Appendices

Appendix 1: Council letter dated 12th June 2023

Contact: **Liz Webster**

E-mail: **housing@northlincs.gov.uk**
Our Ref: **MAU 35282**
Date: **12 June 2023**

North Lincolnshire Council

www.northlincs.gov.uk

Church Square House
30-40 High Street
Scunthorpe
North Lincolnshire
DN15 6NL

Mr Nayan Gandhi
Laister Planning Ltd
Countrywide House
23 West Bar
Banbury
Oxfordshire
OX16 9SA

Dear Nayan

Caravan Sites and Control of Development Act 1960 and
Conservation of Habitats Regulations 2017 – Westfield Lakes, Barton-Upon-Humber.

Thank you for your most recent email requesting confirmation that the Council and Environmental Health in particular, are on course to reach a decision and issue the requested Caravan Site licence for Westfield Lakes.

As you are aware, North Lincolnshire Council (the "Council") have taken extensive advice from Mr David Forsdick KC in respect of this site, and in particular, the legal position regarding planning permission, the caravan site licence and the "Habitats Regulations".

We recently received further advice from Counsel, and it is in the light of that advice, that I am making the following comments and setting out the Council's position.

1. Your licence application is refused on the basis that you have not yet demonstrated to the satisfaction of the Council that the site still has the benefit of the 1991 planning permission for use as a caravan site (as required by Section 3(3) of the Caravan Sites and Control of Development Act 1960).

   The evidence shows that on the balance of probability after 2003, there was a material change in the use of the eastern area of the site in that it came to be used in association with the hotel as its garden/grounds and such use was inconsistent with the caravan use.

   Counsel has pointed to the following –

   a. As the hotel uses expanded from around 1991, the area for caravan use became constrained largely to the east of the Site. There is no subsisting right to use other areas around the hotel and to the north and west for caravans because permissions for inconsistent uses were granted and implemented.
   b. The issue therefore remaining is only as to whether permission subsists for the part of the site to the east which is the area in which caravans are now proposed;
   c. As to that area, according to our records, all caravan use ceased by about 2003;

d. The then owner indicated an intention to abandon the caravan use in the context of disputes about the licence required;
e. The evidence appears to show that for a prolonged period from about 2003 to the flood in 2013, the eastern area was used as part of the hotel use and effectively became part of the hotel planning unit.
f. Aerial photographs and images of wedding uses on the eastern area (all available on public websites), along with maintenance of that area as part of the grounds of the hotel all indicate that there has been such a change of use. The fact the caravan hard standings were not removed does not demonstrate that the change of use had not occurred.

Until the issue of the planning permission is resolved, a site licence cannot be granted.

2. In respect of your application for a site licence. The Caravan Site (Licence Applications) Order 1960 applies. An application for a licence and the contents are prescribed. Your original and unchanged application is for 45 residential homes. We have never received an application for a holiday touring site. Your latest plan was submitted by emailed to Anita Hunt on the 15/05/23, for 10 residential units and a touring caravan site (but without specifying the number of vans to be accommodated). Your application remains for 45 residential and no touring vans.

   You need to either amend and resubmit your application as mixed use with the number of each type of caravan you are seeking; or submit separate applications, one for the touring site and one for the residential site, with the correct number of units on each. Your site plan needs to show the location and proposed number of the touring caravans alongside the 10 permanent units, and you need to provide the information reasonably required for us, as competent authority, to carry out a Habitats Regulations Assessment.

3. It is the Council's position (on advice from Counsel) that given the old licence is not being transferred (the licence holder would need to transfer it) but rather you are applying for a new licence, the granting of a new licence, even for 10 units, is a project for the purposes of the Habitats Regulations and requires an assessment, unless it can be shown that there is no likely significant effect arising with regard to the International Nature Conservation Sites.

Given the position that I have outlined above, I appreciate that you will require some time to consider your position and to reply. We remain committed to trying to resolve this situation and we are happy to discuss the contents of the letter should you so wish.

We would also suggest that you might wish to seek your own advice from Natural England.

Your Sincerely

pp [redacted]

Liz Webster
Head of Environmental Health

Appendix 2: Copy of Pioneer Aggregates House of Lords judgment

[HOUSE OF LORDS]

PIONEER AGGREGATES (U.K.) LTD. . . . RESPONDENTS

AND

SECRETARY OF STATE FOR THE ENVIRONMENT AND OTHERS . . . . . APPELLANTS

1984 March 15, 19, 20; May 24

Lord Fraser of Tullybelton, Lord Scarman, Lord Roskill, Lord Bridge of Harwich and Lord Brandon of Oakbrook

Town Planning—Planning permission—Abandonment—Permission granted to work minerals on site—Commercial decision by occupiers to terminate operations—Restoration of site to satisfaction of planning authority—New occupiers wishing to resume working on site—Whether planning permission abandoned—Town and Country Planning Act 1971 (c. 78), s. 33(1)[1]

In 1950 the Minister of Town and Country Planning granted a mining company planning permission to win and work limestone from a quarry subject to conditions, inter alia, regarding the restoration of the site on completion of quarrying. The company extracted limestone from the site from 1950 to 1966, when they wrote to the local planning authority giving notice that they would cease quarrying at the end of that year. In January 1967 the planning authority wrote to the company informing them that the restoration conditions had been met to its satisfaction. In 1978 the new owner of the site wished to resume quarrying and inquired of the planning authority whether planning permission would be necessary. The planning authority replied that the 1950 permission had been abandoned or, alternatively, on a construction of the 1950 permission, the permitted development had been completed and could not be resumed without the grant of a fresh permission. After some token quarrying by the owner, the planning authority served an enforcement notice on the owner requiring it to cease excavating minerals. The owner appealed to the Secretary of State who, disagreeing with his inspector, held that the permission had been abandoned. The owner's appeal from the minister was allowed by Glidewell J. and the Court of Appeal dismissed the planning authority's appeal from his decision.

On appeal by the planning authority:—

Held, dismissing the appeal, that the Town and Country Planning Act 1971 as amended, provided a comprehensive code of planning control under which, by section 33(1), a grant of planning permission enured for the benefit of the land and all persons for the time being interested in it and it followed that a valid permission capable of implementation could not be abandoned by the conduct of an owner or occupier of land (post, pp. 140F, 141G–H, 142G, 145F–G); that, accordingly, the decision in 1966 to cease to win and work limestone could not amount to an abandonment of the 1950 permission nor, on the true construction of its terms, had the permitted development

[1] Town and Country Planning Act 1971, s. 33(1): see post, p. 141F–G.

on the site been completed so as to require fresh permission before resumption of mineral workings (post, p. 146E–G).

Newbury District Council v. Secretary of State for the Environment [1981] A.C. 578, H.L.(E.) applied.

Pilkington v. Secretary of State for the Environment [1973] 1 W.L.R. 1527, D.C. approved.

Slough Estates Ltd. v. Slough Borough Council (No. 2) [1969] 2 Ch. 305, C.A. disapproved.

Decision of the Court of Appeal (1983) 82 L.G.R. 112 affirmed.

The following cases are referred to in the opinion of Lord Scarman:

Ellis v. Worcestershire County Council (1961) 12 P. & C.R. 178

Hartley v. Minister of Housing and Local Government [1970] 1 Q.B. 413; [1970] 2 W.L.R. 1; [1969] 3 All E.R. 1658, C.A.

Hoveringham Gravels Ltd. v. Chiltern District Council (1977) 76 L.G.R. 533, C.A.

Newbury District Council v. Secretary of State for the Environment [1978] 1 W.L.R. 1241; [1979] 1 All E.R. 243, C.A.; [1981] A.C. 578; [1980] 2 W.L.R. 379; [1980] 1 All E.R. 731, H.L.(E.)

Petticoat Lane Rentals Ltd. v. Secretary of State for the Environment [1971] 1 W.L.R. 1112; [1971] 2 All E.R. 793, D.C.

Pilkington v. Secretary of State for the Environment [1973] 1 W.L.R. 1527; [1974] 1 All E.R. 283, D.C.

Prossor v. Minister of Housing and Local Government (1968) 67 L.G.R. 109, D.C.

Slough Estates Ltd. v. Slough Borough Council (No. 2) (1967) 19 P. & C.R. 326; [1969] 2 Ch. 305; [1969] 2 W.L.R. 1157; [1969] 2 All E.R. 988, C.A.; [1971] A.C. 958; [1970] 2 W.L.R. 1187; [1970] 2 All E.R. 216, H.L.(E.)

The following additional cases were cited in argument:

Hepworth v. Pickles [1900] 1 Ch. 108

LTSS Print and Supply Services Ltd. v. Hackney London Borough Council [1976] Q.B. 663; [1976] 2 W.L.R. 253; [1976] 1 All E.R. 311, C.A.

Mouson & Co. v. Boehm (1884) 26 Ch.D. 398

Tehidy Minerals Ltd. v. Norman [1971] 2 Q.B. 528; [1971] 2 W.L.R. 711; [1971] 2 All E.R. 475, C.A.

APPEAL from the Court of Appeal.

This was an appeal by leave of the House of Lords (Lord Roskill, Lord Brandon of Oakbrook and Lord Brightman) given on 20 October 1983 by the Peak Park Joint Planning Board against an order of the Court of Appeal (Eveleigh and O'Connor L.JJ. and Sir David Cairns) dated 15 June 1983, 82 L.G.R. 112 upholding Glidewell J. on 19 February 1982, 46 P. & C.R. 113 whereby he allowed the appeal of the respondent, Pioneer Aggregates (U.K.) Ltd., against the decision of the Secretary of State for the Environment notified by letter dated 15 April 1981 dismissing their appeal and that of Edmund Harry Mollatt against an enforcement notice served on them on 25 February 1980 by the planning board in respect of land situated at Hartshead Quarry, Hartington, Derbyshire.

The facts are set out in the opinion of Lord Scarman.

Michael Barnes Q.C. and *Harold Singer* for the planning board. The issue of law is whether the right to develop land by virtue of a planning permission can by the actions of the relevant parties be abandoned. If the answer is in the negative then no further issue arises; if it is in the affirmative then there is a question whether, on the facts of this case, the right to work limestone on a site in Derbyshire has been abandoned. There is such a doctrine of abandonment. Rights which exist in relation to the use of property may be acquired by a variety of means including statute, contract and prescription and it is established that such rights may be lost by abandonment. For example, rights under easements or of ownership of property may be abandoned and there is no reason why rights under planning permissions created by the Town and Country Planning Act 1971 should be in any special category, and no reason why those rights should be incapable of being abandoned. If there can be such abandonment, the test is to ask whether a reasonable person knowing all the facts would conclude that the right had been permanently given up.

[LORD ROSKILL: What direction would you give a jury as to the meaning of abandonment?]

It would have to be explained that a planning permission ran with the land and it had to be ascertained as a matter of fact if it had been abandoned, giving the word its ordinary English meaning. On the facts of the present case there was material whereby a finding of abandonment could be reached. The more limited principle, which derived from the Court of Appeal decision in *Slough Estates Ltd. v. Slough Borough Council (No. 2)* [1969] 2 Ch. 305 to the effect that rights under a planning permission could be lost by an election between two inconsistent rights, is but an example of how abandonment may be inferred from the conduct of the parties. [Reference was made to the *Slough* case [1971] A.C. 958, 971, *per* Lord Pearson; [1969] 2 Ch. 305, 316–318, *per* Lord Denning M.R., 321–322, *per* Salmon L.J., and 323, *per* Karminski L.J.; (1967) 19 P. & C.R. 326, 356.] Examples of analogous cases can be found in the law of easements: *Tehidy Minerals Ltd. v. Norman* [1971] 2 Q.B. 528, 553; restrictive covenants (*Hepworth v. Pickles* [1900] 1 Ch. 108, 110); trade marks (*Mouson & Co. v. Boehm* (1884) 26 Ch.D. 398) and planning law (*Hartley v. Minister of Housing and Local Government* [1970] 1 Q.B. 413, 419.)

Dealing with the reasons why abandonment is said not to apply: (1) that the Act of 1971 is a complete code and it does not mention abandonment: unless the *Slough* case was wrongly decided, it is not necessary to introduce into the planning law some such doctrine; (2) that section 33 of the Act of 1971 is not consistent with abandonment, the purpose of the provision is to make it clear that planning permission is not personal to the applicant but runs with the land, section 33(1) is entirely consistent with that argument; (3) that where land has a planning permission, more than one person may have an interest, the question remains whether the rights under the permission have been abandoned; (4) the difficult position for a purchaser, if rights in land can

be abandoned, this is always a problem which a purchaser has; (5) that termination of planning permission is limited to the situations provided for in the Act of 1971 and the Town and Country Planning (Minerals) Act 1981, the principle of abandonment nevertheless applies subject to the need for stringent proof by those claiming abandonment; (6) that *Newbury District Council v. Secretary of State for the Environment* [1978] 1 W.L.R. 1241 offers cogent reasons for keeping the *Slough* decision within narrow confines and not extending it, the *Newbury* decision is of no assistance one way or the other as to whether planning permission can be abandoned. The principle of abandonment of rights relating to property is not a principle of equity nor of private law. It can apply to rights regulated by statutes. [Counsel then addressed their Lordships on the question whether, on the facts of the instant case, the right to extract limestone from the area of land to the north of Heathcote Lane conferred by the planning permissions had been lost by virtue of the more limited principle of abandonment by an election between inconsistent rights.]

David Widdicombe Q.C. and *Charles George* for the occupiers. The Act of 1971, supplemented by the Town and Country Planning (Minerals) Act 1981, is a complete code that does not admit any superimposition of a doctrine of abandonment. It is indicative that Parliament had in mind the termination of planning permissions by time limits in certain circumstances: see sections 41, 42, and 43 of the Act of 1971. If the subject has been considered and dealt with by statute, there is no other method of termination. Planning permissions are to be dealt with by reference to the statutory code which spells out what can and cannot be done in considerable detail, and one is confined to those methods. It would be strange if such a complicated code had a common law principle imposed upon it. It follows further that a planning permission does not cease to have effect by the exercise of any doctrine of election: *Slough Estates Ltd. v. Slough Borough Council (No. 2)* [1969] 2 Ch. 305 was a similar situation to that in *Pilkington v. Secretary of State for the Environment* [1973] 1 W.L.R. 1527 and should have been decided the same way. Dealing with the analogous cases of common law abandonment of property rights, the test for abandonment of easements in *Tehidy Minerals Ltd. v. Norman* [1971] 2 Q.B. 528 is much stricter than the proposed "reasonable man" test for abandonment of a planning permission. No reliance can be placed on *Hartley v. Minister of Housing and Local Government* [1970] 1 Q.B. 413 which was not dealing with an existing use right but an immunity: see *LTSS Print and Supply Services Ltd. v. Hackney London Borough Council* [1976] Q.B. 663. *Hepworth v. Pickles* [1900] 1 Ch. 108 was dealt with as a case of presumed licence and no other interests were affected: it did not deal with the question of other persons. There is no example of a statutory right being abandoned, except perhaps in relation to trade marks; however, the Trade Marks Act 1938, section 26(3), specifically uses the word "abandon" and thus trade marks can be distinguished from planning permissions. A doctrine of abandonment would raise numerous problems. The abandonment of part of a planning permission would raise the question of severance. Nor would it be as simple to formulate a test for abandonment as was

suggested. On the assumption that there is no principle of abandonment, there is no room even for the narrower concept of abandonment by election as in *Slough Estates Ltd. v. Slough Borough Council (No. 2)* [1969] 2 Ch. 305. That decision is inconsistent with *Newbury District Council v. Secretary of State for the Environment* [1978] 1 W.L.R. 1241. The principle on which the Court of Appeal decision in *Slough* is based, election, should be overruled, though the decision on its facts can still be justified by reference to the principle in *Pilkington v. Secretary of State for the Environment* [1973] 1 W.L.R. 1527.

Barnes Q.C. in reply. Dealing with the point that the provisions of the Act of 1971 are to be regarded as a code, the courts over the last decade have created two principles relating to town planning whereby rights may end without looking at any register: see *Prossor v. Minister of Housing and Local Government* (1968) 67 L.G.R. 109 and *Pilkington v. Secretary of State for the Environment* [1973] 1 W.L.R. 1527. Therefore the Act of 1971 cannot be regarded as a complete code. *Hartley v. Minister of Housing and Local Government* [1970] 1 Q.B. 413 is also relied on. Although an "existing use" case where one must first ask whether a use has ended with an intention that it shall permanently cease, the end result in such a case, as in cases of abandonment of planning permission, is to ask whether the rights have been abandoned or given up.

The Secretary of State and Mr. Mollatt were not represented.

Their Lordships took time for consideration.

24 May. LORD FRASER OF TULLYBELTON. My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Scarman. I agree with it and, for the reasons stated in it, I would dismiss this appeal.

LORD SCARMAN. My Lords, in this appeal two questions fall to be considered by the House. The first is a question of legal principle: whether a planning permission for the development of land can be abandoned by act of a party entitled to its benefit. Abandonment, it is said, has the effect that thereafter no person can lawfully resume the hitherto permitted development without obtaining a fresh planning permission. The local planning authority, appellant in this appeal, submits that abandonment effective to terminate a planning permission is recognised by law. The respondent, the owner of land to which the permission in dispute relates, submits that no such abandonment is recognised by law.

If the answer to the question of principle be in the affirmative, it will become necessary to consider whether upon the facts of the case the permission was abandoned. If it were, the appeal (on this premise) would succeed. But if the question of principle should be answered in the negative, the appeal must be dismissed unless the House is prepared to accept the appellant's alternative contention, which raises the second question: namely, has the development, which was permitted by the relevant planning permission, been completed? It is conceded, correctly,

A that, if what was then permitted has been completed, a resumption of the same type of operations would be not the resumption of the earlier development but a new development requiring a fresh planning permission. The first question is of importance in the planning law. If, however, the second question be answered in the affirmative, the appeal would have to be allowed irrespective of the answer to the first. The second question depends upon the proper construction of the terms of
B the relevant planning permission, and upon their application to the facts of the case.

My Lords, I propose first to outline such of the facts as are necessary to determine the two questions. The subsidiary issue as to whether the permission has been abandoned will not arise unless in law it is possible to abandon it.

C

The facts

For a full statement of the facts I would refer to the admirable judgment of Glidewell J. before whom the appeal came from the enforcement notice after being dismissed by the Secretary of State: see (1982) 46 P. & C.R. 113.

D The Peak Park Joint Planning Board, the appellant, is the local planning authority for the part of Derbyshire which includes the area of land with which the appeal is concerned. Pioneer Aggregates (U.K.) Ltd., the respondent, is the owner of the land. By an enforcement notice dated 25 February 1980 the board required Pioneer to remedy what in the notice was alleged to be a breach of planning control, namely development of the land by certain mining operations. Pioneer
E admits the operations but contends that they constituted no breach of planning control. The case is really a test case. Pioneer is not mining on the site. It knew that the local planning authority took the view that to resume mining on the site would be a breach of planning control. It fired one blast to remove some stone so as to bring the difference of opinion to a head. Pioneer has done nothing further save to exercise its
F rights of appeal against the enforcement notice.

The site to which the notice relates is an area of some 25 acres within the Peak District National Park. It is to the north of a lane leading to the hamlet of Heathcote. I shall refer to this area as the northern or the appeal site. There is on the appeal site an existing limestone quarry and attendant plant and buildings. But until the test firing of February 1980 there had been no quarrying or other mining
G operations since 1966.

The history of mining on the appeal site, so far as presently relevant, can be shortly stated. On 31 October 1950 the then Minister of Town and Country Planning (to whom at the time application for planning permission to work minerals had to be made) granted Hartshead Quarries Ltd. permission for the mining and working of limestone on an
H area of land which included the appeal site. This area included, additionally to the appeal site, a larger piece of land on the south side of Heathcote Lane and separated from the appeal site by the lane. The permission allowed for the construction of a tunnel under the lane. The reason for the tunnel (which, however, was never constructed, though a

detailed permission was granted in 1955) becomes clear from a study of the conditions imposed for the disposal of waste material. So long as mining was confined to the appeal site, waste material was to be tipped on to a spoil bank. If and when mining was extended to the area south of the lane, the waste material was to be brought across (or under) the lane and tipped in the quarry made by the excavations on the northern site. Since they bear on the second question, it will be convenient at this stage to quote in full two of the conditions subject to which permission was granted:

> "3. On the completion of quarrying in the area north of the highway tipping of waste material on the said spoil bank shall cease and all waste material shall be deposited within the excavations formed by quarrying in that area to a level surface. 4. On the conclusion of quarrying in the area north of the road all mineral stocks shall be stored in that area."

It is clear from these two conditions that quarrying on the land to the south of the lane was envisaged as (allowably) continuing after conclusion of quarrying to the north, but that, if it did, waste material should no longer be deposited on the spoil bank but in the northern quarry and mineral stocks were to be stored on the northern site.

On 9 November 1962 a further permission was granted extending the area of excavation and of tipping subject to conditions. Nothing turns on this permission, which is to be read merely as an extension of the 1950 permission subject to certain conditions.

Hartshead extracted limestone from the appeal site from 1950 to 1966. On 15 September 1966 they wrote to the board a letter in which they gave notice that they would cease quarrying not later than 31 December of that year. They had confined their operations to the appeal site, although they had acquired the land, or, at the very least, the mineral rights in the land to the south of the lane. Their letter dealt with all the land covered by the planning permission, i.e. the land both to the south and the north of the lane. It indicated clearly their intention to cease quarrying and to vacate all the land and to remove their plant and buildings. The board relies on this letter and the subsequent course of negotiations to establish their case that Hartshead, by electing to treat the 1950 permission (together with its 1962 extension) as at an end, abandoned it.

I pass over the negotiations which followed upon Hartshead's ceasing from mining operations save only to mention that they negotiated with the board a satisfactory solution to the restoration problem. On 6 January 1967 the board wrote to Hartshead informing them that the restoration conditions had been met to its satisfaction. The board did not insist on a full compliance—probably because it believed that Hartshead's departure marked the finish of mining operations on the land to which the permission related.

In 1978, Pioneer became interested in the area covered by the permission of 31 October 1950 as extended by that of 9 November 1962. It asked whether planning permission to quarry was needed. By letter

dated 29 January 1979 the board took the two points which now fall to be decided by the House. The board said:

> "In relation to the entire quarry (one planning unit) for which planning permission was granted by letter dated 31 October 1950, as extended by the permission of 9 November 1962, planning permission for the site has been abandoned."

The letter is ambiguous. It is not clear whether it refers to all the land covered by the 1950 permission or only to the land north of the lane (the appeal site). I read it as alleging that planning permission in relation to all the land to which the 1950 permission related had been abandoned. Whether that be right or wrong, the letter certainly did go on to deal explicitly with the appeal site and in relation to that site made the second, alternative point upon which the appellant relies in the appeal. The board said:

> "In addition and in the alternative, the north-west area having been completed to the written satisfaction of the planning authority pursuant to the third condition [of the 1950 permission], cannot now be opened up without a new express permission."

The first question—Abandonment

If the board is right, a valid planning permission can be abandoned by the conduct of a landowner or occupier of land; and the effect of the party's conduct will be to bind all persons interested in the land now or hereafter whether or not they have notice of the abandonment. The planning permission would be entered in a public register; but not so its abandonment. Nor would it be possible by inspection of the land to discover whether the permission had been abandoned, for the absence of implementation of a planning permission is no evidence that a valid permission does not exist. It is perhaps not surprising that no trace of any such rule can be found in the planning legislation. If there be such a rule, it has been imported into the planning law by judicial decision.

The case upon which the appellant relies for the existence of such a rule is *Slough Estates Ltd. v. Slough Borough Council (No. 2)*. The case is reported as follows: at first instance before Megarry J. (1967) 19 P. & C.R. 326; in the Court of Appeal [1969] 2 Ch. 305, and in the House of Lords [1971] A.C. 958. It is the only reported case in which a rule of abandonment has been recognised as applicable to a planning permission. The plaintiff owned a trading estate of some 500 acres. In January 1945, when about half the estate had been developed, the company sought permission to develop the remaining 240 acres. On 17 October 1945 the council wrote to the company permitting development for industrial purposes. But between 1945 and 1965 the company behaved as if the 1945 permission did not exist. The company sought and obtained fresh planning permissions for factory building covering about 150 of the 240 acres. In 1955, 90 acres remained undeveloped. The company, in accordance with their post-1945 practice, applied for permission to develop the 90 acres for industrial buildings; but this time it was refused. The company then applied for and obtained £178,545 compensation for loss of development value.

In 1966 the company made a startling change of course: it applied to the High Court for a declaration (inter alia) that the permission of 17 October 1945 was still in force. The trial judge, Megarry J., held that the terms of the letter of 17 October 1945 were so obscure that the planning permission was ineffective but embarked, obiter, on a lengthy discussion as to the possibility of abandonment, expressing the view that, if an owner or occupier of land evinced by his conduct an unequivocal intention to abandon planning permission, such permission would be extinguished by abandonment. The Court of Appeal ruled that the October 1945 letter upon its true construction was a valid outline planning permission but held that the company by claiming and obtaining compensation had elected to abandon its rights under the permission and could not now revive the permission. The company had made its election between inconsistent rights, the effect of which was to extinguish the permission. On appeal, this House held that the purported permission of 1945 was ineffective because it failed to identify the land to which it related. Lord Pearson, with whose speech the other members of the House agreed, expressly reserved the question whether a planning permission could be abandoned.

The decision of the Court of Appeal was, of course, binding on Glidewell J. and the Court of Appeal in the present case. Both courts refused, however, to accept that the *Slough* decision introduced into the planning law any general rule of abandonment, treating it as a limited exception to what they held was the general rule, namely that planning permission cannot be extinguished merely by conduct. They went on to find that the facts of the present case did not fall within the *Slough* exception of election. Accordingly, Glidewell J. allowed Pioneer's appeal from the Minister (who had held that planning permission could be abandoned), and the Court of Appeal dismissed the board's appeal from his decision. Neither court dealt expressly with the second question raised in the appeal, though it was, the House was informed, raised. Impliedly, they must be considered to have rejected the board's contention.

My Lords, on the question of abandonment I find myself in agreement with both courts below that there is no such general rule in the planning law. In certain exceptional situations not covered by legislation, to which I shall refer, the courts have held that a landowner by developing his land can play an important part in bringing to an end or making incapable of implementation a valid planning permission. But I am satisfied that the Court of Appeal in the *Slough* case erred in law in holding that the doctrine of election between inconsistent rights is to be incorporated into the planning law either as the basis of a general rule of abandonment or (which the courts below were constrained to accept) as an exception to the general rule that the duration of a valid planning permission is governed by the provisions of the planning legislation. I propose now to give my reasons for reaching this conclusion.

Planning control is the creature of statute. It is an imposition in the public interest of restrictions upon private rights of ownership of land. The public character of the law relating to planning control has been recognised by the House in *Newbury District Council v. Secretary of*

State for the Environment [1981] A.C. 578. It is a field of law in which the courts should not introduce principles or rules derived from private law unless it be expressly authorised by Parliament or necessary in order to give effect to the purpose of the legislation. The planning law, though a comprehensive code imposed in the public interest, is, of course, based on the land law. Where the code is silent or ambiguous, resort to the principles of the private law (especially property and contract law) may be necessary so that the courts may resolve difficulties by application of common law or equitable principles. But such cases will be exceptional. And, if the statute law covers the situation, it will be an impermissible exercise of the judicial function to go beyond the statutory provision by applying such principles merely because they may appear to achieve a fairer solution to the problem being considered. As ever in the field of statute law it is the duty of the courts to give effect to the intention of Parliament as evinced by the statute, or statutory code, considered as a whole.

Parliament has provided a comprehensive code of planning control. It is currently to be found in the Town and Country Planning Act 1971, as subsequently amended. Part II of the Act of 1971 imposes upon local planning authorities the duty of preparing and submitting to the Minister development plans formulating their policy and their general proposals for the development and use of land in their area. Widespread publicity has to be given to the preparation or alteration of such plans. There is provision for local public inquiries in certain specified circumstances. Part III imposes general planning control. Section 23(1) declares the rule: subject to the provisions of the section, planning permission is required for the development of land. There are certain exceptions, of which the most notable are rights in connection with the use of land existing prior to certain specified dates related to the introduction of planning control (commonly called "existing use rights"): sections 23 and 94 of the Act. Section 29 deals with the grant of planning permission: note that the local planning authority must have regard to the provisions of the development plan. In determining an application for permission the authority must take into account "any representations" made to them within the time specified in the section. And there are extensive provisions for giving publicity to applications: sections 26 to 28.

Section 33(1) is of crucial importance. It provides:

> "Without prejudice to the provisions of this Part of this Act as to the duration, revocation or modification of planning permission, any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested therein."

The clear implication is that only the statute or the terms of the planning permission itself can stop the permission enuring for the benefit of the land and of all persons for the time being interested therein. I would comment, in passing, that the provision in section 33(1) was in the law as section 21 of the Town and Country Planning Act 1962, when the *Slough* case [1969] 2 Ch. 305 was decided: but the Court of Appeal made no reference to it.

The provisions in the Town and Country Planning Act 1971 governing the duration, modification, revocation, and termination of planning permission are extensive; see sections 41 to 46. It is unnecessary to analyse them in detail. Perhaps the most significant common feature of the various procedures is the involvement of public authority, local and central, when questions as to duration, modification, revocation, or termination of planning permission arise. And, of course, the procedures involve notice to persons interested as well as to the applicant and/or landowner.

Orders can also be made by a local planning authority for the discontinuance of a use of land or for the removal of buildings under section 51. The Secretary of State must confirm any such order made, and again there is provision for publicity.

Section 52 enables a local planning authority to enter into an agreement with a landowner restricting or regulating the development or use of land. The agreement is registrable.

Indeed, the permissions and orders to which I have briefly referred are, with one exception, either registered in a register maintained under the planning legislation, or registrable as local land charges under the Local Land Charges Act 1975. The exception is a notice ("completion notice") under section 44 of the Act of 1971 setting a time limit after which, subject to confirmation by the Minister, a planning permission shall cease to have effect. Such notices are, however, the subject of a specific, though optional, inquiry of the local authority contained in the officially approved form of inquiry used in connection with searches of the local land charges register.

Finally, it is necessary to refer to the recent amendment to the Act of 1971, namely the Town and Country Planning (Minerals) Act 1981. Section 7 provides that there shall be introduced into the Act of 1971 a new section 44A setting a limit to the duration of a planning permission to work minerals. Section 10 is directly in point. It introduces into the Act of 1971 a new section 51A under which the mineral planning authority, if it appears that the working of minerals has permanently ceased on any land, may prohibit its resumption. If such a prohibition is contravened, a criminal offence is committed. These provisions are not yet in force. But they strongly reinforce the view of the law relating to planning control as being a comprehensive code, and they show clearly that the problem of the future of planning permission for the working of minerals where mining operations have permanently ceased is left to public authority, and that subject to the usual safeguards such permission can be effectively terminated by order under the new section 51A.

Viewed as a question of principle, therefore, the introduction into the planning law of a doctrine of abandonment by election of the landowner (or occupier) cannot, in my judgment, be justified. It would lead to uncertainty and confusion in the law, and there is no need for it. There is nothing in the legislation to encourage the view that the courts should import into the planning law such a rule—recognised though it is in many branches of the private law (e.g. the law of easements, the commercial law, and the law of trade marks) as Megarry J. in his

learned, though obiter, discussion of the principle has shown in *Slough Estates Ltd. v. Slough Borough Council (No. 2)*, 19 P. & C.R. 326.

There is, however, quite apart from the *Slough* case a number of reported judicial decisions which, upon first sight and before analysis, might seem to suggest that there is room in the planning law for a principle, or an exception, allowing the extinguishment of a planning permission by abandonment.

Three classes of case can be identified. The first class is concerned not with planning permission but with existing use. In *Hartley v. Minister of Housing and Local Government* [1970] 1 Q.B. 413 the Court of Appeal (Lord Denning M.R., Widgery and Cross L.JJ.) held that the Minister as the tribunal of fact was entitled to find on the evidence that the resumption of a car sales use on a site where previously there had been two uses, namely car sales and a petrol-filling station, was after a cessation of the car sales use for some four years a material change of use and so properly the subject of an enforcement notice. The Minister, the court held, was entitled to find as a fact that the previous use had ceased, having been abandoned by the owner or occupier of the land. This was not a case of abandoning a planning permission. There was in fact no existing use of the land for car sales because the use had ceased years ago. An existing use, which has been deliberately ended before a resumption arises, is not existing at the date of resumption: accordingly, the resumption was a material change of use, and so required planning permission. The issue was one of fact, as Widgery L.J. emphasised in his judgment. And it had nothing whatever to do with the extinguishment of a planning permission. Widgery L.J. in the course of his judgment made a significant comment, at p. 422:

> "When the car sales use ceased in 1961 there could be no question of a material change of use on which an enforcement notice could be founded in reliance on that fact alone."

The use no longer existing, the change back four years later was the material change of use on which the notice could be founded.

The second class of case has been described as that of the "new planning unit"—a term coined by Widgery L.J. in *Petticoat Lane Rentals Ltd. v. Secretary of State for the Environment* [1971] 1 W.L.R 1112. This line of cases was discussed in *Newbury District Council v. Secretary of State for the Environment* [1981] A.C. 578 (by Viscount Dilhorne, at pp. 598–599 and by myself, at pp. 616–617). I will not repeat what was then said. Two comments, however, should be made. First, the cases are, without exception, cases where existing use rights were lost by reason of a new development sanctioned by a planning permission. There is no case, so far as I am aware, in which a previous planning permission has been lost by reason of subsequent development save in circumstances giving rise to the third class of case, which I shall discuss in a moment. In the class of case now under discussion the existing use right disappears because the character of the planning unit has been altered by the physical fact of the new development. As Lord Parker C.J. remarked in the first of the cases, *Prossor v. Minister of Housing and Local Government* (1968) 67 L.G.R. 109, 113:

"The planning history of this site, as it were, seems to me to begin afresh . . . with the grant of this permission . . . *which was taken up and used* . . ." (Emphasis supplied).

Secondly, it is clear that where the evidence fails to establish the creation by development actually carried out on the land of a new planning unit the grant of planning permission does not preclude a landowner from relying on an existing use right. Indeed, as *Newbury's* case itself shows, existing use rights are hardy beasts with a great capacity for survival.

The third class of case comes nearer to the facts and law of the present appeal. These cases are concerned not with existing use rights but with two planning permissions in respect of the same land. It is, of course, trite law that any number of planning permissions can validly co-exist for the development of the same land, even though they be mutually inconsistent. In this respect planning permission reveals its true nature—a permission that certain rights of ownership may be exercised but not a requirement that they must be.

But, what happens where there are mutually inconsistent permissions (as there may well be) and one of them is taken up and developed? The answer is not to be found in the legislation. The first reported case appears to have been *Ellis v. Worcestershire County Council* (1961) 12 P. & C.R. 178, a decision of Mr. Erskine Simes Q.C. to which Lord Widgery C.J. referred with approval in what must now be regarded as the leading case on the point, *Pilkington v. Secretary of State for the Environment* [1973] 1 W.L.R. 1527.

Mr. Erskine Simes, in a passage which Lord Widgery C.J. was later to describe as exactly illustrating the principle, said, at p.183:

"If permission were granted for the erection of a dwelling house on a site showing one acre of land as that to be occupied with the dwelling house, and subsequently permission were applied for and granted for a dwelling house on a different part of the same acre which was again shown as the area to be occupied with the dwelling house, it would, in my judgment, be impossible to construe these two permissions so as to permit the erection of two dwelling houses on the same acre of land. The owner of the land has permission to build on either of the sites, but wherever he places his house it must be occupied with the whole acre."

Pilkington was a Divisional Court decision. It has been approved by the Court of Appeal in *Hoveringham Gravels Ltd. v. Chiltern District Council* (1977) 76 L.G.R. 533. Its facts were that the owner of land was granted planning permission to build a bungalow on part of the land, site "B." It was a condition of the permission that the bungalow should be the only house to be built on the land. He built the bungalow. Later the owner discovered the existence of an earlier permission to build a bungalow and garage on another part of the same land, site "A." That permission contemplated the use of the rest of the land as a smallholding. He began to build the second bungalow, when he was served with an enforcement notice alleging a breach of planning control. The Divisional Court held that the two permissions could not stand in respect of the

same land, once the development sanctioned by the second permission had been carried out. The effect of building on site "B" was to make the development authorised in the earlier permission incapable of implementation. The bungalow built on site "B" had destroyed the smallholding: and the erection of two bungalows on the site had never been sanctioned. This was certainly a common sense decision, and, in my judgment, correct in law. The *Pilkington* problem is not dealt with in the planning legislation. It was, therefore, necessary for the courts to formulate a rule which would strengthen and support the planning control imposed by the legislation. And this is exactly what the Divisional Court achieved. There is, or need be, no uncertainty arising from the application of the rule. Both planning permissions will be on a public register: examination of their terms combined with an inspection of the land will suffice to reveal whether development has been carried out which renders one or other of the planning permissions incapable of implementation.

My Lords, I find nothing in any of these cases to cast doubt on the view of principle to which a study of the legislation has led me. Indeed, *Pilkington's* case [1973] 1 W.L.R. 1527 may be contrasted with the *Slough* case [1971] A.C. 958 in that it reveals the proper exercise of the judicial function in a field of codified law. It is a decision supporting and strengthening the planning control imposed by Parliament in contrast with the Court of Appeal's decision in the *Slough* case [1969] 2 Ch. 305 which renders control uncertain, is likely to cause confusion, and which to that extent works to undermine the intention of Parliament.

Strangely and ironically, it would appear that the *Slough* case could have been decided along *Pilkington* lines. For, assuming the validity of the 1945 planning permission in the *Slough* case, several acres of the estate which in the 1944–45 plan had been included as a car park were covered with factory buildings constructed pursuant to a subsequent planning permission. Under the *Pilkington* rule the subsequent development would have sufficed to make the outline plan approved in 1945 incapable of implementation. Lastly, it will be observed that the *Pilkington* situation resembles the "new planning unit" class of case in that a permitted development which has been carried out has so altered the character of the land that its planning history now begins with the new development.

For these reasons I would answer the first question in the appeal in the negative. There is no principle in the planning law that a valid permission capable of being implemented according to its terms can be abandoned.

The second question—Completion of permitted development

I turn now to the second of the two main questions in the appeal. The board submits that upon the true construction of the terms of the 1950 permission as extended by the 1962 permission the permitted development to the north of Heathcote Lane has been completed and cannot be resumed without a fresh planning permission. It is recognised that the area of land to which the 1950 permission related comprised more than the appeal site in that the permission related to areas to the

north and south respectively of Heathcote Lane and was drafted so as to grant permission to work minerals in both areas. It is said, however, that it was a permission for two separate developments and that, upon the cesser by Hartshead of mining operations north of the lane together with the restoration of the land to the satisfaction of the board, the development was completed so that a resumption now in that area would be a new development requiring fresh planning permission. Particular reliance is placed on conditions 3 and 4 of the permission (the two conditions which I have earlier set out) whereby it was provided that on the completion of quarrying on the northern site waste material should be deposited in the quarry on the northern land and mineral stocks should be stored on the northern land. The suggestion is that these conditions indicate either a completion of the authorised development of the northern land before the commencement of a separate development south of the lane or, at the very least, two separate developments whether contemporaneous or successive.

My Lords, I do not so read the permission. In terms it relates to the whole area of land south and north of the lane. It is a permission to mine and work minerals in that area. It contains detailed conditions as to method of working and as to restoration work after quarrying. The permission plainly envisages the continued use of the northern land for mineral working even after quarrying in that area has ceased; for the northern land is to be used at all times both during and after quarrying north of the lane for the deposit of waste material and for the processing and storage of minerals, from whatever part of the land to which the permission relates they are won. The permission, as I read its terms, contemplated an authorised development of the land south and north of the lane treated as one planning unit.

I reject, therefore, the submission that the permission was for two separate developments and that one of them was complete when Hartshead ceased operations in 1966. I suspect that in 1966 the board confused the commercial termination of Hartshead's operations with the completion of the development permitted by the 1950 permission as extended in 1962. A commercial decision to terminate operations upon land where there is a valid planning permission for such operations cannot by itself extinguish the planning permission unless the terms of the permission provide that such shall be the effect of the termination. To give such effect to a commercial decision in the absence of terms to that effect in the planning permission would be to fly in the face of section 33(1) of the Town and Country Planning Act 1971 which lays down that, save where the permission so provides, the grant of planning permission enures for the benefit of the land and of all persons for the time being interested in the land.

For these reasons I would dismiss the appeal with costs.

LORD ROSKILL. My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Scarman. For the reasons he gives I too would dismiss this appeal with costs.

LORD BRIDGE OF HARWICH. My Lords, for the reasons given in the speech of my noble and learned friend, Lord Scarman, with which I agree, I would dismiss this appeal.

LORD BRANDON OF OAKBROOK. My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Scarman. I agree with it, and for the reasons which he gives I would dismiss the appeal.

Appeal dismissed with costs.

Solicitors: Theodore Goddard & Co.; Coward Chance.

C. T. B.

[PRIVY COUNCIL]

TAMAITIRUA KAITAMAKI . . . . . APPELLANT

AND

THE QUEEN . . . . . RESPONDENT

[APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND]

1984 March 28; May 1

Lord Scarman, Lord Elwyn-Jones, Lord Brandon of Oakbrook, Lord Brightman and Sir George Baker

New Zealand—Crime—Rape—Consent—Penetration with consent or in belief that woman consenting to sexual intercourse—Continuation after realisation that woman unwilling—Whether rape—Crimes Act 1961 (No. 43 of 1961), ss. 127, 128

New Zealand—Appeal to Privy Council—Legal aid—Whether Court of Appeal having jurisdiction to grant legal aid for appeal to Privy Council—Offenders Legal Aid Act 1954 (No. 62 of 1954), ss. 2(1), 3(1)

Section 127 of the Crimes Act 1961 provides: "For the purposes of this Part of this act, sexual intercourse is complete upon penetration; . . ." Section 128 provides: "(1) Rape is the act of a male person having sexual intercourse with a woman or girl—(*a*) Without her consent; . . ."

