The Planning Inspectorate

Appeal Decisions

Inquiry Held on 16 - 17 April 2018 and 9 August 2018

Site visit made on 17 April 2018

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 27 September 2018

Appeal A: APP/E2001/C/17/3181624
Land adjoining Sunnycliff Cottage and known as Blue Bell Pond Caravan Site, Easington Road, Kilnsea, HU12 0UB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Richard Joseph Scott against an enforcement notice issued by East Riding of Yorkshire Council.
- The enforcement notice was issued on 4 July 2017.
- The breach of planning control as alleged in the notice is:
  1. Material change of use of land from agricultural land to use of the land for the siting of caravans for human habitation purposes and use of the land as a holiday and camping site and for caravan storage and for fishing; and
  2. Operational development consisting of:
     - (i) the widening of a pre-existing internal access road and creation of a highway access onto a classified road (Easington Road, Kilnsea); and
     - (ii) formation of gravelled hardstandings; and
     - (iii) extension/excavation of pre-existing pond and its use for fishing; and
     - (iv) erection of portacabins, shed, screen fencing around portacabins and shed, wooden bird hide, wooden fishing platforms, jetties and viewing platforms and gates at the access to the site; and
     - (v) installation of water tap stands, hook up points, septic tank and foul sewage disposal points.
- The requirements of the notice are:
  1. Cease the use of the land for the stationing of caravans for human habitation purposes and as a holiday and camping site and for caravan storage and for fishing AND remove all caravans, tents, camper vans and motorhomes and any other camping accommodation from the land AND
  2. Remove all associated structures and installations from the land including the portacabins, shed and screen fencing around the portacabins and the shed and the wooden hide together with the water tap installations, hook-up points and hardstandings, wooden fishing platforms, jetties and viewing platforms around the pond, the gates at the site access, foul and waste disposal points, septic tank and associated goods and chattels including any picnic benches and furniture AND
  3. Return the internal access road to its former width and remove the highway access onto the classified road (Easington Road, Kilnsea) AND
  4. Restore the land to its former condition (agricultural grass field).
- The period for compliance with the requirements is within three months of the notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Appeal B: APP/E2001/C/17/3181625
Land adjoining Sunnycliff Cottage and known as Blue Bell Pond Caravan Site, Easington Road, Kilnsea, HU12 0UB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Jonathan Mark Scott against the same enforcement notice as that mentioned in appeal A above.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

This decision is issued in accordance with Section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 3 September 2018.

Application for costs

1. At the inquiry applications for costs were made by Mr Richard Joseph Scott and Mr Jonathan Mark Scott against East Riding of Yorkshire Council and vice versa. These applications will be the subject of a separate Decision.

Procedural matters

2. Both appeals initially included ground (e), but this was withdrawn in Richard Scott's proof of evidence.

3. The inquiry sat initially on 16 and 17 April 2018. However, it was adjourned to 9 August 2018 to enable the Council to respond to the appellants' flood risk evidence, which was only received by the Council on 13 April 2018.

4. During the long adjournment, the Government published the revised National Planning Policy Framework in July 2018. Although evidence was prepared in the context of the March 2012 version of the Framework, the parties confirmed on the last day that there were no material changes for the purposes of these appeals. Where I refer to the Framework, I am referring to the 2018 revision.

5. All witnesses gave evidence under oath. Richard Scott attended the inquiry and gave evidence, but Jonathan Scott simply submitted a proof. Where I refer to Mr Scott, this means Richard, unless I indicate otherwise.

Ground (b)

6. To succeed on this ground, the appellants must prove on the balance of probability that the matters alleged in the notice have not occurred as a matter of fact. The appellants' case on this ground related only to the material change of use allegation and in particular, the fishing and caravan storage components of the use. For the avoidance of doubt, the appellants also say that Mr Scott's temporary residential occupation of a static caravan on the site ceased long before the enforcement notice was issued.

Fishing

7. There was a pond already on the land when the appellants purchased in 2009. Mr Scott said this was overgrown and he dug out and extended it in 2010. He also installed some jetties and pallet type fishing platforms. Mr Scott explained that, save that he allowed 2 local boys to fish in the pond twice since 2010, it is used only for recreational purposes by his customers staying on the caravan site. He described fishing as a "main attraction" for them, along with walking and wildlife, particularly birds. Mr Scott's appendices[1] include photographs from his website showing anglers and their catches at his pond in 2012.

8. In closing for the appellants, Ms Strachan contended that fishing has never been a primary use of the land. However, this is a matter for ground (c). The appellant accepted that, as a matter of fact, the land has been used for fishing. Ground (b) cannot succeed in this respect.

Storage of caravans

9. Mrs Taylor referred in her proof to photographs taken in July 2015 and February 2017 showing caravans parked on the site without any apparent connection to services, without their supporting legs extended and sometimes close to a static caravan.[2] She said this suggests they were not being occupied at the time. The spacing of caravans shown on the south-eastern section of the site in aerial photographs taken in 2012 and 2014 is also consistent with storage, rather than use and occupation.[3] Though he did not address this aspect in his proof, in oral evidence, Mr Scott said that he had stored caravans in the past, but stopped this when he received the enforcement notice. However, he said it was not long-term storage; just for "a week or so", for example for holiday makers leaving the site on a Sunday, but planning to return the following Friday. He explained that he would store these caravans in the south east corner of the site and charge the owners £1.00 per night.

10. Ms Strachan argued in closing that there has not been a primary or ancillary use of the land for caravan storage. Again, that contention is appropriate to ground (c), rather than ground (b) and I shall consider it under that heading. However, Ms Strachan also argued that allowing customers to leave caravans on site for a few days, or over the course of a weekend, does not amount to storage. The periods of up to a week or so referred to by Mr Scott are relatively short. However, what he described was customers leaving their caravans on part of the site, for a small fee, whilst those caravans are not in active use for human habitation. The caravans are moved away from the prepared pitches and disconnected from services. This is an additional facility offered by the appellant, over and above the use of the site for touring caravan holiday purposes. I am satisfied that it does amount to storage, albeit short-term storage. Ground (b) cannot therefore succeed in relation to caravan storage.

Residential occupation

11. Under this ground, the appellants also maintain that no caravans have been used for "residential purposes." However, the notice does not allege "residential" use; it refers to "the siting of caravans for human habitation purposes and use of the land as a holiday and camping site…" It is not

[1] At pages 21 and 22.
[2] Mrs Taylor's appendix VT33
[3] Inquiry document 2.

therefore necessary for the appellants to pursue ground (b) to specifically show that there has been no "residential" use. Indeed, it is not appropriate, as ground (b) can only relate to matters alleged in the notice. However, when I drew attention to the specific wording of the allegation in opening, Mr Garvey said that it was intended to cover residential and holiday use. He said it "may or may not be necessary to amend the notice" and I will consider this.

12. Mr Scott explained that, when his house was damaged by flooding during the tidal surge on 5 December 2013, he lived in a static caravan on the site for 6 – 8 months, following an initial 4 week period in a hotel. That static caravan was provided by his insurance company, who then removed it. It can be seen in an aerial photograph taken on 12 May 2014, but is not shown in that dated 13 November 2014.[4] It appears that Mr Scott stopped living on the site nearly 3 years before the enforcement notice was issued.

