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PARTNERS IN PLANNING

## **Elegant Lifestyle Parks Limited**

Certificate of Lawful Development

Westfield Lakes Caravan Park, Far Ings Road,  
Barton-Upon-Humber, DN18 5RG

Date: 04/10/2024

# Supporting Statement

Application under Section 191 of the Town and Country Planning Act 1990 for "Confirmation that the site benefits from the 1991 Planning Permission Ref 7/113/1991 dated 3rd December 1991 for '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'"

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# 1. Introduction

- 1.1. Laister Planning Limited ('Laister') has prepared this statement in support of an application under Town and Country Planning Act 1990 (TCPA, as amended) Section 191 (S191) for a Lawful Development Certificate (LDC) for "confirmation that the site benefits from the 1991 Planning Permission Ref 7/113/1991 dated 3rd December 1991 for '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'" at Westfield Lakes Caravan Park, Far Ings Road, Barton-upon-Humber, DN18 5RG. The type of LDC sought is known as a Certificate of Lawfulness of Existing Use or Development (CLEUD).
- 1.2. The Local Planning Authority (LPA) is North Lincolnshire Council
- 1.3. The application is accompanied by the following documentation:
  - Application Forms (prepared via the Planning Portal);
  - This Supporting Statement (SS), and its appendices;
  - A Site Location Plan (Figure 1 of this Statement); and
  - The relevant fee (paid under separate cover).
- 1.4. This application seeks to clarify the relevant planning permission for the 'caravan site' within the site which houses both Westfield Lakes Caravan Park and Humber Bridge Country Hotel (formerly known as Reeds Hotel).
- 1.5. This applications follows on from lengthy discussions with the LPA, following various caravan site licence applications (made under Caravan Sites and Control of Development Act 1960 (the 1960 Act)), primarily a letter dated 12th June 2023, which states the following regarding the LPA's presumed position of the planning status of the site:

*"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."*

- 1.6. A copy of the letter is found in Appendix 1.
- 1.7. There have been other discussions, but there is no need to consider those further as this CLEUD application will hopefully bring an end to any doubt regarding the planning status of the caravan site.

## **Legal Background**

### **Purpose of an application under Section 191 of the Planning Act**

- 1.8. The purpose of a CLEUD application is to establish that *"...an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990"* (Planning Practice Guidance (PPG) 001 Reference ID: 17c-001-20140306).
- 1.9. For a use to be considered lawful, TCPA S191(2) states: *"For the purposes of this Act uses and operations are lawful at any time if –*  
*"(a)no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and*  
*"(b)they do not constitute a contravention of any of the requirements of any enforcement notice then in force."*
- 1.10. In this case, the applicant will demonstrate that no enforcement action can be taken because the planning permission was implemented, the planning permission cannot be lawfully abandoned, and no other material change of use has lawfully taken place. It is noted that it is the LPA that alleges that a material change of use has occurred (discussed again later in this report).
- 1.11. In order to demonstrate this, Planning Practice Guidance (PPG) states that it is the applicant who is *"...responsible for providing sufficient information to support an 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” (PPG, 006 Reference ID: 17c-006- 20140306).*

- 1.12. In this case, the Guidance for applications for an existing use further adds “...if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability” (PPG, 006 Reference ID: 17c-006-20140306).
- 1.13. The guidance quoted above provides the basis on which any CLEUD application should be assessed. This approach has been followed by the Applicant, who has presented sufficient information to support the application. This evidence clearly demonstrates, on the balance of probability, that a planning permission exists for the use of the land as a caravan site and that permission extends to the entire application area.

## **Definition of a Caravan**

- 1.14. All caravans types fall within the single definition of ‘caravans’ as defined in the Caravan Sites and Control of Development Act 1960 (the ‘1960 Act’, as amended). The original definition of a caravan is set out in Section 29 of the 1960 Act, and states:

*“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... or*

*(b) any tent.”*

- 1.15. This definition was amended by the Caravan Sites Act 1968 to cover twin-unit mobile homes. The maximum sizes were amended in 2006 by Article 3 of the Social Landlords (Permissible Additional Purposes) (England) Order 2006. The new dimensions are: length 20m, width 6.8m and overall height (measured internally from the floor at the lowest level to the ceiling at the highest level) 3.05m.
- 1.16. The definition within the 1960 Act includes all types of caravans as being the same and interchangeable.
- 1.17. For planning purposes, both the TCPA, and The Town and Country Planning (General Permitted Development) Order 2015 (the GPDO, as amended) both adopt this singular definition.

## **Definition of Caravan Site**

- 1.18. A ‘caravan site’ is statutorily defined in both planning and licensing terms. Whilst there are elements of the caravan site which are used for the stationing of caravans at present and areas which are used for ancillary purposes (together this includes the roadways, other infrastructure, private garden areas, service areas, car parking, visitor parking area, open space areas, etc), in both planning and licensing terms, the only formal description that



can be used is that derived in statute, as set out in Section 1(4) the 1960 Act. Section 1(4) of the 1960 Act states the following:

*"In this Part of this Act the expression "caravan site" 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."*

- 1.19. There is no other description that can be applied, as planning control adopts the same definition arising from the 1960 Act, as set out in Section 336 (Interpretation) of the Town and Country Planning Act 1990 (the '1990 Act', as amended). Section 336 of the 1990 Act states:

*"In this Act, except in so far as the context otherwise requires and subject to the following provisions of this section and to any transitional provision made by the Planning (Consequential Provisions) Act 1990...*

*'caravan site' has the meaning given in section 1(4) of the Caravan Sites and Control of Development Act 1960"*

- 1.20. The position that 'caravan site' comprises the only definition for a site for caravans in both planning and licensing terms is reflected in the House of Lords decision in *Wyre Forest 1990 [Wyre Forest District Council and SoS and Other, 1990 [2 A.C. 357]*. Paragraph E on Page 365 states: *"My Lords, I have to say that I regard the Council's proposition as quite untenable: if Parliament in a statutory enactment defines its terms (whereby enlarging or by restricting the ordinary mean of a word or expression), it must intend that, in the absence of a clear indication to the contrary, those terms as defined shall govern what is proposed, authorised or done under or by reference to that enactment."*
- 1.21. Bridge L.J. goes on to state at Page 368, Part F: *"My Lords, I have to say that none of the foregoing observations dissuade me from the view that the terms 'caravan' and 'caravan site', when used at any time since D-Day [being the commencement of the Caravan Sites and Control of Development Act 1960, which defined both terms in statute] in any formal document under the Planning Acts, prima facie have the meaning which they are given by the Act of 1960 as amended."*
- 1.22. On the above basis, references to 'caravan park', 'residential mobile home park' or similar must be taken to mean 'caravan site', so long as the caravans on the site meet those which are statutorily defined within the 1960 Act.
- 1.23. Hence this LDC application relates to a caravan park/caravan site (in accordance with the planning permissions referred to later).

## **Requirements for a Site Licence**

- 1.24. The 1960 Act set out in Section 1 that there is a prohibition of the use of land as a caravan site without a site licence. Operating a site without a licence makes the owner liable to an offence and a summary conviction.
- 1.25. Section 3 relates to applications for a site licence. Section 3(3) is most pertinent for planning purposes. It states: "A local authority may on an application under this section issue a site licence in respect of the land if, and only if, the applicant is, at the time when



the site licence is issued, entitled to the benefit of a permission for the use of the land as a caravan site granted under Part III of the Act of 1947 otherwise than by a development order.”

- 1.26. It is clear that a licence could only be issued where the Authority is already satisfied that ‘the land’ or ‘caravan site’ benefits from planning permission. The licensing authority would confirm the planning status of the area to be licenced before the issuance of the licence.
- 1.27. Whilst Laister has not seen a copy of the caravan site licence, according to the Council's online records, this was issued under reference CB/003 and is dated 19th May 2011, for touring caravans. A copy of the licence has been requested, but has not yet been received. It is irrelevant to the determination of the CLEUD, however.

## Abandonment of Planning Permissions

- 1.28. The House of Lords examined whether it was possible to abandon an extant planning permission at *Pioneer Aggregates 1985 [Pioneer Aggregates (U.K.) Ltd. Respondents v Secretary of State for the Environment and Other Appellants [1985] A.C. 132]*. The Lord Scarman states at 140: “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.” He goes on to explain the three cases where a planning permission may be lost:
  - Where the existing use does not relate to a planning permission which has been abandoned;
  - Where the character of the planning unit has been altered by character of a new development; and
  - Where two planning permissions sit on the land but are incapable of mutual implementation.
- 1.29. Lord Scarman concluded on Page 145 to state: “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.”
- 1.30. The principle that a planning permission cannot be abandoned was recently re-affirmed by the Supreme Court in their judgment *Hillside Parks Ltd 2022 [Hillside Parks Ltd vs Snowdonia National Park Authority [2022] UKSC 30]*. A copy of the judgments can be found in Appendices 2 and 3 respectively.

## The Pilkington Case

- 1.31. The High Court examined whether two planning permissions can co-exist within a site in *Pilkington v SSE [1973] 1 W.L.R. 1527* (copy found in Appendix 4).
- 1.32. An owner sought to implement planning permission "A" (as referred in the court judgment, granted in 1953) for the erection of a bungalow and garage within a smallholding in 1971 following the implementation of a subsequent planning permission "B" granted in 1954 for a bungalow in a different location within the same smallholding or within the same



defined curtilage. A condition on permission B stated that the bungalow subject to that permission shall be the only dwelling erected upon the area of land edged red on the submitted plan. An Enforcement Notice against the erection of the second bungalow, subject to permission A, was issued by the relevant LPA.

- 1.33. The Secretary of State concluded during the Appeal that *"The view is taken that planning permission 756 was inconsistent with and alternative to permission 601 and that when the former permission was implemented, the latter became incapable of implementation"* as stated in Line D on Page 1531.
- 1.34. The court held that it was fundamental that multiple applications can be made on the same parcel of land, and each must be determined on its own merits. Then the court goes on to state that it is not possible for permission A to be implemented in accordance with its approved details when having regard to the implementation of permission B, and so permission A has become unimplementable.
- 1.35. Lord Widgery CJ states on Page 1532, starting at Paragraph B:

*"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 B 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."*



- 1.36. The principle will be relevant to whether the 1991 Planning Permission can co-exist with the planning permissions for the hotel.
- 1.37. This principle was also re-affirmed in *Hillside 2022*.

### **Material Change of Use**

- 1.38. As the Council has alleged that there has been a material change of use, it is helpful to set out what this might mean in terms of the legislation.
- 1.39. TCPA Section 55(1) defines 'development'. It states: "*Subject to the following provisions of this section, in this Act, except where the context otherwise requires, 'development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change of use of any buildings or other land.*"
- 1.40. It is clear that a material change of use is a form of development which requires planning permission.
- 1.41. In Section 171A regarding enforcement, it states at sub-section (1) that: "*For the purposes of this Act -*  
*(a) carrying out development without the required planning permission; or*  
*(b) failing to comply with any condition or limitation subject to which the planning permission has been granted, constitutes a breach of planning control.*" The same section of the TCPA defines what actions constitute taking enforcement action.
- 1.42. The TCPA sets out time limits for when enforcement action can be taken in Section 171B. It is summarised in the PPG as follows:



## What are the time limits for taking enforcement action?

The time limits for taking enforcement action are set out in [section 171B of the Town and Country Planning Act 1990](#) (see also [The Planning Act 2008 \(Commencement No. 8\)](#) and [Levelling-up and Regeneration Act 2023 \(Commencement No. 4 and Transitional Provisions\) Regulations 2024](#) for transitional arrangements).

