential test exercise that proves that such development cannot be provided elsewhere in the District, on more suitable land.

Conclusions

In conclusion, the application proposes the provision of accommodation for gypsy/travellers that would be occupied 12 months of the year, upon land identified as being within Flood Zone 3, which could present a danger for all if flooded.

The application does not accord with the provisions of Policy 20, in that the development would be located within Flood Zone 3a, which is considered to be a "risk to all" designation. It is not considered that the applicant has made a convincing case to make an exception to national and local planning polices. The Environment Agency have also raised a considerable objection in principle to this proposal.

There are no footpaths or street lights and the site is 0.9 miles from the centre of Crowland, where the residents would need to go in order to access shops, amenities and the bus service to Peterborough
or Spalding. The route into the town would be across the river Welland, along the unlit, treelined B1166 (national speed limit), along the river bank. This would be dangerous in daylight, and especially so in the dark.

Objections have been submitted regarding the development having an impact on insurance

premiums for neighbouring business, and potentially reducing house prices and put off potential buyers. These issues are not planning matters and as such can be given very little weight.

Recommendation

Refuse for the reasons addressed above.

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.

The Planning Inspectorate

Appeal Decision

Hearing held on 7 December 2022

Site visit made on 7 December 2022

by Helen Hockenhull BA (Hons) B.Pl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2023

Appeal Ref: APP/A2525/W/20/3249950
Bridge Inn Caravan Park, Common Drove, Crowland, Spalding PE6 0HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr J O'Connor against the decision of South Holland District Council.
- The application Ref H02-1174-19, dated 28 November 2019, was refused by notice dated 30 January 2020.
- The application sought planning permission for a proposed static and touring caravan park, including new toilet block and access road without complying with a condition attached to planning permission Ref H02/0359/00, dated 22 June 2000.
- The condition in dispute is No 6 which states that: The static caravans shall not be occupied during the month of January and the first two weeks of February in each year.
- The reason given for the condition is: The application has been submitted for holiday use and this condition is imposed to prevent a permanent residential occupancy occurring which would be contrary to residential development policies in the Development Plan.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. This retrospective appeal proposal seeks to vary condition 6 on planning permission ref H02/0359/00 to allow for permanent residential use throughout the year for 5 static caravan plots only to be occupied by Gypsy/Travellers.

3. The main parties were unable to agree a Statement of Common Ground before the event. The hearing therefore proceeded on the basis that there were no areas of agreement between the parties.

4. 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.

5. Before the hearing, I requested the views of the main parties on the implications of the Finney[1] judgment on the appeal proposal. In this case, the Courts established that an application under s.73 may not be used to obtain a permission that would require a variation to the terms of the "operative" part of the planning permission, that is, the description of the development for which the original permission was granted. I have considered the views provided. I am satisfied that having regard to the original description of development, a static and touring caravan park, that the appeal case is not affected by this judgment.

6. The appellant confirmed at the hearing that the personal circumstances of the appellant and the current occupants of the site was not being relied upon in support of the appeal. Nevertheless, at the hearing I heard details of the families who are living on the site, and I have taken this into consideration in my decision.

Main Issues

7. Given the above, the main issues in this case are

    - whether the disputed condition is reasonable and necessary having regard to whether the site forms an appropriate location for Gypsy and Traveller accommodation and whether it would be subject to an unacceptable risk of flooding;

    - whether other material considerations, including the general need for and supply of gypsy sites, the accommodation needs and personal circumstances of the appellant, outweigh any harm identified, such as to justify the development.

Reasons

8. The appeal site lies in the open countryside to the west of Common Drove, adjacent to the River Welland and the Bridge Inn Public House to the west of the town of Crowland. It forms an existing caravan park with permission for 15 static and 15 touring caravans.

9. The appellant has questioned whether the authorised use of the site is for holiday use. I acknowledge that the description of development on the original planning permission does not mention holiday use. However, the reason for condition 6 of the permission clearly states that the application was submitted for such a use. Furthermore, the condition was justified on the basis that a permanent residential use would have been contrary to the policies of the development plan.

10. It is also significant that the 2009 planning application on the site, described the site as an existing holiday caravan park. I am not aware that this description was disputed. There is no evidence before me to suggest that the authorised use of the site is as anything other than a holiday park with both touring and static caravans with restrictions on their occupation to prevent a permanent residential use.

[1] John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868 (Finney).

Appropriate location

11. Planning Policy for Traveller Sites (PPTS) states in paragraph 25 that local planning authorities should very strictly limit new traveller site development in the open countryside that is away from existing settlements or outside areas allocated in the development plan.

12. Policy 1 of the South East Lincolnshire Local Plan adopted in 2019 sets out the spatial strategy in the District. In relation to development in the countryside, it recognises that housing needs for Gypsy and Travellers may, by exception, be justified in the countryside. The principle of Gypsy and Traveller accommodation in the countryside is therefore supported by national and local plan policy.

13. Turning to the specifics of the site in question, it lies approximately 1.5 km from Crowland. Crowland is defined as a Main Service Centre in Policy 1 of the Local Plan. It provides a range of services including a primary school, pubs, shops, health centre, pharmacy, takeaways, hairdressers, pavilion and sports field.

