SOUTH HOLLAND DISTRICT COUNCIL

Report of: **Development Manager**

To: **Planning Committee - 12 January 2022**

(Author: **Lucy Buttery - Principal Planning Officer)**

Purpose: **To consider Planning Application H06-0772-21**

Application Number: H06-0772-21 **Date Received:** 19 July 2021

Application Type: FULL

Description: 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.

Location: The Orchards Blazegate Gedney

Applicant: Mr J Rooney **Agent:** Keith Smith Design Consultant

Ward: Gedney **Ward Councillors:** Cllr J L Reynolds

You can view this application on the Council's web site at
http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H06-0772-21

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 Objections received and policy issues that merit Committee consideration.

2.0 PROPOSAL

2.1 This is a full planning application for the change of use of 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 on land known as 'The Orchards', Blazegate, Gedney.

2.2 The application is part retrospective as there are already touring caravans on site, fencing has been erected on/adjacent to the site, a new access has been created and a hardcore access track has been laid.

3.0 SITE DESCRIPTION

3.1 The site is classed as agricultural in planning terms, but it has not been maintained as such and had become more naturalised in terms of appearance. There are trees to the northern, western and southern boundaries. Only part of the eastern boundary is treed, with a large proportion of those that formerly stood along this boundary having been felled and replaced with closeboard fencing.

3.2 A new access has been created from Blazegate to serve the land and a hardcore access track has been constructed within the site. It would also appear that works have been undertaken in association with the installation of the treatment plant.

3.3 The overriding character of the area is rural countryside, with very limited development in the vicinity. The closest dwelling is immediately opposite the site to the north and there are a small number of dwellings and commercial premises to the north-east around the junction of Blazegate and Gispy Lane.

4.0 RELEVANT PLANNING POLICIES

4.1 **The Development Plan**

South East Lincolnshire Local Plan, March 2019

If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, Section 38 (6) to the Town and Country Planning Act as amended by the 2004 Act states that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

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
19 Rural Exception Sites
20 Accommodation for Gypsies, Travellers and Travelling Showpeople
28 The Natural Environment
36 Vehicle and Cycle Parking
APPENDIX 6 Parking Standards

National Guidance

National Planning Policy Framework (NPPF), 2019

Section 5 - Delivering a sufficient supply of homes
Section 12 - Achieving well-designed places
Section 14 - Meeting the challenge of climate change, flooding and coastal change
Section 15 - Conserving and enhancing the natural environment

Planning Practice Guidance (PPG)

Planning policy for traveller sites

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

Caravan Sites and Control of Development Act 1960 - Section 5

5.0 RELEVANT PLANNING HISTORY

5.1 Recent planning decisions within the District preceding the adoption of the SELLP

5.2 H16-1003-13 - Land off Drain Bank North, Spalding - Provision of gypsy and traveller caravan site with 10 pitches each accommodating up to 3 caravans (permanent site) - Approved 20 May 2014.

5.3 H23-0440-17 - Eccles Place, Hurdletree Bank, Whaplode St Catherine - Use of land for siting of caravan - Approved 22 January 2018.

5.4 Recent planning decisions within the District post-adoption of the SELLP (March 2019)

5.5 H06-0233-19 - Green Acres Park, Ropers 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 dayrooms. 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.

5.6 H16-0734-19 - Akita Place, Clay Lake, Spalding - Siting of mobile home (retrospective) - re-submission of H16-0030-17 - Approved 10 October 2019.

5.7 H23-0848-19 - Bleu Raye Farm, Millgate, Whaplode - Proposed residential gypsy/traveller site - Approved 26 June 2020.

5.8 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.

5.9 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.

5.10 H16-0932-20 - Oak Tree Meadow, A16, Spalding - Caravan site for one traveller family (3 caravans), with associated hardstanding, cesspit drainage and portakabin/dayroom (retrospective) - Approved January 2021.

5.11 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.

5.12 H09-0010-21 - Rear of 6 Rose View Drive, Holbeach -Proposed 4 traveller pitches for family linked with pitch No.6 - Approved May 2021.

