DECISION DELEGATED TO DEVELOPMENT MANAGER

| | | | |
|---|---|---|---|
| **Application No:** | H23-1154-19 | **Applicant:** | Woodlands Caravan Park |
| **Proposal:** | Use of land as residential caravan site without limitation on caravan unit numbers, layout or occupancy of the caravans - resubmission of H23-0736-19 | | |
| **Location:** | Woodlands Caravan Park Jekils Bank Moulton Eaugate | | |
| **Terminal Date:** | 28th January 2020 | | |

**Planning Policies**

**South East Lincolnshire Local Plan - Adopted: March 2019**

**National Guidance**

**National Planning Policy Framework 2019**

Not applicable as a S192 application.

Local Plan Policy is also not relevant to a lawful development determination.

**Representations:**

| | Object | Support | No Obj. | Comments |
|---|---|---|---|---|
| PARISH COUNCIL | 0 | 1 | 0 | 0 |
| WARD MEMBER | 0 | 0 | 0 | 0 |
| RESIDENTS | 5 | 0 | 0 | 0 |

CASE OFFICER ASSESSMENT

**Proposal**

The application is under S192 of the Town and Country Planning Act and proposes that the use of the land as a residential caravan site without limitation on caravan unit numbers, layout or occupancy of the caravans would be lawful.

**Site Description**

The applicant seeks the granting of a Certificate of Lawfulness of Proposed Use or Development (CLEUD). The site is Woodlands Caravan Park, Jekils Bank, Moulton Eaugate, Spalding, PE12 0SX.

**History**

H23-0736-19. Use of land as residential caravan site without limitation on caravan unit numbers, layout or occupancy of the caravans. S192 LAWFUL USE CERT. Refused. 02-10-19

H23-0552-18. Use of caravan on site as permanent dwelling. S191 LAWFUL USE CERT Approved. 12-10-18

H23-1071-17. Use of land for siting of one residential caravan and three holiday caravans and installation of septic tank - approved under H23-0628-81 - Modification of Condition 1 restricting the occupancy of the residential caravan to the applicant. S73A CONTINUATION. REFUSAL 05-01-18

H23-1225-16 Use of land for siting of one residential caravan and three holiday caravans and installation of septic tank - approved under H23-0628-81. Modification of Condition 1 to allow occupancy by persons other than Miss Mimmack. S73A CONTINUATION REFUSAL Issued : 23-01-17. *APPEAL DISMISSED*

**H23-0891-16 Use of Caravans 1, 3 and 4 for residential occupation Fengate Mobile Home Park S191 LAWFUL USE CERT. Approved Issued : 07-11-16**

**Consultation Responses**

SHDC Legal Service

Although the whole site is for a residential caravan site, it is with reference to specific plots and locations:

H23-0891-16 - the locations of caravans 1, 3 and 4 are as identified by reference to the application plan
H23-0552-18 - the location of caravan 5 is as identified by reference to the application plan

The officers report for the refusal under H23-0736-19 is clear that the proposed use would be in contravention of the 1981 permission taken against the appeal decision from July 2017 regarding the s.73A application (H23-1225-16). I can see nothing that has changed in the intervening period that would justify the Council changing its position.

Whaplode Parish Council

Support the application.

Residents

There have been 6 objections received from residents raising the following points (summarised):

- small rural community;
- no footpaths;
- lack of facilities;
- excessive speeds of local traffic including agricultural vehicles;
- original permission related to one residential and three holiday caravans;
- proportion of increase in residents;
- Health and Safety concerns;
- People living on site would outnumber local residents;
- too many vehicles, noise and localised pollution;
- two miles to local facilities;
- 100% increase in numbers means this is a material change of use;
- adverse effect on the delicate balance between nature and wildlife which we are all working to conserve and encourage;.
- this caravan park would have a very negative impact on the biological and carbon footprint of this area;
- noise from nearby drying fans, will this impact on farm operation.

- the additional examples provided in this application regarding other legal cases are not in areas such as South Holland where residential development is limited/restricted.

## Planning Considerations

This application is a legal determination and planning policy is not relevant to the determination as to whether the claimed use is indeed lawful. The decision is based upon the judgment of the professional officers of the Council as to the case being proven on the balance of probabilities.

The application is under S192 of the Town and Country Planning Act and proposes that the use of the land as a residential caravan site without limitation on caravan unit numbers, layout or occupancy of the caravans would be lawful.

The applicant has submitted a range of evidential documents including:

- Appeal Decisions;
- High Court Judgement;
- Decision Notices;
- Supporting Statement;
- Officer's Delegated report.

The applicants supporting statement is comprehensive and detailed and makes out their case that there are no conditions limiting numbers of caravans on site, that the existing conditions have not been complied with and that Certificates of Lawful Development have been granted in regard to non-compliance with conditions on the original 1981 permission.

The applicants make the case that the description on the 1981 planning permission is not a legal mechanism to control the numbers on site and without a condition specifically restricting numbers the LPA cannot impose those controls now, therefore, they contend, the use as set out in the current application description would be lawful.

## Conclusion

The Local Planning Authority consider that the proposed development would be entirely in contravention of the 1981 permission and would be contrary to the recent Inspectors decision, the applicant's evidence alone is not considered to be sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

The application proposals are not considered to be lawful and the application is recommended for refusal.

Recommendation: REFUSE.

## 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.