14. It would take around 20 minutes to walk to Crowland, and a few minutes longer to the school and to the health centre which is at the southern end of the town. The route would involve walking along Gravel Causeway which is a long narrow straight road with no footways and no lighting. Users would on occasion have to walk along the grass verge. This is evidently marshy and uneven in places, more so in the winter months. Several narrow timber footbridges have been installed with a railing to assist walkers.

15. The road is subject to the national speed limit, 60 mph. I observed on my site visit that the route is not heavily trafficked but because of its nature, vehicles travel at speed. However, the road has very good visibility, anyone walking, or cycling would be able to be seen from some distance. The situation would of course be much more hazardous at night when the road is unlit.

16. The nearest public transport to the site would be from the town, a 20/25 minute walk, where an hourly service to Spalding and Peterborough can be accessed. Services are less frequent on Sundays and terminate early evening.

17. In the context of a rural area, the appeal site is not 'away from' an existing settlement, being only about 1.5km from Crowland. The site is also not isolated, being located next to a public house with a residential property beyond. Whilst occupants of the appeal site would have options other than the car to access services and facilities particularly during the day, I accept that in the evening and in inclement weather they would be more likely to use the private car. However, such local journeys would be short.

18. Policy 20 of the Local Plan requires Gypsy and Traveller sites to provide access to education, health care and recreational facilities, shops and employment within reasonable traveling distances, preferably by walking, cycling or public transport. I consider the distance between the site and Crowland to be reasonable. Furthermore, whilst non-car means of transport would not always be ideal as I have outlined above, it would provide an option to future occupants particularly during the day.

19. I take account of paragraph 105 of the Framework which recognises that opportunities to maximise sustainable transport solutions will vary between

urban and rural locations. Given the above, I conclude that the appeal site does provide an appropriate location for a Gypsy and Traveller site. It complies with PPTS and Policies 1 and 20 of the South East Lincolnshire Local Plan which amongst other things seek to achieve sustainable development.

Flood risk

20. The appeal site lies in Flood Zone 3a of the Environment Agency (EA) Flood Zone Map. It lies immediately next to the River Welland, a designated main river, and is protected by the Deeping High Bank running along the southern site boundary. On the opposite side of the river, are the Crowland and Cowbits Washes.

21. The Strategic Flood Risk Assessment (SFRA) identifies around 70% of the site as being within an area of 'Danger for All' with predicted flood depths of between 1-2 metres and around 30% being within an area of 'Danger for Most' with a predicted flood depth of 0.5 to 1 metre in a modelled scenario of a flood with a 1 in 1000 chance of occurring in any year up to 2115. I was advised at the hearing that the 5 static pitches proposed for permanent residential use are within the latter area with a predicted flood depth up to a metre. The EA object to the development proposal as it falls into a flood risk vulnerability category that is inappropriate to the Flood Zone in which the application site is located.

22. PPTS in paragraph 13 is clear that Gypsy and Traveller sites should not be located in areas at high risk of flooding given the particular vulnerability of caravans. They are described as a highly vulnerable development in the Flood Risk Vulnerability Classification at Annex 3 of the Framework. Policy 20 of the Local Plan reiterates this position and states that sites for permanent residential use should not be located within Flood Zone 3a.

23. The Framework requires that development proposals in flood risk areas should be accompanied by a site-specific flood risk assessment (FRA). Planning Practice Guidance (PPG) states that such assessments should be credible and fit for purpose and that they should be appropriate to the scale, nature and location of the development.

24. In this case, the appellant has not submitted a fully detailed assessment but has instead provided a letter addressing flooding matters before the event. The appellant argues this is in effect a FRA, however I do not agree. The PPG advises that the objectives of a site-specific FRA are to establish whether a proposed development is likely to be affected by current or future flooding from any source, whether it will increase flooding elsewhere, whether the measures proposed to deal with these effects and risk are appropriate and also to provide the evidence required to apply a sequential test and where necessary an exception test. The submitted letter does not provide all this information.

25. The appellant refers to the Welland Catchment Strategic Modelling Study undertaken by the EA. This demonstrates that the site would be protected from flooding up to and including the 1 in 1000-year return period plus an allowance for climate change. This is however only in the event that the existing defences are not breached.

26. I was advised at the hearing that the last time the defences in this location were breached was in 1947. The existing fluvial defences consist of earth embankments and reduce the risk of flooding to a 1% chance of occurring in

any year. Whilst I accept that the risk of flooding is low, the potential consequences are significant. This is because the appeal site is lower than the river level, so that if the defences were breached, there would be rapid inundation of fast flowing water with little warning.

27. The appellant suggests that the floor level of the static caravans could be raised to a metre in height, to match that of the predicted flood levels. I acknowledge that this could be achieved, so that the caravans provide a safe haven. However, in a flood event the occupants would be stranded. The flood water would take time to recede resulting in the likelihood that the site occupants would need to be rescued, putting a burden on emergency services.

28. I acknowledge that the existing planning permission for the site permits static caravan occupation all year except for approximately 6 weeks in January and early February. There are no other restrictions on the length of stay etc so that in effect the caravans can nearly be occupied all year round. However, I have already set out in the Preliminary Matters section that in my view the site was permitted on the basis of a holiday use. Notwithstanding the permanent occupation of the site manager, there is a clear distinction between occupation for holiday use and occupation on a permanent residential basis. A flood event would have more serious consequences for those who permanently live in a caravan on the site, including the need for temporary accommodation and loss of property.