6.0 REPRESENTATIONS

6.1 Gedney Parish Council

Council strongly object to this application, they object on the same grounds as the Environment Agency:
We object to the proposed development as it falls within a flood risk vulnerability category that is inappropriate to the Flood Zone in which the application site is located. The application is therefore contrary to the National Planning Policy Framework (NPPF) and its associated planning practice guidance. We recommend that planning permission is refused on this basis. Reason The planning practice guidance (PPG) classifies development types according to their vulnerability to flood risk and provides guidance on which developments are appropriate within each Flood Zone. This site lies within Flood Zone 3a, which is land defined by the PPG and your Strategic Flood Risk Assessment as having a high probability of flooding. Caravans and mobile homes intended for permanent residential use are classed as highly vulnerable in accordance with table 2 of the Flood Zones and flood risk tables of the PPG. Tables 1 and 3 make it clear that this type of development is not compatible with this Flood Zone and therefore should not be permitted. Flood risk assessment Although the development is inappropriate to the Flood Zone in which the application site is located, a flood risk assessment (FRA) has been included in the design and access statement. The FRA does not demonstrate that the development and its future occupants will be safe for the lifetime of the development. The FRA incorrectly identifies the hazard mapping depths the development site could experience. The site could experience depths of between 0.5- 1.0 metres and 1.0 - 1.6.
Are in total agreement with all objections raised by John Hayes MP. This Application would greatly increase traffic and therefore pollution and the roads are not adequate to take more traffic. There is no infrastructure in this area to accommodate such a development. Council requests this application goes to Planning Committee

6.2 The Rt Hon Sir John Hayes CBE MP

I was disappointed, but not surprised, to learn that a part retrospective planning application has been submitted 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 at 'The Orchards', Blazegate, Gedney.

As you are aware, such retrospective applications are undesirable and, even more so, once the applicant has been made aware that the appropriate permission must be sought, but continues with construction anyway, which appears to be the case here. The applicant, clearly, has a complete disregard for the planning process.

I share the views of my constituents that the size and nature of this development will change the character of the local area. There is very little infrastructure and amenities to support an additional five homes in this rural location. This development will lead to increased traffic movements and I am concerned that neighbouring homes may experience an increase in noise and disturbance if the plans are passed. Furthermore, I would not want to see more agricultural land in the open countryside lost to residential development.

To this end, I would be grateful if you would treat my letter as an objection to this proposal and request that the application is determined by the Planning Committee.

6.3 Lincolnshire Police

No objection. Makes reference to the Homes 2019 document on the Secured by Design website.

6.4 Environment Agency

Received 18th August 2021:

We object to the proposed development as it falls within a flood risk vulnerability category that is inappropriate to the Flood Zone in which the application site is located. The application is therefore contrary to the National Planning Policy Framework (NPPF) and its associated planning practice guidance. We recommend that planning permission is refused on this basis.

Reason:
The planning practice guidance (PPG) classifies development types according to their vulnerability to flood risk and provides guidance on which developments are appropriate within each Flood Zone. This site lies within Flood Zone 3a, which is land defined by the PPG and your Strategic Flood Risk Assessment as having a high probability of flooding. Caravans and mobile homes intended for permanent residential use are classed as highly vulnerable in accordance with table 2 of the Flood Zones and flood risk tables of the PPG. Tables 1 and 3 make it clear that this type of development is not compatible with this Flood Zone and therefore should not be permitted.

Flood risk assessment:
Although the development is inappropriate to the Flood Zone in which the application site is located, a flood risk assessment (FRA) has been included in the design and access statement. The FRA does not demonstrate that the development and its future occupants will be safe for the lifetime of the development. The FRA incorrectly identifies the hazard mapping depths the development site could experience. The site could experience depths of between 0.5- 1.0 metres and 1.0 - 1.6 metres arising from a breach in the defences during a flood that has a 0.1% tidal chance of occurring in any one year up to 2115. The caravans appear to be located mainly in the areas subject to depths between 1.0 - 1.6 metres.

Received 29th November 2021:

We have since reviewed the revised Design and Access Statement and would like to maintain our objection (ref: AN/2021/132143/01-L01) dated 18 August 2021.

The site could experience depths of between 0.5 - 1.0 metres and 1.0 - 1.6 metres arising from a breach in the defences during a flood that has a 0.1% tidal chance of occurring in any one year up to 2115. This means 'danger to most' in terms of the tidal hazard mapping (e.g. there will be danger of loss of life for the general public). This is in line with the local flood risk standing advice matrix.

6.5 LCC Highways/SUDS

Does not wish to restrict the grant of permission.

There are no footways on Blazegate and the Application Site is therefore not accessible on foot, other than by walking along the carriageway. However this is no different to other Gypsy/Traveller sites that have received Planning Consent in recent years. The site is a little way outside of the nearest village and so the majority of residents' trips would most likely be undertaken by motor vehicle.

Provided the frontage hedge, trees and other vegetation at the site frontage are removed in accordance with the submitted drawing numbered 20/Blaze/02 Rev. A dated December 20, then the visibility at the site entrance will be acceptable. Therefore, having given due regard to the appropriate local and national planning policy guidance (in particular the National Planning Policy Framework), Lincolnshire County Council (as Highway Authority and Lead Local Flood Authority) has concluded that there is insufficient cause to withhold the grant of Consent for the proposed development by reason of it being expected to have an unacceptable impact upon highway safety.

6.6 Anglian Water

Having reviewed the development, there is no connection to the Anglian Water sewers. We therefore have no comments.

