

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H23-0491-24 **Applicant:** Mr V Mustafa

Proposal: Erection of 19 holiday lodges, reception building, facility managers accommodation & maintenance shed, 2 fishing lakes and associated hard and soft landscaping - approved under H23-0471-23. Modification of wording of Condition 7, relating to the use of the cabins and Modification of Condition 8 relating to the occupation of the managers accommodation.

Location: Home Farm Millgate Whaplode

Terminal Date: 2nd September 2024

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01 Spatial Strategy
02 Development Management

National Guidance

National Planning Policy Framework 2023

Section 2 - Achieving sustainable development
Section 4 - Decision-Making
Section 6. - Building a strong, competitive economy

Representations:

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

CASE OFFICER ASSESSMENT

Proposal

Planning permission for the erection of 19 holiday lodges, reception building, facility managers accommodation & maintenance shed, 2 fishing lakes and associated hard and soft landscaping was approved under H23-0471-23. The applicant has submitted a Section 73 Planning Application for the modification of wording of Condition 7, relating to the use of the cabins and Modification of Condition 8 relating to the occupation of the managers accommodation.

-The applicant seeks to vary condition 7 to remove reference that 'No resident group shall stay on site for more than 28 consecutive days'.
-The applicant seeks to vary condition 8 to allow occupation of the managers accommodation after 5 lodges have been complete.
Both conditions were attached so the development would accord with the overarching spatial strategy set out under SELLP 1.

Site Description

The application site is identified by inset 72 of the policies map as Whaplode Fen. The site is allocated for Accommodation for Gypsies, Travellers and Travelling Showpeople. It is located within the open countryside. It has also achieved planning permission on the site for the same use (H23-0848-19).

The application site lies within Flood Zones 1 and 2 and is identified as being at low to medium risk for tidal and fluvial flooding on the Environment Agency's flood mapping. The South East Lincolnshire Strategic Flood Risk Assessment (March 2017), indicates that the application site is shown to have no hazard rating on both the South Holland District present day and 2115 flood maps.

The application site is accessed from Millgate close to the junction of Hurdle Tree Bank and Broadwater Lane. The application site is mainly laid to grass with trees and shrubs around the perimeter. Either side of the field are arable fields, to the west Holme Farm is located. The village of Whaplode lies approximately 3km to the north and Whaplode St Catherine lies approximately 3.2km to the east.

An extant permission is in place for the erection of 19 holiday lodges, reception building, facilities managers accommodation and maintenance shed.

History

H23-0471-23 - Erection of 19 holiday lodges, reception building, facility managers accommodation & maintenance shed, 2 fishing lakes and associated hard and soft landscaping. Approved 17-04-24

H23-0880-16 - Change of use of stable to dwelling (retrospective). Appeal dismissed

H23-0222-10 - Proposed stable block. Dismissed

H23-0848-19 - Proposed residential gypsy/traveller site. Approved 26-06-20

Consultation Responses

Parish

No comment

Representations

This application has been advised in accordance with the Development Management Procedure Order, no comments have been received.

Planning Considerations

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

In this case, the adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019, forms the development plan for the District, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework (December 2023) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

Furthermore, where a Neighbourhood Plan has been adopted, this alongside the adopted Local Plan, forms part of the Development Plan for the District, and must be considered when assessing development proposals. In this instance, no relevant neighbourhood plans have been adopted.

The Authority is able to demonstrate a supply of deliverable sites equivalent to in excess of 5 years through the latest Housing Land Supply Assessment

Section 73

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.

Any permission achieved under this application would therefore sit alongside the previously approved scheme.

Conditions

A decision notice describing the new permission should clearly express that it is made under section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect.

The applicant has not provided any information in relation to H23-0471-23, in order to discharge any conditions and so those unaffected by this proposal (if approved) will be reattached).

Assessment

The applicant seeks to vary conditions 7 & 8 of planning permission H23-0471-23. The permission was approved by planning committee and decision issued on 17th April 2024.

