

DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No: H18-0259-17 **Applicant:** Roffes Transport Ltd
Proposal: Siting of two mobile homes
Location: Roffe Transport Ltd West Bank Sutton Bridge
Terminal Date: 3rd June 2019

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2019

Representations:

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

Proposal

The application is for a Lawful Development Certificate for the siting of 2 mobile homes on the site at Roffe Transport Ltd, West Bank, Sutton Bridge, Spalding

This application is a legal determination and planning policy is not relevant to the determination as to whether the claimed use is indeed lawful. The decision is based upon the case officers judgment as to the case being proven on the balance of probabilities.

The applicant seeks the granting of a Certificate of Lawfulness of Existing Use or Development (CLEUD) in order to confirm the residential use of the land edged red on the site location plan, for the locating and use of 2 static caravans used in conjunction with the transport business for the accommodating of employees on a temporary basis. It is the applicants case that the 2 caravan units have been used for residential occupation by employees for a period in excess of 10 years at Roffe Transport, West Bank, Sutton Bridge, Spalding, PE12 9QH.

The result of this would be that the use of the 2 static caravans for the residential occupation of Roffe employees has therefore become immune from planning enforcement.

The application is supported by the following submissions:

1. Site Plan
2. Application Form
3. Statutory Declaration of Thomas Malcolm Roffe, director of Roffe Transport Limited with evidential exhibits.

Case law has established that in order to become immune from enforcement and therefore lawful, the breach must be continuous for a period of at least 10 years.

The applicant has confirmed within the Statutory Declaration that the two mobile homes have been used as residential accommodation by employees of the Company for over 10 years. The two mobile homes were purchased from Searles in Hunstanton in 2005 (mobile home 1) and 2007 (mobile home 2) respectively. Both mobile homes have been on the site since those dates. Mobile home 1 was purchased by the Company to provide residential accommodation for one of the drivers when he was offered a job as an HGV driver. It is stated that the employee could not accept the job because he had nowhere to live. It was agreed therefore, that we would provide him with accommodation. A copy of a letter written by Mr Rudzinski and appended to the Declaration, confirms he has occupied mobile home 1 since the 28th February 2005 which is the date upon which he commenced his employment with the Company.

Photographs of the interior of mobile home 1 have been submitted in support of the application which demonstrate a unit used for residential purposes with all the amenities expected for daily living.

The Statutory Declaration states that mobile home 2 was purchased by the Company in 2007 and that records of the Company shows that since 2007 the unit has been occupied by the following employees:

- a. Roman Rudzinski - Roman started work with the Company on the 16th April 2007 and left on the 3rd May 2014. During that time Roman lived at mobile home 2.
- b. Gerald Zalecki - Gerald started work with the Company on the 12th August 2013 and left on the 30th April 2015. During that time Gerald lived at mobile home 2. For part of that time Gerald lived at mobile home 2 with Roman and then Bogdan Kuzdub.
- c. Bogdan Kuzdub - Bogdan started work with the Company on the 30th June 2014 and is still an employee. Bogdan moved into mobile home 2 when he started work with us. Bogdan left mobile home 2 when Andrew Witkowski joined the company.
- d. Andrew Witkowski - Andrew started work with the Company on the 27th July 2015 and is still an employee. Andrew currently lives at mobile home 2. Andrew is a Polish national. Andrew lives there with another Polish national and another Company employee Zbigniew Masiejczyk.
- e. Zbigniew Masiejczyk lives at mobile home 2 with Andrew. According to the Company's records Zbigniew started work with the Company on the 23rd October 2017. He moved into mobile home 2 on the 22nd June 2018. He goes back to Poland every 4 to 5 weeks.

Statements submitted from Andrew Witkowski and Zbigniew Masiejczyk. "TMR4" comprises of two statements in Polish signed by Andrew Witkowski and Zbigniew Masiejczyk. "TMR5" is the English translations of those statements. Those statements confirm that Andrew and Zbigniew are the only persons currently living at mobile home 2, that it is their sole place of residence and states when they first came into occupation there.

The evidence also confirms that the electricity, telephone and sewerage discharge for both mobile home 1 and mobile home 2 are connected to the Company's office on site. As such the Company is responsible for payment of all of the utilities.

Conclusion

If the Local Planning Authority have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

On the evidence submitted and on the balance of probabilities, both caravans shown within the red edge of the site plan, have been used for a period in excess of 10 years for continuous residential use by employees of the company, making the use immune from planning enforcement.

A delegated approval is considered appropriate in this case.

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 to grant permission 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 to grant permission 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 to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.