The defendant was charged on indictment with one offence of rape contrary to section 128 of the Crimes Act 1961 and one offence of burglary. The Crown's case was that he broke into a young woman's flat and twice raped her. There was no dispute that sexual intercourse had taken place on two occasions, but his defence was that the woman consented or he honestly

Appendix 3: Copy of Hillside Supreme Court judgment

Michaelmas Term
[2022] UKSC 30
On appeal from: [2020] EWCA Civ 1440

JUDGMENT

Hillside Parks Ltd (Appellant) *v* Snowdonia National Park Authority (Respondent)

before

Lord Reed, President
Lord Briggs
Lord Sales
Lord Leggatt
Lady Rose

JUDGMENT GIVEN ON
2 November 2022

Heard on 4 July 2022

Appellant
Charles Banner KC
Robin Green
Matthew Finn
(Instructed by Aaron & Partners LLP (Chester))

Respondent
Gwion Lewis KC
(Instructed by Geldards LLP (Cardiff))

LORD SALES AND LORD LEGGATT (with whom Lord Reed, Lord Briggs, and Lady Rose agree):

1. This appeal raises issues of importance in planning law about the relationship between successive grants of planning permission for development on the same land and, in particular, about the effect of implementing one planning permission on another planning permission relating to the same site.

The factual background

2. The site to which the appeal relates is known as "Balkan Hill" and comprises around 29 acres of land near Aberdyfi in the Snowdonia National Park. In January 1967 the local planning authority granted full planning permission for the development of 401 dwellings on the Balkan Hill site in accordance with a detailed plan referred to as the "Master Plan". The Master Plan showed the proposed location of each house and the layout of a road system for the estate. It is the current status of this planning permission ("the 1967 permission") which is in dispute in this case.

3. The ownership of the Balkan Hill site has changed twice since the 1967 permission was granted. The current owner is the appellant, Hillside Parks Limited, which acquired the site in 1988. The identity of the local planning authority has also changed over the years. It is now Snowdonia National Park Authority, the respondent to this appeal. Nothing turns on these changes and we will refer without distinction to the appellant or whoever owned the site at any given time as "the Developer" and to the respondent or whichever body was the local planning authority at any given time as "the Authority".

4. The progress of development at the Balkan Hill site can best be described as glacial. In the period of more than half a century since the 1967 permission was granted, only 41 houses have been built. None of these houses has been built in accordance with the Master Plan. The Developer has applied for and been granted a series of additional planning permissions permitting development which has taken place on parts of the site. The question which now arises is whether the Developer is entitled to carry out further development at the Balkan Hill site pursuant to the 1967 permission; or whether, as the Authority contends, development carried out in accordance with other permissions has had the effect that the Developer cannot now rely on the 1967 permission.

5. The validity of the 1967 permission was previously the subject of litigation which was decided in favour of the Developer in 1987. The present proceedings are largely concerned with events since then, but it is necessary to say something by way of background about earlier events.

Development between 1967 and 1987

6. From the outset, the Developer ran into difficulties. Work was carried out to construct short sections of road to give access to the south of the site in accordance with the Master Plan. However, excavation to lay the foundations for the first two houses to be built revealed that they were sited on an old quarry which caused a problem with the ground level. Accordingly, the Developer applied for planning permission to build the houses in a slightly different position from that shown on the Master Plan and to alter their design in some respects. This permission was granted in April 1967.

7. Thereafter development proceeded very slowly indeed. By 1985 only 19 dwellings had been built, all on the very southernmost part of the site. None of these dwellings was built in accordance with the Master Plan and in some cases the departure from it was substantial. All the dwellings constructed were the subject of specific planning permissions granted by the Authority, of which there are said to have been eight in total.

Drake J's judgment

8. In 1985 a dispute arose about whether the 1967 permission remained valid. The permission had been granted subject to just one specified condition, namely, "agreement being reached on water supply before any work is carried out". The Authority contended that this condition had never been fulfilled, with the result that such development as was carried out was unlawful; and that, as no lawful development was begun within the statutory time limit, the 1967 permission had lapsed so that no development could now lawfully take place under it. The Developer disputed this and brought proceedings in the High Court to establish that the development permitted by the 1967 permission had been lawfully begun within the time limit and could lawfully be continued.

9. The action came to trial before Drake J. In his (unreported) judgment given on 9 July 1987, the judge found that the condition requiring agreement on the water supply had been fulfilled for such development as had already taken place on the

Balkan Hill site and was capable of being satisfied in relation to further development so long as the prior agreement of the responsible water supply authority was obtained. The judge also found that the development permitted by the 1967 permission had been begun by what he found to be the relevant deadline of 1 April 1974, since long before that date the Developer had constructed sections of road and a number of buildings. The judge considered that, although these buildings had been the subject of individual grants of planning permission, each such permission was "merely a variation" of the 1967 permission. He also expressed the view that "the Master Plan remains in force, and if the development is allowed to progress further it can be completed substantially in accordance with the Master Plan". The judge's decision was embodied in declarations, which included a declaration that the development permitted by the 1967 permission had been begun and "may lawfully be completed at any time in the future".

10. At the trial before Drake J, the Authority did not make any argument such as it makes in these proceedings that the 1967 permission had become incapable of implementation as a result of departures from the Master Plan. Nor does any consideration appear to have been given to how as a matter of legal analysis the variations of the 1967 permission had been achieved given that the planning legislation did not at that time give the local planning authority power to make any change to a planning permission previously granted. (Even now, as we discuss below, the power to amend a planning permission is very limited.)

Development after 1987

11. Since Drake J's judgment was given, the further development which has taken place on the Balkan Hill site has, as before, departed from the Master Plan. This further development has all been in the north-west part of the site. Not only do the positions, configurations and sizes of the houses built differ significantly from the Master Plan, but an estate road has been constructed which runs over land on which several houses are sited in the Master Plan; in addition, houses and some garages have been built on land across which one of the main internal estate roads shown in the Master Plan was to run. As previously, the Developer applied for a series of specific planning permissions for development which departed from the Master Plan. Some of the permissions granted describe the permission as a "variation" of the 1967 permission but some do not use that or any similar term. In total, eight such permissions have been granted by the Authority since 1987. It will be necessary to return to some of them in greater detail later in this judgment, but in summary (listed in the order in which the applications were made) they are as follows:

(i) Permission granted on 27 June 1996 for the erection of one dwellinghouse as a "variation" to the 1967 permission ("permission A").

(ii) Permission granted on 20 June 1997 for the erection of two terraces forming one attached dwelling, six apartment units and 8 garages with apartments over, as a "variation" to the 1967 permission ("permission B").

(iii) Permission granted on 18 September 2000 for the erection of a two storey detached dwellinghouse and garage on "Plot 5" of the site ("permission C"). This permission has not been implemented.

(iv) Permission granted on 4 March 2005 for the erection of a two storey dwelling and detached garage on "Plot 17" of the site ("permission D").

(v) Permission granted on 24 August 2004 for the erection of five detached houses and five garages as a "variation" to the 1967 permission ("permission E").

(vi) Permission granted on 25 August 2005 for the erection of a detached dwelling on "Plot 3 of Phase 1" of the site ("permission F"). This permission was not implemented and was superseded by permission H below.

(vii) Permission granted on 20 May 2009 for the construction of three pairs of dwellings ("permission G"). Although not apparent on the face of the permission, the proposed location of these dwellings was on part of the land which was the subject of permission E.

(viii) Permission granted on 5 January 2011 for the erection of one dwelling on "Plot 3" of the site ("permission H"). This permission superseded permission F.

12. With the exception of permissions C and F, we understand that all these planning permissions have been implemented.

The present proceedings

13. In May 2017 the Authority wrote to the Developer asserting that it was now impossible to implement the 1967 permission further and requiring the Developer immediately to stop all works at the Balkan Hill site until the planning situation had been regularised.

14. After correspondence including an exchange of counsel's opinions had failed to resolve the issue, the Developer brought these proceedings seeking declarations that the Authority was bound by Drake J's judgment to treat the 1967 permission as valid as a matter of *res judicata*; and that in any event the 1967 permission remains valid and may be carried on to completion.

15. The trial took place before HHJ Keyser QC sitting as a judge of the High Court. He refused to grant the declarations sought and dismissed the Developer's claim: see [2019] EWHC 2587 (QB). The judge approached the issues by first considering whether Drake J was wrong in law to decide that the remainder of the development permitted by the 1967 permission could lawfully be completed at any time in the future. He concluded that Drake J had not been wrong in law to reach that conclusion on the basis that the additional planning permissions granted before 1987 were all variations of the 1967 permission. The judge considered that in these circumstances he did not need to decide whether the Authority is bound by Drake J's declarations as a matter of *res judicata*. He went on, however, to hold that, as a result of the physical alterations to the land which have taken place since 1987, it is now physically impossible to complete the development fully in accordance with the 1967 permission, and that this has the consequence that further development under that permission would be unlawful.

16. The Developer appealed. For reasons given by Singh LJ with whom David Richards and Nicola Davies LJJ agreed, the Court of Appeal dismissed the appeal: [2020] EWCA Civ 1440. In essence they did so on the basis that the judge was entitled to conclude that, in the light of factual developments since the judgment of Drake J in 1987, it is no longer possible to implement the 1967 permission. In those circumstances the *res judicata* issue did not arise.

This appeal

17. This court granted the Developer permission to appeal on the issue of whether any further development may lawfully be carried out under the 1967

permission, but not on the res judicata issue. The Authority does not now seek to argue that the 1967 permission became incapable of implementation as a result of anything that happened before Drake J's judgment in 1987. Nor does it seek to impeach anything that Drake J decided. We therefore proceed on the footing that the individual permissions granted before 1987 operated as what were, in their effect, variations of the 1967 permission, as Drake J held. On this appeal it is not necessary or relevant to consider whether Drake J's view of the effect of those permissions was correct. We are concerned only with the effect of the additional permissions granted after Drake J's judgment was given in 1987 and the further development which has taken place since then.

18. Judge Keyser accepted (at para 62 of his judgment) that much of the Balkan Hill site is unaffected by this further development, in the sense that it would still be physically possible to build houses and roads on much of the site which conform to the Master Plan. The Developer contends that, on a correct legal analysis, further development on these vacant parts of the site may still lawfully be carried out pursuant to the 1967 permission and that the courts below were wrong to hold otherwise. Before considering the Developer's arguments for this contention, we draw attention to some central features of the legal framework.

The planning legislation

19. Planning control is a creature of legislation. The main elements of the statutory scheme remain the same as they were when first introduced across England and Wales by the Town and Country Planning Act 1947. The principal Act is now the Town and Country Planning Act 1990 (the "1990 Act"). By section 57 of the 1990 Act, planning permission is required for the carrying out of any development of land. The term "development" is defined in section 55(1) to mean "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land". In this case we are concerned with the former type of development (operational development) and not with change in use.

20. A planning permission is simply a permission to develop land and does not itself impose any obligation to carry out development for which permission is given. Under section 70(1) of the 1990 Act a local planning authority may, however, grant planning permission subject to such conditions as they think fit (which may include entry into planning obligations enforceable under section 106 of the 1990 Act). There is a statutory condition that the development to which the permission relates must be begun within a specified period. Provided, however, that the development is

begun within this period, there is no time limit for completing it, unless a completion notice is served under section 94 of the 1990 Act.

21. A fundamental feature of planning permission is that it runs with the land. Section 75(1) of the 1990 Act states that "any grant of planning permission … to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested in it."

Powers to vary a planning permission

22. We have mentioned that under the planning legislation a local planning authority has only limited powers to vary a planning permission after it has been granted. The relevant statutory powers are as follows.

23. Section 73 of the 1990 Act gives the local planning authority a power to dispense with or vary conditions subject to which a planning permission was granted. However, this power cannot be used to change the description of the development: *Finney v Welsh Ministers* [2019] EWCA Civ 1868; [2020] PT&R 455.

24. Section 96A of the 1990 Act, added in 2009, provides that:

> "(1) A local planning authority may make a change to any planning permission … relating to land in their area if they are satisfied that the change is not material."

What qualifies as a non-material change is not defined but is left to the judgment of the local planning authority, subject only to a requirement in subsection (2) to "have regard to the effect of the change, together with any previous changes made under this section, on the planning permission … as originally granted." (We mention in passing that the Developer does not rely on section 96A or suggest that permission H - the only planning permission relating to the Balkan Hill site granted after section 96A came into force - was an exercise of this power.)

25. In addition, clause 98 of the Levelling-Up and Regeneration Bill currently before Parliament will, if enacted, insert a new section 73B into the 1990 Act giving the local planning authority power to grant a planning permission that varies an existing permission but only if the local planning authority is satisfied that "its effect will not be substantially different from that of the existing permission".

Interpreting a planning permission

26. The scope of a planning permission depends on the terms of the document recording the grant. As with any legal document, its interpretation is a matter of law for the court. Recent decisions of this court have made it clear that planning permissions are to be interpreted according to the same general principles that apply in English law to the interpretation of any other document that has legal effect. The exercise is an objective one, concerned not with what the maker of the document subjectively intended or wanted to convey but with what a reasonable reader would understand the words used, considered in their particular context, to mean: see *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2016] 1 WLR 85, paras 33-34 (Lord Hodge) and para 53 (Lord Carnwath); *Lambeth London Borough Council v Secretary of State for Housing, Communities and Local Government* [2019] 1 WLR 4317, paras 15-19.

27. Differences in the nature of legal documents do, however, affect the scope of the contextual material to which regard may be had in interpreting the text. Because a planning permission is not personal to the applicant and enures for the benefit of the land, it cannot be assumed that the holder of the permission will be aware of all the background facts known to the person who applied for it. Furthermore, a planning permission is a public document on which third parties are entitled to rely. These characteristics dictate that the meaning of the document should be ascertainable from the document itself, other public documents to which it refers such as the planning application and plans and drawings submitted with the application, and physical inspection of the land to which it relates. The reasonable reader of the permission cannot be expected to have regard to other material such as correspondence passing between the parties. See eg *Slough Estates v Slough Borough Council (No 2)* [1971] AC 959, 962 (Lord Reid); *Trump International Golf Club*, para 33 (Lord Hodge). In this case, we are concerned with grants of full planning permission, in relation to which it is to be expected that a reasonable reader would understand that the detailed plans submitted with the application have particular significance: *Barnett v Secretary of State for Communities and Local Government* [2008] EWHC 1601 (Admin), [2009] JPL 243, para 24 (Sullivan J); affirmed [2009] EWCA Civ 476, [2009] JPL 1597, paras 17-22 (Keene LJ); R Harwood, *Planning Permission* (2016), para 28.9.

Inconsistent planning permissions

28. As counsel for the Developer have emphasised in their submissions, the planning legislation is intended to operate as a comprehensive code. There is, however, no provision of the legislation which regulates the situation where two or

more planning permissions granted for development on the same site are, or are claimed to be, mutually inconsistent. The courts have therefore had to work out the principles to be applied.

The *Pilkington* case

29. The leading case is the decision of a three judge Divisional Court in *Pilkington v Secretary of State for the Environment* [1973] 1 WLR 1527. The facts were that the owner of a plot of land was granted planning permission to build a bungalow on the plot. After the bungalow was built, he discovered an earlier planning permission granted to the previous owner to build a bungalow on a different part of the same plot of land. The description of the development in the earlier permission and the relevant plan showed that it was contemplated that the rest of the plot would be used as a smallholding. The question was whether the landowner could lawfully build another bungalow in the location specified in the earlier permission. The Divisional Court held that he could not.

30. Lord Widgery CJ (with whose judgment Bridge and May JJ agreed) pointed out that a landowner "is entitled to make any number of applications for planning permission which his fancy dictates," even though they may be mutually inconsistent with one another. The landowner may wish, for example, to "test the market" by putting in applications for alternative schemes before deciding which one to implement. In general, it is the duty of the local planning authority to regard each application as a proposal for a separate and independent development and to consider the application on its own merits. In saying this, Lord Widgery expressly set to one side cases "where one application deliberately and expressly refers to or incorporates another" (p 1531).

31. Where two separate applications are granted in respect of the same site, one of them is then implemented, and the question then arises - as it did in the *Pilkington* case - whether it is lawful to carry out the development contemplated by the other permission, Lord Widgery stated the test as being "whether it is possible to carry out the development proposed in that second permission, having regard to that which was done or authorised to be done under the permission which has been implemented" (p 1532B). Applying this test, the Divisional Court held that, having regard to what had been built pursuant to the later permission, the development contemplated by the earlier planning permission could not be carried out. This was because the development contemplated by that permission was not simply the building of a bungalow, but "the building of a bungalow in a particular site as ancillary to the smallholding which was to occupy the rest of the site" (p 1532D).

32. The *Pilkington* case has been approved and followed on numerous occasions, including in several decisions of the Court of Appeal: see eg *Hoveringham Gravels Ltd v Chiltern District Council* (1977) 35 P & CR 295; *Durham County Council v Secretary of State for the Environment* (1989) 60 P & CR 507; and *Staffordshire County Council v NGR Land Developments Ltd* [2002] EWCA Civ 856; [2003] JPL 56. The Authority contends, and the courts below held, that the present case is one where, on a straightforward application of the *Pilkington* test, development carried out under later permissions granted after 1987 has rendered the 1967 permission incapable of further implementation.

The Developer's case

33. On this appeal counsel for the Developer seek to distinguish the *Pilkington* case in three (alternative) ways. First, they submit that the principle for which the case is authority is, or is analogous to, a principle of abandonment whereby the right to develop land in accordance with a planning permission will be lost if a landowner acts in a way which would lead a reasonable person to conclude that the right has been abandoned. That test, they say, is not satisfied in the present case. Second, they submit that (unless it expressly says otherwise) a planning permission, such as the 1967 permission, for the construction of multiple buildings is properly interpreted as permitting the construction of any sub-set of these buildings, and there is no reason why the landowner cannot combine such development on parts of the site with development on other parts of the site authorised by other planning permissions. The third argument advanced is that, even if the 1967 permission is not severable in this way, each of the additional permissions implemented since 1987 is to be construed as, in substance, a variation of the 1967 permission, in the same way as Drake J found was the effect of the individual permissions granted before 1987. Hence the 1967 permission, as varied, remains valid and capable of further implementation.

No principle of abandonment

34. We consider first the Developer's argument that the decision in the *Pilkington* case should be analysed as resting on a principle of abandonment. Counsel for the Developer submit that the two planning permissions at issue in the *Pilkington* case were plainly irreconcilable so that Mr Pilkington had a choice between implementing one or the other. His conduct in building the first bungalow on the site would have led a reasonable person to assume that he had abandoned the right to implement the other planning permission. They submit that this analysis in terms of abandonment has the merit of keeping judicial gloss on the legislative code to a minimum. The second step in the argument is to contend that in this case the

conduct of the Developer in carrying out building operations authorised by the additional permissions granted after 1987 would not have led a reasonable person to conclude that the Developer had abandoned the 1967 permission.

35. We do not accept that the decision in the *Pilkington* case can be explained on the basis of a principle of abandonment, nor indeed that there is any principle in planning law whereby a planning permission can be abandoned.

36. In the first place, this explanation is directly contrary to the court's reasoning in the *Pilkington* case. Lord Widgery said in terms, at p 1532H:

> "My views on this matter are not based on any election on the part of Mr Pilkington; they are not based on any abandonment of an earlier permission … I base my decision on the physical impossibility of carrying out that which was authorised in [the earlier planning permission]."

37. More fundamentally, the suggested explanation is also inconsistent with the decision of the House of Lords in *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132. In that case the House of Lords unanimously held that there is no principle, and no room for any principle, in planning law whereby a planning permission may be extinguished by abandonment. Lord Scarman, with whom the other members of the appellate committee agreed, gave two main reasons for this conclusion. The primary reason was that Parliament has provided a comprehensive code of planning control and the courts should not introduce into planning law principles or rules derived from private law unless expressly authorised by Parliament or necessary to give effect to the purpose of the legislation (pp 140H-141C). From what is now section 75(1) of the 1990 Act (quoted at para 21 above) Lord Scarman derived the "clear implication" that "only the statute or the terms of the planning permission itself can stop the permission enuring for the benefit of the land and of all persons for the time being interested therein" (p 141G-H). Introducing a doctrine of abandonment into planning law would be inconsistent with this, as it would allow the land to lose the benefit of a planning permission by a means not provided for either by the legislation or by the terms of the planning permission itself. It can therefore be seen that the Developer's assertion that recognising a principle of abandonment would avoid an impermissible judicial gloss on the legislative code is misplaced. It was precisely because it would involve such an impermissible gloss that the House of Lords decided that no such principle may properly be imported into planning law.

38. Secondly, Lord Scarman emphasised that the existence or otherwise of a valid planning permission should be capable of ascertainment by inspection of the planning register and of the land in question. That follows from the nature of planning permission as running with the land and as affecting third parties. Introducing a doctrine of abandonment, not provided for in the planning legislation, would be inconsistent with this requirement of public accessibility. As Lord Scarman observed, at p 139E, if such a doctrine were recognised:

> "The planning permission would be entered in a public register; but not so its abandonment. Nor would it be possible by inspection of the land to discover whether the permission had been abandoned, for the absence of implementation of a planning permission is no evidence that a valid permission does not exist."

39. Lord Scarman discussed the *Pilkington* case as one of a number of judicial decisions which, "upon first sight and before analysis, might seem to suggest that there is room in the planning law for a principle, or an exception, allowing the extinguishment of a planning permission by abandonment" (p 143A-B). Counsel for the Developers have sought to rely on this discussion as indicating that the *Pilkington* case may be regarded as establishing an exception to the general rule that a planning permission cannot be extinguished by abandonment. Lord Scarman went on, however, to explain why, on analysis, the *Pilkington* decision - which he described as "certainly a common sense decision, and, in my judgment, correct in law" - was <u>not</u> based on a concept of abandonment (see pp 144G-145C). Rather, its rationale was that the building of the first bungalow had "destroyed" the smallholding and made the development authorised by the earlier planning permission incapable of implementation. Lord Scarman was satisfied that there was, or need be, no uncertainty arising from the application of this principle:

> "Both planning permissions will be on a public register: examination of their terms combined with an inspection of the land will suffice to reveal whether development has been carried out which renders one or other of the planning permissions incapable of implementation."

40. Counsel for the Developer have not argued that this court should depart from the decision of the House of Lords in *Pioneer Aggregates* nor made any criticism of Lord Scarman's reasoning. We would endorse that reasoning, which also confirms that the correct explanation of the *Pilkington* case is, just as Lord Widgery stated,

that the development carried out in building a bungalow under the later permission had rendered the earlier planning permission incapable of implementation.

The *Pilkington* principle

41. The principle underlying the *Pilkington* case can be analysed further. In the passage of his judgment quoted at para 36 above Lord Widgery said that his decision was based on the "physical impossibility" of carrying out what was authorised by the unimplemented planning permission; and elsewhere in his judgment he used the phrase "practical possibility" (see p 1532C). Two points arise from this. First, it is important to recognise that the test of physical impossibility applies to the whole site covered by the unimplemented planning permission, and not just the part of the site on which the landowner now wishes to build. Thus, in the *Pilkington* case, as pointed out in later cases, it remained perfectly possible to build a bungalow in the position authorised by the earlier, unimplemented planning permission, as that part of the site remained vacant. The reason why it was not physically possible to carry out the development authorised by the earlier permission was that the proposal for which permission was granted involved using the rest of the land as a smallholding and this could not be achieved when part of that land was occupied by the first bungalow: see *R v Arfon Borough Council C Ex p Walton Commercial Group Ltd* [1997] JPL 237; *Staffordshire County Council v NGR Land Developments Ltd* [2002] EWCA Civ 856; [2003] JPL 56, para 56; and *R (on the application of Robert Hitchins Ltd) v Worcestershire County Council* [2015] EWCA Civ 1060; [2016] JPL 373, para 42.

42. A second point to note concerns Lord Widgery's formulation of the relevant test (in the passage quoted at para 31 above) as "whether it is possible to carry out the development proposed in that second permission, having regard to that which was done *or authorised to be done* under the permission which has been implemented" (emphasis added). The words "or authorised to be done" ought, we think, to have been omitted as they are not consistent with the ratio of the decision.

43. On the facts of the *Pilkington* case the planning permission which had already been implemented included a condition that the bungalow built in accordance with that permission should be "the only dwelling to be erected" on the plot. Lord Widgery, however, specifically stated that his decision did not in any way depend on the fact that building the second bungalow would be a breach of this condition (see p 1532H). What mattered, as he made clear, was whether it was physically possible to carry out the development authorised by the terms of the unimplemented permission. That depends upon (a) the terms of the unimplemented permission and (b) what works have actually been done. It would not make sense to have regard to the terms of the permission under which development has already taken place, as a

central theme of the judgment is that mere inconsistency between the two permissions does not prevent the second permission from being implemented. What must be shown is that development in fact carried out makes it impossible to implement the second permission in accordance with its terms.

44. This point is illustrated by *Prestige Homes (Southern) Ltd v Secretary of State for the Environment and Shepway DC* (1992) 64 PCR 502, where a house had been built pursuant to a planning permission which was subject to a condition that the existing trees on the site should be retained. The question then arose whether a separate planning permission to build a house on part of the site (which did not include the land on which a house had already been built but did include some of the trees) was capable of being implemented. The local planning authority argued that it could not be implemented because the house contemplated by the second permission could not be built without felling some of the trees on the site, which would be contrary to the terms of the first permission. Mr Malcolm Spence QC, sitting as a Deputy Judge, held that this objection was misplaced. Applying the reasoning in the *Pilkington* case, all that mattered was that there was no physical impossibility in carrying out the development authorised by the second permission, which there was not. The *Pilkington* case did not decide that mere incompatibility with the terms of another permission already implemented has the consequence that a permission which is capable of being implemented is of no effect. This decision was approved and similar reasoning applied by the Court of Appeal in *Staffordshire County Council v NGR Land Developments Ltd* [2002] EWCA Civ 856; [2003] JPL 56.

45. In essence, the principle illustrated by the *Pilkington* case is that a planning permission does not authorise development if and when, as a result of physical alteration of the land to which the permission relates, it becomes physically impossible to carry out the development for which the permission was granted (without a further grant of planning permission). Unlike a doctrine of abandonment, this principle is consistent with the legislative code. Indeed, as Lord Scarman observed in *Pioneer Aggregates* at p 145C, it serves to "strengthen and support the planning control imposed by the legislation". Where the test of physical impossibility is met, the reason why further development carried out in reliance on the permission is unlawful is simply that the development is not authorised by the terms of the permission, with the result that it does not comply with section 57(1).

Multi-unit developments

46. In the *Pilkington* case the planning permission which Mr Pilkington wanted to implement was for the construction of only a single dwelling. By contrast, in the present case the 1967 permission authorised the construction of 401 dwellings along

with an internal road network on a large site covering some 29 acres of land. Where a planning permission is granted for the development of a site, such as a housing estate, comprising multiple units, it is a question of interpretation whether the permission authorises a number of independent acts of development, each of which is separately permitted by it, or whether it is to be construed as a permission for a single scheme which cannot be disaggregated in this way. Counsel for the Developer submit that (in the absence of some clear contrary indication) the former interpretation is to be preferred, as it gives developers a necessary degree of flexibility about which parts of the approved scheme they build and when. They contend that the 1967 permission ought to be interpreted in this way as giving a freestanding permission to construct each element of the Master Plan. If this interpretation is correct, the ability to carry out any particular element of the Master Plan does not depend on whether it is still physically possible to develop other parts of the site in the manner authorised by the 1967 permission. The development that has taken place since 1987 would therefore not preclude further reliance on the 1967 permission in relation to parts of the Balkan Hill site which have not yet been developed.

The *Lucas* case

47. In support of their contention that a planning permission for a multi-unit development is properly interpreted as severable into a set of discrete permissions to construct each individual element of the scheme (however exactly these elements are individuated), counsel for the Developer rely on the decision and reasoning of Winn J in *F Lucas & Sons Ltd v Dorking and Horley Rural District Council* (1964) 17 P & CR 116. The facts of that case were that a developer was granted planning permission in 1952 to develop a plot of land by building a cul-de-sac off a lane, with seven pairs of semi-detached houses on each side of the cul-de-sac. No construction work was at that stage carried out. In 1957 the developer was granted planning permission to develop the same plot by building six detached houses facing the lane with long, narrow curtilages at their backs. Two of these detached houses were built, making it physically impossible to build one of the two rows of houses contemplated by the 1952 planning permission. The developer nevertheless decided to build the cul-de-sac and the 14 houses on the other side of it, relying on that permission. Winn J granted a declaration that this development was lawful.

48. In his judgment Winn J recognised that the local planning authority, in granting the 1952 planning permission, may have wanted to achieve “a well-laid-out, symmetrical, balanced housing estate” (p 116). However, he treated this as a matter of motivation only, and not as affecting the correct interpretation of the permission. He accepted the developer’s argument that the 1952 permission was properly to be

regarded as comprising separate permissions to erect each of the houses shown on a plan which had accompanied the application. That meant that it authorised the developer to build the 14 houses that it wished to build even though it was now physically impossible to achieve the overall layout contemplated by the 1952 permission.

49. That was on its face an improbable meaning to give to the 1952 planning permission. Winn J did not refer to any term of that permission which required it to be interpreted in such a way. In the absence of such a term, we cannot see how the planning authority, by granting the 1952 planning permission, could reasonably be taken to have authorised the developer to mix and match building whichever of the 28 houses it chose with other buildings constructed on the site as part of an entirely different and inconsistent scheme of development. Yet this was treated as being the effect of the 1952 planning permission. Nothing mentioned in the judgment justifies such a conclusion and we think it clear that the case was wrongly decided.

50. The aspect of the case which Winn J left out of account in his analysis is that planning permission for a multi-unit development is applied for and is granted for that development as an integrated whole. In deciding whether to grant the permission, the local planning authority will generally have had to consider, and may be taken to have considered, a range of factors relevant to the proposed development taken as a whole, including matters such as the total number of buildings proposed to be constructed, the overall layout and physical appearance of the proposed development, the infrastructure required, its sustainability in planning terms and whether the public benefits of the proposed development as a whole outweigh any planning objections. In granting permission for such a scheme, the planning authority cannot be taken (absent some clear contrary indication) to have authorised the developer to combine building only part of the proposed development with building something different from and inconsistent with the approved scheme on another part of the site. Therefore, it is not correct to interpret such a planning permission as severable, as Winn J did.

51. It appears that Winn J was led to a wrong conclusion from the way the case was argued. The alternative interpretation to the one he accepted was presented as being that the 1952 planning permission was conditional upon completion of the whole scheme of development covered by the permission. Winn J understandably rejected that suggestion, observing (at p 117) that:

> "[it] cannot have [been] intended to leave individual owners of separate plots comprised in the contemplated total housing scheme dependent upon completion of the

> whole of the scheme by the original developer, or by some purchaser from him, so that they would be vulnerable, were the whole scheme not completed, separately to enforcement procedure which might deprive them of their houses and of the money which they would have invested in those houses …"

Later in his judgment (at pp 117-118) the judge further emphasised the practical difficulties that would arise if the validity of the planning permission depended "as a condition precedent or subsequent on the completion of the whole project in contemplation of which the permission was granted".

52. The reasons for rejecting such an interpretation are compelling. Section 57(1) requires that planning permission is required for the carrying out of any development of land, so a grant of planning permission has to be effective from the time when the development commences. When permission is granted for a multi-unit development, the permission authorises each stage of that development for so long as it remains practically feasible for the whole development to be implemented. The statute itself imposes no condition precedent or subsequent that the authorisation granted be implemented in full. Where the earlier stages of the development are carried out in accordance with the planning permission which has been granted, the development so carried out complies with the requirement in section 57(1) and hence is lawful. In the context of this statutory regime, it would make no sense to grant planning permission for the construction of a multi-unit development conditional upon completion of the whole scheme, whether as a condition precedent or subsequent.

53. If completion of the whole scheme was a condition precedent to the permission, it would never be permissible to begin development. Treating completion of the whole as a condition subsequent, such that failure to complete the whole scheme would retrospectively remove permission for what had been built, would be almost equally unworkable. It would create intolerable uncertainty and potential unfairness, not least for parties who purchased completed units. Unless the condition subsequent was precisely defined, it would also be unclear when or whether it would apply in a situation where, for example, the developer ran out of money or simply decided to stop construction work but it remained physically possible to complete the development. Parliament cannot have intended accrued property rights to be made vulnerable to enforcement action taken under the Planning Acts in such circumstances, and the terms in which section 57(1) is cast do not lend any support to such an interpretation.

54. The reasons given by Winn J were good reasons to conclude that, if the developer had constructed the cul-de-sac and the 14 houses on one side of it while the rest of the site remained vacant, such development would have been permitted by the 1952 planning permission whether or not the other 14 houses were subsequently built. It did not follow, however, that the local planning authority had authorised the developer to construct the cul-de-sac and the 14 houses in a situation where two detached houses had already been built on part of the site in accordance with a mutually inconsistent scheme.

55. The analytical error made in the *Lucas* case was to fail to distinguish between two significantly different propositions. The first is that, from a spatial point of view, a planning permission to develop a plot of land is not severable into separate permissions applicable to discrete parts of the site. The second is that, from a temporal point of view, development authorised by a planning permission is only authorised if the whole of the development is carried out. The rejection of the second proposition does not undermine the first.

The *Sage* case

56. An argument made on behalf of the Authority in the courts below involved a similar error to that made in the *Lucas* case, albeit that the Authority sought to draw the opposite conclusion from that drawn by Winn J. The Authority argued that if a proposed development is not or cannot be completed fully in accordance with any planning permission under which it is carried out, the whole development will be unlawful. This is a version of the condition subsequent analysis which Winn J rightly rejected.

57. In support of this argument, counsel for the Authority relied on *Sage v Secretary of State for the Environment, Transport and the Regions* [2003] UKHL 22; [2003] 1 WLR 983, a decision of the House of Lords, and the reference made to that case in *Singh v Secretary of State for Communities & Local Government* [2010] EWHC 1621 (Admin).

58. Section 171B(1) of the 1990 Act imposes a time limit of four years for taking enforcement action where building operations have been carried out without planning permission. Time runs from the date when "the operations were substantially completed". In *Sage* an enforcement notice was served in relation to a building which had been partly constructed and for which no planning permission had been granted. No building work had been carried out during the previous four years. The developer argued that the relevant question was when those operations

which amounted to a breach of planning control had been "substantially completed" and that, as the building operations that remained to be done were not operations which, by themselves, required planning permission, they should be left out of account. It followed that all the relevant operations had been completed more than four years previously so that the planning authority was out of time in serving the enforcement notice.

59. The House of Lords rejected this argument. They held that, in applying section 171B(1), regard should be had to the totality of the operations which the developer originally contemplated and intended to carry out: the relevant question was whether these had been substantially completed. Viewed in this way, on the findings made by the planning inspector in that case, the operations had not been substantially completed and the time limit for taking enforcement action had therefore not expired.

60. In the course of his speech (with which the other law lords agreed) Lord Hobhouse referred to what he called the "holistic approach" of planning law and said, at para 23:

> "As counsel for Mr Sage accepted, if a building operation is not carried out … fully in accordance with the permission, the *whole* operation is unlawful. She contrasted that with a case where the building has been completed but is then altered or improved …" (emphasis in original)

In *Singh*, para 20, Hickinbottom J took this to mean that:

> "reflecting the holistic structure of the planning regime, for a development to be lawful it must be carried out fully in accordance with any *final* permission under which it is done, failing which the whole development is unlawful …" (emphasis in original)

It followed, he thought, that where some parts of a development are physically incapable of being implemented, or completed, then the whole development becomes unlawful (para 25).

61. Counsel for the Authority submitted to the Court of Appeal that this "holistic approach" entails that if development for which planning permission has been

granted cannot be completed because of the impact of operations carried out under another permission, then it is not only subsequent development but all development carried out in reliance on the original permission that is unlawful, including any such development that has already taken place. The Court of Appeal noted, at para 68, that, if correct, this "would have the consequence that there could be enforcement action, and potentially criminal liability, in relation to the development that has already taken place, even though it was at the time apparently in accordance with a valid planning permission." That would indeed be a most unreasonable result, but the Court of Appeal preferred to express no view on whether the analysis is correct, saying that the question did not need to be decided.

62. It is important to recognise that in the *Sage* case no planning permission had been granted for any of the building operations carried out. The remarks of Lord Hobhouse about carrying out an operation fully in accordance with a planning permission were therefore obiter. The ratio of the decision is that, for the purpose of section 171B(1) of the 1990 Act, building operations carried out without planning permission are not substantially completed until construction of the whole building contemplated by the landowner is substantially completed. It was the requirement to have regard for this purpose to the whole of the development contemplated by the landowner which was characterised as a "holistic approach".

63. It is unclear exactly what counsel for Mr Sage accepted, as recorded by Lord Hobhouse in the passage quoted at para 60 above. If the concession was that, in carrying out a building operation, any deviation from the planning permission automatically renders everything built unlawful, we doubt that this can be correct, even in relation to a single building. A case comment in the Journal of Planning Law on the later case of *R (on the application of Robert Hitchins Ltd) v Worcestershire County Council* [2016] JPL 373, 387, refers to authorities where failure to conform exactly to a planning permission has been held not to prevent some development having taken place under the permission. If, alternatively, the concession was that failure to complete a building operation for which planning permission has been granted renders the whole operation including any development carried out unlawful, then this certainly cannot be supported. Even in relation to a single building, if construction stops when the building has been only partly built, the remedy of the local planning authority, as mentioned earlier, is to serve a completion notice under section 94 of the 1990 Act. Moreover, even when such a notice is served, failure to complete the development within the required period only invalidates the planning permission going forward: see *Cardiff City Council v National Assembly for Wales and Malik* [2006] EWHC 1412 (Admin); [2007] 1 P & CR 9. Section 95(5) specifically provides that, although the planning permission becomes invalid at the expiration of the period specified in the notice, this "shall not affect any permission so far as development carried out under it before the end of [that period]

is concerned." This provision presupposes that the planning permission authorises each step of development taken in the course of its implementation.

64. The reference made in *Singh* to the remarks of Lord Hobhouse was, in our view, misplaced but was also unnecessary and irrelevant to the result. *Singh* involved a straightforward application of the *Pilkington* principle. Construction of an extension at the back of the claimant's house for which planning permission had been granted had been commenced within the statutory time limit. But a planning inspector found that it had since become physically impossible to complete the development in accordance with the permission because of the impact of work done under another permission to construct a new house alongside the existing house. Seeking to complete the development relying on the earlier permission would therefore be unlawful. Hickinbottom J refused an application to quash the inspector's decision, holding that the inspector had correctly interpreted and applied the law on "impossibility". Although the judge referred in the passages mentioned at para 60 above to the "whole development" becoming unlawful, it seems clear from paras 19 and 20 of his judgment that he had in mind only "subsequent development" and was not intending to suggest that the development initially carried out under the permission had been rendered retrospectively unlawful. He would have been wrong to do so.

65. In any event, neither of these cases was concerned with a multi-unit development. An attempt to read across the remarks of Lord Hobhouse to such a context was made in the *Robert Hitchins* case, where two successive planning permissions had been granted in almost identical terms to develop a site with up to 200 dwellings. The only difference was that the first permission was subject to a planning obligation to make a financial contribution towards transport services whereas the second permission, granted at a later date, was not. The developer had begun the development under the first permission and had paid the first instalment of the transport contribution which had fallen due before the second permission was granted. The developer then claimed to have switched horses and completed the development under the second permission. The judge found that the developer was entitled to act and had acted in this way, with the result that no further instalments of the transport contribution were payable. An appeal against that decision was dismissed.

66. One of the grounds of appeal was that the judge ought to have concluded, applying what Lord Hobhouse said in *Sage*, that because the building operations had been partly carried out under the first permission, they could not be carried out fully in accordance with the second permission, with the consequence that any operations carried out under that permission were unlawful. The Court of Appeal rejected that

argument. Amongst other reasons for doing so, Richards LJ pointed out, at para 49, that, if the argument were correct:

> "it would mean … that if planning permission was granted for 200 houses of which 150 were progressively built out in accordance with the plans and were occupied, all the dwellings so built and occupied would be unlawful unless and until the remaining 50 dwellings were built, even if the 150 were all individually in accordance with the plans and there was no breach of any condition of the permission. That proposition is unsupported by authority and cannot in my view be right."

We agree.

67. On proper analysis, the developer was able to proceed to implement the second permission, since the partial development carried out pursuant to the first permission was compatible with doing so. No difficulty arose from the *Pilkington* principle. The decision and analysis in the *Robert Hitchins* case reflect the established position that any number of planning permissions can be granted in respect of the same land and a developer is free to choose which one it implements, so long as it can do so and does so in accordance with its terms.

68. In summary, failure or inability to complete a project for which planning permission has been granted does not make development carried out pursuant to the permission unlawful. But (in the absence of clear express provision making it severable) a planning permission is not to be construed as authorising further development if at any stage compliance with the permission becomes physically impossible.

Departures must be material

69. The *Pilkington* principle should not be pressed too far. Rightly in our view, the Authority has not argued on this appeal that the continuing authority of a planning permission is dependent on exact compliance with the permission such that any departure from the permitted scheme, however minor, has the result that no further development is authorised unless and until exact compliance is achieved or the permission is varied. That would be an unduly rigid and unrealistic approach to adopt and, for that reason, would generally be an unreasonable construction to put on the

document recording the grant of planning permission – all the more so where the permission is for a large multi-unit development. The ordinary presumption must be that a departure will have this effect only if it is material in the context of the scheme as a whole: see *Lever Finance Ltd v Westminster (City) London Borough Council* [1971] 1 QB 222, 230. What is or is not material is plainly a matter of fact and degree.

