

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H09-1022-22 **Applicant:** Mr P Jackson

Proposal: Scramble Bike Track (retrospective) - approved under H09-0665-20. Modification of Condition 1 to allow the site permanent planning permission

Location: Jacksons Caravan Park Penny Hill Holbeach

Terminal Date: 13th January 2023

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
04	Approach to Flood Risk
28	The Natural Environment
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2021

Section 12 Achieving well designed places
Section 15 Conserving and Enhancing the natural environment.
Annex 3: Flood risk vulnerability classification

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SHDC INTERNAL	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

This is a section 73 application to vary a condition. Planning permission was granted under H09-0665-20 for a scramble bike track (retrospective) on 30th October 2020. It was subject to a temporary condition where the use ceased after a 2 year period. The applicant now wants to make the use permanent, especially as it has been in existence for ten years.

Site Description

The site is 0.3 hectares in area is situated on the western side of Penny Hill immediately to the north of a residential caravan park, which is a long established use. Access is via a gateway serving the caravan park. The eastern and northern boundaries are de-lineated by thick hedge/tree planting on the peripheries which are now mature, with very little gaps in between to allow views into the site.

History

H09-0665-20 - Scramble Bike Trak (retrospective) - granted planning permission on 30/10/2020 subject to the following condition:

"The development hereby permitted shall be discontinued at or before 2 years from the date of this decision notice and the site re-instated to its former condition, unless agreed otherwise in writing by the Local Planning Authority.

Reason: To enable the Local Planning Authority to review the impact of the development on the amenities of the locality.

This condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019".

It is this condition that is sought to be varied so that the permission can become permanent.

A further condition, included in this report for information is as follows:

"This permission shall operate for the benefit of the applicant (Mr P Jackson) and his immediate family, and the use hereby approved shall be terminated at such time as the applicant ceases to occupy the premises as outlined in blue on dwg. No 3674-20-01 accompanying the application. The scramble bike track shall not be used for business or commercial purposes."

Consultation Responses

Local Highway Authority and Lead Local Flood Authority

Does not wish to restrict the grant of permission.

No Objections.

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 the permanent use of this land as a Scramble Bike Track would not be expected to have an unacceptable impact upon highway safety and therefore does not wish to object to this planning application.

SHDC Environmental Protection

Raises no objection.

Public

No comments received from the public or other third parties.

Planning Considerations

Principle and Sustainability

Planning permission is sought to vary condition 1 of planning permission H09-0665-20 to allow the retrospective bike track to be permanent. All other conditions would remain, including the personal permission as shown above which restricts the use to the applicant and his immediate family. Once the family no longer live on the site this condition means the use must cease.

The site is outside a defined settlement limit as defined in the South East Lincolnshire Local Plan, 2019. As such the use is in open countryside. Policy 1 of the SELLP is therefore applicable which states that development will be permitted in the countryside that is necessary for such a location and/or where it can be demonstrated that it meets the sustainable development needs of an area in terms of economic, community or environmental benefits.

In principle the use is unsuitable for any location other than the open countryside, so it is considered necessary for it to be a countryside location as per the policy, since anywhere else it is likely to cause noise and disturbance and also has a significant land take. The location is therefore considered suitable.

In terms of whether or not the site is sustainable, the use is restricted to the family only who live on site, so the site will not attract many external visitors or external trips. As a result, it is considered to be a sustainable use and there is no conflict with Policy 1 of the SELLP.

Size, Scale, Layout and Design

Policy 2 of the SELLP states that proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met, specifically in relation to, amongst other things, size, scale, layout, impact on amenity, character and appearance of the area and the relationship and impact on existing development and neighbouring land uses, the quality of design, access and vehicle generation level and visual intrusion.

The use has operated for ten years. A personal statement has been submitted which outlines how the site has been used and confirms that the other conditions associated with the use by family members only, for limited periods and frequency. No lighting is proposed and the track is not used commercially.

The scale is relatively small and only occupies a small proportion of the site. It is sat behind existing caravans and is well screened so it does not adversely impact the surrounding roads or character of the area.

The proposal does not conflict with policy 2 of the SELLP.

Effect on neighbouring properties

Policy 3 of the SELLP requires all development to create distinctive places and states "design which is inappropriate to the local area.....will not be acceptable." Policy 30 states that development proposals will not be permitted where, taking account of any proposed mitigation measures, they would lead to unacceptable adverse impacts upon noise, the health and safety of the public and the amenities of the area.

The main potential impact associated with the proposal relates to noise impact. Scramble bikes can potentially be noisy. However, the track is solely for private use by the applicant's family and is only used on an intermittent basis. It should be noted that the track has been used since 2012 and whilst there were isolated complaints which were reported before the previous application, no complaints have been received since the imposition of the conditions as a result of the previous approval over the last two years. Environmental Protection (noise) have raised no objections to the proposal, but did support a personal condition in the previous approval. Given the restricted use of the site, and the fact that it has operated successfully for two years without complaint, re-imposing the previous conditions to limit the use to a maximum of 2 hours per day, with no lighting, and a personal permission would ensure that the amenity of nearby residents continue to be protected.

