Planning Statement

Change of Use of Agricultural Land to Provide 5 Gypsy/Traveller Family Pitches Each having a Static Mobile Home, Dayroom, Parking for a Tourer and 2 Vehicle Spaces together with a Treatment Plant, the Laying of Hardstanding and Associated Ancillary Works – Part Retrospective (Resubmission)

Land at The Orchards, Blazegate, Gedney, Spalding, Lincolnshire, PE12 0AD

Prepared on behalf of: Mr John Rooney (Applicant)

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1.0 Introduction

This Planning Statement has been prepared by NKF Planning Consultancy Ltd on behalf of the Applicants to support a planning application for 'Change of Use of Agricultural Land to Provide 5 Gypsy/Traveller Family Pitches Each having a Static Mobile Home, Dayroom, Parking for a Tourer and 2 Vehicle Spaces together with a Treatment Plant, the Laying of Hardstanding and Associated Ancillary Works – Part Retrospective (Resubmission)' on land at The Orchards, Blazegate, Gedney, Spalding, Lincolnshire, PE12 0AD.

The purpose of this Statement is to address the reasons for refusal to grant planning permission under reference number: H06-0772-21 and to assist the decision maker in considering the planning balance of the proposed development, having regard to recent case law and moreover Appeal Decision reference: APP/A2525/W/22/3300517, dated 31 October 2022. If the decision maker requires further information or assistance in terms of the planning merits this case be provided.

This Statement should be read in conjunction with the following documents, which have been submitted as part of the planning application:

1. Application Form
2. Location and Existing Site Plan
3. Proposed Site Plan and Access and Dayrooms
4. Proposed Dayroom Plan
5. Details of Types of Caravans
6. Original Design and Access Statement
7. Previous Supporting Planning Statement
8. Flood Risk Assessment
9. Refusal Decision Notice reference: H06-0772-21, dated 17 January 2022
10. Enforcement Notice reference: SHDC.EN136, dated 02 February 2022
11. Section 70C Decision Notice reference: H06-0791-22, dated 02 September 2022
12. PINS Appeal Decision reference: APP/A2525/W/22/3300517, dated 31 October 2022

The Applicant will submit (via email) a number of documents relating to personal circumstances which are confidential but need to be taken into account when determining this application.

2.0 Preliminary Matter

This is the thir resubmitted planning application by the Applicant. The first resubmitted planning application was for the same development insofar as the number of caravan pitches and the same applicant, which was declined pursuant to section 70C(1) of the Town and Country Planning Act 1990. A copy of Decision Notice reference: H06-0791-22 is attached, which sets out the council reasoning.

Section 70C(1) provides that: *"A local planning authority in England may decline to determine an application for planning permission for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control."*

The second resubmission was withdrawn following the Councils advice that the Environment Agency would maintain their objection to the proposal. Therefore, a new flood risk assessment has been carried out and submitted in support of this application, which confirms:

- The site is located within an Internal Drainage Board catchment with a minimum standard of drainage of 2% annual probability (1 in 50 chance each year) which accords with DEFRA guidelines for rural development. The risk of flooding is lowered further due to the South Holland IDB high priority watercourses incorporating a significant freeboard. This provides storage during events greater than 2% annual probability (1 in 50 chance each year).
- The proposed development is in Flood Zone 3. The site benefits from defences on the tidal River Nene that provide protection during the 0.5% annual probability (1 in 200 chance each year) tidal event including an allowance for climate change.
- The site could experience depths of between 0.5m – 1.0m and 1.0m – 1.6m arising from a breach in the defence during a flood that has a 0.1% tidal chance of occurring in any one year up to 2115.
- It is proposed that the static mobile homes and dayrooms have a floor level not less than 1.6m above general ground levels, the units are secured by anchors and the Flood Warning and Evacuation Plan is followed.
- The development passes the Sequential Test and Exception Test and is therefore suitable for the proposed location.

It is noteworthy that the statutory purpose of Section 70C(1) is a discretionary power which was introduced to avoid giving landowners a second bite of the cherry and, importantly, trying to delay enforcement action being taken.

