DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H02-1123-23**	**Applicant:**	**Mr J O'Connor**
Proposal:	Proposed static and touring caravan park, inc. new toilet block and access road - approved under H02-0359-00. Modification of the wording of Condition 6 to read 'The static caravans shall not be occupied during the month of January and the first two weeks of February each year. Caravans 1, 2, 3, 4 and 14 are excluded from the condition and can be occupied all year.		
Location:	Bridge Inn Caravan Park Bridge Inn Common Drove		
Terminal Date:	21st March 2024		

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
20	Accommodation for Gypsies, Travellers and Travelling Showpeople

National Guidance

National Planning Policy Framework 2023

Section 2 - Achieving sustainable development
Section 4 - Decision-Making
Section 5 - Delivering a sufficient supply of homes
Section 9 - Promoting sustainable transport
Section 14 - Meeting the challenge of climate change, flooding and coastal change
Section 15 - Conserving and enhancing the natural environment

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	1	0	0	0
WARD MEMBER	0	0	0	0
PLANNING LIAISON OFFICER - FLOOD RISK ASSESSMENT	1	0	0	0
WELLAND AND DEEPINGS INTERNAL DRAINAGE BOARD	0	0	0	1

SHDC INTERNAL	0	0	2	0
RESIDENTS	9	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This application is submitted under section 73 of The Town & Country Planning Act 1990. The applicant seeks to amend/vary the wording of condition number 6 attached to planning permission H02/0359/00.

Condition 6 states:

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

Reason: The applications 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

The applicant proposes the following variation:

The static caravans shall not be occupied during the month of January and the first two weeks of February in each year. Caravans 1, 2, 3, 4 and 14 are excluded from the condition and can be occupied all year.

The proposal is to give a permanent occupancy to 5 number static caravans. The literature received within the submission states that " Whilst previous applications have suggested that the description would be for "Gypsy/Traveller"
use, the proposed application only seeks to obtain residential use, irrespective of the occupiers".

LPAs position on planning application H02/0359/00

In the most recent Appeal Decision when considering the planning history of the site the inspector states:

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.

South Holland District Council however maintain its position that the 2009 permission combined with the 2010 appeal decision govern the site.

A witness statement which sets out the Council's view of the planning history in full detail has been provided by the head of planning enforcement. This statement explains in detail how the permission granted under H02-0359-00 could not have been implemented. Application Ref H02-0700-09, which granted permission for a proposal '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. These applications regularised the original permission which was never implemented in

accordance with the approved plans.

The witness statement from enforcement continues *"On 1st August 2011, a breach of condition notice was issued in relation to a breach of condition 5 of planning permission H02-0700-09 (landscaping). The notice required a scheme of boundary hedge planting, landscaping and tree planting to be submitted to the Council within 2 months of the notice taking effect, and for the approved scheme to be carried out within 8 months of the notice taking effect... A condition compliance application was subsequently submitted, reference H02-0817-11, details of landscaping scheme (condition 5 of H02-0700-09). The scheme was approved... On 5th February 2013, I carried out a site inspection and found that the landscaping had been planted in accordance with the approved details and the breach of condition notice complied with."*

It is considered that if the inspector was privy to this information at the appeal a different conclusion would have occurred. Clearly the 2009 permission was implemented and related enforcement notices also complied with. It is on this basis that Council to maintain its position that the 2009 permission combined with the 2010 appeal decision govern the site.

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.

The application site has an extensive planning history, dismissed twice at appeal for seeking permanent residential use of the static caravans. The applicant states that the caravans that are subject to this permission are being used 'by the same occupants for 321 days of the year'. The occupants include 5 dependent children of school age.

History

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 30.01.20. Appeal Dismissed 11-01-23

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.

H02-0700-09 - FULL - Approved 20.01.10 - Modify layout for existing holiday caravan park (originally approved under H02-0359-00). Appeal in relation to conditions 1 and 4 of planning permission H02-0700-09 - allowed
10.11.10.