6.7 South Holland Internal Drainage Board

We would recommend that the proposed surface water drainage strategy is supported by ground investigation to determine the infiltration potential of the site and the depth to groundwater. Reminds the applicant of the relevant consents that may be required.

6.8 SHDC Environmental Protection (noise and odour)

No objection.

6.9 SHDC Environmental Protection (contaminated land)

No comments or objections.

6.10 Public (10 objections/comments received, summarised)

- Highway safety concerns
- Land is green belt; Site is deemed agricultural land
- Impact on character
- Concerns re flood risk and surface water drainage
- Impact on trees and wildlife; Site was cleared before any inspection of native wildlife and plants; Query whether an environmental survey was carried out
- Mature dense hedging already removed should be replaced and planted to mitigate visual, noise disturbance and wildlife issues.
- Already an existing travellers site nearby
- Inaccuracies on application form - site is not currently vacant and works/change of use have already started
- Concern re noise being generated at the site; noise during construction; loss of peace and tranquillity
- Dogs regularly escaping from site and roaming up and down the road (resident and highway safety issue)
- Lack of infrastructure to support site
- Installing services/utilities to the site would cause disruption and possibly road closures
- No need for additional properties when there are ample homes on the market already
- The number of mobile homes proposed and the provision for touring caravans suggests that the site will not only be used for the owner but temporary use by travellers from outside the area
- Site should not be allowed to be used for business use
- Mitigation measures need to be applied to protect the current residents, the nature and character of the area, wildlife and the general environment
- Black bags and rubbish left by a leaving caravan and family
- Occupants having bonfires

- Concern re potential for crime
- Negative impact on nearby businesses
- Devaluation of property
- Previous planning applications in the area stated that no change of use of land or buildings could increase traffic flow or adversely affect the residents both visually and in relation to noise and general disturbance
- Inconsistency in application of planning regulations between different types of applicant
- Retrospective nature of application is intentional

Public (in support)

1 representation in support of the application has been received, which also questions the motives of some of the objectors.

7.0 CONSIDERATIONS

7.1 Planning Considerations

7.2 Principle

7.3 The principle of this proposal is considered in the light of the National Planning Policy Framework (2019), Planning Policy for Traveller Sites (August 2015, published by DCLG) and the policies of the South East Lincolnshire Local Plan (2019).

7.4 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."

7.5 Policy H of the DCLG document sets criteria for determining planning applications for traveller sites and, in particular, 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"

7.6 The relevant policy at a local level is Policy 20 of the South East Lincolnshire Local Plan (2019) (SELLP), which sets out a framework for assessing proposals for gypsy, traveller and travelling showpeople accommodation. It is considered that Policy 20 of the SELLP, which has been subject to considerable public consultation and scrutiny, the scrutiny and amendment of the Planning Inspectorate and adoption by South Holland District Council and Boston Borough Council, is sound and in accordance with the DCLG advice, and gives sound and clear criteria for the assessment and consideration of applications for gypsy and traveller sites.

7.7 Policy 20 states that:

"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, 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.

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."

7.8 Assessing the proposal against the above:

a. The application site is located in the countryside where existing built development is limited. There is a residential property immediately opposite and a small-scale commercial building sited approximately 65m to the east. Each pitch would appear to be of an appropriate size, being able to accommodate a day room, static and tourer, and external amenity space. This is typical of such a scheme. SHDC's Environmental Protection Officer has no objection on amenity grounds;
b. The site is not located adjacent to any known uses likely to endanger the health of occupants, such as a refuse tip, water recycling centres or contaminated land;
c. Given the small scale of the proposal, it is considered that the site respects the scale of the nearest settled community;
d. It is not considered that an additional 5 pitches in this location would place undue pressure on local infrastructure;
e. There are no designated or non-designated heritage assets in the immediate vicinity of the site, nor areas of importance to nature conservation;
f. Concern has been raised about highway safety and visibility from the site access. The Highway Authority have been consulted on the application and have not objected to the proposal on highway grounds, commenting that:
"Provided the frontage hedge, trees and other vegetation at the site frontage are removed in accordance with the submitted drawing numbered 20/Blaze/02 Rev. A dated December 20, then the visibility at the site entrance will be acceptable."
g. i. The closest primary school is located within Gedney Church End, although this would involve crossing the A17, which is likely to be a deterrent to walking or cycling. The secondary school in Long Sutton is within reasonable cycling distance being approx. 2km away. There are also shops, healthcare and recreational facilities more centrally within Long Sutton. Although a town the size of Long Sutton is likely to offer employment opportunities, it is more likely that the occupants of the site will seek employment elsewhere and frequently have their own businesses. Given that the council has in recent times granted permission for Gypsy and Traveller sites in locations where such facilities are equally as close to, if not further away, than this application site, it is on balance considered acceptable.
ii. It has been advised that individuals may work out of their accommodation and that no other business activity will take place on site.
iii. The site is located within Flood Zone 3 and the Environment Agency have objected to the proposal. Matters relating to flood risk and discussed in more detail later in the report; and
h. Not applicable to this particular proposal.

