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TOWN AND COUNTRY PLANNING ACT 1990

FULL

Reference:	H06-0791-22	**Date of Decision:**	2nd September 2022
Applicant:	Mr J Rooney The Orchards Blazegate Gedney Spalding PE12 0AD		
Location:	The Orchards, Blazegate, Gedney, Spalding		
Description:	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) - re-submission of H06-0772-21		

South Holland District Council hereby decline to determine the above application for the following reasons:

1 This decision follows the enforcement notice served by South Holland District Council (**"Council"**) in respect of land at Silver Birch Lane, off Blazegate, Gedney, Spalding, PE12 0FU (**"Site"**) with an effective date of 9 March 2022 (**"Enforcement Notice"**) and the subsequent application for planning permission submitted to the Council by Mr Rooney (**"Applicant"**) and given reference H06-0791-22 (**"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) - re-submission of H06-0772-21"* ("**Proposed Development**")

DC_FINAL_DECISION - ODB:14

2 For the reasons set out in this letter, the Council declines to determine the Application.

Background

3 By way of background, the relevant enforcement and planning history of the site is as follows:

3.1 An application for planning permission 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"* given reference H06-0772-21 was refused by the Council on 17 January 2022.

3.2 The Enforcement Notice was served by recorded delivery on 2 February 2022, with an effective date of 9 March 2022. A copy is appended to this letter at **Annex 1**. The Enforcement Notice set out the alleged breach of planning control as:

"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."

3.3 No appeal against the Enforcement Notice has been received by the Council.

3.4 The Application was received by the Council on 10 August 2022. The Council has validated the Application, however until now it was recorded as "on hold" whilst the Council considered the contents of the Application and sought further legal advice.

Legislative Position

4 Section 70C(1) of the Town and Country Planning Act 1990 (**"Act"**) provides that:

> *"A local planning authority may decline to determine an application for planning permission or permission in principle 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 [i.e. one which was issued prior to the receipt of the application by the local planning authority] 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".*

5 The ability of the Council to decline to determine an application in a situation where there was an extant enforcement notice was considered by the Court in *Wingrove*[1]. The Court concluded that *"Section 70C confers a wide discretionary power on local planning authorities to decline to determine a retrospective planning application for a development, subject to an enforcement notice..."* and that *"section 70C is far from being a gateway for applicants to canvass the full planning merits: it is a discretion to decline to determine those merits, not a discretion to determine them".*

[1] *Wingrove v Stratford-upon-Avon District Council [2015] EWHC 287 (Admin.)*

DC_FINAL_DECISION - ODB:14

The Council's Position

6 The Council considers it clear that granting planning permission for the Proposed Development would require the grant of permission for "*the matters specified in the enforcement notice as constituting a breach of planning control*", thereby engaging Section 70C, for the following reasons:

6.1 Both the Application and the Enforcement Notice relate to the same area of land/part;

6.2 The Enforcement Notice specifies the residential use of the Site by gypsy/travellers and the stationing of caravans for human habitation and associated operational development on the Site as the breach of planning control; the Application seeks permission for gypsy/traveller family pitches together with ancillary works. The Council therefore considers that the Application seeks permission for precisely the use and works specified in the Enforcement Notice.

6.3 The Enforcement Notice was issued on 2 February 2022 (predating the Application by over 6 months) and therefore was a "*pre-existing enforcement notice*" for the purpose of the Act.

7 Therefore, the Council is empowered to decline to determine the Application by the Act.

8 The Council acknowledges that it has discretion in relation to whether to decline to determine an application under Section 70C. However, the Council considers that it is reasonable and proportionate to decline to determine the Application in all the circumstances.

8.1 The Council have not been notified of any legitimate reason why an appeal against the Enforcement Notice was not lodged by the Applicant. Following *Wingrove*, the Council considers that an appeal against an enforcement notice (details of which were notified to the Applicant in the Annex to the Enforcement Notice) was the appropriate avenue through which to challenge enforcement action. It is therefore legitimate for the Council to decline to determine the Application where the Applicant had recourse to an appropriate remedy, particularly as the Applicant has been provided ample opportunity prior to the issue of the Enforcement Notice to regularise the breaches of planning control.

8.2 Following *Wingrove* it is unnecessary for the Council to determine the merits of the application in order to justify an exercise of its discretion to determine the Application in this situation pursuant to section 70C.

8.3 Despite this, the Council has considered the Application to establish if the Application overcomes the previous reasons for refusal for planning permission pursuant to application H06-0772-21 for the following form of development, issued on 17 January 2022 ("**2022 Refusal**"):

> *"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."*

DC_FINAL_DECISION - ODB:14

8.4 The reasons that accompanied the 2022 Refusal were as follows:

> *"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."*

9 No appeal was lodged against the 2022 Refusal, nor steps to cease use of the site and reinstate the land to regularise the breach of planning control. The Enforcement Notice was subsequently issued that reiterated the above two concerns which justified, as explained in the Enforcement Notice, why it was considered expedient to take enforcement action.