29. It is also important to note that the original permission for the site dates from June 2000. Since that time national planning policy has changed, the Framework has been introduced and the risk of flooding and the effects of climate change are now better understood and of greater significance in policy making and decision taking.

30. 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.

31. The appellant argues that since much of the district lies in Flood Zone 3, there are no alternative sites available at a lower risk of flooding. However, a detailed sequential test has not been undertaken to demonstrate which sites have been considered and the reasons for their rejection. Whilst it may be that there are no alternatives, without this assessment being undertaken, I am unable to come to this conclusion. A further difficulty is that the area of search illustrated in the appellant's supporting letter, is very localised to Crowland. It does not cover the whole of the District as required by Policy 4 of the Local Plan.

32. Accordingly, I am not satisfied that the sequential test has been passed. In these circumstances it is not necessary for me to consider, the exception test. This provides two further elements to be satisfied when there are no other sites at a lower risk of flooding.

33. The appellant suggested various measures that could be taken to make the site safe in a flood event, including tethering or anchoring the caravans and a Flood Warning and Evacuation Plan. These adjustments are available to all caravan sites yet the national guidance for Gypsy and Traveller Sites states that sites should not be located in areas at risk of flooding. Whilst the caravans would

only be vulnerable in extreme flood events, it does not alter my overall concern about the impact of a flood event on the occupants.

34. Whilst the appeal site is defended and may be at low risk of flooding, the above policy requirements have not been satisfactorily met. The appeal proposal therefore fails to comply with Policy 4 of the South East Lincolnshire Local Plan, as well as Chapter 14 of the Framework and the advice in the PPG on Flood Risk and Coastal Change.

The need for and supply of Gypsy sites

35. The Council's Gypsy and Traveller Accommodation Assessment conducted in 2016 found a need for 4 new pitches over the local plan period 2011-2036. This was taken forward into Policy 20 of the Local Plan, which allocated a site at Bleu Raye Farm, Whaplode Fen to meet this need. I understand this site has planning permission but has not been implemented.

36. Notably however, the GTAA identified 5 known households that met the PPTS definition and 37 unknown households who met the PPTS definition but could not be interviewed. The appellant has criticised the GTAA as the interviews undertaken were in the summer months when many Gypsies would have been away travelling. It is therefore not surprising that there is a high number of unknown households. The GTAA also identified 19 households who did not meet the definition. Cumulatively this amounts to a significant cultural need in the District.

37. Whilst I acknowledge that the GTAA was the subject of scrutiny during the Local Plan Examination and found to be sound, it is now 6 years old. There is no timeframe for a new assessment to be undertaken. I agree that based on the Local Plan requirements, the Council can demonstrate a five-year supply of pitches. However, I take the view that the high number of unknown households and those not meeting the PPTS definition suggests a higher need in the District. This local need weighs in favour of the development.

Alternative sites

38. I have already discussed alternative sites above in relation to the sequential test and that the site allocated in the Local Plan for Gypsy and Traveller accommodation has planning permission. However, I have no evidence before me that the site is available to the appellant. There are no public sites in South Holland, and I have not been advised of any vacant pitches on other private sites which may be suitable and available. Accordingly, as there is no evidence of alternative accommodation, this factor adds support to the proposal.

Personal circumstances

39. The appellant stated at the start of the hearing that reliance was not being placed on the personal circumstances of the appellant. However, I was provided with some details of those families currently living on the site. In total there are 5 families, though at the time of the appeal hearing, one family was away traveling. There are 5 dependent children of school age. I was informed that all the occupants are registered with the local health centre.

40. I acknowledge that the appeal site would provide a settled base from which the occupants could access education and health care more readily. This would be advantageous to their wellbeing and in the best interests of the children. These

matters weigh in favour of the proposal and accords with the aims of the PPTS to enable the provision of suitable accommodation from which travellers can access education, health, welfare and employment. A permanent base would also reduce the need to travel, reduce the risk of environmental damage from unauthorised encampments and promote the traditional lifestyle of the families.

Planning balance

40. I have found that the appeal site is in an appropriate location with adequate access to services and facilities. The current occupants need for accommodation, personal circumstances and the best interests of the children also weigh in favour of the scheme. I also give positive weight to the fact that the proposal would make effective use of previously developed land.

41. As the proposal is retrospective, intentional unauthorised development has taken place. It is Government policy this is a material consideration in determining planning applications and appeals. The reason behind the policy is that the Government is concerned about the harm caused where the development is undertaken in advance of obtaining planning permission, such that there is no opportunity to appropriately limit or mitigate harm that is caused. The application of this policy is a factor that weighs against the proposal. However, I give this limited weight bearing in mind the current use with static caravans already located on the site.

42. I have also found conflict with the Framework, PPG, PPTS and local plan policies in relation to flood risk. Inadequate evidence has been provided to show that there are no alternative sites at a lower risk of flooding so that the sequential test is not passed. Furthermore, a formal FRA has not been prepared, though some evidence on the risk of flooding has been provided. This does not however provide an adequate assessment of flood risk to demonstrate the site would be safe for its lifetime.

43. Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration. I do not underestimate the importance of stability in a child's life, particularly in relation to their education.

44. Nevertheless, this must be balanced against other considerations. I am mindful that it has not been satisfactorily demonstrated that the site would not be at risk of flooding. This represents a risk to the children permanently resident on the site. Therefore, in weighing the balance, the safety of the children in terms of exposure to flood risk, outweighs the benefit of a stable access to education. Consequently, in my view, the best interest of the children would be served by them not being resident on the site. The dismissal of the appeal would be a proportionate and necessary response.

45. I have also considered the Public Sector Equality Duty (PSED) at section 139 of the Equality Act 2010. Because there is the potential for my decision to affect persons (the appellant and her family) with a protected characteristic(s) I have had due regard to the three equality principles set out in Section 149 (1) of the Act.

46. Dismissing the appeal would impact on the education of the dependent children and the healthcare of all the occupants. It may also result in the families being forced into a roadside existence and intermittent use of unauthorised sites. This

could interfere with the best interests of the children and each member of the family's right for respect for private and family life.

47. Whilst neither party sought the imposition of a temporary permission it remains necessary for me to consider whether such a permission would protect the public interest by a means that would be less interfering to the intended occupant's human rights and thus be a more proportionate response. PPG states that temporary permissions may be appropriate if planning circumstances are likely to change at the end of that period. I was provided with no timeframe for an updated GTAA or for the review of the local plan, though the local plan should be reviewed by 2024, five years after its adoption.

48. Therefore, it is not likely that circumstances would change in the next 3-4 years with additional sites allocated and available to the appellant. The occupants of the site including the children would be at risk of flooding during this time. It would not be in the interest of the appellant and the families concerned to be resident for this period or in the wider public interest. A temporary permission would therefore not form a more proportionate response and would not be justified.

Conclusion

49. The appeal proposal is contrary to the development plan and national guidance. The material considerations in this case, do not justify a decision other than in accordance with these policy documents.

50. For the reasons given above and having had regard to all other matters raised, I dismiss this appeal.

Helen Hockenhull

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Brian Woods	WS Planning and Architecture
Tom Quigg	Flume Consulting Engineers
James and Mary O'Connor	Appellants

FOR THE LOCAL PLANNING AUTHORITY:

Mark Simmonds	Mark Simmonds Planning Services
Keri Monger	Environment Agency
Councillor James Anstill	Ward Member

INTERESTED PERSONS:

David Kempton	Crowland Parish Council

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Judgments

Hertfordshire County Council v Secretary of State for Communities and Local Government and another

Town and country planning - Enforcement Notice - Appeal against notice - Appellant local authority issuing two enforcement notices against second respondent company - Second respondent challenging enforcement notices - Inspector appointed by first respondent Secretary of State quashing enforcement notices - Authority appealing - Whether inspector erring - Town and Country Planning Act 1990, s 289 - Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2, Pt 8

[2012] EWHC 277 (Admin), CO/7181/2010, (Transcript: Wordwave International Ltd (A Merrill Communications Company))

QBD, ADMINISTRATIVE COURT

OUSELEY J

1 FEBRUARY 2012

1 FEBRUARY 2012

M Reed for the Appellant

D Kolinsky for the First Respondent

A Dinkin QC and C Parry for the Second Respondent

Solicitor to Hertfordshire County Council; Treasury Solicitors; Mullis & Peake, Romford

OUSELEY J:

[1] Hertfordshire County Council challenges the decision of the Secretary of State for Communities and Local Government given by an Inspector on 7 June 2010, dismissing appeals made by Metal and Waste Recycling Ltd against two enforcement notices served by the County Council in respect of an alleged material change of use and operational development made without planning permission on a scrapyard in Wallace Way in Hitchin.

[2] Metal and Waste Recycling Ltd has operated a scrapyard at the site since the 1970s with the benefit of a planning permission which was not subject to any conditions relevant to the issues here. It replaced an old fragmentiser used for dealing with scrap metal with a new one in 2006, and around that time its throughput increased notably. Lorries arrived at unsocial hours. Dust was created.

[3] The County Council served Enforcement Notice A alleging a material change of use without planning permission caused by an increase in throughput and its effect. It was arguing that the material change of use had been caused by an intensification in the use. It required the use to return to operations as they had been

conducted before 2006, with various controls imposed, rather resembling conditions, through the medium of steps required to be undertaken to remedy that breach of planning control.

[4] Enforcement Notice B alleged that a number of buildings, including the replacement fragmentiser, had been erected without the planning permission they required and should be removed.

[5] After an eight-day inquiry and considering the evidence, the Inspector rejected the County Council's argument on the material change of use essentially because most of the significant effects of which residents and local businesses complained were not caused by the increase in throughput. She rejected the County Council's arguments on operational development because the buildings were permitted development, not requiring specific planning permission, and she also concluded, in the light of her decision on Enforcement Notice A, that the scrapyard use was not unlawful.