7.9 1. It has been advised that the applicant will make arrangements for refuse/recycling to be collected by a private contractor. Other utilities/infrastructure are capable of being provided.
2. The impact of five households on this site, together with the associated vehicular movements, is not considered by officers to represent a form of development of a nature and intensity that would warrant refusal of planning permission on the grounds of having a significant adverse effect on the amenities of existing local residents or adjoining land users.
3. The site is currently well screened from the north, west and south by established trees and vegetation. Some trees have been removed from the north-eastern corner of the site but new trees would be planted in their place, thus forming a continuous screen around the site. The trees and hedge at the north of the site will be removed in order the create an appropriate visibility splay (agreed by the Highway Authority) and new trees planted further back. Given the

extensive screening, it is not considered that the proposal will have a material impact on the character and appearance of the area and can be successfully assimilated into the immediate environs and wider landscape.

7.10 Taking the above into account, the proposal generally accords with the provisions of Policy 20 of the Local Plan, on the basis that need for the development is accepted. There is clear conflict in terms of flood risk. Need and flood risk are are discussed further later in the report.

7.11 Gypsy and Traveller Status

7.12 The planning definition of "gypsies and travellers", as set out in DGLG's Planning Policy for Traveller Sites is as follows:
"Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such."

7.13 Annex 1 to the above document highlights that in determining whether persons are "gypsies and travellers" for the purposes of that planning policy, consideration should be given to the following issues amongst other relevant matters:
a)whether they previously led a nomadic habit of life
b)the reasons for ceasing their nomadic habit of life
c)whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.

7.14 It has been confirmed that all individuals are close family or extended family and their dependents who are of Irish Traveller origin.

7.15 In terms of criteria a-c above, the following has been provided:

(a) whether they previously led a nomadic habit of life
My client has confirmed that all of the proposed individuals have/are living a nomadic habit of life.

(b) the reasons for ceasing their nomadic habit of life
My client has confirmed that in the case of all of the proposed individuals they are not ceasing their nomadic habit of life and will continue to attend functions such as Horse Fairs and Gatherings around the UK. They seek to occupy a permanent site to enable their children to receive an education, and also for them all to have access to the NHS. There will be in excess of 14 adults and 20 children on the site of all ages with the Human Right to access education and health needs. (an extract regarding evidence of poor outcomes in Gypsy and Traveller communities is also provided)

(c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.
My client has confirmed that all of the proposed individuals will continue to have a nomadic life, albeit for part of the year.
Hereafter, an extract from British Association of Social Workers (BASW) 'Accommodation'
Many Gypsies and Travellers now live in settled accommodation and do not travel, or do not travel all of the time, but nonetheless consider travelling to be part of their identity. At the 2011 Census, the majority (76%) of Gypsies and Irish Travellers in England and Wales lived in bricks-and-mortar accommodation, and 24% lived in a caravan or other mobile or temporary structure'.

7.16 Officers accept this and have no reason to determine otherwise. In any event, the relevant condition which forms part of the recommendation controls this in perpetuity and only someone of gypsy/traveller status and their dependents could live on the site.

7.17 Identifiable need for this development

7.18 As part of work to support the preparation of the South East Lincolnshire Local Plan, an independent Gypsy and Traveller Accommodation Assessment (GTAA) was undertaken on

behalf of the Joint Planning Unit, and the report published in November 2016. At the time of the report, 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 no other provision for Gypsies, Travellers or Travelling Showpeople.

7.19 In terms of need, this report concluded that at the time of publication there are 5 Gypsy or Traveller households identified in South Holland that meet the government definition (as set out in the previous section) and 37 'unknown' households that may meet the definition. The South East Lincolnshire Local Plan therefore acknowledges that there is both a 'known' and 'unknown' unmet need for additional Gypsy/Traveller residential accommodation within its district between the period 2011-36.

7.20 The need for 5 additional pitches for the households that meet the government definition will be met by two allocations in the Local Plan - Bleu Raye Farm (Mill Gate, Whaplode Fen) and land at The Stables (Baulkins Drove, Sutton St James).

7.21 In addition, the report goes on to conclude that there may be a need across the plan period for up to 13 additional pitches for 'unknown' households (on the basis that there are 37 'unknown' households that may meet the definition) to accommodate new household formation, plus any concealed adult households or need arising from older teenagers living in these households. This translates to Paragraph 5.12.4 of the Local Plan, which states that:
"The GTAA ... identifies an 'unknown' need for up to 16 additional residential pitches for gypsy and traveller households (up to 3 in Boston Borough, and up to 13 in South Holland. 'Unknown' needs are those which may arise from gypsy, traveller and travelling showperson's households who were not interviewed by the GTAA consultants. This 'unknown' need will be met by determining planning applications, taking into account the provisions of the NPPF, Planning policy for traveller sites and the policies of this Local Plan (in particular Policy 20)".

