DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No:	**H23-0736-19**	**Applicant:**	**Woodlands Caravan Park**
Proposal:	Use of land as residential caravan site without limitation on caravan unit numbers, layout or occupancy of the caravans		
Location:	Woodlands Caravan Park Jekils Bank Moulton Eaugate		
Terminal Date:	25th September 2019		

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
RESIDENTS	5	0	0	2

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

H23-0552-18 Woodlands Caravan Park, Jekils Bank, Moulton Eaugate, Spalding,
Use of caravan on site as permanent dwelling
S191 LAWFUL USE CERT
Approved - Issued : 12-10-18

H23-1071-17 Woodlands Caravan Park, Jekils Bank, Moulton Eaugate, Spalding
S73A CONTINUATION Whaplode
REFUSAL Issued : 05-01-18

H23-1225-16 Woodlands Caravan Park, Jekils Bank, Moulton Eaugate
S73A CONTINUATION
REFUSAL Issued : 23-01-17

APPEAL DISMISSED

H23-0891-16 Woodlands Caravan Park, Jekils Bank, Moulton Eaugate
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

No representations have been received from Statutory bodies, which is normal for a S192 application.

Residents

There have been 9 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. .

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.

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.

The siting of the one residential caravan was permitted under H23/628/81/1271 with the following condition:

"1. The occupancy of the residential caravan hereby permitted shall at all times be restricted to the applicant."

This was a Miss Mimmack - now deceased.

The reason for the condition was as follows:

"1. The site is in a rural area where it is the policy of the local planning authority not to permit residential development except in the interests of agriculture or where related to the use of the land. This permission has only been granted having regard to the circumstances of the applicant and this condition is imposed accordingly."

The condition was clearly meant to restrict the residential caravan to one person to suit their own personal needs and circumstances at that time. With the person having the benefit of the condition being unfortunately deceased, that need is no longer in existence and the residential unit in essence should be removed.

The land owner applied to remove this condition, the application was refused and the condition is still in force. (The Appeal Inspector upheld the Council's refusal).

The Inspector found that;

Paragraph 13:

"The existence of the disputed condition, although not specifically requiring removal of the condition via its wording, reasonably intended through its enforcement that residential use of caravan 2 would not be a permanent feature of the site. The existence of the disputed condition does not permit the future occupation of caravan 2 following the death of Miss Mimmack and the removal the condition would necessitate the grant of a new planning permission /~/".

The Council is very mindful of that recent Appeal decision and considers that the description of the 1981 permission which explicitly and clearly states this is for 4 caravans (1 residential and 3 for holiday use) in combination with the recently dismissed appeal in which the Inspector upheld the Council's decision that the condition restricting the occupation of the residential caravan only to the named site operator (Miss Mimmack) and that this meant that the residential caravan could not therefore be occupied AT ALL and although the caravan was not under a requirement to be removed from the site it formed no further useful purpose.

This creates a very specific set of circumstances which the Council considers creates a situation where the unfettered use of the site would be so entirely in contravention of the 1981 permission and the recent Inspectors decision as to not be lawful.

Although comparisons with other Appeal decisions and legal cases have been made by the applicant, the Council is mindful that many of the cases turn on the individual circumstances of each case; in considering this matter the key detail and what the Council is relying upon, is the

fundamental circumstance that a recent Appeal decision found that one of the caravans could not be occupied at all.

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.