[6] Hertfordshire County Council, with permission, challenges those decisions. Mr Matthew Reed, appearing for the County Council, contends that the Inspector wrongly excluded from her judgment as to whether a material change of use had taken place by way of intensification those effects attributable to changes related to the scrapyard use other than the increase in throughput. The argument on behalf of the second Respondent, Metal and Waste Recycling Ltd, has involved some consideration of the concept of material change of use by intensification.

[7] The County Council contended that the buildings were not permitted development because the scrapyard use should be regarded as falling outside the scope of an industrial process within the meaning of the Town and Country Planning (General Permitted Development) Order 1990, SI No 418, and the scrapyard use was not lawful.

[8] The terms of Enforcement Notice A are important. The breach of planning control as amended alleged:

> ". . . without planning permission the material change of the use of the Land from a scrap-metal yard with an average yearly material throughput of 121,174 tonnes, to a scrap yard, (including as part of this use an end of life vehicle recycling facility), with an average yearly material throughput of 231,716 tonnes, the totality of the new use having a different nature and character from the former use."

[9] The reasons for the issue of the Enforcement Notice refer to the impact which that breach of planning control has had: new buildings were built, including the new fragmentiser "to service this substantial increase in throughput". The steps which Enforcement Notice A required Metal and Waste Recycling Ltd to take to remedy the breach of planning control read like the imposition of a series of conditions. These were intended to limit the monthly throughput, the days and hours of operation, and the number and hours of heavy goods vehicle use. They required the buildings which were said to be required to service the increased throughput to be demolished. Those buildings were also the subject of Enforcement Notice B.

[10] Mr Reed, for the County Council, agreed that para 10 of the Inspector's decision letter accurately summarised his submissions. In view of the arguments, I set them out:

> "10 The increase in throughput at the time of the installation of the fragmentiser has been used by the Council to describe the extent of the material change of use. However, it accepts that the significant increase in throughput, itself does not amount to a material change of use. The Council has had regard to the planning consequences of that increased throughput in reaching its conclusion that there has been a material change of use. The essence of the council's case on this ground is that there has been an intensification of use which has had significant effects on the locality. It contends that the proper question to consider is not whether the description of the use remains the same but whether the character of the use falling under that description remains the same. The Council relies upon case law to support its contention that in deciding whether the current use is materially different from the previous use, it is appropriate to have regard to the impacts of the current use in comparison to the former use. The Council's position is that there can be a material change of use by reference only to changes in impacts."

[11] Metal and Waste Recycling's submissions in contrast were:

> "11 The Appellant strongly rejects the Council's submission that there can be a material change of use by reference only to changes in impacts. He accepts that a comparative exercise is necessary based on the effects of the increase in throughput, but submits that the fact that there are more HGVs, general activity, explosions, noise or dust is not sufficient to constitute a material change of use. The question to be asked is whether the effects of that increase in throughput, including effects off-site, are such that there has been a definable change in the character of the use of the land. If off-site effects are being relied upon they must be such as to have caused some fundamental change in the character of the use of the land. Mere intensification, even with adverse side effects, is not enough."

[12] Fundamental to the County Council's case is the contention that although the significant increase in throughput was by itself insufficient to constitute a material change of use, the planning consequences of that increase demonstrated a material change of use. Metal and Waste Recycling contended that the adverse impacts from the increase in throughput were not sufficient to demonstrate a material change of use by intensification. A definable change in the character of the use of the land was required.

[13] The Inspector's decision letter then considers in sequence the particular impacts relied on by the County Council. In para 68 and following, she set out accurately the effect of a number of authorities cited to her on the scope of intensification. She said:

> "In the light of judicial pronouncements, and after considering the approaches of the parties, it seems to me that what must be determined is whether the increase in the scale of the use has reached the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it has resulted in a such a change in the definable character of the use that it amounts to a material change of use. It is necessary to first look at the effects of what has been done at the site."

[14] She then drew together her unchallenged conclusions of fact and degree, and her conclusions as to the cause of the impacts relied on, in paras 69 to 71. So far as dust was concerned, she said:

> "There is no evidence to indicate that any dust created by the site would cause a risk to human health. I have concluded there has been a material increase in dust experienced by local businesses which has emanated from the site since the increase in throughput occurred. However, there is no substantial evidence that the increase in dust identified by local residents at their homes derives specifically from the appeal site or can be directly attributable to the increase in throughput."

[15] She then turned to the explosions caused by the quantity of gas bottles in the waste handled at the site. She said "The evidence also does not support the conclusion that the increase in throughput has materially changed the level of impact resulting from explosions at the site."

[16] There had been a significant increase in the number and size of heavy goods vehicles going to the site. She said about that:

> "Nevertheless, the size of vehicles and the use of containers to transport material from the site can be attributed to changes in export markets and practices of the haulage industry, rather than the increase in throughput."

[17] The impact, however, of that increase in the number and size of HGVs was more complex. She had previously found that there had also been an increase in HGV movements generally on the road which led to the industrial estate and to the scrapyard. She continued:

> "There is additional road traffic noise but the main disturbance caused to residents is by HGV vehicles going to and from the site during the '*night time*' period. The available evidence indicates that this relates to drivers' working practices and the need to comply with regulations and is not directly caused by the increase in throughput. There has not been any material change in the impact of noise disturbance caused by HGVs that can be attributed to the intensified

> scrap yard use. The increase in HGVs going to and from the site as a result of the increase in throughput has not given rise to any material harm to the safety of people using the public highway."

