



Department for Levelling Up,
Housing & Communities

Mr A Clover, Lincs Design Consultancy
mail@andrewcloverplanninganddesign.co.uk

Our ref: APP/D2510/V/20/3262551
Your ref: N/110/00906/20

8 March 2022

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77 APPLICATION MADE BY
MS A NASH
WILLOW TREE FARM, BRICKYARD LANE, SUTTON ON SEA, LN12 2RN
APPLICATION REF: N/110/00906/20**

This decision was made by the Minister of State for Housing, Stuart Andrew MP, on behalf of the Secretary of State

1. I am writing further to the Secretary of State's decision letter dated 17 January 2021 and the report of I Jenkins BSc CEng MICE MCIWEM, recommending refusal of three separate applications for planning permissions including your client's application at Willow Tree Farm, referred to as application B, for the change of use from 15 no. touring caravan pitches to 11 no. twin units at existing holiday park in accordance with application ref. N/110/00906/20, dated 4 June 2020.
2. The Secretary of State's decision letter dated 17 January 2022 refused planning permission for applications A 'Meadowbank' and C 'South Fields' and indicated that he was 'minded to refuse' application B 'Willow Tree Farm'.
3. A copy of the 17 January 2022 decision letter (DL) and the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that DL.

Matters arising since the 17 January 2022 decision letter

4. The 17 January 2022 DL fully set out the Secretary of State's conclusions in respect of application B, and indicated that he was 'minded to refuse' the application. For the reasons given at paragraphs 37-40, he provided an opportunity for parties to make representations on his proposed approach (paragraph 40).
5. One representation was received in response to this letter which is set out at Annex A. The representation was circulated to the main parties on 9 February 2022. A copy of the letter may be obtained on request to the email address at the foot of the first page of this letter. The Secretary of State is satisfied that no issues were raised in this

correspondence regarding his proposed approach. No representations were received from the applicant or the Council.

6. Therefore, the Secretary of State has decided to proceed on the basis set out in the DL. For the reasons given in the DL, he confirms his 'minded to refuse' decision and concludes that planning permission should be refused for application B Willow Tree Farm.

Formal decision

7. Accordingly, the Secretary of State agrees with the Inspector's recommendations in respect of application B Willow Tree Farm. He hereby refuses planning permission at Willow Tree Farm, for the change of use from 15 no. touring caravan pitches to 11 no. twin units at existing holiday park in accordance with application ref. N/110/00906/20, dated 4 June 2020.

Right to challenge the decision

8. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
9. A copy of this letter has been sent to East Lindsey District Council and the Environment Agency, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

MA Hale

Mike Hale
Decision officer

This decision was made by the Minister of State for Housing, Stuart Andrew MP, on behalf of the Secretary of State, and signed on his behalf

ANNEX A

SCHEDULE OF REPRESENTATIONS

Representations received in response to the Secretary of State's decision letter of January 17, 2021

Party	Date
The Environment Agency	28/01/2022



Department for Levelling Up,
Housing & Communities

A. Mr A Clover, Lincs Design Consultancy
B. as above
C. Mr J Chappell, Ellis Brothers
Contractors Limited

Our ref: A. APP/D2510/V/20/3262525
B. APP/D2510/V/20/3262551 &
C. APP/D2510/V/20/3262549
Your ref: A. N/084/00587/20
B. N/110/00906/20 &
C. S/090/00770/20

17 January 2022

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77

**APPLICATIONS MADE BY A. MR K PALMER, B. MS A NASH & C. ELLIS BROS
CONTRACTORS LIMITED**

**A. HILL VIEW CARAVAN PARK, SKEGNESS ROAD, HOGSTHORPE, SKEGNESS,
PE24 5NR ('MEADOWBANK')**

B. WILLOW TREE FARM, BRICKYARD LANE, SUTTON ON SEA, LN12 2RN &

**C. SKEGNESS WATER LEISURE PARK, WALL'S LANE, INGOLDMELLS, SKEGNESS,
PE251JF ('SOUTH FIELDS')**

APPLICATION REFS: A. N/084/00587/20, B. N/110/00906/20 & C. S/090/00770/20

*These decisions were made by the Minister of State for Housing, Chris Pincher MP, on
behalf of the Secretary of State*

1. I am directed by the Secretary of State to say that consideration has been given to the report of I Jenkins BSc CEng MICE MCIWEM, who held a public local inquiry on 4-7 and 10-14 May 2021 into three separate applications for planning permission as follows:
 - A. 'Meadowbank' - change of use of land to create 18 no. static caravan pitches and the erection of 1 no. amenity block to provide toilets and shower facilities, construction of internal roads and hardstanding areas, alterations to existing vehicular access and provision of car parking without complying with condition no. 2 previously imposed on planning permission Ref. N/084/00176/1. in accordance with application ref. N/084/00587/20, dated 27 March 2020.
 - B. 'Willow Tree Farm' - change of use from 15 no. touring caravan pitches to 11 no. twin units at existing holiday park in accordance with application ref. N/110/00906/20, dated 4 June 2020.
 - C. 'South Fields' - extension to existing water and leisure park to provide 189 no. additional static caravans, excavation of fishing lake, erection of indoor leisure centre, reception building, entrance wall with gates to a maximum height of 2.5

metres, provision of football/tennis court with cover, an outside playing field, butterfly garden/nature trail and construction of access roads, 2 no. pedestrian footbridges, associated parking, play area and landscaping without complying with condition no. 18 previously imposed on planning permission Ref. S/153/00268/12, in accordance with application ref. S/090/00770/20, dated May 2020.

2. On 30 October 2020, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that these applications be referred to him instead of being dealt with by the local planning authority.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that planning permission be refused for all three applications.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions except where stated, and agrees with his recommendations. He has decided to refuse applications A and C and is also minded to refuse application B. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

5. The Inspector concluded the public local inquiry on 20 July 2021 and the revised National Planning Policy Framework ('the Framework') was published on the same day. The Inspector consulted with the parties and has taken the revised Framework into account (IR1.2.1).

Policy and statutory considerations

6. In reaching his decisions for applications A and C, and in forming his view in respect of application B, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case the development plan consists of the East Lindsey Local Plan Core Strategy (CS) and the Settlement Proposals Development Plan Document (both adopted July 2018). The Secretary of State considers that relevant development plan policies include those set out at IR4.1.2–4.1.14.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

Emerging plan

9. East Lindsey District Council is going through a partial review of the 2018 Local Plan and held Issues and Options and a call for sites consultation ending in April 2021. Given the early stage of the plan it has not been afforded any weight.

Main issues

Application and compliance with CS Policy SP19 (Holiday Accommodation)

10. For the reasons given at IR13.2.1-13.2.21 the Secretary of State agrees with the Inspector's conclusions in these paragraphs, including that both Policy SP19(7) and SP19(8) have a part to play in the consideration of the applications (IR13.2.2). He further agrees with the Inspector's finding that in order to be 'deemed' by Annex 2 to have passed Part 1 of the Exception Test the development must be supported by Policy SP19(7) (IR13.2.21).
11. For the reasons given at IR13.2.22 the Secretary of State agrees with the Inspector that the application A site 'Meadowbank' falls within the high risk areas of the Coastal Zone, that it does not meet the Policy SP19(7) exemption criteria, and that it would conflict with Policy SP19.
12. IR13.2.23-13.2.28 sets out the Inspector's conclusions on the current position of Willow Tree Farm with regard to planning permissions and applications. The Secretary of State addresses this matter further at paragraphs 37-40 below. For the reasons given at IR13.2.27 the Secretary of State agrees with the Inspector that the application B site 'Willow Tree Farm' falls within the high risk areas of the Coastal Zone, that it does not meet the Policy SP19(7) exemption criteria, and that it would conflict with Policy SP19.
13. For the reasons given at IR13.2.29 the Secretary of State agrees that application site C 'South Fields' also falls within the high risk area of the Coastal Zone, that it does not meet the Policy SP19(7) exemption criteria, and that it would conflict with Policy SP19.
14. The Secretary of State agrees that in relation to these cases, Policy SP19 is the main and most important policy in the development plan (IR13.2.30).