70. There is no inconsistency here with section 96A of the 1990 Act (referred to at para 24 above). If the planning authority makes a change to a planning permission under section 96A because satisfied that the change is not material, this will have the benefit for the landowner that it can be certain that the altered pattern of development is indeed within the scope of the permission. It could not afterwards be said that there has been any departure at all from the scheme for which permission has been granted. If, on the other hand, the landowner alters the pattern of development in an immaterial way without first obtaining a variation under section 96A, it does not follow that the development must be treated as unauthorised by the original, unvaried permission. In such a case the landowner will simply be more exposed to possible arguments in later enforcement proceedings that the change was in fact material, which would then have to be decided by a planning inspector or a court. That has always been the position under the planning legislation, including before section 96A was added to give the facility to amend a permission.

Conclusion on multi-unit developments

71. We agree with the view expressed by the Court of Appeal in this case that where, as here, a planning permission is granted for the development of a site, such as a housing estate, comprising multiple units, it is unlikely to be the correct interpretation of the permission that it is severable: see [2020] EWCA Civ 1440, para 90. That is for the reasons given in para 50 above.

72. The scheme for development of the Balkan Hill site on the Master Plan which was the subject of the 1967 permission seems to us to be a paradigm instance of such an integrated scheme which cannot be severed into component parts. It follows that carrying out under an independent planning permission on any part of the Balkan Hill site development which departed in a material way from that scheme would make it physically impossible and hence unlawful to carry out any further development under the 1967 permission.

The "variation" argument

73. The Developer's third argument, on which the appellant's leading counsel, Charles Banner KC, put most emphasis in his oral submissions, seeks to avoid this conclusion by asserting that the development on the Balkan Hill site since 1987 has been carried out under planning permissions which were not independent of the 1967 permission. Rather, he submitted, these permissions were intended to operate along with the 1967 permission by authorising what were, in effect, local variations of the original development scheme on particular parts of the site while leaving the 1967 permission otherwise unaffected. Mr Banner pointed out that in the *Pilkington* case Lord Widgery excluded from the scope of the court's decision cases where one planning application expressly refers to or incorporates another (see para 30 above). He submitted that the post-1987 permissions are all of this kind as they refer either specifically or by clear implication to the 1967 permission and must therefore be read with it. Mr Banner also submitted that it would cause serious practical inconvenience if a developer who, when carrying out a large development, encounters a local difficulty or wishes for other reasons to depart from the approved scheme in one particular area of the site cannot obtain permission to do so without losing the benefit of the original permission and having to apply for a fresh planning permission for the remaining development on other parts of the site.

74. In our view, that is indeed the legal position where, as here, a developer has been granted a full planning permission for one entire scheme and wishes to depart from it in a material way. It is a consequence of the very limited powers that a local planning authority currently has to make changes to an existing planning permission. But although this feature of the planning legislation means that developers may face practical hurdles, the problems should not be exaggerated. Despite the limited power to amend an existing planning permission, there is no reason why an approved development scheme cannot be modified by an appropriately framed additional planning permission which covers the whole site and includes the necessary modifications. The position then would be that the developer has two permissions in relation to the whole site, with different terms, and is entitled to proceed under the second.

75. The Authority has argued that, because the planning legislation does not confer any power on a local planning authority to make a material change to an existing planning permission, a later planning permission cannot have the effect of modifying in any material way the development scheme authorised by an earlier permission.

76. The trial judge, HHJ Keyser QC, did not find this argument persuasive and nor do we. We agree with him that, although there cannot strictly be a variation of a planning permission (save as mentioned in paras 24 above), there is "no reason why a grant of permission might not, on its true construction, authorise development in accordance with an earlier permission (eg the Master Plan) but with specified modifications": para 48. That seems to us to be how, at least prima facie, a planning permission described as a "variation" of an earlier planning permission would reasonably be understood. The legal analysis which best gives effect to the expressed intention is to construe the permission described as a "variation" as a permission to carry out the development described in the original permission as modified to accommodate the development specifically authorised by the new permission (and as modified by any previous such "variations"). However, if an application for a permission described as a "variation" is properly to be analysed in this way, ordinarily it would have to be accompanied by a plan which showed how the proposed new permission incorporated the changes indicated into a coherent design for the whole site. Mere use of the "variation" label by itself is not sufficient to show how the new permission ought properly to be interpreted, when read as a whole and having regard to the relevant context.

77. Where an application for a variation of a previous permission is properly to be regarded as an application for a fresh permission for the whole site, this may of course mean that the application is required to be accompanied by certain documentation relevant to the whole site, such as an environmental impact assessment. Where the variation is comparatively minor and circumstances have not changed, it may be possible to re-use or update such documentation submitted in support of the application for the previous permission. Whether this is possible or not will depend upon the particular circumstances.

The effect of the post-1987 permissions

78. Each of the additional planning permissions granted after 1987 (listed at para 11 above) states that the Authority hereby permits the development briefly described in the permission notice "in accordance with the plans and application submitted to the Authority". To ascertain the effect and precise scope of the permission, it would therefore be relevant to examine the plans and application submitted to the Authority by the Developer. However, the Developer did not put in evidence in these proceedings any of the relevant plans and applications. The court was provided only with the permission notices themselves, the Master Plan, plans showing the development built on the Balkan Hill site as at July 1987 and when these proceedings were begun in 2019, and selected correspondence between the parties.

79. The absence of the planning applications and accompanying plans is explained by the fact that in the courts below the Developer's case was presented at a high level of generality. The Developer argued that there were no material differences between the pre-1987 additional permissions (some of which were expressed to be "variations" of the 1967 permission and some of which were not) and the post-1987 additional permissions; and that, as Drake J decided that the pre-1987 additional permissions were variations of the 1967 permission, the same must be true of the later permissions. So far as appears from the skeleton arguments and judgments in the courts below, no attempt was made to examine and construe the post-1987 permissions individually.

80. The attempt to extrapolate from Drake J's acceptance that the pre-1987 additional permissions were in some way lawful variations the conclusion that the post-1987 additional permissions must be regarded as variations (in the sense of new permissions granted for development of the whole site with relevant changes) is, however, untenable. The fact that Drake J's judgment is to be taken as conclusive in relation to matters as they stood in 1987 cannot prevent the Authority from disputing, as it does, the meaning and effect of permissions which did not yet exist when that judgment was given. It is for the Developer to make good the contention that the additional planning permissions granted after 1987 are properly to be construed as modifying the original development scheme rather than as independent permissions. In his oral argument in this court Mr Banner KC sought to do this by addressing each of the individual post-1987 permissions.

The permissions described as "variations"

81. Of the six post-1987 planning permissions listed at para 11 above which have been implemented, three (permissions A, B and E) are expressed on their face to be "variations" of the original 1967 permission. However, the development which took place under each of them is substantially at variance from what was shown in the Master Plan. Without sight of the applications or evidence that they were accompanied by plans of the kind referred to in para 76 above, it cannot be said that these permissions authorised a new development scheme for the whole site. A reasonable reader would have understood them to relate only to specific sites within the Balkan Hill area.

82. The position is clearer still in relation to the other three permissions (D, G and H) since they were not stated to be "variations" of the 1967 permission.

The permissions referring to plot numbers

83. In each of permissions D and H the brief description of the development in the permission notice referred to a specified plot number in "Hillside Park". It is an agreed fact that these references were to plot numbers used in the original Master Plan to which the 1967 permission related. The Developer contends that this would convey to the reasonable reader that the permission was intended to authorise a localised modification of the Master Plan so as to permit the development described in the permission on the particular plot referred to while leaving the 1967 permission otherwise intact.

84. We cannot accept this submission. Although the copies of the original Master Plan provided to the court do not contain plot numbers, we accept based on the parties' agreement that the locations of the plots of land to which permissions D and H relate were identified by reference to the original Master Plan. That only shows, however, that the Master Plan was used for the purpose of geographical reference: in effect as a map. It does not mean that either of permissions D or H was intended to modify the scheme shown in the Master Plan rather than to permit a discrete development on the specified part of the site. That might have been a proper inference to draw if the application had been accompanied by a plan, which the Authority approved, showing how the proposed development on the plot concerned would fit with the scheme shown on the Master Plan, as a coherent integrated whole. However, the Developer has not put in evidence any such plan nor suggested that any such plan exists. All the indications are that the plans submitted when applying for permissions D, G and H showed only the proposed development on the land in question and did not attempt to integrate the proposed development with the development shown in the Master Plan. So, for example, no attempt appears to have been made to indicate how the roads shown on the plans for these additional permissions would be linked to the road network shown on the Master Plan.

85. Mr Banner KC submitted that a reasonable reader, aware of the planning history of the Balkan Hill site, would not understand permissions D and H to build a few houses on particular plots to be intended to operate at the expense of the original permission granted for a major scheme to construct 401 dwellings which was being rolled out across the Balkan Hill site. He suggested that to interpret permissions D and H as having that effect would be unreal.

86. We are not persuaded by this submission for two reasons. First, it is wrong to assume that the previous planning history of the site is relevant to the interpretation of these permissions. As explained in the *Pilkington* case (see para 30 above), it is the duty of the local planning authority to regard every application for planning

permission, unless it refers to an earlier permission, as a proposal for a separate and independent development and to consider the application on its own merits. The reader of a planning permission should accordingly assume that the application has been dealt with in this way. Hence a planning permission should be regarded as a self-contained permission for an independent development unless it says otherwise.

87. Second, even if regard is had to the previous planning history of the Balkan Hill site, it does not support the suggestion that the Developer was rolling out across the site the scheme for a development of 401 dwellings authorised by the 1967 permission. As noted at the beginning of this judgment, none of the houses built on the site has been built in accordance with the Master Plan and some of the departures from it have been substantial. An objective observer who looked at the planning history in 2005 when permission D was granted, or in 2011 when permission H was granted, would therefore see a pattern of development significantly different from that authorised by the 1967 permission and would see that every house built in the 40 years since it was granted had been built in accordance with a subsequent specific planning permission. There was nothing in this history which showed that the Developer still intended to carry out any development in accordance with the 1967 permission. Moreover, it would have been clear that the development carried out pursuant to the additional permissions granted since 1987 meant that the Master Plan for the 1967 permission could not be implemented according to its terms and no alternative updated version of it had been filed in support of the applications for those permissions. Nor was there any evidence that any of the additional documents to be expected in relation to a fresh application for permission for a development of the whole site (see para 77 above) had been filed.

88. On the material available we are therefore unable to construe permissions D and H as modifying the development scheme authorised by the 1967 permission. A reasonable reader of those permissions would understand that they related solely to the specific limited areas of land to which they applied. It follows that the development carried out under these permissions, by departing in material ways from the Master Plan, made it impossible for the Developer thereafter to carry out development in accordance with the 1967 permission.

Permission G

89. The last of the additional permissions granted after 1987 which has been implemented is permission G. This was not expressed to be a variation of the 1967 permission nor did the permission notice even refer to a plot number on the Master Plan. The development for which the permission was granted is described in the

permission notice as: “Full application for construction of 3 pairs of dwellings, Land at Hillside Park, Aberdyfi.” Again, there is no evidence that the application for this permission was accompanied by a revised version of the Master Plan showing how the development would form part of an integrated development of the whole site.

90. No reasonable person would, in our view, interpret this permission as intended to authorise a local variation of the scheme authorised by the 1967 permission on the basis set out above rather than as an independent permission applicable only to the specific site to which it relates. The proposed development is mutually inconsistent with the 1967 scheme. The easternmost pair of dwellings constructed pursuant to permission G is sited across an estate road which in the Master Plan served as an access route to the entire northern part of the site. Instead of that access road, a road has been built which is designed to serve only as a communal private road giving access to the eight dwellings authorised by permissions E and G. For good measure, this local road cuts across the site of a building shown on the Master Plan.

91. Again, we have not seen the plans and application submitted to the Authority but there is no evidence that any plan was submitted which sought to integrate the proposed development with the development shown on the Master Plan. Nor is there any evidence that the application was accompanied by the additional documents to be expected if it had been intended to be for a fresh permission relating to the whole site. It follows that carrying out the development authorised by permission G has made it physically impossible to carry out the development authorised by the 1967 permission.

92. The Developer sought to avoid this conclusion by relying on a letter from the Authority to the Developer dated 10 October 2008. The first paragraph of this letter indicates that it was written in response to a request for the Authority to approve a plan to construct two pairs of attached houses on part of the site covered by permission E as “minor amendments” to the 1967 permission. The letter then states:

> “The situation is that [permission E] for 5 detached dwellings and 5 garages supersedes the 1967 permission. As [permission E] has been commenced, that is not the extant permission on this part of Hillside Park. Therefore, I cannot treat the submission for the two pairs of attached houses as an amendment to the 1967 permission.

> For your information, I agree with you that the 1967 permission has been proven to be 'A full permission which could be implemented in its entirety without the need to obtain any further planning permission or planning approval of details'. This means that it is only that exact permission as approved that can be implemented without the submission of further applications. … For the avoidance of doubt, once a variation to the 1967 permission is approved and commenced, then the 1967 permission on that part of the site ceases to be valid."

93. Permission G does not refer to this letter. Indeed, the letter - which was written several months before the application was submitted on 7 April 2009 - appears to relate to an earlier proposal for development which was not the proposal for which permission was ultimately sought and granted. Thus, the letter refers to "two pairs of attached houses" rather than the "construction of 3 pairs of dwellings" described in permission G. For the reasons given in para 27 above, we see no justification for treating this letter as part of the context to which a reasonable reader would have regard in interpreting permission G.

94. For good measure we would add that, even if regard is had to the letter, it does not assist the Developer. It specifically rejects a request to treat the proposed development as an amendment to the 1967 permission and expresses the view that permission E had superseded the 1967 permission and was the extant permission on that part of the Balkan Hill site. The letter gave no assurance that carrying out the proposed development would be compatible with further implementation of the 1967 permission on other parts of the site. Even if such an opinion had been expressed by the Authority, we do not see how it could as a matter of law affect the correct interpretation of permission G - all the more so in view of the fact that the location of the easternmost pair of houses built under permission G (which may not even have been one of the two pairs of houses referred to in the letter) directly conflicts with Master Plan.

95. The difficulties for the Developer's case do not end there. The plan produced by the Authority for the purpose of these proceedings showing the buildings constructed on the Balkan Hill site as at 2019 depicts, immediately to the east of the houses authorised by permission B, a terrace of six houses and a block of garages built on land not covered by any of the additional permissions. These buildings do not accord with the Master Plan. The houses encroach on the site of one the main estate roads shown on the Master Plan and the garages have been built directly across the site of that road. There is no suggestion on the plan that this development

was authorised by any additional permission, let alone one that could be said to operate as a "variation" of the 1967 permission. At the end of the hearing we accordingly asked the parties to provide clarification of the status of these buildings.

96. Documents subsequently provided to the court include a drawing number 97/3/A1/1 dated February 1997 (the "1997 drawing"), submitted with the planning application for permission B. This shows the two terraces of houses which were the subject of permission B but not the further terrace of six houses and garages which have been built on land to the east of that plot. The first reference in the documents provided to us to those further buildings is in a letter from the Developer's architect to a development control officer at the Authority dated 23 May 2004, some seven years later. This letter states that the "approved Phase 1 lay out, as you know, provides for six attached houses linked together. Units 18 to 23." The "approved Phase 1" layout referred to in this letter, which now includes the six attached houses numbered 18 to 23, is shown in an amended version of the 1997 drawing which indicates that it was "Amended Jan 2000".

97. The letter dated 23 May 2004 went on to say that, in order to improve this lay-out, it had been revised to provide for three separate pairs of attached houses providing landscaped spaces between each pair of houses instead of six attached houses, and also to make provision for garages. It appears from some further correspondence that the proposed revised layout was not approved by the development officer. The Developer then went ahead and built a terrace of six attached houses ("units 18-23") as shown on the 1997 drawing as amended in January 2000.

98. The Developer submits that it is to be inferred from this correspondence that the Authority had approved the construction of the terrace of six houses labelled units 18-23 in accordance with the amended drawing, presumably in January 2006. No evidence has been provided, however, that planning permission was ever granted for this development, let alone for the block of garages which have also been constructed on this part of the site. The most that the references to the "approved" layout can be taken to signify is that the development control officer had indicated that he was content with the proposed layout. But that did not dispense with the requirement to obtain a grant of planning permission. A fortiori there is no evidence to suggest that permission was given to treat the development as a variation of the Master Plan.

99. As the Authority accepts, because this further development was completed more than four years ago, it is now immune from planning control in accordance

with section 171B of the 1990 Act. But its effect is, again, to make it physically impossible to carry out the development authorised by the 1967 permission.

Conclusion

100. The courts below were right to hold that the 1967 permission was a permission to carry out a single scheme of development on the Balkan Hill site and cannot be construed as separately permitting particular parts of the scheme to be built alongside development on the site authorised by independent permissions. It is possible in principle for a local planning authority to grant a planning permission which approves a modification of such an entire scheme rather than constituting a separate permission referable just to part of the scheme. The Developer has failed to show, however, that the additional planning permissions under which development has been carried out on the Balkan Hill site since 1987 should be construed in this way. Therefore, that development is inconsistent with the 1967 permission and has had the effect that it is physically impossible to develop the Balkan Hill site in accordance with the Master Plan approved by the 1967 permission (as subsequently modified down to 1987). Furthermore, other development has been carried out for which the Developer has failed to show that any planning permission was obtained. This development also makes it physically impossible to develop the site in accordance with the Master Plan approved by the 1967 permission (as subsequently modified). The courts below were therefore right to dismiss the Developer's claim and this appeal must also be dismissed.

Appendix 4: Copy of Pilkington High Court judgment

A

[HOUSE OF LORDS]

* FEDERAL STEAM NAVIGATION CO. LTD. AND ANOTHER . . . . . PETITIONERS

AND

B DEPARTMENT OF TRADE AND INDUSTRY . RESPONDENTS

1973 Nov. 15 Lord Cross of Chelsea, Lord Simon of Glaisdale and Lord Salmon

Petition for leave to appeal to the House of Lords from the decision of the Court of Appeal (Criminal Division) in *Reg.* v. *Federal Steam* C *Navigation Co. Ltd.; Reg.* v. *Moran* [1973] 1 W.L.R. 1373.

The Appeal Committee allowed the petition.

F. C.

D

[QUEEN'S BENCH DIVISION]

* PILKINGTON *v.* SECRETARY OF STATE FOR THE ENVIRONMENT AND OTHERS

1973 Oct. 18, 19 Lord Widgery C.J., Bridge and May JJ.

E

Town Planning—Planning permission—Subsequent planning permission—Conflicting planning permissions relating to same land granted on different dates—Later permitted development implemented—Whether development sanctioned in earlier permission capable of implementation

In October 1954, the owner of land was granted planning F permission to build a bungalow on part of it (site B). The permission contained a condition that the bungalow should be the only dwelling to be built on that land. After he had built a bungalow on site B, the owner discovered the existence of an earlier planning permission, granted in May 1953 to his predecessor in title, to build a bungalow and a garage on another part of the same land (site A). That permission contemplated the use of the rest of the land as a smallholding. G The owner began to build a bungalow on site A although he had already built a bungalow on site B. In October 1971 the local planning authority served on him an enforcement notice which recited the commencement of the erection of a bungalow on site A without planning consent as a breach of planning control and required the restoration of site A to its original condition.

The owner appealed to the Secretary of State who took the H view that the later permission was inconsistent with, and alternative to, the earlier, so that when the later permission was implemented, the earlier became incapable of implementation; and he dismissed the appeal.

On appeal by the owner:—

Held, dismissing the appeal, that though a landowner was entitled to make, and the planning authority was required to

---

[Reported by P. R. K. MENON, ESQ., Barrister-at-Law]

deal with, any number of applications for planning permissions for development of the same land even though they were mutually inconsistent, two permissions could not stand in respect of the same land where, as in the present case, the sanctioned development of one bungalow in the centre of the whole of the land had been carried out so that the development authorised in the earlier permission was no longer capable of implementation.

Per curiam. It is no part of the duty of the local planning authority to relate one planning application or one planning permission to another to see if they are contradictory. They should regard each application as a proposal for a separate and independent development, and they should consider the merits of the application on that basis (post, p. 1531G–H).

The following cases are referred to in the judgments:

Ellis v. *Worcestershire County Council* (1961) 12 P. & C.R. 178.

Garland v. *Minister of Housing and Local Government* (1968) 67 L.G.R. 77, C.A.

Lucas (F.) & Sons Ltd. v. *Dorking and Horley Rural District Council* (1964) 62 L.G.R. 491.

Miller-Mead v. *Minister of Housing and Local Government* [1963] 2 Q.B. 196; [1963] 2 W.L.R. 225; [1963] 1 All E.R. 459, C.A.

The following additional cases were cited in argument:

Heyting v. *Dupont* [1963] 1 W.L.R. 1192; [1963] 3 All E.R. 97.

Kent v. *Guildford Rural District Council* (1959) 11 P. & C.R. 255, D.C.

Slough Estates Ltd. v. *Slough Borough Council (No. 2)* [1969] 2 Ch. 305; [1969] 2 W.L.R. 1157; [1969] 2 All E.R. 988, C.A.

APPEAL from the Secretary of State for the Environment.

On October 29, 1971, the Fulwood Urban District Council, the second respondents, as agents of the local planning authority, the Lancashire County Council, the third respondents, served on Richard Pilkington, the owner and occupier of land situate at Walker Lane, Fulwood, an enforcement notice alleging a breach of planning control, which was stated to be the "commencement of erection of a detached bungalow and garage in Walker Lane, Fulwood without planning consent having been granted"; and the notice required the removal of all works and restoration of the site to its original condition.

The owner appealed to the Secretary of State for the Environment against the enforcement notice. The Secretary of State dismissed the appeal. The owner appealed to the court.

The facts are stated in the judgment of Lord Widgery C.J.

George Dobry Q.C., H. H. Andrew and *R. J. A. Carnwath* for the owner.

Iain Glidewell Q.C. and *Alistair Dawson* for the local planning authority.

LORD WIDGERY C.J. This matter comes before the court as an appeal under section 246 of the Town and Country Planning Act 1971 against a decision of the Secretary of State for the Environment which was communicated to the parties in a decision letter of August 15, 1972, whereby the Secretary of State dismissed an appeal brought by the present appellant, Mr. Richard Pilkington, against an enforcement notice which had been served on him by the Fulwood Urban District Council, acting as agents for the Lancashire County Council. The case does give rise to considera-

A tion of quite important points relating to the effect of the grant by a planning authority of two or more conflicting planning permissions.

The argument has ranged over a very wide field, but in my judgment the relevant facts can be put quite shortly. There is at Fulwood a public highway called Walker Lane, and adjoining that public highway and fronting upon it is a strip of land, the dimensions of which are not given, but which one can adequately describe by saying that it would physically B accommodate three houses with adequate gardens if divided into three separate areas. There have been a very large number of planning applications made over the years in respect of this strip of land, but again it seems to me that there are only two, and possibly a third, to which any real attention must be given, and I start with the permission granted in 1953 to Mr. Pilkington's predecessor in title as owner of this land.

C This first relevant permission has the reference number 4/1/601, and it was the subject of an application for permission made on May 4, 1953. The permission granted is dated May 28, 1953. It names the then owner as the applicant for permission; it describes the land to be developed as being in Walker Lane, and it describes the development for which permission is granted as the erection of a bungalow and garage and the use of the land as a smallholding. The particulars of the decision to grant D permission are contained in the application and plans upon which the permission is based.

When one looks at the relevant plan, it shows that what was then contemplated was a bungalow to be built at the northern end of this strip of land, the end which has been referred to throughout the argument as site A. For convenience in argument, the strip of land has been notionally E divided into three plots; site A is the northernmost of the three, and the permission number 601 contemplated the building of a bungalow on site A, and also showed the rest of the entire site as being coloured, and thus within the application which was being made. The reference to a smallholding in the permission in my judgment clearly contemplates that the coloured land, that is to say the entire strip to which I have first referred, is embraced in the application, and that the intention is to use F that land as a smallholding.

I fully appreciate the argument put before us by Mr. Dobry that using land as a smallholding does not require planning permission, and it is perfectly true to say that the development which was contemplated in permission 601 was the building work of erecting a bungalow, but it is well known that a decision to allow building work to take place is affected by the setting in which the building will lie, and it is also affected by such G considerations as the extent of the curtilage intended to be provided and the use to which other land occupied with the building should be put. Therefore I think it quite wrong to say that permission 601 merely permits the building of a bungalow. It permits the building of a bungalow in the setting contemplated by the application, namely, as a dwelling house upon a smallholding.

H That permission was not implemented; one does not know why. In due course the whole of the land was transferred, as I understand it, to Mr. Pilkington, and of the numerous applications which he made for permission to develop the land the most relevant one is 4/1/756. That was a permission granted on October 28, 1954, and like its predecessor, number 601, it describes the land to be developed as Walker Lane, Fulwood. It describes the nature of the development as being the erection of a bungalow, and it says the development is to be carried out in accordance

with the application and plans. When one looks at the appropriate plan in respect of this development permission, one finds that it was for the erection of a bungalow not on the part of the land which I have called site A, but in the middle of the land on the part which has been referred to as site B. Again it shows the whole curtilage as being associated with the permission. It therefore shows that the bungalow permitted to be built will be in the middle of the whole site, and have the whole site as part of its curtilage, and in case it is necessary to make that point even more vivid, the permission itself contains a condition in these terms: "The bungalow shall be the only dwelling to be erected upon the area of land edged red on the submitted plan." That certainly drives home the point that the permission comprised in number 756 was for a bungalow on site B, but that the whole of the site to which I originally referred is comprised in the permission in that that bungalow is intended to have the rest of the site as its curtilage.

In due course Mr. Pilkington, having obtained permission under 756, implemented it; a bungalow which is called Jamar was duly built on the area of site B and later a further bungalow was built on site C pursuant to another planning permission, which is number 1469 for purposes of reference. The fact that the planning authority permitted a further bungalow, one known as Westwinds, to be erected on site C is a little surprising at first blush, because to allow that to be done seems to me to ignore the condition attaching to plan 756 which had contemplated only one bungalow on the whole site. But I agree with the Secretary of State that it was perfectly open to the planning authority to authorise the erection of a bungalow on site C under permission number 1469, and the fact that that was done is not really a relevant fact in the issues which we have to decide today.

To bring the matter up to date, Mr. Pilkington having erected the bungalow in accordance with permission number 756 must have had the existence of permission 601 brought to his attention. I say that because it is common ground that he did not know about permission 601 when he acquired the land, but at some time it is evident that he learnt of it, and he reached the conclusion that the existence of permission 601 allowed him, if he wished, to build a bungalow on site A notwithstanding that by this time Jamar was erected on site B and Westwinds on site C. So the problem presented to the Secretary of State, and now to us, is whether Mr. Pilkington was entitled to use this aged permission, if I may so describe number 601, in the circumstances which had happened, in order to justify the erection of a building on site A.

The matter was brought to a head by his beginning the work of erection of this bungalow and the service on him of an enforcement notice by the planning authority in consequence of what he had done. The enforcement notice is dated October 29, 1971, and the recital of breach of planning permission in the notice is

> "commencement of erection of detached bungalow and garage in Walker Lane, Fulwood without planning consent having been granted."

Among the points taken by Mr. Dobry in the course of a wide ranging argument over the law affecting cases of this kind was that the notice was bad anyway because it failed to specify the land on which the development was said to have taken place. He drew attention to the absence of any

A plan with the enforcement notice which would have identified the particular piece of land. I may say at once to get the point out of the way, that for my part I can see nothing in this argument. No one can have had the slightest doubt that the notice related to this half-developed bungalow on site A, because there is no suggestion that Mr. Pilkington was building or attempting to build any other building in Walker Lane.

There is the notice, and the way in which the planning authority have B sought to describe the breach of planning control which prompted the service of the notice. Receiving the notice Mr. Pilkington maintained the view that he had got planning permission for the erection of a bungalow on site A, and the permission on which he relied was number 601. The case when it came before the Secretary of State for decision raised in the view of the Secretary of State and I must say in my view also, a point C shortly stated, namely, whether having implemented the permission contained in number 756, it was open to the occupier to claim the right to implement the permission contained in number 601 also.

The Secretary of State having stated the facts dealt with his own view of the matter extremely briefly. He says:

> " The view is taken that planning permission 756 was inconsistent with D and alternative to permission 601 and that when the former permission was implemented, the latter became incapable of implementation."

The question for us is whether as a matter of law the Secretary of State was justified in reaching that conclusion.

There is, perhaps surprisingly, not very much authority on this point E which one would think could often arise in practice, so I venture to start at the beginning with the more elementary principles which arise. In the first place I have no doubt that a landowner is entitled to make any number of applications for planning permission which his fancy dictates, even though the development referred to is quite different when one compares one application to another. It is open to a landowner to test the market by putting in a number of applications and seeing what the attitude of the F planning authority is to his proposals.

Equally it seems to me that a planning authority receiving a number of planning applications in respect of the same land is required to deal with them, and to deal with them even though they are mutually inconsistent one with the other. Of course, special cases will arise where one application deliberately and expressly refers to or incorporates another, but we are not G concerned with that type of application in the present case.

In the absence of any such complication, I would regard it as the duty of the planning authority to regard each application as a proposal in itself, and to apply its mind to each application, asking itself whether the proposal there contained is consistent with good planning in the factual background against which the application is made.

I do not regard it as part of the duty of the local planning authority H itself to relate one planning application or one planning permission to another to see if they are contradictory. Indeed I think it would be unnecessary officiousness if a planning authority did such a thing. They should regard each application as a proposal for a separate and independent development, and they should consider the merits of the application upon that basis. What is the consequence here? The fact that application 756 related to a bungalow central in the site, and the fact that it contemplated only one bungalow on the whole site, and the fact that that

permission has now been implemented, means in my judgment that one must look back at permission 601, and see whether in fact that development there contemplated can now be carried out consistently with the development sanctioned in the implemented application number 756.

For this purpose I think one looks to see what is the development authorised in the permission which has been implemented. One looks first of all to see the full scope of that which has been done or can be done pursuant to the permission which has been implemented. One then looks at the development which was permitted in the second permission, now sought to be implemented, and one asks oneself whether it is possible to carry out the development proposed in that second permission, having regard to that which was done or authorised to be done under the permission which has been implemented.

Accordingly, one now looks back at permission 601 to see whether the development there contemplated is a practical possibility having regard to what has been done or may be done under number 756. I have no doubt in my mind that it is quite clear that the development contemplated by number 601 cannot now be carried out. As I endeavoured to explain earlier, the development contemplated by number 601 was the building of a bungalow, but the building of a bungalow in a particular site as ancillary to the smallholding which was to occupy the rest of the site. It is not now possible to build a bungalow on number 601 subject to those terms, and it does not follow in the least that if the local planning authority had been asked to give permission for a bungalow on site A that they would have done so if they had known that the remainder of the site was not to be made available for the smallholding which was clearly in contemplation all the way through.

I find that if one looks at the development sanctioned by number 601 and asks oneself whether that can now be carried out having regard to the activities pursuant to permission number 756, it seems to me the answer must be no, and I think that if that is the position the effect is that permission 601 is no longer capable of being implemented.

Whether or not it should be regarded as in suspense and possibly available at a future time should the development carried out pursuant to number 756 be removed is something which I do not feel compelled to express an opinion about. What I am clear about is that it is not now possible to implement number 601 for the reasons I have endeavoured to give.

It was said in the course of argument that any such decision is unfair to future purchasers. It was said that this decision as to the effect of conflicting planning permissions may operate to the detriment of a future purchaser who buys land and finds there is some shadow over it from some other permission of which he was unaware at the time of purchasing. I am unimpressed with this argument because an intended purchaser who is interested in permissions affecting the land can find out by looking at the proper register; if he looks at the register the position will be clear to him when he buys. If he does not look at the register he is no doubt content to take the land and take whatever planning permission he can persuade the local planning authority to grant.

My views on this matter are not based on any election on the part of Mr. Pilkington; they are not based on any abandonment of an earlier permission, and they do not in any way depend on the fact that the building on site A may have been a breach of the condition in number 756. I base my decision on the physical impossibility of carrying out that

which was authorised in number 601. I mention this because I do not regard the case as one in which the Secretary of State's decision depends on the condition in number 756. Had it done so and had it been necessary for the Secretary of State to rely on the condition in that permission, we should have had to consider the point put before us by Mr. Dobry that that was not the basis on which the enforcement notice had been framed.

It has been recognised for many years that if the planning authority allege development without permission they cannot support the notice by showing a breach of condition; if they make a mistake in their choice the notice is bad and irremediable. That is a doctrine which has its roots in the Town and Country Planning Act 1947, an Act which not only gave the Secretary of State no power to amend the notice but indeed gave no power of appeal to the Secretary of State at all; and it is, I think, for consideration another day, though not today, whether that principle has survived the changes in legislation which have occurred meanwhile, in particular whether it has survived the right of the Secretary of State to amend the notice where this can be done without injustice, and whether it has survived the language now used in the section dealing with appeals of this character, that is to say, section 88 of the Town and Country Planning Act 1971, which in subsection 1 (*b*) has put breach of condition and development without permission in one sentence, with perhaps some suggestion that now the two should be treated as interchangeable.

Some doubt was expressed by Lord Denning M.R. in a recent case as to whether this rule should survive until today. In *Garland* v. *Minister of Housing and Local Government* (1968) 67 L.G.R. 77, Lord Denning M.R., having referred to *Miller-Mead* v. *Minister of Housing and Local Government* [1963] 2 Q.B. 196, made this observation. Speaking of a notice criticised for containing this fault he said, at p. 79:

> "It cannot be cured by amendment. I will assume that such is still the law, though I am by no means sure about it. The matter may some day have to be reconsidered."

Before I complete this judgment I ought briefly to refer to the two authorities to which I have had regard in reaching the conclusions already expressed. The first is a decision of Winn J. in *F. Lucas & Sons Ltd.* v. *Dorking and Horley Rural District Council* (1964) 62 L.G.R. 491. That was a rather exceptional case where planning permission had been granted for the erection of a substantial number of houses in conformity to a layout plan which had accompanied the application. Later a further permission was granted for the development of two houses on part of the land contemplated in the first permission, but in a manner inconsistent with the layout prescribed in the first permission. Winn J. had to consider whether, those two houses having been built in implementation of the second permission, it was still open to the owner of the rest of the land to develop it in accordance with the original permission. He came to the conclusion that it was, but as I understand his judgment, for the reason that he construed the first planning permission as authorising the carrying out of a number of independent acts of development, and taking that view it naturally followed that the implementation of the second permission did not deprive the owner of the rest of the land from carrying out the independent acts of development authorised on such part of the site as remained under his control.

More helpful I find the second authority to which we have been referred, and an authority on which the Secretary of State himself relied;

that is *Ellis* v. *Worcestershire County Council* (1961) 12 P. & C.R. 178, a decision of Mr. Erskine Simes Q.C. I refer to this for one passage which seems to me exactly to express the conclusion that I have independently reached in regard to the propriety of endeavouring to implement the second conflicting planning permission. He said, at p. 183:

> "If permission were granted for the erection of a dwelling house on a site showing one acre of land as that to be occupied with the dwelling house, and subsequently permission were applied for and granted for a dwelling house on a different part of the same area which was again shown as the area to be occupied with the dwelling house, it would, in my judgment, be impossible to construe these two permissions so as to permit the erection of two dwelling houses on the same acre of land. The owner of the land had permission to build on either of the sites, but wherever he places his house it must be occupied with the whole acre."

That exactly illustrates the principle upon which I would base my decision in this case and in the result I would regard the Secretary of State's decision as showing no error of law and I would dismiss the appeal.

BRIDGE J. I entirely agree.

MAY J. I agree.

Appeal dismissed with costs.

Solicitors: *Young, Jones, Golding, Patterson for L. H. Cartwright, Preston; P. D. Inman, Preston.*

[CHANCERY DIVISION]

* *In re* SMITH KLINE & FRENCH LABORATORIES LTD.'s APPLICATIONS

[1971 S. No. 5770]

1973 May 18, 21, 22, 23, 24; June 14 — Graham J.

Trade Mark — Registration — Distinctiveness — Colour — Pharmaceutical substances in capsule form—Whether colour combinations constituting trade mark—Whether distinctive of goods—Whether risk of confusion—Trade Marks Act 1938 (1 & 2 *Geo.* 6, *c.* 22), *ss.* 9, 11, 68 [1]

[1] Trade Marks Act 1938, s. 9: "(1) In order for a trade mark . . . to be registrable in Part A of the register, it must contain or consist of at least one of the following essential particulars:—(*a*) the name of a company, individual, or firm, represented in a special or particular manner; . . . (*e*) any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the foregoing paragraphs (*a*), (*b*), (*c*) and (*d*), shall not be registrable under the provisions of this paragraph except upon evidence of its distinctiveness. (2) For the purposes of this section 'distinctive' means adapted, in relation to the goods in

Appendix 5: Copy of Council's Schedule of Planning History

app_num	proposal	decision	decision_date	
7/1975/0769	Continue the use of land as a caravan site without complying with condition no 2.	Refused	05/12/1975	Refused - not relevant
7/1975/0770	Change the use of land to a site for 154 no holiday caravans and to erect 3 no toilet blocks.	FP/CONDS	18/11/1975	Pre 1991 permission - not relevant
7/1976/0087	The renewal of planning permission ba/3/72/b relating to the erection of 7 residential chalets and the siting of 76 caravans for a temporary period.	FP/CONDS	26/03/1976	Pre 1991 permission - not relevant
7/1978/0119	Planning permission to erect an extension to an existing laboratory block to provide additional office and welfare accommodation	FP/CONDS	08/03/1978	Pre 1991 permission - not relevant
7/1978/0828	Renewal of Planning Permission no:BA/81/73 dated 21.9.73 in respect of the erection of 5 chalets	FP/CONDS	09/11/1978	Pre 1991 permission - not relevant
7/1979/0057	Erect an extension to the main administration office block to house telephone equipment.	FP/CONDS	01/03/1979	Pre 1991 permission - not relevant
7/1979/0071	The use of land for purposes of caravans and chalets without complying with condition no 2 on the permission dated 26th march 1976 reference no 7/87/76 relating to the all year round occupation of the caravans and chalets for a further temporary period to the 31st March 1980	FP/CONDS	01/03/1979	Pre 1991 permission - not relevant
7/1979/0440	Construct a new office building.	FP/CONDS	12/07/1979	Pre 1991 permission - not relevant
7/1980/0051	Permanently occupy a residential caravan.	FP/CONDS	21/02/1980	Pre 1991 permission - not relevant
7/1980/0052	Permanently occupy a residential caravan.	FP/CONDS	21/02/1980	Pre 1991 permission - not relevant
7/1980/0053	Permanently occupy a residential caravan.	FP/CONDS	21/02/1980	Pre 1991 permission - not relevant
7/1980/0054	Permanently occupy a residential caravan.	FP/CONDS	21/02/1980	Pre 1991 permission - not relevant
7/1980/0305	Erect maintenance and storage building to be used in association with existing jetty operations.	FP/CONDS	05/08/1980	Pre 1991 permission - not relevant
7/1980/0460	Fill in a disused clay pit.	FP/CONDS	28/05/1980	Pre 1991 permission - not relevant
7/1984/0089	Change of use of disused chalet to shop/snack bar.	FP/CONDS	22/03/1984	Pre 1991 permission - not relevant
7/1987/0872	The retention of 5 mobile homes for residential purposes.	FP/CONDS	19/11/1987	Pre 1991 permission - not relevant
7/1990/0233	Construct line stone car park.	FP/CONDS	02/05/1990	Pre 1991 permission - not relevant
7/1991/0113	Allow all year round residential use of the existing caravan site.	FP/CONDS	03/12/1991	Permission in question - relevant
7/1993/0381	Retain the change of use of hotel annex to house in multiple occupation comprising 6 bedrooms with communal facilities.	FP/CONDS	28/10/1993	CoU of existing building - not relevant
PA/1996/1621	Erect extension and carry out alterations to provide new restaurant and lounge annexes and refurbish bar lounge areas and w c s.	FP/CONDS	25/10/1996	Works to main hotel building - not relevant
PA/1997/0118	Erect a two storey building of timber construction comprising of 18 bedrooms and 4 classrooms.	FP/CONDS	16/04/1997	New building to east of hotel - relevant
PA/1997/0771	Consent to display 4 non illuminated sign boards.	NO DECISION		Advert consent - not relevant
PA/1998/0266	Planning permission to erect a classroom.	Approved	17/04/1998	New building to east of hotel - relevant
PA/1998/1287	Planning permission to retain a portacabin office, retain 6 lamp standards on a car park and retain low-level lights on a new access road	FULL/CONDS	11/06/1999	Portacabin between existing hotel buildings - not relevant
PA/1998/1288	Planning permission to retain a link between the lodge and the former cottages	FULL/NO COND	11/06/1999	Link extension between existing buildings - not relevant
PA/1998/1490	Planning permission to erect a temporary marquee for a three year period to be used as a function suite and a permanent, single-storey link building to provide ancillary toilet, bar and storage facilities	FULL/CONDS	11/06/1999	Works to west of hotel - relevant
PA/1998/1491	Planning permission to erect a guest lodge for the Odyssey Foundation and associated car park	FULL/CONDS	11/06/1999	New building to north east of hotel - relevant
PA/1999/0339	Planning permission to retain the siting of a portable office unit and retain a electricity generating station and to re-site a mobile home	FULL/CONDS	08/11/1999	Buildings to the west and north east of hotel - relevant
PA/1999/1098	Planning permission to retain a building for use as a nursery	FULL/CONDS	11/08/2000	Building and use (retention) to north east of hotel - relevant
PA/1999/1175	Planning permission to retain an office block	FULL/NO COND	11/08/2000	Building (retention) to east of hotel - relevant
PA/1999/1177	Planning permission to retain a temporary building to be used as a coffee lounge	FULL/CONDS	11/08/2000	Building (retention) to east of hotel - relevant
PA/1999/1184	Planning permission to continue to use dwellings as treatment rooms	FULL/NO COND	11/08/2000	CoU of existing buildings - not relevant
PA/1999/1197	Planning Permission to retain a steel container for the storage of chairs etc	FULL/CONDS	11/07/2000	Container within main hotel site - not relevant
PA/1999/1199	Planning Permission to erect a bottle store/rest room and retain a link between the same and existing marquee	FULL/NO COND	11/07/2000	Works to main hotel building - not relevant
PA/2000/0082	Planning permission to retain a store	FULL/NO COND	11/07/2000	Building (retention) to north east of hotel - relevant
PA/2000/0973	Planning permission to erect a hotel extension	FULL/CONDS	06/02/2001	Large extension to west of hotel - relevant
PA/2001/0213	Application for certificate of lawfulness for the proposed relocation of a marquee to be used as a function room	NOTLAWFUL	24/04/2001	Refused and appeal withdrawn - not relevant
PA/2001/1029	Planning permission to re-site existing marquee and erect a toilet block to north elevation	FULL/CONDS	11/01/2002	Marquee and extension to north of hotel - relevant
PA/2002/0356	Consent to retain a static internally illuminated sign	ADV NO CONDS	07/05/2002	Advert consent - not relevant
PA/2003/0262	Planning permission for temporary siting of 4 no steel jack leg containers and erection of 3m high fence	FULL/CONDS	14/04/2003	Temporary storage containers - not relevant
PA/2003/1628	Planning permission to erect a single-storey dining room and link corridors	FP/CONDS	25/02/2004	Small extension between existing hotel buildings - not relevant
PA/2004/0481	Planning permission to remove condition 3 of 2003/1628 relating to the months when construction can take place	FP/CONDS	14/07/2004	S73 application - not relevant
PA/2006/1579	Consent to retain one static externally illuminated free-standing sign	REFUSEFP	22/11/2006	Advert consent refused - not relevant
PA/2007/0451	Consent to retain non-illuminated freestanding sign	REFUSEFP	15/05/2007	Advert consent refused - not relevant
PA/2007/1977	Consent to display 3 non-illuminated freestanding advertisements	ADVCOND	23/01/2008	Advert consent - not relevant
PA/2016/0029	Planning permission for new main entrance with associated internal works and car park works	Full Planning Permission	16/05/2016	Small extension on front of main hotel building - not relevant
PA/2020/1618	Planning permission for replacement log cabin on existing concrete base	Full Planning Permission	17/12/2020	Single plot to east of hotel - not relevant
PA/2020/635	Planning permission to place a log cabin on existing concrete base	Withdrawn	13/10/2020	Withdrawn - not relevant
PA/2021/813	Planning permission to erect 19 lodges, new access road and associated hardstanding	Withdrawn	02/09/2021	Withdrawn - not relevant
RET/1980/0015	Retain 5 no residential caravans.	FP/CONDS	26/02/1981	Pre 1991 permission - not relevant
RET/1980/0016	Retain an existing caravan site without complying with condition no 2 on planning permission 7 87 76.	FP/CONDS	26/02/1981	Pre 1991 permission - not relevant

Appendix 6: Copy of 1972 Permission and Plans

COUNTY COUNCIL OF LINCOLN – PARTS OF LINDSEY

TOWN AND COUNTRY PLANNING ACTS 1962 to 1968

Application No. IA / 3/72/B

To be quoted in all correspondence

TOWN AND COUNTRY PLANNING
GENERAL DEVELOPMENT ORDERS 1963 to 1969

FULL PLANNING PERMISSION

COUNTY COUNCIL
PLANNING DEPARTMENT
RECEIVED
23 FEB 1972
Letter No.....
Ref'd to.....