[18] In para 70 she turned to on-site noise:

> "As regards the noise emanating from the site, it must be recognised that prior to the carrying out of the noise attenuation measures, the new fragmentiser was initially identified as the source of the elevated noise levels giving rise to complaints. However, the situation is obviously very different with the acoustic shield and the other noise attenuation measures in place. There have been no significant alterations in the noise characteristics of the other on-site activities. The evidence does not reveal any significant adverse planning consequences arising from the noise generated by the on-site operations following the increase in throughput. Taking all the various effects as a whole, they cannot be said, as a matter of fact and degree, to have produced a materially different situation in planning terms than previously existed."

[19] Her overall conclusions are in para 71:

> "I concur with the Appellant's general proposition that the primary way a planning authority should control the extent of any use is through the imposition of conditions. This site is a long established scrap metal yard which has been operating under an effectively unrestricted planning permission since the 1970s with no conditions attached to control matters such as the number of lorry movements or hours of operation. The effects of the intensification need to be such as to have caused a material change in the character of the use. There have been changes in the effects of the operation upon the surrounding area and, in some instances, the very substantial increase in throughput has been a contributory factor. However, many of the identified impacts upon local residents and businesses derive from extraneous factors and not the increase in throughput. I conclude that the increase in throughput has not had such materially different planning consequences as to take it, as a matter of fact and degree, beyond the normal fluctuations in activity that could reasonably be expected to be experienced by the business. It has not resulted in a change in planning effects of such magnitude so as to cause a material change in the definable character of the use of the land. I find, on the balance of probabilities, that the material change of use alleged by the corrected notice has not taken place. The appeal succeeds on ground (c)."

[20] Mr Reed's challenge to her conclusions in relation to intensification proceeds on a narrow front. He contends that in her judgment as to whether a material change of use by reason of intensification had occurred, the Inspector had focused exclusively on impacts caused by the increase in throughput, with the result that she had ignored impacts caused by changes, whether on or off-site, which were caused other than by that increase in throughput: for example, by changes in the number of gas bottles in the arisings, or changes in the drivers' working hours.

[21] The Inspector's detailed conclusions show that there were serious noise problems created initially by the installation of the new fragmentiser, largely resolved by later attenuating measures. This was then, in her view, not materially different from what previously had existed (see para 23). She was unable to conclude that the increase in throughput had caused a change in the impact of explosions; yet, as para 29 shows, she thought it likely that there was some increase, not attributable to the increase in throughput. This aspect of the impact was, said Mr Reed, ignored in her assessment of whether there was a material change of use by intensification.

[22] In relation to lorry noise off-site, she appears in paras 39 and 40 to conclude that the increase in heavy goods vehicles entering the site is directly related to the increase in throughput, but that the disturbing impact of their noise was attributable to their arrival at the site at unsociably early hours. At para 45 of the decision letter she attributes this impact not to an increase in throughput, but to changes in drivers' working practices, which would have occurred whether the throughput had increased or not; (these are not drivers employed by Metal and Waste Recycling Ltd).

[23] Accordingly, submitted Mr Reed, that aspect of the impact of change was ignored because it was not attributable to the increase in throughput. The same applies to her conclusion about the increase in the annoying use of bleepers. This increase was caused by the turning movements of container lorries, which was

not so much a function of the increase in throughput, but of changes in the way in which waste was handled off-site. That impact was accordingly put to one side.

[24] The increase in dust, so far as it affected the nearby industrial estate, was caused by the increased throughput. But so far as residents were concerned, she could not conclude that the dust they experienced derived from the site at all or from an increase in throughput.

[25] So, reading para 71 of the decision letter with that background, Mr Reed is plainly right to submit that the focus of the Inspector's conclusions on whether a material change of use by intensification had occurred, at least so far as impacts were relevant, focused on the impacts caused by the increased throughput and excluded impacts caused by other changes. Those which were excluded from account in particular included part of the impacts of gas bottle explosions, at least part of which were attributable to the increase in the numbers of such bottles in the arisings anyway, lorry noise in the early hours, which were attributable to the change in drivers' working practices, and the noise of the reversing bleepers.

[26] The crucial question, however, is whether that approach was an error of law, as Mr Reed submits. He contends that the materiality of a change of use by intensification can, though it may not have to be, judged solely by the change in impacts on or off-site which a use may have, even where the use remains one of the same generic type - here a scrapyard use. The character of the use can be judged and determined by those effects. It is not necessary for them to be attributable to a specific on-site change such as here: the significant increase in throughput which occurred in 2006, at the same time approximately as the new fragmentiser was installed. Hence the Inspector was wrong to exclude those effects which she did exclude from her judgment of whether there had been a material change of use by intensification.

[27] Mr Reed submitted that Enforcement Notice A had conveyed the approach he contended for through its use of the words "the totality of the new use having a different nature and character from the former use". He did however accept that that was not how the case was being put to the Inspector.

[28] I reject Mr Reed's contentions. I take the last point first because it is significant for both of his arguments in relation to Enforcement Notice A. The material task of the Inspector on this aspect of the Enforcement Notice appeal was to decide whether the matters alleged in the Enforcement Notice constituted a breach of planning control. The allegation in the Enforcement Notice, after argument before me by Mr Reed, may not be as clear as it was to the parties and the Inspector at the inquiry.