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

Welland & Deepings IDB
No comments to make

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

Environmental Protection
No concerns

Parish
Objects - CPC does not believe the situation has improved since the previous application was rejected by the planning inspector. Conditions have also deteriorated with the recent flooding and further risk in this area

Representations

A number of objections have been received against the planning application. The material points of these are summarised below.

Objections
-Character Issues
-Flood risks
-Original permission was not for Gypsy Travellers
-Families in danger from flood risk when livening on the site
-Traffic Issues
-Sewage

Planning Considerations

In terms of the planning assessment it is key to consider whether or not A S73 application is appropriate in this instance, and this forms the first part of the assessment. Secondly and notwithstanding the planning history complexity, the most recent appeal decision does offer a framework for discounting unnecessary assessment topics.

Therefore the main issue for this assessment the relates to;

- Effect of original application

In the interest of completes the following subsidiary topics are assessed;

-Planning Principle
-Flood Risk

Effect of original Application

The LPA maintain the position that the 2009 permission combined with the 2010 appeal decision govern this site. Planning permission H02-0359-00 is in effect superseded by those permission's the appeal decision APP/A2525/A/10/2128849 (dated 19 October 2010) 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.

Section 73 of the 1990 Act provides for applications for planning permission to develop land without complying with previously imposed planning conditions. The local planning authority can grant permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should be kept.

However there are limits imposed by the wording of s73 itself on the type of amendment which can be affected, such an instance is that the original planning permission must have been lawfully implemented or still be capable of implementation.

On this basis it is considered that given the permission granted under H02-0359-00 has been superseded by H02-0700-09, and by the appeal decision APP/A2525/A/10/2128849, which have been evidenced to be implemented, then a S73 cannot be used to vary condition 6 of planning application H02-0359-00, as the permission no longer exists.

In this instance (to allow for the permanent occupancy of 5 statics, as applied for under this application) the correct procedural approach should have been to submit a new full application, or vary those permission that teh LPA maintain govern this application site.. Therefore given the councils position that this permission not longer exits (superseded by newer permissions which have been implemented) then there is no permission/condition to vary. A S72 is not the correct mechanism for the applicant to apply when seeking permanent occupancy of 5 of the static caravans.

In the interest of completeness the report will assess the matters in relation to both principle and flood risk.

Planning Principle

The application site is located outside of the defined settlement limits of Crowland and in the open countryside. SELLP Policy 1 states of these locations:

The rest of the Local Plan area outside the defined settlement boundaries of the Sub-Regional Centres, Main Service Centres, Minor Service Centre and Other Service Centres and Settlements is designated as Countryside. In the Countryside development will be permitted that is necessary to such a location and/or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits.

Whilst under SELLP Policy 1 development that would support local recreation and tourism are supported (as are gypsy/traveller sites in some instances) this proposal for permanent residential accommodation is not considered acceptable (especially one which does not necessarily require a countryside location).

Under paragraph 5.8 of the planning statement, the applicant states:

Whilst previous applications have suggested that the description would be for "Gypsy/Traveller" use, the proposed application only seeks to obtain residential use, irrespective of the occupiers as retrospectively applying a condition based upon ethnicity and lifestyle could be considered discriminatory. Therefore, there is no material change in the application site and no building works happening.

Previous discussion around Gypsy Travellers as a topic have been intensive across the previous two appeals, given one application proposed specifically the condition was varied in those terms. The applicant confirms in this submission that the variation of the condition relates to giving the static caravans a permanent residential use, rather than giving a restricted residential use.

Therefore, there is no requirement to revisit an assessment in relation to provision for Gypsy

Traveller sites, especially as the applicant confirms that the proposal is for an open residential use.

On this basis the proposal is not considered acceptable, the existing use of the site is for holiday purposes, to open this up to general permanent residential occupancy through the variation of condition is not in accordance with SELLP Policy 1.

Flood Risk

SELLP Policy 4 sets out the districts approach to Flood Risk. In relation to caravan and mobile home accommodation the policy states:

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 1 st November in any one year and the 14th March in the succeeding year.

