DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H18-0647-26**	**Applicant:**	**Evolution Park Homes Group Ltd.**
Proposal:	Use of site as site for caravans for seasonal workers and its retention out of season for storage of caravans - approved under H18-0224-18. Modification of Condition 2 to allow amended wording of condition.		
Location:	Poppy Fields Caravan Park Fields Farm South Sutton Bridge		
Terminal Date:	3rd September 2026		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework August 2026

Section 73 of the Town and Country Planning Act 1990

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0
ENVIRONMENT AGENCY	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

The application is made under Section 73 of the Town and Country Planning Act 1990 and seeks to vary Condition 2 of planning permission H18-0224-18.

The application form describes the approved development as:

"Use of site as site for caravans for seasonal workers and its retention out of season for storage of caravans H18/1219/98 Appeal Decision: APP/A2525/A/04/1142470 Conditions 1 - Modification of Condition 1 of H18-0691-03 (allowed on appeal) to allow amendments to wording."

Condition 2 of H18-0224-18 controls the occupation of the caravans by restricting their use to agricultural and/or horticultural workers employed in farming by Hargreaves Plants and working on land in the same ownership or occupation.

The application seeks to modify that condition.

The principal issue is therefore whether the existing occupancy restriction should be varied and, if so, whether an alternative condition would provide an appropriate, precise and enforceable means of controlling the future occupation of the caravans.

Site Description

Poppy Fields Caravan Park comprises a number of static caravans situated within a predominantly rural area to the south of Sutton Bridge. The site is accessed from the A17 via a single-track road and is largely enclosed by established trees and vegetation. Two dwellings are located in close proximity to the site, with a small number of agricultural buildings situated to the north.

The site lies within Flood Zone 3a, which is identified in national planning guidance as having a high probability of flooding. The South East Lincolnshire Strategic Flood Risk Assessment also identifies the site as having a future flood hazard classification predominantly of 'Danger for Most', with potential flood depths of approximately 0.5-1.0 metres arising from a breach of the flood defences during an event with a 0.1% annual probability up to 2115.

History

H18-1109-23 - Continued use of land as a site for static caravans in residential use in breach of Condition 1 & 2 of H18-0691-03 and Condition 2 of H18-0224-18 (re-submission of H18-1073-22). Refused 14th February 2024. Appeal A Ref: APP/A2525/C/24/3344342 Appeal B Ref: APP/A2525/C/24/3344343 Appeal C Ref: APP/A2525/C/24/3344336 Appeal C Ref: APP/A2525/C/24/3344337 - Dismissed. Appeal : APP/A2525/X/24/3341311 allowed.
H18-1073-22 - Continued use of land as a site for static caravans in residential use in breach. Certificate NOT issued 11.04.2023
H18-0918-20 - s191 Lawful Use Certificate - Permanent Residential Use of Caravan - Appeal Allowed August 2021
H18-0919-20 - s191 Lawful Use Certificate - Permanent Residential Use of Caravan - Appeal Allowed August 2021
H18-0920-20 - s191 Lawful Use Certificate - Permanent Residential Use of Caravan - Appeal Allowed August 2021
H18-0224-18 - s73a application - Use of site as site for caravans for seasonal workers and its retention out of season for storage of caravans H18/1219/98 Appeal Decision: APP/A2525/A/04/1142470 Conditions 1 - Modification of Condition 1 of H18-0691-03 (allowed on appeal) to allow amendments to wording (approved May 2019).
H18-0580-16 - s73a application - Use of site for caravans for seasonal workers and its retention out of season for storage of caravans - approved under appeal decision
H18-0691-03. Amend Condition 1 and remove Condition 2 (refused August 2016).
H18-0691-03 - s73a application - Continuation of permission without complying with Conditions 1 & 2 of H18/1219/98 to allow occupation by seasonal agricultural workers all year round (appeal allowed October 2004)
H18-1219-98 - Full planning application for the use of site as site for caravans for seasonal workers and its retention out of season for storage of caravans (approved March 1999).

Consultation Responses

The Environment Agency has reviewed the submitted Planning Supporting Statement and raises no objection to the application on the basis that the proposed variation of Condition 2 does not appear to give rise to any change in the nature of the existing occupation of the caravans and, consequently, does not appear to result in any additional flood risk implications.

