

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Planning Manager

To: Planning Committee – 27 August 2014

(Author: Richard Fidler Development Manager)

Subject: Plots 1 – 9 Fulney Lane North, Spalding

Purpose: To consider Planning Application H16-0124-14

Application Number: H16-0124-14

Date Received:

13 February 2014

Application Type: S191 Lawful Development Certificate

Description: Use of land for private caravan/mobile home site for permanent occupation

Location: Plots 1 – 9 Fulney Lane North, Spalding

Applicant: South Holland District Council

Agent:

Ward: Spalding St Pauls

Ward Councillors:

Cllr D Ashby
Cllr A Miller

You can view this application on the Council's web site at

<http://www.sholland.gov.uk/doitonline/plandev/plansearch.aspx> .

Just enter the Application Reference Number, press 'Get the details' and follow the links to see the documents and plans held

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 The site is owned by South Holland District Council.

2.0 PROPOSAL

2.1 The application seeks a certificate of lawful use in respect of the use of land situated at Fulney Lane North (the site) as a caravan/mobile Home site for permanent residential occupation under section 191 of the Town and Country Planning Act 1990. Evidence has been submitted to support the claim that the land has been occupied as a caravan/mobile home site for a period of more than ten years. The plots have been occupied for many years under the licence agreements granted under the Mobile Homes Act 1983 (as amended). The District Council's Housing Team manage the letting of each plot, using the same housing management system as the main housing stock.

3.0 SITE DESCRIPTION

3.1 The application site is divided into 9 plots, with mobile homes/caravans on 8 of the plots. The remaining plot is vacant. The plots are served by an access road from Fulney Road North. To the north are a number of residential properties, with the bank to the Coronation Channel to the west and Dalehead Foods to the east and south.

4.0 RELEVANT PLANNING POLICIES

- 4.1 As this is a legal determination planning policies is not a relevant consideration.

5.0 RELEVANT PLANNING HISTORY

- 5.1 H16-1059-92 a planning application was submitted for the siting of 3 mobile homes on Plot 9. The application was withdrawn following a memorandum from the Housing & Property Services Department to the Director of Planning & Building Control Services dated 6 November 1992 which stated:
"I refer to the conversation between yourself and Sally (Sally Waltham – the then Director of Housing & Property Services) on 3rd November, 1992 confirming that the above site (Fulney Lane Caravan Site) has an established use as a mobile/static home site and therefore, Planning Permission will not be required for the proposed scheme to provide three mobile homes...."

6.0 REPRESENTATIONS

- 6.1 None received.

7.0 MATERIAL CONSIDERATIONS

- 7.1 The key issue for consideration in this application is whether the submitted evidence is sufficient to consider on the balance of probability that the use of the land in question is lawful.

Consideration of the Evidence

- 7.2 Section 191 of the Town and Country Planning Act 1990 provides:-

"(1) If any person wishes to ascertain whether:

(a) any existing use of buildings or other land is lawful . . .

he may make an application for the purpose to the local planning authority specifying the land and describing the use . . .

(2) For the purposes of this Act uses and operations are lawful at any time if:

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force."

- 7.3 In reaching a decision on an application for a certificate of lawfulness the Council must consider the lawfulness of the existing use or development at the time of the application on the balance of probability based on the evidence and should not consider the planning merits of the existing position. If, on such an application, the Council are satisfied of the lawfulness at the time of the application of the matters as described in the application, or as modified by the Council, they must issue a certificate to that effect.
- 7.4 The evidence was clear that Plots 1 - 8 had been continually occupied for more than ten years. However, given that Plot 9 has been vacant since 2007, legal advice was sought as to whether the use of this plot could be considered lawful.

- 7.5 When considering the question of the lawfulness of the existing use at the time of the application the case of Panton v Secretary of State for the Environment, Transport and the Regions; Farmer v Secretary of State for the Environment, Transport and the Regions [1999] 1 P.L.R 92 established that a dormant use could still exist in planning terms, and could be an "existing use" for the purposes of section 191 of the Act provided that it has not been lost: by abandonment; by the formation of a new planning unit; or by the making of a material change in use.
- 7.6 The applicant has confirmed the dates for occupation of each plot which indicate that plots 1-8 have been in occupation for more than ten years; however plot 9 has been vacant since 2007. Due to the length of time that this plot has been empty it is necessary in considering the question of the lawfulness of the "existing use" of plot 9 as a caravan/mobile home site to consider whether or not that use has been abandoned.
- 7.7 The four criteria for abandonment were laid down in the case of Hughes v Secretary of State for the Environment, Transport and Regions [2000] JPL 826 and are:-
1. the physical condition of the building;
 2. the length of time for which the building had not been used for residential purposes;
 3. whether it has been used for any other purposes; and
 4. the owners intentions.

The criteria are of equal relevance and are to be tested by considering whether a reasonable man with knowledge of all the circumstances would objectively reach the conclusion that plot 9 had been abandoned. The wishes of the owner are not the determinative factor. The weight to be attached to each of the criteria is a matter of judgment for the decision taker taking into account the particular circumstances of the case.

- 7.8 Taking the criteria in turn in relation to the plot 9 on the site:-

- the physical condition of the site;
The site is in a habitable state and is mostly in use by mobile homes and although currently overgrown plot 9 retains its appearance and is suitable for occupation for the siting of 3 mobile homes.
- the length of time for which site had not been used for residential purposes;
Whilst the applicant has licences to show plots 1-8 have been in occupation for more than 10 years, plot 9 has been empty for at least the last 7 years. The length of time that this property has not been used whilst indicative that the use may have been abandoned is not conclusive there have been a number of appeal decisions which have found that the property has not been abandoned even where the properties have been unoccupied for 40 years and have been found to be uninhabitable.
- whether it has been used for any other purposes;
As there is no evidence that the site has been used for any other purpose then it follows that plot 9 is still intended to be used for the purpose of siting 3 mobile homes, whether it is in occupation or not.
- the owners intentions.
As the land belongs to South Holland District Council, the evidence provided confirms that each plot is let under a licence agreement under the Mobile Homes Act 1983 as amended) which indicates that South Holland District Council intends for that site to be used for mobile homes/caravan housing including plot 9.

7.9 Formation of a new planning unit

There is no evidence that this site or plot 9 that there has been subject to a formation of a new planning unit on the site or plot 9.

7.10 Material change in use

There is no evidence that there has been no material change of use to the site or plot 9 since South Holland District Council commenced using that site as a mobile/static home site in 1987.

Conclusion

- 7.11 *On considering the application and submitted evidence and in the light of no contrary evidence to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, the provisions of the Town and Country Planning Act 1990 are that on the balance of probabilities it seems that the existing use of the site as a whole in respect of use of land for private caravan/mobile home site can be considered to be lawful.*

8.0 **RECOMMENDATIONS**

- 8.1 **Issue a Lawful Development Certificate for use of land for a sui generis caravan/mobile home site for permanent residential occupation.**

Background papers:- Planning Application Working File

Lead Contact Officer

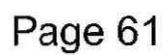
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Appendices attached to this report:

Appendix A – Plan A



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