It is important to be mindful of the overall legislative objective, which is to ensure that an applicant cannot insist upon having two separate considerations of the underlying merits – namely, by having a right to appeal against the EN on the ground that planning permission should be granted and a right to appeal any refusal of planning permission. That is the mischief, or abuse, that Section 70C is designed to remedy: *R (O'Brien) v South Cambridgeshire DC* [2016] JPL 656.

In this particular case, the Applicants missed the opportunity to appeal against the refusal to grant planning permission because the council served an Enforcement Notice reducing the timeframe for an appeal from 6 months to 28 days. The Applicant also missed the opportunity to appeal the Enforcement Notice. In both cases, it should be noted that the Applicants find it difficult to read and understand documents. Moreover, the Applicants took advice from their then agent who advised them that the timeframe was 6 months, not knowing the effect of an enforcement notice.

The culmination of missing both appeals has prevented the Applicants from having the opportunity to present the planning merits of the case to an independent Planning Inspector at appeal. It is important that the planning merits are considered again by the Council or an independent Planning Inspector as it is clear the Council has previously:

1. misinterpreted Part D of Local Plan Policy 1, which is permissive rather than restrictive policy;
2. failed to meet Need for traveller pitches within the district; and
3. carry out and take into account a Welfare assessment for those occupying the site.

With regard to 1 above, we refer the Council to a recent PINS Appeal Decision reference: APP/A2525/W/22/3300517, dated 31 October 2022, which allowed planning permission for change

of use from paddock to residential use for Gypsy and Travellers (retrospective) to include 2 static caravan pitches, and associated touring caravans. This decision is a material consideration not least because it confirms the council's misinterpretation of Part D of Local Plan policy 1, which is permissive rather than restrictive.

With regard to 2 above, we submit there is a failure in policy as the council has failed to allocate any land in a Development Plan for the provision of gypsy and traveller sites and there are no realistic alternative sites suitable, affordable, available and acceptable (See *Angela Smith Doncaster MBC*) that will provide provision for the Applicant and his close family and extended family to occupy.

Although the council may be able to demonstrate a supply of five years' worth of sites against the need identified in the GTAA. This does not follow that any further proposals that come forward would be contrary to the provisions of the Local Plan as no maximum number of pitches is identified within any policy. See paragraph 7.23 of the officer delegated report for the refused planning application, it is stated that *"the view of officers is that the matter of whether the need set out above has been met is clearly debatable and potentially challengeable, and it could be construed that speculative applications of this nature indicate that there is an outstanding need for pitches."*

The GTAA is not a recent document and its findings are partly based on estimations of need. These figures underestimate the actual need and distinguish between travellers that meet the PPTS definition in Annex 1; unknowns; and those that don't meet the definition. The council has failed to review the GTAA annually or within a reasonable timeframe and therefore its figures should not be relied upon rigidly.

With regard to 3 above, there is a clear obligation upon the Council to ensure that decisions made accord with the qualified rights under Article 8 of the ECHR. Incorporated into that are the obligations set out under the United Nations Convention of the Rights of the Child, in this case specifically Article 3. Whilst insufficient information on personal circumstances was provided in support of the planning application, the Council still had an obligation to undertake such an assessment prior to the taking of enforcement action. There are people living onsite that have medical needs and children that are young with medical and educational needs. There is no indication on the enforcement notice that the Council discharged their obligation.

In the case of *Smith v Secretary of State for Levelling Up, Housing And Communities And Anor* [2022] EWCA Civ 1391 (31 October 2022), the court of appeal has determined the planning definition is 'discriminatory'. Mr Rooney has young children with medical and educational needs and moreover Ms Rooney is elderly and registered Disabled with a degenerative bone disease and her condition has deteriorated recently to the extent that she requires full time care.

