

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Development Manager

To: Planning Committee - Wednesday, 8 March 2023

(Author: Richard Fidler, Development Manager)

Purpose: Following the receipt of external legal advice and further representation from the Environment Agency, to consider the appeal submitted regarding the refusal by the Local Planning Authority of a planning application (ref: H14-0419-22) on 27 June 2022 at Land North of Gatehouse 86 Langhole Drove for the 'Use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/day room ancillary to that use'.

1.0 BACKGROUND

- 1.1 A full planning application (H14-0419-22) was received in April 2022 for "Use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/day room ancillary to that use" at Land North Of Gatehouse 86 Langhole Drove Pinchbeck.
- 1.2 The Local Planning Authority (LPA) acted positively and proactively in determining this application by assessing it against all material considerations, including national guidance, planning policies and representations that were received during the public consultation exercise. A revised Flood Risk Assessment was submitted during the course of the application in an attempt to address the holding objection by the Environment Agency (EA). However, at the time of decision the issues were considered to be so fundamental to the proposal that it was not possible to negotiate a satisfactory solution and due to the harm, which was identified within the reasons for the refusal, approval was not possible. The application was refused under the scheme of delegation on 27 June 2022, for the following reasons:

Reason 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, Policy 20 of the adopted South East Lincolnshire Local Plan (2019) states that planning permission for sites for permanent residential use will be granted when they 'are not located within Flood Zone 3a or 3b'.

In light of the above, the proposal is considered contrary to Policies 4 and 20 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.

Reason 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 meets the sustainable development needs of the area in terms of economic, community and environmental benefits.

- 1.3 Copies of the Decision Notice and the Officer report are appended at Appendix A of this report.

2.0 **APPEAL CASE**

- 2.1 As a result of the refusal of planning permission for this development an appeal was submitted to the Planning Inspectorate on 22 December 2022. The appeal, requested by the appellant to be considered via a Hearing. A “start date” has not been received from the Planning Inspectorate at the time of writing this report.

3.0 **EXTERNAL LEGAL ADVICE**

- 3.1 As a result of recent appeal decisions (included at Appendix B) relating to gypsy and traveller applications made by the Planning Inspectorate within the District, specifically:

Appeal Ref: APP/A2525/W/22/3300517: (H09-0087-22) Land To The Rear Of Emmanuel House, Main Road, Holbeach Drove, Spalding. Inspector’s decision 31 Oct 2022;

Appeal Ref: APP/A2525/W/20/3249950: (H02-1174-19) Bridge Inn Caravan Park, Common Drove, Crowland. Inspector’s decision 11 Jan 2023 and

Enforcement Appeal Ref: APP/A2525/C/20/3258547: Land on the east side of Baulkins Drove, Sutton St James. Inspector’s decision 13 Jan 2023.

Officers thought it prudent to seek external legal advice to inform planning decision making on such proposals going forward.

- 3.2 External legal advice was received on 23 February 2023, and is discussed below:
- 3.3 With regard to NEED, having reviewed the recent appeal decisions it is the considered view of the external legal advisor that it is now extremely difficult for the Council to object on the basis of need, without an updated Gypsy and Traveller Accommodation Assessment (GTAA) being undertaken. Each of the recent three appeal decision notices specifically addressed “need” and all three Inspectors concluded that there was an unmet need in the District based on the outdatedness of the assessment, the high number of unknown households and the fact that Local Plan policy does not place an upper limit on sites.
- 3.4 As a result of these three recent and consistent appeal decisions, without a change to the evidence Base (i.e. the GTAA), it is the view of the external legal advisor is that the Council runs the risk of an adverse costs award if it continues to resist applications and appeals on the ground of need i.e. it would be unreasonable. Of course it should be noted that any new GTAA may well demonstrate a greater need. Furthermore, all proposed developments need to comply with the criteria contained in Policy 20 but that is a separate matter.
- 3.5 The legal advisor goes on to say that in relation to this appeal, if the Council elects not to pursue an objection based on need then it should communicate this to the Planning Inspectorate and to the Appellant as quickly as possible. There is nothing to be gained by waiting.
- 3.6 With regard to FLOOD RISK the external legal advisor again considered the recent appeal decisions in the District, and advises that although Policy 20: Accommodation for Gypsies, Travellers and Travelling Showpeople, makes reference to Flood Zone 3a/b, this argument did not persuade the Planning Inspector at Baulkins Drove. Also the Planning Inspector at

the Bridge Inn appeal, would appear to have left the door open to allowing such uses where an appropriate Flood Risk Assessment has been submitted.