7.22 The base date for the GTAA is August 2016 and, taking into account permissions that have been granted since that date, a total of 15 additional pitches have been approved. The total number of pitches granted approval thus far therefore exceeds the 13 pitches specified in the GTAA and referred to in paragraph 5.12.4 of the Local Plan.
However, in consideration of H09-0010-21 (Proposed 4 traveller pitches for family linked with pitch No.6. at Rose View Drive, Holbeach), a view was taken that the exact number of pitches approved towards the 13 additional pitches required for 'unknown' household to accommodate new household formation was likely to be less than approved on the face of it 6 because 5 of those permitted since August 2016 did not relate to new household formation, rather they were required for reasons such as a teenager now requiring their own pitch, a relative occupying the pitch instead or the individuals looking for somewhere more suitable to live for a more continual period.

7.23 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. Members of the Planning Committee, in taking their decision on this application, will have to carefully consider this element in respect of this decision and its ramifications for future similar applications.

7.24 The applicant's agent has been made aware that sufficient permissions would appear to have been granted within the plan period to satisfy both the known and unknown need outlined in the Local Plan. Their full response to this is set out in the document that forms Appendix B. In summary, they provide a number of extracts from the GTAA relating to the pitch needs of 'Travelling' Gypsies and Travellers and 'Unknown' Gypsies and Travellers, with the following conclusion:
"The Gypsy and Traveller Accommodation Assessment (GTAA) was undertaken in 2016, which South Holland District Council would base its Needs Assessment upon. It is noted that a Review has yet to be undertaken. At that time, the new 'Definition' of a Gypsy, Traveller and Travelling Showperson had been introduced. 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 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.

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."

7.25 In terms of a review, there is no requirement within the Local Plan that the GTAA be reviewed within a certain time period.

7.26 Officers also do not believe that the assertion that the introduction of the new definition meant that the Gypsy and Traveller community became reluctant to engage in interview is a fair interpretation of the wording of the GTAA. The exact wording of the GTAA (at paragraph 3.26) is that:
"ORS are of the opinion that it would not be appropriate when producing a robust assessment of need to make any firm assumptions about whether or not households where an interview was not completed meet the new definition based on the outcomes of households in that Local Authority where an interview was completed."

7.27 To conclude, it could be argued that sufficient permissions appear to have been granted within the plan period to satisfy both the known and unknown need outlined in the Local Plan. However, it could be also be argued that speculative applications of this nature indicate that there is an outstanding need for pitches. As such the matter of need is a debatable and challengeable area. Members will have to carefully consider this element, but it is the view of officers that the application could be refused on the basis of the specified need having been met and, accordingly, the proposal being contrary to Policy 1 of the Local Plan. Policy 1 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.

7.28 Impact on Neighbouring Dwellings

7.29 As stated previously, the impact of five households on this site, together with the associated vehicular movements, is not considered by officers to represent a form of development of a nature and intensity that would justify refusing planning permission on the grounds of having a significant adverse effect on the amenities of existing local residents or adjoining land users.

7.30 The proposed pitches are set back from the carriageway and will be screened by new trees and hedging. There would therefore be no material loss of privacy or overbearing and/or overshadowing impact.

7.31 The proposal satisfactorily accords with Policies 2, 3 and 30 of the Local Plan in this regard.

7.32 Flood Risk and Drainage

7.33 The site is located within Environment Agency Flood Zone 3. Table 2 in the National Planning Practice Guidance (NPPG) classifies development types according to their vulnerability to flood risk and caravans for permanent residential use are classified as 'highly vulnerable'. Table 3 addresses flood risk vulnerability and flood zone 'compatibility'. This table indicates that 'highly vulnerable' development is not compatible with Flood Zone 3 and should not therefore be permitted. Furthermore, Policy 4 of the Local Plan states that 'Caravans, mobile homes and park homes intended for permanent residential use will not be permitted in areas at risk of flooding'. There is therefore a clear issue of principle in this case.

7.34 Additionally, Policy 4 states that applications should be supported by a site-specific flood risk assessment which identifies the relevant predicted flood risk (breach/overtopping) level, and mitigation measures that demonstrate how the development will be made safe and that occupants will be protected from flooding from any source.