In most cases, development becomes immune from enforcement if no action is taken:

- within 10 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place on or after 25 April 2024
- within 10 years for an unauthorised change of use to a single dwellinghouse where the change of use took place on or after 25 April 2024
- within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024;
- within 4 years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024
- within 10 years for any other breach of planning control (essentially other changes of use)

1.43. There are exceptions to this, but these do not apply to the situation at the application site.

1.44. It is clear that a breach of planning control, to cause a material change of use, requires 10 years of a continuous breach. This will be relevant later in the report.

## The Site and Surroundings

1.45. The site comprises two areas within a larger roughly rectangular piece of land owned by the applicant. These comprise the area which were used as part of the Westfield Lakes Caravan Park. One area, to the west, is referred to as the 'Western Field of the site, and the larger area, to the east, is known as the 'Eastern Field' of the site, for the purposes of this report.

1.46. The Western Field comprises a small corner of hardstanding which was previously occupied by two caravans for residential purposes along with a storage container. The eastern part of the site contains a single chalet caravan, along with various hardstanding bases and access roads as remnants of the caravan site, grass areas, and a small central complex housing the foul water pumping system for the site. Access to the wider site is derived from the south-eastern corner of the eastern area of the site. There is some



vegetation within the site as well as surrounding its edges, although most of the vegetation is not mature.

- 1.47. The site is located just beyond the south shoreline of the River Humber, west of the A15/Humber Bridge. It also hosts a former hotel, most recently known as the Humber Bridge Country Hotel (but locally known as the Reeds Hotel) in the centre between the Eastern and Western Fields. It was a 34-bedroom hotel with two large conference rooms, and also included a former reception area, restaurant facility to the south of the hotel and reception, and a dwellinghouse, typically occupied by the owner or manager of the hotel and caravan park. Further south is a former access to the site, which runs between two lakes that were formed following the cessation of extraction activities.
- 1.48. The site access comprises a long single-track access with several passing places from Far Ings Road to the south, entering the site at its south-eastern corner and running through the middle of the eastern half of the caravan site until it reaches the car parking areas that supported the hotel.
- 1.49. In the immediate surrounds of the site, to the north is a walkway on top of the Environment Agency managed flood defence that sits adjacent to the shoreline areas of the River Humber. To the east is a property associated with the Far Ings Visitor Centre, which includes a large lake created following the cessation of extraction activities. To the south, as mentioned above, are two large lakes.
- 1.50. Whilst irrelevant for the purposes of this application, the Western Field of the site is located within a Site of Special Scientific Interest (SSSI) and land surrounding the site, excluding the hotel, the dwelling house and the Eastern Field, but including the access, comprise European designated Special Protection Areas (SPA), Special Areas of Conservation (SAC) and RAMSAR areas. Such designations have no relevance to CLEUD applications.



## 2. Planning History

- 2.1. The site has an extensive planning history, as can be seen from this screenshot of the Council's online mapping service for planning applications, but most applications are irrelevant for the purposes of this application:

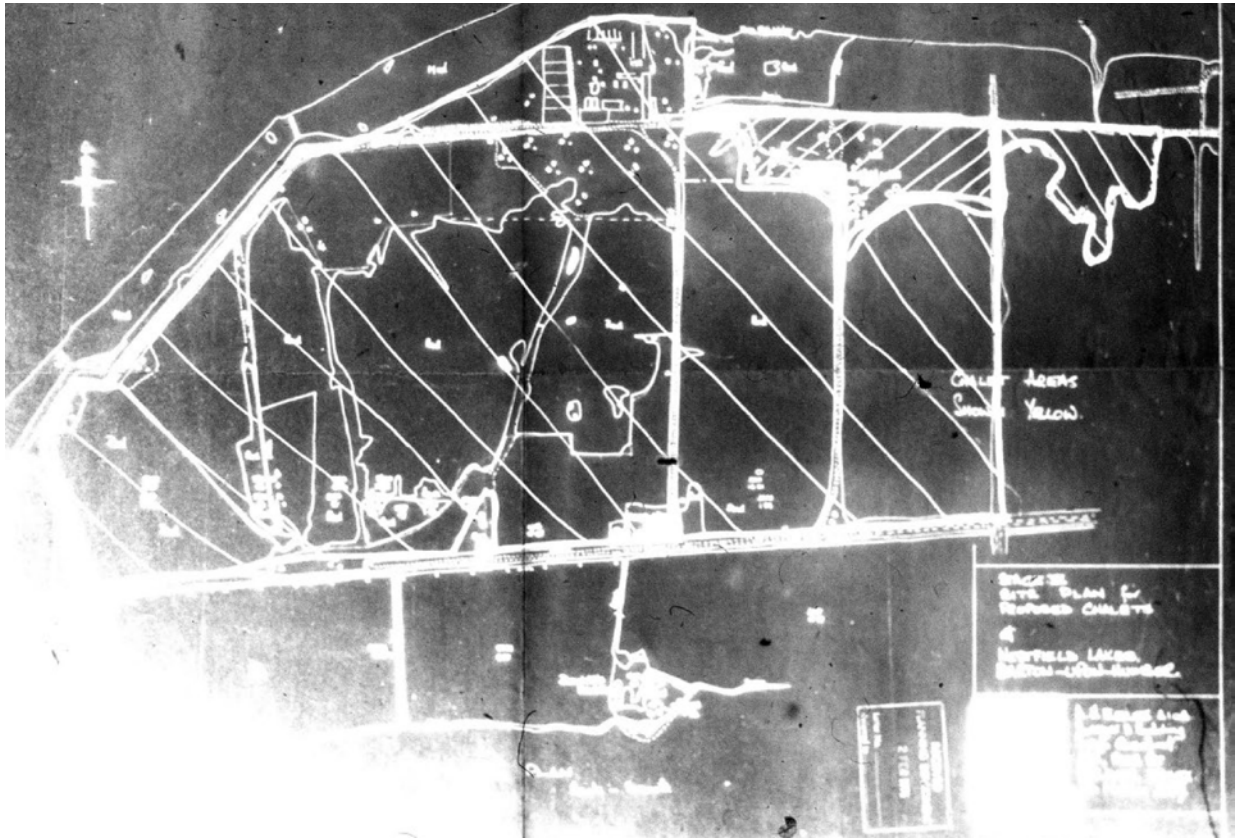


- 2.2. The Council has provided a copy of the planning history in a schedule following a request under Environmental Information Regulations (no EIR2023/00465) that can be found in Appendix 5. The Council also provided decision notices and plans associated with that request.
- 2.3. We discuss the key permissions for the caravan site use below.
- 2.4. The hotel permissions are discussed later in the report.

### **The 1972 Permission (Ref: BA/3/72/B)**

- 2.5. On 21st February 1972, planning permission was granted for "Erect 7 residential chalets and site 76 caravans for a period of 5 years." The area of the permission was:





2.6. Whilst the plan is only in black and white and no legend can be read, the planning permission likely applied to the area which was diagonally hatched with a high density of lines running from top-right to bottom-left.

2.7. The planning permission was granted subject to four conditions:

- Timescale condition
- The "all year round use of this site for residential caravans and chalets" shall be discontinued on 21st March 1977, and from that date, no caravan or chalet shall be occupied between 1st November in any year and 14th March in the following year.
- As a pre-commencement condition, a landscaping and tree planning plan shall be approved, and carried out within 12 months of the date of the commencement of development. Trees and shrubs shall be maintained for a period of 10 years.
- Relates to an area of car parking within the site.

2.8. It is understood that this permission was implemented.

2.9. A copy of the permission and plan can be found in Appendix 6.

### **The 1976 Permission (Ref: 7/87/76)**

2.10. On 26 March 1976, planning permission was granted for "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." According to an email from the Planning Support team at the LPA dated 30th September 2022, there are no plans on microfiche.

2.11. The permission had eight conditions attached to it. The relevant ones for this application



are:

- Condition 1, timescale
- Condition 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 caravans and chalets shall be occupied between 1st November and 14th March of the following year.
- Condition 5, the approach road at the eastern end of the Far Ings Road shall be reconstructed and include the required plays, sight lines, etc.
- As a pre-commencement condition, Condition 6 required the two approach roads shall be respectively designed for access and egress.

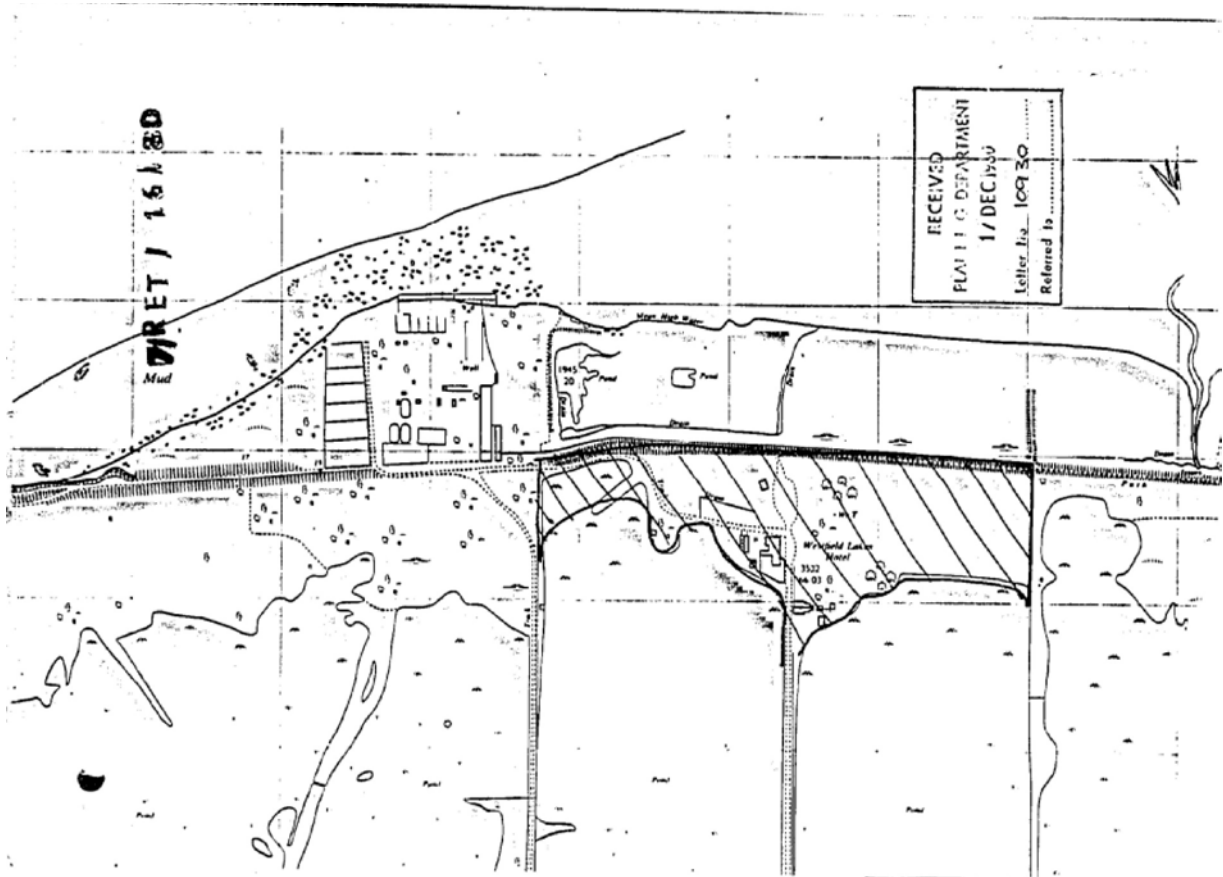
2.12. The planning permission is understood to have been implemented.