The Barton-upon-Humber Urban District Council

acting on behalf of the County Council of Lincoln, Parts of Lindsey hereby give notice to Mr. A.E. Eales, 63a, High Street, Maldon Essex, on behalf of Westfield Lakes Lido Ltd., 9, London Road, Maldon, Essex.

that the application received on 10th January 1972 for permission to

Erect 7 residential chalets and site 76 caravans for a period of 5 years, Westfield Lakes, Far Ings Road, Barton-upon-Humber.

has been considered and that permission for this development in accordance with the plans and written particulars submitted has been granted subject to the following conditions:-

(1) The development to which this permission relates MUST be begun not later than the expiration of FIVE YEARS from the date of this permission.

(2) The all year round use of this site for residential caravans and chalets shall be discontinued on the 31st March 1977 and from that date no caravan or chalet shall be occupied residentially during the period from 1st November in any year to the 14th March in the following year.

(3) Before any development is commenced the approval of the local planning authority is required to a scheme of landscaping and tree planting for the site (indicating inter alia the number, species, heights on planting and positions of all the trees). Such scheme as approved by the local planning authority shall be carried out in its entirety within the period of 12 months beginning with the date on which development is commenced, (or within such longer period as may be agreed in writing with the local planning authority). All trees, shrubs and bushes shall be adequately maintained for the period of 10 years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary.

(4) The area shown on the submitted plan as a car parking space shall be kept available for such use and no development, whether permitted by the Town and Country Planning (General Development) Order 1963 or not, shall be carried out on the land so shown (other than the erection of a private garage or garages) or in such a position as to preclude vehicular access to this reserved parking space.

PLEASE TURN OVER

The reasons for the above conditions are:-

(1) To comply with the provisions of Section 65 of the Town and Country Planning Act, 1968.

(2) The site is in an area where the local planning authority consider that full time occupation of caravans would not be desirable having regard to the location of the essential services such as schools, shopping areas and communal facilities, but they are prepared to permit full time occupation until the completion of the Humber Bridge.

(3) In the interests of amenity.

(4) In order to avoid car parking inconvenient to road users.

Dated 21st February 1972. Signed [redacted]

Clerk of the Council

WARNING

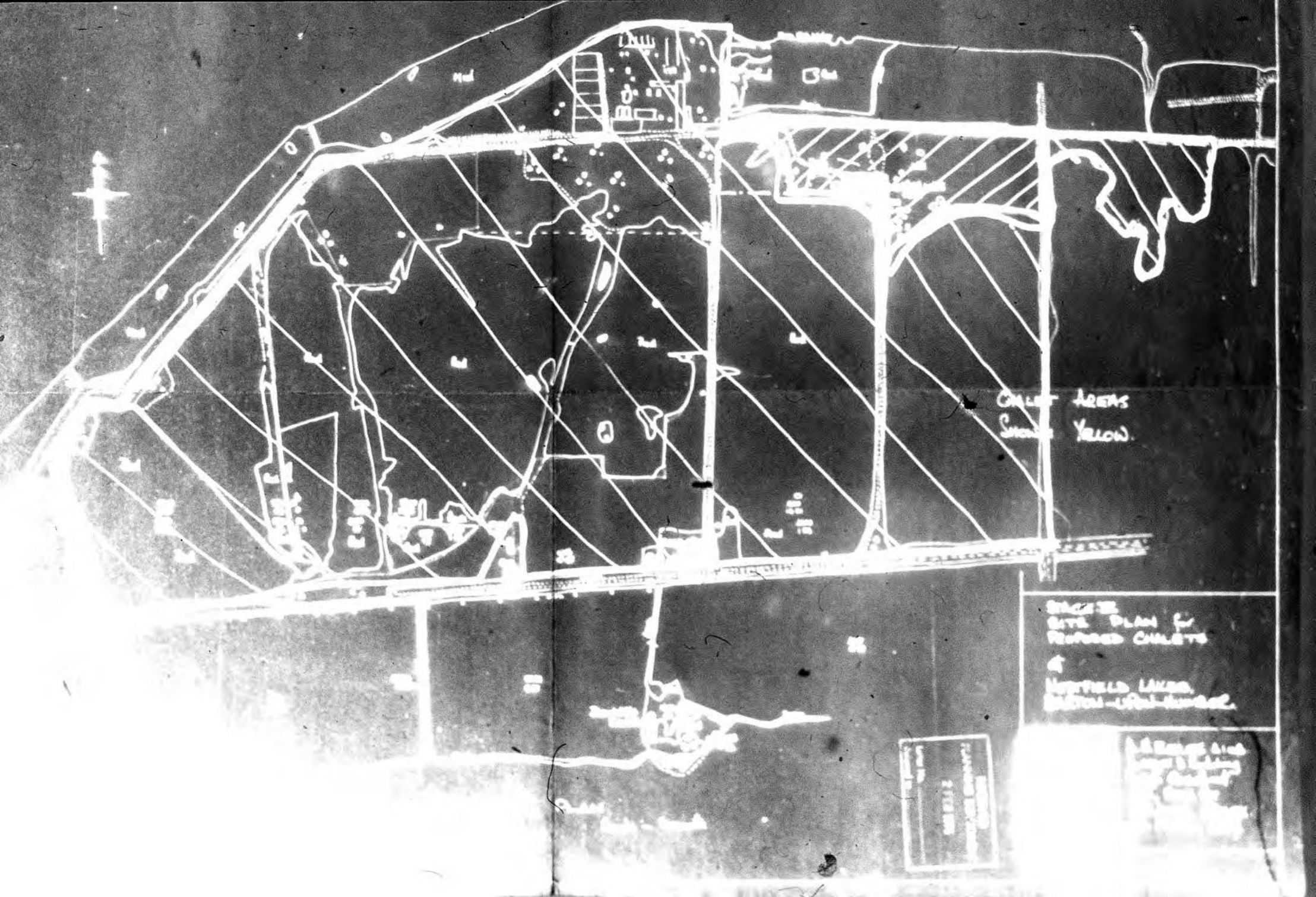
1. This is a PLANNING PERMISSION ONLY. It does NOT convey any approval or consent required under any enactment, byelaw, order or regulation other than those referred to in the heading of this notice. It is IMPORTANT that you should read the notes concerning APPEALS below.

2. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with section 23 of the Town and Country Planning Act, 1962 within SIX MONTHS of receipt of this notice. Appeals must be made on a form which is obtainable from the Secretary of State for the Environment, Whitehall, London S.W.1.

The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given uader the order. (The statutory requirements include section 6 of the Control of Office and Industrial Development Act 1965 and section 23 of the Industrial Development Act, 1966).

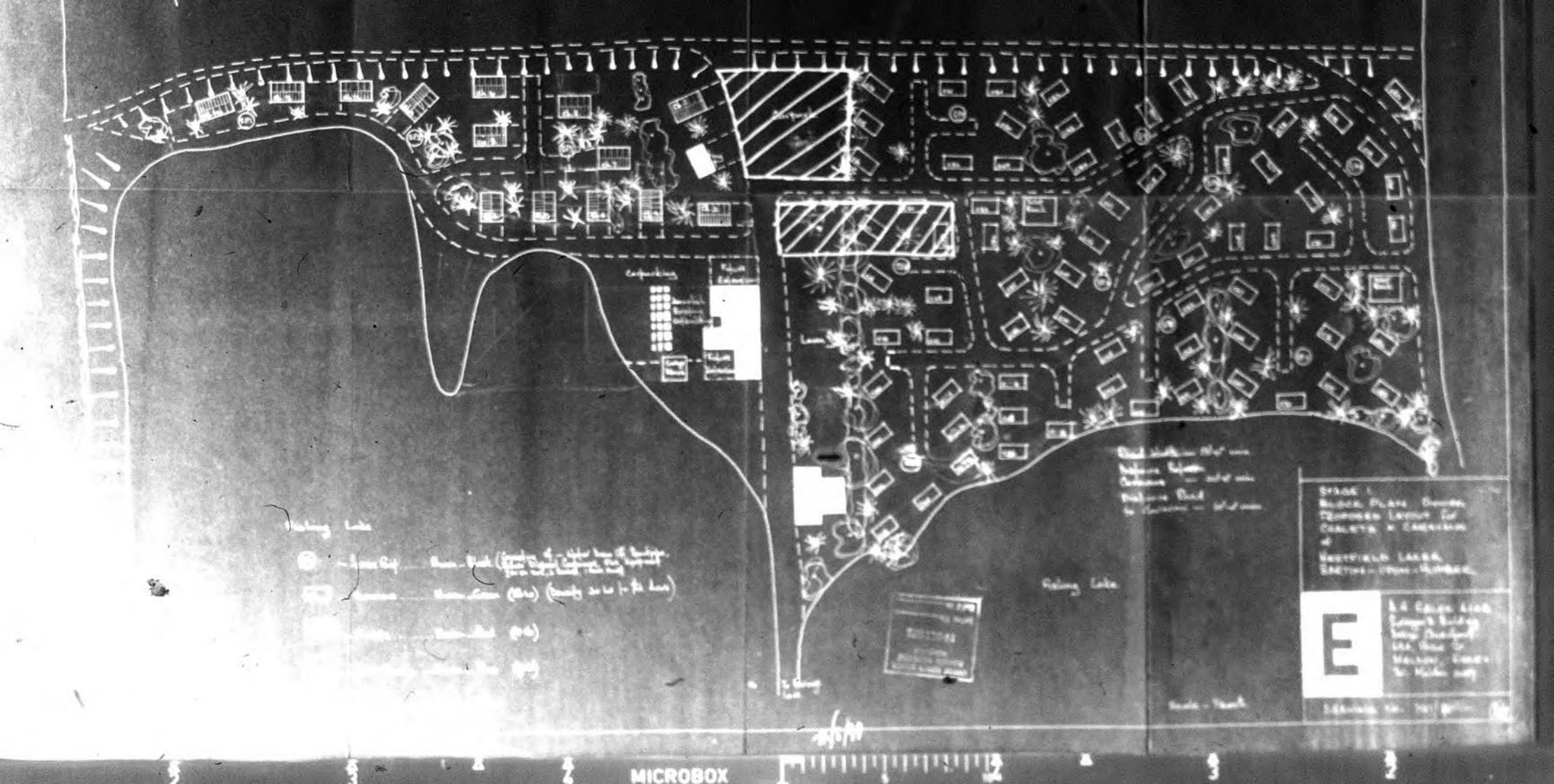
3. If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the council of the County District in which the land is situated a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part VIII of the Town and Country Planning Act, 1962 (as amended by the Town and Country Planning Act, 1968).

4. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 123 of the Town and Country Planning Act, 1962.


Chalet Areas
Shown Yellow.


Fishing Lake
Caravans
Chalets
Toilet Blocks
Carparking
Fishing Lake


Fishing Lake
E
MICROBOX


E
MICROBOX

Appendix 7: Copy of the 1976 Permission and Plans

GLANFORD BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1971

Application No.
7/87/76
To be quoted in all correspondence

FULL PLANNING PERMISSION

The GLANFORD BOROUGH COUNCIL hereby give notice to Westfield Lakes Lido Ltd., 9 London Road, Maldon, Essex, through their agent A.H. Beles, C/o 9 London Road, Maldon, Essex,

that the application received on 2nd February 1976 for permission to renew Planning Permission BA/3/72/B relating to the erection of 7 residential chalets and the siting of 76 caravans for a temporary period, Westfield Lakes Hotel, Far Ings Road, Barton-upon-Humber, O.S. Sheet No. 7/5,

has been considered and that permission for this development in accordance with the plans and written particulars submitted has been granted subject to the following conditions:-

(1) The development to which this permission relates MUST be begun not later than the expiration of FIVE YEARS from the date of this permission.

(2) The all-year-round use of this site for the stationing of residential caravans and chalets shall be discontinued on 31st March 1979 and from that date no caravan or chalet shall be occupied residentially during the period from 1st November in any year to 14th March in the following year.

(3) Before any development is commenced the approval of the district planning authority is required to a scheme of landscaping and tree planting for the site (indicating inter alia the number, species, heights on planting and positions of all the trees). Such scheme as approved by the district planning authority shall be carried out in its entirety within the period of 12 months beginning with the date on which development is commenced (or within such longer period as may be agreed in writing with the district planning authority). All trees, shrubs and bushes shall be adequately maintained for the period of 10 years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary.

(4) The areas shown on the submitted plan as car parking areas shall be kept available for such use and no development, whether permitted by the Town and Country Planning (General Development) Order 1973 or not shall be carried out on the land so shown (other than the erection of a private garage or garages)gor in such a position as to preclude vehicular access to these reserved parking spaces.

(5) The approach road located at the eastern end of the Far Ings Road frontage shall be reconstructed to a standard satisfactory to the district planning authority, this reconstruction to include any required splays, sight lines and radii, and shall be in accordance with details to be approved by the district planning authority before any development is commenced.

PLD 1

PLEASE TURN OVER

(6) The two approach roads shall be respectively designated for access and egress and shall be so clearly marked and used.

(7) The design and method of construction of the access, including any necessary piping or culverting of any ditch or watercourse, shall be to the satisfaction of the district planning authority.

(8) The works to which conditions 5, 6 & 7 relate shall be carried out to the satisfaction of the district planning authority before the development is brought into use.

The reasons for the above conditions are:-

(1) To comply with the provisions of Section 41 of the Town and Country Planning Act, 1971.
(2) The site is in an area where the district planning authority consider that full-time occupation of caravans would not be desirable having regard to the location of the essential services such as schools, shopping areas and communal facilities, but they are prepared to permit full-time occupation until the completion of the Humber Bridge.
(3) To enhance the appearance of the development in the interests of visual amenity.
(4) In order to avoid car parking in a manner [redacted] to be inconvenient to other road users.
(5)-(8) In the interests of road safety.

Dated 26 MAR 1976

Signed [redacted]

Planning Officer

WARNING

1. This is a PLANNING PERMISSION ONLY. It does NOT convey any approval or consent required under any enactment, byelaw, order or regulation other than those referred to in the heading of this notice. It is IMPORTANT that you should read the notes concerning APPEALS below.

2. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with section 36 of the Town and Country Planning Act, 1971 within SIX MONTHS of receipt of this notice. Appeals must be made on a form which is obtainable from the Secretary of State for the Environment, Caxton House, Tothill Street, London S.W.1.

The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal.

3. If permission to develop land is refused or granted subject to conditions, whether by the local planning authority or by the Secretary of State and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the council of the County District in which the land is situated a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act, 1971.

4. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act, 1971.

Appendix 8: Copy of the 1980 Permission and Plans

GLANFORD BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1971

Application No.
7/RET/16/80
To be quoted in all correspondence

FULL PLANNING PERMISSION

The GLANFORD BOROUGH COUNCIL hereby give notice to Westfield Lakes Lido Ltd., Far Ings Lane, Barton upon Humber, South Humberside.

that the application received on 17th December, 1980 for permission to retain an existing caravan site without complying with condition no 2 on planning permission 7/87/76
Westfield Lakes, Barton upon Humber.
O.S. Sheet No. 0023

has been considered and that permission for this development in accordance with the plans and written particulars submitted has been granted subject to the following conditions:-

(1) The development to which this permission relates MUST be begun not later than the expiration of FIVE YEARS from the date of this permission.

(2) With the exception of [illegible] 1,41,42,44 and 45, as defined on the attached plan 7/81/16/ 1/1, the caravans shall be occupied solely for recreational [illegible] and not as residential homes.

(3) Within [illegible] of the date of this permission a scheme for the landscaping of the site shall be submitted to and approved by the district planning authority. Such scheme shall include, inter alia, details of the proposed positions, species and heights on planting and maturity of trees to be planted within the site. The approved landscaping scheme shall be carried out in its entirety within a period of twelve months from the date upon which development is commenced. Any trees, shrubs or bushes removed, dying being severely damaged or becoming severely diseased within two years of planting shall be replaced with trees, shrubs or bushes of similar size and species to those originally required to be planted.

PLD 1

PLEASE TURN OVER

25X

The reasons for the above conditions are:-

(1) To comply with the provisions of Section 41 of the Town and Country Planning Act, 1971.

(2) The site is in an area where the district planning authority considers that the full time occupation of caravans would not be desirable having regard to the location of essential services such as schools, shopping areas, and community facilities.

(3) To enhance the appearance of the development.

Dated 26 FEB 1981

Signed [redacted]

Planning Officer

WARNING

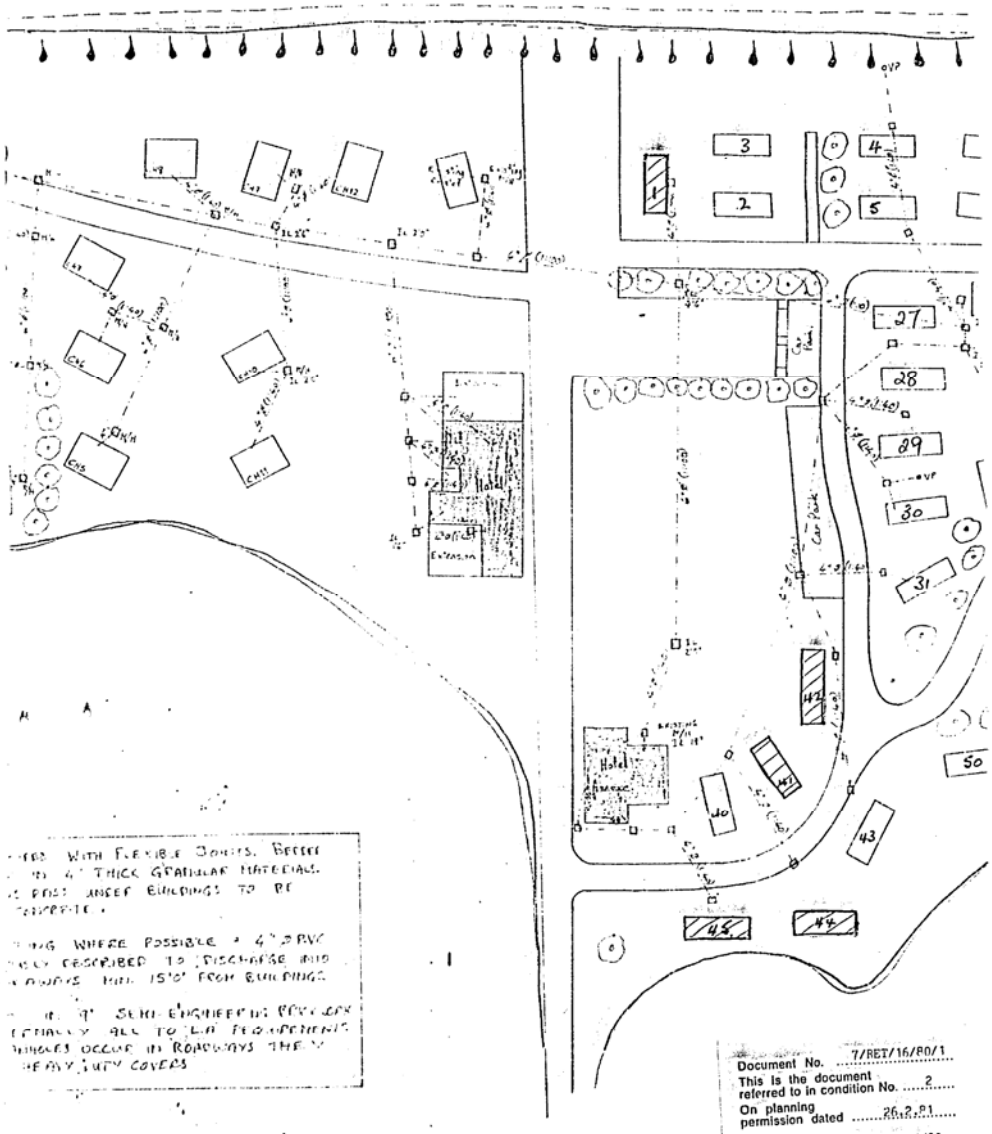
1. This is a PLANNING PERMISSION ONLY. It does NOT convey any approval or consent required under any enactment, byelaw, order or regulation other than those referred to in the heading of this notice. It is IMPORTANT that you should read the notes concerning APPEALS below.

2. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 36 of the Town and Country Planning Act 1971 within six months of receipt of this notice. Appeals must be made on a form which is obtainable from the Department of the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ.

The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the local planning authority was based on a direction given by him.

3. If permission to develop land is refused or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted he may serve on the Council of the district in which the land is situated a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act, 1971.

4. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act, 1971.



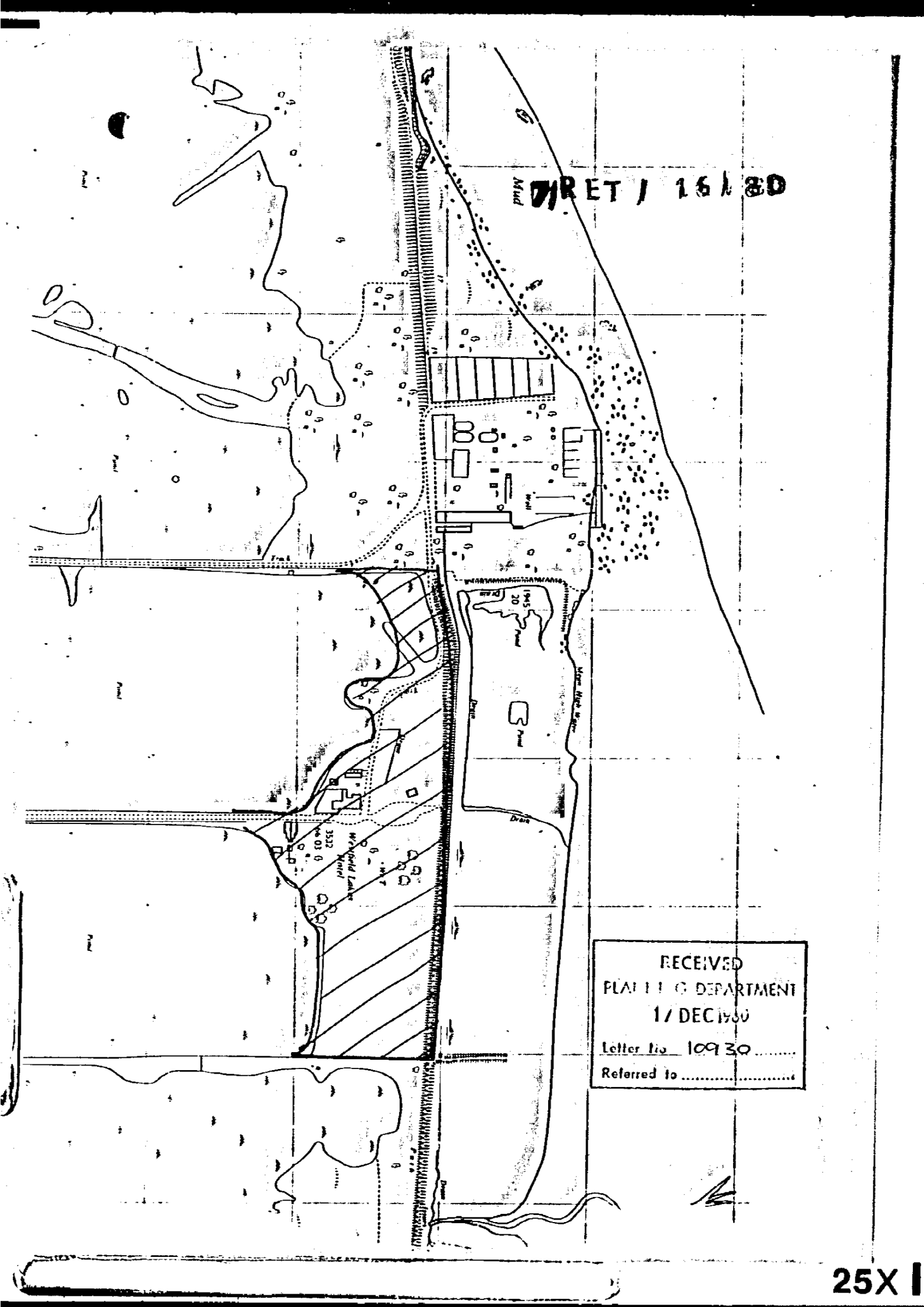
...RES WITH FLEXIBLE JOINTS. BEDDED ... 4" THICK GRANULAR MATERIAL. ... FOUL UNDER BUILDINGS TO BE ...CEPTIC.

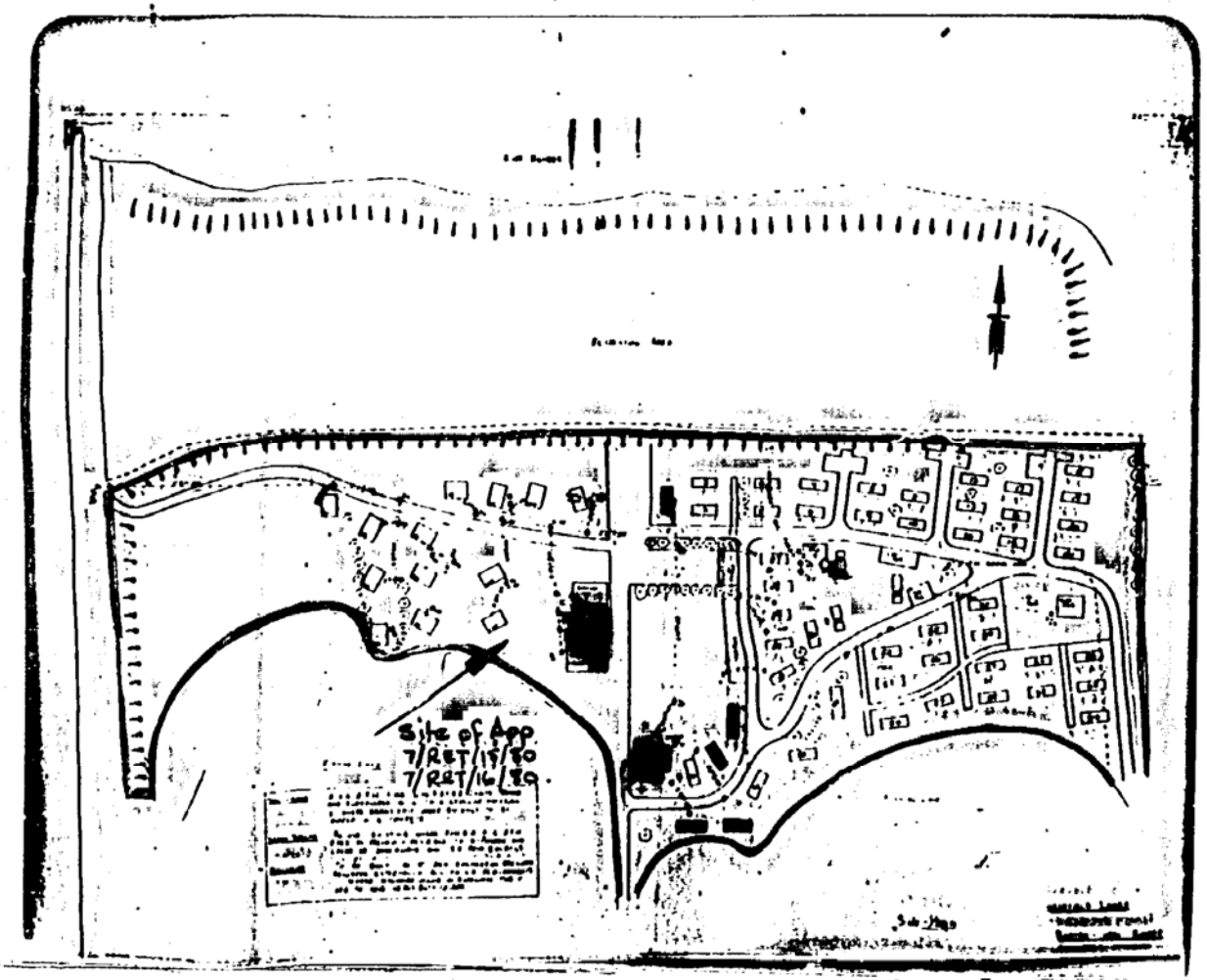
...NG WHERE POSSIBLE. 4" Ø PVC ...ELY DESCRIBED TO DISCHARGE INTO ...AMWAYS MIN. 15'0" FROM BUILDINGS.

... 9" SEMI-ENGINEERED PAVEMENT ...ICIALLY ADJ TO L.A. REQUIREMENTS ...THERE OCCUR IN ROADWAYS THEY ... HEAVY DUTY COVERS

Document No. 7/RET/16/R0/1
This is the document referred to in condition No. 2
On planning permission dated 26.2.81
Reference No. 7/RET/16/R0

000415


RECEIVED
PLANNING DEPARTMENT
17 DEC 1980
Letter No 10930
Referred to



25X

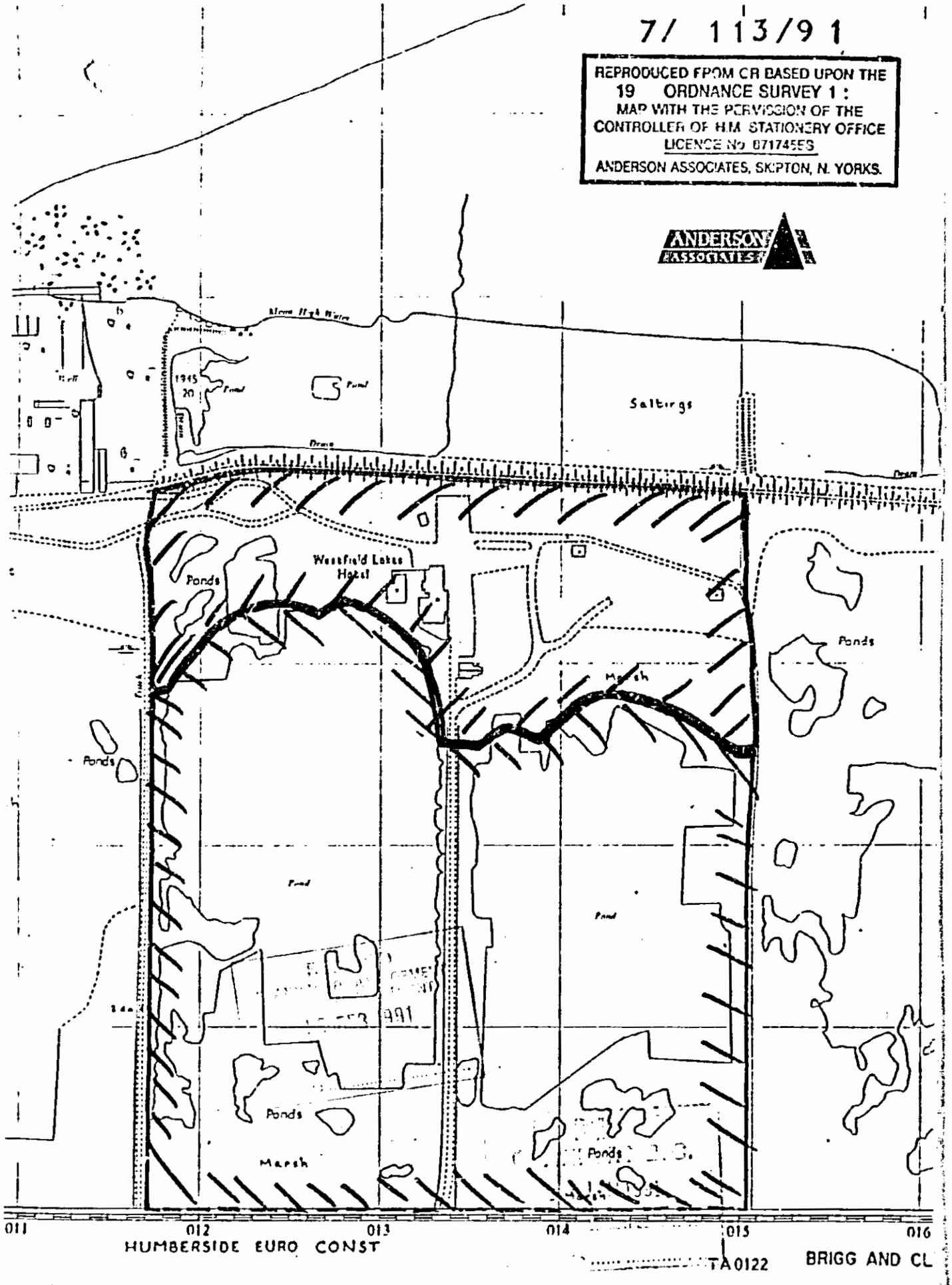
32X

25X

Appendix 9: Copy of the 1991 Permission and Plans

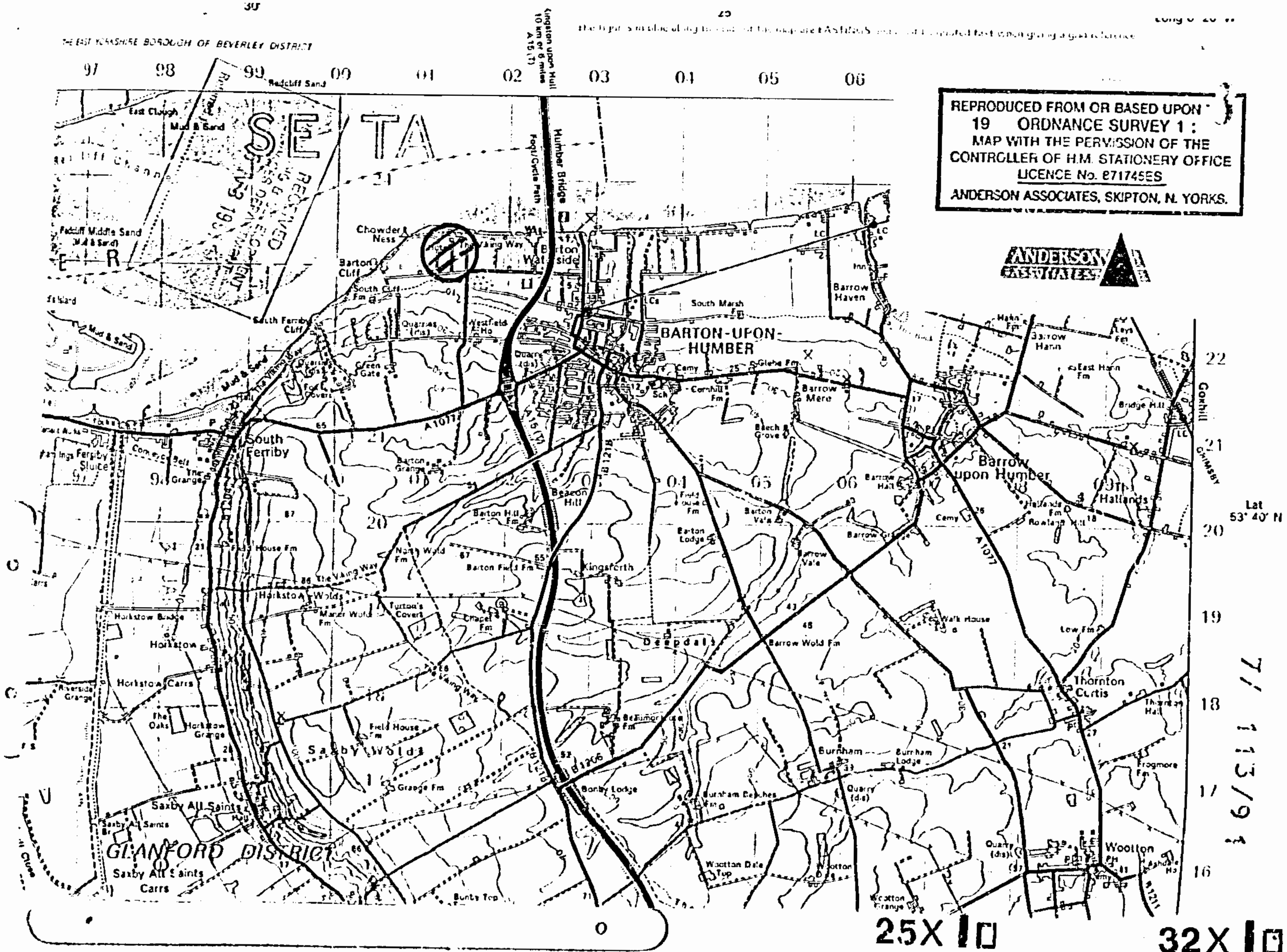
7/ 113/91

ANDERSON ASSOCIATES



Heights are given in metres above the
Bench mark lists which may contain later levelling informa

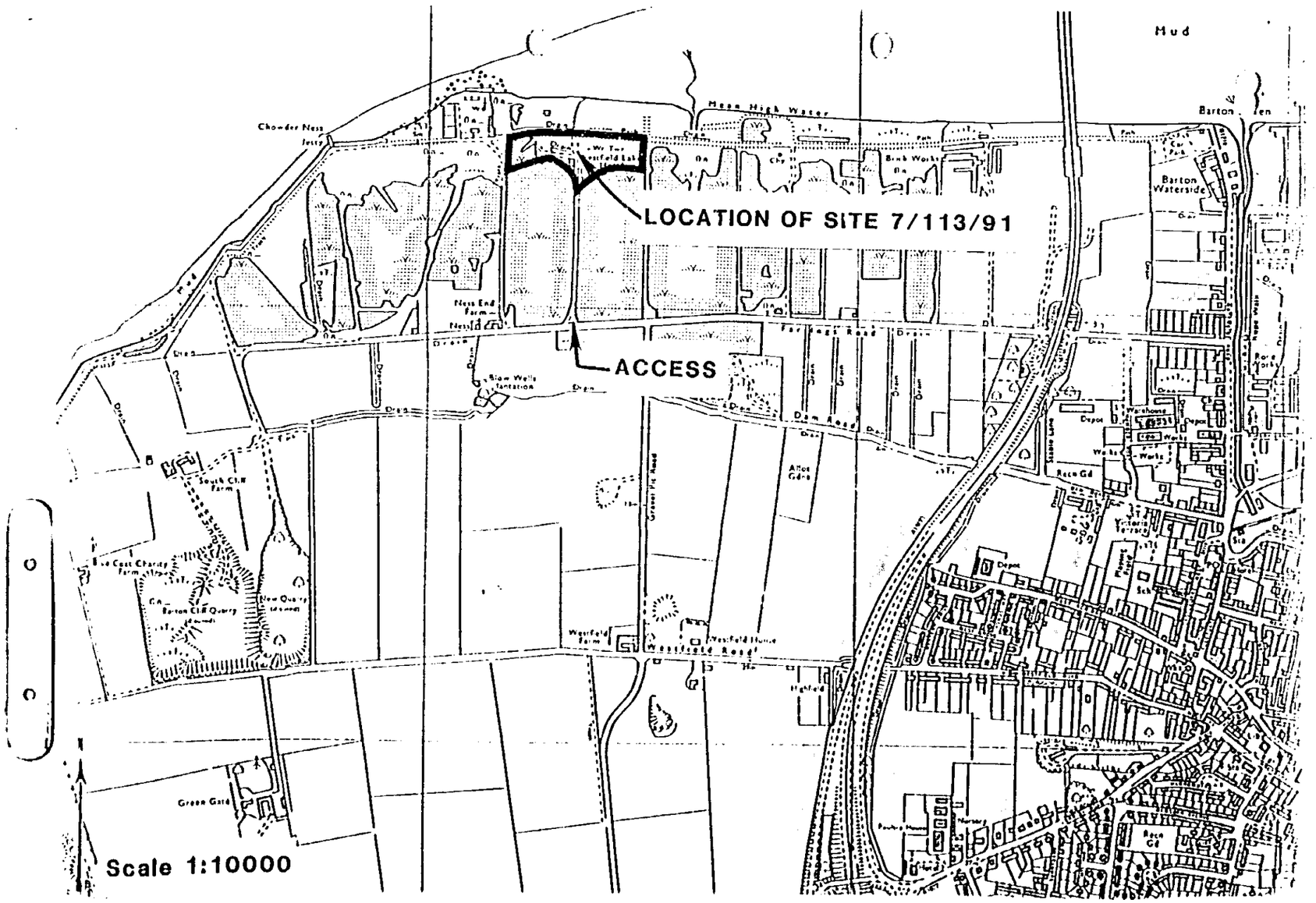
25X



25X1

32X1

25X1


LOCATION OF SITE 7/113/91
ACCESS
Mud
Mean High Water
Barton Waterside
Scale 1:10000

25X 32X 25X

GLANFORD BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1971

Application No.
7/RET/16/80
To be quoted in all correspondence

FULL PLANNING PERMISSION

The GLANFORD BOROUGH COUNCIL hereby give notice to Westfield Lakes Lido Ltd., Far Ings Lane, Barton upon Humber, South Humberside.

that the application received on the 17th December, 1980 for permission to retain an existing caravan site without complying with condition no 2 on planning permission 7/87/76
Westfield Lakes, Barton upon Humber,
13. Sheet No. 0023

has been considered and that permission for this development in accordance with the plans and written particulars submitted has been granted subject to the following conditions:-

(1) The development to which this permission relates MUST be begun not later than the expiration of FIVE YEARS from the date of this permission.