For the avoidance of doubt, the application site is occupied by 14 adults, some of which are elderly with severe medical conditions and 20 children whose welfare is a priority and must be taken into account. Those occupying the site have no alternative place to stay and will be forced onto the roadside. In fact, as a response to the Councils recent letter concerning further enforcement action, some of those living on the land have presented themselves to the Local Housing Authority. This will put additional pressure on the LHA and require in one case the Council to rehouse a family with 5 children and 2 more on the way.

The personal circumstances, including such matters as health, housing needs and welfare, of persons suspected of acting in breach of planning control, must be taken into account when deciding whether to take enforcement action (see: *R v Kerrer DC, ex parte Uzell* [1996] 71 P&CR 566).

The case of *R (Banghard) v Bedford BC* [2018] PTSR 1050 (see. para. 30) that is is usually not relevant whether or not the applicant did in fact exercise his/her right to appeal the EN.

In *Wingrove*, it was discussed that "*since delay is the bugbear against which the section is directed, a claimant's actual motives to use a retrospective planning application to delay matters is clearly a consideration in favour of a decision to invoke s.70C*". Therefore, the Council should carefully consider the motives here – is this to delay enforcement or is there a genuine possibility that objections could be overcome? On this point, it was also said at para. 31:

There may be factors pointing against exercising the discretion in section 70C of the 1990 Act to decline to determine an application which for a local planning authority to ignore would open their decision to a public law challenge. Examples might be where for legitimate reasons there has been a failure to appeal an enforcement notice and the development is plainly compliant with planning provisions (for example, they have been patently misapplied or have changed) or the development can readily be made acceptable by the correct planning conditions.

In *O'Brien*, it was noted that *"..If the claimant subsequently makes an application for planning permission for that development, the planning authority is not obliged to determine that application. The planning authority has a discretion to do so (for example, where the development plan has changed, or some other material planning considerations have changed, so that the underlying planning merits may be different, and it may be appropriate to grant planning permission for the unauthorised development)".*

The discretion as to whether or not to exercise s.70C is wide. Cranston J held in *Wingrove v Stratford-on-Avon DC* [2015] PTSR 708 that:

The legislative history of section 70C demonstrates that Parliament's intention was to provide a tool to local planning authorities to prevent retrospective planning applications being used to delay enforcement action being taken against a development. It seems to me that there is a legislative steer in favour of exercising the discretion, especially since an enforcement notice can be appealed and the planning merits thereby canvassed. Since delay is the bugbear against which the section is directed, a claimant's actual motives to use a retrospective planning application to delay matters is clearly a consideration in favour of a decision to invoke section 70C.

Whilst we therefore accept that there is no obligation for the Council to validate and determine a fresh planning application, it is important to note that the discretion must be exercised rationally (see. *R (Bhanghard) v Bedford BC* [[2018] PTSR 1050 [para. 36]). Ultimately, the decision is amenable to a judicial review challenge on grounds of rationality, reasonableness and lawfulness.

For the reasons set out above, on balance we submit that it would be unreasonable for the Council to decline to determine this planning application for the following reasons:

1. The Council misinterpreted Part D of Local Plan Policy 1, as being restrictive and not permissive when determining the first planning application.

2. The Council has failed to meet Need for traveller pitches within the district, of which the Applicants fall within the PPTS definition of Traveller in Annex 1.
3. The Council failed to carry out and take into account a Welfare assessment for those occupying the site.
4. The development proposal the subject of this planning application has been reduced to 2 caravan pitches.
5. The FRA and flood risk construction mitigation measures and evacuation plan etc. overcome the flood risk objections.
6. The purpose of s.70C is to ensure that the applicant cannot insist on two separate considerations of the planning merits or "multiple bites at the cherry" (*Wingrove* at [para. 21]). From *Banghard*, the fundamental principle was that an individual could have their application determined once.

Application Site Context

The Application Site comprises approx. 1.13 hectares of a level parcel of former orchard land with existing access which lies on the south side of Blazegate, about 0.5 miles to Chapelgate, 1.2 miles to Gedney, 1.8 miles to Long Stutton and 12m to Spalding.