Compliance with CS Policy SP17(4) and other CS Policies

15. For the reasons given at IR13.2.31 the Secretary of State agrees that all three schemes are likely to pass the Sequential Test.
16. For the reasons set out in IR13.2.32, and taking into account his conclusions at paragraphs 10-14 above, the Secretary of State agrees with the Inspector that the application schemes would not comply with CS Policy SP19, and they are therefore not 'deemed' to have passed Part 1 of the Exception Test under the terms of Annex 2. Annex 2 indicates that development not 'deemed' to have passed Part 1 of the Exception Test must demonstrate that it passes the test using the Annex 2 Sustainability Appraisal Form (SAF). The Secretary of State notes that neither the Council nor the applicants have provided a completed Sustainability Appraisal Form (SAF). He agrees that, under the terms of the CS, each of the proposals fails Part 1 and therefore the Exception Test taken as a whole and each of the proposals conflicts with CS Policy SP17(4) (IR13.2.32). In reaching this conclusion, he has also taken into account his conclusion at IR13.2.47 that while the proposals would score positively against a number of the Sustainability Objectives set out in the SAF, they would not score positively overall against the SAF.
17. For the reasons set out in IR13.2.33-13.2.47, the Secretary of State agrees that the caravan park sector makes a significant contribution to the economy in a relatively deprived part of the country (IR13.2.34), but considers that the jobs directly created by the application schemes would be limited (IR13.2.40). He further agrees that for application site A 'Meadowbank' and application B site 'Willow Tree Farm' the economic

and tourism benefits would be small (IR13.2.44). He accordingly apportions limited weight to these benefits.

18. For the reasons given at IR13.2.43 the Secretary of State agrees that in respect of application C 'South Fields' that permission would increase the likelihood that the approved development of the eastern section of the site would be completed. He further agrees that if the proposed extension were to unlock sales of the remaining pitches and development of the other approved facilities at SWLP, the economic, tourism, community facility and biodiversity benefits would be modest (IR13.2.44) and therefore attributes moderate weight in favour of the proposal.
19. The Secretary of State agrees with the Inspector that the 'South Fields' proposal would gain some support from CS Policies SP24 and 26 (IR13.2.43) and that insofar as there are such benefits, all the proposals would accord with CS Policy SP17(1), SP21, SP24 and SP26 (IR13.2.44). He further agrees with the Inspector's conclusions at IR13.2.45.
20. The Secretary of State, like the Inspector, notes that the extended occupancy period proposed would provide for those who now choose not to fly abroad on holiday in favour of a holiday with lower associated carbon emissions. However, he agrees there is no compelling evidence to show that the impact of the proposals in terms of reduced carbon emissions would be significant and likewise apportions this little weight (all at IR13.2.46).

Consistency with the development plan

21. Overall and in agreement with IR13.2.48-13.2.50, the Secretary of State agrees that each proposal would conflict with CS Policy SP19 and would also conflict with SP17(4) (IR13.2.48). He further agrees that the approach set out in the Council's Coastal Policy is not inconsistent with the Framework, and the CS is not out of date (IR13.2.50). He also agrees that none of the proposals would amount to sustainable development, contrary to CS Policy SP2. Overall he agrees that they would each conflict with the development plan taken as a whole (IR13.2.51).

Consistency with Chapter 14 of the Framework

22. For the reasons given in IR13.3.2-13.3.3, the Secretary of State agrees that the proposals would fail part a) of the Framework exception test.
23. The Secretary of State has, like the Inspector at IR13.3.4-IR 13.3.79, gone on to further consider the proposal against part b) of the Framework's Exception Test. He is in agreement that for these proposals the particular area of concern is the protection of people (IR13.3.6).
24. For the reasons given at IR13.3.7- IR13.3.14 (*Flood risk-Flood hazard*) the Secretary of State agrees with the Inspector that greater weight is attributable to the general pattern of flooding across the area than the Council's predictions of site flood levels (IR13.3.14).
25. Having considered the Inspector's assessment (IR13.2.15- IR13.3.18 *Design Flood Risk*) the Secretary of State agrees with the Inspector that the 'Meadowbank' and 'Willow Tree Farm' application sites are not affected by the Design Flood, and the escape route from 'Willow Tree Farm' would not be affected by the Design Flood (IR13.3.17). He further agrees that whilst some sections of the escape route from 'Meadow Bank' would be affected by flood water, given the short lengths of highway involved and depths in the range 0-0.25 metres, with a low hazard rating, it is acceptable under that scenario (also

IR13.3.17). However, for the reasons given at IR13.3.18, for 'South Fields' he agrees that the conditions resulting from the Design Flood raise significant safety concerns.

26. For the reasons given at IR13.3.19- IR13.3.48 (various sub-sections starting with *Residual Flood Risk*) the Secretary of State agrees with the approach set out by the Inspector at IR13.3.44 in respect of the hybrid approach to flood risk. He further agrees that the likelihood of combining factors leading to hazardous tidal conditions is greater in the period November to 5 January, the proposed extension period, than in April and October (IR13.3.47). Overall, he agrees that the flood risk associated with the proposed extension to the period of occupancy would be significant and greater than that associated with the existing occupancy season in each case (IR13.3.48).
27. For the reasons given at IR13.3.49- IR13.3.52 (*Flood Risk Management and Mitigation resistance works*), the Secretary of State agrees with the Inspector that failure to demonstrate that the suggested works would not increase flood risk elsewhere and the absence of consultation are each a compelling reason why seeking to secure such works at the sites by condition would not be reasonable. He further agrees that the suggested works should be given little weight (IR13.3.51). He further agrees that whilst for 'Willow Tree Farm' and 'South Fields' the most vulnerable development would not be located in areas of lowest flood risk within the sites, the requirement of paragraph 167(a) of the Framework is satisfied and that there are no alternative locations for caravans within the Meadowbank site (both IR13.52).
28. For the reasons given from IR13.3.53–13.3.71 the Secretary of State agrees that the CS's preferred mitigation strategy includes the Policy SP19(7) occupancy restriction, which the proposals would not comply with (IR13.3.54). He notes that the Council and applicants consider that in the event of the season being extended as proposed, flood risk could be mitigated by implementing a FWEP that ensures everyone has left the site before it is affected by a flood event and as a result of the mitigation, residual risk would be zero (IR13.3.56). The Council further considers that whether a FWEP is sensible in any particular context is a matter for the Council to determine, and can be left to be resolved in these cases by condition. However, the Secretary of State agrees with the Inspector that the adequacy of the FWEP is integral to the approval being sought from the Secretary of State and key matters such as the way in which it would operate, and a judgement as to whether it would be effective cannot be left until a later date (IR13.3.74). He therefore considers that dealing with the FWEPs via a condition is not appropriate in the circumstances of these cases. He further agrees that there is significant uncertainty as to how the proposed redrafted FWEPs would operate and significant doubt about the effectiveness and reliability of them in these particular cases (IR13.3.67). He further agrees with the Inspector that it cannot be concluded with any reasonable degree of confidence that re-drafted FWEPs, secured by condition in these cases, would ensure everyone would leave sites before they are affected by a flood event (13.3.71).
29. For the reasons set out at IR13.3.72-IR13.3.82 and at paragraphs 24-28 above, the Secretary of State agrees that it has not been demonstrated that any of the subject developments would be safe for their lifetime during the proposed extension to occupancy period and it follows that they have failed to satisfy Part b) of the Exception Test and the requirements of paragraphs 167 d) and e) of the Framework (IR13.3.79). He further agrees that it would not be possible to make any of the proposals acceptable in planning terms through the imposition of planning conditions, such as those promoted by the Council in relation to FWEPs and bunding/flood gates (IR13.3.81), and that, with particular reference to flood risk, the proposals would each conflict with Chapter 14 of the

Framework (IR13.3.82). Paragraph 165 of the Framework indicates that both elements of the Exception Test should be satisfied for the development to be permitted.

Other harms

30. For the reasons given at IR13.3.70 the Secretary of State agrees with the Inspector that the relatively limited number of caravans associated with the applications would not materially increase traffic levels involved in mass evacuation or the time taken to evacuate. He therefore agrees that concerns in that regard attract little weight.

Other benefits

31. For the reasons given at IR13.2.38 the Secretary of State agrees that only moderate weight should be given to the assertion that the proposals provide the only realistic future for the sites.

Planning conditions

32. The Secretary of State has given consideration to the Inspector's analysis at IR13.5.1-IR13.5.11, the conditions set out at the end of the IR in Annex A and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. He has concluded overall that an extension of the occupancy period in each of these cases is unacceptable. He has further concluded that dealing with the FWEPS via conditions is not appropriate in the circumstances of these cases (paragraph 28 above), and that seeking to secure bunding/flood gate works at the sites by condition would not be reasonable (paragraph 27 above). He is satisfied that the other conditions recommended by the Inspector all comply with the policy test set out at paragraph 56 of the Framework. In doing so he agrees with the reasons given for all three sites given at IR13.5.4-13.5.8; at IR13.5.9 for application A 'Meadowbank' ; at IR13.5.10 for application B 'Willow Tree Farm and at IR13.5.11 for application C 'South Fields'. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing planning permission for applications A and C and being similarly minded to refuse application B.