(2) With the exception of the caravans on plots 1,41,42,44 and 45, as defined on the attached plan 7/RET/16/80/1, the caravans shall be occupied solely for recreational or holiday accommodation, and at no time as permanent residential homes.

(3) Within 12 months of the date of this permission a scheme for the landscaping of the site shall be submitted to and approved by the district planning authority. Such scheme shall include, inter alia, details of the proposed positions, species and heights on planting and maturity of trees to be planted within the site. The approved landscaping scheme shall be carried out in its entirety within a period of twelve months from the date upon which development is commenced. Any trees, shrubs or bushes removed, dying being severely damaged or becoming severely diseased within two years of planting shall be replaced with trees, shrubs or bushes of similar size and species to those originally required to be planted.

PLD 1

PLEASE TURN OVER

25X

GLANFORD BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1971

Application No.
7/113/91
To be quoted in all correspondence

FULL PLANNING PERMISSION

The GLANFORD BOROUGH COUNCIL hereby give notice to Mr H Blackhurst, Westfield Lakes Hotel Far Ings Road, Barton-upon-Humber, South Humberside, DN18 5RG through his agents Anderson Associates, Tom Hill Barn, Broughton, Skipton, North Yorkshire, BD23 3AQ

that the application received on 15 February 1991 for permission to remove condition 2 of planning permission BA/3/72B and 7/RBT/16/80 to allow all year round residential use of the existing caravan site:- Westfield Lakes Site, Far Ings Road, Barton-upon-Humber.
O S Sheet No 0123

has been considered and that permission for this development in accordance with the plans and written particulars submitted has been granted subject to the following conditions:-

(1) The development to which this permission relates MUST be begun not later than the expiration of FIVE YEARS from the date of this permission.

2. At no time shall there be more than a total of seventy (70) caravans and/or chalets and/or mobile homes on the site.

3. All the chalets or mobile homes to be stationed on the site shall conform with BS.3632 (1989) Specification for Park Homes (Mobile Homes).

4. No additional caravans, chalets or mobile homes shall be brought onto the site before a plan has been submitted to and agreed in writing by the District Planning Authority to show details of the layout of the [illegible] development and proposals for its landscaping. The landscaping proposals shall include indications of all existing trees and hedgerows on the site, and details of any to be retained, together with measures for their protection during the course of development.

5. All the approved landscaping shall be carried out within twelve months of the date of this decision (unless a longer period is agreed in writing by the district planning authority). Any trees or plants which die, are removed or become seriously damaged or diseased within five years from the date of planting shall be replaced in the next planting season with others of similar size and species, unless the District Planning Authority agrees in writing to any variation.

6. The layout of the development shall include provision for one vehicle parking space within the curtilage of each residential unit and additional parking for visitors on the basis of a minimum of one space for every ten units.

7. Not more than twenty five (25) new units shall be constructed on the site before the access to Far Ings Road at the south-eastern boundary of the site has been suitably surfaced in accordance with details to be submitted to and agreed in writing by the District Planning Authority beforehand.

8. No additional units shall be constructed on the site until a scheme has been submitted to and agreed in writing by the District Planning Authority indicating the external finishes and colours of the additional units.

The reasons for the above conditions are:-

(1) To comply with the provisions of Section 41 of the Town and Country Planning Act, 1971.

2. To define the extent of the permission for the avoidance of doubt.

3. In the interests of residential amenity.

4-5. To enhance the appearance of the development.

6-7. In the interests of road safety.

8. To assist the development to blend with the surrounding landscape.

Dated 5 DEC 1991

Signed

Planning & Development Services Officer

WARNING

1. This is a PLANNING PERMISSION ONLY. It does NOT convey any approval or consent required under any enactment, byelaw, order or regulation other than those referred to in the heading of this notice. It is IMPORTANT that you should read the notes concerning APPEALS below.

2. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 36 of the Town and Country Planning Act 1971 within six months of receipt of this notice. Appeals must be made on a form which is obtainable from the Department of the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ.

The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the local planning authority was based on a direction given by him.

3. If permission to develop land is refused or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted he may serve on the Council of the district in which the land is situated a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act, 1971.

4. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act, 1971.

KEY

- Twin.
- Single.
- Parking.
- Visitors parking.
- Fire point.
- Existing trees/shrubs.
- Proposed tree/shrub planting.
- Boundary line of planning permission.
- Proposed hedge/ fence line.

100228

RECEIVED
GLANFORD B.C.
16 OCT 1992
PLANNING & DEVELOPMENT SERVICES DEPT.
Referred to .....

Revised layout.
landscaping scheme
(position of planting).

1:500

WESTFIELD LAKES
FAR INGS ROAD
BARTON-UPON-HUMBER

DATE 13·10·92
REF 1288/2

WESTFIELD LAKES

Barton-on-Humber

HOTEL

100229

PLAN No 2

Illustrative plan showing possible development for full Residential use.

ANDERSON ASSOCIATES

1:500

MICROBOX

Mean High Water

1945
·20

Pond

Pond

Drain

Drain

WESTFIELD LAKES

Saltings

Westfield Lakes
Hotel

Ponds

Track

Marsh

PLAN No 1

Illustrative plan showing possible development from existing Planning Permission.

ANDERSON ASSOCIATES

1:500

100230

MICROBOX

5

10

cm

N

FOOTPATH

VISITORS PARKING

RECREATION GROUND

VISITORS PARKING

LAKE

WESTLAKE HOTEL

HOTEL PARKING

VISITORS PARKING

VISITORS PARKING

HOTEL ANNEX

EXISTING TRACK

EXISTING TRACK

LAKE

LAKE

KEY

- Twin.
- Single.
- Parking.
- Visitors parking.
- FP Fire point.
- Existing trees/shrubs.
- Proposed tree/shrub planting.
- Boundary line.

100231

1:500

WESTFIELD LAKES ESTATE
FAR INGS ROAD
BARTON-UPON-HUMBER

MICROBOX

1 2 3 4 5 10 cm 4 3 2 1

Appendix 10: Counsel's Opinion from Richard Harwood KC OBE

IN THE MATTER OF WESTFIELD LAKES, BARTON-UPON-HUMBER

ADVICE

1. I am instructed to advise Mr Jason Green and Green's Park Homes Limited upon various planning permissions in respect of a caravan site at Westfield Lakes.

2. The site received planning permission for temporary uses for the siting of caravans in 1972[1] and 1976.[2] On the latter occasion the site was identified as 'Westfield Lakes Hotel'. A permanent planning permission for caravans was granted on 26th February 1981.[3] The planning application drawings included within the application site the hotel and hotel annex buildings. There was no suggestion in the application or the permission that those buildings would be pulled down for caravans to be sited in their place, or that the hotel use would cease. The 1981 planning permission limited occupation of the caravans to recreational users.

3. On 3rd December 1991 planning permission was granted[4] without the recreational user condition, so allowing year-round residential use of up to 70 caravans/chalets/mobile homes. A layout plan had to be approved before any more caravans could be sited.

4. None of the plans in the various applications showed caravans in very close proximity to the hotel buildings.

5. A caravan site licence was issued on 22nd August 2000 in reliance on the 1991 planning permission. No copy of the site licence plan appears to be available: the Council do not have a copy. The 2000 licence remains the current site licence although the corporate licence holder appears to no longer exist.

6. Pre-dating the caravan site uses, and continuing throughout the period of caravan activities, a large building on the site was in use as a hotel.

7. An application for a new caravan site licence was made on 23rd August 2021 but has still not been determined.

---

[1] Ref 3/72/B.
[2] Ref 7/87/76.
[3] Ref 7/RET/16/80.
[4] Ref 7/113/91. It appears to be a section 73 approval for planning permission without complying with a condition on a previous permission.

The Planning Permission issue

8. On 23rd March 2023 the Council wrote to the applicant's agents:

> "we need to ascertain the use of the area covered by your licence application since 2003. It appears to us that there may have been changes to the planning unit for the caravan park site, introduction of non-residential uses (including in some of the mobile homes including offices/business uses); use of the caravan park site in association with the hotel use – as landscaped grounds; and some operational development. Please provide information as to the condition of the land since 2003, when caravan use ceased (we think this was around 2003/4) and whether there have been any other uses of the land since. Whilst we are aware of the conflicting case law including *Stockton v Secretary of State* [2011] JPL 183 as to whether the 1991 Permission could be abandoned, we have to be satisfied that there is a lawful caravan site permission in existence before any licence can be granted. We note that in 2000, the former owner expressly stated that he was abandoning the caravan use."

9. The applicant immediately asked the Council to share the information which related to this concern. The Council replied saying:

> "Please find the attached spreadsheet which outlines the full planning history of Westfied Lakes. We have highlighted the applications we considered to be relevant in reaching our current position in green and the applications not considered relevant are left unshaded. A brief note has been added alongside each application to explain why it was considered to be relevant or not."

10. The list, as far as it shows applications from 1991, is appended to this advice.

Assessment

11. Notwithstanding the number of planning permissions, the issues can be dealt with quite briefly.

12. It is common ground that the caravan site has had the benefit of planning permission for caravan site use. The most recent permission being the 1991 consent, which has been implemented. The question therefore is whether subsequent events have caused the loss of the lawful caravan site use over all or part of the site.

Legal principles

13. A use which has commenced under a planning permission will rarely be lost except where a material change of use of the land has taken place. The following principles apply:

(i) By s 75(1) of the Town and Country Planning Act 1990 'Without prejudice to the provisions of this Part as to the duration, revocation or modification of planning permission , any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested in it.' So a right to make a material change of use will survive, subject to the provisions of the Act.

(ii) A lawful planning use will be lost if a material change of use of that land takes place, subject to limited exceptions in the Town and Country Planning Act 1990, s 57. The reason is that making a material change of use requires planning permission (s 57(1)) unless an exception applies, so making a material change back to the original use requires a further grant of planning permission. A planning permission for a material change of use will be capable of being exercised only once[5] unless it can be interpreted to allow multiple changes;

(iii) A right to develop under a planning permission cannot be lost by the non-exercise of the right (unless the permission expires under the statute). In particular it is not possible to abandon a planning permission, a point discussed further below in respect of *Stockton*;[6]

(iv) Once a use of land which started without planning permission becomes lawful, then the use can remain even if it is dormant, so not being actively carried out, unless it is abandoned;[7]

(v) Development carried out under a new planning permission may supercede the previous use,[8] but it is a matter of interpreting the permissions to see whether

[5] *Cynon Valley Borough Council v Secretary of State for Wales* (1987) 53 P & CR 68.
[6] *Pioneer Aggregates v Secretary of State for the Environment* [1985] AC 132 at 145G per Lord Scarman, followed in *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30, [2022] 1 WLR 5077 at para 37 to 39 per Lord Sales and Lord Leggatt LJJ.
[7] *Panton & Farmer v Secretary of State for the Environment, Transport and the Regions* (1998) 78 P&CR 186.
[8] *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132, 143f–144d per Lord Scarman, followed in *Welwyn-Hatfield Borough Council v Secretary of State for Communities and Local Government* [2011] UKSC 15, [2011] 2 AC 304 at para 23 per Lord Mance.

they are inconsistent and they would only supercede insofar as they are inconsistent;[9]

(vi) Development of land under a materially inconsistent planning permission will prevent further development from being carried out under the original permission if it is physically impossible to do so.[10] However development under another permission does not render development which has been carried out under the original permission unlawful.[11] For example, the construction of houses on part of a playing field does not render the playing field use of the remainder unlawful.

(vii) The mere grant of a planning permission does not affect the continuation of any existing uses of the site: the permission needs to be implemented, whether by carrying out a material operation or because the permission is, at least in part, retrospective;

(viii) Where a temporary planning permission has been granted 'planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted'.[12] The previous use can therefore be resumed.

(ix) If an enforcement notice has been issued in respect of any development of land then planning permission is not required to revert to the previous lawful use;[13]

14. In *Stockton on Tees Borough Council v Secretary of State for Communities and Local Government*[14] planning permission which had been granted with conditions in 1961, used as a site for 80 seasonal chalets and caravans, was still capable of rendering lawful the use of the same site for 80 caravans in 2009, notwithstanding that for several years the use as a caravan park had simply ceased. The Court drew on section 75 and *Pioneer Aggregates* to conclude that there has been no use of the land other than that permitted by the planning permission first granted for use as a caravan site then that use can be carried out.[15]

---

[9] *Lambeth London Borough Council v Secretary of State for Housing, Communities and Local Government* [2019] UKSC 33, [2019] 1 WLR 4317 at para 38 per Lord Carnwath JSC.
[10] *Hillside Parks*, explaining *Pilkington v Secretary of State for the Environment* [1973] 1 WLR 1527.
[11] *Hillside Parks*.
[12] Town and Country Planning Act 1990, s 57(2).
[13] Town and Country Planning Act 1990, s 57(4).
[14] [2010] EWHC 1766 (Admin), [2011] JPL 183.
[15] At para 32 and 35 per Leggatt J.

15. The decision in *Stockton on Tees* was correct, and is reinforced by the subsequent endorsements of *Pioneer Aggregates* by the Supreme Court in *Welwyn Hatfield* and *Hillside Parks*.

The caravan site planning permissions

16. The caravan site planning permissions recognised the existence and continuation of the hotel use. Their plans showed the hotel and its annex and the caravan site layouts did not conflict with those buildings or that use. For a site licence to be issued the applicant must be entitled to the benefit of a planning permission 'for the use of the land as a caravan site'[16] but there may be other uses which also co-exist on the site.

The subsequent planning consents

17. The Council say that 11 of the post-1991 planning permissions are relevant to whether that permission remains in force. They accept that 10 other planning permissions in that period are not relevant.

18. The first point which arises on all of these planning permissions is that they do not, either individually or collectively cover the whole of the caravan site. Indeed, they authorise development on very small parts of the site, usually at or in the immediate vicinity of the hotel. It follows that planning permission remains for the use of the caravan site as a whole. The only question would have been whether some parts of the site should be excluded from the licence.

19. That question will have arisen on previous caravan site licence applications. Eight of the planning permissions which the Council consider to be relevant were granted before the 2000 site licence was issued. Of those permissions, five were retrospective and so came into force on being granted. The Council therefore considered that the site licence should be issued in its terms, on the basis of the 1991 permission and given the numerous other planning permissions which had been granted subsequently.

20. The planning application site for the caravan site permission covered the whole site, whilst the approved plans recognised the existence of the hotel. The site licence could legitimately not be concerned about the detail of the hotel – the 1991 planning permission was granted over the area it covered, and planning details such as the layout control the development but do not reduce the application site.

[16] Caravan Sites and Control of Development Act 1960, s 3(3).

21. The three post-site licence planning permissions are similar in character. Permission 2000/0082 authorised the retention of a store building within the grounds of a staff nursery. That nursery had been retrospectively approved under 1999/1098 prior to the issue of the 2000 site licence. The store building did not alter the scope of the site licence.

22. Permission 2000/0973 authorised an extension to the hotel building, with very little if any effect on caravan site.

23. Permission 2001/1029 authorised the temporary siting of a marquee and a toilet block until June 2002 whilst the permanent western extension was being carried out. The use of the land could revert to its previous use at the end of that period. Two of the pre-site licence planning permissions were also temporary.[17]

24. The original temporary marque permission was PA/98/1490. This included a requirement, by condition 2, for hedge planting to assist nature conservation. Those measures were not inconsistent with the caravan site use. Therefore they did not affect whether the site licence could be issued, or its terms.

25. Additionally not all of the permissions were implemented. Permissions PA/1997/0118 (hotel extension to the east) and PA/98/1491 (guest lodge for the Odyssey Foundation (operating from the Hotel Annex) appear to have expired without implementation.

26. The situation is therefore unchanged from the issue of the 2000 site licence. The planning consents for the caravan site accommodated the hotel use and continue to authorise the caravan site use.

27. If any matters arise out of this advice, please do not hesitate to contact me in Chambers.

[redacted]

39 Essex Chambers
81 Chancery Lane,
London WC2A 1DD

Richard Harwood KC

15th May 2023

[17] 1998/1490 (marquee) and 1999/1177 (coffee lounge).

The post-1991 planning applications

Those permissions which the Council considers to be relevant to the lawfulness of caravan site use are highlighted in green.

7/1991/0113	Allow all year round residential use of the existing caravan site.
7/1993/0381	Retain the change of use of hotel annex to house in multiple occupation comprising 6 bedrooms with communal facilities.
PA/1996/1621	Erect extension and carry out alterations to provide new restaurant and lounge annexes and refurbish bar lounge areas and w c s.
PA/1997/0118	Erect a two storey building of timber construction comprising of 18 bedrooms and 4 classrooms.
PA/1997/0771	Consent to display 4 non illuminated sign boards.
PA/1998/0266	Planning permission to erect a classroom.
PA/1998/1287	Planning permission to retain a portacabin office, retain 6 lamp standards on a car park and retain low-level lights on a new access road
PA/1998/1288	Planning permission to retain a link between the lodge and the former cottages
PA/1998/1490	Planning permission to erect a temporary marquee for a three year period to be used as a function suite and a permanent, single-storey link building to pr facilities
PA/1998/1491	Planning permission to erect a guest lodge for the Odyssey Foundation and associated car park
PA/1999/0339	Planning permission to retain the siting of a portable office unit and retain a electricity generating station and to re-site a mobile home
PA/1999/1098	Planning permission to retain a building for use as a nursery
PA/1999/1175	Planning permission to retain an office block
PA/1999/1177	Planning permission to retain a temporary building to be used as a coffee lounge
PA/1999/1184	Planning permission to continue to use dwellings as treatment rooms
PA/1999/1197	Planning Permission to retain a steel container for the storage of chairs etc
PA/1999/1199	Planning Permission to erect a bottle store/rest room and retain a link between the same and existing marquee
PA/2000/0082	Planning permission to retain a store
PA/2000/0973	Planning permission to erect a hotel extension
PA/2001/0213	Application for certificate of lawfulness for the proposed relocation of a marquee to be used as a function room
PA/2001/1029	Planning permission to re-site existing marquee and erect a toilet block to north elevation
PA/2002/0356	Consent to retain a static internally illuminated sign
PA/2003/0262	Planning permission for temporary siting of 4 no steel jack leg containers and erection of 3m high fence
PA/2003/1628	Planning permission to erect a single-storey dining room and link corridors

PA/2004/0481	Planning permission to remove condition 3 of 2003/1628 relating to the months when construction can take place
PA/2006/1579	Consent to retain one static externally illuminated free-standing sign
PA/2007/0451	Consent to retain non-illuminated freestanding sign
PA/2007/1977	Consent to display 3 non-illuminated freestanding advertisements
PA/2016/0029	Planning permission for new main entrance with associated internal works and car park works
PA/2020/1618	Planning permission for replacement log cabin on existing concrete base
PA/2020/635	Planning permission to place a log cabin on existing concrete base
PA/2021/813	Planning permission to erect 19 lodges, new access road and associated hardstanding

Appendix 11: Email from Liz Webster on 27th June 2023

Nayan Gandhi

From: Liz Webster <Liz.Webster@northlincs.gov.uk>
Sent: 27 June 2023 14:52
To: Nayan Gandhi
Cc: [redacted] Caroline Emerson; Rebecca Leggott; Environmental health; Anita Brough
Subject: RE: Westfield Lakes Caravan Site licence application - MAU 35282

Dear Nayan

Thank you for your email response below and I hope you are well.

We have considered the content of your email and your Counsel's opinion. Firstly, we are comfortable with a large number of the points he makes. However, we do believe, based on open-source data, that on the balance of probability a change of use has happened on the land.

As I understand it, from my planning colleagues, one option for you would be to complete and submit a lawful development certificate for existing use clearly indicating the area of the site that you say still benefits from planning permission as a caravan site and why. That information can then be reviewed and determined by planning, and we can then move forward according to the determination. I'm not sure that we can achieve much more via email exchange given our current positions.

Can I also draw you to our comments regarding the Habitats Regulations and whilst I note your comment about looking for the original owner, as it currently stands, this is a new licence, and our Counsel has advised that *"the granting of a new licence, even for 10 units, is a project for the purposes of the Habitats Regulations and requires an assessment, unless it can be shown that there is no likely significant effect arising with regard to the International Nature Conservation Sites."*

As I understand it, that assessment needs to be part of the licence application.

Kind regards
Liz

From: Nayan Gandhi [redacted]
Sent: Tuesday, June 20, 2023 2:39 PM
To: Liz Webster <Liz.Webster@northlincs.gov.uk>
[redacted] Caroline Emerson <Caroline.Emerson@northlincs.gov.uk>; Adaku Watson <Adaku.Watson@northlincs.gov.uk>
Subject: RE: Westfield Lakes Caravan Site licence application - MAU 35282

Hi Liz,

Do you have any update as to when you'll be able to provide the information requested below? I've not seen anything further, but I appreciate that this might come from your planning and environmental colleagues.

Please let me know, thank you.

Kind regards,

Nayan

Nayan Gandhi
Director
Laister Planning Limited
[redacted]

[redacted]

Laister Planning Ltd is a company registered in England under no. 13091207.
Registered Office at Countrywide House, 23 West Bar, Banbury, Oxfordshire, OX16 9SA

From: Nayan Gandh [redacted]
Sent: Monday, June 12, 2023 6:57 PM
To: Liz Webster <Liz.Webster@northlincs.gov.uk>
[redacted] Caroline Emerson <Caroline.Emerson@northlincs.gov.uk>; Adaku Watson <Adaku.Watson@northlincs.gov.uk>
Subject: Re: Westfield Lakes Caravan Site licence application - MAU 35282

Dear Liz,

Apologies, there's a typographical error. as noted below. Also, I attach the Counsel's Opinion, which I inadvertently omitted.

We look forward to hearing from you and receiving the evidence that you relied on and your responses to our queries below in due course.

Nayan

Ps, I've added Caroline Emerson and Adaku Watson into cc for completeness.

Nayan Gandhi - Director
Laister Planning
[redacted]

From: Nayan Gandhi [redacted]
Sent: Monday, June 12, 2023 6:39 pm
To: Liz Webster <Liz.Webster@northlincs.gov.uk>
[redacted]
Subject: FW: Westfield Lakes Caravan Site licence application - MAU 35282

Dear Liz,

With regards to the attached letter, we note at the final paragraph that you remain keen to work with the Green's regarding the site. In the spirit of co-operation and working out a way forward, I would be grateful if the Council would kindly provide any officer's reports related to any matters associated with this letter, but in particular on Points 1 & 3, so we can further understand your reasonings for the decision.

Furthermore, under EIR/FOI regulations as necessary, please would you also kindly supply the evidence which the Council has relied on to draw the following conclusions, as found in the attached letter.

¶
Counsel·has·pointed·to·the·following·–·¶
¶

a. → As·the·hotel·uses·expanded·from·around·1991,·the·area·for·caravan·use·became·constrained·largely·to·the·east·of·the·Site.·There·is·no·subsisting·right·to·use·other·areas·around·the·hotel·and·to·the·north·and·west·for·caravans·because·permissions·for·inconsistent·uses·were·granted·and·implemented.¶
b. → The·issue·therefore·remaining·is·only·as·to·whether·permission·subsists·for·the·part·of·the·site·to·the·east·which·is·the·area·in·which·caravans·are·now·proposed;¶
c. → As·to·that·area,·according·to·our·records,·all·caravan·use·ceased·by·about·2003;¶¶

d. → The·then·owner·indicated·an·intention·to·abandon·the·caravan·use·in·the·context·of·disputes·about·the·licence·required;¶
e. → The·evidence·appears·to·show·that·for·a·prolonged·period·from·about·2003·to·the·flood·in·2013,·the·eastern·area·was·used·as·part·of·the·hotel·use·and·effectively·became·part·of·the·hotel·planning·unit.·¶
f. → Aerial·photographs·and·images·of·wedding·uses·on·the·eastern·area·(all·available·on·public·websites),·along·with·maintenance·of·that·area·as·part·of·the·grounds·of·the·hotel·all·indicate·that·there·has·been·such·a·change·of·use.·The·fact·the·caravan·hard·standings·were·not·removed·does·not·demonstrate·that·the·change·of·use·had·not·occurred.·¶

¶

Whilst we await this information, I would be grateful if the Council could kindly confirm that they have considered the following points in the spirit of co-operation. This is submitted without prejudice to the further points which may be raised following receipt of the above information, and any advice received from Counsel or the client's planning solicitor. You will be aware that our Counsel's Opinion (re-attached for convenience) considered that there was no incompatibility between the two uses which would suggest that one replaced the other.

- You stated in point a: 'As the hotel uses expanded from 1991 the area of the caravan site use became constrained largely to the east of the Site. There is no subsisting right to use the other areas around the hotel and to the north and west for caravans because permissions for inconsistent uses were granted and implemented." Please would you kindly state which permissions that you consider are inconsistent with the 1991 Permission, and provide the associated decision notice and relevant plans and documentation which you used to arrive at this conclusion (please treat this request under EIR/FOI regulations). I would also draw your attention to the aerial photographs analysis referred to below and in the attached, which suggests that the caravan site was not constrained to the Eastern part of the site by 1991, indeed anytime before 2013 (the last caravan in this area was removed between 2016 and 2018 according to aerial photographs).
- You stated in point c.: 'As to that area, according to our records, all caravan use ceased by about 2003." We are unclear why this area is specifically identified. Are you able to advise the extent of the area which you consider represents the 'part of the site to the east'? Thank you.
- You stated in Point e. that: *"The evidence appears to show that for a prolonged period from about 2003 to the flood in 2013, the eastern area was used as part of the hotel use and effectively became part of the hotel planning unit."* You go on in the following point to refer to aerial photographs and images of wedding uses in the eastern area. I attach aerial photographs that we obtained from CentremapsLive.co.uk, which has a comprehensive set of aerial photographs. You will see that in the period from 2003 to 2013, there were caravans on various parts of the site, including the installation

of new ones. These could only be lawful if the 1991 Permission remained extant. There is no evidence of wedding uses in the eastern parts of the site, although we do not know exactly where you refer to.

We would also be grateful if the Council could provide its commentary on the principle established by the *Castle View* Appeal decision (Ref: APP/C1435/X/17/3190604)), as referenced on Pages 10 & 11 of our 7th November 2022 letter (attached for convenience), particularly, why it believes that this could be set aside when the bases remain in situ.

Of course, our client will need to consider the outcome of this with their legal advisors, once we have the evidence which underpins your decision, as requested in this email, but we would also appreciate any responses on the above to assist us in understanding the Council's position.

I would be grateful if you would kindly treat all requests for information under this email either in the spirit of co-operation and share this information (it would need to be disclosed if any Appeal was made in any event), or, if necessary, under EIR/FOI regulations. We would prefer if the latter process is avoided, as this can add significant delay to the processing of matters.

I look forward to hearing from you.

Kind regards,

Nayan

Nayan Gandhi
Director
Laister Planning Limited

[redacted]

Laister Planning Ltd is a company registered in England under no. 13091207.
Registered Office at Countrywide House, 23 West Bar, Banbury, Oxfordshire, OX16 9SA

From: Housing <Housing@northlincs.gov.uk>
Sent: Monday, June 12, 2023 3:07 PM
[redacted]
Subject: Fw: Westfield Lakes Caravan Site licence application - MAU 35282

Good afternoon

Please see attached letter

Kind regards
Karen

Appendix 12: Copy of the 2000 Caravan Site Licence

Caravan sites and Control of Development Act, 1960
SECTION 3

NORTH LINCOLNSHIRE COUNCIL

SITE LICENCE

To: The Realwood Co. Ltd, Far Ings Road, Barton-on Humber, North Lincolnshire, DN18 5RG.

In respect of land situated at: Westfield Lakes, Far Ings Road, Barton-on Humber, North Lincolnshire, DN15 8RG.

(hereinafter called "the said land").

And whereas you are entitled to the benefit of permission (Ref. No. 7/113/91) for the use of the said land as a caravan site.

Now therefore the North Lincolnshire Council

HEREBY GRANT a site licence in respect of the said land pursuant to section 3 of the Caravan Sites and Control of Development Act, 1960, subject to the conditions, set out in the attached schedule.

See Attached Conditions

DATED this 22nd day of August 2000

SIGNED: [redacted]

(Director of Environment and Public Protection)

No.14

NORTH LINCOLNSHIRE COUNCIL

Directorate of Housing, Health & Protection

Caravan Sites and Control of Development Act 1960 (as amended)

Conditions to be attached to site licence in respect of

Westfield Lakes, Far-lngs Road, Barton-on-Humber, DN15 8RG

DEFINITIONS

1. "Caravan" means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include:-

   (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or

   (b) any tent.

2. "Director" means the Director of Environment and Public Protection for North Lincolnshire Council whose address is, Church Square House, PO Box 42, Scunthorpe, North Lincolnshire, DN15 6XQ.

NUMBER OF CARAVANS

3. Not more than 10 Permanent Residential Caravans shall be stationed on the site in the designated area for Permanent Residential Vans, at any one time for the purpose of human habitation.

BOUNDARIES

4. The boundaries of the site shall be clearly marked by a permanent fence, hedge or wall which shall be properly maintained at all times.

5. No caravan, store, building, car parking space or other construction shall be situated within 3 metres of the site boundary provided that, on receipt of a written request from the licence holder, the Director may at his discretion grant exemption from or vary this condition as far as he thinks fit.

SITE PLAN

6. An updated plan shall be provided within 28 days from the date of any written request and at any time when significant alterations to the site layout are undertaken. The cost of such plans shall be met by the licence holder. The plan shall indicate the useable area of the site (as defined by Condition 9) and shall show the position of :-

    a. All caravans, including their enclosure boundaries and all garages, sheds, covered stores, car ports, covered walkways and car parking spaces associated with them.

    b. All site buildings and other permanent structures.

    c. All roads and paths and their associated lighting.

    d. All fire points and fire hydrants.

    e. All public telephones.

    f. All electrical distribution points.

    g. All compounds for the storage of liquefied petroleum gas.

    h. All cesspits, septic tanks and connections to the public sewerage system.

    i. All foul and surface water drainage runs and inspection chambers.

    j. All communal refuse stores.

DENSITY AND SPACE BETWEEN CARAVANS

7. Except where the proposed alteration to the site will not affect compliance with the conditions of the Site Licence, the layout of the site shall not be varied without the prior written consent of the Director, whose consent shall not be unreasonably withheld.

8. Subject to the following variations, every caravan shall be at least 6 metres from any other caravan, which is occupied separately and at least 2 metres from a road.

    - Porches of the open type may protrude 1 metre into the 6 metres separation distance. If they are enclosed, they shall be treated as part of the caravan and there shall be at least 6 metres between them and any other unit.

- Where awnings are used, the distance between any part of the awning and any adjacent caravan shall be not less than 3 metres. Awnings shall not be used for sleeping or cooking and shall neither face each other or touch.

- Eaves, drainpipes and bay windows may extend into the 6 metre space, provided that the total distance between the extremities of 2 adjacent units shall be at least 5.25 metres.

- Where ramps for wheelchair users, verandas, or stairs extending from the unit are installed, there shall be 4.5 metres clear space between them, and adjacent units, and any two such items shall not face each other in any space.

- Any ramps, verandas or stairs, which are enclosed, shall be considered as part of the unit, and shall not extend into the six metre space between adjacent units.

- Any garage, shed or covered storage space between units shall be of non-combustible construction (including non-combustible roof) and sufficient space shall be maintained around each unit so as not to prejudice means of escape in case of fire. Windows in such structures shall not face towards the units on either side, unless there is at least 6 metres between the window and the adjacent unit.

- If there is at least 6 metres between a shed or covered storage space and an adjacent structure or unit, excluding that unit served by the shed or storage space, the shed or storage space need not be of non-combustible construction.

- There shall be no car ports or covered walkways within the 6 metre space.

NB: The point of measurement for porches, awnings etc, is the exterior cladding of the caravans.

9. The gross density shall not exceed 50 caravans to the hectare, calculated on the basis of the useable area (excluding lakes, roads, communal services and other areas unsuitable for the siting of caravans) rather than total site area.

10. No caravan shall be sub-divided to provide a separate unit of accommodation or be let in multiple occupation.

HARD STANDINGS

11. Every caravan shall stand on a concrete hard standing which shall extend over the whole area occupied by the caravan placed upon it and project at least 1 metre outwards from the entrance or entrances to the caravan.

ROADS, GATEWAYS AND FOOTPATHS

12. All roads and footpaths shall allow adequate access for fire appliances and other emergency vehicles. In particular, all roads shall be at least 3.7 metres wide or, if they form part of a clearly-marked one-way system, 3 metres wide, with a height clearance of at least 4.5 metres. Gateways shall be at least 3.1 metres wide. Roads shall allow for vehicles with a turning circle of 17 metres diameter.

13. All roads shall be constructed suitably of concrete, tarmacadam or block paving and shall be maintained adequately at all times.

14. Every caravan standing shall not be more than 50 metres from a road and shall be joined to the road by a footpath at least 0.75 metres wide. Footpaths shall have a hard surface of concrete, tarmacadam, flags or block paving.

15. Vehicle routes within the site shall remain unobstructed, with a minimum clearance of 3 metres at all times.

16. Turning facilities shall be provided and remain unobstructed. These shall be sufficient for vehicles with a turning circle of 17 metres.

17. Suitable speed humps shall be within 10 metres of the site entrance and at intervals of not more than 100 metres on all site roads. A clear sign, warning of speed humps, shall be maintained at the site entrance.

18. All site roads and paths shall be provided with artificial lighting sufficient to allow safe movement around the site during the hours of darkness.

FIRE FIGHTING APPLIANCES

Fire Points

19. No caravan or site building shall be more than 30 metres from a fire point. Fire points shall be housed in weatherproof structures; and all equipment susceptible to mal-functioning or damage by frost shall be suitably protected. They shall be easily accessible and clearly and conspicuously marked "FIRE POINT". Access to fire points and fire hydrants shall not be obstructed or obscured at any time. During hours of darkness, fire points shall be illuminated by normal street lighting or other means.

Fire Fighting Equipment

20. Each fire point shall include a permanently connected hydraulic hose reel with a water supply of sufficient pressure and flow to give a jet of at least 5 metres at 30 litres per minute from the hose nozzle. This shall comply with the appropriate sections of British Standard 5274 and British Standard 5306 Part 1.

Hoses shall be at least 30 metres long, terminating in a small hand-control nozzle and shall be housed in boxes painted red and marked "HOSE REEL".

Hose reels shall be maintained in a manner that allows easy and immediate deployment of the hose. The hose reel drum shall be mounted vertically, allowing the hose· to fall unhindered from the drum during deployment.

21. Fire hydrants shall be installed within 100 metres of every caravan standing. Hydrants shall comply with British Standard 750 and be properly installed, protected and indicated.

Fire Warning

22. A means of raising the alarm in the event of fire shall be maintained at each fire point by way of manually operated rotating bells, other manually operated sounders or an electrically operated alarm bell or siren. The alarm sounders should be loud enough to be heard clearly inside all caravans within a 30 metre radius.

Maintenance

23. All alarm and fire fighting equipment shall be maintained in working order at all times and shall be inspected and tested at least once a year by a competent person. A log book shall be kept on the site to record all tests and remedial action and shall be available for inspection by the licensing authority at any time. The costs of all inspections and servicing shall be met by the licence holder.

FIRE NOTICES

24. A clearly written and conspicuous notice shall be provided and maintained at each fire point to indicate the action to be taken in case of fire and location of the nearest telephone. This notice should include the following duly completed:

"On discovering a fire

i) Ensure that the caravan or site building involved is evacuated
ii) Raise the alarm
iii) Call the fire brigade (the nearest telephone is sited……...
……
……

iv) Attack the fire using the fire fighting equipment provided, but only if it is safe to do so.

It is in the interest of all occupiers of this site to be familiar with the above routine and the method of operating the fire alarm and fire fighting equipment".

FIRE HAZARDS

25. Grass and vegetation shall be cut as necessary to prevent it from becoming a fire hazard to caravans, buildings or other installations on the site. Any such cuttings shall be disposed of in a manner as to avoid creating a fire risk or causing a nuisance.

26. The spaces beneath and between caravans shall not be used for the storage of combustible materials.

27. Bonfires shall not be permitted on the site.

TELEPHONES

28. An immediately accessible telephone, in an artificially lit area, shall be available on the site for calling emergency services. A permanent notice by the telephone shall include the address of the site.

LIQUIFIED PETROLEUM GAS (LPG) AND MAINS GAS

29. LPG storage supplied from tanks shall comply with Guidance Booklet HSG 34 "The Storage of LPG at Fixed Installations" or, where LPG is supplied from cylinders, with Guidance Note CS4 "The Keeping of LPG in Cylinders and Similar Containers" as appropriate.
(Where there are metered supplies from a common LPG storage tank, then Guidance Note CS11 "The Storage and Use of LPG at Metered Estates" provides further guidance).

30. Exposed gas bottles or cylinders shall be allowed within 6 metres of an adjacent unit in the case of existing units, so long as they are connected to the van and are situated immediately adjacent to it. On new plots exposed gas bottles or cylinders shall not be within 6 metres of an adjacent unit.

31. LPG installations shall conform to British Standard 5482, "Code of Practice for domestic butane and propane gas burning installations, Part 2: 1977 Installations in Caravans and non-permanent dwellings".

32. For mains gas supply, the Gas Safety (Installation and Use) Regulations 1994 (as amended) shall be complied with for the installation downstream of any service pipe(s) supplying any primary meter(s) and such service pipes shall comply with the Pipelines Safety Regulations 1996.

ELECTRICAL INSTALLATIONS

33. The site shall be provided with an electricity supply sufficient in all respects to meet all reasonable demands of the caravans situated on it.

34. Any electrical installations, which are not Electricity supplier works and circuits, subject to Regulations made by the Secretary of State under section 16 of the Energy Act 1983 and, Section 64 of the Electricity Act 1947, shall be installed, tested and maintained in accordance with the provisions of the Institution of Electrical Engineers' (IEE). Regulations for Electrical Installations for the time being in force and, where appropriate, to the standard which would be acceptable for the purposes of the Electricity Supply Regulations 1988, Statutory Instrument 1988 No 1057.

35. Work on electrical installations and appliances, together with inspections thereof, shall be carried out only by competent persons who shall be one of the following:

The Manufacturer's appointed agent
The Electricity supplier
A professionally qualified Electrical Engineer
A member of the Electrical Contractor's Association
A certificate holder of the National Inspection Council for Electrical Installation Contracting, or
A qualified person acting on behalf of one of these (in which case it should be stated for whom he is acting).

36. The electrical installation shall be inspected within 3 months of the issue of the Site Licence and thereafter not less than once in every 12 months, excluding underground installations which shall be inspected at least once every 3 years subsequent to the initial inspection. When an installation is inspected, it should be judged against the current Regulations.

The inspector shall, within one month of such an inspection, issue an inspection certificate in the form prescribed in the IEE Wiring Regulations, which shall be retained by the Site Operator and displayed with the Site Licence. The cost of the inspection and report shall be met by the Site Operator, and a copy of the report shall be submitted to the Director within 7 days.