The Environment Agency nevertheless highlights that the site is subject to a significant level of flood risk. It lies within Flood Zone 3a, which is identified as having a high probability of flooding. The South East Lincolnshire Strategic Flood Risk Assessment also identifies the site as having a future flood hazard classification predominantly of 'Danger for Most', with potential flood depths of between approximately 0.5 metres and 1.0 metre arising from a breach of the flood defences during an event

with a 0.1% annual probability up to 2115.

Reference is also made to Policy 4 of the South East Lincolnshire Local Plan 2011-2036, which states that caravans, mobile homes and park homes intended for permanent residential use will not be permitted in areas at risk of flooding. The Environment Agency further notes that Appendix C of the Strategic Flood Risk Assessment advises that new caravan sites within areas classified as 'Danger for Most' in relation to tidal flood risk would only be appropriate where they are used for short-let accommodation and are subject to a seasonal occupancy restriction preventing occupation during the higher-risk winter period.

On that basis, the Environment Agency advises that it would ordinarily object to a proposal for caravan accommodation in this location where the seasonal occupancy restriction required by Policy 4 was not secured. However, in this instance, its response proceeds on the understanding that the application concerns existing caravans and does not seek to alter the nature of their occupation. On that basis, it raises no objection.

The Environment Agency makes clear, however, that its position is dependent upon that understanding. Should the Local Planning Authority consider that the proposed variation could alter the nature, duration or pattern of occupation of the caravans, and thereby give rise to additional flood risk implications, the Environment Agency requests that it be re-consulted.

Evaluation

Section 73 of the Town and Country Planning Act 1990 allows an application to be made for development without complying with conditions attached to an existing planning permission. In determining such an application, the Local Planning Authority must concentrate on the condition subject to the application, although it may also impose or restate other conditions which remain necessary.

The grant of permission under Section 73 would create a new planning permission. The existing permission would nevertheless remain available and would not be extinguished by either the grant or refusal of this application.

The proposal relates to the variation of condition 2 attached of H18-0224-18, through seeking permission under Section 73 of the Act. The purpose of an application made under Section 73 of the Town and Country Planning Act 1990 is to vary or remove conditions associated with an existing planning permission. These applications are used to allow for amendments to an approved scheme and can be made both retrospectively and prior to a permission being implemented, as long as the permission is extant.

The Act is very clear that: "On such an application the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted." As such, the Local Planning Authority are not able to revisit the principle of development and only matters relevant to the specific conditions can be considered.

The effect of granting permission would be to issue a new permission with the relevant conditions amended, together with any other relevant conditions from the original permission, or subsequent relevant revisions since this permission.

Planning practice guidance highlights that where less substantial changes are proposed, amending a proposal can occur through 'Amending the conditions attached to the planning permission, including seeking to make minor material amendments'. The PPG clarifies that "Permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions.

The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted".

There is no statutory definition of a 'minor material amendment'; but this is likely to include any amendments where its scale and/or nature results "in a development which is not substantially different from the one which has been approved". In the case of R (Vue Entertainment Limited) v City of York Council, it was concluded that the decision gives clear support for use of s.73 in respect of changes to conditions which go beyond 'minor' amendments.

It places a clear emphasis on preserving the precise terms of the grant. If an amendment to a condition can be made which keeps the description of the development intact it may well be appropriate to make such an application under a s.73, even if the affect of the change will be significant".

Assessment

The application seeks to modify Condition 2 of planning permission H18-0224-18.

The applicant considers that the condition should be changed because it refers specifically to Hargreaves Plants and includes controls over the employment arrangements of occupiers which are considered unnecessary. The supporting statement suggests that occupation could instead be limited to persons solely or mainly employed in agriculture, although no complete replacement condition is proposed.

There is some merit in reconsidering the existing wording, particularly the reference to a named company. The main issue is whether the information submitted is sufficient to allow an appropriate replacement condition to be identified and imposed.

The key considerations are:

·the existing planning position and recent appeal decision;
·whether an alternative condition could remain consistent with the permitted seasonal-worker use;
·which parts of the site any new condition would apply to;
·the implications for flood risk; and
·whether a replacement condition could be precise, enforceable and reasonable.

Existing Planning Position and Recent Appeal Decision

Condition 2 of planning permission H18-0224-18 states:

"The caravans shall only be used for accommodation for agricultural and/or horticultural workers employed in farming by Hargreaves Plants, and such persons shall only work on land in the same ownership or occupation."

