DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H18-1109-23**	**Applicant:**	**Evolution Park Homes Ltd**
Proposal:	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)		
Location:	Poppy Fields Caravan Park Fields Farm South Sutton Bridge		
Terminal Date:	7th February 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Section 191 of the Town and Country Planning Act 1990 (TCPA 1990)

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

Proposal

This application is a Lawful Development Certificate which seeks to demonstrate that the wider caravan site is operating is breach of planning conditions 1 and 2 of planning permission H18-0691-03 allowed under appeal APP/A2525/A/04/1142470.

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

Condition 2 states
No person shall occupy any of the caravans for more than six months in any period of one year. The premise of the certificate is that due to the conditions being ineffective (or at least in part), the wider site is no longer subject to the terms of the original permission.

Site Description

Poppy Fields Caravan Park is a site of 15 no. static caravans, which is accessed from the A17 by a

single track road. The site is enclosed by trees and vegetation. There are two dwellings in close proximity and a small number of agricultural buildings to the north of the site. The character of the wider area is predominantly rural.

History

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

None

Representations

A letter from a district Counsellor has been received., which states:

I am, as local member for Sutton Bridge and Wingland, submitting the following observations of fact. As the local district councillor I have, throughout the period being referred to, delivered occasional newsletters to all properties in the ward of Sutton Bridge. Whilst I have no precise records of dates and times, I can vouch for the fact that for substantial periods during the past ten years, the property(Ives) referred to were totally unoccupied by residents. I would request that the application be considered by the full planning committee.

Planning Considerations

The application seeks the local authority's consideration as to whether the wider caravan site is operating is breach of planning conditions 1 and 2 of planning permission H18-0691-03

The grant of a certificate applies only to the lawfulness of development in accordance with planning legislation. It does not remove the need to comply with any other legal requirements such as the Building Regulations 2010, or the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) or other licensing or permitting schemes.
Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application and how it must be submitted. An application must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application. An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. Paragraph: 005 Reference ID: 17c-005-20140306

Evidence provided since H18-1073-22 decision

The applicant has provided a supporting statement written by Eiser Planning, resubmission of statutory declarations, additional comments from a Neighbour to the caravan site, Migrant Seasonal Workers Document, Seasonal worker Visas and UK agriculture Document.

The basis of the submission appears to be the challenge of the validity of conditions under 2003 and 1998 permissions, a challenge against the conflicting evidence received under H18-1073-22,

whether the 2019 permission was implemented.

The certificate asserts that as individual caravans have been agreed to be unlawfully habitat for a continuous period of 10 years and that the wider site (as the planning unit) should also be immune from enforcement.

Validity of conditions

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.

The applicant goes to length in arguing that condition 1 attached to planning permission H18-0691-03 would not meet with the 6 tests for conditionality due to its wording 'Seasonal Agricultural Worker Scheme (SAWS). The condition did add 'or any successor scheme'.

Notwithstanding this from 2008, the SAWS was restricted to workers from Romania and Bulgaria. Then, in 2014, it was scrapped entirely. The government believed that EU workers - who enjoyed visa-free entry to the UK - could meet the needs of the agricultural sector going forward. Following Brexit and in 2018 the government announced its Seasonal Workers Pilot, which launched in March 2019 and ran until 2020 (this has been extended into 2024). This latter scheme represents a successor scheme.

It is noted then that condition 1 of H18-0691-03 could not possible be effective from a 4 year period between 2014 and 2018. During this time the condition would not have fairly met the 6 tests for conditionality.

Notwithstanding this condition 2 of the same permission applied a more succinct and enforceable condition 'No person shall occupy any of the caravans for more than six months in any period of one year.' Therefore despite the questions that arise relating to condition 1, there are no such validity concerns in relation to condition 2.

Continuous Breach

The applicant states in regards the breach of condition 1 "In order for there to have been a breach between 2009-2014 all that would have been necessary to amount to a breach of the condition would have been that the occupants of the caravans were not part of the SAWS, the SAWS during this period was only eligible to residents of Romania and Bulgaria. In the 2021 appeals the Inspector accepted the evidence of occupation during this period by residents who were not part of the SAWS".

Saws was abolished in 2014 and Seasonal Workers Pilot began in 2018 (this is the 'successor scheme') the applicant has failed to state whether or not in 2018 anyone on site was part of this pilot. Interestingly in 2018 (under) 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 was submitted to SHDC for consideration.

This application was made on the basis that 'We wish to amend the condition as the Seasonal Agricultural Workers scheme no longer exists' The officer report states that "Following discussions with the agent, the wording the condition to be varied would read "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 time frame of this application (close to the point where the applicant claims immunity from enforcement) whilst not conclusive is suggestive that a planning permission was considered necessary so the business could give accommodation to seasonal workers and that as a planning unit this permission was required to allow the site to operate in terms of their business needs.