Planning balance and overall conclusion

33. For the reasons given above, the Secretary of State considers that the all three applications are not in accordance with CS Policies SP2, SP17(4) and SP19 and are not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposals should be determined other than in accordance with the development plan.
34. Weighing in favour of application A 'Meadowbank' and application B 'Willow Tree Farm' schemes are the economic and tourism benefits which attract limited weight. The economic, tourism, community facility and biodiversity benefits of application C 'South Fields' attract moderate weight. Moderate weight is given to all three proposals providing the only the realistic future for the sites; while little weight is attributed to the lower associated carbon emissions, and to the suggested bunding/flood gate works.
35. For all three applications the conflict with the Framework resulting from failure to pass the Exception Test is a very significant material consideration. Paragraph 165 of the Framework indicates that both elements of the Exception Test should be satisfied for the development to be permitted. In these cases therefore, Framework policy indicates that

permission should not be granted. Also weighing against the proposals is the increase in traffic levels, this being afforded little weight.

36. Overall the Secretary of State considers that the material considerations in this case indicate a decision for all three applications in line with the development plan – i.e. a refusal of permission for each. He therefore concludes that planning permission should be refused for applications A and C.

Conclusion on application B

37. For the reasons given above, the Secretary of State is also minded to refuse application B. However, due to the recommendations of the IR on the need for a full permission application for the change of use and condition as sought, and due to the subsequent full permission application made (with a different occupancy condition sought) and granted in 2021 in respect of part of the site, he wishes to give the applicant and other parties the opportunity to make representations before he issues his final decision on this application.
38. The Secretary of State has noted the planning history of this site as set out by the Inspector at IR3.2.1-3.2.4 and IR13.2.23-13.2.28, and has also noted that on 4 May 2021, planning permission Ref N/110/00357/21 was granted for part of the site by the Council. This post-dates the extant application which is the subject of this letter.
39. The Secretary of State's decision in this case will be confined to the change of use and condition application before him which he understands has not been withdrawn by the applicant and therefore remains extant. His intention in refusing this application is to accept the views and recommendations of the Planning Inspector and refuse permission as sought for the change of use and the proposed extended occupancy period (N/110/00906/20). His intention is also to leave unamended the extant permitted use as per N/110/00592/11, N/100/00276/13 and N/110/00357/21.
40. Should any of the parties wish to make representations on this approach, please respond to the address at the foot of the first page of this letter by Monday 7 February. Any representations received will be circulated to parties, and the Secretary of State's final decision on application B will then be issued.

Formal decision

41. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations in respect of applications A and C. He hereby refuses planning permission for applications A and C:

Application A ('Meadowbank'): Change of use of land to create 18 no. static caravan pitches and the erection of 1 no. amenity block to provide toilets and shower facilities, construction of internal roads and hardstanding areas, alterations to existing vehicular access and provision of car parking without complying with condition no. 2 previously imposed on planning permission Ref. N/084/00176/1 in accordance with application ref. N/084/00587/20, dated 27 March 2020.

Application C ('South Field'): Extension to existing water and leisure park to provide 189 no. additional static caravans, excavation of fishing lake, erection of indoor leisure centre, reception building, entrance wall with gates to a maximum height of 2.5 metres, provision of football/tennis court with cover, an outside playing field, butterfly garden/nature trail and construction of access roads, 2 no. pedestrian footbridges,

associated parking, play area and landscaping without complying with condition no. 18 previously imposed on planning permission Ref. S/153/00268/12 in accordance with application ref. S/090/00770/20, dated May 2020.

Right to challenge the decision

42. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decisions on applications A and C may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

43. A copy of this letter has been sent to East Lindsay District Council and the Environment Agency, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

MA Hale

Mike Hale

Decision officer

These decisions were made by the Minister of State for Housing, Chris Pincher MP, on behalf of the Secretary of State, and signed on his behalf



Report to the Secretary of State

by **I Jenkins BSc CEng MICE MCIWEM**

an Inspector appointed by the Secretary of State

Date **18 October 2021**

TOWN AND COUNTRY PLANNING ACT 1990

EAST LINDSEY DISTRICT COUNCIL

APPLICATIONS BY

MR KEVIN PALMER

MS ANNE NASH

ELLIS BROS CONTRACTORS LIMITED

Concurrent Inquiries Held on 4-7 May and 10-14 May 2021

Site A-Hill View Caravan Park, Skegness Road, Hogsthorpe, Skegness, PE24 5NR.

Site B-Willow Tree Farm, Brickyard Lane, Sutton on Sea, LN12 2RN.

Site C-Skegness Water Leisure Park, Wall's Lane, Ingoldmells, Skegness, PE25 1JF.

File Ref(s): APP/D2510/V/20/3262525, APP/D2510/V/20/3262551 & APP/D2510/V/20/3262549

CASE DETAILS

Application A-File Ref: APP/D2510/V/20/3262525

Hill View Caravan Park, Skegness Road, Hogsthorpe, Skegness, PE24 5NR

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 30 October 2020.
- The application is made by Mr Kevin Palmer to East Lindsey District Council.
- The application Ref N/084/00587/20 is dated 27 March 2020.
- The development proposed is the change of use of land to create 18 no. static caravan pitches and the erection of 1 no. amenity block to provide toilets and shower facilities, construction of internal roads and hardstanding areas, alterations to existing vehicular access and provision of car parking without complying with condition no. 2 previously imposed on planning permission Ref. N/084/00176/13.

Summary of Recommendation: Planning permission be refused.

Application B-File Ref: APP/D2510/V/20/3262551

Willow Tree Farm, Brickyard Lane, Sutton on Sea, LN12 2RN

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 30 October 2020.
- The application is made by Ms Anne Nash to East Lindsey District Council.
- The application Ref N/110/00906/20 is dated 4 June 2020.
- The development proposed is a change of use from 15 no. touring caravan pitches to 11 no. twin units at existing holiday park.

Summary of Recommendation: Planning permission be refused.

Application C-File Ref: APP/D2510/V/20/3262549

Skegness Water Leisure Park, Wall's Lane, Ingoldmells, Skegness, PE251JF

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 30 October 2020.
- The application is made by Ellis Bros Contractors Ltd to East Lindsey District Council.
- The application Ref S/090/00770/20 is dated 4 May 2020.
- The development proposed is the extension to existing water and leisure park to provide 189 no. additional static caravans, excavation of fishing lake, erection of indoor leisure centre, reception building, entrance wall with gates to a maximum height of 2.5 metres, provision of football/tennis court with cover, an outside playing field, butterfly garden/nature trail and construction of access roads, 2 no. pedestrian footbridges, associated parking, play area and landscaping without complying with condition no. 18 previously imposed on planning permission Ref. S/153/00268/12.

Summary of Recommendation: Planning permission be refused.

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1. Procedural Matters

1.1. *The Inquiries*

- 1.1.1. In his letters dated 30 October 2020, the Secretary of State issued directions to East Lindsey District Council, under his powers in section 77 of the *Town and Country Planning Act 1990*, that the applications identified above shall be referred to him instead of being dealt with by the local planning authority (the call-in letters).
- 1.1.2. The Secretary of State's call-in letters confirmed that a local Inquiry, following the *Town and Country Planning (Inquiries Procedure)(England) Rules 2000* (2000 Inquiries Procedure Rules) would be held to consider all of the relevant aspects of each of the proposed developments. The matters which the Secretary of State particularly wished to be informed about for the purposes of his consideration of each of the applications were identified as:
 - a) The extent to which the proposed development is consistent with the Government's policies for meeting the challenge of climate change, flooding and coastal change (the National Planning Policy Framework's Chapter 14);
 - b) The extent to which the proposed development is consistent with the Development Plan for the area; and,
 - c) Any other matters the Inspector considers relevant.
- 1.1.3. The start date for the Inquiries was initially set as 22 March 2021. The first pre-Inquiries meeting was held on 13 January 2021 to discuss the procedural arrangements for the Inquiries. At the meeting, the Council indicated that it had requested modelling data from the Environment Agency, which would inform the analysis/evidence it intends to rely on at the Inquiries. Furthermore, it expressed doubts about whether, once the data has been received, sufficient time would remain for its consultant to review the data and provide its proofs of evidence by the submission date of 23 February 2021. I indicated that if, when the position regarding the provision of data and the associated proofs becomes clearer, the Council considers that it is unable to meet the deadline, it should write to the Planning Inspectorate setting out the reason(s) and suggested course of action, with associated timescales.
- 1.1.4. On the 8 February 2021, the Council wrote to the Planning Inspectorate to formally request that the start date for the Inquiries be postponed, as it would be unable to comply with the deadline for the submission of proofs of evidence of 23 February 2021. On 15 February 2021 the Council confirmed that all of the required data had been received and that it would be able to produce its proofs of evidence by 22 March 2021. Under the circumstances, I determined that it would not be feasible to open the Inquiries as previously scheduled on 22 March 2021. Following liaison between the main parties and the Planning Inspectorate, a new date for the start of the Inquiries was set as 4 May 2021 and a second pre-Inquiries meeting was held on 1 March 2021 to establish a revised pre-Inquiries timetable.