10 After consideration of the Application by officers, the Council does not consider that its previous concerns raised through the 2022 Refusal and set out in the Enforcement Notice have been addressed.

11 There remains an in-principle objection to the Proposed Development because, as explained most recently in the Enforcement Notice, the Council considers it 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 Proposed Development and uses proposed are 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. The Council remains of the view that Policy 1 is not complied with and the Application and its contents does not alter this in-principle objection.

12 Further, the Council remains of the view that the Proposed Development and proposed use is not supported because the use falls within the 'highly vulnerable' flood risk vulnerability category that is inappropriate to the flood zone in which the 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 with this flood zone and therefore should 'not be permitted.' The Council remains of the view that the use 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. The Council is also mindful that the application site lies within an area identified as 'Danger to Most' in the South East Lincolnshire Strategic Flood Risk Assessment (March 2017) (SFRA) and could experience depths of between 0.1 – 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 Council remains unsatisfied therefore that the proposed use is acceptable from a flood risk perspective.

13 Further, the Council does not consider that there have been any material changes either in policy terms or to the Proposed Development since the issue of the Enforcement Notice which may weigh in favour of the Council determining the Application or indeed that is likely to change the Council's recommendation as to the Proposed Development. The description of the Proposed Development and the alleged breach of planning control in the Enforcement Notice are virtually identical, and the policy against which the use of the Site and development have not changed. It is not considered that the Application addresses the reasons for issuing the Enforcement Notice (or refusing permission pursuant to the 2022 Refusal).

14 The personal circumstances of the Applicant has been considered, and whilst the Council has sympathy in that regard and considered matters carefully, this does not change the Council's decision due to the overall planning merits and in-principle objections outlined in this decision.

15 For all these reasons, the Council – after careful consideration based on all the representations received from the Applicant and the contents of the Application– considers it appropriate to exercise its discretion pursuant to section 70C(1) of the Act and refuses to determine the Application.



Phil Norman
Head of Planning
South Holland District Council

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
(AS AMENDED BY THE PLANNING AND COMPENSATION ACT 1991)

ENFORCEMENT NOTICE – MATERIAL CHANGE OF USE INCLUDING OPERATIONAL DEVELOPMENT

ISSUED BY: South Holland District Council ("the Council")

1. **THIS NOTICE** is issued by the Council because it appears to the Council that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. The Council considers that it is expedient to issue this Notice, having regard to the provisions of the development plan and to other material planning considerations and for those reasons set out in this Notice. The Annex at the end of the Notice and the enclosures to which it refers contain important additional information.

2. **THE LAND TO WHICH THE NOTICE RELATES**

   The land on the south side of Blazegate, Gedney, Spalding now known as **Silver Birch Lane, off Blazegate, Gedney, Spalding, PE12 0FU** registered under Title Number LL299536 and shown edged red on the attached plan ("the Land")

3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE 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.

4. **REASONS FOR ISSUING THE NOTICE**

   It appears to the Council that the above breach of planning control has occurred within the last ten years.

   The reasons for issuing this notice are that the use falls within the 'highly vulnerable' flood risk vulnerability category that is inappropriate to the flood zone in which the 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 with this flood zone and therefore should 'not be permitted.' The use 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.

Additionally, 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 use 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.

The Council considers it has allowed sufficient opportunity for the breaches of planning control detailed in this Notice to be regularised through the submission of a retrospective planning application. This was recently determined by the Council under application H06-0772-21 and planning permission was refused on 17 January 2022. The Council maintains that in light of the concerns detailed above planning permission should be not be granted, because planning conditions could not overcome these objections to the development. The Council has considered the implications of taking enforcement action upon the owner and occupiers of the Land, however in all the circumstances considers that it is expedient to take enforcement action.

5. WHAT YOU ARE REQUIRED TO DO

(i) Cease all residential use of the Land;
(ii) Remove all caravans and/or mobile homes including all motorhomes from the Land;
(iii) Cease the use of the Land for the parking of vehicles by removing all vehicles from the Land;
(iv) Remove the access and all hardstanding/hardcore from the Land together with any developments, structures, materials and other paraphernalia to facilitate the residential use of the Land, including but not limited to any package treatment plant and domestic paraphernalia; and
(v) On completion of steps (i) – (iv) return the Land to its previous condition

6. TIME FOR COMPLIANCE

(i) Six (6) calendar months after this notice takes effect
(ii) Six (6) calendar months after this notice takes effect
(iii) Six (6) calendar months after this notice takes effect
(iv) Six (6) calendar months after this notice takes effect
(v) Nine (9) calendar months after this notice takes effect

7. **WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on 9 March 2022, unless an appeal is made against it beforehand.

Dated: 2 February 2022

Signed:
Development Manager

On behalf of South Holland District Council, Council Offices, Priory Road, Spalding, PE11 2XE

Silver Birch Lane, off Blazegate, Gedney, PE12 0FU



SOUTH HOLLAND DISTRICT COUNCIL

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