In terms of caravan numbers, the 2003 decision only gave a permission with a submitted red line boundary and the amount of caravans were not made explicit (only given spatial parameters). Whilst it has been established that some of the caravans have been confirmed to have immunity (H18-0918-20, H18-0919-20, H18-0920-20) a site plan of 'Poppy Fields Caravan Park' is included in the statutory declarations. The site plan shows that at some point there are 15 number caravans on site, todays numbers are not corroborated but it is assumed in the absence of discussion that this is still the case.

Therefore, on the main the planning unit has not been demonstrated holistically to be in a continuous breach, only a small portion of it. It is plausible that the other unit's whist not meeting SAWS requirements, were not being used for something materially different to the permission approved in 2003. I.e. they may have just not have been used.
Turning to condition 2 the applicant states "Condition 2 which is tied to condition 1 can be considered in the same terms, it would be impossible for any third party to know whether the residents on the site had stayed for six months or seven months on the site." AND

"The 2004 condition included a condition regarding the length of stay in each caravan. This condition was a complimentary condition to reflect the SAWS requirements of the visa, we know that this condition was breached through the residents of the site. Third party representations also introduce the concept of a resident site manager."
Whilst there is clear evidence following appeal that some (3) of the caravans are confirmed to have been in breach of conditions 1 & 2 and so immune, this only represents a fraction of those caravans shown on the site plan. To draw a line through the entire site and claim the planning unit is now immune (based upon the demonstrated immunity of a small portion of the caravans) does not weigh correctly.

The 2018 a S73 application demonstrates that the applicant at that time saw a planning need for the occupancy condition to be amended and the overarching planning unit in general terms was potentially still subject to the terms of the permission given under H18-0691-03, and a material use of the site was not considered to be established.

Material change of the unit

In the case Cotswold Grange County Park v SoSCLG Hickinbottom J states:

Simply because something is expressly permitted in the grant does not mean that everything else is prohibited. Unless what is proposed is a material change of use - for which planning permission is required, because such a change is caught in the definition of development - generally, the only things which are effectively prohibited by a grant of planning permission are those things that are the subject of a condition

In the above case this translates into our assessment in that just because a portion of a planning unit has established immunity for a continuous breach (of what is prohibited through condition) it does not follow that the entire unit is immune. Even if a condition is weakened by external factors (such as SAWS) it does not give to say that the original terms of the permission are in doubt. In this instance condition 2 provided a sound condition in addition to the terms of the permission.

In Barton Park Estates Ltd v Secretary of State for Housing, Communities and Local Government & Anor Lindblom LJ noted that the question for the decision-maker was whether, as a matter of fact of degree, there had been a change in the character of the use. He found that the Inspector, having reached the conclusion that the planning permissions were not merely for a "caravan site" but instead a caravan site housing a mixture of both permanent residential and holiday accommodation, found lawfully that the proposed use would be a change from the permitted use because it "would encompass the use of any and all caravans on the site to provide permanent residential accommodation, with no holiday use at all"

How this case influences the approach to this assessment is that the appellant changes were so vast that a material change (of the original permission) had clearly occurred. There was no doubt that the site was being used for an alternative use to what the permission allows.

This site which establishes immunity of three number units, does not, because of the size of area of the site approved under H18-0691-03 and that the site plans (in the declaration shows that there are a total of 15 caravans) and so 80% of those units are not demonstrated to be in breach and so the immunity of 3 caravans does not necessitate that the planning unit itself is immune from enforcement or that the remaining caravans have been used for something materially different to the terms of the original permission. Essentially those that are immune do not represent because of their low numbers and the size of the application site a material change to the original permission. Furthermore it has not been suggested in evidence that has been previously received by the LPA that signs of a material change has occurred on this site. The Barton case suggests that there are visual indicators of a material change (especially when considering caravan sites), these indicators have not been described.

Conflicting Evidence
The applicant attempts to overcome the suite of evidence that contradicted their position under H18-1073-22. The reasoning however is based on an attempt to undermine the evidence statements received. Furthermore during this application a ward member has corroborated that evidence, stating that as a frequent visitor to the site it is clear that there have been long periods of time where these caravan have not be lived in.

The arguments are considered in the assessment of this LDC.

Conclusion

It is concluded that the applicant has not demonstrated that the wider caravan site has operated for a continuous period of 10 year in breach of planning conditions 1 and 2 of planning permission H18-0691-03. Nor has the applicant established that the lawful breaches previously established give rise to a materially different use of the planning unit than that which was permitted under H18-0691-03 .

Notwithstanding the fact that some of the units have been demonstrated to have been in a continuous breach, the proportion of these units when assessed against the size of the site and submitted evidence showing that at least 15 caravan units have been historically sited, this does not represent an overall material change of the site/unit (essentially 80% of the site is not evidenced to have been used for a materially different use). Even if condition 1 was ineffective for a period of time because of the abolition of SAWS the evidence does not demonstrate that holistically the planning unit was used in breach (and provided for another material use) continually during this time. Furthermore condition 2 of the said permission was/is effective and a continuous breach of this condition has not been demonstrated across the wider site.

On this basis it is considered that a certificate cannot be issued.

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.