20 Western Avenue
Milton Park
Abingdon, Oxfordshire
OX14 4SH
T +44 1235 821 888

Our ref: NP12675

Date: 03 November 2022

Planning Department
South Holland District Council
Priory Road
Spalding
PE11 2XE

Dear Sirs,

Town and Country Planning Act 1990
Town and Country Planning (Development Management Procedure) (England) Order 2015
Poppy Fields Caravan Park, Fields Farm, Sutton Bridge, Spalding PE12 9SN
Application for a Lawful Development Certificate for an Existing Use or Development
Continued use of land as a site for static caravans in residential use in breach of condition number 1 and 2 of planning permission reference H18-0691-03 and condition 2 of H18-0224-18.

I have pleasure in submitting via the planning portal an application under Section 191 of the Town and Country Planning Act 1990 ('the Act') for a Certificate of Lawfulness for an Existing Use or Development (CLEUD) for the continued the use of land at Poppy Fields Caravan Park, Fields Farm, Sutton Bridge, Spalding for static caravans in residential use in breach of condition number 1 and 2 of planning permission reference H18-0691-03 and condition 2 of H18-0224-18.

I enclose for your attention the following:

- This covering letter.
- Application form.
- Site Location Plan 12675-0001-01.
- Appeal decisions in respect of planning application references H18-0918-20, H18-0919-20 and H18-0920-20
- Appeal decisions; Castle View Caravan Site (Ref APP/C1435/X/17/3190604. and Lakeside Caravan Park (Ref APP/N2535/X/13/2205963)
- Statutory Declarations:
  - Mr A Tasker
  - Mr G McCann
  - Mr G Sims
  - Mr K New

I have arranged for the planning fee to be paid under separate cover.

The site the subject of this application is situated to the west of the settlement of Sutton Bridge. It is accessed via a single track lane that runs south from the A17. The site is enclosed by trees and other vegetation and is in close proximity to two dwelling houses and some agricultural buildings.

Purpose of an application under Section 191 of the Planning Act.

The purpose of a CLEUD application is to establish that *"...an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990"* (Planning Practice Guidance (PPG) 001 Reference ID: 17c-001-20140306). For a use to be considered lawful, the use must have been in continuous use for a period of ten years. For the avoidance of doubt, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required (PPG, 001 Reference ID: 17c-003-20140306).

In order to demonstrate this, Planning Practice Guidance (PPG) states that it is the applicant who is *"…responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence"* (PPG, 006 Reference ID: 17c-006-20140306).

In this case, the Guidance for applications for an existing use further adds *"…if a local planning authority has no evidence itself, nor any 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"* (PPG, 006 Reference ID: 17c-006-20140306).

The guidance quoted above provides the basis on which any LDC application under Section 191 should be assessed. This approach has been followed by the Applicant, demonstrated by the presentation of the evidence below to support the case and demonstrate, on the balance of probability, that the use undertaken at the land in question is lawful.

In essence, it is considered that there are two key aspects of evidence that demonstrate the lawfulness of the use, albeit those aspects are in themselves also inter-related. The first aspect concerns the idenfication of what is the planning unit at the site, and the second the evidence that establishes that the use of the land has been in such use for a continuous period of at least 10 years

Background

The Council's online records indicate that the relevant planning history of the site began in 1998 when planning permission was first applied for caravans at the site. This application, and those others of relevance to this application for a CLEUD are now referenced below;

-Planning application reference H18-1219-98 – Full planing application for the use of site for caravans for seasonal workers and its retention out of season for storage of caravans. The application was granted planning permission on 02 March 1999 and was subject to a total of 8 conditions, including the following;

- Condition 1 – 'The caravans shall only be used for accommodation outside the period of 1st Decmber to 5th April in the following year and that accommodation shall only be for seasonal workers employed in farming operations on land in the same occupation.'

- Condition 2 – 'Between the minimum period of 1st December each year until 5th April the following year, the caravans shall only be stood on land in an unoccupied state.

- Condition 3 – No more than 21 caravans shall be stationed or stored on the site at any one time, and no caravans shall be moved on or off the site wiothout the prior written consent of the Local Planning Authority and then only, when for structural or maintenance reasons, a caravan has to be replaced.'