1.1.5. Concurrent Inquiries into the subject planning applications opened on the 4 May 2021 and sat for 9 days, 4-7 May and 10-14 May 2021. The Inquiries were conducted in a virtual format. I undertook an accompanied visit to each of the application sites on the 15 April 2021 and again on the 25 May 2021. Unaccompanied visits to the local area were also conducted before and after the Inquiries.

1.2. ***The revised National Planning Policy Framework***

1.2.1. Following the publication of the revised *National Planning Policy Framework*, in July 2021 (the Framework), the parties to the Inquiries were invited, if they considered that revisions to the Framework affected their case, to provide their comments on that matter for consideration. I have taken the revised document into account and references to the Framework in this report are to the July 2021 version.

1.3. ***Legal submissions-planning application B, Ref. N/110/00906/20***

1.3.1. At the Inquiries, the Council expressed its view that planning permission is not required for the development subject of planning application B, Ref. N/110/00906/20, at Willow Tree Farm. This was disputed by the Environment Agency. Inquiry documents ID11, ID12 and ID24 set out the legal submissions of each party. The Inquiries continued without prejudice to the decision which might later be made on the matter.

1.4. ***The Report***

1.4.1. In this report I set out the main substance of the cases for the parties who appeared at the Inquiries, summarise the main points raised in the written representations submitted. I then set out my conclusions and my recommendations to the Secretary of State. Appended to the report are lists of:

- 1) Appearances at the Inquiries;
- 2) Inquiries documents submitted by the parties;
- 3) Schedules of conditions; and,
- 4) A schedule of abbreviations.

2. **The Sites**

2.1. ***Hill View Caravan Park***

2.1.1. Hill View Caravan Park (HVCP) comprises a number of discrete static caravan sites clustered together on the northern and southern sides of the A52. HVCP is surrounded by agricultural land and is situated to the southeast of Hogsthorpe. The application site comprises 'Meadowbank 1' (Meadowbank), one of the 3 HVCP sites situated on the northern side of the A52.¹ Meadowbank contains 18 static caravans arranged around a centrally positioned fishing lake, all of which is well screened from view from the

¹ EA3.9.

surroundings by boundary planting. The site is situated within the Environment Agency's Flood Zone 3a.²

2.2. Willow Tree Farm

2.2.1. Willow Tree Farm (WTF) is located on the western side of Brickyard Lane and the application site comprises a caravan park for 15 no. touring caravans, with pitches positioned around the northern section of a fishing lake.³ The area of WTF between the fishing lake/touring pitches and Brickyard Lane includes a 5-pitch certified location/site and buildings associated with Willow Tree Farm. Those buildings include, amongst other things, 2 buildings with planning permission for change of use to 5 holiday lets and the applicant's bungalow. The bungalow shares its southern boundary with a separate dwelling Old Willow Tree Farm. The southern, western and northern boundaries of the area occupied by the fishing lake/15 no. touring pitches are enclosed by hedging. The surrounding area comprises, for the most part, of agricultural land.⁴ The site is situated within the Environment Agency's Flood Zone 3a.

2.3. Skegness Water Leisure Park

- 2.3.1. The application site comprises the South Fields section of the Skegness Water Leisure Park (SWLP), which is located on the southern side of Wall's Lane.⁵ South Fields contains a fishing lake, a utilities building, a network of access tracks/roads and a small proportion of the 189 no. static caravans for which planning permission has been granted, Ref. S/153/0268/12. South Fields is linked to the older section of SWLP by a bridge over a drainage channel, which separates the two areas of the park. The older section of SWLP contains a range of accommodation, including around 700 static caravans, three holiday bungalows, 21 glamping pods and pitches for up to 250 touring caravans/tents. Other facilities there include a public house, a coffee shop, a general store, fishing lakes, a light railway and a private airstrip.⁶
- 2.3.2. To the west and south of South Fields the land is predominantly in agricultural use. To the east there are a number of caravan sites and a residential housing estate. The site is situated within the Environment Agency's Flood Zone 3a.⁷

3. Planning Histories and Proposals

3.1. Hill View Caravan Park

- 3.1.1. Planning permission Ref. N/084/00176/13 was granted in 2013 for a change of use of Meadowbank to create 18 no. static caravan pitches and the erection of 1 no. amenity block to provide toilets and shower facilities,

² CDA3-3.1 and KP1.1.

³ CDB1-1.2.

⁴ CDB3-3.1 and AN1.1.

⁵ CDC1-1.3.

⁶ CDC3-3.1 and EB1.1.

⁷ CDC3-3.1.

construction of internal roads and hardstanding areas, alterations to existing vehicular access and provision of car parking.⁸ It has been implemented.

- 3.1.2. Condition no. 2 attached to planning permission Ref. N/084/00176/13 stated *'the static caravans hereby approved must only be used or occupied for holiday purposes and only be used between 15 March and the 31 October in any one year, except that, in years when the Autumn half term school holiday falls within November then the period is extended to the Sunday at the end of that half term holiday.'* The reason given for the condition was *'to minimise the potential impact of flooding having regard to the site's location in the coastal flood zone, in accordance with paragraphs 100-104 of the National Planning Policy Framework'*.
- 3.1.3. The subject application in this case, Ref. N/084/00587/20, seeks planning permission for the development for which planning permission Ref. N/084/00176/13 was granted without complying with condition no. 2 attached to that planning permission. The applicant proposes that instead of condition no. 2, a new condition be imposed which allows occupancy of the 18 caravans between 1 March and 5 January the following year; extending the season.
- 3.1.4. Meadowbank is one of a number of discrete static caravan sites that make up HVCP, each of which are the subject of a separate planning permission. Meadowbank shares its southeastern boundary with an established HVCP site for 46 no. caravans, subject of planning permission N/084/01131/15. On land to the north of those sites, planning permission Ref. N/084/00583/20 has been granted for another 63 no. caravans.⁹ Currently, all 3 of those HVCP sites to the north of the A52, with a total consented capacity of 127 units, have the same occupancy restriction. However, I understand that a planning application to extend the season for the 46-no. caravan site has been made and subsequently, called-in by the Secretary of State.
- 3.1.5. Whilst a small number of the caravans sited on the sections of HVCP to the south of the A52 are restricted to occupation between the 15 March and 31 October or 30 November, around 54 of the units sited there are subject to an open season between 1 March and 5 January the following year.
- 3.2. ***Willow Tree Farm***
- 3.2.1. Planning permission Ref. N/110/00592/11 was granted in 2011 for a change of use of an existing 5 no. caravan park to form a 15 no. touring caravan park and provision of an access track through site. Condition no. 2 attached to that permission indicates that *'caravans must only be on site from 1 April to 30 September in any one year, except that, in years when the Bank Holiday known as Good Friday falls in March, then caravans may be sited and occupied from Good Friday to 30 September in that year. Outside this period of use all caravans must be removed from the application site.'*¹⁰

⁸ CD42 and EA3.9.

⁹ EA3.9.

¹⁰ CD42 Appendix 4.