2.13. As a reference, the site was 'Westfield Lakes Hotel', which demonstrates that the hotel and caravan park were conjoined and not incompatible.

2.14. A copy of the decision can be found in Appendix 7.

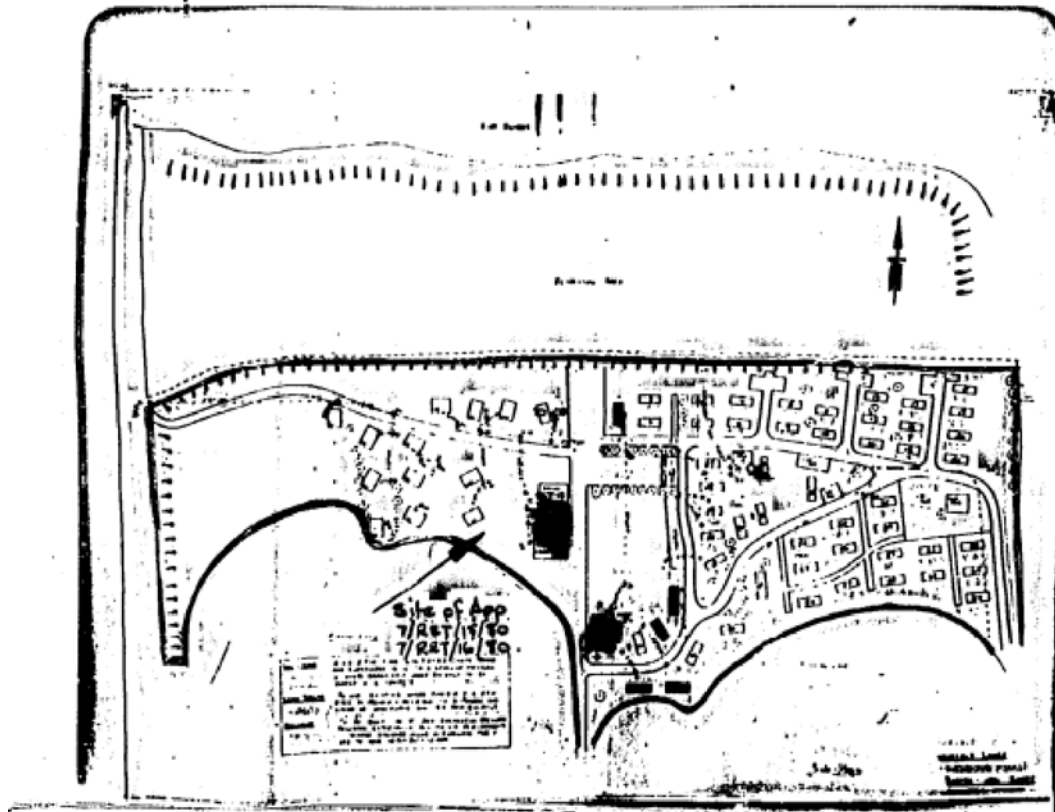
### **The 1981 Permission (Ref: RET/1980/0016)**

2.15. On 26th February 1981, planning permission was granted for "*retain existing caravan site without complying with condition no 2 on planning permission 7/87/76.*" The area of the permission is (rotated counter-clockwise for ease of reference):



2.16. A second plan was provided by the Council, as follows:



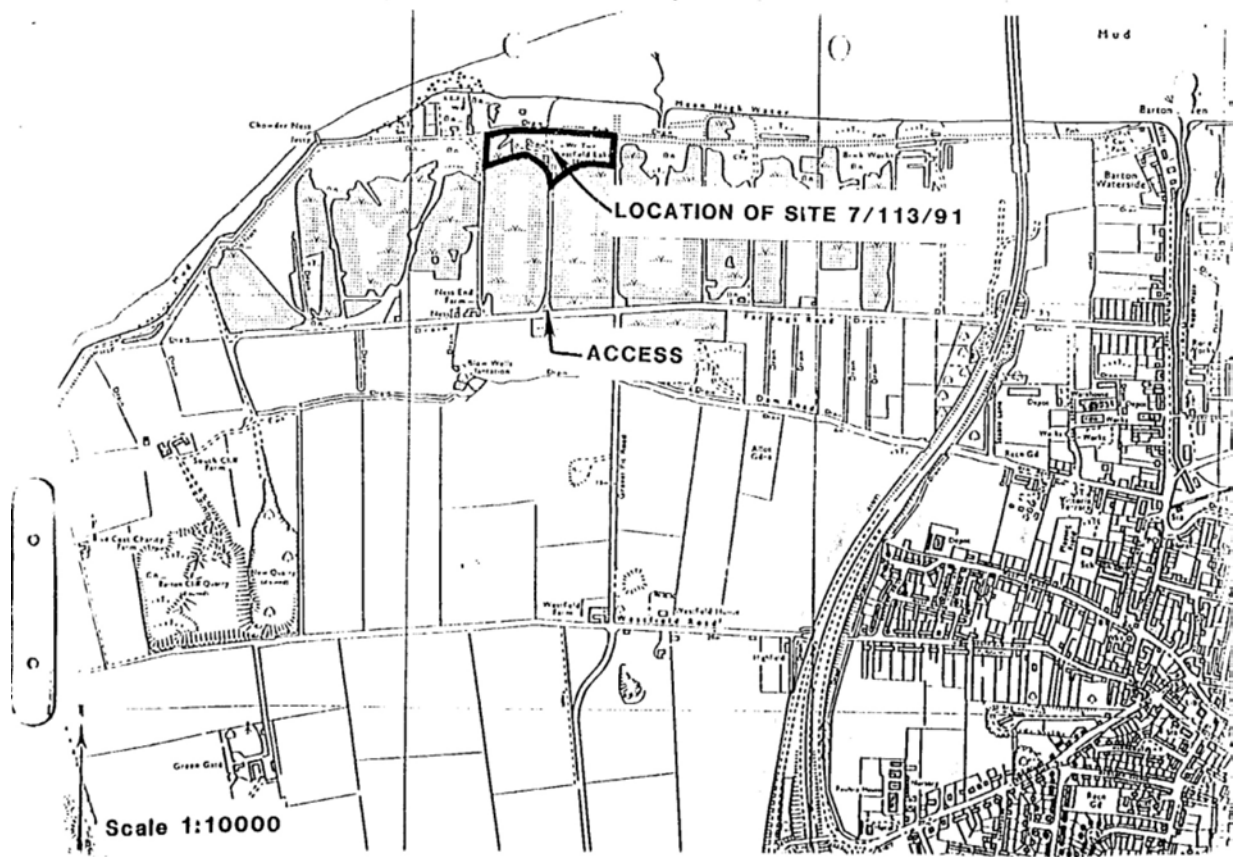


- 2.17. Whilst both plans are in black and white, it is clear that there is line encircling the site and which appears to relate to the extent of the planning permission. Indeed, on the location plan, there is also cross-hatching to the support the same conclusion.
- 2.18. The permission was subject to 3 conditions, although condition 2 is illegible on the version which we have received: 1 - timescale; 2 - occupancy (we believe), and 3 - landscaping plan to be approved.
- 2.19. It is understood that this permission was implemented, as it was subsequently referred to in the following permission.
- 2.20. A copy of the permission can be found in Appendix 8.

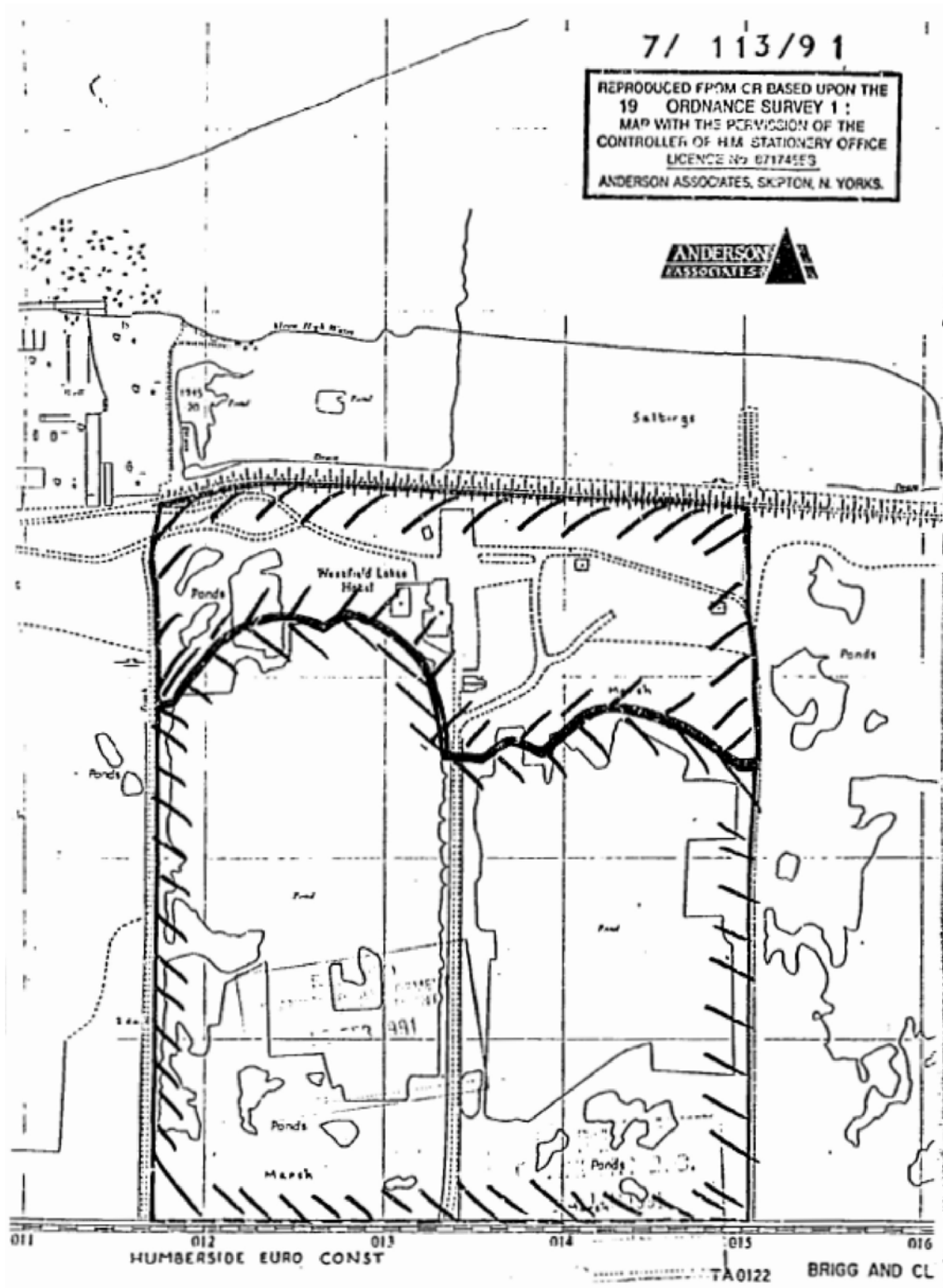
### **The 1991 Planning Permission (Ref: 7/113/1991)**

- 2.21. On 3rd December 1991, full planning permission was granted for "remove condition 2 of planning permission BA/3/72/B and 7/RET/16/80 to allow all year round residential use of the existing caravan site." The location plan provided by the Council is as follows:





2.22. A second plan provided by the Council shows the following:



2.23. The above plan is clearly stamped by the Council with the date as well as the reference number. Whilst it is in black and white, there is a thick black line which provides an outline of the site, with hatching both within the black line and outside of it. There is no legend attached to this permission, but it is likely that the area within the black outline represented the area of the planning permission.