13. Although there is another static caravan near the southern site boundary, there is no evidence that anyone has occupied it as their residence. Mr Scott said his brother Jonathan owns it, but only stayed in it a couple of times. Mr Scott said he uses this static caravan for shelter, perhaps once a fortnight, or to make a cup of tea when on site. Whilst that caravan is clearly suitable for residential use, I have no good reason to doubt Mr Scott's evidence about its use.

14. The term "human habitation" would cover holiday use of caravans and it would also cover occupation on a long-term residential basis. In these circumstances, I see no need to amend the allegation, especially since the evidence indicates that any residential use ceased long before the notice was issued. The appellants are not asking for any planning permission to cover residential use and conditions could prevent this. Furthermore, in requiring cessation of the stationing of caravans for human habitation and the removal of all caravans, it addresses both residential and holiday use.

Ground (c)

15. The issue on this ground is whether the appellants have proved on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control.

16. The appellants' primary contention on this ground is that the land has been used as a caravan site with the benefit of permitted development (PD) rights, namely planning permission granted by Schedule 2, Part 5, Class A and C of the Town and Country Planning (General Permitted Development) Order 2015 (the 2015 GPDO). They argue that even though conditions on that permission have been breached, there has been no material change of use since that permission was granted.

Permitted development rights

17. The land was historically used as a prisoner of war camp, but Mr Scott says he first used it as a small holding when he acquired it in 2009. He says that the caravan site use commenced in May 2010. It is necessary to consider the PD rights available at the time the use commenced and therefore it is the Town and Country Planning (General Permitted Development) Order 1995 as amended (the 1995 GPDO) which is strictly relevant, although the provisions are effectively the same as those in the 2015 GPDO.

[4] Inquiry document 2.

18. Taken together, Article 3 and Schedule 2, Part 5, Class A of the 1995 GPDO granted planning permission for "the use of land, other than a building, as a caravan site in circumstances referred to in paragraph A.2." The relevant part of paragraph A.2 says: "The circumstances mentioned in Class A are those specified in paragraphs 2 to 10 of Schedule 1 to the 1960 Act (cases where a caravan site licence is not required)…"

19. The "1960 Act" is the …Caravan Sites and Control of Development Act 1960 and the relevant paragraph in Schedule 1 of that Act is paragraph 5. The circumstances referred to in paragraph 5 are that "there is in force a certificate issued…by an exempted organisation" and that "not more than five caravans are at the time stationed for the purposes of human habitation on the land to which the certificate relates."

20. On 25 May 2010, Mr Scott obtained a certificate (CLC[5]) under paragraph 5 of Schedule 1 of the 1960 Act from The Caravan Club, as an exempted organisation.[6] (I note that the land to which the CLC related encompassed a smaller area to that now used as a caravan site and covered by the enforcement notice[7] and will consider the significance of this later).

21. Paragraph A.1 of Schedule 2, Part 5, Class A of the 1995 GPDO imposes the following condition: "…the use shall be discontinued when the circumstances specified in paragraph A.2 cease to exist, and all caravans on the site shall be removed as soon as reasonably practicable."

22. I indicated my view at the inquiry that, in line with commentary in the Encyclopedia of Planning Law and Practice, the requirement to discontinue the use as well as removing the caravans must mean that infrastructure and services should be removed. There was no dissent from that view.

23. Mr Scott says a CLC was in place continuously from May 2010 until February 2017. Accordingly, if the use originally benefitted from PD rights, as at February 2017, no CLC was in place and the condition in paragraph A.1 required removal of the caravans and discontinuance of the use as soon as reasonably practicable. In oral closing submissions, Mr Garvey suggested that, if I found that there was a breach of this condition, rather than a material change of use, the notice could be corrected to allege that, without injustice, as the requirements would remain the same. The appellants did not counter that submission.

24. However, the Council produced 6 aerial photographs taken between September 2012 and March 2016, each showing more than 5 caravans on the land covered by the CLC. Mrs Taylor's proof refers to a complaint in October 2010 that the site was being used by more than 5 caravans at a time.[8] On this basis, the Council argues that the 1995 GPDO permission was never implemented anyway, as the circumstances referred to in paragraph A.2 never applied and there has simply been a material change of use of the land from agriculture without planning permission.

25. Mr Scott did not deny that the 5 caravan limit had been exceeded at times, but guessed that this started around the time he made a retrospective application

[5] CLC being short for Certified Location Certificate.
[6] Mr Scott's appendices, pages 8 – 15.
[7] See Mrs Taylor's appendix VT8.
[8] Page 8 of her proof.

Ref DC/13/02188/PLF/EASTE for a total of 10 pitches. Accordingly, on Mr Scott's admission, this must have started before that application was submitted on 1 July 2013. Nevertheless, he said he did limit the number of caravans to 5 when he first obtained the CLC and added that, at that stage, he was not reliant on income from the site, as he used to sell Japanese import vehicles. Whilst the burden of proof is on the appellant and despite the lack of photographic or other documentary evidence from him concerning the period 2010 – 2011, I have no good reason to doubt Mr Scott's oral evidence on oath that this was the case. I have no details of the October 2011 complaint to which the Council refers and this was some 17 months after the CLC was issued anyway. The earliest relevant aerial photograph was taken more than 2 years after the first CLC was issued. I have no reason to conclude that the 5 caravan limit was always exceeded and therefore that the 1995 GPDO permission was not implemented, simply on the basis that. On this score, Mrs Taylor acknowledged that if 1 caravan had turned up on site the day after the CLC was granted, the GPDO permission would have been implemented.

Mixed use

26. However, the allegation describes a mixed use. I have already found that fishing and caravan storage have occurred as a matter of fact, but I left for my consideration of ground (c) the question of whether these are primary or ancillary uses.

27. With regard to fishing, though Mr Scott admits allowing 2 local boys to fish in the pond on 2 occasions, I regard this as de minimis. I also accept his evidence that he only allows those staying on the caravan site to fish there; he explained that allowing other anglers to use the pond would not impress his caravan customers. In any event, there is no evidence of use by others. Furthermore, whilst a fishing pond would not necessarily be expected as an integral part of a touring caravan site, it is normal for sites used for holiday purposes to include some recreational facilities, for example a children's play area. An angling pond is not an unreasonable example. In these circumstances, and given that the use of the pond for fishing was by those holidaying on the site, there is a functional link between the caravan site use and fishing and I am satisfied that the use of the land for fishing is incidental or ancillary to its use as a caravan site.

28. Turning to caravan storage, this is a facility over and above that which would normally be found on a touring caravan site. Mr Scott indicates that only people intending to stay on the site store their caravans there. Nevertheless, one would normally expect that people would arrive with their caravans at the beginning of their stay and tow them away when they leave, even if they were intending to come back a week or so later. Although not an authoritative statement of planning law, the Caravan and Motorhome Club rules are indicative of this when, in prohibiting the leaving of caravans unoccupied overnight, they say:

> *"It is not uncommon to find caravans left unoccupied for varying periods of time. Clearly there will be exceptional circumstances when brief periods (a night or two) can be accepted. However, regular or lengthy periods effectively constitute 'storage', which almost invariably requires separate planning permission."* [9]

[9] Mrs Taylor's appendix VT38 ('A guide to setting up a CL' – Rule 5).