- 3.2.2. In 2013, a successful section 73 planning application resulted in the grant of planning permission Ref. N/100/00276/13 with a single condition, numbered 2, which states that *'touring caravans must only be on site between 15 March and 31 October in any one year, except that, in years when the Autumn half term holiday falls within November then the period is extended to the Sunday at the end of that half term holiday.'*¹¹ The reasons given for that condition were *'to minimise the potential impact of flooding having regard to the sites location in a coastal flood zone, in accordance with National Planning Policy Framework paragraphs 100-104 and to protect the landscape from visual harm having regard to Policies A5 and T15 of the East Lindsey Local Plan Alteration 1999 and paragraphs 17, 28 and 109 of the National Planning Policy Framework'.*
- 3.2.3. The proposal in this case, planning application Ref. N/110/00906/20, would involve the removal of the 15 no. touring caravan pitches and the siting of 11 no. static twin caravan units around the northern section of the fishing lake. The applicant proposes that the allowed period of occupancy would be between 1 March and 5 January the following year.
- 3.2.4. On 4 May 2021 planning permission Ref. N/110/00357/21 was granted by the Council for a change of use of part of the existing touring caravan site to allow the siting of 11 no. static caravans. Condition no. 4 attached to that permission states the caravans hereby permitted shall only be occupied between 15 March and 31 October (or the first Sunday in November if half term falls in November) in any year. The reason given for the condition is *'to reduce the risk of flooding to the proposed development and future occupants in accordance with Policy SP19 of the East Lindsey Local Plan and paragraph 163 of the National Planning Policy Framework.'*¹² The approved site layout drawing no. LDC3008-PL-02, is the same as that submitted in support of the planning application Ref. N/110/00906/20 before the Secretary of State.¹³

3.3. **Skegness Water Leisure Park**

- 3.3.1. Planning permission Ref. S/153/0268/12 was granted in 2013 for *'extension to existing water and leisure park to provide 189 no. additional static caravans, excavation of fishing lake, erection of an indoor leisure centre, reception building, entrance wall with gates to a maximum height of 2.5 metres, provision of football/tennis court with cover, an outside playing field, butterfly garden/nature trail and construction of access roads, 2 no. pedestrian footbridges, associated parking, play area and landscaping'.*
- 3.3.2. Condition no. 18 attached to planning permission Ref. S/153/0268/12 states that *'the static holiday caravans within the site hereby permitted shall not be occupied between and including 1st November (or the Monday immediately following the end of any half term holidays that end later than the 1st November) and 14th March in the following year'.* The reason given for that condition was *'to ensure that the site is only occupied during periods of lower flood risk and therefore to reduce the risk of loss of life during a*

¹¹ CD42 Appendix 5.

¹² ID33.

¹³ CDB1-1.3.

flood event. This condition is imposed in accordance with the requirements of paragraph 102 of the National Planning Policy Framework 2012 and Policy T16 of the East Lindsey Local Plan Alteration 1999’.

- 3.3.3. The subject application in this case, Ref. S/090/00770/20, seeks planning permission for the development for which planning permission Ref. S/153/0268/12 was granted without complying with condition no. 18 attached to that planning permission. The applicant proposes that instead the allowed period of occupancy would be between 1 March and 5 January the following year; extending the season. Whilst the application was made for that extended period to remain in perpetuity, a time limited extension to 2049 was discussed between the applicant and the Council while the application was with it for consideration. However, at the Inquiries, Ellis Bros Contractors Ltd (EBC) stated its preference is that the application be determined on the basis of the original application; that is, an application for an extension of the period of occupancy to between 1 March and 5 January the following year in perpetuity¹⁴. I have taken this into account.

4. Planning Policy and Guidance

4.1. The Development Plan

- 4.1.1. The Development Plan comprises the East Lindsey Local Plan Core Strategy (CS) and the Settlement Proposals Development Plan Document, both of which were adopted in July 2018.
- 4.1.2. The CS Key Diagram identifies an area at risk from tidal flooding along the eastern side of the District as Coastal East Lindsey, the definitive boundaries of which are shown on the Policies Map.¹⁵ *Policies Map 2-Coastal Zone/Coastal Flood Hazard Areas* shows the red (danger for all), orange (danger for most), yellow (danger for some) and green (low hazard-caution) areas.¹⁶ Furthermore, the introduction to CS Chapter 10-Coastal East Lindsey includes the ‘Combined Flood Hazard Map of East Lindsey areas at risk of flooding from breach of sea defences, due to an event with a 0.5% chance of occurring in any one year 1 in 200-year event 2115’ and the paragraph that follows confirms that coastal area of East Lindsey is defined by the area shown on the Coastal Flood Hazard Maps.¹⁷
- 4.1.3. The CS explains that *‘the coastal area of East Lindsey, as defined by the area shown on the Coastal Flood Hazard Map, is considered so important in terms of its size, economic impact, make up of population and its issues around coastal flood risk that it warrants a policy in its own right’*. *‘Chapter 10-Coastal East Lindsey sets out the Council’s policy approach to development in the Coastal Zone’*.¹⁸ Furthermore, *‘it is considered very important, given the major change in the way development, particularly housing, is to be considered in this policy, that the Council both monitors*

¹⁴ Mr Chappell’s oral response to Inspector’s questions.

¹⁵ CD1 page 5.

¹⁶ CD1 page 7.

¹⁷ CD1 pages 85 and 86.

¹⁸ CD1 page 134.

and reviews this Policy'.¹⁹ I understand that whilst a review of the CS has commenced, it is at an early stage.

4.1.4. The policies set out in Chapter 10 comprise:

- SP17-Coastal East Lindsey;
- SP18-Coastal Housing;
- SP19-Holiday Accommodation;
- SP20-Visitor Economy; and,
- SP21-Coastal Employment.

4.1.5. Chapter 10 indicates that *'all relevant development in areas of flood risk has to show how it has passed the Sequential and Exception tests'*; a requirement of CS Policy SP17-Coastal East Lindsey. *'With regard to the Sequential Test this steers development to areas of lowest risk. One of the aims of the Coastal Policy is to make it clear to those wishing to develop what will and will not be supported by the Council. Part of this work is to make the process of submitting and understanding the process around planning easier. To aid in this, Annex 2 of this Plan sets out how relevant development meets the Sequential Test in the coastal zone, this then precludes this exercise from the application process. For development deemed to have passed the Sequential Test, it must then demonstrate how it passes the Exception Test, this is also set out in Annex 2'*.²⁰

4.1.6. Annex 2 repeats that *'One of the aims of the Coastal Policy is to make it clear to those wishing to develop what will and will not be supported by the Council. Part of this work is to make the process of submitting and understanding the process around planning easier. To aid in this, this Annex to the Plan sets out how relevant development meets the Sequential test in the Coastal Zone'*. It adds *'Development supported by the policy is deemed to have passed the Sequential Test, it must then demonstrate how it passes the Exception Test'*.

4.1.7. Annex 2 identifies, with regard to the Coastal Zone and Strategic Policies SP17, SP18, SP19, SP20 and SP21 Coastal East Lindsey, the developments deemed to have passed the Sequential Test. They include static caravan holiday accommodation.²¹

4.1.8. Annex 2 confirms that *'the Exception Test is split into two parts. For the Exception Test to be passed:*

- *Part 1: it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and,*

¹⁹ CD1 page 89.

²⁰ CD1 page 88.

²¹ CD1 page 136.

- *Part 2: a site-specific flood risk assessment must demonstrate that 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.'*

- 4.1.9. The Annex indicates that *'for the Exception test, the very term exception means that it is development beyond that which would normally be allowed. It is important that all relevant development still does demonstrate that it provides wider sustainability benefits. In order to assist those wishing to develop the Council will test development against its Sustainability Objectives set out below. Whilst the Council strongly supports economic growth on the coast, all relevant development should score positively and demonstrate that it provides wider environmental, social and economic benefits to the community.'*

All relevant development will need to provide a site-specific flood risk assessment which should identify and assess the risks from all forms of flooding to and from the development. It should demonstrate how these risks will be managed so that development remains safe throughout its lifetime, taking into account climate change'.

- 4.1.10. Annex 2 identifies that the types of development deemed to have passed Part 1 of the Exception Test include static caravan holiday accommodation.
- 4.1.11. The Coastal Policy that deals with holiday accommodation is CS Policy SP19. The reasoned justification for that Policy explains *'evidence shows that the period November to March carries the highest risk of flood events, caravans are classed as vulnerable development and mitigation is not sufficient during an event to ensure reduced risk. Therefore, all caravans in the Coastal Zone in the high risk areas will only be supported with an occupancy condition placed on them of 15th March to 31st October or the following Sunday. The Council needs to balance risk against the impact on the economy of the coast so these dates, take in the Easter and October half term holidays which are acknowledged busy times for the holiday industry in the Coast. Where it is proposed to extend the site area or redevelop an existing site that currently has a different occupancy period to that in Policy SP19, providing that the development would not increase the number of caravans, log cabins or chalets on the site, the occupancy limits in this Policy will be applied flexibly so that no disadvantage should result, i.e. the existing occupancy period will be retained'*.²²
- 4.1.12. CS Policy SP19(7) states that *'Occupancy of caravan, log cabin, chalets, camping and touring sites will be limited to between 15th March and 31st October in any one year, or the following Sunday, if the 31st does not fall on a Sunday, except where it is proposed to extend the area of or redevelop an existing site that currently has a different occupancy period, but where no net increase or an overall reduction by an improved layout or density in the number of caravans, log cabins or chalets would result. In such cases, the existing occupancy period will continue to be applied to the whole site'.*

²² CD1 page 94 para 10.28

- 4.1.13. The reasoned justification for CS Policy SP19 also explains that '*...it is important to take account that recent research (July 2011) has shown that there are a significant number of people choosing to reside in static caravans as their main home...The Council does not wish to encourage these numbers to increase because of added pressures to the health service and also a caravan is classed as a vulnerable development in terms of flood risk and therefore will not support all year round occupancy or permanent living in caravans in the coastal area*'.²³
- 4.1.14. To that end, CS Policy SP19(8) states that '*the Council will not support all year round occupancy or permanent living in caravans in the coastal area*.'