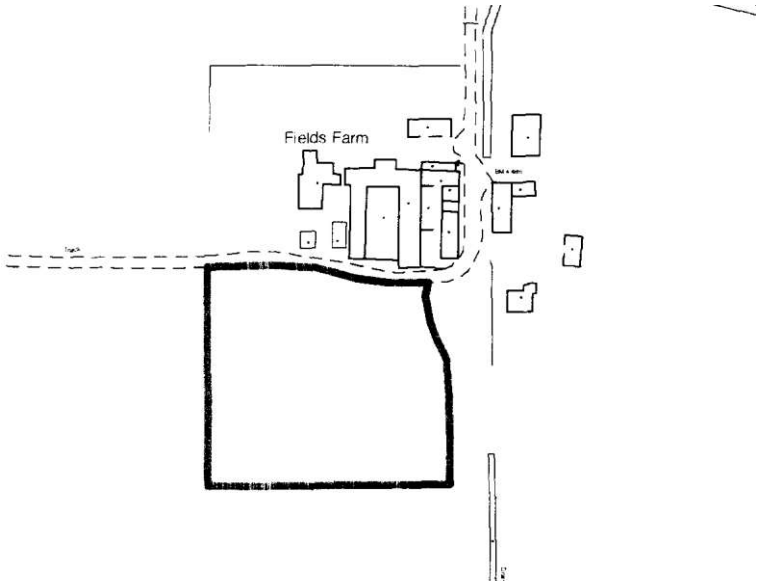
The 1998 planning permission referenced above also identified the size of and boundaries to the application site.

-Planning application reference H18-0691-03 – Section 73 planning application for the continuation of permission without complying with conditions 1 & 2 of H18/1219/98 to allow occupation by seasonal agricultural workers all year round. This application was refused by the Council on 23 December 2003. As a result, an appeal was submitted and the hearing held on 28 September 2004. On 18 October 2004, the appeal was allowed and planning permission was granted subject to 3 conditions, the first two being of some relevance. They are repeated below;

- Condition 1 – 'The caravans shall only be used for accommodation for seasonal workers employed in farming under the Seasonal Agricultural Worker Scheme (SAWS), or any succesor scheme, and such persons shall only work on land in the same ownership or occupation.'

Condition 2 – 'No person shall occupy any of the caravans for more than six months in any period of one year.'

The location submitted in respect of the application is copied below.



-Planning application reference H18-0580-16 – Section 73 planning application for 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. This application was refused on 2nd August 2016.

- Planning application reference H18-0224-18 – Section 73 planning application for the 'use of site for caravans for seasonal workers and its retention out of season for storage of caravans H1818/1219/98 Appeal Decision: APP/A2525/A/04/1142470 Condition 1 – Modification of Condition 1 of H18-0691-03 (allowed on appeal) to allow amendments to wording'. This application was permitted on 29 May 2019 and was subject to 2 conditions, the second of which stated that '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.'

- Planning application references H18-0918-20, H18-0919-20 and H18-0920-20 – Three applications for lawful development certificates (LDC) for the permanent residential use of caravan were submitted for caravan's A4, B2 and C1 respectively. All three applications were refused on 11 February 2021. Appeals against all three refusals were submitted. On 27 August, the appeals were all allowed, the Inspector finding that in all cases the Council's decision to refuse the grant of a certificate of lawful use or development was not well founded, considering that the evidence submitted showed that the respective caravans had been occupied in breach of conditions 1 and 2 of planning permission ref H18-0691-03 and condition 2 of planning permission reference H18-0224-18. The three appeal decisions are submitted in support of this application.

Existing Use

The site has remained in use as a caravan site since planning permission was originally granted in 1998. Since 2008, it has been operated in non-compliance with conditions 1 and 2 of H18-0691-03, in that caravans have been occupied by persons who are not seasonal workers and are not employed under in farming under SAWS or any subsequent scheme.

The statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required (Planning Practice Guidance (PPG)). Under Section 171 of the Act, no enforcement action may be taken on any breach of planning control, other than operational development or the change of use of a building as single dwellinghouse, after the end of the period of ten years beginning with the date of the breach.

The applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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 ((PPG), Paragraph: 006 Reference ID: 17c-006-20140306).

In order to establish that conditions 1 and 2 of planning permission reference H18-0691-03 and condition 2 of planning permission reference H18-0224-18 have been breached, it is necessary to simply show that;

- Caravans have been occupied by persons who are not seasonal workers and are not employed under in farming under SAWS or any subsequent scheme
- Caravans have been occupied continuously for a period in excess of 6 months by the same person(s).

It is then necessary to provide evidence that these breaches has been continuous for at least 10 years.

Set out later in this letter is a summary of the evidence provided which demonstrates the site has been occupied in non-compliance with the referenced conditions. Firstly however, it is necessary to show why the breach of conditions identified must apply to the whole site, and not just any one individual caravan.

The Area of Breach

We consider that the breaches are substantial and continuous and relate to multiple caravans on the site. It has already been accepted by the Inspector at the recent appeals that there are 3 caravans that have been occupied in breach of the respective conditions. However, we consider that the precise location of each caravan is not material because the planning permissions granted were for the use of land across the whole planning unit, not individual caravans/planning units.

It is common ground that the caravan site has been used in breach of conditions on the duration of the manner of occupation for more than 10 years. Three of the caravans have been confirmed to be occupied in breach for 10 years – see appeal decisions in Appendix 1. With both these caravans and those referenced in the statutory declarations in support of this application, the evidence is that at any time in the 10 year period there have been at least six caravans in breach of the conditions. A further CLEUD must therefore be issued certifying the lawfulness of breaching those conditions.

The question is simply the form of the LDC and this depends on identifying the breaches of the conditions which arise. The nature of the conditions means that any breach would occur across the whole site. Unlike the case of *St Anselm* it would not be possible for enforcement notices to be issued against individual plots on the site since caravans could simply be moved to another plot and continue the same breach. Therefore any enforcement notice would have to impose requirements on the whole site, meaning that any breach is site-wide.

In the Divisional Court decision of the High Court in *Mounsdon* a site wide condition, limiting the number of caravans to three, had been breached for more than the then limitation period of four years, with 26 caravans

when the enforcement notice was issued and 14 four years previously. The Court required the quashing of the notice in its entirety rather than varying it to require no more than 14 caravans. So the condition lost its effect entirely. On that same approach the present conditions would cease to be enforceable and a CLEUD would be issued for use in breach of the two conditions

Clearly the question to ask is whether a caravan could have been enforced against if it changed position. The wording of the respective conditions is clear. For example, condition 1 of H18-0691-03 does not refer to specific caravans on their pitch, allowing it to move to another pitch without breaching the condition. It simply states that 'the caravans shall only be used for accommodation for seasonal workers…..". This is an important distinction, showing that the condition is absolutely controlling the site as a whole, not individual pitches. The same applies to condition 2. It does not state that no individual caravan can be occupied for more than 6 months, thus allowing people to move from one caravan to another and avoid being in breach of condition. It refers to the caravans on site as a whole: *"No person shall occupy any of the caravans…'*. Therefore a caravan or person that moves around the site would still be in breach of the conditions if the caravan or person continued to breach conditions 1 and/or 2. Moving a non-compliant caravan within the site would be a continuation of the same breach of planning control: the caravan continuing to be occupied by someone not working seasonally in agriculture etc. and for more than 6 months. So any enforcement notice would have to require the caravan's removal from the entire site, otherwise the breach of the condition would simply continue. Without that wider requirement the breach of condition would not be brought to an end, and indeed, moving the caravan would grant planning permission for it to remain permanently on the site in its new position. The land which would be the subject of any enforcement notice would therefore have to be the whole site, not an individual plot.

It is therefore the case that the breach cannot be limited to individual pitches because that would not be in accordance with the way the condition is worded, i.e. it is on a site-wide (planning unit) basis.

It is important also to state that the Inspector in dealing with the recent 3 appeals regarding plots A4, B2 and C1 was dealing with the matters before him. He was not able or in a position to address or comment on the issue of whether the breach applied to the whole site as that was not the proposal before him. That he made no comment or direction on this issue cannot be taken to be of any consequence or materiality in respect of this application.