29. I am satisfied that the storage of caravans was not ancillary or incidental to the use of the land as a caravan site and such use is of a different character, requiring much less space around and between the caravans. Furthermore, although there is nothing to indicate that caravan storage occurred on a large scale, photographic evidence[10], along with Mr Scott's own testimony, including that he charges a standard rate for storage, indicate to me that the use was more than de minimis.

30. Although the evidence is that caravans were stored primarily in the south-eastern portion of the site, that area is not physically separate from the rest of the site and I conclude that caravan storage was a primary element within a mixed use of the overall site. It is not entirely clear when the storage element was introduced. However, the arrangement of caravans in the south-eastern corner of the site shown on the aerial photograph dated 9 September 2012 is consistent with storage. It is probable that the storage use had already begun when the site was extended into that area.

The extension of the site

31. The south-eastern section of the land is an extension of the site for which a CLC was granted[11]. When I suggested to Ms Strachan in closing that the planning unit had been enlarged and asked her what the implications of this were, she said that the area for which a CLC was granted would be the area that had PD rights. Even without the mixed use issue, the change in the planning unit arguably started a new chapter in the planning history and extinguished any lawful use authorised by the 1995 GPDO.

32. As an aside, when describing the change to a mixed use in closing[12], Mr Garvey included reference to "using the site more intensely for the siting of caravans (i.e. in excess of the 5 permitted through the certificate)." However, the Council had not alleged a change of use through intensification and this was not part of Mrs Taylor's written or oral evidence. Indeed when it was put to her in cross examination that the real issue was the increase in the number of caravans over 5, she said "no, it is the change of use to a mixed use." Though Ms Strachan made closing submissions on intensification, I see no need to consider this aspect further.

Summary and conclusion on ground (c)

33. Bringing these various strands together, either there was a mixed use from the start, to which the PD rights in Schedule 2, Part 5, Class A of the 1995 GPDO would not have applied, or those PD rights were implemented, but there was a subsequent material change to a mixed use and a change in the planning unit, opening a new chapter in the planning history.

34. If the PD rights were implemented, but I am wrong about the caravan storage constituting a primary element in a mixed use, the breach of the condition in paragraph A.1 of Class A arising when the number of caravans on the site exceeded 5 and then when the CLC lapsed, still demanded removal of the caravans and discontinuance of the use. Accordingly, if this were the proper analysis, the notice could be corrected to allege a breach of condition and it could still require removal of infrastructure, so that an agricultural field was left

[10] Mrs Taylor's appendix VT33 and inquiry document 2.
[11] See Mrs Taylor's appendix VT8.
[12] Inquiry document 15, paragraph 3.3.2.

behind, rather than an empty caravan site. Alongside that, the notice could still allege a change of use of the additional land, over and above that covered by the CLC and PD rights.

35. Whichever route one takes into and within this labyrinth, the destination is the same; the appellants have failed to prove on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control. On the evidence before me though, I am satisfied that, whilst the PD rights for a caravan site were implemented and fishing was only ever an ancillary activity, as a matter of fact and degree, there was then a material change of use. That was a change, during or before 2012, to a mixed use for the siting of caravans for human habitation purposes and use of the land as a holiday and camping site and for caravan storage. Furthermore, that mixed use was carried on over a larger area than that covered by the PD rights. No planning permission exists for that mixed use.

36. The appeal on ground (c) must therefore fail, except in relation to the reference to fishing, which can be deleted from paragraphs 1 and 2(iii) of the allegation and requirement 1 of the notice. Of course, this would not mean that the land can be used as a stand-alone angling facility without planning permission. Given my conclusion that PD rights were implemented, the reference to the change of use from agriculture should also be deleted. It is not strictly necessary for the notice to identify the previous use. For the avoidance of doubt, there would be no automatic right to revert to the previously lawful use of a site for up to 5 caravans, because there is no CLC in place and a condition required its discontinuance and the removal of caravans.

37. For the sake of completeness, although this did not feature in the appellants' closing submissions, I note that Mr Scott's proof made reference to elements of the alleged operational development, which he said he had to undertake in order to obtain a CLC and which he believed were therefore PD.[13] Schedule 2, Part 5, Class B of the 1995 GPDO granted permission for development "required by the conditions of a site licence for the time being in force under the 1960 Act." Although the CLC was referred to as a "licence" from time to throughout the inquiry, Ms Strachan accepted my reminders that this was not correct; a CLC provides an exemption from the requirement to obtain a licence. Accordingly, any operational development carried out by Mr Scott in order to obtain a CLC was not PD under Class B.

Ground (d)

38. The appellants' case on this ground relates only to the alleged operational development. The issue on this ground is:

- whether the appellants have proved on the balance of probability that the operational development alleged in the notice was substantially completed by 4 July 2013[14] (the relevant date) and, if so:
    - whether that development was carried out to facilitate the alleged unauthorised change of use, being part and parcel of that change of use and ancillary and integral to it.

[13] Mr Scott's proof, paragraphs 9, 10 and 32.
[14] This is 4 years prior to the issue of the enforcement notice.

39. Some elements of the operational development listed in the allegation have clearly not gained immunity. Ms Strachan acknowledged in closing that the wooden bird hide was not substantially completed by the relevant date. Although a shed was first installed for this purpose in 2010, the current one is a recent replacement and it is not immune from enforcement action.

40. It is apparent from a 2003 aerial photograph[15], that there was a pre-existing internal access road. Mr Scott said this was an overgrown red brick road at the time of his purchase but, as well as repairing and improving this with grey granite chippings, he widened it along its east side, from a point close to the highway access towards the back of the site. This extended it up to the eastern boundary fence. Mr Scott said this was because the strip of grass "approximately 2 feet wide" was awkward to cut and maintain. In his proof, he said he did this late in 2012. However, Mr Scott must be mistaken in this regard, as a photograph taken on site on 1 October 2013 shows that the road had not yet been widened.[16] This of course was after the relevant date and this element is not immune from enforcement action.

41. With regard to the "gravelled hardstandings", the Council accepts that some of the gravelled pitches were completed before the relevant date. Indeed, this is apparent from the aerial photograph dated 10 April 2013[17]. However, some were then extended across the intervening grass to link to the internal access road. The 14 April 2015 aerial photograph[18] shows that 3 gravelled pitches have been extended in this way. It is also clear from the photographs taken on site on 1 October 2013[19] that they had not been so extended before the relevant date. Furthermore, there is an entirely new gravelled pitch/hardstanding to the southeast of the WC portacabin. The aerial photograph dated 16 March 2016[20] showed this marked out, but not yet completed.

42. With regard to the hardstandings, Mr Garvey referred in closing to the judgement in *Sage v Secretary of State for the Environment, Transport and the Regions* [2003] UKHL 22 and suggested that I should take a holistic approach and require the removal of these in their entirety. However, as a matter of fact and degree, I regard the extension of the hardstandings as distinct operations, separate from their initial creation. The formation of the additional gravelled hardstanding is also a stand-alone example of operational development, rather than a later stage of a single operation.

43. Mrs Taylor accepted in her proof[21] that the following operational development was substantially completed before the relevant date: the creation of a highway access onto Easington Road; the extension/excavation of the pre-existing pond; the erection of the portacabins, shed and screen fencing around them; the erection of the wooden fishing platforms, jetties and viewing platforms; and the installation of the water tap stands and hook up points.