2.24. There were eight conditions attached to the permission. The relevant ones for this

application are:

- Condition 1 - timescale;
- Condition 2 - no more than 70 caravans or chalets or mobile homes shall be stationed on the site
- Condition 3 - all chalets or mobile homes shall confirm to BS3632 standards.
- Condition 4 - prior to stationing of caravans, a layout plan shall be agreed, including for landscaping.
- Condition 7 - not more than twenty-five units shall be constructed on site before the access in the south-eastern boundary of the site shall be surfaced, details to be agreed in writing with the LPA.

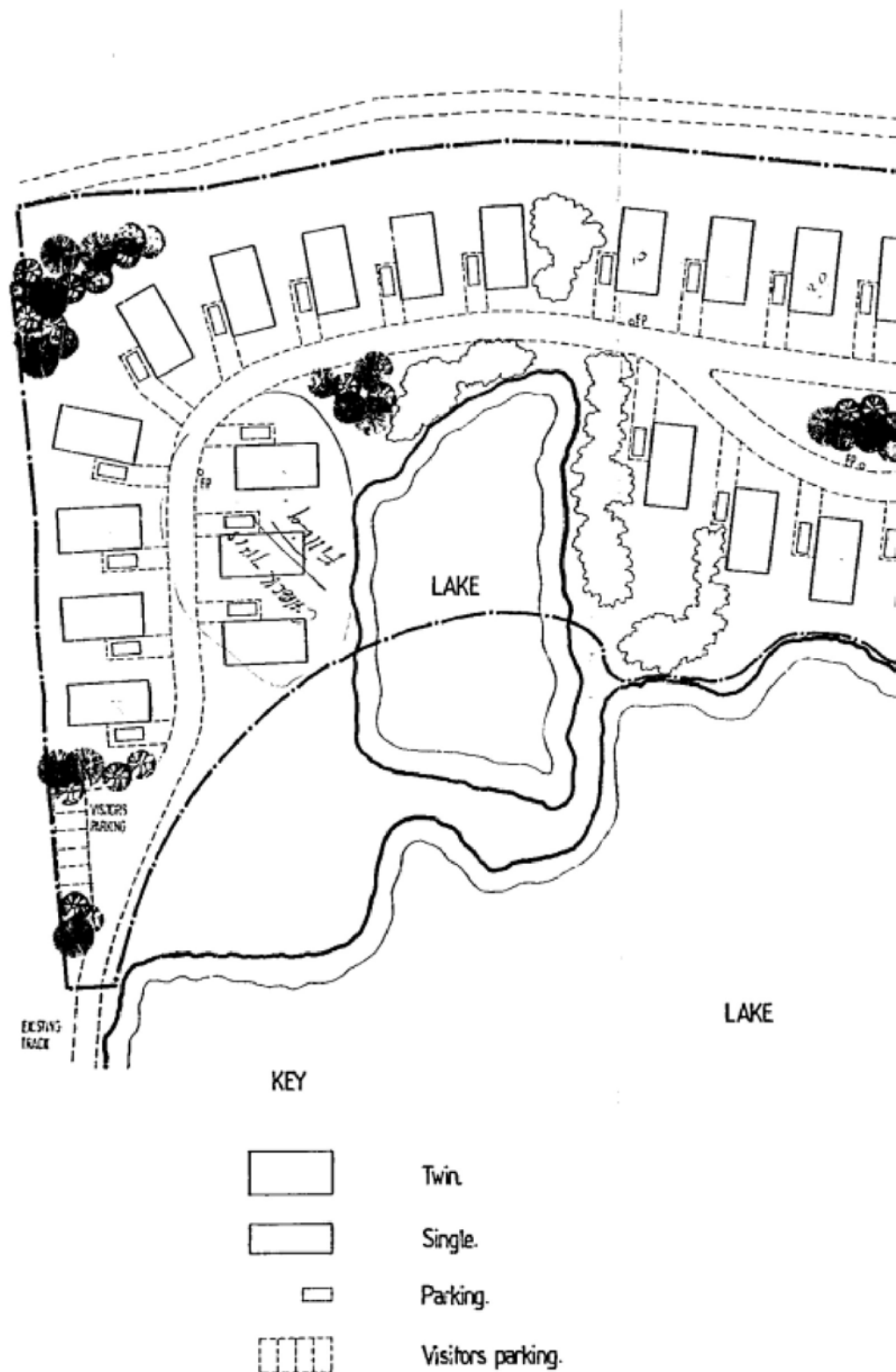
2.25. A further site plan was provided by the Council, which shows the following:



2.26. This is understood to be the landscaping plan required by condition 4 as it provided for both the layout and landscaping details. It stamped by the Council and shows various details of the layout, including 57 caravans in a mix of twin and single units, along with car parking, etc. An area to the west was considered to be an area where design and lay matters were reserved.

2.27. That said, a further plan on file shows the western end being developed for another 12 caravans, or showing a total of 69 caravans across the site. An extract of the western part of the plan is shown below:





2.28. It is noted that the planning permission granted permanent residential use of the caravans and did not control the layout in perpetuity. It did limit the number of static caravans across the site to a maximum of 70, however.

2.29. This planning permission is understood to have been implemented. Indeed, a photograph

taken on 20th January 1993 from the end of Gravel Pit Road where it meets Far Ings Road at the south-eastern end of the site shows the following (sourced from the local library):



2.30. A zoomed in version shows the following:



2.31. Caravans can clearly be seen on site by the required time period, and the planning permission can be confirmed as implemented as a result.

2.32. Aerial photographs confirm the same. For example, the 1994 aerial photograph acquired from NCAP dated 2nd November 1994 clearly shows caravans on the site. An extract of the aerial photograph relevant to the site is as follows (rotated to ensure north is pointing upwards):





2.33. A zoomed in version of this showing just the site is as follows (rotated to show north as upwards):



- 2.34. It is noted that the area to the western end of the 1991 Permission's application area appears to have been filled in, and which it is noted that caravans could be stationed.
- 2.35. It is noted that the foul water system complex is clearly visible on site, as per the following further zoom-in of the NCAP aerial:





- 2.36. As we will discuss in the following section of the report, its presence and continued operation on site to support the caravan site would alone maintain the caravan site's use.
- 2.37. A copy of the Decision notice and plans can be found in Appendix 9.

### **2021 Withdrawn Application**

- 2.38. On 2nd September 2021, a planning application to erect 19 lodges, new access road, and associated hardstanding was withdrawn. It does not effect anything related to the current status as it was withdrawn.

### **Hotel Planning Permissions**

- 2.39. Subsequent to the 1991 Permission for the permanent residential caravan site, there have been a number of other planning applications made on the site, some of which have been implemented, mostly pertaining to the expansion of the hotel.
- 2.40. The client's barrister (Richard Harwood KC OBE of 39 Essex Chambers) has reviewed these in detail in a Counsel's Opinion which was provided to the LPA on 15th May 2023. The Counsel's Opinion is appended in Appendix 10:
- 2.41. As can be seen from the advice, Mr Harwood also reviewed the Council's list of planning history for the site. Mr Harwood also sets out additional case law to that which we cited in Section 1 with regards to dormancy, abandonment and inconsistent planning permissions in Paragraphs 13-15, which again, for brevity reasons, are not repeated here, but just to say



those references simply complement the concepts referred to in Section 1 that a planning permission cannot be abandoned and multiple permissions can apply to a site so long as they are not inconsistent.

- 2.42. Mr Harwood then reviews the 11 no post-1991 permissions which are identified by the Council in their table. It is agreed that 10 other permissions are irrelevant.
- 2.43. The Counsel's Advice sets out an analysis of the hotel permissions which the Council considers to be relevant, and Mr Harwood concludes that they either pre-date the 2000 site licence (discussed below) or did not affect the character of the caravan site and are not in conflict with that permission. He states:

*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.*

*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.<sup>17</sup>*



24. The original temporary marquee 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."

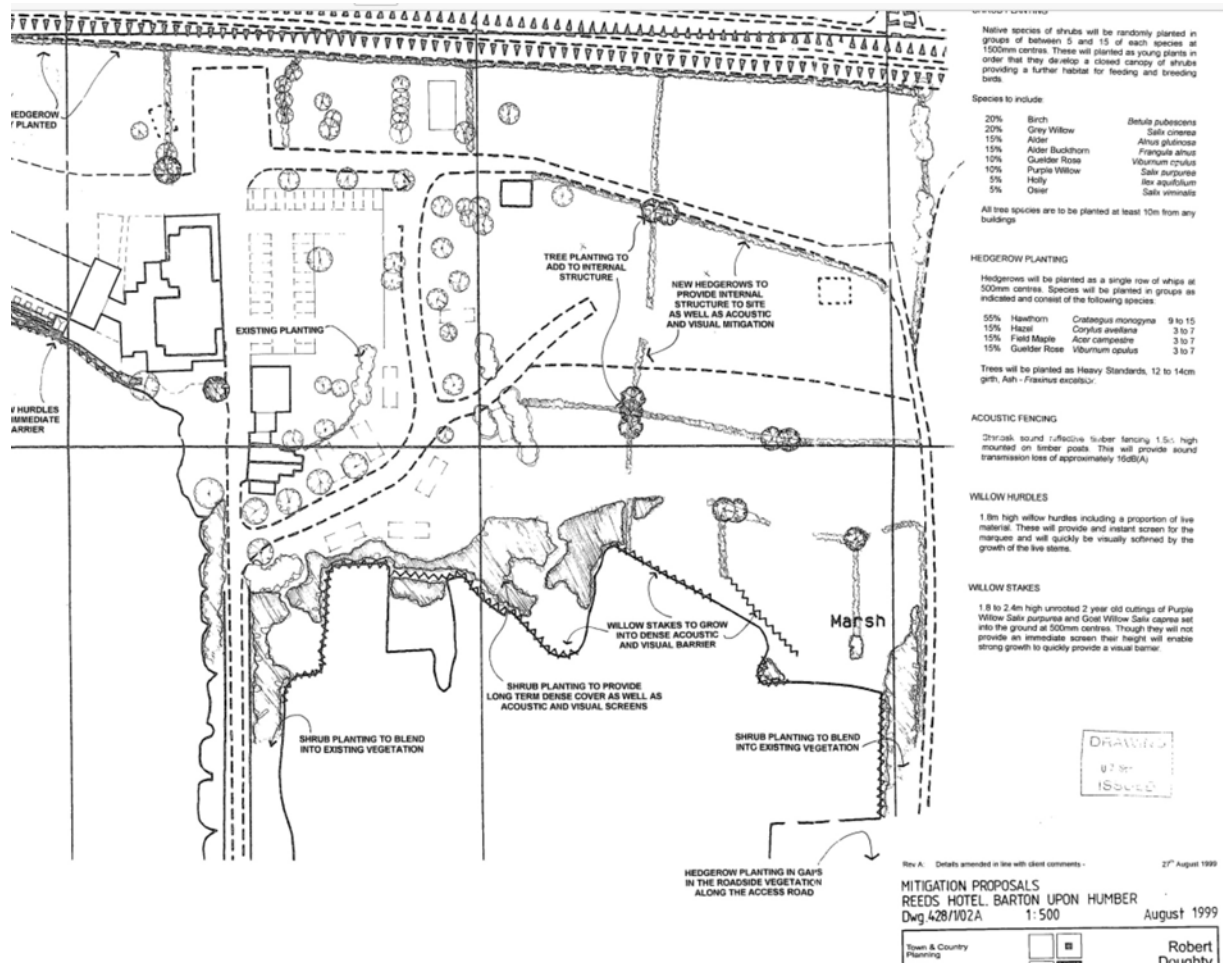
[Footnote 17 states: 1998/1490 (marquee) and 1999/1177 (coffee lounge).].