7.35 Consequently, the Environment Agency have objected to the application on the following grounds:

7.36 *"We object to the proposed development as it falls within a flood risk vulnerability category that is inappropriate to the Flood Zone in which the application site is located. The application is therefore contrary to the National Planning Policy Framework (NPPF) and its associated planning practice guidance. We recommend that planning permission is refused on this basis.*

Reason:
The planning practice guidance (PPG) classifies development types according to their vulnerability to flood risk and provides guidance on which developments are appropriate within each Flood Zone. This site lies within Flood Zone 3a, which is land defined by the PPG and your Strategic Flood Risk Assessment as having a high probability of flooding.

Caravans and mobile homes intended for permanent residential use are classed as highly vulnerable in accordance with table 2 of the Flood Zones and flood risk tables of the PPG. Tables 1 and 3 make it clear that this type of development is not compatible with this Flood Zone and therefore should not be permitted.

Flood risk assessment: Although the development is inappropriate to the Flood Zone in which the application site is located, a flood risk assessment (FRA) has been included in the design and access statement. The FRA does not demonstrate that the development and its future occupants will be safe for the lifetime of the development. The FRA incorrectly identifies the hazard mapping depths the development site could experience. The site could experience depths of between 0.5- 1.0 metres and 1.0 - 1.6 metres arising from a breach in the defences during a flood that has a 0.1% tidal chance of occurring in any one year up to 2115. The caravans appear to be located mainly in the areas subject to depths between 1.0 - 1.6 metres."

7.37 Given the above, flood risk is a significant material consideration against the granting of planning permission, particularly in light of the potential risk to people and property. The proposal therefore conflicts with Policies 4 and 20 in terms of flood risk.

7.38 The applicant's agent has been made aware of these concerns and their full response is set out in the document that forms Appendix B. In summary, reference is made to another application on a site nearby (Green Acres Park, Ropers Gate, Gedney, ref. H06-0233-19) where planning permission was granted for the following in Flood Zone 3: *"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 dayrooms. 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"*. An extract is provided from the FRA which supported that application, as well as conditions relating to flood risk. It is also highlighted that flood risk information in the Design and Access Statement supporting this application was updated in light of the Environment Agency's consultation response and that no further response appears to have been received.

7.39 Whilst it is accepted that Green Acres Park does lie within Flood Zone 3, the Environment Agency did not object to that application, instead responding that:
"Based on current policy, permanent residential use for caravans on this site would be contrary to National Policy, and also contrary to our standing advice as the site is at risk from the tidal Nene, and mitigation in tidal risk situations is usually secured by the use of the seasonal occupancy restriction (only open 15th March to 31st October).

We provided some pre-app advice to your Authority where we advised that despite the policy issues, if your Authority was minded to give weight to the current year round use already being permitted on site we wouldn't pursue an objection but would strongly recommend that the same level of mitigation is included, i.e. raising of caravans by 1m and also ensuring the site has a robust warning and evacuation plan."

7.40 There is a clear difference between the two applications in that the proposal at Green Acres Park was for the extension of an existing site, whereas the proposal presently before the Local Planning Authority is for an entirely new site. The former was considered to carry sufficient weight to outweigh policy issues.

7.41 The Environment Agency have provided further comments on 29th November, as follows:

7.42 *"We have since reviewed the revised Design and Access Statement and would like to maintain our objection (ref: AN/2021/132143/01-L01) dated 18 August 2021.*

The site could experience depths of between 0.5 - 1.0 metres and 1.0 - 1.6 metres arising from a breach in the defences during a flood that has a 0.1% tidal chance of occurring in any one year up to 2115. This means 'danger to most' in terms of the tidal hazard mapping (e.g. there will be danger of loss of life for the general public). This is in line with the local flood risk standing advice matrix."

7.43 In terms of drainage, the proposal is for surface water to be discharged into soakaways and a Kingspan Klargester Biodisc treatment plant would be installed on site to deal with foul water. Further details of each can be conditioned if permission were to be forthcoming.

7.44 Other

7.45 For completeness, the remaining comments made by objectors that have not been addressed in the sections above are responded to below.

7.46 Land is green belt; site is deemed agricultural land - There is no designated green belt in South Holland. The legitimate planning status of the site as agricultural land is not contested.

7.47 Impact on trees and wildlife; Site was cleared before any inspection of native wildlife and plants; Query whether an environmental survey was carried out - An ecological survey has not been carried out and, whilst this approach is not advocated, given the work that has been undertaken on site to date it is unlikely that conducting a survey at this stage would elicit anything pertinent. All trees on the site boundary (with the exception of those to be removed to improve access visibility) will be retained and any gapping will be address as part of the landscaping scheme.

7.48 Already an existing travellers site nearby - The existence of a travellers site nearby in and of itself is not a reason to refuse the application.

7.49 Inaccuracies on application form; site is not currently vacant and works/change of use have already started - It is accepted that the application form is inaccurate in this regard.

7.50 Whilst officers can sympathise with concerns about construction noise, noise during this period is almost inevitable and not a material issue on which to refuse an application.