4.2. **Chapter 14 of the National Planning Policy Framework**
(the Framework)

- 4.2.1. Paragraphs 160 and 161 of the Framework indicate that '*strategic policies should be informed by a strategic flood risk assessment, and should manage flood risk from all sources*'. '*All plans should apply a sequential, risk-based approach to the location of development – taking into account the current and future impacts of climate change. – so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by:*
- a) *applying the sequential test and then, if necessary, the exception test as set out below;...*'
- 4.2.2. Paragraph 162 states that '*The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding*'.
- 4.2.3. Paragraph 163 states that '*If it is not possible for development to be located in zones with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in national planning guidance*'.
- 4.2.4. Paragraph 164 states that '*The application of the exception test should be informed by a strategic or site-specific flood risk assessment, depending on whether it is being applied during plan production or at the application stage. For the exception test to be passed it should be demonstrated that:*
- a) *the development would provide wider sustainability benefits to the community that outweigh the flood risk; and*

²³ CD1 page 94 para 10.27.

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.'

- 4.2.5. Paragraph 165 states that *'Both elements of the exception test should be satisfied for development to be allocated or permitted.'*
- 4.2.6. Paragraph 166 states that *'Where planning applications come forward on sites allocated in the development plan through the sequential test, applicants need not apply the sequential test again. However, the exception test may need to be reapplied if relevant aspects of the proposal had not been considered when the test was applied at the plan-making stage, or if more recent information about existing or potential flood risk should be taken into account.'*
- 4.2.7. Paragraph 163 states that *'When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment²⁴. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:*
- a) Within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*
 - b) The development is appropriately flood resistant and resilient such that, in the event of a flood, it could quickly be brought back into use without significant refurbishment;*
 - c) It incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*
 - d) Any residual risk can be safely managed; and*
 - e) Safe access and escape routes are included where appropriate, as part of an agreed emergency plan.'*

4.3. **National Planning Practice Guidance**

- 4.3.1. The national *Planning Practice Guidance-Flood Risk and Coastal Change* (PPG) explains that the Framework sets strict tests to protect people and property from flooding which all local planning authorities are expected to follow. Where these tests are not met, national policy is clear that new development should not be allowed.²⁵ The broad approach of assessing, avoiding, managing and mitigating flood risk should be followed.²⁶ The first step is to assess the flood risk, which for individual proposals means

²⁴ A site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3. In Flood Zone 1, an assessment should accompany all proposals involving: sites of 1 hectare or more; land which has been identified by the Environment Agency as having critical drainage problems; land identified in a strategic flood risk assessment as being at increased flood risk in future; or land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use.

²⁵ PPG Flood Risk & Coastal Change para 001.

²⁶ PPG Flood Risk & Coastal Change para 029.

undertaking a site-specific flood risk assessment to accompany their applications. For the purposes of applying the Framework, 'flood risk' is a combination of the probability and potential consequences of flooding from all sources, including the sea, amongst others. The second step of avoiding flood risk involves following a sequential approach, by applying the Sequential Test and, if needed, the Exception Test.

- 4.3.2. The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding.²⁷ Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test if required.
- 4.3.3. The Exception test is a method to demonstrate and help to ensure that flood risk to people and property will be managed satisfactorily, while allowing necessary development to go ahead in situations where suitable sites at lower risk of flooding are not available. There are 2 parts to the test. To pass part (a) it should be demonstrated that the development would provide wider sustainability benefits to the community that outweigh flood risk.²⁸ Where this is not possible the Exception Test has not been satisfied and planning permission should be refused, thereby avoiding flood risk.²⁹
- 4.3.4. To pass part (b) it should be demonstrated that 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.³⁰ This amounts to the fourth step of managing and mitigating flood risk.

5. Statements of Common Ground

- 5.1. Pursuant to Rule 14 of the *2000 Inquiries Procedure Rules*, the Council has agreed a Statement of Common Ground with each of the applicants.³¹
- 5.2. No Statements of Common Ground have been agreed between the Council and the Environment Agency.

6. Other Matters

- 6.1. The Council has confirmed that, excluding the 3 applications before me, it has received holding Directions of undefined timescale pursuant to Article 31 of the *Town and Country Planning (Development Management Procedure)(England) Order 2015* in relation to 30 no. section 73 planning applications.

²⁷ PPG Flood Risk & Coastal Change para 001.

²⁸ The Framework para 164 a).

²⁹ PPG Flood Risk & Coastal Change para 037.

³⁰ The Framework para 164 b)

³¹ CDA3-3.1, CDB3-3.1 and CDC3-3.1.

- 6.2. Furthermore, *The Fantasy Island Local Development Order 2020* (Fantasy Island LDO) was made by the Council on 16 July 2020, which amongst other things, allowed caravan occupancy from 1 March to 5 January the following year. It was confined to Fantasy Island Pleasure Park at Ingoldmells. As a result of approaches from the Ministry of Housing, Communities and Local Government, the Council decided that it would not allow it to become effective before 1 October 2021.
- 6.3. In addition, *The Coastal Local Development Order 2020* was made by the Council on 9 October 2020 and its principal effect was to allow any lawful existing holiday park to open its accommodation for holiday use from 1 March to 5 January after having gone through a prior approval process. The LDO will expire on 9 October 2022. In a similar way to the Fantasy Island LDO, the Council advised all operators that have gone through the first part of the prior notification process (39 made to date) that final approval will not be given unless the respective operator also submits a unilateral undertaking to confirm that they will not take advantage of the LDO before 1 October 2021. The Council indicated that this was more a 'Covid response' document than the Fantasy Island LDO, the latter had previously been the subject of discussion for a number of years. The Council has not received any unilateral undertakings for Coastal LDO sites to date.
- 6.4. Whilst I note these matters, I have considered the 3 planning applications before me on their own merits.

7. The Case for the Environment Agency

7.1. Introduction

- 7.1.1. The Environment Agency (the Agency) is seriously concerned about the direction of travel which is being pursued by the Council in relation to the occupancy of caravans for longer than the season referred to in Policy SP19(7). These three applications are the first to arise for determination, the Secretary of State having called them in for his consideration. The Secretary of State has also been asked to intervene in the operation of two Local Development Orders made by the Council and there are 30³² applications for planning permission which have as their aim the extension of the current restricted occupancy season. The decisions on these three applications could well have wide-ranging consequences for future decision-making on issues relating not just to tidal flooding, but for the approach to flood risk generally, particularly given that decision makers are generally expected to act consistently in consistent situations.
- 7.1.2. In his evidence in chief Mr Leader expressed a desire not to criticise the Agency. His desire came too late. The Agency considers that its staff and its approach to these applications and to flood risk generally has been treated with utter disdain by the Council and its advocate at these Inquiries. The Council's approach has unfortunately been to claim that the Agency's officers are "confused" about flood risk and to suggest that the Agency does

³² According to document ID32.

not know what it is talking about. There was even doubt expressed about the “veracity” of the Agency’s evidence on previous events, when the Council had rushed to judgement about which defence failures at Wash Banks were being referred to, without even checking that they had the right event. The Council has been sadly too keen to criticise the Agency at every turn.

7.2. *The proper approach to flood risk*

- 7.2.1. There has been a wholesale, misplaced and belated attack upon the Agency’s approach to flood risk expressed at the Inquiries. It was a point which does not figure in the Council’s Statement of Case (in any of its three iterations) or in Mr Leader’s proof and emerged for the first time in evidence-in-chief. In fact, as the Agency will demonstrate, it is the Council which has failed properly to understand the appropriate approach to flood risk. Further, the Agency’s working relationship with the Council has, until recently, been both constructive and productive. It is the Council’s recent approach towards flood risk and a patent desire to ditch their own Development Plan outside of a review process which has led to confrontation, which is not the way forward.
- 7.2.2. It is important to note that Mr Cage expressly accepted, at the outset of his cross-examination, that the Agency has a good understanding of the risk of sea flooding. He was right to do so. Mr Clover also accepted that the Agency’s approach to flood risk was one that he has himself used for many years. The Flood Risk Assessment (FRA) for site C³³ also used the Agency’s Hazard Mapping without any reservation being expressed about it.
- 7.2.3. Inappropriate development in areas at risk of flooding should be avoided by directing development away from the areas of highest risk. Where development is necessary in such areas, then it should be made safe for its lifetime without increasing flood risk elsewhere. That approach is encapsulated in the ‘Assess, Avoid, Manage and Mitigate’ approach set out in paragraph 001 of the PPG³⁴, which is to be used in decision taking³⁵.
- 7.2.4. The ‘Areas at risk of flooding’ are prescribed in Table 1 of the PPG. All of the application sites are in Flood Zone 3a, as they are at risk of flooding from a sea flooding event with a 0.5% or greater annual probability of occurrence, ignoring the presence of defences. The development types in this case are classified as ‘more vulnerable’ in Table 2 of the PPG. The reference to ignoring the presence of defences means that it is immediately apparent that the Framework and PPG approach the question of risk in a particular way.
- 7.2.5. The sequential test involves directing development to areas with the lowest risk of flooding. If that is not possible the Exception Test might apply according to the classification of the vulnerability of the development³⁶. Table 3 in the PPG provides that the Exception Test has to be applied to

³³ CDC1-1.4.