[29] The former use was the scrapyard use with a particular throughput. The new use was the scrapyard use with the higher throughput. That increase was the material change of use. The significance of the reference to "totality" as encompassing changes unrelated to an increase in throughput, which occurred off-site or which would have occurred on-site anyway to the same or at least to some degree, was simply not raised before the Inspector. Those changes were not understood by the parties to be relevant of themselves to the material change of use by intensification.

[30] It is perfectly clear from the second page of the Enforcement Notice, which refers to the planning reasons behind its issue, that the case was concerned with the effect of the increase in throughput. The issues as recorded and debated before the Inspector, and as judged by her, were whether the effects on or off-site relied on by Hertfordshire County Council were caused by the increase in throughput. That is clear from the record of the County Council's argument in the third sentence of para 10 of the decision letter above, which Mr Reed accepted faithfully recorded his submissions. He took me to his closing submissions in support of his argument, but it is perfectly clear, as he accepted, that they are structured in the same way in order to focus on the effects caused by the increase in throughput.

[31] Metal and Waste Recycling Ltd focused its own submissions to the inquiry within that same framework, a framework selected by the way in which the County Council sought to present its case on the application to the facts of what it saw as the meaning of its Enforcement Notice. Not surprisingly, that is the framework which the Inspector adopted for her consideration of Hertfordshire County Council's argument that there had been a material change of use by intensification.

[32] Hertfordshire County Council lost before her because it lost many of the significant arguments of fact and degree as to whether the effects relied on were wholly or significantly attributable to the increase in throughput. It is perfectly clear that it had thought that the installation of the fragmentiser was the cause of the increase in throughput, and that the amenity impacts which occurred on and off-site were the consequence of that increase in throughput. But it failed on that ground because the evidence of Metal and Waste Recycling Ltd on those matters was preferred.

[33] The Inspector looked at those impacts which she concluded were attributable to the increase in throughput, but reached her unassailable and well reasoned conclusion on that point adverse to the County Council.

[34] In my judgment, it is not open to the County Council to criticise the Inspector for adopting the basis for decision-making which it had urged upon her, and for failing to adopt a basis which it did not urge upon her. She cannot be said to have misinterpreted the nature of the allegation in the Enforcement Notice, nor to have omitted from consideration material factors to the issue of whether there had been a material change of use as formulated in the Enforcement Notice or as contended for by Hertfordshire County Council.

[35] In any event, I am not persuaded that the factors she excluded were material considerations, however the case had been presented. The concept of a material change of use by intensification requires, as a necessary but not sufficient condition, an increase in the scale of all or some of the activities on-site, leaving aside how or where that has to manifest itself. It is that increase which has to cause the change of use. To the extent that effects are relevant, it is the effect from that increase which matter. A change in the nature of activities on the site, or a change in the relative proportions of mixed uses on the site may give rise to some material change of use other than by way of intensification. But if such changes themselves do not bring about a material change of use as was the case here, the activities as varied can be carried on as part of the existing or permitted use. Their effects are permitted effects.

[36] Similarly, 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. 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.

[37] I do not doubt that a combination of intensification and other changes in activities can constitute a material change in use; but what could be done without the need for permission would still have to be ascertained. That is how the Inspector approached it. Gas bottle explosions for example would have occurred anyway, as would the use of container lorries and the unsociable hours of the arrival of HGVs outside the site as part of the permitted use. They were not, or largely not, related to the increase in throughput, and so rightly were or largely were excluded from consideration. So even if effects could prove that a material change of use had occurred, they had to be effects generated by activities beyond those which did not require planning permission.

[38] Mr Anthony Dinkin QC, for Metal and Waste Recycling Ltd, submitted, in support of the Inspector's conclusions, that in effect there had been a degree of intensification falling short of that which could show a material change of use; a material change of use by intensification could not be shown simply by reason of increased impacts, however grave. He pointed out that the County Council had accepted that the degree of

increase by itself did not show that there had been a material change of use, and that its argument as to impact on and off-site was the crucial determinant for its argument. The on-site primary or generic use as a scrapyard was unchanged, as the Council had accepted, and there had been no change in the nature or type of activities undertaken on the site. Mr Dinkin rightly points out that the Inspector so concluded at para 67 of the decision.

[39] Mr Reed submitted that a material change of use by intensification could be shown by the effect of on or off-site impacts alone. That had happened here, and was why all impacts had to be considered.

[40] Although the concept of a material change of use can be expressed clearly enough as a concept, it is elusive in practice, perhaps even illusory. But one point is clear from all the authorities, and the Inspector expresses it correctly in para 68 of her decision, as I set out above: the change relied on has to result in a material change of the use of the land, and it can only do that by bringing about a definable change in the character of the use made of the land.