2.44. To summarise Mr Harwood's advice:

- None of the other permissions cover the entirety of the site, and only authorise development on small parts (Paragraph 18).
- Eight of those permissions pre-date the 2000 Caravan Site Licence (CSL, discussed below), and five of those were retrospective (Paragraph 19). The Council in their decision on the CSL clearly identified that CSL should be issued regardless of these other permissions.
- The 1991 Permission was granted recognising the existence of the hotel (Paragraph 20).
- Permissions refs 2000/0082, 2000/0973 and 2001/1029 were of a similar character and did not alter the scope of the 2000 CSL (paragraphs 21-23).
- A temporary marquee permission (Ref: PA/98/1490) did by condition 2 require hedge planting to assist in nature conservation, but such measures are not inconsistent with the caravan site use (Paragraph 24).
- Not all permissions were implemented (Mr Harwood cites Permissions PA/1997/0118 and PA/98/1491) (Paragraph 25).
- Mr Harwood's conclusions is: "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." (Paragraph 26).

2.45. The only potential We examine the plan pertaining to PA/98/1490, which requires by condition 2 hedge planting to assist in nature conservation. This is as follows:





2.46. This plan is referred to in Condition 2 of the permission, which required its implementation. It is unlikely to be in conflict with the caravan site use for the following reasons:

- The permission was issued prior to the site licence, so clearly the Council did not consider that it would prejudice the extant nature of the 1991 Permission and issued the caravan site licence. It is noted that the drawing is dated August 1999 (the stamp date is illegible), it wasn't so long before the licence was issued.
- The permission was temporary, as per Condition 1, and upon its expiry, the previous lawful land use would have been re-instated (i.e. 1991 Permission).
- The plan shows the outline of six caravan bases so clearly the plan on its face notes the continued existence of the caravan site.
- The hedging does not prejudice the caravans being stationed in between them.

2.47. The Council has seen a copy of this advice. In an email reply by Ms Webster, dated 27th June 2023 (see Appendix 11), Ms Webster states:

*"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..."*

- 2.48. The remainder of the email relates to Habitats Regulations Assessment (HRA, to be discussed in the following section of the report), which are irrelevant (the HRA review provisions are discussed below). This CLEUD application is in part a response to the second paragraph of this email, and the Council letter dated 12th June 2023, where a CLEUD is requested.
- 2.49. As we'll note later in the report, the Council refers to 'open-source data' but when asked to provide these in a statutory FOI/EIR request, they are unable to furnish any evidence.

### **The 2000 CSL**

- 2.50. Mr Harwood refers to a 2000 Caravan Site Licence issued by North Lincolnshire Council, who are also the licensing authority alongside being the LPA.
- 2.51. CSL No 14 was issued to the '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, Borton-on-Humber, North Lincolnshire, DN15 8RG (sic)"*.
- 2.52. The remainder of the licence can be seen in the following screenshot:



**Caravan sites and Control of  
Development Act, 1960  
SECTION 3**



**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

**(Director of Environment and Public Protection)**

**No.14**

2.53. The conditions limited the site to not more than 10 permanent residential caravans (Cond 3), required the provision of hardstandings (Cond 11) and roads (Cond 12), drainage facilities, particularly foul water (Cond 39)

2.54. It is clear that in 2000, the LPA considered that the 1991 Permission referred to in the CSL was extant. That goes to demonstrate Mr Harwood's point that none of the hotel

permissions could have, in the Council's view, been inconsistent with the 1991 Permission for the residential caravan site. The Licensing Authority, in conjunction with the LPA, certified this with the issuance of this licence.

2.55. A copy of the licence can be found in Appendix 12, and it remains extant. That is material to the application as it represents the Council continuing to formally licence a caravan site within the application site.

## HRA Review Provisions

2.56. Upon making a fresh CSL application, the Council indicated in a letter dated 2nd March 2022 (copy found in Appendix 13), that the LPA would consider how the HRA regulations would 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.

2.57. We have dealt with these points in a letter dated 7th November 2022, as found in Appendix 14. The second point relates to the 1991 Permission, whereas the first point relates to operational development required by conditions of a CSL. The latter is not relevant here as the applicant is not seeking a CLEUD to confirm any matters in relation to operational development.

2.58. In the letter, Laister reviewed the legislation pertaining to reviewing planning permissions for the purposes of HRA (Regulations 71-73). Reg 71 required the LPA to review any planning permissions and issue a modification or revocation order under TCPA Section 97 or a discontinuance notice under TCPA Section 102 where adverse effects could not be overcome by planning obligations or other mitigation. However, Reg 73 that any Order or Notice cannot affect development authorised by permission before the Order took effect or could not affect anything done before the European site was designated.

2.59. As demonstrated above, the caravan site was implemented prior to the designations coming into plan (which was in 2007 at the earliest).

2.60. The letter also sets out how the development was 'complete' even before the habitats were designated as a European site. As such, it is simply not possible to review the permission under the provisions of the HRA.



### 3. The Planning Unit

- 3.1. Whilst it is clear from the above that the caravan site forms the same planning unit alongside the hotel, albeit subject to separate planning permissions, even if the LPA remains uncertain about this (although they are unlikely to have any evidence to contradict the applicant's version of events), it is abundantly clear that the application site falls within the planning unit.

#### The Burdle 1972 Principles Surrounding a Planning Unit

- 3.2. The case law on the planning unit is well-established.
- 3.3. The PPG provides guidance on this:

*"Where land is or buildings are being used for different uses which fall into more than one class, then overall use of the land or buildings is regarded as a mixed use, which will normally be sui generis. The exception to this is where there is a primary overall use of the site, to which the other uses are ancillary. For example, in a factory with an office and a staff canteen, the office and staff canteen would normally be regarded as ancillary to the factory."(Paragraph 010, Reference ID: 13-010-20140306)*

- 3.4. The 'Burdle' case [*Burdle v Secretary of State for the Environment and another* [1972] 1 WLR 1207 (referred to as the Burdle case)] is the seminal case on the planning unit. In summary, the Court held:

*"What, then are to be considered the appropriate criteria to determine the planning unit which should be considered in deciding whether there has been a material change of use? Without presuming to propound exhaustive tests apt to cover every situation, it may be helpful to sketch out broad categories of distinction.*

*"First, whenever it is possible to recognise a single main purpose of the occupiers use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. That proposition emerges clearly from G. Percy Trentham Ltd v Gloucestershire County Council [1966] 1 WLR 506, where Diplock LJ said at p.513:*

*"What is the unit which the local authority are entitled to look at and deal within an enforcement notice for the purposes of determining whether or not there has been a 'material change in the use of any buildings or land'? As I suggested in the course of the argument, I think for that purpose what the local authority are entitled to look at is the whole of the area which was used for a particular purpose, including any part of that area whose use was incidental to or ancillary to the achievement of that purpose..."*

*"...It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller scale unit can be*



*recognised as the site of activities which amount in substance to a separate use both physically and functionally.”*

- 3.5. Essentially, the ‘Burdle’ tests set out that if the Application site is physically and functionally separated from the caravan site, it would not form part of the caravan site’s planning unit. This is a matter of planning judgment based on fact and degree
- 3.6. It is noted that when it comes to ancillary uses and the primary use, this has already been settled. The case *Westminster Council v British Waterways Board [1985]* tested the concept, and Judge Lord Bridge indicated that the concept that ancillary uses can be outside of a planning unit would be a misapplication of the concept.
- 3.7. There is simply no concept in planning where the primary use and the ancillary use are found within separate planning units.
- 3.8. We discuss this concept with regards to the sewerage system on site in the following section of the report.
- 3.9. In our view, the application site and the adjoining hotel form a single planning unit, comprising a caravan site governed under the 1991 Permission and a hotel, governed under a series of permissions for its operational development and implicitly, its planning use. We have seen no evidence that would lead to any other conclusion regarding the planning unit, given the longevity of both uses co-existing on site (for some 50+ years at present) and no obvious inconsistent planning permissions that prejudices one use over the other, as set out in Mr Harwood’s advice.



## 4. The Case for the Applicant

- 4.1. As a reminder, the PPG contains guidance on who is responsible for providing sufficient information to support an application (Paragraph 006, Reference ID: 17c-006-20140306). It states that the Applicant is responsible for providing sufficient information to support an application. It also states:-

*"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the Applicant's version of events less than probable, there is no good reason to refuse the application, provided the Applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."*

- 4.2. It helpful to remind the reader of the reason that this CLEUD application is being made. The LPA alleges, in their letter dated 12th June 2023, that according to the evidence that they have obtained, there was a material change of use of the Eastern Field from caravan site governed by the 1991 Permission to "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.*" In the letter, the LPA also alleges that the caravan site use was abandoned around 2003. It is noted that the words used by the Council is that it "was used" which would indicate a material activity taking place.
- 4.3. We will demonstrate below that both statements are false, that the caravan site was not as a matter of fact abandoned in 2003 as alleged, but equally, there is a distinct lack of evidence of any activity on the land, let alone a material activity associated with the hotel, and that any activity was certainly not *continuous* (if it occurred at all) to cause a material change of use. Our evidence demonstrates that this CLEUD application was entirely unnecessary.

## The Applicant's Evidence

- 4.4. The onus being firmly on the applicant to demonstrate that no material change of use has occurred, and the 1991 Permission remains extant. This is rather an unusual situation, as normally such applications are made to demonstrate that the Applicant's land is subject to a *lawful* material change of use for which Enforcement Action can no longer be taken. Quite simply, in this case, the Applicant has to demonstrate that a continuous use of the land as 'ancillary hotel uses' has not occurred for a continuous period in any 10 year period to the date of this application, which would then be sufficient to demonstrate that the 1991 Permission remains extant and the application site remains in caravan site use. This is because the alleged material change of use could simply not occur if there has been no alternative use, because a planning permission cannot be abandoned as a matter of law.
- 4.5. In advance, it is not necessary to set out the nature of the client's CSL licence application



from 2021 –2023. That application was refused, but once the CLEUD sought herewith has been issued, a fresh CSL (or a transfer of the existing CSL) can be obtained, in accordance with the provisions of the 1960 Act.

