DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H23-1030-23**	**Applicant:**	**Mr M Seymour**
Proposal:	Variation of Condition 1 of H23-1493-06 to allow occupation of dwelling without being tied to caravan storage business		
Location:	The Childers 26 High Road Whaplode		
Terminal Date:	29th January 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Section 4. Decision-making

Representations:

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

CASE OFFICER ASSESSMENT

Proposal

This is a section 73 application which seeks to remove condition 1 of planning permission H23-1493-06. The condition states:

The occupation of the dwelling known as 'The Childers' 26 High Road, Whaplode, shall be limited to persons solely or mainly employed in the caravan storage business occupying the site edged in red on the attached plan formatting part of this decision notice, or a widow or widower of such a person, or any resident dependents.

The reason for the condition was implemented as occupation independent of the business would be 'unacceptable by virtue of the fact that this was a previously tied agricultural dwelling, given its open countryside location'

A letter of support has been received from the estate agent in respect of how the property and

business were marketed. Also evidence of an offer for the caravan business and barns has been provided. This offer excludes the dwelling (The Childers)

Site Description

The application site relates to a dwelling know as 'The Childers' is located to the west of number 22 Main Road (A151) which is associated with an existing caravan storage business. Planning application H23-1048-21 allowed for the change of use of barns to 2 residential dwellings.

The application site is located in the open countryside for planning policy purposes outside of the settlement for Whaplode. An existing shared access runs towards the property, this access also serves the caravan storage business as well as a recently approved barn conversion. Though a new access to the caravan storage business has been approved to the east of this application site.

History

H23-1493-06 - Variation of condition 4 of H23/0438/89 to allow occupancy of dwelling in conjunction with existing caravan storage business. Approved 20-12-06

H23-1069-23 - Change of use from agricultural land to domestic garden including new access for caravan storage business. Approved 12-01-24

H23-1069-23- Change of use from agricultural land to domestic garden including new access for domestic barn and access into the existing caravan storage facilities. Approved 12-01-24

Consultation Responses

Parish
Is this site appropriate as a stand-alone property in the open countryside, with no business connection. This application should be a new application as the site area is different from that approved.

Response
The original application site has changed since the original permission due to subsequent planning applications. The condition remains in effect as it is linked to the dwelling 'The Childers'. The dwelling is occupancy tied to the business through condition, the submission of Section 73 application is therefore the correct procedural approach.

Planning Considerations

An application made under section 73 of the Town and Country Planning Act 1990 can be used to make a material amendment by varying or removing conditions associated with a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission.

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.

In this instance the applicant seeks to remove condition 1 of planning permission H23-1493-06. This was the only condition attached to that permission. This permission was a S73 application itself which sought to amend condition 4 of H23/0438/89 to allow the dwelling to be occupied in conjunction with the existing caravan storage business.

The reason for the condition is that the dwelling was originally approved as an agricultural farm worker dwelling, this occupancy restriction was lifted and tied to the caravan storage business. Since 2006 permission has been achieved to convert the two barns (located in between the dwelling and the caravan storage business to residential dwellings) An alternative access to the caravan storage business has also been approved.

NPPF Paragraph 47 states that:

Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing

NPPF Paragraph 56 states:

Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early 16 is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification

Assessment

The applicant has show through a scheme of marketing that the business and dwelling cannot be sold as a single unit. The letter from Longstaff dated 18th January 2024 states that the entire planning unit was market for sale from December 2022 until June 2023 (over a 6 month period). During this time only one potential vendor viewed the property (in January 2023) and 'was put off by the fact the house and business were tied'.

To substantiate this the applicant has provided information from Chattertons estate agents who work on behalf of a potential vendor. The email dated 22nd November 2023 states that Chattertons are instructed to make an offer for the caravan storage, fields and barns but not the dwelling (Childers).

It is clear then that the applicant has through a scheme of marketing and subsequent offers demonstrated that there are no potential vendors for the dwelling and caravan storage as a holistic planning unit. The planning unit was clearly marketed highlighting that the dwelling and business were linked through condition. No offers came in for the dwelling on its own, only the business. The condition at present therefore undermines the rural enterprise.

The original condition did not identify what harm an open market dwelling would have on the open countryside. However, the dwelling is part of a row of ribbon residential dwellings fronting High Road, it has residential properties either side. A recent prior approval also allowed for two barn conversions to the rear. The dwelling is therefore located within a 'cluster' of residential form, somewhat shielded from impact upon the open countryside. These are material considerations that sit alongside the evidence of marketing and potential sales which suggest that the condition is no longer justified.

The new approved access serving the caravan storage would also represent betterment in terms of amenity for all of these dwellings, it would also dilute the requirement for The Childers to be associated with the caravan storage business.

It is therefore considered that the occupancy condition is now both not necessary and no longer reasonable (given the marketing exercise that the applicant carried out as well as the recent planning history) and so contrary to NPPF Paragraph 56. The recent planning history which has approved two further market dwellings in close proximity to the Childers would suggest that limited harm would be placed upon the open countryside should the occupancy condition be removed. On this basis it is considered that material considerations exist where a departure from plan should be supported, and the occupancy condition removed in line with NPPF Paragraph 47.

Conclusion

The applicant has demonstrated through marketing that there is no longer justification to retain the occupancy condition of the dwelling, tying it to the caravan storage business. Furthermore, a series of permission within the original application site have diluted the relationship/requirement for the dwelling to be linked to the caravan storage business. This approval does not require the attachment of conditions, given only the occupancy condition was attached to permission H23-1493-06.

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.