In addition, it is considered that there is not sufficient evidence to refuse the application on grounds of dust, air quality, health issues, possible anti-social behaviour etc. Some of these matters could be dealt with by means of separate legislation if they were to subsequently arise - however, no evidence has been put forward or received to indicate that the use in the last two years has resulted

in any problems.

Given the fact that Environmental Protection raise no objection, that there have been no comments on the application and no reported complaints, it is considered that the proposal does not conflict with Policy 3 of the SELLP.

Flooding Considerations

Policy 4 of the SELLP relates to the approach to flood risk and details how development proposals will be determined, including sequential testing and other relevant considerations.

The site is located within Flood Zone 3 of the Government's Flood Map within an area identified as 'Danger for Some'. However, it is classified as a less vulnerable use and no buildings or impermeable surfaces are proposed. Consequently, there are no objections on flood risk grounds which has further been confirmed by the Lead Local Flood Authority.

The proposal does not conflict with Policy 4 of the SELLP.

Foul and Surface Water Drainage

The proposal does not involve foul water.

In terms of surface water, the development would be permeable. As such there would not be any significant issues concerning surface water run-off.

Impact on Biodiversity

Section 15 of the National Planning Policy Framework (NPPF) seeks to protect sites of biodiversity value, minimise and provide net gains for biodiversity, including establishing coherent ecological networks that are more resilient to current and future pressures.

Policy 28 of the SELLP seeks to protect ecological networks of interconnected designated sites and wildlife-friendly greenspace and assess proposals directly or indirectly affecting these assets by assessing if the benefits of the proposal would outweigh the adverse impacts on the site and wider network of natural habitats.

There are limited opportunities to improve biodiversity on the track but the main biodiversity net gain relates to the retention of boundary trees and hedgerows. Hedgerows in particular can provide numerous benefits for wildlife. Given that the existing permission has a condition that excludes lighting, the hedgerows are likely to be beneficial for light sensitive species such as bats. In the previous permission, a further condition stated that the hedgerows should be maintained for 5 years. Given that there is now increased emphasis upon biodiversity net gain, it is considered that this scheme can contribute to biodiversity net gain by maintaining the hedgerow for a longer period of time. The agent has agreed that a similar condition can be re-imposed but for a longer period of 10 years to maintain the hedgerow. This is considered to meet the requirement for a net gain in biodiversity.

As a result it is not considered that the proposal is contrary to policy 28 of the SELLP.

Highway Safety and Parking

Policy 36 of the SELLP states that all new development should provide vehicle and cycle parking in accordance with the minimum Parking Standards adopted by the Local Planning Authority. There is no particular standard for this type of use and therefore the scheme has to be assessed on its merits.

There are no parking or highway safety impacts as the use of the track is by the family only living on site. They therefore walk to the facility. The Local Highway Authority also raise no objection.

The proposal is not contrary to policy 36 of the SELLP as a result.

Planning Balance

Section 38 (c) of the Planning and Compulsory Purchase Act 2004 states that 'If regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts,

the determination must be made in accordance with the plan unless material considerations indicate otherwise.'

The balancing exercise is as follows:

In economic terms the scramble bike track would be for personal use by the applicant and family. There are no significant economic benefits in terms of building a strong, responsive and competitive economy as it is not a commercial activity, it is considered the proposal is neutral in economic terms.

In social terms the proposal would be used by the occupants of Penny Hill House, which is associated with the caravan site. The site adjoins the latter and is in close proximity to the house. It is a suitable location for such a facility, which by its nature would not be wholly appropriate within a defined settlement boundary. Again the proposal is neutral in social terms.

In environmental terms the site is very well screened by trees and hedging along its northern and eastern boundaries and static caravans located to the south. Consequently, it is not readily visible from either Peartree House Road or Washway Road. It is considered that the proposal would not harm the existing character or the rural locality. Noise can be controlled via conditions. Retaining the boundary hedgerows for a further 10 years controlled by condition is considered to be a net gain in biodiversity. This weighs in favour of the proposal.

It is considered that the benefits outweigh any harm associated with the proposal and on balance the proposal is considered acceptable.

Conclusion

The proposal satisfactorily complies with Policies 1, 2, 3, 4, 28 and 30 of the South East Lincolnshire Local Plan, 2019. The proposal is considered to be sustainable and there are no overriding factors against the scheme, subject to mitigating conditions, including a personal permission. It is therefore recommended that the application be approved.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).

C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

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

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

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

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for

private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.