44. Having heard Mr Scott's evidence, Mrs Taylor also accepted during her evidence in chief that the gates at the access to the site had been added by

[15] Mrs Taylor's appendix VT4.
[16] Mrs Taylor's appendix VT39.
[17] Within inquiry document 2.
[18] Ibid.
[19] Mrs Taylor's appendix VT41.
[20] Ibid.
[21] At paragraph 8.6.

April 2010. Mr Scott said this was part of the works undertaken in order to obtain a CLC[22].

45. In her proof, Mrs Taylor reserved her position on the septic tank and foul sewage disposal points. Mr Scott said that the septic tank was in place when he purchased the site and had probably been there since the 1940s, when it was a prisoner of war camp. Mr Garvey conceded in closing that the Council had no reason to dispute Mr Scott's evidence on that score. With regard to the foul sewage disposal points, Mr Scott said in his proof that he installed some breezeblocks next to the toilet block and above one of the chambers of the septic tank at the same time that the toilet block (portacabin) was installed. Indeed it is apparent from Mr Scott's appendices[23] that this work was completed before the CLC was issued and therefore before the relevant date.

46. In summary then, I am satisfied on the balance of probability that:

(a) the following works were not substantially completed by the relevant date and are not immune from enforcement action:

- the erection of the wooden bird hide;
- the widening of the pre-existing internal access road;
- the extension of 3 gravelled hardstandings; and
- the addition of a further gravelled hardstanding, the location of which can be seen marked out in the aerial photograph dated 16 March 2016; but

(b) the following works were substantially completed before the relevant date and would normally be immune from enforcement action:

- the creation of a highway access onto Easington Road;
- the extension/excavation of the pre-existing pond;
- the erection of the portacabins, shed and screen fencing around them;
- the erection of the wooden fishing platforms, jetties and viewing platforms;
- the installation of the water tap stands and hook up points;
- the gates at the access to the site;
- the septic tank;
- the foul sewage disposal points; and
- the formation of gravelled hardstandings, except for the extensions thereto and the addition of 1 hardstanding referred to in (a) above.

47. However, with 2 exceptions, the Council contends that all of the operational development referred to in (b) above was carried out to facilitate the alleged unauthorised change of use, being part and parcel of that change of use and ancillary and integral to it. Therefore, on the basis of the principle affirmed by

[22] Mr Scott's proof, page 10 and page 17 of his appendices.
[23] At pages 7 and 8.

the Court of Appeal in *Kestrel Hydro v SSCLG* [2016] EWCA Civ 784, the Council contends that the notice can require removal of these works, even though they would normally be immune. The 2 exceptions are the septic tank and the extension/excavation of the pre-existing pond. The septic tank was probably installed when the site was used as a prisoner of war camp in the 1940s and, on the evidence, the pond was extended/excavated to combat a run-off problem, rather than to provide an ancillary facility for the caravan site. These 2 items are clearly immune from enforcement action.

48. In answer to my questions, Mrs Taylor said that, if the other works listed in paragraph 46(b) above were done more than 4 years before the enforcement notice was issued in order to facilitate a PD use as a caravan site for up to 5 caravans, then the notice could probably not require their removal. However, she said it is hard to say what was done in connection with PD, as often the site was not used in accordance with the PD regime/CLC. In addition, she said the works were more than reasonably required for a 5 caravan PD site.

49. I have already concluded that the permission for a caravan site granted by Article 3 and Schedule 2, Part 5, Class A of the 1995 GPDO was implemented. Whilst that permission did not authorise operational development, the works in question were undertaken before the CLC was granted, in order to facilitate what was lawful a PD use at the time. That operational development was not part and parcel of, ancillary and integral to the unlawful material change to a mixed use. Although, the works provided more pitches, water tap stands and hook up points than would strictly be required for a 5 caravan site, I accept Mr Scott's explanation that this was to provide "customer choice" and to allow pitches to be "rested." This factor does not therefore deprive that operational development of the normal immunity.

50. With regard to the road widening, hardstanding addition and extensions, Ms Strachan suggested in closing that these were de minimis[24]. Mr Scott said in paragraphs 34(a)(i) and (ii) of his proof that the road widening was not development, though he has no planning expertise. These points were not put to Mrs Taylor in cross examination and are not relevant to ground (d); they relate to ground (c), where the appellants' case was limited to the change of use. On the evidence and submissions before me, I am not persuaded that the road widening, hardstanding addition and extensions were not operational development by virtue of being de minimis.

Conclusion on ground (d)

51. For the reasons given, this ground succeeds in relation to: the creation of a highway access onto Easington Road; the extension/excavation of the pre-existing pond; the erection of the portacabins, shed and screen fencing around them; the erection of the wooden fishing platforms, jetties and viewing platforms; the installation of the water tap stands and hook up points; the gates at the access to the site; the septic tank; the foul sewage disposal points; and the formation of gravelled hardstandings, except for the extensions thereto and the addition of 1 hardstanding referred to in paragraph 46(a) above. The allegation will be corrected to delete reference to these matters and this will necessitate consequential variations to the requirements.

[24] Inquiry document 16, paragraphs 26 and 30.

Ground (a)/the deemed application for planning permission (appeal A only)

Background

52. The scope of the deemed application is defined by the allegation in the notice and I am correcting the allegation to take account of my findings that fishing is not a primary element of the use and that much of the operational development is immune from enforcement action. This would be a matter for conditions, but I note that, although the appellant would like to have 12 pitches on the site, he only seeks permission for a maximum of 10 caravans to be stationed there at any one time.[25]

Main Issues

53. The main issues are:

- whether the development would be at risk of flooding;
- the effect of the development on the nearby designated wildlife habitat sites;
- whether there is any lawful fall-back position; and
- whether the development would deliver any benefits to outweigh any identified harm.

Reasons

Flood risk

54. The relevant development plan policy is ENV6 of the East Riding of Yorkshire Local Plan Strategy Document (LP), adopted 2016. This seeks to ensure that development is steered towards areas of lowest flood risk, by applying: (i) a Sequential Test (ST), on the basis of the Council's 2010 Strategic Flood Risk Assessment (SFRA) and the Environment Agency's (EA) Flood Map; and (ii) where necessary, the Exception Test (ET). This is consistent with the Framework and the Planning Practice Guide (PPG), which specifically requires reference to be made to the SFRA.

55. The appeal site lies in the tidally dominated Flood Zone (FZ) 3a, as shown on the EA's Flood Map and the SFRA. It is at high risk of flooding from both the North Sea and the Humber Estuary. The Kilnsea area is protected by a number of flood defences[26] and the appeal site partially benefits from these. The SFRA also sub-divides FZ 3a to account for risk should a defence breach occur. On this basis, the appeal site lies within the highest risk category, namely "danger to all."

56. As the site is used as a holiday or short-let caravan and camping site, the development falls within the "More Vulnerable" category under the risk vulnerability classification system set out in the PPG. Accordingly, having regard to the PPG, the SFRA and the Council's Flood Risk Note for the Planning Application Process, October 2017[27] the ST and ET should normally be satisfied.

[25] Inquiry document 8 and Mr Scott's proof, paragraph 20.
[26] See Mr Bentley's report (inquiry document 10), page 4.
[27] Mr Bentley's appendix D and Mrs Taylor's appendix VT27, at page 30.