4.6. The applicant's evidence in favour is as follows:

- The 1991 Permission, as reviewed in a previous section.
- The presence of the 2000 CSL, which remains extant (as reviewed in a previous section of this report).
- Counsel's Opinion regarding the permissions on site (as reviewed in the previous section of this report).
- The Council's EIR2023/0465 reply and the Information Governance Team Review under reference IR2023/01017.
- A Statutory Declaration from Mr Christopher James Sedwick, Director of Drainmaster (UK) Limited, dated 6th August 2024.
- Photographs from David Lee Photography (to be followed up with a statutory declaration from Mr Michael Lee).
- Council tax records, received via Internal Review Ref: IR2024/00346 with regards to FOI2024/00121.
- Various Aerial Photographs.
- The Council's EIR No FOI2023/00463 reply provided on 25th April 2023, which explains that the timeline when the hotel flooded on 5th December 2013.

4.7. We discuss each in turn below, before assessing the LPA's claim of an alleged material change of use.

### **The 1991 Permission**

4.8. As demonstrated in the previous section, the 1991 Planning Permission was duly implemented and caravans can be seen on the site in 1993 and 1994. The permission extended to the entirety of the application and beyond, and permitted up to 70 residential caravans to be stationed on site in any layout going forward. The requested CLEUD seeks to confirm its extant nature as regards to the application site.

4.9. The Council will note that as the permission extends into the areas of the hotel and to areas further west beyond the application site, it is open to the Council to include these areas within the CLEUD when it is issued, using its powers provided under TCPA S191(4) to modify the description or the location based on the evidence before it.

4.10. We have also reviewed the provisions of the HRA which would enable the LPA to potentially review, modify or revoke the planning permission. However, as demonstrated in the letter submitted to the Council in 2022, the caravan site was 'complete' for the purposes of the HRA and a review would no longer be lawful.

### **The 2000 CSL**



- 4.11. The site still benefits from the 2000 CSL, which was granted on the basis that the site benefited from the 1991 Permission. It represents a formal decision of the Council. It has not been retracted or revoked. As a result, formally, the Council continues to authorise the caravan site under the CSL, which it could only do if it continues to accept that the 1991 Permission applies, albeit only for the Real Wood Co Limited.
- 4.12. The weight attached to this is significant, however, as the site remains formally licensed as a caravan site, which it could only occur if the 1991 Permission remained lawful.

### **The EIR2023/00465 and IR2023/01017 Reply**

- 4.13. The Applicant submitted a request for information as follows:

*"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 statements (sic) are based. Please would you kindly share any and all information that the Council has relied on or discarded that relates to this."*

- 4.14. As set out in the planning history section of this report, the LPA provided a spreadsheet of the planning history alongside copies of decision notices and plans. Mr Harwood's advice discusses the fact that none of the permissions introduce any elements of potential conflict, and that it has long been the case that the hotel and caravan site have co-existed on site. The LPA has read the Counsel's advice, and replied *"Firstly, we are comfortable with a large number of the points he makes."* as reported in the previous section of the report. The Council appears to, at that point, drop any pretence that there may be incompatibilities between the caravan site and the hotel use, but insist on the material change of use by way of a material activity taking place, as an alternative approach.
- 4.15. The Applicant sought to clarify the outcomes of the initial EIR response and requested several internal reviewed..
- 4.16. The reply that was provided stated (as summarised in IR2023/01017): *"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."*
- 4.17. The EIR reply adds: *"It was explained that 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."*
- 4.18. The LPA has confirmed that they relied on images to make the statement (presumably this is the 'open-source data' that was referred to in the email dated 27th June 2023) that there was a material change of use of the land, but which they no longer hold and cannot



provide to the applicant.

- 4.19. Laister was unable to locate any images via Google Image Search that definitively or strongly indicate activity associated with the hotel on the eastern area, except for vehicles passing along the access through the eastern area.
- 4.20. Whilst we discuss this in detail below, it appears that the LPA has relied on images which it no longer holds to allege there was a material change of use. Notwithstanding the fact that the evidence has not been retained, the LPA should know that such images, whether aerial photographs or other photographs, do not demonstrate 'continuous' use on their own, but rather represent a snapshot of a point in time. A series of dates images over a long period may demonstrate such activity took place over time, but in this particular scenario (as will be seen below), we are unable to view the LPA's images to confirm the dates and whether these stretch over a long period of time. We doubt that they do given the evidence in this Statement, but in any event, we can conclude that such images, if they can be re-located by the LPA, are unlikely to demonstrate a continuous use on their own.
- 4.21. As stated above, an applicant is normally required to provide sufficiently precise and unambiguous evidence to demonstrate something is lawful. In this case, as it is the LPA which is alleging the material change of use, the LPA should be held to the same standard. Indeed, the PPG states: "*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.*" (Paragraph: 006 Reference ID: 17c-006-20140306; Revision date: 06 03 2014)
- 4.22. If the LPA wishes to allege a material change of use from an extant planning permission has occurred, their evidence to support that allegation must be sufficiently precise and unambiguous and must be shared with the applicant. At present, the lack of evidence from the LPA means that their allegation would fail if it were presented by an applicant seeking a CLEUD. That should, in context, be taking into account; the alleged material change of use lacks precise and unambiguous evidence at present.
- 4.23. In addition, the EIR also noted that a letter was provided by the then owner in 2000 indicating that the owner was "*discussing the probability of a move of all the residents off the park to another site.*" The Council has, in their 12th June 2023 letter, stated under 1.d that the owner intended to abandon the caravan site use following disputes about the licence. As we will demonstrate below with Council tax records and aerial photography, whilst there may have been that intention to abandon the caravan site in 2000, the cessation of operating the caravan site simply did not take place at all (and of course, on its own, would not be capable of causing the planning permission to be abandoned or replaced). A copy of the letter can found in Appendix 15b.
- 4.24. Copies of the results of the original EIR can be found in Appendix 15a.

### **Statutory Declaration by Christopher James Sedgwick**

- 4.25. Mr Sedgwick, on behalf of Drainmaster UK, carried out a foul water drainage survey (CCTV



and physical) of the Westfield Lakes Caravan Park on 7th November 2023. The results of his drainage survey can be found in Exhibit A of his statement. A screenshot is below:



- 4.26. They clearly show that both the Western and Eastern Fields connect to the foul drainage central tank and pumping facility at the western end of the Eastern Field, where there is a manhole (see north of Manhole No 9). The caravans that were in the Western Field are located by manhole 1A.
- 4.27. Mr Sedgwick confirms that the foul drainage system remains broadly intact, and subject to some maintenance, it can be restored to a fully functioning system.
- 4.28. It is clear from Mr Sedgwick's statement that the caravans found in the Western Field would rely on the foul water drainage tank in the eastern area as an ancillary piece of infrastructure as part of their operation. We discuss this point again below, but as that infrastructure was necessary for caravans stationed on site until 2017, the pumping station's presence alone, and its continued use, would have on its own continued the caravan site use.
- 4.29. A copy of the Statutory Declaration can be found in Appendix 16.

### **Photographs by David Lee Photography**

- 4.30. We are awaiting a statutory declaration from Michael Lee, Director and owner of David Lee Photography. However, in the meantime, we set out below photographs taken by Mr Lee during the relevant periods that demonstrate that there are no hotel activities on the Eastern Field, and strongly cast doubt regarding whether there was a continuous period of hotel-related activities on the Eastern Field to cause a material change of use. Mr Lee will certify in his declaration (available shortly) that he is not aware of any activities in the



Eastern Field pertaining to the hotel during his visits to site. A draft copy of his statement can be found in Appendix 17, which has been prepared with Mr Lee.

- 4.31. An aerial photograph taken by Mr David Lee, Michael Lee's father, from 28th July 1992 demonstrates that the caravan site was quite active in 1992. Whilst it is not as clear due to its age and that it is zoomed-in, it is sufficiently clear to show that caravans could be seen as far as the north-eastern end of the Eastern Field.



- 4.32. A photograph (Photo Ref: ID812900) taken by Mr Lee on 24th April 2007 shows no activities taking place by the hotel guests on the Eastern Field (it is looking towards the south-west):



- 4.33. The hotel car park can be seen as quite busy, with numerous cars parked at reception (centre left of the hotel) and by the conference facility and second storey bedrooms (right side of the photograph). There are vehicles passing through the access, but there are no persons seen within the Eastern Field. In fact, there is a distinctive lack of any activity on the Eastern Field, although the grass was being maintained.
- 4.34. Along the northern border of the site (in the foreground of the photograph), the white roofs of the two static caravans stationed close together can be seen as white, to the right of the pitched roof of the chalet which is also on site.
- 4.35. This photograph casts doubt about whether any activity alleged by the Council occurred



on a continuous 10-year basis during the relevant period (if it occurred at all, which we doubt), given it was taken on a busy day at the hotel and no activity can be seen. More so, it confirms that the two caravans were stationed on the Eastern Field, which would carry the caravan site use on to this date.

- 4.36. An aerial photograph taken on 7th March 2007 also shows no activities taking place on the Eastern Field:



- 4.37. It does show the presence of the two static caravans in the Western Field in the foreground and two static caravans in the north-western part of the Eastern Field. It also shows the chalet. This would be sufficient to continue the caravan site use according to the 1991 Permission forward to 2007.
- 4.38. The hotel was occupied with some vehicles found in both car parks, but reveals no evidence to support the position that the Eastern Field was used for anything hotel related. It does show the Eastern Field is maintained, but without any activity.
- 4.39. These alone suggest that there has been almost no activity (or *de minimus* activity at best) as regards to hotel users using the Eastern Field, but certainly no continuous material activity taking place on this land, to suggest a material change of use might occur.
- 4.40. Mr Lee's Statutory Declaration will demonstrate the extent of Mr Lee's knowledge of the site, and that he cannot recall any material activities taking place on the land by hotel users, to suggest a material change of use could have taken place. When the signed Declaration is provided, the evidence within it should carry significant weight.
- 4.41. In the absence of the Declaration, these photographs carry moderate weight.

## Council Tax Records

- 4.42. Following an Internal Review (Ref: IR2024/00346) of a request for Council tax records for the site (FOI2024/00121), the Council released records of Council tax paid on caravans at



Westfield Lakes Caravan Park, which is an indication of occupation (normally, one would not pay Council tax where there are no occupants of a unit, particularly as properties can be declared vacant, etc). Such records are therefore a good determinant of occupation.

4.43. The following provides a record of Council tax on the property from 1993 to 2010.

Westfield Lakes, Far Ings Road, Barton On Humber DN18 5RG		
Address	Period in CT list	Class R (empty pitch)
Caravan 1	1.4.93-31.3.2000	13.6.94-1.3.2000
Caravan 4	16.11.93-31.3.2000	22.1.99-31.3.2000
Caravan 12	16.12.94-5.2.95	
Caravan 15	1.4.93-30.4.01	

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	12.11.01-31.8.05	
	11.10.06-21.7.07	
Caravan 16	22.11.96-current	From 22.3.10
Caravan 17	1.4.93-11.10.03	11.10.03-11.10.03
Caravan 23	27.7.94-31.3.2000	13.2.95-31.3.2000
Caravan 24	27.7.94-31.3.2000	13.2.95-31.3.2000
Caravan 26	1.4.93-31.3.2000	28.2.98-31.3.2000
Caravan 28	1.4.93-31.3.2000	1.4.93-31.3.2000
Caravan 30	1.4.93-28.2.01	
Caravan 31	1.4.93-30.5.01	
Caravan 72	14.7.93-31.3.2000	27.12.99-31.3.2000
Pitch 12	22.7.94-31.7.03	19.9.94-31.7.03
18 Westfield Lakes	1.4.93-20.1.05	1.4.04-20.1.05
41 Westfield Lakes	1.4.93-31.7.03	15.11.98-30.9.2000
		16.2.02-31.7.03
Plot 43	1.4.93-31.8.01	
Summerland	7.8.96-23.1.97	
	1.3.98-31.3.99	

4.44. The Council did not provide a map with the request, and any further follow up on this has not revealed that a map of the unit numbers is available. The absence of a map is somewhat irrelevant, however, as the purpose of the Council tax is simply to demonstrate that occupation took place.