Statutory Declarations

Submitted with this application are a number of statutory declarations which each provide evidence of the breach of both condition number 1 and 2 of planning permission reference H18-0691-03 and condition 2 of H18-0224-18. The declarations are as follows:

- Mr Glenn McCann: Confirms that he moved to the site in September 2010 and that he has lived there as his primary residence ever since. He also confirms that during all of this time, he paid rent to but was not employed by either Hargreaves Plant Ltd or the subsequent owner. Indeed, he confirms that his employment is based away from the site ownership and occupation. He corroborates the dates and period of time that Mr Tasker, Mr New and Mr Sims have lived on site as well.
- Mr Andrew Tasker: States that he moved to the site in February 2011 and that he has lived there as his primary residence ever since. He also confirms that during all of this time, he paid rent to but was not employed by either Hargreaves Plant Ltd or the subsequent owner. Indeed, he also confirms that his employment is based away from the site ownership and occupation. Finally, Mr Tasker corroborates the dates and period of time that Mr McCann, Mr New and Mr Sims have lived on site as well.
- Mr K New: Confirms that he moved to the caravan site in March 2010 and that he has lived there ever since. He also confirms that during all of this time, he has not been employed either Hargreaves Plant Ltd of the subsequent owner and confirms that his employment is based away from the site ownership and occupation. He also confirms that he paid rent to both Hargreaves

Plant Ltd and then Mr Smith. He corroborates the dates and period of time that Mr McCann, Mr Tasker and Mr Sims have lived on site as well.

- Mr G Sims: He states that he moved onto the site in May 2011 and that he has lived there as his primary residence ever since. He also confirms that during all of this time, he paid rent to but was not employed by either Hargreaves Plant Ltd or the subsequent owner. Indeed, he confirms that his employment is based away from the site ownership and occupation. He corroborates the dates and period of time that Mr McCann, Mr Tasker and Mr New have lived on site as well.

It is also of relevance to note the evidence that supported the application references H18-0918-20, H18-0919-20 and H18-0920-20, the LDC's that were granted on appeal for the unrestricted residential use of three caravans on the site. As the Inspector noted, the declarations made by Mr Leonard, Mr Rooney and Mr Giles all;

- Stated that they had lived on the site continuously for over 10 years;
- Confirmed that they paid rent to the owners of the site, whether it be Hargreaves Palnt Ltd or the subsequent owner;
- Confirmed that they did not work for Hargreaves Plant Ltd or Mr Smith, the subsequent owner.
- Corroborated the statements of each other.

This evidence was accepted by the Inspector and he attached '….substantial weight' to each sworn statement, acknowledging that such statements are made with the knowledge that any false statement can be liable to prosecution. He also attached substantial weight to the statements as each corroborated the others. This provides a further, clear evidential demonstration that the restrictions set out in conditions 1 and 2 of H18-0691-03 and condition 2 of H18-0224-18 have been breached, and that those breaches have been continuous on site for a period in excess of 10 years.

Condition No.1 of permission H18-0691-03 and condition 2 of permission H18-0224-18 seeks to restrict the occupation of any caravan to only seasonal workers employed in farming under the Seasonal Agricultural Worker Scheme (SAWS), or any succesor scheme, and such persons shall only work on land in the same ownership or occupation. Each statutory declaration submitted in support of this application and the previous applications in 2020 demonstrate that those in the caravans have not been in seasonal or any employment in SAWS, for Hargreaves Plant Ltd, any other owner, and have worked elsewhere. There is therefore strong evidence that condition no.1 has been continually breached for more than 10 years.

Turning to condition 2 of H18-0691-03, it seeks to limit the stay of any person to no more than six months in any period of one year. Again, the declarations submitted in support of this application clearly demonstrate that this condition has been consistently and continuously breached since 2009. There is therefore also strong evidence that condition no. 2 has been continually breached for more than 10 years.

We consider that these breaches are substantial and continuous and relate to multiple caravans on the site. The precise location of each caravan is not material because the planning permission is for a use of land across the whole planning unit, not individual caravans/planning units.