Condition 7

This condition stated that; The accommodation hereby permitted shall not be used for purposes other than holiday letting purposes. The accommodation shall not be used as the main residence of any occupant. No resident/group shall stay on site for more than 28 consecutive days. The manager of the site shall keep a record of all bookings which will be made available to the LPA upon request

The reason for the condition was: To ensure that the development is restricted to holiday use only and that the accommodation is not used for residential purposes. Residential use would be contrary to the provisions of national guidance contained in Section 5 of the National Planning Policy Framework, December 2023 and to Policy 1 of the South East Lincolnshire Local Plan, 2019 which seeks to restrict residential development in the open countryside to that which is necessary to such a location and/or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits.

This Condition is imposed in accordance with Policy 1 of the South East Lincolnshire Local Plan, 2019 and Section 5 of the National Planning Policy Framework, December 2023

The applicant has provided a planning statement which states that the 28-day constraint is restrictive on the commercial site of the business and would like the '28 day' limit removing from the proposed development, in line with other permissions issued by SHDC. It is suggested that the condition should be scaled back to just reference to a 'holiday-use.'

The issue with this approach is that unlike other permissions that the applicant has put forward (H23-0491-24) is that condition 7 is the only condition enforcing the units to be for holiday accommodation. If this is opened (i.e. all year round then there is little difference between a holiday use and permanent residential use). The applicant has cited a condition used on similar application site (H23-0491-24) as a reference. This condition simply states that the accommodation must be used as holiday accommodation (and not as a permanent residence). This permission has a secondary condition that requires that an up-to-date register of names must be kept.

It is considered that potentially there is scope to amalgamate these two texts to form a condition and allow for the existing condition to be varied, in this instance the condition would require that both the

units approved are for holiday purposes only and that a register of the names, main home addresses, visiting dates and length of stay of all visitors to the holiday units hereby permitted shall be maintained at all times and be available for inspection by the Local Planning Authority at all reasonable times. This would allow the condition to be enforceable by demonstrating evidence that all those residing at the site are not doing so as their main residence.

Condition 8

The condition states that *The occupation of the managers accommodation hereby permitted shall be limited to a person solely employed in the business occupying the site edged red on the Location Plan (drawing number JDA/2023/885/OS.001). It shall not be occupied until the lodges are complete.*

Reason: To ensure that the accommodation is occupied only in association with that business. This Condition is imposed in accordance with Policy 1 of the South East Lincolnshire Local Plan 2019.

The applicant maintains that the condition is restrictive in that it excludes the applicant's ability to phase the site. The applicant has requested that this condition is time phased to allow occupation following the construction of 5 lodges.

This is considered acceptable. The original submission did not contain any information on phasing and therefore to impose a condition did not at that time have any basis for judging reasonableness. It is considered that 5 units is sufficient to require an onsite manager and therefore the condition will be changed.

The condition will therefore be amended to allow occupation following the erection of 5 number lodges.

Planning Balance

As detailed above, Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The proposal represents appropriate development within the defined settlement boundary. The development hereby proposed does not materially harm the character or appearance of the locality, or amenity of nearby residents, and provides adequate parking, whilst conforming with the South East Lincolnshire Local Plan and the provisions of the National Planning policy Framework when viewed as a whole.

In this instance, there are no material considerations that weigh against the proposal and as such, the planning balance is in favour of the development.

Conclusion

Taking the above considerations into account, the proposal is considered to be in accordance with policy 1 of the South East Lincolnshire Local Plan (SELLP) (2019), along with the identified sections contained within the National Planning Policy Framework (NPPF) (December 2023).

The two conditions will be changed as described above, notwithstanding the variation of text the condition still maintains the intended mitigation. Therefore there are no significant factors in this case that indicate against the proposal and outweigh the consideration in favour of the proposal and the policies referred to above.

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.