37. If an inspection reveals that an installation no longer complies with the Regulations in force at the time it was first installed, any deficiencies shall be rectified in accordance with recommendations in the Inspection Certificate, and in any case not later than 28 days, or such longer time as agreed in writing by the director. Any major alterations and extensions to an installation and all parts of the existing installation affected by them shall comply with the latest version of the IEE Wiring Regulations. Upon completion of any remedial work or major alterations and extensions to an installation, the installation shall be inspected and a certificate issued in a similar way to above in 36.

WATER SUPPLY

38. - The site shall be provided with an adequate water supply in accordance with appropriate Water Bylaws and statutory quality standards.

- Each caravan must be provided with an adequate piped supply of wholesome water.

- A scheme to protect water supply pipes from the risk of frost or damage however caused shall be submitted to the Director.

NB: Any change to the water supply shall be notified to the Director 28 days prior to such change. Any necessary details shall be submitted to indicate compliance with this condition.

DRAINAGE, SANITATION AND WASHING FACILITIES

39. Satisfactory provision shall be made for foul drainage, by connection to a public sewer or sewage treatment works. Each caravan standing shall be provided with a connection to the foul drainage system; the connection shall be capable of being made air-tight when not in use.

40. The site and every hard standing shall be provided with an adequate drainage system for the complete and hygienic disposal of foul, rain and surface water from the site, buildings, caravans, road and footpaths.

41. Each caravan shall have its own water supply and water closet. Every caravan brought on to the site shall be provided with its own internal water closet, bath or shower, wash hand basin and sink. Every water closet shall be provided with a piped water supply and every bath or shower, wash hand basin and sink shall be provided with piped hot and cold water supplies. All amenities shall be connected to the foul drainage system.

REFUSE DISPOSAL

42. Every caravan standing shall have an adequate number of suitable refuse bins with close fitting lids. Arrangements shall be made for the bins to be emptied regularly on a weekly basis.

PARKING

43. One car only may be parked between adjoining caravans, provided that the door. to neither caravan is obstructed. Plastic or wooden boats shall not be parked between caravans.

44. Suitable surfaced parking spaces shall be provided on the site at a ratio of at least one per caravan plus one further space for every ten caravans.

RECREATION SPACE

45. Space equivalent to about one tenth of total area shall be allocated for children's games and/or other recreational purposes.

NOTICES

46. A suitable sign shall be displayed prominently at the site entrance indicating the name of the site and the name, address and telephone number of the site manager.

47. A copy of the site Licence with its conditions shall be displayed prominently on the site, together with a copy of the Electrical Certificate.

48. Notices and a plan shall be displayed on the site, setting out the action to be taken in the event of an emergency. They shall show where the Police, Fire Brigade, Ambulance and local Doctors can be contacted, and the location of the nearest public telephone. The notices shall also give the name and the location/telephone number of the site licence holder or his/her managing agent.

49. All notices shall be adequately maintained, kept in a legible condition, suitably protected from the weather and displayed out of the direct rays of the sun, preferably in areas which are artificially lit.

SITE MAINTENANCE

50. All parts of the site shall be properly maintained and shall be kept in a clean and tidy condition to the satisfaction of the Director.

MISCELLANEOUS

51. No caravan intended for residential purposes shall be brought onto the site unless it complies with British Standard 3632.

52. All caravans shall be maintained in a good state of repair to the satisfaction of the Director.

53. No converted buses or other similar vehicles shall be permitted on the site.

54. Touring caravans shall not be allowed on the site except where they are owned by residents and stored on site when not in use. Storage of such touring caravans must be such as to maintain the separation standards set out in condition 8.

Appendix 13: Copy of Council's March 2022 Letter

This matter is being dealt with by:
Telephone: 01724 297000
E-mail: environmental.health@northlincs.gov.uk
Ref: 35252
Date: 2nd March 2022

North Lincolnshire Council

www.northlincs.gov.uk

Helen Manderson
Director of Economy and the Environment
Church Square House
30-40 High Street
Scunthorpe
North Lincolnshire
DN15 6NL

Mr Nat Green
Green Planning Studio
Unit D, Lunedale
Upton Magna Business Park
Upton Magna
Shrewsbury
SY4 4TT

By e-mail - Nat.Green@gspltd.co.uk

Dear Sir,

Caravan Site and Control of Development Act 1960
Application for a permanent residential site for 46 park homes at Westfield Lakes Barton upon Humber

As you know, North Lincolnshire Council has been considering Caravan Licence Application FS358136824 for the above site. The proposal site lies within and/or adjacent to the Humber Estuary Site of Special Scientific Interest (SSSI), Special Area for Conservation (SAC), Special Protection Area (SPA) and Ramsar site. This means that the site is designated as being nationally and internationally important for various estuarine and wetland habitats, breeding, wintering and passage birds and a number of other species, including lampreys (jawless fish).

Because of this, the Council as competent authority, must consider the licence application in the context of The Conservation of Habitats and Species Regulations 2017 (hereafter "the Habitats Regulations"). We also need to consider how the Habitats Regulations will apply to:

- Any works to be carried out under General Development Order, otherwise known as "permitted development".
- Any extant planning permissions where development is not yet complete. In particular, we shall consider permission 7/113/91 on the understanding that you intend to rely on this permission for your proposals.

It appears to the Council that;

- None of these projects is necessary for the management of Humber Estuary SAC, SPA or Ramsar site.

- Each of the projects would have a likely significant effect on the Humber Estuary SAC, SPA or Ramsar site alone and/or in combination with other plans and projects.

As competent authority, we therefore need to carry out a Habitats Regulations Assessment of each element of the project, as outlined above. In accordance with government guidance, "The competent authority will require the applicant to provide such information as may reasonably be required to undertake the assessment." In this case, the information required will include, but not be limited to:

- A plan, in Shapefile, pdf or Jpeg format, showing the location of the proposals in relation to the boundaries of the Humber Estuary SAC, SPA and Ramsar site.
- Details of the proposed site layout and proposed works, including numbers and locations of caravans, any proposed visual screening, concrete pads, access roads etc.
- Proposed construction methods, noise restrictions, and equipment to be used in construction.
- The potential for ongoing noise and visual disturbance to breeding, passage and wintering birds and any measures proposed to minimise such disturbance.
- Details of external lighting, including vertical and horizontal overspill diagrams.
- Details of site drainage and foul water disposal and the potential for foul water and/or surface water to enter the Humber Estuary SAC, SPA and/or Ramsar (including Barton/Barrow Claypits).
- A habitat survey of the application site and surrounding areas, with particular reference to habitat features that may support breeding, wintering or passage birds associated with the Humber Estuary SPA and Ramsar Site.
- Breeding bird and vantage point survey information, with particular reference to marsh harrier and bittern.
- Recent wintering and passage survey information sufficient to assess the usage of the application site and adjacent SSSI units by birds associated with the Humber Estuary SPA and Ramsar Site.
- Projected numbers of visitors and residents, with an assessment of the potential for additional recreational use of the area, compared to the current baseline, and the potential for recreational disturbance of breeding, passage and wintering birds. This should include:
    - Information on existing background levels of recreational disturbance.
    - Projections of any likely increase in disturbance – clearly showing the any assumptions and the basis upon which this has been calculated.
    - Any measures proposed to discourage recreational disturbance.
    - Links to previous studies of recreational disturbance of birds using the Humber Estuary: https://www.humbernature.co.uk/resources/reports
- Details of known plans or projects that could act in combination with the applicant's projects with regard to potential impacts on the Humber Estuary SCA, SPA and/or Ramsar site.

If you intend to rely on permitted development rights for any aspect of the proposals, you are advised to seek the opinion of Natural England as to whether the works would have a likely significant effect on the Humber Estuary SAC, SPA and/or Ramsar site. If the answer is that there would be a likely significant effect, then prior approval from the local planning authority (LPA) will be required for these works.

Where Natural England's opinion, or our Habitats Regulations Assessment, identifies a likely significant effect, then we will carry out an appropriate assessment of the projects. We can only give consent where it is possible to ascertain that there will be no adverse effect on the integrity of the Humber Estuary SAC, SPA and/or Ramsar site. We will take into account any conditions, restrictions or modifications that could be made to the projects or consents. However, after this, if it is still not possible to determine that there would be no adverse effect on the integrity of the Humber Estuary SAC, SPA and/or Ramsar site then we must refuse consent and/or revoke the extant planning permission.

If you have any questions about these specific requirements, please contact Mr Andrew Taylor by email - andrew.taylor@northlincs.gov.uk.

If you have any questions specifically related to the licence, please feel free to contact us by email – environmental.health@northlincs.gov.uk.

Please can you also confirm by when you will be able to supply the information reasonably required for the Habitats Regulations Assessments.

Finally, please note that this letter has also been sent to Mr Jason Green.

Yours faithfully

[redacted]

pp **Mrs E Webster**
Group Manager
Environmental Health & Housing

Appendix 14: Copy of Laister Planning November 2022 Letter

Mrs E Webster
Group Manager
North Lincolnshire Council
Church Square House
30-40 High Street
Scunthorpe, North Lincs
DN15 9NL

7th November 2022

Dear Mrs Webster,

Caravan Site and Control of Development Act 1960 – Application for a Site Licence for a Permanent Residential Site for 45 Mobile Homes (Static Caravans) at Westfield Lakes, Barton-upon-Humber

Response to North Lincolnshire Council Letter dated 2nd March 2022

Laister Planning Limited has been appointed by Jason Green (and Green's Park Homes Limited) to prepare a response to North Lincolnshire Council's ("the Council") letter dated 2nd March 2022 (copy enclosed with this letter). Mr Jason Green applied for a Residential Caravan Site Licence ("SL") under the Caravan Sites and Control of Development Act 1960 (the "1960 Act", as amended) Section 3 on 23rd August 2021, registered under application reference FS358136824. The issue is the effect of the Conservation of Habitats and Species Regulations 2017 (the "2017HR", or "Habitats Regulations"). This letter has been drafted with the input of Richard Harwood KC.

Summary

The Habitats Regulations do not apply to decisions whether to issue a caravan site licence. They are irrelevant to those decisions and is it unlawful for the Council to decline to issue a caravan site licence or to delay doing so because of the 2017HR.

The permitted development rights to carry out development which is required by a site licence are subject to a condition imposed by the 2017HR, reg 75. The approval of the local planning authority (the "LPA") is required if the development

is likely to have a significant effect on a European site. This obligation only arises prior to the commencement of such permitted development. The local planning authority is not entitled to carry out a Habitats Regulation Assessment (an "HRA") 'off its own bat'.

The duty under the 2017HR to review existing planning permissions only applies where the development is not complete. The development is the material change of use of the site. That is complete. The present owner's proposals do not amount to a material change of use of the site and so are not development under the planning permissions.

In any event the ecological advice from RSK Biocensus is that the proposals will not be likely to have a significant effect on a European Site.

The Council's Letter

The Council's letter was issued in response to the site plan submitted with the Site Licence application which sought changes to the site (described and shown below). It is understood that the proposals appeared to the Council, as the "Competent Authority" or "CA" under the 2017HR, might have a potential adverse effect on the nearby Humber Estuary Site of Special Scientific Interest (SSSI), Special Area for Conservation (SAC), Special Protection Area (SPA) and Ramsar Site (the "Designations"), which are nationally and internationally designations for important estuarine and wetland habitats. As a result, the Council has indicated that it must consider the licence application against the context of the 2017HR, because Mr Green's proposals are not deemed to be necessary for the management of the Designations. The Council indicates that they are required to prepare Habitats Regulations Assessment (an "HRA") regarding the proposals, and it has identified two elements of Mr Green's proposals for which an HRA must be prepared, relating to the lawfulness of the site's use under the relevant planning permission and the reliance on permitted development rights to install necessary infrastructure that would support the site's use, as follows:

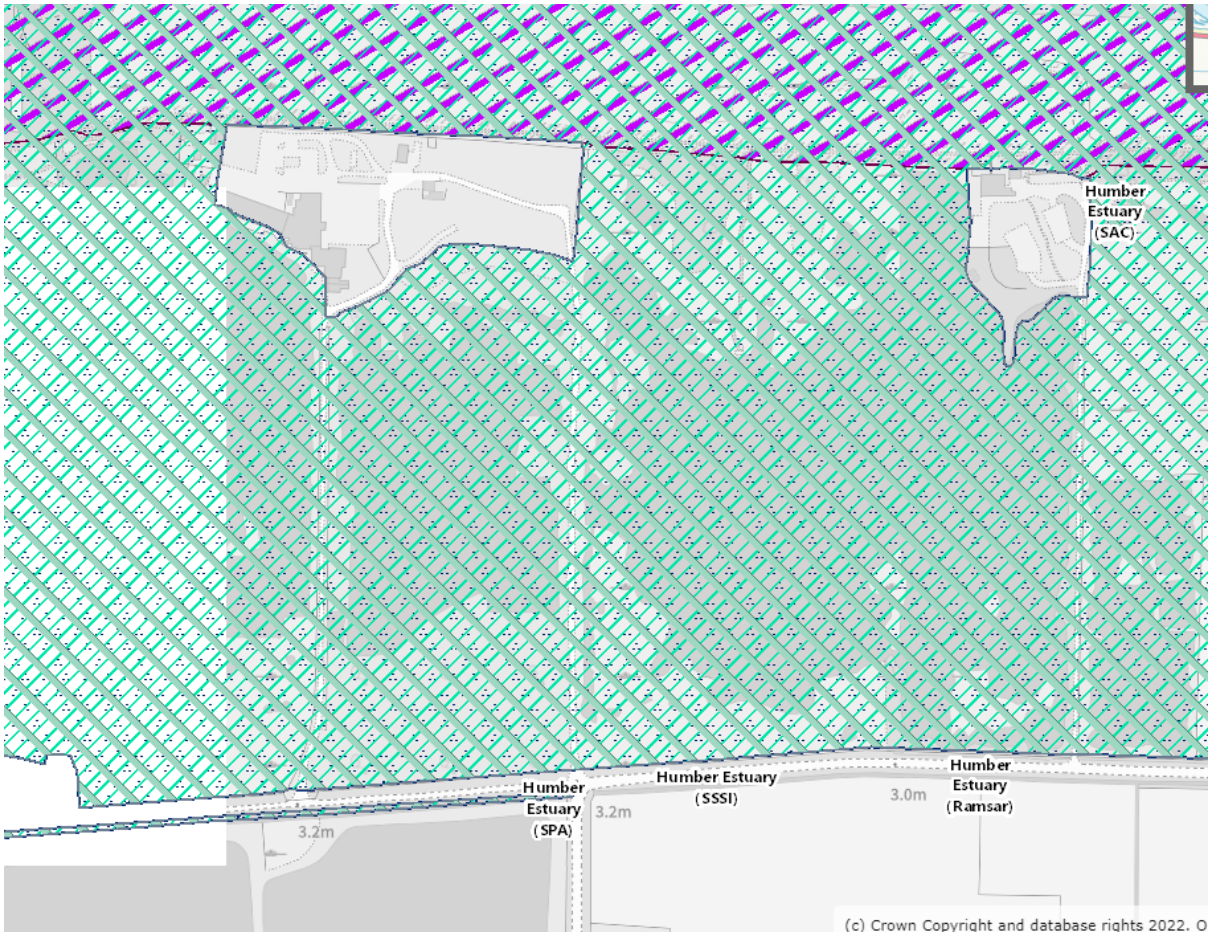
"

- *Any work carried out under the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO, as amended), and*
- *Any extant planning permissions where the development is not yet complete. In particular, we shall consider permission ref 7/113/91 on the understanding that you intend to rely on this permission for your proposals."*

They will require Mr Green to provide some information to support the preparation of an HRA, as listed in the Council's Letter.

We discuss each in turn below, taking the site licence first, then the use of land (the second matter identified by the Council, as it relates to the underlying planning permission for the caravan site use).

It is helpful to note that the Designations surround our client's site, as follows:



Key:

Ramsar

SAC

SPA

SSSI

The hotel and caravan site are purposely excluded from the Designations (at least mostly), although the access falls within the SPA, SSSI and RAMSAR.

Background to the Site Licence Application

Accompanying the site licence application (the form of which is enclosed with this letter), the following plan was submitted, which shows a layout for 45 residential mobile homes (static caravans) within the eastern part of the existing Westfield Lakes Caravan Park:

This would be a re-arrangement of the caravan site as compared to its existing layout, through the provision of two additional roadways enabling all caravans to gain access directly from a roadway, as well as the removal of existing bases and the provision of new ones in a looser arrangement than existing. Some caravans will be stationed on existing (and perhaps extended) bases, particularly at the south-western edge.

By way of background, Jason Green acquired the former Humber Bridge Hotel (previously known as the Reeds Hotel) and Westfield Lakes Caravan Park site on 19th July 2021, following the administration/bankruptcy of the previous owner's company. Jason Green and Green's Park Homes are unaffiliated with the previous owner.

The site is located within an area of managed land around the former Hotel, and caravan site, at the northern end of Far Ings Road. The site is situated between the Humber River and lakes created following historic extraction activities in the area. The main access is located at the eastern edge of the site, being a paved single-track access with intermittent passing bays. A previous access was located between two lakes located to the south of the site.

The Westfield Lakes Caravan Park has existed since the early 1970s, having hosted both static and touring caravans throughout its years. It is currently unoccupied by caravans, although there are the remnants of around 44 caravan bases that can be found within the site.

Withholding of the Site Licence

The letter issued by the Council followed an application for site licence. However, the site licence has been withheld following the Council's intentions to review of the 1991 Permission, as set out in the Council's letter dated 2nd March 2022. This was confirmed in a telephone call between Anita Hunt (Council's Licensing Officer), Mr Green and Laister Planning. However, it appears to be the incorrect approach, and the Council has no ability to withhold the issuing of the Licence where an extant planning permission exists.

The Licence application was duly made in accordance with the 1960 Act, Section 3. Sub-section (3) is clear that a Site Licence can only be issued where the site benefits from permission under the TCPA, and Sub-section (4) is clear that they must determine the licence application within 2 months of that date.

In this case, there is no dispute that the 1991 Permission remains extant (indeed, the Council issued a Site Licence in 2000, as discussed below). Section 3 simply contains no provisions that state that the licence can be withheld whilst a review under the 2017HR is conducted or because of the 2017HR.

A site licence decision may only be taken with regard to site licensing considerations, not planning considerations: *Babbage v North Norfolk District Council* (1989) 59 P&CR 248. In terms of the issue of a site licence that scope is even more constrained: a licence has to be issued if there is planning permission for a non-permanent residential use. Where the application is for a relevant protected site, so allows permanent residential occupation, limited matters relating to caravan site management in accordance with the site licence and funding are considered. None of these relate to the Habitats Regulations. The 2017HR are relevant to planning but not to site licensing. They cannot be used as

a reason for refusing a site licence or a basis for imposing conditions on such a licence.

The 2017HR does not apply to site licences or to non-planning or non-environmental controls such as building regulations or alcohol or entertainment licensing.

The habitats assessment and review provisions apply to specific consents or approvals (in Part 6, Chapters 2 to 7 of the 2017HR) and then subject to specific exceptions, 'in relation to all other plans and projects': reg 62(1). It is notable (but not itself decisive) that those other chapters contain planning and environmental approvals, but not caravan site licences or anything like them.

Establishing a caravan site on land is a project. Changing the operator is not, nor is any change which does not require planning permission. The requirement to carry out appropriate assessment may apply before giving 'consent, permission or other authorisation for, a plan or project': reg 63(1). The project is the use of the land as a caravan site, see as a comparison the Environmental Impact Assessment regime. That already has consent: planning permission has been granted several times, most recently in 1991.

Issuing a caravan site licence is not giving a consent, permission or other authorisation for the project. It is merely licensing the operator.
This interpretation is confirmed by the 2017HR taken as a whole. Appropriate assessment requires consideration of environmental impacts which are outside the scope of caravan site licensing and the capabilities of the site licensing authority. Reg 63(6) requires consideration to be given to conditions or restrictions on the proposed consent, but site licence conditions can only relate to caravan site licensing matters, not purely planning or environmental matters.
Reg 64(1) concerns where the project 'must be carried out', so is addressing future projects or, at least, those which do not already have consent. As already mentioned, site licensing is not identified in the 2017HR, although planning is. Additionally the site licensing regime has always been structured so that planning matters are determined by the planning authorities; see the planning applications which flowed from site licence applications under section 17 of the 1960 Act, Babbage, or the use of permitted development rights (which can be withdrawn by the local planning authority) for operational development.

Of course, if the planning status changes in the future, the licence can be updated.

It follows that the 2017HR has no bearing on whether a site licence should be granted or the terms of such a licence. The Council is obliged to determine the application. It would be an error of law to decline to do so because of the Habitats regime.

We therefore request that the site licence be issued without delay (unless you require more information to process the application, in which case, a request for more information should be sent immediately to Mr Green so the licence can be processed with haste).

We note turn to the contents of the Council's March 2022 letter and the intended reviews.

1. Review of Permission Ref: 7/113/1991 (the "1991 Permission")

We understand that the Council wishes to review the 1991 Permission. As it was initiated via a site licence application, the review must be conducted by the local planning authority and not by the site licensing authority. It is separate to the processing of the site licence application. The outcome of the review may ultimately affect any site licence which is issued, but it should not withhold the processing of the licence application whilst it is undertaken.

We assume that the review is being undertaken according to 2017HR reg 71-74 (and HRA under reg 63), although this is not stated in the letter. Whilst it is not stated in the Council's letter, it is assumed that this has been initiated because of Mr Green's proposals to alter the site's arrangement, and as such, the Council now considers that the site is 'incomplete' (the term is discussed again below)

Copies of the relevant Articles are enclosed with this letter, and for completeness, we provide a summary below.

Relevant Regulations of the 2017HR

Regulation 63 sets out the relevant assessment of adverse effects, including making an Appropriate Assessment. Sub-paragraph (2) indicates that a person applying for a consent shall provide information as required by the CA for the purposes of the assessment.

Regulation 71 stipulates when a CA can conduct a review of a permission. It states:

" 71.— Planning permission: duty to review

(1) Subject to the following provisions of this regulation, the review provisions apply to any planning permission or deemed planning permission, unless—

(a) the development to which it related has been completed;

(b) it was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun; or

(c) it was granted for a limited period and that period has expired."

The remaining sub-articles of reg 71 are not relevant to this response.

The development is the making of a material change of use of the land. That development has taken place and so is complete. The duty to review does not therefore apply This is discussed again below.

Reg 72 sets out the provisions of the review, as follows:

Planning permission: consideration on review

72.—(1) In reviewing any planning permission or deemed planning permission under the review provisions, the competent authority must —

(a) consider whether any adverse effects could be overcome by planning obligations under section 106 of the TCPA 1990 (planning obligations)(**1**) being entered into; and

(b) if it considers that those effects could be so overcome, invite those concerned to enter into such obligations.

(2) So far as the adverse effects are not thus overcome, the authority must make such order as may be required under—

(a) section 97 of the TCPA 1990 Act (power to revoke or modify planning permission); or

(b) section 102 of, or paragraph 1 of Schedule 9 to, that Act (orders requiring discontinuance of use etc.).

(3) Where the authority ascertains that the carrying out or, as the case may be, the continuation of the development would adversely affect the integrity of a European site or a European offshore marine site, it nevertheless need not proceed under the review provisions if and so long as it considers that there is no likelihood of the development being carried out or continued.

Regulation 73 sets out what would be required for any orders to modify/revoke a permission under TCPA Section 97 or to discontinue a use under TCPA Section 102 to take effect. Importantly, it also states:

"(5) An order under section 97 of that Act made in pursuance of regulation 72(2) ***does not affect so much of the development authorised by the permission as was carried out before the order took effect.***

(6) An order under section 102 of or paragraph 1 of Schedule 9 to that Act made in pursuance of regulation 72(2) ***does not affect anything done before the site became a European site or European offshore marine site.****"* (LPL Emphasis)

It is clear that any development which has already been carried out before an Order under TCPA Sections 97 or 102 is not affected by actions following a review.

We come to these two sub-sections below, but it means that any development that has already taken place as of now could not be considered by any review.

If such an Order is confirmed then the local planning authority is liable to pay compensation, including for the loss of value of the site (TCPA, s 107). Regulation 74 sets out the liability of the local planning authority pay compensation if the Order is not confirmed.

It is noted that the 2017HR reflects the provisions of previous Habitats Regulations regarding extant planning permission, including the original ones issued in 1994..

DEFRA has published Circular 01/2005 (or ODPM Circular 06/2005) titled: 'Biodiversity and Geological Conservation – Statutory Obligations and Their Impact within the Planning System' to assist in understanding the provisions of the 1994HR, and this Circular remains extant and continues to apply in relation to 2017HR as regards to the planning permission review process (which is fundamentally the same as the 1994HR, as noted above). It states:

> 35. Regulations 50, 51, 55 and 56 of the Habitats Regulations require the local planning authority to review extant planning permissions, including outline permissions, granted by them that are likely to have a significant effect on a European site, either individually or in combination with other plans or projects, and, following that review, to affirm, modify or revoke such permissions. This includes all permissions that are valid but not yet commenced and permissions that have been started but are not yet complete[39]. Regulation 55 requires planning authorities to consider whether certain planning permissions deemed to be granted under section 90(1) of the Town and Country Planning Act 1990 should, in their opinion, be reviewed.

Footnote 39 states: *"Under regulation 57(5) of the Habitats Regulations 1994, an order made under section 97 of the TCPA 1990 in pursuance of regulations 55* ***shall not affect so much of the development authorised by the permission as was carried out prior to the order taking effect****"* (LPL emphasis).

In summary, any review can only take place where the 'development' was not 'completed'. For the purposes of a review, it is important to note that the Designations were first introduced in August 2007, according to information published by the Joint Nature Conservation Committee (JNCC), as follows:

- The Humber Estuary SPA was first classified as an SPA in 2007-08, with the Site Code: UK9006111.
- The Humber Estuary SAC was first confirmed as an SAC on 2009-12, with the Site Code: UK0030170.

- The Humber Estuary RAMSAR was first designated on 31st August 2007, according to the 'Information Sheet on Ramsar Wetlands (RIS)', with the RIS reference: WK11031.

Legal Background to Caravan Sites

Before discussing whether the development was 'complete' for the purposes of 2017HR Reg 71, it is important to set out the legal background regarding caravan sites, which are uses of land in planning terms. As such, these operate fundamentally differently to operational development (such as the construction of buildings).

Being uses of land, once the use has been lawfully established (e.g. by way of implementation of a planning permission that causes the material change of use to occur), changes to such uses are not treated as 'development' (according to TCPA Section 55, which refers to the definition of development) that requires planning permission. This is because such changes are not 'material'. This would include bringing on, or taking off, caravans where the site is already established, or a re-arrangement of caravans within the caravan site, as the use of the land would remain the same (control can only be imposed by way of conditions requiring a specific layout to be retained in perpetuity).

It is necessary to clarify that caravan sites may require operational development to support the use of land. The operational development that is required either forms part of the planning permission or is prescribed via conditions of a site licence. However, the infrastructure that exists forms part and parcel of the use of the land and does not need to be occupied by caravans. This is discussed in the "Castle View" case (Appeal ref: APP/C1435/X/17/3190604, a copy of which is enclosed with this letter). That case related to a Lawful Development Certificate (LDC) application that sought year-round use of a caravan site. The Inspector confirmed that the Council in that scenario conflated 'use' and 'occupation' of the site (Paragraph 12). It was confirmed by an Inspector that the provision of infrastructure itself continues the caravan site use, because the infrastructure only exists where the use of the land as a caravan site is already lawful. The Inspector stated in Paragraphs 12, 13 and 15:

"12. The Council has sought information from the Appellant about which particular pitches have been occupied during the disputed period but in my view that is misconceived. In this respect it seems to me that the Council has conflated "use" with "occupation"[2]. The condition, even if given sensible meaning,

does not simply require occupation of the caravans to cease or the site to be vacated but rather refers to use. ***Whilst occupation of caravans would not be possible if the use had been discontinued, lack of occupation of caravans or vacation of the site does not necessarily lead to the conclusion that the use has ceased.***

"13. Therefore, if the condition can be read as requiring the use to cease, then as a matter of fact and degree I find that the condition has not been complied with. In my view, ***even if no caravans had been occupied and no support buildings used from the end of November to March, that would not be sufficient to bring the use of the site to an end. The character of the land with its permanent infrastructure to support the use would remain that of a caravan site. Its use as such would not have been discontinued even if it had been vacated for part of each year.***

…

*"15. A requirement that specific caravans which have been occupied during the winter months should be identified is misguided****. If the site has continued to operate throughout the disputed months, with the support buildings in use and some caravans occupied, then the use of the land as a caravan site (as might be said to be required to cease by the condition) has not ceased regardless of which or how many caravans have been occupied.****"***

It is clear that so long as the infrastructure for a caravan site remains on site, the use continues. This is pertinent to the purposes of whether the 1991 Permission was 'completed' (i.e. the use remained intact for the duration of the period).

Finally, it is noted that the House of Lords confirmed at *Pioneer Aggregates* [1985] 1 AC 132 that a planning permission cannot be abandoned and remains extant until such time as it is replaced (either by some other planning permission or a lawful material change of use occurring). The concept that a planning permission cannot be abandoned was very recently reaffirmed by the Supreme Court in *Hillside* [2022] UKSC 30.

We now turn to the matters raised in the Council's letter.

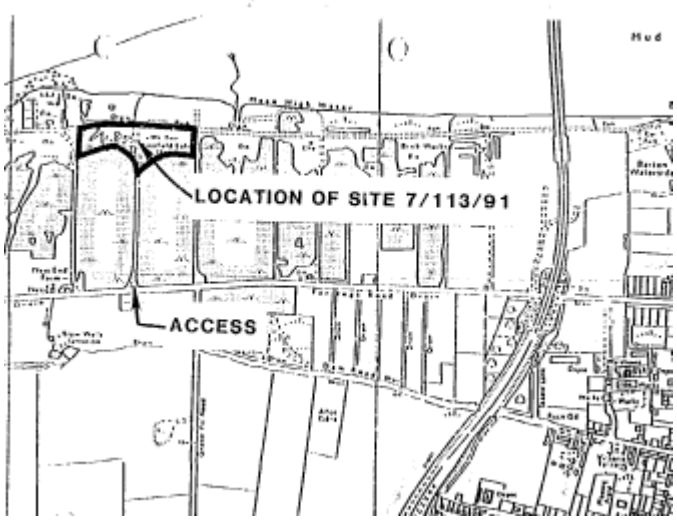
Is the Development 'Complete'?

Turning to the question of a review of the extant permissions, the question being asked is whether the development is 'complete' for the purposes of reg 71.

As referred to above, Laister Planning understands that the Council no longer considers that the development is 'complete' because of Mr Green's proposals to re-arrange the site. As we will demonstrate below, the proposals have little to do with the review under reg 71, as his proposals would not alter the site's extant use as a caravan site.

The 1991 Permission

It is necessary to understand the planning permission itself before we answer the question of whether it was complete. The planning permission that you wish the local planning authority to a review of is the 1991 Permission, which was granted on 3rd December 1991 for: *"Remove condition 2 of planning permission BA/3/72B and 7/RET/16/80 to allow year round residential use of the existing caravan site."* A copy of the Decision Notice can be found enclosed to this letter. The site location plan is as follows:



It is noted that the permission was a variation of condition permission (presumably made under TCPA Section 73). This means that it is a permission which relates to previous planning permissions, in this case dating back to 1972 and 1981 respectively. It is clear that the 1991 Permission granted a use of land as a residential caravan site, in accordance with those original permissions.

Condition 1 had a timescale which required that the development must be begun within 5 years of the date of the permission. As set out below, it is likely that the permission was implemented within the 5 year time limit.

Condition 2 limited the number of caravans on site to not more than 70 caravans/chalets/mobile homes. Importantly, this condition does not stipulate that the whole of the development would comprise 70 units, but rather sets an upper limit to the development. As such, a single residentially occupied caravan on the site after the permission was granted would have implemented that permission in full by constituting a material change of use of the land under the planning permission.

Condition 4 required the approval of the layout and proposals for landscaping before any additional caravans could be brought onto site (although the condition does not specify what the baseline number of caravans was at the time, so it is likely to be imprecise and fail the relevant tests for use of conditions). Condition 7 required that before more than 25 caravans were brought onto site, the access to Far Ings Road at the south-eastern boundary of the site shall be suitable surfaced according to details approved by the Planning Authority. Condition 8 stated that no additional units shall be constructed on site until a scheme has been approved indicating the external finishes and colours of the additional units.

The other conditions are irrelevant to this purpose of this letter. Ultimately, the permission did not contain any pre-commencement conditions which would indicate that the permission could not have been implemented immediately.

Discussion

The question is whether the development authorised by the permission was 'complete' for the purposes of reg 71(1)(a). The definition of 'complete' is not defined in the Regulations, but it can be interpreted via reg 73 of the same Regulations, which sets out what actions could be taken in relation to any review. These are limited to development that has not yet been carried out by the time any Orders under TCPA Sections 97 or 102 are confirmed. In other words, development completed at present time would not be considered by provisions of reg 73.

We are discussing a use of land: caravan site. For the material change of use of land to be 'complete', it would need to have been carried out, that is to say it was "used as a caravan site."

The evidence below demonstrates that the caravan site was already operational before the Designations came into effect in August 2007. The permission is therefore 'complete' for the purposes of 2017HR Article 71, and as such, it is our

view that it is not lawful to conduct any further reviews of the permission. The key evidence is as follows (with the 1991 Permission red line drawn over):

- 2no 1987 Aerial Photographs
- A 1993 Photograph from Gravel Pit Road/Far Ings Road
- A 1994 Aerial Photograph
- A 1999 Aerial Photograph
- A 2000 Site Licence issued by the Council
- A 2003 Aerial Photograph

The 2no 1987 Aerial Photographs

The following aerial photographs were taken by Ordnance Survey (provided by Historic England) on 16th April 1987 and 23rd October 1987, as follows (with zoomed in versions adjacent).

April 1987 Image:

Zoomed in version:

October 1987 Image:

A zoomed in version:

Both aerial photographs show caravans on the site at the point of the photographs being taken, with there being many touring caravans and some statics there in April 1987 (first set of photographs), and fewer in October 1987 (second set of photographs).

These provide a baseline for the site's conditions in advance of the 1991 Permission being issued.

1993 Photograph from Gravel Pit Road/Far Ings Road

The following photograph was provided by North Lincolnshire Museum, and it is dated 20th January 1993. It was taken from the junction of Gravel Pit Road and Far Ings Road:

The photograph clearly shows quite a number of caravans, spread across the width of the site, which can be better seen in the zoomed in extract below:

There is no question that many caravans of various types are stationed on the land in early 1993, so after the date of the 1991 Permission. The use of land was a caravan site, and the 1991 Permission was clearly implemented at this point.

Undated Photograph

An undated oblique aerial photograph was found within the hotel, which we assume to have been taken some time after 1991 but it appears to be before the 1994 Aerial Photograph. This is based on the number of bases installed, and the block at the rear of the hotel and the chalet to the north of the hotel both still exist, which were replaced by the 1994 Aerial Photograph (see below). Finally, the

touring caravan in the foreground at the bottom of the picture appears on a perpendicular orientation, which was a change from the orientation in the 1987 Aerial Photograph, but seen in the 1994 Aerial Photograph.

1994 Aerial Photograph

The following aerial photograph was provided by the National Collection of Aerial Photography (NCAP) and it is dated 2nd November 1994, so only 3 days after the 1994 HR came into force:

A zoomed in version clearly shows a significant number of caravans (estimated at 21 static and touring units) on site at the time of the photograph.

More importantly, a substantial increase in the number of caravan bases can be seen (taking the total to 44 caravan bases in total at the time of the aerial photograph) between the 1987 Aerial Photograph and the 1994 Aerial Photograph, and the orientation of some of the other bases has changed (from parallel to the northern boundary of the site to being perpendicular). This will correspond with the 1993 photograph taken from Gravel Pit Road, which also shows the site heavily in use and occupied by a significant number of caravans after the 1991 Permission was granted.

It is therefore concluded that the 1991 Permission was implemented, and the caravan site's land use was established for the stationing of up to 70 caravans of any time, **in advance of the 1994HR coming into force**.

1999 Aerial Photograph

An 28th April 1999 aerial photograph from Getmapping.com shows the site remained operational and occupied many years after the 1991 Permission was granted, as there are clearly static caravans stationed in the south-west corner and touring caravans in the northern part of the site. It is noted that the eastern access road is now paved.

2000 Site Licence

The Council issued a site licence on 22nd August 2000 (No 14, see enclosures to this letter), which refers to the 1991 Permission (referred to as the "2000SL"). It licenced the site for residential static caravans, and it remains the most current licence as it has not yet been revoked/replaced, although it will be amended once the new owner's site licence is issued by the Council. It also demonstrates that the 1991 Permission was implemented as the Council would not have been able to issue this Licence unless the 1991 Permission was considered extant (in accordance with Caravan Sites and Control of Development Act 1960 Section 3).

Whilst the 1994HR was enacted by the point when the 2000SL was issued, the Humber Estuary was not subject to the Designations at this point.

2003 Aerial Photograph

An aerial photograph dated 28th April 2003 shows the site as still containing various infrastructure and a single caravan, at its northern end. The hotel's expansion to the west was now completed by this time, and the new access to the site via the eastern access road has been paved, with passing bays clearly visible along its route. All of this work pre-dates the Designations.

In accordance with the Castle View decision referred to above, the infrastructure installed on site maintains the use (the infrastructure cannot be separated from the use of land), and this infrastructure remains on site today. The use of land as a caravan site has continued from 1991 to the present day, and is kept alive in any event by the extant permission. There has been no event which leads to the loss of the lawful use.

As such, it is Laister Planning's view that the planning permission remains 'completed' as the material change of use has taken place and the site remains a caravan site. It continues to host some 44 caravan bases (if not more), all of which existed well before the Designations came into force, and indeed before the 1994HR came into force. The Council's proposed review of the 1991 Permission under 2017 reg 71 fails the relevant tests set out in sub-paragraph (1)(a), because the 'development' is already completed. This is because the 1991 Permission did not stipulate a minimum number of caravans or control the layout; it simply granted the use of a caravan site for 'up to' 70 caravans and it was implemented. It was therefore effectively complete at the point that the use of land commenced. Whilst our client proposes to re-arrange the location of the caravans within the extant site, this would not alter the 'use of land' as permitted.

However, in the event that the CA concludes incorrectly that the 1991 Permission was not 'completed' notwithstanding the evidence that we have provided above, according to reg 72 and 73, the Council would have two options with regards to any actions that it could take to address any identified adverse impacts: the Council may either invite the owner to enter into a planning obligation under TCPA Section 106 to regulate the use of the land, or issue an Order under Articles 97 or 102. Neither option would be effective in our view for the following reasons:

- Any obligation made under TCPA Section 106 would fail the relevant tests for use of such obligations given the extant nature of the permission as described above.
- Any Order issued under TCPA Sections 97 or 102 would not affect the development already carried out – i.e. the use of land for up to 70 caravans – and this would remain extant given it is subject to permission which was implemented before the relevant Designations were confirmed.

Conclusion on Review of 1991 Permission

The 1991 Permission was a variation of condition permission which simply sought to amend the conditions of extant planning permissions. It is clear that the 1991 Permission was implemented, as there were occupied caravans on site and the

Council issued a Site Licence in 2000 in accordance with this permission and confirmed the residential use of the site (which it could only do if it considered that the 1991 Permission was extant). Given this evidence, it is unlikely that it could be seen as not being 'complete'. As such, the necessary test for the Competent Authority to conduct a review under 2017HR reg 71 fails, because there is clear evidence that the use of the site as a caravan site after the planning permission was issue. In any event, there were more historic permissions which were already extant period to this permission, and in all circumstances, the site was a lawful caravan site before the 1994HR or the Designations were in place. Aerial photography and other photographic evidence shows numerous caravans on site, with at least 44 caravan bases installed.

The use of the site has continued throughout this period, given the infrastructure remains in situ at the present time, and so the use has been maintained (in accordance with the principle established in the Castle View Appeal decision).

The change of a caravan site by way of re-arrangement, or the bringing on of caravans (touring or static) would not amount to 'development' in accordance to case law as there was no control imposed by condition that required the retention of a specific layout. It is our conclusion that the Council is unable to review the 1991 Permission under 2017HR reg 71 as the permission is already 'complete'.

In any event, it is noted that even the 2017HR contains references to the fact that until an Order, issued under the TCPA Section 97 or 102 is confirmed, the review proposed under reg 71 carries no effect on the existing 1991 Permission. Furthermore, any Order pursuant to 2017HR regs 72 and 73 would not prevent the caravan site from existing going forward (not at least in accordance with more historical planning permissions), as such Orders would not remove existing development that has already taken place. As such, a site licence will always remain necessary and should be issued without delay.

2. Review of the Permitted Development Rights

The second review proposed in the Council's letter is to review the use of permitted development rights which are available via the GPDO, for the operational development that would accompany the proposed re-arrangement of the site by Mr Green (as shown in the masterplan submitted with the site licence application, and referred to at the start of the letter).

The Council, as the CA, has requested that the client approach Natural England for an opinion under 2017HR reg 76. It is not clear if the Council already concluded that there might be a significant effect, as the initial trigger point is reg 75, where it

is in the Council's gift to rule that the infrastructure is not likely to cause a significant effect in advance of triggering the requirements under reg 75.

The permitted development rights which Mr Green would seek to rely on to provide 45 static caravans within the site are derived from the conditions of a Site Licence (once one is issued to him), which would include the relocation of bases, roads and parking spaces to accommodate 45 residential static caravans, along with the installation of any drainage or other requirements to support the re-arrangement of the site.

As described above, the site already has 44 hardstanding bases, roads, etc.

Legal Background

The permitted developments rights accrue from the GPDO Article 3, which states that permission granted for the development set out in Schedule 2 of the GPDO, subject to the provisions of 2017HR reg 73-76. Schedule 2, Part 5, Class B is applicable here, which grants permission for anything which is required by the conditions of a site licence.