4.45. It is clear that Caravans 1, 4, 12, 15, 17, 23, 24, 26, 28, 30, 31, 72, 12, 18, 41, and 43 were on site



and occupied residentially in the relevant period to implement the 1991 Permission.

- 4.46. It is also clear that in the period when the LPA alleges that there was a material change of use (from 2003 to 5th December 2013), there were four caravans on site for which Council tax was paid in that period (nos 15, 16, 18 and 41). Caravan no 15 even restarted occupation twice in that period - between 2001 and 2005 and again between 2006 and 2007. Caravan 16 was declared vacant in 2010, as the last unit to be declared as such. Caravan 18 was declared occupied until 1st April 2004, although on the roll until 20th January 2005. That would also indicate occupation throughout the relevant period.
- 4.47. Whilst it appears that the caravan site had diminished in scale of operations, the Council tax records demonstrate that the caravan site was unlikely to have ceased operation in 2003 as apparently alleged by the Council. This alone would have prevented a material change of use (as alleged by the Council) from taking place as the caravan site continued its operations beyond 2003, as such operations could only have taken place in accordance with the 1991 Permission.
- 4.48. As Council Tax records are simply a matter of fact, the weight attached to them is very significant.

### **Various Aerial Photographs**

4.49. The applicant has sourced a series of aerial photographs which whilst snapshots in time, demonstrate that there were caravans on site during the period 2003 to 2013. They also show no evidence of any hotel activity taking place during this period. A summary of the aerial photographs from 2003 to 2013 were provided to the Council in an email dated 12th June 2023, and a copy is provided in Appendix 18a. The following commentary can be made about the aerial photographs:

- The 1999 aerial photograph - this shows caravans in the Western Field as well as the southern part of the Eastern Field. The application site is maintained in this photograph.
- The 2003 aerial photograph - there are still caravans located in the Western Field and southern part of the Eastern Field. A chalet in the north-western part of the Eastern Field was installed at this point. The application site is maintained in this photograph.
- The 2008 aerial photograph - there are still two caravans in the Western Field and along with the chalet, there is a single caravan along the north-western boundary of the Eastern Field. The application site is maintained in this photograph.
- The 2009 aerial photograph - there are still two caravans in the Western Field and there is also a single caravan at the north-western corner of the Eastern Field, along with the chalet in the same area. It is noted that in this aerial photograph, a vehicle is parked outside of the caravan in the Eastern Field, which would suggest that the occupation of the unit. This would likely align with Council tax records referred to above. The site remains maintained in this photograph.
- The 2013 aerial photograph - there is a single static caravan located in the



Western Field. The chalet remains in the north-western part of the Eastern Field.  
The site remains maintained in the aerial photograph.

4.50. In addition, the applicant can supply the following additional aerial photography in support of its application.

4.51. The 23rd October 1987 Historic England aerial photograph shows the site developed as follows (zoomed in for ease of reference):



4.52. The NCAP 2nd November 1994 aerial photograph (as seen in Section 3) shows the following (zoomed in for ease of reference):





4.53. It is clear that the layout of the caravan site was altered, likely following the grant of the 1991 Planning Permission, and also strongly indicates that the permission was implemented, particularly as there are caravans stationed on the new bases that did not exist in 1987.

4.54. The 22nd June 2005 Historic England aerial photograph shows the following (taken from Historic England's Aerial Photo Explorer) (note orientation is looking east):



4.55. A zoomed-in version focused on the site is as follows:



4.56. It can be seen from this aerial photograph that in 2005 that there were two caravans in the Western Field (see foreground) and two caravans were stationed on the northern end of the Eastern Field, along with the chalet and the foul water drainage building, but no activities associated with the hotel taking place in the Eastern Field. The caravan site areas are however maintained in this photograph.

4.57. The aerial photographs provide a snapshot on a day as to the activity on site. However, none of the available aerial photographs between 2003 and 2013 (the relevant period, see below) show any activity related to the hotel operations on the Eastern Field, and all photographs show caravans stationed in the Eastern and Western Field for part of the time, with the ones in the Western Field being there through the entirety of the 2003 to 2013 period. If there was a *continuous* material use of the land for purposes ancillary to the hotel as alleged by the Council, some evidence would be visible in at least one of the aerial photographs that have been sourced. It is simply not the case that that such alleged activity was absent from one of the aerial photographs available; any activity from the hotel on the Eastern Field is absent from all aerial photographs from the relevant period. It cannot be the case that a material change of use is not visible in the total of six aerial photographs and strongly points to there being a lack of evidence to support the alleged material change of use.

4.58. In addition, we provide aerial photographs from 2014, 2016 and 2019, with commentary as follows:

- 2014 - GetMapping aerial photograph dated 27th September 2014 which shows that the site is still being tidied up following the floor. A static caravan is still located in the Western Field, and the foul water building is on site. The chalet is also on site, and the Eastern Field is being maintained, within the context of the works that were being carried out.
- 2016 - GetMapping aerial photograph dated 20th April 2016, which is discussed



below under the Western Field, as it continues to show a caravan in the Western Field, and that the Eastern Field is being maintained.

- 2019 - BlueskyGeoPerspectives aerial photograph dated 19th September 2019 shows the chalet in the Eastern Field and the site being maintained, but no static caravans on site. This is the first time in almost 40 years that there is evidence that no static caravan is on site.

4.59. We hold other aerial photographs, but they do not add anything to the evidence that is already provided in the more recent aerial photographs.

4.60. As these are third party pieces of documentary evidence, whilst being only a snapshot in time, taken together, the weight afforded to them is significant.

### **The Council's EIR No FOI2023/00463 reply provided on 25th April 2023, which explains that the hotel flooded on 5th December 2013**

4.61. As the LPA is aware, the site was subject to overtopping-based flooding from the River Humber on 5th December 2003. The Council provided a reply to an FOI request (no FOI2023/00463) on 25th April 2023, which sets out the information that the Council has regarding the operations of the hotel (see Appendix 19).

4.62. The FOI reply provides detail of the timeline of the flooding and the days immediately thereafter, as follows:



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

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- 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

4.63. This provides a date when the hotel use ceased operations, albeit temporarily. According to newspaper reports from the Grimsby Live<sup>1</sup>, Scunthorpe Telegraph<sup>2</sup> and Restaurant online<sup>3</sup>, the hotel was closed from the date of the flood (5th December 2013) to roughly

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<sup>1</sup> GrimsbyLive article titled 'Humber Bridge Country Hotel's struggles from flooding, huge debt to sudden closure (<https://www.grimsbytelegraph.co.uk/news/local-news/humber-bridge-country-hotels-struggles-5575539>), dated 26th June 2021.

<sup>2</sup> Scunthorpe Telegraph article titled ' Reeds Hotel begins recruitment as it looks to reopen this summer' (<https://www.scunthorpetelegraph.co.uk/news/jobs/reeds-hotel-begins-recruitment-looks-88083>), dated 31st May 2016.

<sup>3</sup> Restaurant article titled ' <https://www.restaurantonline.co.uk/Article/2014/01/06/Reeds-Country-House-Hotel-in-voluntary-liquidation-due-to-floods>'.

31st May 2016, when Scunthorpe Telegraph reports that a recruitment drive had commenced in advance of re-opening. That three-year break in operations provides a clear date by when the alleged material change of use of Eastern Field to uses ancillary to the hotel by the Council would need to have become lawful (i.e. taken place for 10 continuous years prior to 6th December 2013). Otherwise, any other material change of use would have ceased before it had become lawful and could not lawfully replace the 1991 Permission, meaning the latter remains extant on the site. Indeed, this was discussed in the *Panton* case [*Panton & Farmer v Secretary of State for the Environment, Transport & the Regions and Vale of White Horse District Council* [1999] 78 P. & C.R. 186], which says that any breaks in the first 10 years will reset the clock, but a period of 'dormancy' after the first 10 years would not affect the use. In this case, the period falls within the first 10 years, so the clock was reset.

4.64. For the avoidance of doubt, a material change of use to ancillary hotel uses could not be established after the flood because it has not yet been 10 years since the hotel re-opened, and it is a matter of fact that the hotel closed and went into administration in Summer 2021, when our client acquired the site, so before it had been open for 10 continuous years after the flood. It has remained closed since.

## Discussion

4.65. The Council alleges that there was a material change of use of the Eastern Field which has replaced the 1991 Permission in that area. The only period which could be relevant to such a claim is the period from 2003 to December 2013, as that is the only potential period where the Council believes that the caravan site was stopped and before the hotel operations ceased following the flood.

4.66. The 2003 aerial photograph clearly shows caravans on the bases in the southern part of the Eastern Field, and so it is clear that at that point there was an active caravan site in accordance with the 1991 Permission. The end period is when the flooding of the hotel took place, and the hotel stopped trading/operating for some 2+ years to summer of 2016, which would have stopped any ancillary use upon closure in December 2013.

4.67. The evidence of continual use for hotel activities in the Eastern Field is quite frankly absent from third-party sourced data. The LPA did not retain any records which supposedly support their claim made in their letter dated 12th June 2023, so we cannot verify what was seen or relied on. It is the LPA that is alleging a material change of use, and usually, the party which is alleging such change is required to furnish sufficiently precise and unambiguous evidence of such claims.

4.68. The LPA has cited some planning permissions for the hotel as evidence, without quantifying why there is a conflict with the 1991 Permission. However, as stated in the Counsel's Opinion, there is no evidence that those permissions were in conflict with the

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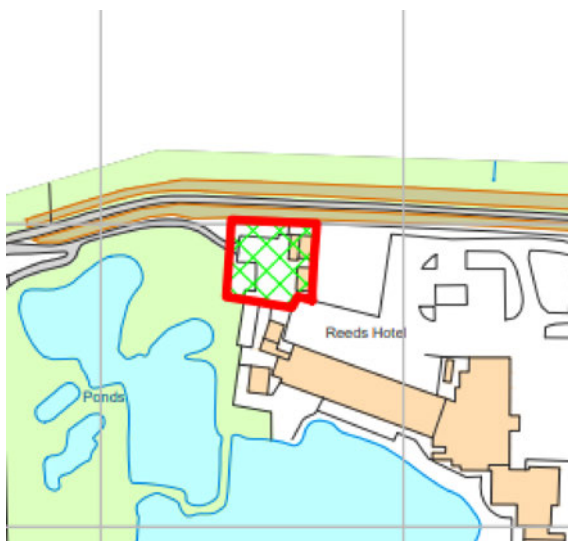
(<https://www.restaurantonline.co.uk/Article/2014/01/06/Reeds-Country-House-Hotel-in-voluntary-liquidation-due-to-floods>), dated 6th January 2014.

1991 Permission, and in fact, these serve to demonstrate that for over 40 years, the caravan site and hotel co-existed on site as compatible uses. There is no incompatibility between the two uses.