Case Law

The most recent key appeal decision that deals with issues similar to this case is Castle View Caravan Site, Eastbourne Road, Pevensey Bay BN24 6DT (Appeal Ref: APP/C1435/X/17/3190604), dated 8 January 2019 (attached). This appeal dealt with non-compliance with a specific condition that is similar to the conditions considered in this application.

The key paragraph in this decision is 15:

"A requirement that specific caravans which have been occupied during the winter months should be identified is misguided. If the site has continued to operate throughout the disputed months, with the support buildings in use and some caravans occupied, then the use of the land as a caravan site (as might be said to be required to cease by the condition) has not ceased regardless of which or how many caravans have been occupied. The current case can be distinguished from The Queen on the application of St Anselm Development Company

Limited v First Secretary of State [2003] EWHC 1592 (Admin) to which the Council makes reference. That case concerned the retention of parking on a site for a specific purpose and the individual spaces were severable. It did not relate to a requirement to cease the use of an entire planning unit."

In this case, planning permission had been granted subject to a condition that 'This permission shall not authorise the use of the land as a caravan site except during the period from 1st March to the 30th November inclusive each year.' The Inspector interpreted this as being an informative that the permission does not authorise use at other times, rather than proper condition which constrained the use, such as 'shall not be used'. Therefore, continued use was not a material change of use and so was lawful. However, if the condition was a prohibition, the Inspector went onto consider whether there was a year-round breach. He held that the permanent caravan infrastructure meant that the use of the land was always that of a caravan site. There was some occupation in the winter period, but the extent of it was not important. Distinguishing *St Anselm*, the use of the site was not affected by how many caravans were occupied

In the Poppy Fields case, as stated above, the conditions relate to the planning unit/site as a whole, not to individual pitches. The *Castle View* principles would therefore apply here.

A further appeal considers whether, in situations where a condition is breached, reference to the specific number of units that are in breach should be included. This appeal relates to Lakeside Caravan Park, Barlings Lane, Langworth, Lincolnshire LN3 5DF (Appeal Ref: APP/N2535/X/13/2205963) dated 17 April 2014 (attached). The appeal concerned a condition that 'there shall not be more than 20 touring caravans stationed on the touring caravan park at any one time.' The local planning authority accepted that the condition had been breached, issuing a CLEUD but stating that it was limited to 32 touring caravans, that being the number it accepted were on site for more than 10 years. The Inspector considered that the condition was unenforceable and no limit could be included – the condition simply could not be enforced at all.

Paragraphs 17 to 20 of the appeal decision considered whether any limitation should be made in the decision based on the extent of the breach (i.e. to specify the number of caravans). The Inspector concluded that the advice on stating the limits of a use as a point of reference for any subsequent changes applies only to Section 191(a), not Section 191(c). In this case the Inspector was clear that, if the Council considers that there has been a breach such that a condition is not enforceable, they are not entitled to impose a new limitation on that condition. In the Poppy Fields case, we have demonstrated that there have been multiple breaches across the planning unit, so the same principle would apply. The conditions are no longer enforceable.

Summary and Conclusion

In order for the Certificate to be issued, it must be proved on the balance of probability, that the application site has been occupied in non-conformity with condition number 1 and 2 of planning permission reference H18-0691-03 and condition 2 of H18-0224-18 for a period in excess of 10 years, and the evidence presented with this application provides strong and compelling evidence that this has been the case. These conditions are therefore no longer enforceable, and we have referred to case law that sets out how these types of cases should be determined. Since breaches of the conditions have to be considered across the site, rather than as individual plots, an enforcement notice which simply alleged that the conditions had been breached would be quashed since that allegation would be out of time. Therefore, in the absence of any evidence to contradict the evidence in support of the use, the Council must issue a CLEUD.

I trust you have sufficient information to enable you to register and process this application and grant the CLEUD. Should you have any queries however, please do not hesitate to contact me.

Our ref: NP12675

Yours sincerely,
for RPS Consulting Services Ltd



Guy Bailey
Senior Director
baileyg@rpsgroup.com
+44 1235 438083

Enc