The application site is located within Environment Agency flood zone 3. 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. The proposed use is classed as 'highly vulnerable' under the government flood risk classification, 'Caravans, mobile homes and park homes intended for permanent residential use'.

Of pertinence is the inspector's consideration in relation to flood risk in respect of the difference between a holiday use and a permanent residential occupancy, it was stated:

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.

The Environment Agency have been consulted under this application and have stated:
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 (year round) 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.

The applicant since the last appeal has provided an FRA, however this has limited material impact upon the proposal, over what has already been considered in flooding terms under previous applications. The EA state that "We have not undertaken a comprehensive review of these documents as they do not appear to include any new information on flood risk to the site. We are not aware of any material changes in the risk to the site".

The application site therefore FUNDEMENTALLY is contrary to planning policy both NPPG and SELLP Policy 4. The variation of condition would instigate a material change to year-round accommodation, placing those units within a 'highly vulnerable' category. Furthermore, since the approval of the site as holiday accommodation new flood modelling data and local (and national) policy is in place. A proposal for a new holiday caravan site in such a location in unlikely to be approved.

Under paragraph 5.9 of the planning statement, the applicant puts forward:

The main issue for this site, is that the Planning Inspectorate did not feel that the site satisfied the sequential test. However, this application is for a Variation of Condition with no proposed building works happening. As such there is no material change in the application site and no sequential test can be applied to an existing lawfully used site.

This is not strictly the case, the inspector considered that the variation of condition would result in a material change to the site. A change from holiday use to one of permanent residential occupation. This is sufficient to suggest a sequential test is applied. However, using SELLP Policy 4 as a

barometer, the change of condition which would (if approved) allow for permanent occupancy of 5 caravans and so a material change would occur (holiday park to permanent residential accommodation). This would also result in those static caravans (subject to this application) to be reclassified as 'highly vulnerable'. On this basis then SELLP Policy 4 is clear that the development in flooding terms is unacceptable in principle. Therefore, a sequential test is purposeless as the site under the existing policy condition could not reasonably be supported for permanent occupancy (even if no others are available). This position is inextricably linked to the grave risks from flooding and the permanent occupancy of caravans on this application site.

It is therefore considered that based upon the real risks to permanent occupiers of caravans on this site, in the scenario where a flood event may occur, the potential harm outweighs any benefits brought about by allowing a permanent residential occupancy of these static caravan units.

On this basis it is considered that the proposal would be contrary to the aims of SELLP Policy 4 and planning practice guidance.

Planning Balance

The LPA contend that the application sought to be varied no longer exists; superseded by H02-0700-09, and by the appeal decision APP/A2525/A/10/2128849.

Notwithstanding, even if this approach was procedurally correct it would allow a permanent residential use of 5 number caravans and so it would be in conflict with SELLP Policy 1. Moreover, the consequences in relation to flood risk can not be outweighed. The Environment Agency have vehemently objected on principle grounds to this proposal and have set out a position that the variation of condition (which would allow permanent residential occupancy) is unacceptable in principle.

Furthermore, the proposal to allow a 'general' permanent occupancy in this countryside location is considered contrary to SELLP Policy 1.

Conclusion

The permission subject to this S73 application has been superseded by H02-0700-09, and by the appeal decision APP/A2525/A/10/2128849, procedurally then this application cannot be determined in a positive manner.

The proposal which seeks to vary condition 6 of planning permission H02/0359/00 would result in an unrestricted permanent residential occupancy of these units. Such an occupancy is in appropriate within the open countryside, unless related specifically to one that has been demonstrated to require a countryside location. Moreover, a permanent residential occupancy of these units would result in a material change of part of the site, placing the units into a 'highly vulnerable' category. Such development is not supported by SELLP Policy 4, which is clear in stating "Caravans, mobile homes and park homes intended for permanent residential use will not be permitted in areas at risk of flooding."

On this basis the proposal to vary condition 6 is refused.

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.