7.51 Dogs regularly escaping from site and roaming up and down the road (resident and highway safety issue) - Responsibility for the behaviour of dogs lies with their owners and it is not a matter that the planning department can control.

7.52 Installing services/utilities to the site would cause disruption and possibly road closures - It is accepted that new development that requires the installation of new services and utilities will involve an element of disruption and this is part and parcel of development.

7.53 No need for additional properties when there are ample homes on the market already - The application relates to Gypsy/Traveller accommodation, not general market housing.

7.54 The number of mobile homes proposed and the provision for touring caravans suggests that the site will not only be used for the owner but temporary use by travellers from outside the area - It has been advised that the site will be used by close and extended family of the applicant and their dependents. It is not unusual for touring caravans to be located on a site such as this as they are used by the applicant's when they travel away from the site.

7.55 Site should not be allowed to be used for business use - A condition could be added that the areas of the site external to the mobile homes/tourers/dayrooms should not be used for business purposes.

7.56 Black bags and rubbish left by a leaving caravan and family - It has been advised that the applicant will make arrangements for the collection of refuse/recycling by a private contractor. Details of this can be secured by condition if permission were to be forthcoming.

7.57 Occupants having bonfires - It is not an offence to have a bonfire, although they can be considered to be a statutory nuisance under the Environmental Protection Act 1990 when causing a nuisance to neighbouring residents. Any problems with bonfires should be reported to the Council's Environmental Protection team.

7.58 Concern re potential for crime - Lincolnshire Police have not raised any objection to the proposal.

7.59 Negative impact on nearby businesses - Whilst this is a consideration, it is not one which carries material weight in the overall planning balance.

7.60 Devaluation of property - Whilst this is a consideration, it is not one which carries material weight in the overall planning balance.

7.61 Previous planning applications in the area stated that no change of use of land or buildings could increase traffic flow or adversely affect the residents both visually and in relation to noise and general disturbance - Each application is determined on it's own merits and highway matters, visual impact, noise and general disturbance are all valid considerations. These matters have been considered in further detail in previous sections of the report.

7.62 Inconsistency in application of planning regulations between different types of applicant - Whilst it is clearly preferable for applicants to seek planning consent prior to carrying out any development, retrospective applications are permitted by the legislative framework.

7.63 Retrospective nature of application is intentional - An existing breach of planning control is not a material planning consideration.

7.64 Planning balance

7.65 Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, states that the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

7.66 The proposal generally accords with the provisions of Policy 20 of the South East Lincolnshire Local Plan, 2019. However, flood risk represents a significant material consideration against the granting of planning permission, particularly given the potential risk to people and property due to the predicted flood depths for the application site. The policy and technical objection from the Environment Agency in this regard is also clear and unambiguous. There is clear conflict with Policy 4 of the Local Plan and national guidance on flood risk.

7.67 In terms of need, it could be argued that the Council has already granted planning permission for sufficient pitches within the plan period to satisfy both the known and unknown need outlined in the Gypsy and Traveller Accommodation Assessment (November 2016), and as set out in the South East Lincolnshire Local Plan, 2019. However, it could also be argued that speculative applications of this nature indicate that there is an outstanding need for pitches. Members will have to carefully consider this element, in terms of this decision and its ramifications for similar applications should they be forthcoming in the future.

7.68 Notwithstanding this, it is the view of officers that any need that may be construed by virtue of this speculative application being submitted does not in itself tip the balance sufficiently in support of a planning permission for this site by outweighing the harm and risk to occupants of this type of development being situated within a high risk flood zone.

7.69 Furthermore, if a need argument is not supported, the proposal can be deemed as being contrary to Policy 1 of the Local Plan. Policy 1 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.

7.70 **Additional Considerations**

7.71 Public Sector Equality Duty

7.72 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.

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

7.74 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.

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

7.76 Human Rights

7.77 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).

7.78 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.

7.79 **Conclusion**

7.80 There is clear conflict with Policy 4 of the Local Plan and national guidance on flood risk, and this is a matter which represents a significant material consideration against the granting of planning permission, outweighing any potential argument of need that may be construed by virtue of the speculative nature of this application.

7.81 Furthermore, if a need argument is not supported, the proposal can be deemed as being contrary to Policy 1 of the Local Plan, which is the finely balanced recommendation of officers in this case.

8.0 RECOMMENDATIONS

8.1 **Refuse permission for the reasons set out at Section 9.0 of the report**

9.0 REASONS FOR REFUSAL

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.