- 3.7 Langhole Drove is different to Baulkins Drove in that it lies in a hazard zone, albeit it in the 'low' classification, which is lower than Bridge Inn.
- 3.8 In concluding, the external legal advisor remarks that in summary his advice to the Council is that without a change to the evidence base, it is now extremely difficult to object to future applications/appeals on the basis of need.
- 3.9 In relation to flood risk, his advice is that should the Environment Agency no longer object to the scheme in the context of the recent appeal decisions it would similarly not be advisable to pursue the appeal on flood risk grounds.

4.0 **RESPONSE OF THE ENVIRONMENT AGENCY**

- 4.1 The Environment Agency (EA) were contacted regarding the receipt of the appeal in the context of the recent appeal decisions and the external legal advice received.
- 4.2 The EA responded on 9 February 2023 stating that:

"You have now provided further information regarding the Council's position in respect of the need to update the Gypsy and Traveller Accommodation Assessment (GTAA) and asked us to provide further advice in respect of flood risk to this site, notwithstanding the policy position indicating that caravans intended for permanent residential use are classified as 'highly vulnerable' development and should not be permitted in Flood Zone 3a (*Planning Practice Guidance, Flood risk and coastal change section: paragraph 079 Reference ID: 7-0799-20220825*), as outlined in our previous objection letters. The South East Lincolnshire Local Plan Policy 20, also reflects this position.

We can advise that this site lies in an area shown to be at a 'low hazard' should a breach of the defense occur in an event with a 1 in 1000 chance of occurring in any year up to 2115. The development could experience depths of up to 250mm should such an event occur. Therefore, notwithstanding the policy objection, the risk of the flooding of the site is not considered to pose a threat to life during the extreme event and resistance measures could be incorporated into the development to protect property – i.e. setting the finished floor levels of the static caravan and day room at 300mm.

Accordingly, if the Council is minded not defend an appeal against the refusal of this application, the Environment Agency would not pursue its policy objection."

5.0 **CONCLUSION AND OTHER OPTIONS**

- 5.1 The recent appeal decisions are material to current and future applications for Gypsy and Traveller accommodation. The clear legal advice is that to pursue a refusal on the basis of need is now difficult. It would likely be seen as unreasonable to continue in this vein.
- 5.2 Similarly without the support of the EA to defend the appeal on flood risk grounds to continue would also likely be seen as unreasonable.

- 5.3 The Council cannot withdraw from the appeal process, which will continue to take its course. However, it can contact the Planning Inspectorate and appellant and inform them that no evidence shall be presented by the Local Planning Authority. To minimise the chance and size of an award of costs the legal advice is to do so as soon as is practicable.
- 5.4 Members may alternatively resolve to instruct officers to defend the appeal. In the context of the recent appeal decisions, the legal advice and the position of the EA this is not considered to be a reasonable course of action. This would likely open the Council to a more significant award of costs against it.

6.0 RECOMMENDATION

- 6.1 **It is recommended that the Planning Committee considers this report and resolves that Officers shall advise the Planning Inspectorate and the appellant that no evidence shall be presented by the Council to defend this appeal, in the light of recent appeal decisions, external legal advice and further representations from the Environment Agency.**

Background papers:-

Planning Application and Appeal File

Relevant Appeal Decisions

South East Lincolnshire Local Plan 2019

Boston and South Holland Gypsy and Traveller Accommodation Assessment, November 2016

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

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 - Land North of Gatehouse 86 Langhole Drove H14-0419-22. Officer report and Decision Notice

Appendix B – Recent appeal decisions:

Appeal Ref: APP/A2525/W/22/3300517: (H09-0087-22) Land To The Rear Of Emmanuel House, Main Road, Holbeach Drove, Spalding.

Appeal Ref: APP/A2525/W/20/3249950: (H02-1174-19) Bridge Inn Caravan Park, Common Drove, Crowland.

Enforcement Appeal Ref: APP/A2525/C/20/3258547: Land on the east side of Baulkins Drove, Sutton St James.