The Sequential Test

57. I heard evidence from Mr Pickering of RAB Consultants Ltd, who produced a Flood Risk Assessment (FRA) for the appellant. That FRA indicated that the development did not need to pass the ST, because it benefitted from the exception for "minor development and changes of use" in the Framework and PPG. I note this exception is also mentioned in the supporting text of LP Policy ENV6. That exception is preserved in paragraph 164 and footnote 51 of the 2018 Framework revision. Minor development includes:

> *"small non-residential extensions (with a footprint of less than 250m^2) and changes of use; except for changes of use to a caravan, camping or chalet site, or to a mobile home or park home site, where the sequential and exception tests should be applied as appropriate."*

58. Mr Pickering says that the appeal development is minor development, because it merely increases the number of caravan pitches by 5 and the footprint of those additional 5 pitches approximates to 218m^2. In my view, the reference to "footprint" must relate to buildings and, in this context, the word "extensions" similarly concerns buildings and does not cover the expansion of a business in general terms. In any event, even if the small extensions exception does relate to such business expansions, the use, including the storage use, is carried on across the wider site. Measuring the limited 'footprints' of just the 5 additional caravan pitches is an artificial exercise.

59. The Framework makes clear that a change of use to a caravan site still necessitates both the ST and ET. Mr Pickering says that, as the existing use is a touring caravan park, there is no change of use and the ST and ET do not therefore apply. However, I have found that there has been a change of use to a mixed use, including use as a caravan site. I have also found that the previous use was as a caravan site with the benefit of PD rights. Nevertheless, in the context of flood risk, I cannot ignore the fact that, once the 5 caravan limit was exceeded and, in any event, once there was no longer a CLC in place, the GPDO required the caravan site use to be discontinued. The exceedance over 5 caravans and/or the lapse of the CLC did not in themselves result technically in a material change of use, but they would have meant that the continued use of the site as a caravan site was not lawful, even ignoring the material change to a mixed use. In all the circumstances I conclude that the exception in the Framework does not apply and both the ST and ET should be met.

60. Given Mr Pickering's view on the exception relating to minor development and changes of use, his FRA did not apply the ST. However, in oral evidence, he said that, though he had not considered other locations, if the ST does apply, this development passes by default. This is because he considers it an extension to an existing small business and because it would be unreasonable to have to look at other locations.

61. In an email to RAB Consultants dated 15 March 2018[28], Mrs Taylor advised that, for the purposes of this appeal, the FRA would need to relate to the entire development, not an expansion of an existing business, and the search area for the ST should not be limited to the applicant's existing land. She accepted that the search area could be limited to this part of the east coast, due to the

[28] Inquiry document 1.

attraction of Spurn, but that land around the nearby village of Easington and between Easington and Kilnsea should be considered as a minimum. Mrs Taylor explained that her approach was based on the view that the whole development of the land is currently unauthorised. The email did end with a statement that, in relation to a genuine extension of an existing business, "the Council would usually accept that the search area would be limited to the applicant's land holding and that an operational link would be required."

62. I also note the following paragraph in the PPG:

> *"When applying the Sequential Test, a pragmatic approach on the availability of alternatives should be taken. For example, in considering planning applications for extensions to existing business premises it might be impractical* (my emphasis) *to suggest that there are more suitable alternative locations for that development elsewhere."* (Paragraph: 033 Reference ID: 7-033-20140306)

63. Although I found on ground (c) that a caravan site for less than 5 caravans was initially established with the benefit of PD rights, there was then a material change to a mixed use. Again, for reasons already given, the GPDO also required the original lawful caravan site use to cease. Moreover, the site now used is larger than that covered by the CLC. The PPG does not expressly qualify the words "existing business premises" with the term "lawful." However, it cannot be right that someone can unlawfully change the use of land in a high risk flood zone and then, when seeking retrospective planning permission for that unauthorised use within enforcement proceedings, successfully avoid the need to consider other locations in the ST, just on the basis that the business is already in existence.

64. In any event, the PPG says in relation to extensions to existing business premises, it "might" be impractical to suggest that there are more suitable alternative locations. If this should be regarded as a genuine expansion of an existing business, it would obviously be more convenient for the appellant to stay on the appeal site and utilise the infrastructure already in place. However, there was no evidence from Mr Scott to demonstrate why it would be impractical for him to use another location. Furthermore, there is no evidence that either he or Mr Pickering has fully considered other locations with a lower flood risk.

65. In this regard, appeal Ref APP/E2001/A/14/2226484 (the 2015 appeal) concerns this site and is relevant. This was against the Council's refusal of planning permission for "continued use of land for 5 caravans and retention of buildings, hardstanding, wildlife / fishing pond and alterations to vehicular access in connection with the caravan park use" and that appeal was dismissed on 22 June 2015.[29] The appeal was considered on the basis that the proposal was for an additional 5 caravan places over and above the 5 pitches covered by the appellant's CLC from the Caravan Club. No consideration was given in that appeal to the implications of the 5 caravan limit having been breached. Nevertheless, flood risk was a reason for dismissing that appeal. In particular, the Inspector found that the ST was failed and, said:

> *"4. There is a sizable area of land close by to the north of the appeal site which is not within Flood Zone 3a. The appeal site's close proximity to the*

[29] Mrs Taylor's appendix VT18.

Spurn Head and to the appellant's home gives the site a particular character which would not be easily replicated if situated a significant distance away. However, the site could be potentially located nearby to the north without affecting unduly the appellant's ability to manage the site or attract visitors. Evidence has not been presented to make it clear to what extent the appellant has explored the availability of potentially suitable sites which would have a lower probability of flooding in the local area. Whilst the Planning Practice Guidance indicates that a pragmatic approach to application of the Sequential Test should be taken, the lack of evidence presented means that the appeal proposal does not pass the Sequential Test."

66. I note the reference, in an email from RAB Consultants Ltd, to Mr Scott having established that owners of the land immediately to the north were unwilling to sell[30]. However, this is the only evidence of other locations even being considered.

67. In another recent appeal Ref APP/E2001/C/17/3175584 concerning a site in FZ 3a at Hook in this district, the inspector said:

15. The appellant suggests that the search area should be reduced and that no land in Flood Zone 1 would be suitable for the residential caravan and the recreational caravan site and camping pods as they serve the business which presently exists on the site.

16. However, I have been provided with little substantive evidence to demonstrate that is the case. I have no evidence of any geographical area having been assessed, the sites therein that have been considered or any methodology used to compare sites. Moreover, whilst it may be impractical, I have no compelling evidence that locating the development in an alternative location would be prohibitive to the business either functionally or financially. As a result, on the basis of the evidence before me, I cannot conclude that the Sequential Test has been met.

68. Against this background, I heard evidence from Mr Bentley, who prepared a flood risk report for the Council during the long adjournment. This included a review of the evidence, including Mr Pickering's FRA. Having regard to Mr Bentley's brief from the Council, which included an instruction to rebut the appellant's case, the appellant questioned whether he was in fact acting as an additional advocate, rather than an expert witness. However, Mr Bentley explained that he had advised the Council that any instruction to support its case would compromise his professional integrity. The Council accepted this and I am content with Mr Bentley's assurance that the contents of his report and his oral evidence reflect his independent, professional opinion.