The 2024 appeal decision is an important material consideration. The Inspector found that the 2019 permission had taken effect and considered Condition 2 to have a clear meaning and to be capable of being monitored and enforced.

The appeal proceedings also established that seven identified pitches benefit from unrestricted lawful residential occupation. The 2024 Lawful Development Certificate relates to A3, B3, C2 and C6, while A4, B2 and C1 already benefited from earlier certificates.

The current application does not seek unrestricted residential occupation of the remainder of the site. It seeks to alter the existing control over who may occupy the caravans.

Consistency with the Permitted Seasonal-Worker Use

The Council has considered whether the reference to Hargreaves Plants could be removed and replaced with a more general agricultural occupancy condition.

The applicant suggests that occupation could instead be limited to persons solely or mainly employed in agriculture.
However, the permitted development continues to be described as the use of the site for caravans for seasonal workers. The applicant's own supporting statement identifies this as the description of the permitted development.

A condition allowing occupation by any person solely or mainly employed in agriculture could include permanent agricultural workers. It could therefore operate more widely than the permitted seasonal-worker use.

The Council has considered whether this could be addressed through a condition referring specifically to persons undertaking seasonal agricultural and/or horticultural work. Such an

approach may be capable of being acceptable in principle.

However, no complete replacement condition has been submitted and it is not clear whether the applicant intends occupation to remain limited to seasonal workers. The Council cannot therefore be certain that the variation sought would remain consistent with the permitted development.

Parts of the Site to Which a New Condition Would Apply

Any replacement condition must also be clear about the land to which it applies.

Seven identified pitches already benefit from unrestricted lawful residential occupation and should not be brought within a new seasonal agricultural occupancy restriction.

However, no updated site plan has been submitted identifying those seven pitches and clearly distinguishing them from the remainder of the site.

This is particularly important because the historic planning permission allows for a maximum of 21 caravans. The Inspector expressly referred to this when considering the extent of the lawful use.

It would therefore not be appropriate simply to assume that a new condition should apply to the caravans currently present on the site.

Without an updated plan, the Council cannot properly define the geographical extent of any replacement condition.

Flood Risk

The site lies within Flood Zone 3a and is subject to significant flood risk.

The Environment Agency raises no objection on the understanding that the application does not change the nature of occupation of the existing caravans.

That position is important because the precise nature of the proposed replacement occupancy control has not been established.

Without a complete replacement condition, the Council cannot be certain whether occupation would remain seasonal or whether the nature of occupation could change.

The absence of clear replacement wording therefore means that the Council cannot be satisfied that the basis on which the Environment Agency raised no objection would remain applicable.

Precision, Enforceability and Reasonableness of a Replacement Condition

The applicant relies on the six tests for planning conditions and argues that the existing condition should be amended.

There is some merit in reconsidering the reference to Hargreaves Plants. However, the same tests must apply to any condition which replaces it.

The Council has considered whether it could draft an alternative condition itself. However, doing so would require the Council to determine:

·whether occupation should remain limited to seasonal workers;
·the precise wording and scope of the new occupancy restriction; and
·the land or caravan pitches to which that restriction would apply.

These are not minor drafting matters. They determine the scope and effect of the new planning permission.

In the absence of a complete replacement condition and an updated plan, the Council cannot be satisfied that any alternative condition would be sufficiently precise, enforceable and reasonable, or that it would remain consistent with the permitted development.

Planning Balance and Conclusion

There is a reasonable basis for reconsidering the reference to Hargreaves Plants, and an alternative occupancy condition may be capable of being acceptable.

The Council has therefore considered whether a positive decision could be reached rather than simply seeking to retain the existing condition.

However, the current submission does not provide sufficient information to allow that approach to be taken.

In particular, no complete replacement condition has been submitted, it is unclear whether occupation would remain limited to seasonal workers, and no updated plan identifies the parts of the site to which a replacement condition would apply. This also prevents the Council from being certain that the basis of the Environment Agency's no-objection response would remain unchanged.

The Council would therefore have to determine both the wording and geographical extent of the new planning control without a sufficiently clear proposal from the applicant.

The application does not therefore provide sufficient information to demonstrate that an appropriate, precise and enforceable replacement for Condition 2 can be imposed.

The proposed variation has therefore not been demonstrated to be acceptable and the application is recommended for refusal.

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.