To the north west of the Application Site is a property a property known as Libra. To the north east of the Application Site at the junction of Blazegate and Gipsy Lane lies a residential property and commercial property. Approx. 305 metres (as the crow flies) to the north of the Application Site lies another traveller site.

The Application Site comprises an irregular rectangular area of land with a mixture of trees and close boarded fencing to the northern, eastern, western and southern boundaries. An existing access has been reinstated and running through the centre of the Application Site is a hardcore track that leads to partially complete areas of hardstanding that form 5 pitches. Water and treatment plant works have started but are incomplete.

The character of the area is rural countryside, with sporadic mixed development within the immediate locality and a good level of services and facilities within close proximity to the Application Site in nearby settlements.

3.0 Proposed Development

This planning application is a resubmission and seeks planning permission for a change of use of agricultural land to create a residential caravan site that will comprise of 5 Gypsy/Traveller family pitches each having a Static Mobile Home, Dayroom, parking for a Tourer, 2 further parking spaces and a treatment plant with reed bed soakaways, the laying of hardstanding and associated ancillary works.

The proposed development includes the improvement of an existing access to provide an improved visibility splay that will have a tarmac surface leading up to timber gates set back from the road giving a safe access into the Application Site.

The track will be improved and remain permeable, which along with turning areas and pitches will have new rolled natural stone hardstanding. There will be sufficient parking for a Tourer and two vehicles within each pitch.

A ‘Kingspan Klargester’ BioDisc treatment plant with soakaways will be installed to each pitch.

4.0 Relevant Planning History

Planning application reference: H06-0772-21 for ‘Change of use from agricultural land to provide 5 Gypsy/Traveller family pitches, each having a static mobile home, a dayroom, parking for a tourer and two vehicle spaces, together with a treatment plant, laying of hardstanding, and associated works - part retrospective’ was refused by the local planning authority for the following reasons:

1. The use for which planning permission is sought falls within the 'highly vulnerable' flood risk vulnerability category that is inappropriate to the flood zone in which the application site is located (Environment Agency Flood Zone 3). Tables 1 and 3 of the National Planning Practice Guidance (NPPG) make it clear that this type of development is not compatible to this flood zone and therefore should 'not be permitted.' Furthermore, the submitted Flood Risk Assessment does not identify the correct flood depths that the site is likely to be subject to in a flood event and therefore does not identify appropriate mitigation measures.

   In light of the above, the proposal is considered contrary to Policy 4 of the South East Lincolnshire Local Plan (2019), as well as Section 14 of the National Planning Policy Framework (2021) and National Planning Practice Guidance on flood risk.

2. The Local Planning Authority has already granted planning permission for sufficient pitches within the plan period to satisfy both the known and unknown need outlined in the South East Lincolnshire Local Plan, 2019. The proposal is therefore contrary to Policy 1 of the Local Plan which states that new development in the 'Countryside' should be necessary to such a location and/or meet the sustainable development needs of the area in terms of economic, community or environmental benefits.

An enforcement notice dated 2 February 2022 was served on the Applicant and other interested parties. This enforcement notice relates to the following alleged breach of planning control:

‘Without planning permission, the material change of use of the Land to a site for residential use by gypsy/travellers together with the stationing of caravans for human habitation and associated operational development including a treatment plant, laying of hardstanding and other associated works in connection with the residential use of the Land.’

Unfortunately, the enforcement notice took effect on 9 March 2022 before the Applicant could appeal it. The effect of the enforcement notice also reduced the Applicants timeframe for appealing against the LPA decision to refuse to grant planning permission from 6 months to 28 days.

The Council declined to determine Planning Application reference: H06-0791-22 in accordance with the provisions of Section 70C. The full reasons for the decision are set out in the decision notice. It is noteworthy that this decision was based on a resubmittion for the same development.

The following planning decisions within the LPA’s administrative area, preceding the adopted SELLP, are considered relevant to the determination of this planning application:

- H16-1003-13 – Land off Drain Bank North, Spalding – Provision of gypsy and traveller caravan site with 1- pitches each accommodating up to 3 caravans (permanent site) – Approved 20 May 2014.
- H23-0440-17 – Eccles Place, Hurdletree Bank, Whaplode St Catherine – Use of land for siting of caravan – Approved 22 January 2018.