3. 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. Furthermore, matters of concern with the application have been identified and discussed with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory solution and due to the harm, which has been clearly identified within the reason(s) for the refusal, 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

4. The determined plans are:
   20/BLAZE/01
   20/BLAZE/02C
   Final Design and Access Statement (prepared by Keith Smith Design Consultant)
   Report to the South Holland District Council Planning Committee - Addendum to the Final Design and Access Statement (prepared by Keith Smith Design Consultant, dated 18th November 2021)
   Details of Types of Static Vans (Indicative)

Background papers:- Planning Application Working File

Lead Contact Officer

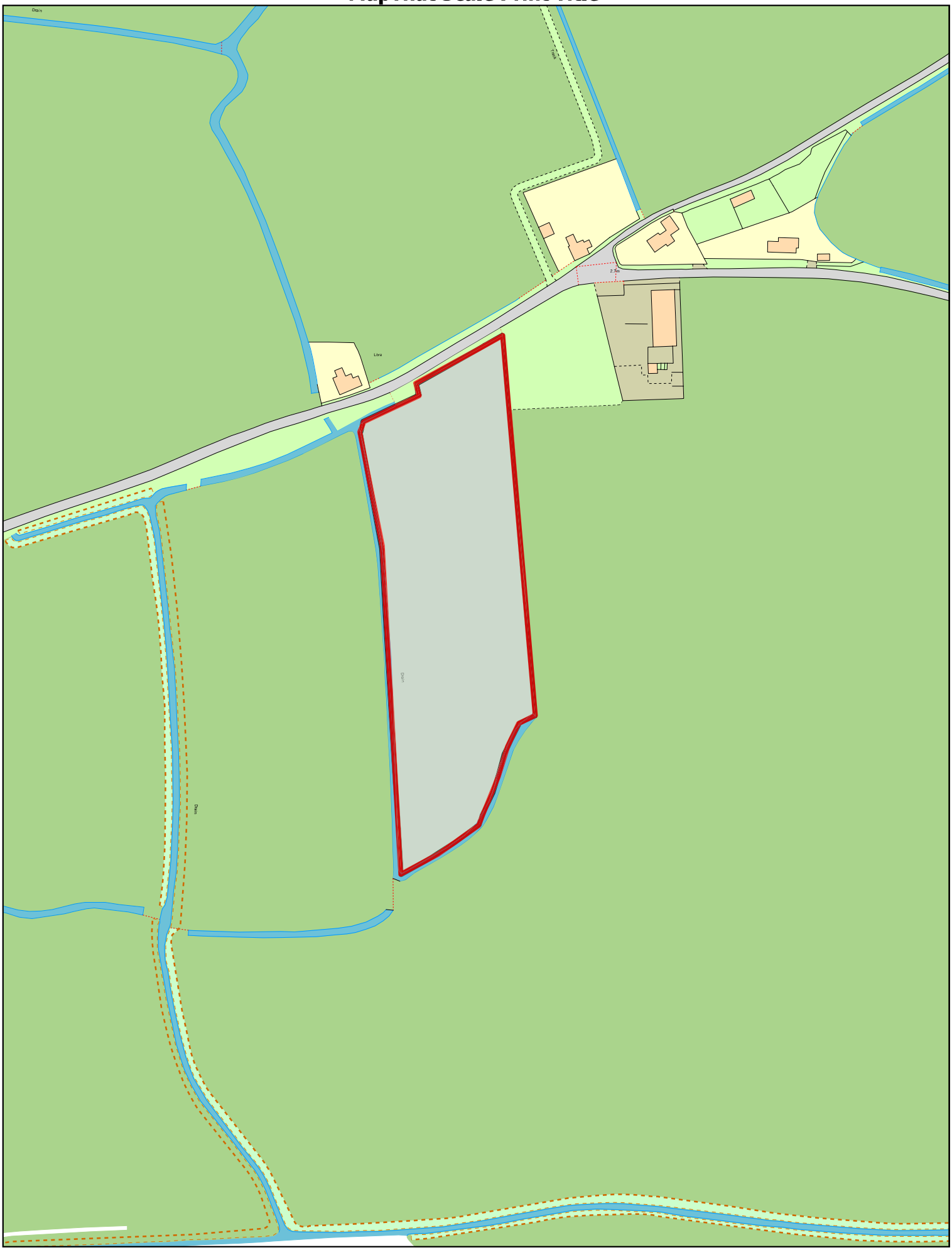
Name and Post:	Richard Fidler , Development Manager
Telephone Number:	01775 764428
Email	rfidler@sholland.gov.uk

Appendices attached to this report:

Appendix A Plan A

Appendix B Agent response to matters of Environment Agency objection and granting of sufficient pitches to meet need

MapThat Scale Print Title



SOUTH HOLLAND DISTRICT COUNCIL

© Crown copyright and database rights 2018 Ordnance Survey 100018351.

MAP SCALE 1:2000
CREATED DATE: 30/11/2021
PHOTOGRAPHIC COPY LIABLE TO DISTORTION IN SCALE