2017HR reg 73 and 74 have been revised above. Regulation 75 states:

General development orders

75. It is a condition of any planning permission granted by a general development order made on or after 30th November 2017, that development which—

(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

(b) is not directly connected with or necessary to the management of the site,

must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77 (approval of local planning authority).

Regulation 75 appears to only apply where the proposals subject to the permitted development rights are likely to have a significant effect on the Designations. Where there is likely to be a significant effect, prior approval would be required for the permitted development rights according to reg 77. Regulation 76 enables the owner to ascertain Natural England's opinion as to whether the proposed use of permitted development rights for the infrastructure associated with the caravan site is likely to cause a significant effect. The Council letter indicates that such an opinion from Natural England should be obtained.

Turning to whether the proposed infrastructure associated with Mr Green's proposals are 'likely' to result in a significant effect', RSK Biocensus, the client's ecologist, have visited the site and considered the proposals against the Habitats Regulations. They have stated that *"[Jason Green's] revised plan shows fewer*

caravan bases along the north of the site and an additional access road along the southern boundary of the site. In my view, the proposed relocation of the bases and installation of associated infrastructure (including roads and drainage) is unlikely to have any significant impact on the Humber Estuary SAC, SPA, Ramsar site, and SSSI in addition to the impacts that were assessed in the HRA screening report dated July 2022."

We agree with this assessment, and we consider that the proposed infrastructure is unlikely to result in a significant effect and the proposals fall outside of the remit of 2017HR reg 75 (and therefore outside the remit of reg 63). We conclude this for the following reasons.

- The site is currently lawfully used as a caravan site according to a planning permission. It already hosts some 44 caravan hardstanding pads intermixed with grass areas. Caravans can be stationed on the bases at the present time. This represents a baseline effect, and the proposed change with Mr Green's scheme is only the increase of 1no unit over what is already available which is not a material change.
- In any event, whilst the ratio of concrete pads to grass amenity areas will change somewhat with Mr Green's proposals (they will be spread out farther apart then they are in their current compact arrangement), the effect will be minimal on the neighbouring Designations, which the boundaries of which were clearly intentionally drawn to exclude and accommodate this site, and would certainly not be 'significant'. In some cases, the existing pads will be partly or completely re-utilised.
- The roadway layout will change from a singular road with various stubs leading to various parts of the site to three through roads which will be able to provide direct access to all caravans. The site already hosts several segments of roadway to service the existing caravan pads. So whilst there would be three new strands of roadways that replace the existing roadways, this is again not substantially different to what is already there, simply in a different location.
- There will be no change to drainage conditions on site. The 2000 Site Licence (Condition 40) requires the provision of adequate drainage and hygienic disposal systems, and as set out in the application forms for the site licence, drainage will be connected to the existing mains sewers for the site, which is the same as the current situation.
- We would note that there would be no physical changes proposed to the existing access, which already serves the hotel as well as the caravan site.

Furthermore, as referred to above, the site is subject to an extant planning permission which would allow it to be used for up to 70 caravans. The site has previously hosted a combination of touring and static caravans, although the permission has no control on either type being stationed on site.

Mr Green is considering whether they would temporarily run a touring caravan site for up to 70 touring caravans on site for any occupation type (i.e. holiday or residential) whilst the reviews by the Council are undertaken, to earn some income and ensure that the site is occupied (the hotel has been subject to some recent vandalism). This could be undertaken without the further need for planning permissions, and there would be no need to rely on permitted development rights to implement this as the hotel's existing facilities would be utilised as agreed with the licensing team (as such reg 75-77 are not relevant). In that scenario, the lawful effect is likely to be greater on the neighbouring Designations than any infrastructure that would be required by a site licence in support of the installation of 45 residential static caravans, as proposed by Mr Green.

Given the existing lawful use of the site is for 70 caravans of any type and any occupation (according to the 1991 Permission), and the presence of existing infrastructure on site which could be utilised without further consent, it is Laister Planning's view that the utilisation of permitted development rights to install infrastructure that will be required to update the layout to deliver Mr Green's proposals are unlikely to cause a significant effect on the European designated sites adjacent to the property. As such, there is no further need to consider the 2017HR with regards to permitted development rights.

We would kindly request that the Council, as the CA, establishes a view as to whether Article 75 is even triggered in light of the above evidence. We believe that the Council will find that it is more likely that the infrastructure associated with the proposed caravan site will not cause a significant effect on the neighbouring Designations, as there will be little change from what is already existing.

Conclusions

Following an application by our client for a site licence for a re-arrangement of the existing Westfield Lakes Caravan Park, which he recently purchased, the Council has indicated that they intend to undertake two reviews of the proposals, according to the 2017 HR due to the proximity of the site to European and national ecological designations made in 2007:

1. A review of the extant 1991 Permission for the site

2. A review of the use of permitted development rights to install infrastructure to support the proposed re-arrangement of the site.

These reviews appear to be conducted independently from the site licence application which Mr Green submitted. The Council has withheld the issuance of the site licence based on their desire to conduct these reviews. However, there is no legal basis for withholding the issuance of the site licence according to the requirements of the 1960 Act. As such, we kindly request that licence is issued as soon as possible.

Turning to the reviews, for the review of the 1991 Permission, this relates to the use of the site as a residential caravan site. The 2017HR indicates that a review is only lawfully possible where the development under the planning permission is not yet complete. In this regard, we have assumed that because Mr Green is making changes to the site's layout, the Council has interpreted the change as meaning the permission was 'incomplete'. It is our view that the review is unlawful.

The caravan site was already operational before the 1994HR came into force, and critically before the Humber Estuary was established as a European site in August 2007. The site was occupied by almost 40 caravans in November 1994, and the infrastructure for the site remains today. The Council issued a site licence in 2000 confirming the use of the site as a residential caravan site. The movement of caravans on and off of an established site, or its re-arrangement within the context of the same planning permission, is not 'development'.

Whilst the caravan site is unoccupied at the present time, extant planning permissions cannot lawfully be abandoned. In any event, the infrastructure which remains on site, sustains any caravan site use throughout time, because the infrastructure only exists where the underlying use already exists. As such, the 1991 Permission remains 'completed' as it provides the lawful permission for the caravan site use. Its re-arrangement falls simply within the context of what was approved, as the permission did not control the layout going forward.

The second review relates to the reliance on permitted development rights to install infrastructure associated with the re-arrangement of the caravan site to support Mr Green's proposals. The Council must determine if the infrastructure is potentially likely to cause a significant effect on the Designations. However, with the 1991 Permission, it is already possible to station up to 70 caravans without the further need for infrastructure (albeit in the form of touring caravans), and there are already 44 bases within the site which are suitable for immediate use. Mr Green's proposals only seek to re-arrange the layout of an existing caravan site,

through the provision of a revised location for bases and the provision of some additional roadways to ensure each caravan has its own direct access to the internal roads. There is no change to how the site would drain. They will also provide 45 units on site, which is 1 more than the number of bases known to be on site. The likely effect of the additional infrastructure is insignificant given the established baseline is for 70 caravans, and the client is potentially considering to use the site temporarily for the stationing of 70 touring caravans (which do not require any further infrastructure) whilst the review matter is being resolved.

We look forward to hearing from the Council regarding confirmation that you are discontinuing the review of the 1991 Permission, and that the local planning authority agree that the marginal changes arising from the infrastructure which benefits from permitted development rights would not likely cause a significant effect.

If you have any queries regarding matters arising from this letter, please do not hesitate to contact me 07538 139797 or via email on nayan@laister.co.uk.

We look forward to hearing from you.

Yours sincerely,

[redacted]

Nayan Gandhi
Director

cc. Andrew Law, Council Strategic Development Officer
Anita Hunt, Council Environmental Health Technical Officer
Andrew Taylor, Council Natural Environment Specialist
Client

Encl

Enclosure 1 – Copy of Council letter dated 2nd March 2022

This matter is being dealt with by:
Telephone: 01724 297000
E-mail: environmental.health@northlincs.gov.uk
Ref: 35252
Date: 2nd March 2022

North Lincolnshire Council

www.northlincs.gov.uk

Helen Manderson
Director of Economy and the Environment
Church Square House
30-40 High Street
Scunthorpe
North Lincolnshire
DN15 6NL

Mr Nat Green
Green Planning Studio
Unit D, Lunedale
Upton Magna Business Park
Upton Magna
Shrewsbury
SY4 4TT

By e-mail - Nat.Green@gspltd.co.uk

Dear Sir,

Caravan Site and Control of Development Act 1960
Application for a permanent residential site for 46 park homes at Westfield Lakes Barton upon Humber

As you know, North Lincolnshire Council has been considering Caravan Licence Application FS358136824 for the above site. The proposal site lies within and/or adjacent to the Humber Estuary Site of Special Scientific Interest (SSSI), Special Area for Conservation (SAC), Special Protection Area (SPA) and Ramsar site. This means that the site is designated as being nationally and internationally important for various estuarine and wetland habitats, breeding, wintering and passage birds and a number of other species, including lampreys (jawless fish).

Because of this, the Council as competent authority, must consider the licence application in the context of The Conservation of Habitats and Species Regulations 2017 (hereafter "the Habitats Regulations"). We also need to consider how the Habitats Regulations will apply to:

- Any works to be carried out under General Development Order, otherwise known as "permitted development".
- Any extant planning permissions where development is not yet complete. In particular, we shall consider permission 7/113/91 on the understanding that you intend to rely on this permission for your proposals.

It appears to the Council that;

- None of these projects is necessary for the management of Humber Estuary SAC, SPA or Ramsar site.

- Each of the projects would have a likely significant effect on the Humber Estuary SAC, SPA or Ramsar site alone and/or in combination with other plans and projects.

As competent authority, we therefore need to carry out a Habitats Regulations Assessment of each element of the project, as outlined above. In accordance with government guidance, "The competent authority will require the applicant to provide such information as may reasonably be required to undertake the assessment." In this case, the information required will include, but not be limited to:

- A plan, in Shapefile, pdf or Jpeg format, showing the location of the proposals in relation to the boundaries of the Humber Estuary SAC, SPA and Ramsar site.
- Details of the proposed site layout and proposed works, including numbers and locations of caravans, any proposed visual screening, concrete pads, access roads etc.
- Proposed construction methods, noise restrictions, and equipment to be used in construction.
- The potential for ongoing noise and visual disturbance to breeding, passage and wintering birds and any measures proposed to minimise such disturbance.
- Details of external lighting, including vertical and horizontal overspill diagrams.
- Details of site drainage and foul water disposal and the potential for foul water and/or surface water to enter the Humber Estuary SAC, SPA and/or Ramsar (including Barton/Barrow Claypits).
- A habitat survey of the application site and surrounding areas, with particular reference to habitat features that may support breeding, wintering or passage birds associated with the Humber Estuary SPA and Ramsar Site.
- Breeding bird and vantage point survey information, with particular reference to marsh harrier and bittern.
- Recent wintering and passage survey information sufficient to assess the usage of the application site and adjacent SSSI units by birds associated with the Humber Estuary SPA and Ramsar Site.
- Projected numbers of visitors and residents, with an assessment of the potential for additional recreational use of the area, compared to the current baseline, and the potential for recreational disturbance of breeding, passage and wintering birds. This should include:
    - Information on existing background levels of recreational disturbance.
    - Projections of any likely increase in disturbance – clearly showing the any assumptions and the basis upon which this has been calculated.
    - Any measures proposed to discourage recreational disturbance.
    - Links to previous studies of recreational disturbance of birds using the Humber Estuary: https://www.humbernature.co.uk/resources/reports
- Details of known plans or projects that could act in combination with the applicant's projects with regard to potential impacts on the Humber Estuary SCA, SPA and/or Ramsar site.

If you intend to rely on permitted development rights for any aspect of the proposals, you are advised to seek the opinion of Natural England as to whether the works would have a likely significant effect on the Humber Estuary SAC, SPA and/or Ramsar site. If the answer is that there would be a likely significant effect, then prior approval from the local planning authority (LPA) will be required for these works.

Where Natural England's opinion, or our Habitats Regulations Assessment, identifies a likely significant effect, then we will carry out an appropriate assessment of the projects. We can only give consent where it is possible to ascertain that there will be no adverse effect on the integrity of the Humber Estuary SAC, SPA and/or Ramsar site. We will take into account any conditions, restrictions or modifications that could be made to the projects or consents. However, after this, if it is still not possible to determine that there would be no adverse effect on the integrity of the Humber Estuary SAC, SPA and/or Ramsar site then we must refuse consent and/or revoke the extant planning permission.

If you have any questions about these specific requirements, please contact Mr Andrew Taylor by email - andrew.taylor@northlincs.gov.uk.

If you have any questions specifically related to the licence, please feel free to contact us by email – environmental.health@northlincs.gov.uk.

Please can you also confirm by when you will be able to supply the information reasonably required for the Habitats Regulations Assessments.

Finally, please note that this letter has also been sent to Mr Jason Green.

Yours faithfully

[redacted]

pp **Mrs E Webster**
Group Manager
Environmental Health & Housing

Enclosure 2 – Copy of the Site Licence Application Form submitted on Mr Jason Green's behalf

Your reference number is FS358136824.

Thank you for submitting Caravan site licence application form

Customer Name:

Title	First name	Last name
Mr	Jason	Green

Customer Address:

Flat	House	Street	Locality / Village	Town	Postcode
Green Planning Studio Ltd	Unit D, Lunesdale	Upton Magna Business Park		Shrewsbury	SY4 4TT

Customer Contact Details:

Email Address	Phone Number	Mobile Number
application@gpsltd.co.uk	01743709364	

Position: Agent

Are there any other parties with an interest in the site?: No

Address or description of the site for which the site licence is required.: Humber Bridge Hotel Caravan Park
West field Lakes
Far Ings Road
Barton-upon-Humber
DN18 5RG

Acreage of the site: 8.61

Has the applicant held a site licence, which has been revoked at any time in the last three years?: No

State type of caravan site for which the site licence is required: Permanent residential

State maximum number of caravans proposed to be stationed on the site at any one time for the purposes of human habitation.: 45

Attach electronic copy of your lay-out plan: 5868-L-01 SitePlan.pdf

Main water supply: Mains water connection

Waste water disposal: Mains

Sewage disposal: Package treatment plant then pumped to mains

Refuse disposal: Individual collection

How many caravans receive their main water supply from intermediate storage tanks and not from the rising main?: :

Has planning permission for the site been obtained from the local planning authority?: Yes

Date of permission: 05/12/1991

Issuing authority: Glanford Borough Council

Date (if any) on which permission will expire:

Are you applying for a caravan site which was already in use on or before 9th March 1960, without planning permission from the local planning authority?: No

Was the site in use as a caravan site: at any other time since 9 March 1958

If so, when:: 01/01/1971

Do all caravans have their own internal WC?: Yes

Do all caravans have their own bath/shower/wash hand basin?: Yes

Are WC/washing facilities provided in separate blocks?: No

Do you have mains/bulk tank gas supply to caravans?: Yes

Do you provide gas bottles for residents?: No

Do you have a gas bottle storage area?: No

Is mains electricity supplied to any caravans?: Yes

Is the supply to the caravans protected by a trip switch (Residual Current Device)?: Yes

is a trip switch (RCD) provided to each caravan?: Yes

Is there a current Electrical Inspection Certificate for the site?: No

How many part and full-time employees work on the site?: n/a

How many live on site?: n/a

Does the site owner or manager live on site?: None

Declaration: I/We certify that the details given above are, to the best of my/our knowledge and belief, a true statement.

Dated: 23/08/2021

Declaration:

Declaration
I accept

Enclosure 3 – Relevant Regulations of the 2017HR

Conservation of Habitats and Species Regulations 2017/1012
reg. 71 Planning permission: duty to review

Law In Force

Version 1 of 1

30 November 2017 - Present

Subjects
Environment

71.— Planning permission: duty to review

(1) Subject to the following provisions of this regulation, the review provisions apply to any planning permission or deemed planning permission, unless—

(a) the development to which it related has been completed;

(b) it was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun; or

(c) it was granted for a limited period and that period has expired.

(2) The review provisions do not apply to planning permission granted or deemed to have been granted—

(a) by a development order, local development order or neighbourhood development order (but see regulations 75 to 81);

(b) by virtue of the adoption of a simplified planning zone scheme or of alterations to such a scheme (but see regulation 82); or

(c) by virtue of the taking effect of an order designating an enterprise zone under paragraph 5 of Schedule 32 to the Local Government, Planning and Land Act 1980 (enterprise zones) [1] , or by virtue of the approval of a modified enterprise zone scheme (but see regulation 83).

(3) Planning permission deemed to be granted by virtue of a direction of a kind specified in paragraph (4) must be reviewed in accordance with Chapter 4, Chapter 5 or Chapter 6 (as the case may be) in conjunction with the review of the underlying authorisation, consent or order.

(4) Directions of a kind referred to in paragraph (3) are—

(a) a direction under section 90(1) of the TCPA 1990 in respect of development for which an authorisation has been granted under section 1 of the Pipe-lines Act 1962 (pipe-line construction authorisations) [2] ;

(b) a direction under section 5(1) of the Pipe-lines Act 1962;

(c) a direction under section 90(1) of the TCPA 1990 in respect of development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989 (consents required in relation to generating stations and overhead lines);

(d) a direction under section 90(2) of the TCPA 1990 or section 57(2) of the Town and Country Planning (Scotland) Act 1997 (which relate to development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989);

(e) a direction under section 90(2ZA)(a) or (b) of the TCPA 1990 or section 57(2ZA)(a) or (b) of the Town and Country Planning (Scotland) Act 1997 (which relate to the variation of a deemed grant of planning permission in relation to

development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989 and to the variation of conditions of any such deemed grant of planning permission); or

(f) a direction under section 90(2A) of the TCPA 1990 (which relates to development in pursuance of an order under section 1 or 3 of the Transport and Works Act 1992 (orders as to railways, tramways or inland waterways) [3]).

(5) In the case of planning permission deemed to have been granted in any other case by a direction under section 90(1) of the TCPA 1990, the local planning authority must—

(a) identify any such permission which it considers falls to be reviewed under the review provisions; and

(b) refer the matter to the government department or person which made the direction.

(6) The department or person to whom a reference is made under paragraph (5)(b) must, if in agreement that the planning permission does fall to be so reviewed, review the direction in accordance with the review provisions.

(7) Except as otherwise expressly provided, the review provisions do not apply to planning permission granted or deemed to be granted by a public general Act of Parliament.

(8) Subject to paragraphs (3) to (6), where planning permission granted by the appropriate authority falls to be reviewed under the review provisions—

(a) it must be reviewed by the local planning authority; and

(b) the power conferred by section 97 of the TCPA 1990 (power to revoke or modify planning permission) [4] is exercisable by that local planning authority as in relation to planning permission granted on an application under Part 3 of that Act (control over development).

(9) In a non-metropolitan county in England the function of reviewing any such planning permission is to be exercised by the district planning authority unless it relates to a county matter (within the meaning of paragraph 1 of Schedule 1 to the TCPA 1990 [5]), in which case it is exercisable by the county planning authority.

Notes

1 1980 c. 65. Paragraph 5 of Schedule 32 was amended by the Planning (Consequential Provisions) Act 1990 (c. 11), Schedule 1, Part 1.
2 1962 c. 58. Section 1 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; by the Planning Act 2008 c. 29, Schedule 2, paragraphs 5 and 6; and by S.I. 1999/742 and 2007/1519.
3 1992 c. 42. Sections 1 and 3 were amended by the Planning Act 2008, Schedule 2, paragraphs 51, 52 and 53.
4 Section 97 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 4; and by the Housing and Planning Act 2016 (c. 22), Schedule 12, paragraphs 1 and 25.
5 Paragraph 1 of Schedule 1 was amended by the Planning and Compensation Act 1991, Schedule 1, paragraph 13.

reg. 72 Planning permission: consideration on review

Law In Force

Version 1 of 1

30 November 2017 - Present

Subjects
Environment

72.— Planning permission: consideration on review

(1) In reviewing any planning permission or deemed planning permission under the review provisions, the competent authority must—

(a) consider whether any adverse effects could be overcome by planning obligations under section 106 of the TCPA 1990 (planning obligations) [1] being entered into; and

(b) if it considers that those effects could be so overcome, invite those concerned to enter into such obligations.

(2) So far as the adverse effects are not thus overcome, the authority must make such order as may be required under—

(a) section 97 of the TCPA 1990 Act (power to revoke or modify planning permission); or

(b) section 102 of, or paragraph 1 of Schedule 9 to, that Act (orders requiring discontinuance of use etc.).

(3) Where the authority ascertains that the carrying out or, as the case may be, the continuation of the development would adversely affect the integrity of a European site or a European offshore marine site, it nevertheless need not proceed under the review provisions if and so long as it considers that there is no likelihood of the development being carried out or continued.

Notes

1 Section 106 was substituted by the Planning and Compensation Act 1991, section 12(1), and amended by the Greater London Authority Act 2007 (c. 24), section 33; the Planning Act 2008 (c. 29), section 174(1) and (2); the Growth and Infrastructure Act 2013 (c. 27), Schedule 2, paragraphs 1 and 3. It is prospectively amended by the Housing and Planning 2016, section 158(3), and is prospectively repealed by the Planning and Compulsory Purchase Act 2004 (c. 5), Schedule 6, paragraphs 1 and 5, from a date or dates to be appointed.

reg. 73 Planning permission: effect of orders made on review

Law In Force

Version 1 of 1

30 November 2017 - Present

Subjects
Environment

73.— Planning permission: effect of orders made on review

(1) An order under section 97 of the TCPA 1990 made pursuant to paragraph (2) of regulation 72 (planning permission: consideration on review) takes effect upon the service of the notices required by section 98(2) of that Act (procedure for section 97 orders) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(2) Where the appropriate authority determines not to confirm such an order—

(a) the order ceases to have effect as from the time of that determination;

(b) the permission revoked or modified by the order thereafter has effect as if the order had never been made;

(c) any period specified in the permission for the taking of any action, being a period which had not expired prior to the date upon which the order took effect under paragraph (1), is extended by a period equal to that during which the order had effect; and

(d) for any date specified in the permission as being a date by which any action should be taken ("the specified date"), not being a date falling before the date upon which the order took effect under paragraph (1), there is substituted such later date as postpones the specified date by a period equal to that during which the order had effect.

(3) An order under section 102 of, or paragraph 1 of Schedule 9 to, the TCPA 1990 made pursuant to regulation 72(2), in so far as it requires the discontinuance of a use of land or imposes conditions upon the continuance of a use of land, takes effect upon the service of the notices required by section 103(3) of that Act (confirmation of section 102 orders) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(4) Where the appropriate authority determines not to confirm any such order, the order ceases to have effect as from the time of that determination, and the use which by the order was discontinued or upon which conditions were imposed—

(a) may thereafter be continued as if the order had never been made; and

(b) is to be treated for the purposes of the TCPA 1990 as if it had continued without interruption or modification throughout the period during which the order had effect.

(5) An order under section 97 of that Act made in pursuance of regulation 72(2) does not affect so much of the development authorised by the permission as was carried out before the order took effect.

(6) An order under section 102 of or paragraph 1 of Schedule 9 to that Act made in pursuance of regulation 72(2) does not affect anything done before the site became a European site or European offshore marine site.

reg. 74 Planning permission: compensation

Law In Force

Version 1 of 1

30 November 2017 - Present

Subjects
Environment

74.— Planning permission: compensation

(1) Where the appropriate authority determines not to confirm an order under section 97 of the TCPA 1990 which has taken effect under regulation 73(1), any claim for compensation under section 107 of that Act (compensation where planning permission revoked or modified) [1] is limited to any loss or damage directly attributable to the permission being suspended or temporarily modified for the duration of the period between the order so taking effect and the appropriate authority's determination not to confirm the order.

(2) Where the appropriate authority determines not to confirm an order under section 102 of the TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works) which has taken effect under regulation 73(3), any claim for compensation under section 115 of that Act (compensation in respect of orders under section 102) is limited to any loss or damage directly attributable to the effect of the order in suspending or imposing conditions on any right to continue a use of the land for the duration of the period between the order so taking effect and the appropriate authority's determination not to confirm the order.

(3) Paragraph (4) applies where—

(a) compensation is payable in respect of—

(i) an order under section 97 of the TCPA 1990; or

(ii) any order mentioned in section 115(1) of that Act or to which that section applies by virtue of section 115(5); and

(b) the order has been made pursuant to regulation 65 (review of existing decisions and consents).

(4) Where this paragraph applies, the authority liable to pay the compensation must refer the question as to the amount of the compensation to the Upper Tribunal for its determination, unless and to the extent that in any particular case the appropriate authority has indicated in writing that such a reference and determination may be dispensed with.

Notes

1 Section 107 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 8 and Schedule 6, paragraph 13; and by the Housing and Planning Act 2016 (c. 22), Schedule 12, paragraphs 1 and 28.

reg. 75 General development orders

Law In Force

Version 1 of 1

30 November 2017 - Present

Subjects
Environment

75. General development orders

It is a condition of any planning permission granted by a general development order made on or after 30th November 2017, that development which—

(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

(b) is not directly connected with or necessary to the management of the site,

must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77 (approval of local planning authority).

Part 6 Assessment of plans and projects > Part 2 Planning > General development orders > reg. 75 General development orders

reg. 76 General development orders: opinion of appropriate nature conservation body

Law In Force

Version 1 of 1

30 November 2017 - Present

Subjects
Environment

76.— General development orders: opinion of appropriate nature conservation body

(1) Where it is intended to carry out development in reliance on the permission granted by a general development order, application may be made in writing to the appropriate nature conservation body for its opinion as to whether the development is likely to have a relevant effect.

(2) The application must give details of the development which is intended to be carried out.

(3) On receiving such an application, the appropriate nature conservation body must consider whether the development is likely to have such an effect.

(4) Where it considers that it has sufficient information to conclude that the development will, or will not, have such an effect, it must notify the applicant and the local planning authority in writing of its opinion.

(5) If the appropriate nature conservation body considers that it has insufficient information to reach either of those conclusions, it must notify the applicant in writing indicating in what respects it considers the information insufficient, and the applicant may supply further information with a view to enabling it to reach a decision on the application.

(6) The opinion of the appropriate nature conservation body, notified in accordance with paragraph (4), that the development is not likely to have a relevant effect is conclusive of that question for the purpose of reliance on the planning permission granted by a general development order.

(7) In this regulation and in regulation 77, *"a relevant effect"* means an effect of a kind mentioned in regulation 75(a).

Part 6 Assessment of plans and projects > Part 2 Planning > General development orders > reg. 76 General development orders: opinion of appropriate nature conservation body

reg. 77 General development orders: approval of local planning authority

Law In Force

Version 1 of 1

30 November 2017 - Present

Subjects
Environment

77.— General development orders: approval of local planning authority

(1) An application to the local planning authority for approval, as mentioned in regulation 75, must—

(a) give details of the development which is intended to be carried out; and

(b) be accompanied by—

(i) a copy of any relevant notification by the appropriate nature conservation body under regulation 76; and

(ii) any fee required to be paid.

(2) For the purposes of its consideration of the application the local planning authority must assume that the development is likely to have a relevant effect.

(3) The authority must send a copy of the application to the appropriate nature conservation body and must take account of any representations made by it.

(4) If in its representations the appropriate nature conservation body states its opinion that the development is not likely to have a relevant effect, the local planning authority must send a copy of the representations to the applicant.

(5) The sending of the copy of the representations to the applicant under paragraph (4) has the same effect as a notification by the appropriate nature conservation body of its opinion under regulation 76(4).

(6) In any other case in which the application has been sent to the appropriate nature conservation body, the local planning authority must, taking account of any representations made by the appropriate nature conservation body, make an appropriate assessment of the implications of the development for the European site or European offshore marine site in view of that site's conservation objectives.

(7) In the light of the conclusions of the assessment the local planning authority may approve the development only after having ascertained that it will not adversely affect the integrity of the site.

Part 6 Assessment of plans and projects > Part 2 Planning > General development orders > reg. 77 General development orders: approval of local planning authority

reg. 78 General development orders: supplementary

Law In Force

Version 1 of 1

30 November 2017 - Present

Subjects
Environment

78.— General development orders: supplementary

(1) The local planning authority for the purposes of regulations 75 to 77 is the authority to which an application for approval under regulation 77 would fall to be made if it were an application for planning permission.

(2) The fee payable in connection with an application for such approval is £30.

(3) Approval required by regulation 75 is to be treated—

(a) for the purposes of the provisions of the TCPA 1990 relating to appeals, as approval required by a condition imposed on a grant of planning permission; and

(b) for the purposes of the provisions of any general development order relating to the time within which notice of a decision should be given, as approval required by a condition attached to a grant of planning permission.

Part 6 Assessment of plans and projects > Part 2 Planning > General development orders > reg. 78 General development orders: supplementary

Enclosure 4 – Copy of the “Castle View” Appeal Decision Ref: Appeal Ref: APP/C1435/X/17/3190604

The Planning Inspectorate

Appeal Decision

Site visit made on 5 November 2018

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 January 2019

Appeal Ref: APP/C1435/X/17/3190604
Castle View Caravan Site, Eastbourne Road, Pevensey Bay BN24 6DT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr N Brabon against the decision of Wealden District Council.
- The application Ref WD/2017/0175/LDE, dated 23 January 2017, was refused by notice dated 20 June 2017.
- The application was made under section 191(1)(a) and (c) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought was initially described as "All year round caravan site use" but revised on amended application form dated 31 May 2017 to "All year round caravan site use on the basis of non-compliance with Condition 3 of planning permission WD/79/3077/X for the relevant 10 year period".

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Preliminary matter

2. No representative from the Council attended the site visit. I rang the Council and spoke to an officer who confirmed that the Council was content for the visit to proceed despite no Council presence. The Appellant allowed me to inspect the property. No discussion as to the merits of the appeal took place. I am satisfied that I have seen all that I need to proceed to a decision and the Council has raised no objection to my doing so.

Reasons

3. For the purposes of this appeal, Castle View Caravan Site is subdivided into two parts as in a LDC issued on 23 December 2010. That drew a distinction between the western portion of the site, said to have been used as a caravan park continuously for a 10 year period with no intervening use preceding the date of the application; and the eastern portion, certified for use as a caravan park between 1 March and 30 November in any calendar year continuously for a 10 year period with no intervening use preceding the date of the application. The application the subject of this appeal seeks a LDC for all year round caravan site use of the eastern portion.

4. Planning permission WD/79/3077/X for the entire site, granted on 11 December 1979, was for development described as "*Use of land and buildings as caravan and camping site as existing with extended dates of*

1 March to 30 November, Castle View Caravan Site, Eastbourne Road, Pevensey Bay." Whilst that description suggests that the permission is limited to the period from 1 March to 30 November each year, it is well established that a restriction, in this case to a limited period each year, cannot be implied by reference to that period in the description of the development[1]. A condition is needed to regulate the use.

5. The permission did include a condition, the second in the permission (although numbered 3), which stated "*This permission shall not authorise the use of the land as a caravan site except during the period from 1st March to the 30th November inclusive each year*."

6. This condition is poorly worded in that it does not impose a requirement or limitation. It does not affect (or even appear to seek to affect) the terms upon which permission was granted, but rather to clarify them. It does not, for example state the land "*shall not be used as a caravan site other than during the period …"* or that "*the use shall cease…"*. Rather it appears to be a bland explanatory statement in the nature of an informative. A condition should be clearly expressed and imposed. This one isn't in that it says nothing more than that the permission does not authorise the use of land during the period 30 November through to 1 March. It does not, therefore, take away any right through the operation of the law to continue the use outside of the period specified in the permission.

7. I have already noted the confirmation (from the 2010 LDC issued by the Council) that there has been no intervening use. That in itself indicates that the lawful use of the site as a caravan park did not cease, since from the implementation of the planning permission granted for the use, whereby the use became lawful, no other use took its place from 30 November to 1 March the following year.

8. In the absence of a condition requiring the use to cease for the specified period, its continuation from 30 November through to the following March would not amount to a breach of planning control since:

   a) the continuation of the use beyond 30 November would not amount to a further material change of use from that granted by the planning permission so no development would be involved (the 2010 LDC, certifying use as a caravan park between 1 March and 30 November each year, confirms that there has been no intervening use, such that a further planning permission for material change of use would be required); and

   b) there would have been no breach of any condition expressly requiring the use to cease.

9. On these grounds alone I conclude that the existing use as an all year round caravan site is lawful.

10. Nonetheless, if that conclusion is wrong and the condition can be given sensible meaning when construed objectively in the context of the planning permission as a whole so as to prevent "use as a caravan site" from the end of November through to the beginning of March, I will go on to consider whether that exclusion has been breached in excess of 10 years so as to have become lawful.

[1] I'm Your Man v SSE QBD [1999] 77 P. & C. R. 251

11. In this respect, all the supporting administrative, service/amenity and store/maintenance buildings for the entirety of the Castle View Caravan Site are situated on the eastern portion of the property, the subject of this appeal. In addition internal access roads, caravan hardstandings and service hook ups are also constant features on the land. With all these physical features in place, a permanent change in the character of the land to that of a caravan site has occurred. Even if unoccupied, the caravan site would remain in the same way that a vacant dwellinghouse would remain as a dwellinghouse – the use would not have ceased.

12. The Council has sought information from the Appellant about which particular pitches have been occupied during the disputed period but in my view that is misconceived. In this respect it seems to me that the Council has conflated "use" with "occupation"[2]. The condition, even if given sensible meaning, does not simply require occupation of the caravans to cease or the site to be vacated but rather refers to use. Whilst occupation of caravans would not be possible if the use had been discontinued, lack of occupation of caravans or vacation of the site does not necessarily lead to the conclusion that the use has ceased.

13. Therefore, if the condition can be read as requiring the use to cease, then as a matter of fact and degree I find that the condition has not been complied with. In my view, even if no caravans had been occupied and no support buildings used from the end of November to March, that would not be sufficient to bring the use of the site to an end. The character of the land with its permanent infrastructure to support the use would remain that of a caravan site. Its use as such would not have been discontinued even if it had been vacated for part of each year.

14. In this case, however, the evidence is that the site has not been vacated for any period for well in excess of ten years. All the administrative, service/amenity and store/maintenance buildings on the appeal site have been in use year round – at the very least to support occupiers of the western portion of the property even if not for occupiers of the eastern part, the appeal site. That, in itself, is sufficient to show that the use did not cease. Furthermore, evidence provided by the Appellant[3] demonstrates that there has been some occupation of caravans on the appeal site during the period from the end of November to the following March for in excess of ten years. I am aware that the caravan site licences include restriction on occupation but the evidence is that those restrictions have not been adhered to. No evidence to the contrary has been provided.

15. A requirement that specific caravans which have been occupied during the winter months should be identified is misguided. If the site has continued to operate throughout the disputed months, with the support buildings in use and some caravans occupied, then the use of the land as a caravan site (as might be said to be required to cease by the condition) has not ceased regardless of which or how many caravans have been occupied. The current case can be distinguished from *The Queen on the application of St Anselm Development Company Limited v First Secretary of State* [2003] EWHC 1592 (Admin) to which the Council makes reference. That case concerned the retention of parking on a site for a specific purpose and the individual spaces were

[2] See 2nd bullet and final paragraph of Council's letter dated 26 September 2018
[3] Including statements from the site owner, site manager and customers who have stayed during the winter months, booking records and water usage which is metered

severable. It did not relate to a requirement to cease the use of an entire planning unit.

16. Neither do I accept that the site has a mixed use. The lawful use of the land is as a caravan site[4] which by definition means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed. There is nothing to restrict the type of occupier or length of stay other than the disputed condition. Further, it is not unusual on caravan sites for there to be fluctuation in the number of caravans present and in occupation.

17. On the basis that the condition can be given sensible meaning as requiring the use to cease between the end of November and the beginning of the following March, I conclude as a matter of fact and degree and on the balance of probability that the condition has been breached for in excess of ten years such that no enforcement action may be taken[5]. Given that there is no contravention of any enforcement notice in force, the requirements of s191(2) of the Act are met and the use is lawful.

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of an all year round caravan site use was not well-founded and that the appeal should succeed. I find no reason to include in the description on the LDC the additional wording as set out on the later amended application form as it does not describe the existing use applied for but rather goes to the reasoning as to why a LDC should be issued. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

B M Campbell

Inspector

[4] See S336(1) of the Act
[5] S171B(3)

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 23 January 2017 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Planning permission was granted for the use in 1979. It has continued since that time with no material change. No condition requires the use to cease during certain months of the year but even if the condition attached to the 1979 planning permission could be interpreted as imposing such a requirement it has been breached for in excess of 10 years such that enforcement action cannot be taken.

Signed

[redacted]

Inspector

Date: 8 January 2019
Reference: APP/C1435/X/17/3190604

First Schedule

All year round caravan site use

Second Schedule

Land at Castle View Caravan Site, Eastbourne Road, Pevensey Bay BN24 6DT

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawul, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 8 January 2019

by B M Campbell BA(Hons) MRTPI

Land at Castle View Caravan Site, Eastbourne Road, Pevensey Bay BN24 6DT

Reference: APP/C1435/X/17/3190604

Do not scale

Enclosure 5 – Copy of the 1991 Decision Notice Ref: 7/113/91

GLANFORD BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1971

Application No.
7/113/91
To be quoted in all correspondence

FULL PLANNING PERMISSION

The GLANFORD BOROUGH COUNCIL hereby give notice to Mr H Blackhurst, Westfield Lakes Hotel Far Ings Road, Barton-upon-Humber, South Humberside, DN18 5RG through his agents Anderson Associates, Tom Hill Barn, Broughton, Skipton, North Yorkshire. BD23 3AQ

that the application received on 15 February 1991 for permission to remove condition 2 of planning permission BA/3/728 and 7/RBT/16/80 to allow all year round residential use of the existing caravan site:- Westfield Lakes Site, Far Ings Road, Barton-upon-Humber.
O S Sheet No 0123

has been considered and that permission for this development in accordance with the plans and written particulars submitted has been granted subject to the following conditions:-

(1) The development to which this permission relates MUST be begun not later than the expiration of FIVE YEARS from the date of this permission.

2. At no time shall there be more than a total of seventy (70) caravans and/or chalets and/or mobile homes on the site.

3. All the chalets or mobile homes to be stationed on the site shall conform with BS.3632 (1989) Specification for Park Homes (Mobile Homes).

4. No additional caravans, chalets or mobile homes shall be brought onto the site before a plan has been submitted to and agreed in writing by the District Planning Authority to show details of the layout of the [illegible] development and proposals for its landscaping. The landscaping proposals shall include indications of all existing trees and hedgerows on the site, and details of any to be retained, together with measures for their protection during the course of development.

5. All the approved landscaping shall be carried out within twelve months of the date of this decision (unless a longer period is agreed in writing by the district planning authority). Any trees or plants which die, are removed or become seriously damaged or diseased within five years from the date of planting shall be replaced in the next planting season with others of similar size and species, unless the District Planning Authority agrees in writing to any variation.

6. The layout of the development shall include provision for one vehicle parking space within the curtilage of each residential unit and additional parking for visitors on the basis of a minimum of one space for every ten units.

7. Not more than twenty five (25) new units shall be constructed on the site before the access to Far Ings Road at the south-eastern boundary of the site has been suitably surfaced in accordance with details to be submitted to and agreed in writing by the District Planning Authority beforehand.

25X 10

8. No additional units shall be constructed on the site until a scheme has been submitted to and agreed in writing by the District Planning Authority indicating the external finishes and colours of the additional units.

The reasons for the above conditions are:-

(1) To comply with the provisions of Section 41 of the Town and Country Planning Act, 1971.

2. To define the extent of the permission for the avoidance of doubt.

3. In the interests of residential amenity.

4-5. To enhance the appearance of the development.

6-7. In the interests of road safety.

8. To assist the development to blend with the surrounding landscape.

Dated 5 DEC 1991

Signed [redacted]

Planning & Development Services Officer

WARNING

1. This is a PLANNING PERMISSION ONLY. It does NOT convey any approval or consent required under any enactment, byelaw, order or regulation other than those referred to in the heading of this notice. It is IMPORTANT that you should read the notes concerning APPEALS below.

2. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 36 of the Town and Country Planning Act 1971 within six months of receipt of this notice. Appeals must be made on a form which is obtainable from the Department of the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ.

The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the local planning authority was based on a direction given by him.

3. If permission to develop land is refused or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted he may serve on the Council of the district in which the land is situated a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act, 1971.

4. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act, 1971.

Enclosure 6 – Copy of the extant Caravan Site Licence Ref 14 for Westfield Lakes Caravan Site, issued on 22nd August 2000

Caravan sites and Control of Development Act, 1960
SECTION 3

NORTH LINCOLNSHIRE COUNCIL

SITE LICENCE

To: The Realwood Co. Ltd, Far Ings Road, Barton-on Humber, North Lincolnshire, DN18 5RG.

In respect of land situated at: Westfield Lakes, Far Ings Road, Barton-on Humber, North Lincolnshire, DN15 8RG.

(hereinafter called "the said land").

And whereas you are entitled to the benefit of permission (Ref. No. 7/113/91) for the use of the said land as a caravan site.

Now therefore the North Lincolnshire Council

HEREBY GRANT a site licence in respect of the said land pursuant to section 3 of the Caravan Sites and Control of Development Act, 1960, subject to the conditions, set out in the attached schedule.

See Attached Conditions

DATED this 22nd day of August 2000

SIGNED: [redacted]

(Director of Environment and Public Protection)

No.14

NORTH LINCOLNSHIRE COUNCIL

Directorate of Housing, Health & Protection

Caravan Sites and Control of Development Act 1960 (as amended)

Conditions to be attached to site licence in respect of

Westfield Lakes, Far-lngs Road, Barton-on-Humber, DN15 8RG

DEFINITIONS

1. "Caravan" means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include:-

   (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or

   (b) any tent.