The following planning decisions within the LPA's administrative area, post-adoption of the SELLP (March 2019), are considered relevant to the determination of this planning application:

- H06-0233-19 – Green Acres Park, Roper's Gate, Gedney – Change of use of land (part retrospective) to provide five additional gypsy/traveller pitches with one day room per pitch and existing stables converted to dayroom. Also, erection of one new store and retention of sheds for pitch 1, with construction of internal road to facilitate separate ingress and egress to and from the site, including hardstanding – Approved 5 September 2019.
- H16-0734-19 – Akita Place, Clay Lake, Spalding – Siting of mobile home (retrospective) – re-submission of H16-0030-17 – Approved 10 October 2019.
- H23-0848-19 – Bleu Raye Farm, Millgate, Whaplode – Proposed residential gypsy/traveller site – Approved 26 June 2020.
- H20-0513-20 – The Stables, Baulkins Drove, Sutton St James – Residential gypsy caravan site for one family with 2 caravans (retrospective) – Approved under H20-0287-06. Modification of Condition 1 to allow the name on the planning approval to be changed to Ms West – Approved 25 August 2020.
- H23-0841-20 – Foxes Lowe, Hurdletree Bank, Whaplode St Catherine – Change of use from paddock to travellers site for applicants and family only (part retrospective) – Approved December 2020.
- H16-0932-20 – Oak Tree Meadow, A16, Spalding – Caravan site for one traveller family (3 caravans), with associated hardstanding, cesspit drainage and portacabin/dayroom (retrospective) – Approved January 2021.
- H08-1133-20 – Travellers Lodge, Beck Bank, Gosberton Clough – Extend the existing Travellers Site into part of the adjacent paddock to accommodate two touring caravan parking spots. (Static already approved – chalet to remain on original axels) and erection of day room for the pitch – Approved January 2021
- H09-0010-21 – Rear of Rose View Drive, Holbech – Proposed 4 traveller pitches for family linked with pitch No. 6 – Approved May 2021.
- H09-0087-22 – Land To The Rear Of Emmanuel House, Main Road, Holbeach Drove, Spalding PE12 0PS – Proposed change of use from paddock to residential use for Gypsy and Travellers (retrospective) to include 2 static caravan pitches, and associated touring caravans – Allowed on Appeal October 2022

5.0 Relevant Planning Policy

In deciding the outcome of this planning application regard must be had to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires amongst other things, the determination of planning applications in accordance with the Development Plan unless material considerations indicate otherwise.

Local Planning Policy

The planning polices of the South East Lincolnshire Local Plan (adopted March 2019) that are considered to be the most relevant in the determination of this planning application include:

01 Spatial Strategy
02 Development Management
03 Design of New Development
04 Approach to Flood Risk
10 Meeting Assessed Housing Requirements
11 Distribution of New Housing
17 Providing a Mix of Housing
20 Accommodation for Gypsies, Travellers and Travelling Showpeople
28 The Natural Environment
36 Vehicle and Cycling Parking
APPENDIX 6 Parking Standards

National Planning Policy

The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied and the Planning Practice Guidance (PPG) sets out Government guidance in relation to planning related issues in England. Both are material planning considerations in determining this planning application.

Planning policy for traveller sites (PPTS) also a material consideration as it sets out the Government's aims in respect of traveller sites which include, *inter alia,* local authorities developing fair and effective strategies to meet need through the identification of land for sites; promoting more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites; and to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply.

Local planning authorities are required to use a robust evidence base establish accommodation needs to inform the preparation of local plans and make planning decisions (*Policy A*). In producing their local plans, local planning authorities should, *inter alia*, set pitch targets; identify and maintain a rolling 5-year supply of specific deliverable sites; and relate the number of pitches to the circumstances of the specific size and location of the site and the surrounding population's size and density.