- 4.69. The Council claims in the 12th June 2023 letter at Point 1 d) that the caravan site was abandoned in 2003. This is factually incorrect. There remained caravans on site after 2003, as can be seen in Appendix 18a showing aerial photography from 2003 to 2013. It can also be seen via the Council Tax records, where at least four caravans were subject to Council tax which was being paid during the period between 2003 and 2013. Their presence on site was authorised by the 1991 Permission, and would have sustained/continued that permission's extant use into the relevant period alleged by the Council to be when the caravan site was abandoned.
- 4.70. The site remains licenced as a caravan site to an entity, and that licence has not been revoked by the Council on the basis that the caravan site's planning permission was replaced. That would strongly suggest during the relevant period, the Council was satisfied that the caravan site continued to operate. It is only now, some 10 years later, that the Council claims that the caravan site use was lost. Whilst we have not seen any inspection records of the licensing team to verify that they visited site, these seem somewhat irrelevant given the other evidence in support of the applicant's position.
- 4.71. The aerial photography provided by the local photographer, Historic England and other large data providers shows no evidence of any sort of activity related to the hotel on the Eastern Field between 2003 and 2013. Rather, it shows caravans remained on both parts of the application site.
- 4.72. We now turn the relevance to specific the Western and Eastern Fields subject to this application.

## The Western Field

- 4.73. This represents the north-western corner of the site, as follows:



- 4.74. There are numerous references above to the presence of the two caravans in the Western Field from 2003 onwards to 2016 (such as the aerial photographs from Historic England



from 2005 and Mr Michael Lee's 2007 Aerial Photograph, as well as aerial photographs in Appendix 18b). Two caravans were on site for many years. One caravan remained as of 20th April 2016, as can be seen in the top-left hand corner of the GetMapping aerial photograph taken on that date (zoomed-in for ease of reference):

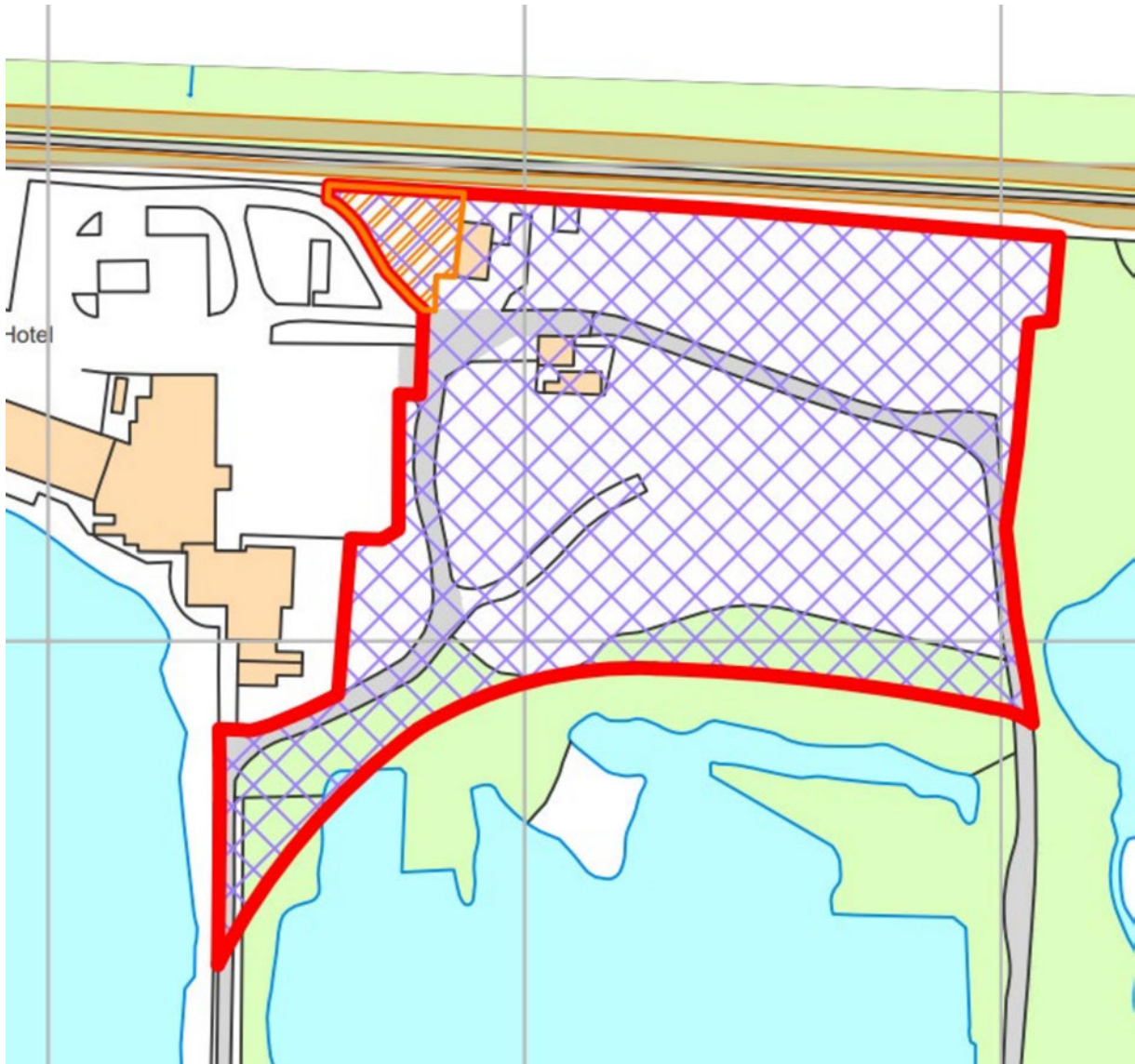


- 4.75. As that was less than 10 years ago, the site was used as a caravan site within the past 10 years. Furthermore, it is also known that since our clients acquired the site in 2021, that there have been no activities in the north-western corner of the site known as the Western Field.
- 4.76. No planning permissions were granted which were incompatible with the caravan site use.
- 4.77. No material change of use could lawfully have taken place in the Western Field as caravans were not removed over ten years ago.
- 4.78. It may be that two of the four caravans for which Council Tax was paid during the relevant period were those stationed in this area.
- 4.79. We can categorically state that the Western Field still benefits from the 1991 Permission, and the CLEUD must be granted for this area.

### **The Eastern Field**

- 4.80. The Eastern Field comprises the following area:





- 4.81. The orange hatching represents the areas where two caravans were stationed between 2003 and 2010.
- 4.82. Indeed, there is no dispute that there were caravans on the site in 2003. In 2005, 2007, 2008 and 2009, there are one or two caravans located along the northern boundary of the site. For example, this can be seen in Historic England aerial photograph from 2005 or Mr Lee's photograph taken in March 2007, both referred to above. Those caravans were either used or stored there and this could only be done in the context of the 1991 Permission.
- 4.83. It is also known that Council Tax was paid on four different caravans in the period between 2003 and 2013. At most, only two caravans were located in the Western Field (as discussed above), and so two caravans were being occupied and on which Council tax was being paid between 2003 and 2013 within the Eastern Field. The occupation of caravans in the Eastern Field could only be lawful as falling within the scope of the 1991 Permission. That would automatically prevent the 1991 Permission being replaced.
- 4.84. The Council alleges that there have been hotel-related ancillary activities taking place within the Eastern Field, without providing any evidence of this. However, upon examining



numerous aerial photographs from 2003 to 2013 in this report, there is no activity associated with the hotel operations that can be found taking place in the Eastern Field in any of the aerial photographs, let alone material ones. In fact, as stated above, the aerial photographs clearly show two caravans being located at the northern boundary, and then one, over time, which would maintain the 1991 Permission's use in this Field. Even if there were no caravans in this area, there is no evidence of any material activities associated with the hotel taking place, let alone a continuous activity. It casts strong doubts as to whether any material activities were continuous for a period of 10 years from 2003 to 2013, if any activity at all took place, for which there is significant doubt.

- 4.85. Importantly, the Castle View appeal case (reviewed on Page 10 of the Laister Habitats Letter - see Appendix 14) confirms that use and occupation should not be conflated, and a caravan site remains as such even if no caravans are on bases that exist at a particular moment. In this regard, there are caravans on site between 2003-2016 as demonstrated in this report, some of which are subject to Council Tax, and the unoccupied bases found throughout the site would contribute towards the continuation of the use as a caravan site regardless of a lack of occupation of individual bases, because the site itself remains active.
- 4.86. In addition, Mr Lee, who visited site at least eight times in the period between 2003 and 2013, states that he cannot recall any times where there were material ancillary activities to the hotel taking place on this land. As he was asked to take photographs of events, it would be likely that if guests to the hotel and conference facility were using the Eastern Field, he would have photographs to show for it. He has none. He was visiting at busy times, and so his recollection would suggest that at all of those eight times, there were no activities taking place that could cause a material change of use, and casts doubt on the Council's claim as it cannot be a continuous use for 10 years. A Statutory Declaration will be provided shortly which confirms his evidence.
- 4.87. Finally, Mr Sedgwick has demonstrated through his foul water drainage survey that the Western Field's drainage system is linked to the Eastern Field's drainage system, and together, they drain to the central foul water tank along with the hotel. The foul water tank and pumping house is an ancillary activity. In accordance with case law, cannot form a separate planning unit to the primary use. As the caravans in the Western Field sustained the 1991 Permission, the ancillary operations would come under the same primary use. There is clearly evidence of occupation of the caravan site between 2003 and 2013 (see Council Tax records, for example). As such, the foul water central tank and pumphouse would form an essential part of the Western Field's planning unit, which is based on the 1991 Permission, and by extension, the caravans in the Western Field that were on site until 2016 would have extending the caravan site's use in the Eastern Field until at least when these were removed from site. It would not be possible to replace that permission for the duration of the presence of those caravan on site.
- 4.88. As noted above, the 2000 CSL remains extant, which is a formal decision of the Council, and the Council did not consider any need to revoke this following identification that the caravan site's lawful use has ceased. That would suggest that the Council believed (and still does) that the 1991 Permission remains extant on site, and hence a CSL is required as



there is a lawful caravan site there.

- 4.89. We have discussed already that the hotel permissions were not incompatible with the 1991 Permission for the caravan site, and so these would not replace the caravan site permission. Indeed, caravans remained on site well beyond the period of these permissions. The hotel ceased operations in 2013, which was some three years after the caravans were on the Eastern Field, and again it ceased falling into administration in 2021. For a large part of the periods, the hotel wasn't operational for a continuous 10 year period.
- 4.90. In summary, as noted above, there is no evidence of any material activity other than caravan site activities within the Eastern Field in all of the evidence explored above. The LPA has been unable to furnish any verifiable evidence of their allegations (although they are obliged to), and furthermore, it is not clear how the LPA was able to continue that any material use was continuous from the evidence that they referred to but did not supply to the applicant.
- 4.91. Taken together, it has been demonstrated that there were caravans on the Western Field until 2017, and there were caravans within the Eastern Field until 2010. Council Tax was paid on four of them at various times when the Council alleges that there was a material change of use. No evidence can be found that supports the Council's allegations, such as through aerial photographs of the site, and none have been supplied to the Applicant.
- 4.92. No lawful material change of use has been established, and therefore, in accordance with the principles established by *Pioneer Aggregates* and other case law, the use of land as a caravan site for 70 caravans as established by the 1991 Planning Permission remains extant. On this basis, the CLEUD should be issued for the Eastern Field, alongside the Western Field.



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