³⁴ All references in these submissions to the PPG are to the chapter “Flood Risk and Coastal Change”.

³⁵ PPG para 029.

³⁶ Framework para 162.

proposals for development in the 'more vulnerable' category, save to the extent that the test had been applied at the stage of Development Plan preparation. Even then, paragraph 166 of the Framework provides that the Exception Test may need to be reapplied if relevant aspects of the proposal had not been considered when the test was applied at plan-making stage.

- 7.2.6. The Exception Test is set out in paragraph 164 of the Framework. It contains two limbs, both of which have to be satisfied³⁷ by planning applications, unless they were satisfied at plan-making stage.
- 7.2.7. Limb (a) of the Exception Test requires the development to provide wider sustainability benefits to the community that outweigh the flood risk. The Council says this limb has been satisfied, but the Agency does not agree.
- 7.2.8. Limb (b) of the Exception Test requires that 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. Limb (b) therefore contains two tests and one exhortation. The Council accepts that limb (b) needs to be satisfied by these applications.
- 7.2.9. Framework paragraph 167 and footnote 55 combine to mean that where development is proposed in flood zone 3, as here, the application should be accompanied by the site-specific flood-risk assessment which meets the requirements of parts (a) to (e) of the paragraph. Of particular note for present purposes, part (d) requires a demonstration that 'any residual risk can be safely managed'. It is to be noted that there is no requirement for the combination of factors combining to create that residual risk to be quantified in any way, as Mr Leader accepted.
- 7.2.10. There is no issue about paragraph 168 and footnote 56 of the Framework – the applications are not exempted from the Exception Test if it would otherwise apply.
- 7.2.11. Residual risk is defined in the PPG³⁸. It is the risk remaining after applying the Sequential Test and the taking of 'mitigating actions'. Three examples of residual risk are then given, two of which are relevant to these applications:
 - 1) The first example of residual risk includes 'the failure of flood management infrastructure such as a breach of a raised flood defence';
 - 2) The third example of residual risk is 'a severe flood event that exceeds a flood management design standard, such as a flood that overtops a raised flood defence'.
- 7.2.12. After giving these examples, PPG paragraph 041 points out that areas behind flood defences are at particular risk from rapid onset of fast-flowing and deep water flooding, with little or no warning if defences are overtopped or breached.

³⁷ Framework para 165.

³⁸ PPG para 041.

- 7.2.13. It is then necessary to assess the meaning of risk and the approach to it in these applications. The PPG³⁹ defines flood risk as a combination of the probability and the potential consequences of flooding. That is a general statement and its application varies throughout the Framework and PPG:
- 1) For assessing the risk affecting flood zones, the presence of flood defences is ignored and so the probability of the defence failing is simply irrelevant to that part of the PPG;
 - 2) When assessing a design flood⁴⁰ where any defences hold firm, the probability of the event is inherent in the scenario being addressed – for sea flooding a 0.5% annual chance of occurrence;
 - 3) When assessing residual risk from a severe event which does not involve a breach of defences, the probability of the occurrence of that event is also inherent in the scenario being addressed – in these applications a flood event with a 0.1% annual probability of occurrence; and,
 - 4) When assessing the type of residual risk that comes from a breach event, the probability of the event is partly addressed by the annual probability of the flood event being used, in these applications both of a 0.5% and 0.1% annual probability event.
- 7.2.14. The question then becomes whether policy and guidance require the probability of the breach of defences to be quantified. This is in the context that the Council alleges that the Agency, together with the Council's Strategic Flood Risk Assessment (SFRA) at plan-making stage (and thus the plan itself) wrongly addresses hazard, not risk. The answer is that there is no such requirement. That is for the following reasons.
- 7.2.15. There is nothing in the Framework, PPG or other guidance that provides that is the case. Indeed, the PPG addresses this general issue under the heading 'How should residual risk be addressed?'⁴¹. It provides that where residual risk is relatively uniform, such as within a large area protected by embanked flood defences, the SFRA should '*indicate the nature and severity of the risk remaining*' and provide guidance for residual risk issues to be covered in site-specific FRAs. This is language that indicates that considering hazard is correct.
- 7.2.16. The matter gets clearer still when considering PPG paragraph 017. This is in the section dealing with assessing residual risk in the Strategic FRA and so is directly relevant to Mr Leader's point which emerged in detail for the first time in his examination in chief, where he plainly sought to suggest that the Council had been misled by a wrong approach taken by the Agency which, in turn, had misled the examining Inspectors as to the proper basis for assessing risk. Surprisingly, he did not see fit to address this guidance until he was cross-examined about it. The heading to PPG paragraph 017 is '*How should the assessment cover flood defence breaching and overtopping and risk to people behind defences?*' The paragraph comprises a link to the

³⁹ PPG para 002.

⁴⁰ PPG para 055.

⁴¹ PPG para 042

Agency's guidance '*How to prepare a strategic flood risk assessment*'⁴². There are two levels of SFRA. A level 1 SFRA is always required⁴³. A level 2 SFRA is required if, in short, the LPA cannot allocate all of the land it needs outside flood risk areas or if it can do so, but expects high numbers of applications on land in flood risk areas on sites not allocated in the local plan⁴⁴. The following references in that document are important:

- 1) The prescribed content of a level 1 SFRA's maps and supporting report includes nothing about the risk of failure of defences⁴⁵;
- 2) The same is true for the prescribed content of a level 2 SFRA⁴⁶;
- 3) Under the heading of the '*Nature of the Risk from all sources*'⁴⁷, there is a comprehensive list of what detailed mapping should show, such as velocity and depth of water, speed of onset, hazard and mechanism, but no requirement to assess or show the probability of failure of the defence itself; and,
- 4) Crucially, under the heading '*If flood risk management features and structures fail*'⁴⁸, the guidance provides that the SFRA should assess what would happen if flood risk management features and structures failed or were breached or if the design standard were exceeded. Assumptions made should be cautious as '*it's difficult to predict changes to flood risk management features and structures over the lifetime of the development*'. It continues by advising that consideration be given to which is the most likely mechanism of failure or combination of mechanisms and then recommends the use of breach models to show what would happen if the relevant existing or proposed defences failed. The Agency should be asked for the information that they hold on flood defence breach. If breach models are not available, then the Agency should be asked '*how to assess the potential effect and reach of flood water if a defence is breached*' and then, in that specific context, section 12 of the Defra/Environment Agency *R & D Technical Report FD2320/TR2, October 2005* (FD2320/TR2)⁴⁹ is cited. Immediately afterwards, the paragraph continues with guidance that maps in the SFRA should show, among other things, residual flooding that would only happen if feature or structures fail or if a design standard is exceeded.

7.2.17. This guidance, and its linkage to the PPG, is fatal to Mr Leader's expressed concern about the Core Strategy. There is nothing in the guidance cross-referenced by PPG paragraph 017 that requires the risk of failure of the relevant defence to be assessed. The citation of FD2320/TR2 is in the specific context of considering the effects if a defence failed (i.e., hazard) and is not directed towards assessing the risk of failure of the defence itself.

⁴² Which can be found at appendix 1 to Mrs Morris' evidence, doc EA1.2.

⁴³ EA1.2 page 5/18.

⁴⁴ Ibid page 6/18.

⁴⁵ Ibid page 6/18 and 7/18 "Level 1 SFRA: what to include".

⁴⁶ Ibid page 13/18 and 14/18 "Level 2 SFRA: what to include".

⁴⁷ Ibid page 14/18.

⁴⁸ Ibid page 14/18 to 15/18.

⁴⁹ CD5.

The guidance is expressly consequence-based when it addresses residual risk through severe events or breach events.