Paragraph 13 sets out the wider sustainability benefits of providing permanent residential sites for gypsies and travellers which should be taken into account in plan-making and development control (*Policy B*).

Policy C suggests that gypsy sites may be located in rural or semi-rural areas, provided that they are of a scale appropriate to their specific location. This is reiterated in paragraph 25 of Policy H. Paragraph 24 of Policy H sets out issues which should be considered in the determination of planning applications for gypsy sites, including:

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

Policy H states that local planning authorities should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. However, when considering applications, local planning authorities should attach weight to the following matters effective use of previously developed (brownfield), untidy or derelict land.

The following policies of the PPTS are considered to be most relevant to the determination of this planning application:

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 H: Determining planning applications for traveller sites
Policy I: Implementation
Annex 1

The relevant statutory provisions of the Housing and Planning Act 2016 and the Caravan Sites and Control of Development Act 1960 – Section 5 are also considered relevant to the determination of this planning application.

6.0 Addressing the Reasons for Refusal

The need for, and provision of, traveller sites

In general terms the PPTS requires Councils to establish the accommodation needs for gypsies in the wider area to inform the preparation of plans and make planning decisions. Further, Councils should be able to identify and update annually a supply of specific and deliverable sites sufficient to provide 5 years' worth of sites against the locally set targets.

An independent Gypsy and Traveller Accommodation Assessment (GTAA) was undertaken to assess current and future need for Gypsy, Traveller and Travelling Showpeople accommodation in Boston and South Holland. The GTAA was public in November 2016. At the time of publication, in South Holland there were no public sites; 10 private sites with a total of 57 pitches; 1 unauthorised site with 10 pitches; and 3 Travelling Showpeople yards with 14 plots. There was also no allocation or other provision to meet the demand for Gypsies, Travellers or Travelling Showpeople.

The GTAA concluded that at the time of publication there were 5 Gypsy or Traveller households identified in South Holland that meet the government definition and 37 unknown households that may meet the definition. The South East Lincolnshire Local Plan therefore acknowledged that there is both a 'known' and 'unknown' unmet need to additional Gypsy/Traveller residential accommodation within its district between the period of 2011-36.

The GTAA further concluded that there may be a need across the plan period for up to 13 additional pitches for 'unknown' households to accommodate new household formation, plus any concealed adult households or need arising from older teenagers living in these households.

It is noteworthy that the GTAA distinguishes between gypsies and travellers that comply with the definition in Annex 1 of PPTS (PPTS gypsies), those whose status is unknown ("*unknowns*") and, those deemed not to comply with the definition (non-PPTS). It is worth bearing in mind that Opinion Research Services (ORS), who produced the GTAA, only surveyed persons living on known gypsy and traveller sites (ethnic gypsies and travellers) and failed to achieve interviews with *unknowns* households (the "*unknowns*").

This is recognised in the GTAA which concludes that:

"It is apparent that due to the introduction of the new Definition the Gypsy and Traveller community became reluctant to engage in interviews, with the outcome that important survey data could not be collected and included within the GTAA, as advised at the time by the ORS. This being the case the actual Need requirement would have been underestimated, which is reflected in the fact that there are 5 Gypsy and Traveller families who have no permanent home. Currently, the families are unable to gain access to the NHS and their children are being deprived of an education, this can be resolved if planning permission is granted."

This is a key factor as the failure to collect important survey data resulted in the actual Need requirement for Gypsy and Travellers to be underestimated leading to the GTAA advising that:

"With this all-in mind, it is believed that planning permission should not be refused based on the principle of the local planning authority has granted planning permission for sufficient pitches within the plan period to satisfy both the known and unknown need outlined in the Local Plan."

In addition to the above it seems that the need arising from emerging households is apportioned using the cultural/PPTS factor derived from surveys of the full range of households, but there is a strong argument that many households emerging from non-PPTS travellers will wish to assert or experience a travelling lifestyle, a key part of their cultural identity. If so the allowance for PPTS sites for emerging households in the current GTAA would be further underestimated.