69. Mr Bentley said that whilst it might also be appropriate to take a sequential approach to the layout and management of development within a specific site, a proper application of the ST required other sites to be considered first. He said that the ST did apply in this case and that, whilst it would be reasonable to look at Easington and any land between Easington and Kilnsea, even if the search area were restricted to Kilnsea, there are still sequentially preferable sites. He gave examples of sites at Driftwood and Kew Villa in Kilnsea, which are within FZ 2 and where additional plots could be located on areas of

[30] Mr Bentley's proof, appendix G.

adjacent open land. He said there may also be further sites towards Easington, though he did not investigate this further.

70. Mr Bentley accepted in cross examination that he had not fully assessed the suitability of these alternatives, but pointed out that it was for the appellant to search the wider area and make those assessments and there was no evidence that he had explored the possibility of sites at lower flood risk. In terms of paragraph 159 of the Framework, it had not been demonstrated that it was not possible to locate the development in a lower risk zone.

71. I am satisfied that there is a requirement to meet the ST in this case and that the appellant has not done so. In those circumstances, it is not strictly necessary to consider the ET, but conclusions on that test may well be relevant to the overall planning balance in this case.

The Exception Test

72. To satisfy the ET, it must be demonstrated that: (a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and (b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

73. Dealing with the second limb of that test first, Mr Pickering's FRA acknowledges that the site is at risk of tidal flooding during present day scenarios (0.5% Annual Exceedance Probability) with depths up to 1.38m and when climate change is factored in, this increases to 1.57m. However, he says that a detailed Flood Warning and Response Plan (FWRP) would ensure that caravan owners are warned in advance of flooding and can evacuate the site safely.

74. Mr Pickering recommends that the FWRP should include: (1) the flood risk for the site; (2) details on required signage for the site; (3) appropriate protocols following flood alerts and warnings; (4) evacuation route and associated procedures; (5) contact information for the site and relevant services; and (6) a maintenance procedure for the signage and equipment associated with the FWRP. He notes that Mr Scott has signed up to the Environment Agency's (EA) free service which aims to provide advance flood warnings up to 2 hours prior to the onset of flooding in the area. Mr Pickering concludes that if his recommendations are adhered to, "the proposed development will be appropriate for the flood risk, not impede the path of flood water, and it will remain safe for its lifetime while not increasing flood risk elsewhere."

75. However, Mr Bentley highlighted a number of concerns:

- The evacuation plan depends on people being on site to remove their caravans. They may be away from the site, touring the area when the warning comes. They may be unable to get back to the site and remove their caravans in the space of 2 hours, or they might put themselves at risk in trying to do so.

- The fact that the level of the only access road into the site from Easington is as low as 2m – 2.5m AOD (i.e. about 1m below the lowest level of the appeal site), means that, if the site is flooded, the road may be flooded too, especially if defences are breached. On behalf of the EA, Mr Pedder indicates in his proof that access roads to Kilnsea are susceptible to flooding during storm surges and access could be hazardous in a flood, even for emergency services.

- Even if caravan owners do not put themselves at risk trying to get back to the site, caravans which remain on site would float in the depths anticipated, causing a risk to others and their property, possibly blocking roads and even drainage ditches, thereby increasing the risk of flooding elsewhere. There is no evidence that existing fences on site would contain floating caravans and no suggested details of any effective measures. (During the round table discussion of conditions it was noted that such measures could give rise to other planning objections in any event).

- During the most recent flood event in December 2013, there were problems with flood warnings, with some severe warnings only being received within 1 hour of the maximum level.[31]

- The EA flood warning and alert system is based on measuring storm surges from the North Sea and the risk of over-topping of defences, rather than breach. Although breach of the sea defences to the north did occur in 2013, and Mr Scott described the flooding as starting from the north, the higher land in that area would have restricted the flow of water to the site. Even then, the depth of water on the site was estimated at 0.3m the day after the event and it would have been deeper on the day itself.[32]

- Although the Humber Estuary defences were over-topped in December 2013, they were not breached. Had they been breached, there would have been rapid inundation and a much greater flow of water. This is reflected in the "danger to all" categorisation in the SFRA.

- The North Sea coast defences were repaired after 2013 and the Humber Estuary defences at Kilnsea, namely the concrete wall fronting the village, were raised. However, the earth embankment which extends to the south was not raised and that is the main issue for this site, as water would flow onto the site from here, if the embankment were breached. Mr Pedder's proof indicates that it may be difficult to maintain the flood defences for the life of new development in the area.

- Whilst breach of defences is most likely when water levels are at their highest, a breach could still occur well before over-topping is a risk, as embankments can be undermined, for example by rabbit burrows. In these circumstances there would be no adequate warning of rapid inundation and this would be a risk even if, as suggested to Mr Bentley in cross examination, the evacuation procedure were triggered by an earlier flood alert, rather than a flood warning.

- Caravans are essentially at ground level, where they will not be safe, but they could only be effectively raised 1 – 1.5m above ground level by creating large, sloping earth bunds. However, this would take up flood plain volume, displacing water and exacerbating flooding elsewhere. Indeed, Mr Pickering's FRA acknowledged that touring caravans "typically have a floor level circa 300 mm above local ground level" and "it is technically unfeasible to raise finished floor levels of touring caravans…"[33]

[31] Inquiry document 12, at page 29.
[32] See the proof from Nick Pedder (EA).
[33] His paragraph 4.1.

76. These are all serious points and I accept Mr Bentley's conclusion during his evidence in chief that it has not been demonstrated that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere. Mr Bentley was asked in cross examination if he was aware that Mr Scot's emergency plan included providing accommodation at a local hotel to allow people to seek refuge and he said he was not. Neither was I, as this was not referred to in the appellant's written or oral evidence. Given the lack of any detail for this arrangement, it carries no significant weight in my deliberations.

77. In terms of the first limb of the ET, I accept that development would enable the growth of a local business, potentially bringing some job opportunities, encouraging tourism and contributing to the local economy. In this regard, I also note the letters of support appended to Mr Scott's proof and the evidence in support from Councillor Tucker and Mr Clarke at the inquiry. Nevertheless, I am not persuaded that wider sustainability benefits to the community outweigh the serious flood risk.

78. Accordingly, even if the ST were satisfied, the ET is not passed and the development would be at risk of flooding, contrary to LP ENV6 and the Framework. In addition, paragraph 20 of the Executive Summary of the SFRA says that, notwithstanding the application of the ST and ET, More Vulnerable development should be avoided in FZ 3a where possible and Table 6.4.4 says such development "should not be permitted at ground level." This conclusion weighs heavily against the development.

Wildlife habitats

79. The appeal site is in close proximity to the Humber Estuary Special protection Area (SPA) and Special Area for Conservation (SAC), which are European designated sites. These sites are also listed as the Humber Estuary Ramsar site and, at a national level, the Humber Estuary Site of Special Scientific Interest (SSSI).

80. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regs) provide that, if the development is likely to have a significant effect on a European site and it is not directly connected with or necessary to the management of the site, I would have to undertake an "appropriate assessment" before granting planning permission. Following an appropriate assessment I would need to consider whether the proposed development would adversely affect the integrity of a European site, having regard to the site's conservation objectives. If it would have such an adverse effect, permission could only be granted if, there being no alternative solutions, the development had to be carried out for imperative reasons of overriding public interest. As part of the assessment process, I would also have to consult Natural England.[34]

81. LP Policy A5 supports an integrated approached to habitat and species management and ENV1 requires proposals to incorporate nature conservation and biodiversity enhancement where possible. Of most relevance to this appeal is LP Policy ENV4, which states that proposals likely to have a significant effect on an International Site will be considered in the context of the statutory protection. As a matter of policy, paragraph 176 of the Framework applies the same level of protection to Ramsar sites. Policy ENV4 echoes the Framework in

[34] Regulations 61 and 62 of the Habitats Regs.

saying that development likely to have an adverse effect on a National Site will not normally be permitted, except where the benefits of the development outweigh both the impact on the site and any broader impacts on the wider network of National Sites.

82. The reasons for dismissal of the 2015 appeal included that the appellant had not provided supportive evidence to enable the Council to make a proper assessment of the potential impact on these sites. Though they did not give oral evidence at the inquiry, proofs were submitted by Martin George, as the Council’s Hedgerows, Nature Conservation and Ecology Officer and by Lauren Garside and James Walsh on behalf of the Yorkshire Wildlife Trust and Natural England respectively. They each confirmed that insufficient information had been submitted to enable consideration of the impact of the development on the relevant sites.

83. However, Mr Toohie has now submitted a proof, appending his Extended Phase 1 Habitat Survey and he attended and gave evidence on the first day of the inquiry on 16 April 2018. He concluded that the development is unlikely to impact on any European protected species or associated habitats.[35]

84. Mr Toohie conducted the survey on the basis of his instructions that, whilst 5 additional caravans were proposed, the appeal site would continue to be used for 5 touring caravans anyway, with existing buildings being retained and no significant new development works being proposed. This is linked to the appellant’s fall-back position concerning the re-implementation of PD rights. That is a matter of dispute, to which I will return. However, when this was put to Mr Toohie in cross examination, he said he was confident that, even if he were considering a proposal for a change of use from agriculture to a 10 pitch caravan site, his conclusion would be the same. Though Mr Garvey cast doubt on this for various reasons in closing, in the absence of contrary expert evidence, I have no good reason to reject Mr Toohie’s opinion on that score.

85. However, in concluding that the development is unlikely to impact on any European protected species or associated habitats, Mr Toohie nevertheless acknowledged the potential for increased visitor pressure and added the caveat that several measures should be adopted to ensure potential adverse impacts to wildlife are avoided. The written report focused on the implementation of visitor management measures[36] and Mr Toohie confirmed this in oral evidence. However, he also made reference to controls over lighting and the implementation of a wildlife enhancement plan, including screen planting. In closing, Ms Strachan said all of these measures would just provide an added bonus. However, I am not persuaded that Mr Toohie’s evidence safely forms the basis of a conclusion that there would be no significant effect on a European site, even if his recommended mitigation measures were not implemented.

86. The Court of Justice of the European Union issued its decision in *People over Wind, Peter Sweetman v Coillte Teorante* Case C-3/17 on 12 April 2018. Unfortunately, this was not widely known when Mr Toohie was present to give his oral evidence on the first day of the inquiry. The *People over Wind* judgement indicates that if mitigation measures would be required to avoid significant effects, a full appropriate assessment must be made; the screening

[35] Mr Toohie’s appendix CT.2, paragraph 1.6.
[36] Ibid, paragraph 7.6.3.

stage must be undertaken on a precautionary basis. I drew the parties' attention to this judgement and its implications shortly before the inquiry resumed on 9 August 2009. The appellant did not seek to recall Mr Toohie.

87. I conclude on this issue that, if I were otherwise minded to grant planning permission for the development, the Habitats Regs and LP Policy ENV4 provide that I could not do so, without first making an appropriate assessment. That would require further evidence and consultation and the inquiry might need to be reopened.

Fall-back position

88. The appellant maintains that, if his appeal is dismissed, he will still be able to use the site for a maximum of 5 caravans as PD pursuant to Schedule 2, Part 5, Class A of the 2015 GPDO. Having regard to *R (on the application of Zurich Assurance Ltd) v North Lincolnshire* [2012] EWHC 3708 and *Gambone v SSCLG* [2014] EWHC 952 (Admin), Ms Strachan submitted that this legal fall-back position should carry significant weight and I note the fact that the Council has not sought to make an Article 4 Direction removing PD rights in this area.

89. Mr Scott said the only organisations he was aware of that might grant a CLC were The Freedom Camping Club, the Caravan and Motorhome Club (formerly The Caravan Club) and the Camping and Caravanning Club. The Freedom Camping Club granted the last CLC, which expired on 16 January 2017. An email from that club dated 6 November 2017[37] indicated that the CLC was not renewed because Mr Scott failed to provide an electrical safety certificate and make subscription arrangements. More significantly it says a later application was declined because of "changes to the club policies regarding flood risk." An email from the Caravan and Motorhome Club dated 21 February 2018 said they chose not to progress a CLC application from Mr Scott because they had prior knowledge of the land and could see the ownership had not changed.[38] An email from the Camping and Caravanning Club dated 12 June 2017 states that Mr Scott's application was declined because of the enforcement notice.[39]

90. On the evidence before me, there is no realistic prospect of Mr Scott obtaining a CLC from The Freedom Camping Club or the Caravan and Motorhome Club. If the notice were quashed, there would be a greater than theoretical possibility of the Camping and Caravanning Club granting a CLC. Although Mr Scott acknowledged that he would not be able to continue his business if all the operational development had to be removed, I have found that most of it is immune from enforcement action and need not be removed.

91. In all the circumstances, the fall-back position provided by the potential for PD use as a 5 pitch caravan site is a material consideration. However, it carries limited weight because I am persuaded by Mr Bentley's view that, even if 5 caravans could be sited as PD and therefore without the need to even provide a FRA, 10 caravans are more problematic. In the context of flood risk, I would not be comfortable concluding that, as Mr Scott may be able to have 5 caravans in a high risk zone, I might as well grant permission for 10. The weight which attaches to the prospect of a Camping and Caravanning Club CLC

[37] Mrs Taylor's appendix VT36.
[38] Mrs Taylor's appendix VT37.
[39] Mrs Taylor's appendix VT35.

is also restricted by the fact that at least one other organisation has recently reviewed its policies on flood risk.

Other benefits

92. When considering flood risk and the application of the ET, I have already noted a measure of local support and the fact that the development would enable the growth of a local business, potentially bringing some job opportunities, encouraging tourism and contributing to the local economy. Consistent with the Framework, LP Policies EC2, A5 and S4 specifically support tourism development. These factors carry moderate weight in favour of the development.

Other matters

93. The appellant and others supporting him question how there can be objections to his development when the nearby Yorkshire Wildlife Trust Visitor Centre was granted permission. I understand the temptation to make that comparison, but Mrs Taylor explained that this replaced an old facility and was intended to better manage existing visitor numbers, rather than generate more visitors. Furthermore, that development was not within the "More Vulnerable" category and was designed to be flood resilient. Moreover, whilst an initial application was refused, ultimately a great deal of evidence was submitted to support that scheme, including in relation to flood risk and ecology. In reality the Visitor Centre is a very different development to that before me; it involved different considerations and that permission does not set a precedent for this development.