2. "Director" means the Director of Environment and Public Protection for North Lincolnshire Council whose address is, Church Square House, PO Box 42, Scunthorpe, North Lincolnshire, DN15 6XQ.

NUMBER OF CARAVANS

3. Not more than 10 Permanent Residential Caravans shall be stationed on the site in the designated area for Permanent Residential Vans, at any one time for the purpose of human habitation.

BOUNDARIES

4. The boundaries of the site shall be clearly marked by a permanent fence, hedge or wall which shall be properly maintained at all times.

5. No caravan, store, building, car parking space or other construction shall be situated within 3 metres of the site boundary provided that, on receipt of a written request from the licence holder, the Director may at his discretion grant exemption from or vary this condition as far as he thinks fit.

SITE PLAN

6. An updated plan shall be provided within 28 days from the date of any written request and at any time when significant alterations to the site layout are undertaken. The cost of such plans shall be met by the licence holder. The plan shall indicate the useable area of the site (as defined by Condition 9) and shall show the position of :-

    a. All caravans, including their enclosure boundaries and all garages, sheds, covered stores, car ports, covered walkways and car parking spaces associated with them.

    b. All site buildings and other permanent structures.

    c. All roads and paths and their associated lighting.

    d. All fire points and fire hydrants.

    e. All public telephones.

    f. All electrical distribution points.

    g. All compounds for the storage of liquefied petroleum gas.

    h. All cesspits, septic tanks and connections to the public sewerage system.

    i. All foul and surface water drainage runs and inspection chambers.

    j. All communal refuse stores.

DENSITY AND SPACE BETWEEN CARAVANS

7. Except where the proposed alteration to the site will not affect compliance with the conditions of the Site Licence, the layout of the site shall not be varied without the prior written consent of the Director, whose consent shall not be unreasonably withheld.

8. Subject to the following variations, every caravan shall be at least 6 metres from any other caravan, which is occupied separately and at least 2 metres from a road.

    - Porches of the open type may protrude 1 metre into the 6 metres separation distance. If they are enclosed, they shall be treated as part of the caravan and there shall be at least 6 metres between them and any other unit.

- Where awnings are used, the distance between any part of the awning and any adjacent caravan shall be not less than 3 metres. Awnings shall not be used for sleeping or cooking and shall neither face each other or touch.

- Eaves, drainpipes and bay windows may extend into the 6 metre space, provided that the total distance between the extremities of 2 adjacent units shall be at least 5.25 metres.

- Where ramps for wheelchair users, verandas, or stairs extending from the unit are installed, there shall be 4.5 metres clear space between them, and adjacent units, and any two such items shall not face each other in any space.

- Any ramps, verandas or stairs, which are enclosed, shall be considered as part of the unit, and shall not extend into the six metre space between adjacent units.

- Any garage, shed or covered storage space between units shall be of non-combustible construction (including non-combustible roof) and sufficient space shall be maintained around each unit so as not to prejudice means of escape in case of fire. Windows in such structures shall not face towards the units on either side, unless there is at least 6 metres between the window and the adjacent unit.

- If there is at least 6 metres between a shed or covered storage space and an adjacent structure or unit, excluding that unit served by the shed or storage space, the shed or storage space need not be of non-combustible construction.

- There shall be no car ports or covered walkways within the 6 metre space.

NB: The point of measurement for porches, awnings etc, is the exterior cladding of the caravans.

9. The gross density shall not exceed 50 caravans to the hectare, calculated on the basis of the useable area (excluding lakes, roads, communal services and other areas unsuitable for the siting of caravans) rather than total site area.

10. No caravan shall be sub-divided to provide a separate unit of accommodation or be let in multiple occupation.

HARD STANDINGS

11. Every caravan shall stand on a concrete hard standing which shall extend over the whole area occupied by the caravan placed upon it and project at least 1 metre outwards from the entrance or entrances to the caravan.

ROADS, GATEWAYS AND FOOTPATHS

12. All roads and footpaths shall allow adequate access for fire appliances and other emergency vehicles. In particular, all roads shall be at least 3.7 metres wide or, if they form part of a clearly-marked one-way system, 3 metres wide, with a height clearance of at least 4.5 metres. Gateways shall be at least 3.1 metres wide. Roads shall allow for vehicles with a turning circle of 17 metres diameter.

13. All roads shall be constructed suitably of concrete, tarmacadam or block paving and shall be maintained adequately at all times.

14. Every caravan standing shall not be more than 50 metres from a road and shall be joined to the road by a footpath at least 0.75 metres wide. Footpaths shall have a hard surface of concrete, tarmacadam, flags or block paving.

15. Vehicle routes within the site shall remain unobstructed, with a minimum clearance of 3 metres at all times.

16. Turning facilities shall be provided and remain unobstructed. These shall be sufficient for vehicles with a turning circle of 17 metres.

17. Suitable speed humps shall be within 10 metres of the site entrance and at intervals of not more than 100 metres on all site roads. A clear sign, warning of speed humps, shall be maintained at the site entrance.

18. All site roads and paths shall be provided with artificial lighting sufficient to allow safe movement around the site during the hours of darkness.

FIRE FIGHTING APPLIANCES

Fire Points

19. No caravan or site building shall be more than 30 metres from a fire point. Fire points shall be housed in weatherproof structures; and all equipment susceptible to mal-functioning or damage by frost shall be suitably protected. They shall be easily accessible and clearly and conspicuously marked "FIRE POINT". Access to fire points and fire hydrants shall not be obstructed or obscured at any time. During hours of darkness, fire points shall be illuminated by normal street lighting or other means.

Fire Fighting Equipment

20. Each fire point shall include a permanently connected hydraulic hose reel with a water supply of sufficient pressure and flow to give a jet of at least 5 metres at 30 litres per minute from the hose nozzle. This shall comply with the appropriate sections of British Standard 5274 and British Standard 5306 Part 1.

Hoses shall be at least 30 metres long, terminating in a small hand-control nozzle and shall be housed in boxes painted red and marked "HOSE REEL".

Hose reels shall be maintained in a manner that allows easy and immediate deployment of the hose. The hose reel drum shall be mounted vertically, allowing the hose· to fall unhindered from the drum during deployment.

21. Fire hydrants shall be installed within 100 metres of every caravan standing. Hydrants shall comply with British Standard 750 and be properly installed, protected and indicated.

Fire Warning

22. A means of raising the alarm in the event of fire shall be maintained at each fire point by way of manually operated rotating bells, other manually operated sounders or an electrically operated alarm bell or siren. The alarm sounders should be loud enough to be heard clearly inside all caravans within a 30 metre radius.

Maintenance

23. All alarm and fire fighting equipment shall be maintained in working order at all times and shall be inspected and tested at least once a year by a competent person. A log book shall be kept on the site to record all tests and remedial action and shall be available for inspection by the licensing authority at any time. The costs of all inspections and servicing shall be met by the licence holder.

FIRE NOTICES

24. A clearly written and conspicuous notice shall be provided and maintained at each fire point to indicate the action to be taken in case of fire and location of the nearest telephone. This notice should include the following duly completed:

"On discovering a fire

i) Ensure that the caravan or site building involved is evacuated
ii) Raise the alarm
iii) Call the fire brigade (the nearest telephone is sited……...
……
……

iv) Attack the fire using the fire fighting equipment provided, but only if it is safe to do so.

It is in the interest of all occupiers of this site to be familiar with the above routine and the method of operating the fire alarm and fire fighting equipment".

FIRE HAZARDS

25. Grass and vegetation shall be cut as necessary to prevent it from becoming a fire hazard to caravans, buildings or other installations on the site. Any such cuttings shall be disposed of in a manner as to avoid creating a fire risk or causing a nuisance.

26. The spaces beneath and between caravans shall not be used for the storage of combustible materials.

27. Bonfires shall not be permitted on the site.

TELEPHONES

28. An immediately accessible telephone, in an artificially lit area, shall be available on the site for calling emergency services. A permanent notice by the telephone shall include the address of the site.

LIQUIFIED PETROLEUM GAS (LPG) AND MAINS GAS

29. LPG storage supplied from tanks shall comply with Guidance Booklet HSG 34 "The Storage of LPG at Fixed Installations" or, where LPG is supplied from cylinders, with Guidance Note CS4 "The Keeping of LPG in Cylinders and Similar Containers" as appropriate.
(Where there are metered supplies from a common LPG storage tank, then Guidance Note CS11 "The Storage and Use of LPG at Metered Estates" provides further guidance).

30. Exposed gas bottles or cylinders shall be allowed within 6 metres of an adjacent unit in the case of existing units, so long as they are connected to the van and are situated immediately adjacent to it. On new plots exposed gas bottles or cylinders shall not be within 6 metres of an adjacent unit.

31. LPG installations shall conform to British Standard 5482, "Code of Practice for domestic butane and propane gas burning installations, Part 2: 1977 Installations in Caravans and non-permanent dwellings".

32. For mains gas supply, the Gas Safety (Installation and Use) Regulations 1994 (as amended) shall be complied with for the installation downstream of any service pipe(s) supplying any primary meter(s) and such service pipes shall comply with the Pipelines Safety Regulations 1996.

ELECTRICAL INSTALLATIONS

33. The site shall be provided with an electricity supply sufficient in all respects to meet all reasonable demands of the caravans situated on it.

34. Any electrical installations, which are not Electricity supplier works and circuits, subject to Regulations made by the Secretary of State under section 16 of the Energy Act 1983 and, Section 64 of the Electricity Act 1947, shall be installed, tested and maintained in accordance with the provisions of the Institution of Electrical Engineers' (IEE). Regulations for Electrical Installations for the time being in force and, where appropriate, to the standard which would be acceptable for the purposes of the Electricity Supply Regulations 1988, Statutory Instrument 1988 No 1057.

35. Work on electrical installations and appliances, together with inspections thereof, shall be carried out only by competent persons who shall be one of the following:

The Manufacturer's appointed agent
The Electricity supplier
A professionally qualified Electrical Engineer
A member of the Electrical Contractor's Association
A certificate holder of the National Inspection Council for Electrical Installation Contracting, or
A qualified person acting on behalf of one of these (in which case it should be stated for whom he is acting).

36. The electrical installation shall be inspected within 3 months of the issue of the Site Licence and thereafter not less than once in every 12 months, excluding underground installations which shall be inspected at least once every 3 years subsequent to the initial inspection. When an installation is inspected, it should be judged against the current Regulations.

The inspector shall, within one month of such an inspection, issue an inspection certificate in the form prescribed in the IEE Wiring Regulations, which shall be retained by the Site Operator and displayed with the Site Licence. The cost of the inspection and report shall be met by the Site Operator, and a copy of the report shall be submitted to the Director within 7 days.

37. If an inspection reveals that an installation no longer complies with the Regulations in force at the time it was first installed, any deficiencies shall be rectified in accordance with recommendations in the Inspection Certificate, and in any case not later than 28 days, or such longer time as agreed in writing by the director. Any major alterations and extensions to an installation and all parts of the existing installation affected by them shall comply with the latest version of the IEE Wiring Regulations. Upon completion of any remedial work or major alterations and extensions to an installation, the installation shall be inspected and a certificate issued in a similar way to above in 36.

WATER SUPPLY

38. - The site shall be provided with an adequate water supply in accordance with appropriate Water Bylaws and statutory quality standards.

- Each caravan must be provided with an adequate piped supply of wholesome water.

- A scheme to protect water supply pipes from the risk of frost or damage however caused shall be submitted to the Director.

NB: Any change to the water supply shall be notified to the Director 28 days prior to such change. Any necessary details shall be submitted to indicate compliance with this condition.

DRAINAGE, SANITATION AND WASHING FACILITIES

39. Satisfactory provision shall be made for foul drainage, by connection to a public sewer or sewage treatment works. Each caravan standing shall be provided with a connection to the foul drainage system; the connection shall be capable of being made air-tight when not in use.

40. The site and every hard standing shall be provided with an adequate drainage system for the complete and hygienic disposal of foul, rain and surface water from the site, buildings, caravans, road and footpaths.

41. Each caravan shall have its own water supply and water closet. Every caravan brought on to the site shall be provided with its own internal water closet, bath or shower, wash hand basin and sink. Every water closet shall be provided with a piped water supply and every bath or shower, wash hand basin and sink shall be provided with piped hot and cold water supplies. All amenities shall be connected to the foul drainage system.

REFUSE DISPOSAL

42. Every caravan standing shall have an adequate number of suitable refuse bins with close fitting lids. Arrangements shall be made for the bins to be emptied regularly on a weekly basis.

PARKING

43. One car only may be parked between adjoining caravans, provided that the door. to neither caravan is obstructed. Plastic or wooden boats shall not be parked between caravans.

44. Suitable surfaced parking spaces shall be provided on the site at a ratio of at least one per caravan plus one further space for every ten caravans.

RECREATION SPACE

45. Space equivalent to about one tenth of total area shall be allocated for children's games and/or other recreational purposes.

NOTICES

46. A suitable sign shall be displayed prominently at the site entrance indicating the name of the site and the name, address and telephone number of the site manager.

47. A copy of the site Licence with its conditions shall be displayed prominently on the site, together with a copy of the Electrical Certificate.

48. Notices and a plan shall be displayed on the site, setting out the action to be taken in the event of an emergency. They shall show where the Police, Fire Brigade, Ambulance and local Doctors can be contacted, and the location of the nearest public telephone. The notices shall also give the name and the location/telephone number of the site licence holder or his/her managing agent.

49. All notices shall be adequately maintained, kept in a legible condition, suitably protected from the weather and displayed out of the direct rays of the sun, preferably in areas which are artificially lit.

SITE MAINTENANCE

50. All parts of the site shall be properly maintained and shall be kept in a clean and tidy condition to the satisfaction of the Director.

MISCELLANEOUS

51. No caravan intended for residential purposes shall be brought onto the site unless it complies with British Standard 3632.

52. All caravans shall be maintained in a good state of repair to the satisfaction of the Director.

53. No converted buses or other similar vehicles shall be permitted on the site.

54. Touring caravans shall not be allowed on the site except where they are owned by residents and stored on site when not in use. Storage of such touring caravans must be such as to maintain the separation standards set out in condition 8.

Appendix 15a: Copy of Internal Review Reply Ref IR2023/01017

Information Complaint: Mr N Gandhi Ref: IR2023/01017

1. Summary

Mr Gandhi made an Environmental Information Regulation request for information to North Lincolnshire Council about Westfield Lakes, Barton upon Humber.

The request was received 23 March 2023 and was assigned reference number EIR2023/00465. The request was responded to 21 April 2023 providing the requested information with redaction to prevent the release of 3rd party information.

On 12 June 2023 after discussing potentially missing information with the council Mr Gandhi requested an Internal Review to reconsider the response provided to EIR2023/00465. The Internal Review was assigned reference number IR2023/01017.

The first response to Internal Review IR2023/01017 was issued to Mr Gandhi on 19 July 2023. On 19 July 2023 Mr Gandhi responded as set out below in section 3.0.

I have now carried out an investigation, as I am required to do in accordance with the Council's Information Complaints Policy and set out herein my report.

2. Original Request and Response

The original request for information EIR2023/00465 was:

Westfield Lakes and Regs 75-77 of the Habitats Regulations

It appears to us that there may have been changes to the planning unit for the caravan park site, introduction of non-residential uses (including in some of the mobile homes including offices/business uses); use of the caravan park site in association with the hotel use – as landscaped grounds; and some operational development.

Without prejudice to any response that we may provide to your requests, I assume that the Council holds some information on which these statement are based. Please would you kindly share any and all information that the Council has relied on or discarded that relates to this.

The response provided to EIR2023/00465 was:

Please find the attached spreadsheet which outlines the full planning history of Westfied Lakes. We have highlighted the applications we considered to be relevant in reaching our current position in green and the applications not considered relevant are left unshaded. A brief note has been added alongside each application to explain why it was considered to be relevant or not.

Also attached are copies of the decision notice and plans for each application as separate PDF documents. Please note, the documents have been reviewed and personal information removed as per Regulation 13 of the Environmental Information Regulation which provides an exemption that allows information to be withheld when disclosure would breach the fair processing principle, as it would be unfair on the person who the personal data relates to. In this instance, the information withheld is personal signatures.

In addition, image searches via google were utilised as part of the review process. These images were not saved as part of the formal record.

If you would like any further information on any of the listed applications, please contact the team directly on planning@northlincs.gov.uk who can assist you.

3. Details of Issue

First Issue

The details of Mr Gandhi's Internal Review are as follows:

Have you now investigate why our previous EIR/FOI request was not correctly and comprehensively completed and do you now know when we will receive all relevant information pertaining to our requests?

Please would you kindly let me know so our client can decide whether to complain to the ICO or Local Government Ombudsman about a lack of complete cooperation so far. We would like to avoid making a complaint and the best way to do so is for an explanation to be provided as to why this information was absent and for the Council to furnish with haste all requested information/evidence in an clear format with references to sources so that our client can understand/cerify/test the Council's present Opinion that the 1991 Permission for the caravan site was replaced.

The relevant quote in the Planning Practice Guidance (PPG) is:
"Who is responsible for providing sufficient information to support an application?
The applicant is responsible for providing sufficient information to support an [LDC] application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence." (LPL emphasis)
Taken from: [Paragraph: 006 Reference ID: 17c-006-20140306; Revision date: 06 03 2014]
(https://www.gov.uk/guidance/lawful-development-certificates)

We note that the information was not fully shared before the 'decision' was made to decline the caravan site licence application on the basis of a lack of planning permission for the caravan site. There is a natural justice obligation to share all relevant information, but which has not happened to date. Failure of the Council to reveal relevant information will result in a costs application against the Council if they refuse the Certificate using information that they did not disclose beforehand.

I hope you'll understand our client is quite angry about how things have unfolded, because he paid for advisors time to provide advice on an information disclosure which was not as complete as it should have been.

Second Issue – Received 19 July 2023

Thank you for the response, and the provision of the letter from 2000. However, I believe that the information request remains partly unfulfilled, as follows:

- *"c. As to that area, according to our records, all caravan use ceased by about 2003; d. The then owner indicated an intention to abandon the caravan use in the context of disputes about the licence required;"* This was taken from the letter provided on 12th June 2023 by NLC Housing Department (attached), but

relates to the statement made in the email from Liz Webster dated 23rd Match 2023, which was subject to our EIR request, that stated: *"Please provide information as to the condition of the land since 2003, when caravan use ceased (we think this was around 2003/4) and whether there have been any other uses of the land since"*. The attached letter from your further EIR response is dated from 2000, and not 2003, and Point c. states clearly that there were records were from 2003. It stated: "according to our records". What records? Why are these not being released? At present, no evidence exists in the full EIR response (either what was originally provided by IG or your response issued today) which demonstrates why NLC considered that the caravan site use ceased in 2003 according to their records. Please can you clarify this within NLC. If 'the records' referred to cannot be released, then a reason has to be given, because otherwise, we are unable to assess the Council's evidence for the preparation of the CLEUD application, contrary to the PPG as I've previously cited.

- In the Liz Webster email dated 23rd March 2023, she stated: *"It appears to us that there may have been changes to the planning unit for the caravan park site, introduction of non-residential uses (including in some of the mobile homes including offices/business uses); use of the caravan park site in association with the hotel use – as landscaped grounds; and some operational development."* We know from the 12th June 2023 letter from NLC Housing that the evidence which Ms Webster was referring to were partly: *"e. The evidence appears to show that for a prolonged period from about 2003 to the flood in 2013, the eastern area was used as part of the hotel use and effectively became part of the hotel planning unit. f. Aerial photographs and images of wedding uses on the eastern area (all available on public websites), along with maintenance of that area as part of the grounds of the hotel all indicate that there has been such a change of use. The fact the caravan hard standings were not removed does not demonstrate that the change of use had not occurred."* This sets out further the evidence which NLC relied on to make their statement on 23rd March 2023 regarding the use of the caravan site for landscaped grounds for the hotel. However, this evidence hasn't been provided as part of your additional response to our EIR request, nor with the original response. As such, please provide the evidence regarding the Council's conclusion: 'use of the caravan park site in associated with the hotel use – as landscaped grounds' as originally requested, which likely comprises 'evidence' that the eastern area was used 'for a prolonged period' used as part of the hotel use, and further, the 'aerial photographs and images of wedding uses on the eastern area (all available on public websites)' as set out in the 12th June 2023 letter.

- My request also sought 'information that the Council has relied on or discarded that relates to this." Please confirm that there is no evidence held within NLC which was not discarded as part of drawing up their conclusions regarding the planning status of the site. We have come across situations in the past where Councils have inadvertently (or otherwise) withheld information which cast doubts regarding their position (and supports the applicants). We want confirmation that no stone is unturned regarding the situation at Westfield Lakes Caravan Park before the CLEUD application is made. We note that the Council has an obligation to assist with regards to establishing the planning status of the site prior to making the CLEUD application, in accordance to the Planning Practice Guidance (PPG).

Separately, I note there is evidence that my other outstanding request in my email dated 12th June 2023 will be responded to. It was:

- "You stated in point a: 'As the hotel uses expanded from 1991 the area of the caravan site use became constrained largely to the east of the Site. There is no subsisting right to use the other areas around the hotel and to the north and west for caravans because permissions for inconsistent uses were granted and implemented." Please would you kindly state which permissions that you consider are inconsistent with the 1991 Permission, and provide the associated decision notice and relevant plans and documentation which you used to arrive at this conclusion (please treat this request under EIR/FOI regulations). I would also draw your attention to the aerial photographs analysis referred to below and in the attached, which suggests that the caravan site was not constrained to the Eastern part of the site by 1991, indeed any time before 2013 (the last caravan in this area was removed between 2016 and 2018 according to aerial photographs)."

Please can you confirm that the IG Team is still going to provide this information.

Finally, I wrote to Rebecca Leggott in the attached email dated 28th June 2023, for which no response has been provided. Do you know if Ms Leggott intends to reply, in accordance with the requirements of the PPG as set out in my email to Information Governance on 30th June 2023 (PPG Paragraph: 006 Reference ID: 17c-006-20140306; Revision date: 06 03 2014) that the LPA is obliged to: *"The applicant is responsible for providing sufficient information to support an [LDC] application,* ***although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land****."* The LPA made a 'decision' regarding the planning status of the site (that a planning permission was replaced by a material change of use), and as such, it needs to share its reasons fully, with the evidence. There is no evidence of an officer's report to explain the 'decision', and as such, the questions relate to points which would have normally been provided via the report. I would be grateful if you would kindly ask Ms Leggott whether she intends to reply to my queries.

Thank you for your further attention to this and I look forward to hearing from you on the points above.

4. Methodology

I have considered the requests looking at the relevant provisions of the Environmental Information Regulations, along with the guidance and various decision notices issued by the Information Commissioner's Office (ICO).

5. Investigation and Analysis

First Issue

Mr Gandhi rasised a concern that information was not released in the original response to Environmental Information Regulation request EIR2023/00465 to enable his client to 'understand/cerify/test the council's present opinion that the 1991 Permission for the caravan site was replaced'.

A further search for information in scope of the request was carried out and a letter was located from The Real Wood Company Ltd to North Lincolnshire Council dated 20 October 2000.

Second Issue

Whilst further checking to ensure all information within scope had been released it was found that application information had requested by Mr Gandhi in an email dated 28 June 2023. This information is now being released as attached.

It was explained in the initial response to EIR request EIR2023/00465 that image searches via google were used as part of the review process. It was explained that these images were not saved, and I can find no evidence of this information being saved.

Information considered to be legal advice has been withheld relying on the exception under Environmental Information Regulation exception 12(5)(b) that allows information to be withheld where release would adversely affect the course of justice. This exemption requires a public interest test to see if the public interest in disclosure outweighs the public interest in withholding the information. In this instance the public interest in ensuring the EIR do not undermine legal procudues is considered stronger than that of release. Therefore, this information has been withheld.

No further information in scope was found.

Rebecca Leggott the council's Development Management Lead responded to Mr Gandhi on 28 July 2023 as follows:

> 'Furthermore, you have raised several queries in relation to a purported 'decision'. Please note no formal decision can be made by the Local Planning Authority (LPA) until a CLEUD Application has been submitted and determined. I note that you have been advised to submit a CLEUD, however, no such application has been forthcoming.
>
> For clarity the Local Planning Authority are unable to assist you with queries such as the below until we are in receipt of a valid CLEUD Application.

6. Decision

First Issue

On balance, I consider the letter referred to above from the Real Wood Company Ltd should have been included in the response to EIR2023/00465, with the the signature redacted as this is considered the personal data of a third party. Please accept my apologies on behalf of North Lincolnshire Council for this information not being released as part of the original Environmental Information Regulation response.

Second Issue

The request to release application information in an email dated 28 June 2023 was missed. Please accept my apologies for this oversight. This information is now being released. Further explanation has been provided about google search information and legal advice.

The council's Development Management Lead responded directly to a query about local planning authority decision making.

I can confirm that no further information is held.

7. Right of Appeal

This report constitutes the council's formal response. If you are not satisfied with the response, you have the right to make a formal complaint to the Information Commissioner at the following address:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Phillipa Thornley
Information Governance Advisor / Data Protection Officer
North Lincolnshire Council

Dated 09 August 2023

Appendix 15b: Copy of EIR Ref: EIR2023/00465

Contact: Information Governance Team
Direct Dial: 01724 296224
E-mail: informationgovernanceteam@northlincs.gov.uk
Web Address: www.northlincs.gov.uk
Our Ref: EIR2023/00465

North Lincolnshire Council

Church Square House
30-40 High Street
Scunthorpe
North Lincolnshire
DN15 6NL

Nayan Gandhi
nayan@laister.co.uk

INFORMATION DISCLOSURE

Dear Nayan Gandhi

Re: Environmental Information Regulations - EIR2023/00465

Thank you for your request for information, received by North Lincolnshire Council on the 23rd March requesting information about Westfield Lakes. I have considered your request in detail and can confirm that the council holds the following information:

Westfield Lakes and Regs 75-77 of the Habitats Regulations

It appears to us that there may have been changes to the planning unit for the caravan park site, introduction of non-residential uses (including in some of the mobile homes including offices/business uses); use of the caravan park site in association with the hotel use – as landscaped grounds; and some operational development.

Without prejudice to any response that we may provide to your requests, I assume that the Council holds some information on which these statement are based. Please would you kindly share any and all information that the Council has relied on or discarded that relates to this.

Please find the attached spreadsheet which outlines the full planning history of Westfied Lakes. We have highlighted the applications we considered to be relevant in reaching our current position in green and the applications not considered relevant are left unshaded. A brief note has been added alongside each application to explain why it was considered to be relevant or not.

Also attached are copies of the decision notice and plans for each application as separate PDF documents. Please note, the documents have been reviewed and personal information removed as per Regulation 13 of the Environmental Information Regulation which provides an exemption that allows information to be withheld when disclosure would breach the fair processing principle, as it would be unfair on the person who the personal data relates to. In this instance, the information withheld is personal signatures.

In addition, image searches via google were utilised as part of the review process. These images were not saved as part of the formal record.

If you would like any further information on any of the listed applications, please contact the team directly on planning@northlincs.gov.uk who can assist you.

If you wish to re-use this information for reasons other than, for example personal use, please see the council's Access toInformation Policy for full details of how to request permission to re-use information released in response to a Freedom of Information request.

If you are unhappy about how we have dealt with your request please let me know and I will refer the matter to the council's Information Complaints Policy. Alternatively you can complain using the council's online complaint form on the Contact Us page of the North Lincolnshire Council website.

You also have the right to appeal directly to the Information Commissioner's Office (ICO), although please note the ICO usually expect the council to have investigated your concerns first.

Yours sincerely

Information Governance Team
North Lincolnshire Council

Appendix 16: Copy of Christopher Sedgwick of Drainmaster (UK) Limited Statutory Declaration

Statutory Declaration

In support of Lawful Development Certificate for an Existing Use or Development

for the

"existing use of Westfield Lakes Caravan Park as a 'caravan site' in accordance with Planning Permission reference 7/113/1991"

at

Westfield Lakes Caravan Park, Far Ings Road, Barton-upon-Humber

I, Christopher James Sedgwick, of 68 Peveril Avenue, Scunthorpe, DN17 1BE, solemnly and sincerely make this Statutory Declaration in support of an application for a Lawful Development Certificate for an Existing Use or Development at the above site. I declare as follows:

1. I am a Director of Drainmaster (UK) Limited (Company No 03802760), since 6th April 2013.
2. I was appointed by the owners of Westfield Lakes Caravan Park and the adjoining Humber Bridge Country Hotel (formerly Reeds Hotel) to carry out a foul drainage survey and provide advice regarding the foul water drainage system that exists on site.
3. I carried out a drainage survey on 7th November 2023. I created an indicative drainage plan of the foul drainage assets found within the site, a copy of which can be found in Exhibit A.
4. I can confirm that the drainage system stretches from Manhole 1A where the caravans in the 'Western Field' in the plan found in Exhibit B to a pumping facility in the central part of the site, roughly located north of Manholes 8, 9, 9A, and 10. The hotel and the 'Eastern Field' (as referred to in the plan found in Exhibit B) are also connected to the same system. The foul water is then gravity drained to a central tank.
5. I can confirm that the drainage system remains broadly intact and subject to some maintenance and repair work, it can be restored to a fully functioning system, should the owner wish to re-use it. Drainmaster (UK) Limited can advise accordingly.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared by Christopher James Sedgwick

[redacted] .....

This 6th Day of August 2024

[redacted]

HETTS
SOLICITORS
11 WELLS STREET
SCUNTHORPE
NORTH LINCOLNSHIRE
DN15 6HW

Exhibit A – Indicative Drainage Plan prepared by Drainmaster (UK) Limited

This sketch is not to scale and does not represent the exact routing of the drainage system.

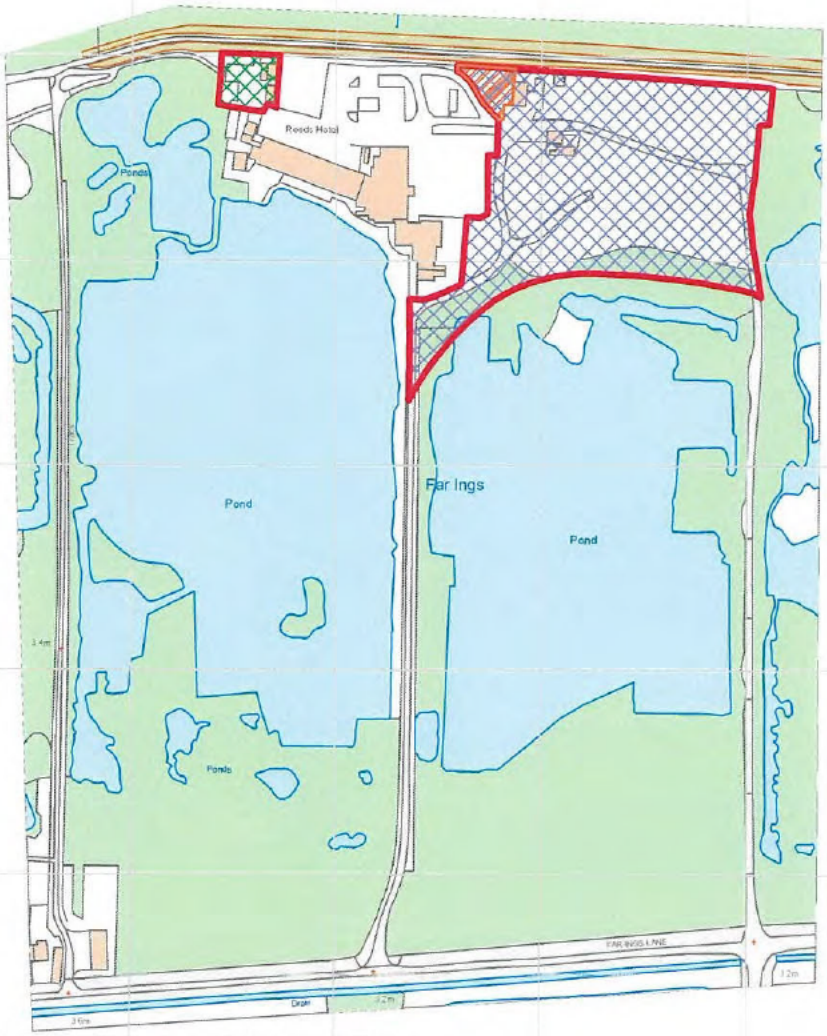
[redacted]

Exhibit B – 'Site Location Plan' prepared by Laister Planning Limited

[redacted]

Legend

- Application Site Location
- Other Land Controlled by Applicant
- The 'Eastern Field'
- The 'Western Field'
- Area Occupied by Caravans between 2003-2010



Client:	Elegant Lifestyle Limited
Project:	Westfield Lakes Caravan Park
Title:	Site Location Plan
Drawing No:	Figure 1

laister

PARTNERS IN PLANNING

Rev	Changes	Date

OS Licence Information: 2024: 0100031673

Drawn: Nayan Gandhi

Chk'd: Nick Laister

Oddfellows Hall, Ground Floor
London Road, Chipping Norton
Oxfordshire OX7 5AR

North

Scale: 1:2,500

Paper Size: A3

File Name: LPL1237/CLEUD/Figure 1 Site Location Plan.dwg

Appendix 17: Draft Copy of Michael Lee of David Lee Photograph Statutory Declaration

Statutory Declaration

In support of Lawful Development Certificate for an Existing Use or Development

for the

"existing use of Westfield Lakes Caravan Park as a 'caravan site' in accordance with Planning Permission reference 7/113/1991"

At Westfield Lakes Caravan Park, Far Ings Road, Barton-upon-Humber

I, Michael John Lee, of [insert address], solemnly and sincerely make this Statutory Declaration in support of an application for a Lawful Development Certificate for an Existing Use or Development at the above site. I declare as follows:

1. I am a Director of David Lee Photography Limited (Company No 01291092), since 2^{5th} March 2002. Previously, the company was owned by my father, David Lee, and I worked for him at the company since [INSERT DATE].
2. I have detailed knowledge of Westfield Lakes Caravan Park and the adjoining Humber Bridge Country Hotel (formerly Reeds Hotel). I have visited the site on the following occasions on a professional basis (as a photographer), either on behalf of the owners of the site or those engaged in events (such as weddings) at the site, until 2013:
   - 5th September 1997
   - 10th September 1997
   - 26th October 1997
   - 14th August 1998
   - 18th August 1998
   - 8th September 1998
   - 18th November 1998
   - 7th January 1999
   - 21st August 1999
   - 18th July 2000
   - 27th August 2000
   - 27th October 2000
   - 18th June 2002
   - 26th July 2002
   - 3rd October 2002
   - 25th January 2005
   - 5th May 2005
   - 6th May 2006
   - 3rd June 2005
   - 4th May 2010
   - 14th September 2012
   - 17th October 2013
   - 31st January 2013
3. To the best of my knowledge, I can confirm the following:
   a. I am aware that caravans were stationed in the area hatched purple on the plan found in Exhibit A, until around 2003.

b. As far as I am aware, those same caravans were relocated to the northern area of the site hatched orange in Exhibit A sometime between 2003 and 2005.

c. The caravans which were stationed in the area hatched orange on the plan found in Exhibit A were there until after 2013. As far as I am aware, they were occupied by Richard Morgan and Dasia Morgan, who lived on site. I cannot recall when they started to stay on site and when they moved away from the site.

d. As far as I am aware, the two caravans located in the western field were occupied until after 2013.

e. As far as I am aware, I have not seen any hotel event activities formally or otherwise that had taken place in the area hatched purple in Exhibit A (referred to as the 'Eastern Field' in the Exhibit).

f. The company has taken the following photographs of site:

   i. A photograph taken by myself, dated 24th April 2007 is found in Exhibit B (photograph reference 1D8I2900). This was taken on the date of event where we were contracted to take photographs. It shows the site from a distance. The two caravans are visible to the west of the chalet within the area hatched orange found on the plan in Exhibit A – see the foreground in front of the hotel. There are no other activities taking place within the Eastern Field hatched purple in the plan found in Exhibit A.

   ii. Aerial photograph taken on 6th March 2007 by the company, found in Exhibit C. This shows the Westfield Lakes Caravan Park and the adjoining hotel looking in a north-eastern direction. There are no activities taking place within the Eastern Field hatched purple in the plan found in Exhibit A.

   iii. Aerial photograph taken on 5th December 2013 by the company, found in Exhibit D. This shows the Westfield Lakes Caravan Park and the adjoining hotel looking in an eastern direction. There are two caravans visible at the western end of the site, referred to as the Western Field hatched in green on the plan found in Exhibit A. There are two caravans which are visible at the western end of the Eastern Field hatched purple on the plan found in Exhibit A. There are no other activities found taking place within the Eastern Field is visible in this photograph.

4. From my knowledge of the site over many years, I am unable to recall a time when hotel guests were actively using the Eastern Field hatched purple on the plan found in Exhibit A for any activities associated with their stay or visit to the hotel, other than to use the access drive.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared by Michael John Lee

……

This……. Day of ……..2024

Exhibit A – Laister Planning Figure 1

Exhibit B – Photograph dated 24th April 2007

Exhibit C – Aerial Photograph dated 6th March 2007

Exhibit D – Aerial Photograph dated 5th December 2013

Appendix 18a: Aerial Photographs from 2003-2013

1999 Aerial Photograph

Caravans are clearly dotted throughout the site. I would draw your attention to the caravans which are located within the north-western corner of the site, which fall within the 1991 Permission area.

The 2003 Aerial Photograph

As can be seen, there are two caravans in the north-western part of the site and 2 caravans along the southern part.

2008 Aerial Photograph

It can be seen that there are two caravans in the north-western corner, one of which was recently replaced. Another caravan is now installed in the northern part of the site.

2009 Aerial Photograph

The two caravans in the north-western corner remain on site, as does the one along the northern boundary. Indeed, there is a vehicle parked in front of the caravan, which suggestions occupation.

2013 Aerial Photograph

One caravan remains in the north west part of the site.

Appendix 18b: Aerial Photographs from 2014 onwards

2014 Aerial Photograph

This photograph shows that work is being undertaken on site to restore it following the floods in December 2013. The caravan is still located in the north west corner. The chalet is also on site, along with the foul water building. The Eastern Field is maintained.

The 2016 Aerial Photograph

This photograph shows there is a static caravan in the north west corner. The chalet is also on site, along with the foul water building. The Eastern Field is maintained.

2019 Aerial Photograph

It can be seen that there is no caravan in the Western Field now, but the caravan site has been maintained.

Appendix 19: Copy of EIR Ref: EIR2023/00463

Contact: Information Governance Team
Direct Dial: 01724 296224
E-mail: informationgovernanceteam@northlincs.gov.uk
Web Address: www.northlincs.gov.uk
Our Ref: FOI2023/00463

North Lincolnshire Council

Church Square House
30-40 High Street
Scunthorpe
North Lincolnshire
DN15 6NL

Nayan Gandhi
nayan@laister.co.uk

INFORMATION DISCLOSURE

Dear Nayan Gandhi

Re: Freedom of Information - FOI2023/00463

Thank you for your request for information, received by North Lincolnshire Council on the 24th March requesting information about 2013 Flood event at Reeds Hotel Barton Upon Humber as below;

Please may I have any records that you hold regarding the significant flood event which took place at Reeds Hotel/Westfield Lakes Caravan Park sometime in or around 2013.

I am particularly looking for any records regarding the state of the hotel after the event, evidence of its temporary closure/that it stopped being operational, because of the event (we understand that the entire site was closed for a substantial period of time whilst insurance and reconstruction matters were being resolved, but we would like the Council's own evidence of the situation), and when you had issued a license for the reopening, or any licensing matter for which you are responsible (hire, alcohol, food, etc).

Please note information regarding the provision of advice and guidance relating to floods is retained for three years after the date of the flood and information relating to the provision of sandbags or equipment and engineering advice to help residents and business in the event of floods is retained for six years following the event. All records of this nature relating to the 2013 flood event have been disposed of in accordance with the North Lincolnshire Council Records Retention Schedule.

I have considered your request in detail and can confirm that the council holds the below list of contacts between the Economic Development team and Reeds Hotel during winter of 2013/14 which we have compiled for ease of reading. No further records or information after this date are held.

- 5th December 2013 – 11.22pm – call from Reeds Hotel to say banks had flooded, residents relocated to Oaklands Hotel Grimsby and emergency assistance required to prevent further breach in morning high tide.
- 6th December 2013 – Economic Development Team aware that sandbags delivered but confirmed significant damage to hotel – grounds covered in mud, bank washed away – ground floor extensively damaged.
- 10th December 2013 – Site visit made by Economic Development
    - All staff had been laid off
    - Family members were trying to fire-fight the situation
    - Dealing with irate customers demanding monies back for Christmas parties and weddings
- 10th December 2013 - Attempts were made by NLC to relocate and host planned events at Normanby Hall and Baths Hall but was unable to assist

- 11th December 2013 – Advised by owner of Reeds that asset finance had been secured to clean the hotel, repaper and carpet to get the hotel up and running again by 2nd/3rd week in January.
- 12th December 2013 – Approach made to Planning Department was made from Economic Development Team to check on potential uses for site that were planning policy compliant – confirmed as:
    - Commercial/Employment related development appropriate to open countryside;
    - Recreational/leisure/sport use (ie country park, watersports centre, sports facility);
    - Tourism uses (ie visitors centre associated with natural environment);
    - Continuation of existing hotel use
- 17th December 2013 – it was confirmed Reeds Hotel had gone into liquidation

If you wish to re-use this information for reasons other than, for example personal use, please see the council's Access toInformation Policy for full details of how to request permission to re-use information released in response to a Freedom of Information request.

If you are unhappy about how we have dealt with your request please let me know and I will refer the matter to the council's Information Complaints Policy. Alternatively you can complain using the council's online complaint form on the Contact Us page of the North Lincolnshire Council website.

You also have the right to appeal directly to the Information Commissioner's Office (ICO), although please note the ICO usually expect the council to have investigated your concerns first.

Yours sincerely

Information Governance Team
North Lincolnshire Council