The GTAA is an exercise to assess future need for strategic planning purposes and does not purport to address individual or immediate needs. The LPA has accepted the Applicant and his close family and extended family are of Irish Traveller origin and moreover currently satisfy the definition under Annex 1 of the PPTS. The Council has included the Application Site and Applicant in the bi-annual count noting the Application Site is unauthorised, which for the purpose of Need represents an immediate need for additional pitches within the district, even before considering in-migration over the next 5 years or population growth.

The Council has not allocated any land in a Development Plan for the provision of gypsy and traveller sites and there are no realistic alternative sites suitable, affordable, available and acceptable that will provide provision for the Applicant and his close family and extended family to occupy.

The Application and his close and extended family have no alternative site to move to. Therefore, evicting them from the Application Site will result in the family dispersing and living on the roadside, which would prevent children from attending school and the elderly or vulnerable receiving medical care. It is therefore conclusive that there is a Need arising from the Applicant and his close and extended family to seek a permanent base.

Personal circumstances

The Applicant and his close family and extended family include elderly and young people that need access to the NHS and education. Those occupying the site are registered with GP's and Dentist within the local area and children attend local schools. Without the Application Site the family will be forced to live on the roadside with a large number of children, all of whom have a need for access to health care and regular schooling. A number of family members including elderly and young children have severe health problems. The Applicants Mother is registered Disabled with a degenerative bone disease and her condition has deteriorated recently to the extent that she requires full time care. It is therefore intended for her to move to the Application Site where she can receive the care required provided by her son and his dependants.

The family needs a settled base where they can access specialised health care. In my opinion, those residents have a personal need for lawful accommodation and, it would be in the best interests of the children that they be provided with a settled base for access to education and medical care. The best interests of the children cannot intrinsically be given less weight than any other material consideration.

Submitted as **Confidential Information** in support of this planning application are numerous documents relating to health and education that need to be taken into account.

Flood risk

The site is located within Flood Zone 3, an area with a high probability of flooding, of the Environment Agency Flood Maps for Planning. The Environment Agency Long Term Flood Risk maps show that:

- the site has a low risk of flooding from rivers or the sea (annual probability between 0.1% and 1%);
- the site has a very low risk of surface water flooding (annual probability less than 0.1%); and
- the site is not within an area at risk of reservoir flooding.

Table 2 of the PPG Flood Risk and Coastal Change categorises different types of uses and development according to their vulnerability to flood risk. The development is covered by the description of mobile homes intended for permanent residential use and is classified as 'Highly Vulnerable'.

Table 3 of the PPG Flood Risk and Coastal Change sets out Flood Risk Vulnerability and flood zone 'compatibility'. The site is in defended Flood Zone 3a and the development is 'Highly Vulnerable' therefore the development is inappropriate.

However, the application of the Sequential Test at the Application Site, which must show that there are no other reasonably available sites at a lower flood risk in the district, should consider:

- the decision (ref H06-0233-19) for a change of use of land to provide five gypsy traveller pitches at Green Acres Park, Ropers Gate, Spalding;
- the extent of land within flood zone 2 and 3 that surrounds the site; and
- the defences that protect the site.

The recent planning decision (ref H06-0233-19) for the land at Green Acres Park was for a similar development with a change of use of land to a residential use for caravans. The principle for the approval of highly vulnerable development in Flood Zone 3 has been set the by the approval at Green Acres Park.

Large parts of the South Holland district between the River Welland and River Nene lie within Flood Zone 2 or Flood Zone 3. As such opportunities for a site within Flood Zone 1 are limited.

The River Nene and River Welland have defences that provide protection during the 0.5% annual probability (1 in 200 chance each year) event and therefore the 'actual risk' of flooding at the site is low.

Based upon the availability of alternative sites with a lower flood risk, the level of protection at the site and the similarities between the proposed development and the site at Green Acres Park, it is considered that the Sequential Test has been met.