94. I sympathise with Mr Scott in that he has put a great deal of effort into building up a popular facility and a viable business to support his family and note his statement that this is the most enjoyable job he has ever had. However, whilst not underestimating these factors, they can only carry limited weight in the specific context of serious flood risk and given that the planning system operates in the public interest.

The Planning balance and overall conclusion

95. I have attached moderate weight to the support from policies relating to tourism development. Nevertheless, given my conclusion that the Sequential Test is not met and that, in any event the Exception Test is not satisfied, such that the development would be at risk of flooding, there is a clear conflict with LP Policy ENV6 concerning flood risk. I regard LP Policy ENV6 as the key policy in this case and the development therefore conflicts with development plan as a whole. This also results in conflict with the Framework and the PPG. The other material considerations raised, including the fall-back position and Mr Scott's personal circumstances are insufficient to indicate that planning permission should nevertheless be granted and I am not persuaded that conditions would overcome the harm identified.

96. With regard to wildlife habitat sites, I have insufficient information to conclude that there would be no significant effect on a European site without relying on mitigation. However, even if I were able to reach that conclusion, my finding on the first main issue is sufficient to demand dismissal of the appeal. It is not therefore necessary for me to carry out an appropriate assessment under the Habitats Regs.

97. For all the reasons given, appeal (a) must fail and the deemed application will be refused

Ground (f) (Appeals A and B)

98. This ground is that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or as the case maybe, any injury to amenity. In this case, the purpose of the notice is to remedy the breach of planning control by ending the use and undoing the operational development, save for the extension/excavation of the pond. Although the notice under-enforced in relation to the pond, I am deleting that part of the allegation anyway, following my findings on ground (d). The reasons for issuing the notice concern flood risk and impact on ecology, rather than injury to amenity.

99. In any event, the appellants contend that the requirement to cease the caravan site and fishing use entirely, without preserving PD rights, goes further than is necessary to remedy the breach. Similarly they contend that the requirement to remove infrastructure that could be used in connection with a PD caravan site is excessive.

100. Having regard to *Duguid v SSE* [2001] 82 P&CR 6, it would not normally be necessary for an enforcement notice to explicitly preserve PD rights as a notice cannot make an offence out of an otherwise lawful activity. However, Mr Garvey acknowledged in closing for the Council that it might be sensible to make reference to PD rights in this case, as the Camping and Caravanning Club and others may be under the impression that the existence of the enforcement notice would, in itself prevent the grant of a CLC. I shall vary the requirement accordingly.

101. In terms of the operational development, I have already found that most of this is immune from enforcement action under ground (d) and this necessitates variation of the notice requirements. The exceptions to this are the road widening and the hardstanding additions and extension. Although these works could be used in connection with a PD caravan site, they would not be PD themselves. They were carried out after the change to a mixed use and their removal would be necessary to restore the land to its condition prior to the breach. Ground (f) succeeds to the limited extent described.

Ground (g)

102. The basis of ground (g) was that 3 months would be insufficient to enable the significant works required by the notice and that 8 months would be necessary. However, given my conclusions on ground (d) and (f) the works required by the varied notice will be relatively minor. I am not persuaded that 3 months would be inadequate for these and ground (g) therefore fails.

Formal decisions

Appeal A: APP/E2001/C/17/3181624 and Appeal B: APP/E2001/C/17/3181625

103. It is directed that the enforcement notice be:

(i) corrected:

(a) in section 3(1) by deleting the words “from agricultural land” and the words “and for fishing”;

(b) in section 3(2)(i) by deleting the words "and creation of a highway access onto a classified road (Easington Road, Kilnsea)";

(c) in section 3(2)(ii) by deleting the words "formation of gravelled hardstandings" and substituting the words "the extension of 3 gravelled hardstandings/caravan pitches and the creation of 1 new gravelled hardstanding/caravan pitch"; and

(d) by deleting section 3(2)(iii); and

(ii) varied:

(a) in section 5(1) by deleting the words "and for fishing" and adding after the words "from the land" the words: "provided that this shall not prevent any subsequent implementation of permitted development rights under Schedule 2, Part 5, Class A of the Town and Country Planning (General Permitted Development) Order 2015, or any amendment or re-enactment thereof";

(b) by deleting the words in section 5(2) and substituting: "Remove the wooden bird hide and any goods and chattels associated with the caravan site use, including any picnic benches and furniture";

(c) in section 5(3) by deleting the words "and remove the highway access onto the classified road (Easington Road, Kilnsea)";

(d) in section 5(4) by deleting the words "Restore the land to its former condition (agricultural grass field)" and substituting the words "(i) remove the extensions to the gravelled hardstandings/caravan pitches, those extensions being shown edged and hatched black on the attached aerial photograph marked 'Photograph A' and (ii) remove the gravelled hardstanding/caravan pitch from the location shown edged and cross hatched black on photograph A, and restore those areas to grass"; and

(e) by adding the attached aerial photograph marked 'Photograph A'.

Subject to these corrections and variations the appeals are dismissed and the enforcement notice is upheld, and planning permission is refused on appeal A on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

J A Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Nicola Strachan of counsel

She called

Richard Joseph Scott	Appellant
Christopher Toohie MSc MCIEEM	Wold Ecology Ltd
Raymond Pickering CEng C.WEM MCIWEM MCGI MEPS	RAB Consultants Ltd

FOR THE LOCAL PLANNING AUTHORITY: Killian Garvey of counsel

He called

Victoria Louise Taylor BA(Hons) PGC Urban Design MScURP MRTPI	Development Control Team Leader, East Riding of Yorkshire Council
Mark Bentley BSc CEng CEnv FCIWEM C.WEM	J B Consulting

INTERESTED PERSONS:

David Tucker	Ward Councillor for South East Holderness
Paul Clarke	Local resident

DOCUMENTS SUBMITED DUTING THE INQUIRY

1 Email from the Council to the appellants' solicitor 15 March 2018
2 Appendix VT46 to Victoria Taylor's proof comprising aerial photographs dated: 9 September 2012; 10 April 2013; 12 May 2014; 13 November 2014; 14 April 2014; and 16 March 2016
3 The Council's draft costs application
4 The Council's opening submissions
5 Statement of David Tucker (Ward Councillor)
6 Statement of Paul Clarke
7 Victoria Taylor's summary proof
8 Statement of Common Ground
9 Email from the Council to the appellants' solicitor 6 March 2018

10 Flood risk report by Mark Bentley of JBA consulting
11 Appeal decision Ref APP/E2001/C/17/3175584 dated 24 April 2018 re Land and ponds at Westfield Lane, Hook, East Riding of Yorkshire
12 Flood Investigation Report re tidal surge flooding events on 5 December 2013 (also at Mr Bentley's appendix J)
13 Appeal decision Ref APP/E2001/C/17/3173444
14 The Council's holiday accommodation guidance
15 Closing submissions on behalf of the Council
16 Closing submissions on behalf of the Appellants
17 Cost application on behalf of the Council
18 Cost application on behalf of the Appellants and their response to the Council's application

The Planning Inspectorate

Photograph

This is the 'Photograph A' referred to in my decision dated: 27 September 2018

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

Land adjoining Sunnycliff Cottage and known as Blue Bell Pond Caravan Site, Easington Road, Kilnsea, HU12 0UB

Reference: APP/E2001/C/17/3181624 and 3181625

Scale: DO NOT SCALE