[41] I have no difficulty in seeing that significant environmental effects, experienced on or off-site, may support the contention that a material change of use of land by intensification has occurred. There are plenty of authorities to that effect. But I do not see how effects, whether on or off-site, can themselves constitute a material change in the use of the land. The concept focuses on the use made of a particular piece of land. I do not see how an increase in lorries, for example, arriving in the road at unsocial hours, or creating problems at a junction a mile away, or an increase in noise or dust experienced off-site from activities on-site, is capable of itself or themselves, whatever the degree of increase, of constituting a material change of use on a particular site. It may be very relevant to the argument that there has been a material change in the character and use of land. For example, a specialist gas bottle disposal facility might be treated as a materially different use from a general scrapyard because of its noise impacts. But of itself, an increase in noise impact, however severe, cannot be a material change in the use of the land.

[42] The relevance of impacts comes in evidencing a material change of use of the land, a definable change in its character, but one which is defined by a material change in use, not by a change however severe or minimal, in the effects of a use.

[43] I add these words of caution about attempting to broaden material change of use by intensification as a substitute for proper conditions on planning permissions. Although authorities, in the Court of Appeal for example in *Fidler v the First Secretary of State* [2004] EWCA Civ 1295 at para 28, and earlier in, for example, *Lilo Blum v the Secretary of State for the Environment* [1987] JPL 278 per Simon Brown J, treat the principle of a material change of use by intensification as well established, the fact remains that no decided case has been shown to me in which a material change of use by intensification has been found to have occurred.

[44] In *Brooks and Burton Ltd v the Secretary of State for the Environment* [1978] 1 All ER 733, 76 LGR 53, [1977] 1 WLR 1294, Megaw LJ pointed out on p 1306E-J that experienced planning counsel had found no reported case in which an intensification in existing use had been found to be a material change of use. That remained the position in front of me. Although earlier cases, mentioned in the authorities cited above say that the existence of a material change in use by intensification is well recognised, they do no more themselves than recognise that material change of use by intensification may exist. They have never actually found one.

[45] This reflects what Sullivan J said in *R v Thanet District Council v Kent International Airport plc* (2000) 81 P & CR 520 at para 54, [2000] EGCS 87, [2001] PLCR 22:

> "It is easy to state the principle that intensification may be of such a degree or on such a scale as to make a material change in the character of a use, it is far more difficult to apply it in practice. There are very few cases of 'mere intensification'. Usually the increase in activity will have led to some other change: from hobby to business, from part to full-time employment, or an increase in one use at the expense of other uses in a previously mixed use."

[46] The precise description of the existing and changed uses is important. Mere generic descriptions may not always be sufficiently precise to reflect material planning differences. The statutory overlay, for example in relation to generic residential and industrial uses, may now qualify what might have been the role which the concept of intensification may have been thought able to play many years ago. But for all that, the cases have all emphasised the need to identify a material change in the definable character of the use of the land. None of them has suggested that this could be done simply by reference to examining impacts alone, relevant though they are to that crucial issue in a material change of use by intensification case.

[47] Accordingly, I reject Mr Reed's submission that the Inspector ought to have examined impact alone. She had to examine something else as the starting point for her examination, however much the impacts might have been evidentially relevant.

ENFORCEMENT NOTICE B

[48] Mr Reed contended that the fragmentiser constituted operational development for which planning permission was required. The Inspector concluded that it was development permitted under class B(a) in Pt A to Sch 2 to the GPDO 1995. This permits, subject to immaterial exceptions, development consisting of the installation of replacement plant to be carried out on industrial land for the purposes of an industrial process. "Industrial land" means land used for carrying out an industrial process. "Industrial process" is defined in art 1(2) as a process for or incidental to "(b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article". On the face of it, that is applicable here to the fragmentiser, as the Inspector found, and so the fragmentiser was permitted development.

[49] Mr Reed repeats here the argument which failed before the Inspector. He points out that the Town and Country Planning (Use Classes) Order 1987, SI No 764, it adopts materially the same definition of "industrial process". The Use Classes Order treats changes of use within the defined use classes as immaterial, including changes within Class B1, light industrial, and within class B2, general industrial. The definition of "industrial process" applies to both of those classes.

[50] However, a scrapyard use is explicitly excluded from all schedule classes, including class B1 and class B2 into which it would potentially fall. So a general industrial site cannot become a scrapyard without planning permission. It is illogical then, contends Mr Reed, if a scrapyard is treated as industrial land, or a place where an industrial process is carried on so that it has permitted development rights, but land in a general industrial use cannot change to a scrapyard use without specific planning permission. The same exclusion from the definition of the scope of the Use Classes Order should apply to permitted development so that scrapyards do not have permitted development rights.

[51] I cannot accept that argument. First, Parliament has not put into the 1995 order the exclusion which it put into the 1987 order. That must have been a continuing conscious decision. No basis has been shown for interpreting that later instrument as impliedly incorporating the omitted exclusion - and it must have been deliberately omitted, even if there is no obvious reason for that, according to Mr Reed.

[52] Second, there is, in my judgment, a real and obvious difference between treating a change of use from general industrial land to use as a scrapyard as material so that a new scrapyard needs permission, and giving permitted development rights to those scrapyards which already exist. That is what happened here. I accordingly reject Mr Reed's submission on that point, as did the Inspector.

[53] It is not necessary to deal with his arguments on whether the scrapyard is a lawful use in the light of the conclusions I have reached in relation to Enforcement Notice A. Accordingly, this appeal is dismissed.

Appeal dismissed.