The Exception Test requires consideration of the wider sustainability benefits of a development and that the development would be safe and residual risks managed. The development provides wider sustainable benefits. The provision of five pitches will contribute to meeting the need for gypsy / traveller sites within the district.

Section 5 of this Flood Risk Assessment describes the flood mitigation measures and the management of the residual risks, demonstrating that this development will be safe and not increase flood risk elsewhere. The development is considered to pass the Exception Test.

The probability of this development flooding from localised drainage systems is low. Failure of Lutton Leam Tidal Sluice could lead to an increased level of risk at the site. The probability of the site flooding from any Environment Agency system is less than 1% annual probability (1 in 100 chance each year) because of the standards of the existing flood defences. Over time there will be a gradual increase in risk to the site due to climate change. During the design life of the development it is not anticipated that the site would flood.

The SFRA considers the residual risk associated with overtopping and a breach in the defences in 2115. The site could experience depths of between 0.5m – 1.0m and 1.0m – 1.6m arising from a breach in the defence during a flood that has a 0.1% tidal chance of occurring in any one year up to 2115.

The proposed arrangement increases the impermeable area and therefore there will be an increased volume of surface water that has the potential to increase flood risk.

It is therefore proposed that the static mobile homes and dayrooms have a floor level not less than 1.6m above general ground levels, the units are secured by anchors and the Flood Warning and Evacuation Plan is followed.

7.0 Planning Balance

At the onset of considering the issues in the planning balance, the decision maker should take into account the duty placed on the LPA within the Public Sector Equality Duty and ECHR. Amongst other things the LPA is required to considered the best interests of the children as primary, the elderly and disabled.

The wording of Part D of LP policy 1 is permissive rather than restrictive. Furthermore, this policy does not require evidence that a proposal would meet an identified need. Instead, it simply allows development in the countryside that has to be located in such a location. At paragraph 3.2.17 of the LP, there is recognition that Gypsy and Traveller accommodation may be necessary on sites outside defined settlements.

It is well known that Gypsy and Travellers find it difficult to acquire land for new pitches within towns and villages due to competing development interests that generate higher land values. The Applicant have experienced the same difficulties and there is no realistic prospect of the Applicant or his family acquiring land within a town or village.

Paragraph 22 of the PPTS notes that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Paragraph 24 advises that authorities should consider, amongst other things, the existing local provision and level of need, the availability of alternative sites for the applicants and other personal circumstances. Where there is no identified need, locally specific criteria should be used to assess applications.

There are a number of factors that weigh in favour of planning permission. There is no doubt that the Applicant and his close and extended family have a personal need for a site and living as an extended family group is consistent with the aim of facilitating the traditional and nomadic way of life of travellers.

Some weight in favour of planning permission also arises from the current lack of suitable alternative sites in the District to meet the immediate needs of the Applicant and his close and extended family. There is considerable evidence of integration and positive community relations, with the Application Site providing good access to education and health care. Notwithstanding its location in the countryside it is in a relatively sustainable location in many ways, and having a settled base is in the best interests of the children, having regard in particular to the unsatisfactory alternative of possibly having to resort to roadside living.

The Application Site is located within an Internal Drainage Board catchment with a minimum standard of drainage of 2% annual probability (1 in 50 chance each year) which accords with DEFRA guidelines for rural development. The risk of flooding is lowered further due to the South Holland IDB high priority watercourses incorporating a significant freeboard. Although the proposed development is in Flood Zone 3. The Application Site benefits from defences on the tidal River Nene that provide protection during the 0.5% annual probability (1 in 200 chance each year) tidal event including an allowance for climate change. The Application Site could however experience depths of between 0.5m – 1.0m and 1.0m – 1.6m arising from a breach in the defence during a flood that has a 0.1% tidal chance of occurring in any one year up to 2115. Therefore, it is proposed that the static mobile homes and dayrooms have a floor level not less than 1.6m above general ground levels, the units are secured by anchors and the Flood Warning and Evacuation Plan is followed. The development passes the Sequential Test and Exception Test and is therefore suitable for the proposed location.

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