- 7.2.18. The upshot is that the Core Strategy was prepared on the correct basis. That is unsurprising given that the Examining Inspectors found it, and the modelling upon which it was based, sound⁵⁰.
- 7.2.19. There is thus nothing in the Framework, PPG or Environment Agency guidance that requires an assessment of residual risk to quantify the probability of failure of the relevant defence or defences. Informed selection of the breach location, combined with knowledge of the consequences is perfectly appropriate, together with the keeping in mind that a low probability of a severe consequence event can properly be a risk that should be avoided. Even if the risk of failure of defences along the East Coast is very low, the consequences of such a failure would be catastrophic. With climate change the frequency of events of this scale will increase, for example, with sea level rise, today's 0.5% tide by 2106 is expected to be more aligned with a tide with a 50% chance of occurring in any one year: see the graph at Appendix 2 of Mrs Morris' evidence.
- 7.2.20. Further, there is nothing in any planning policy, guidance or Environment Agency policy or guidance which requires the application of a threshold level of risk (x chances per million of an event) or of any comparative risk (how does the risk to people behind the defences compare to other risks in life?). That is simply not how residual risk is to be addressed.
- 7.2.21. Mr Leader has sought to rely upon parts of FD2320/TR2⁵¹. He is wrong to do so. Save for two parts of the guidance, the project is an R&D paper which has not been translated into policy. The two parts are:
- 1) The table recording different levels of danger to people for various combinations of flood depth and flood velocity⁵² which was later amended to include a factor to account for the presence of debris⁵³. This table is cited in the Agency guidance on preparing SFRAs⁵⁴ and was, as Mrs Morris explained, taken forward to discharge legal obligations in the EU Floods Directive to provide Hazard Mapping; and,
 - 2) Section 12 of the R&D paper is cited in the Agency guidance on Strategic Flood Risk Assessments (referred to above), but that is in the specific context of the Agency guidance on SFRAs requiring consideration of the consequences of a failure, not assessing the likelihood of that failure in the first place.
- 7.2.22. For those reasons, Mr Leader's attempt to apply the Risks to People calculator need not detain the Inspector and Secretary of State for very long:

⁵⁰ CD14, paras 79 to 84.

⁵¹ CD5

⁵² CD5 Table 13.1 page 118

⁵³ CD6

⁵⁴ EA1.2 Mrs Morris' appendix 1, page 14/18, "Nature of flood risk from all sources"

- 1) The R&D paper is at pains on page (v) to explain it is not policy of Defra, the ODPM or the Agency and that the project outputs needed testing and parallel policies and practices needed developing;
 - 2) Section 22.7.2 on page 187 makes it plain that the risks to people calculator is not suitable on its own for assessing the risk from breaches or overtopping, and Guidance Note S3.2 "Risk to People Behind Defences"⁵⁵ should be addressed;
 - 3) However, as already set out above, Guidance Note S3.2 has not been taken forward in a way that requires the risk of failure of the defence to be addressed. One of the three methods set out in that part of CD5 (the "simple" method") clearly addresses hazard and the Guidance Note S3.2 does not recommend which of the three methods it addresses should be the one to be used, again, as Mr Leader accepted. As will be shown later, the Agency's Hazard Mapping is a more sophisticated version of mapping the consequences of breaches than either the simple or intermediate method contained within Guidance Note S3.2; and,
 - 4) In the ultimate Average Annual Individual Risk calculation carried out by Mr Leader, he uses only two probabilities of event, when FD2321⁵⁶ provides that at least five should be used.
- 7.2.23. The Council has not drawn attention to anyone other than Mr Leader seeking to use the risk calculators or risk to people behind defences calculations to either formulate residual risk consideration in Local Plans or decision making. There has been no reference to any decision of the Secretary of State, an Inspector or Local Planning Authority (not even the Council) using these methods in decision making, nor even any numerical assessment of the probability of a defence failing. Perhaps that is because, as Mr Cage agreed in cross-examination, the process would be very complex with multiple variables. Those variables would be multiplied again for numerous breaches and also to account for the change in defence condition over time, particularly as different defences may require assessment against different fragility curves over time.
- 7.2.24. The Core Strategy was found sound. Mr Leader, at the outset of his examination in chief said that there was no need to consider the Framework in detail because if the applications comply with the Development Plan then they comply with the Framework. So, the plan must be consistent with the Framework and the approach to considering residual risk in the plan must comply with the Framework.
- 7.2.25. The Council's recently invented case on the need for a quantitative risk assessment of the occurrence of a breach is ultimately of no help to the Council or the applicants anyway:
- 1) If the Development Plan had been prepared using the wrong approach to risk, then the only result would be that flood risk had not

⁵⁵ Also within CD5.

⁵⁶ ID26.

been properly assessed in the plan, and the only existing resource to use in decision making would be the Agency's Flood Zone maps, meaning that applicants would have to address the actual and residual risk faced by these sites. That would, on Mr Leader's case, involve them conducting a quantitative risk assessment of the mechanisms of breach. As neither they nor the Council have done so, the ultimate logic of the Council's position is to require the rejection of these applications as not having addressed risk properly. The point is ultimately self-defeating and plainly not thought through; and,

- 2) The assessment of the Exception Test in formulating the Core Strategy would, on the Council's case, have been defective meaning that the proposals in the Development Plan could not properly be said to have passed that test.

7.2.26. The other point at issue in relation to interpreting the Framework and PPG is whether a Flood Warning and Evacuation Plan (FWEP) can be the sole mitigation against residual risk. The argument runs that a robust plan means that no one will be on site when danger arises and so there is no residual risk. This argument does not ultimately require resolution, because the reliance upon evacuation is plainly misplaced in this case. However, the Council's approach is wrong. PPG paragraph 041 does not define 'mitigation actions' but:

- 1) Risk is not just about risk to people but also about risk to development. Flooding an empty piece of development is still of concern to the planning system;
- 2) PPG paragraph 054 "How can development be made safe from flood risk" is plainly concerned with residual risk but does not mention FWEPs, other than to link to paragraph 056;
- 3) PPG paragraph 056 provides that where ensuring new development is safe, including where there is a residual risk of flooding, one of the relevant considerations is whether adequate flood warnings would be available, and there follows a reference to FWEPs. PPG paragraph 067, prescribing the content of site-specific FRAs, refers at section 9 to FRAs describing residual risk and then asks at (b) how the risks will be managed over the lifetime of the development (e.g., by putting in place a FWEP). If, as Mr Leader claims, an evacuation plan is a mitigation action which can negate residual risk, then the PPG would simply not refer to FWEPs as a tool to manage residual risk, because they would have removed the risk altogether. The reference to FWEPs as a tool to manage residual risk, means that FWEPs are not seen as a mitigating action to remove residual risk. The reason is obvious. If a developer could rely solely upon a FWEP, even when other measures were available, then other, possibly better, mitigation could simply be bypassed. Any development could take place anywhere, even in the highest risk areas, as long as the developer provided an evacuation plan.

7.3. ***The Formulation and content of the Core Strategy***

- 7.3.1. There have been occupancy restrictions on caravans for many years⁵⁷, which have varied as scientific knowledge and experience moves on⁵⁸. The current occupancy restriction has its origins in the Lincolnshire Coastal Study⁵⁹. That document was originally prepared to support a review of the East Midlands Regional Spatial Strategy. It took account of the risk of sea flooding, using the newly prepared Agency Hazard Maps⁶⁰ and recommended both an open season of April to September for caravans⁶¹ and the use of occupancy restrictions⁶².
- 7.3.2. Chronologically, the next important event is the Shoreline Management Plan (SMP)⁶³. The application sites are in Policy Unit O where the policy recommended was to 'hold the line' for the three epochs⁶⁴ of the plan, until 2105. The SMP did not deal with funding, but the Agency proceeds on the basis that the design standard of defences will be kept at a 0.5% annual probability of event level, even with climate change sea level increases – as sea levels rise, so will the defences. However, even a secure funding regime could not prevent the risk of breaches.
- 7.3.3. In March 2016, the Lincolnshire Resilience Forum (LRF) expressed concern about any proposals to increase caravan occupancy periods⁶⁵. Although it was addressing all year occupation, it was concerned about evacuation in the Christmas and New Year period especially, when fewer resources are available to it. That remains its position: see Appendix 2 to Miss Stubenrauch's evidence.
- 7.3.4. In March 2017 the Council published its SFRA. This was the tool for, among other purposes, addressing the Sequential and Exception Tests at plan-making stage. It did so using the Agency Hazard Maps, referring to them with approval⁶⁶ and using them to represent residual risk in 2115. The SFRA contained an Appendix 4 which addressed the Sequential and Exception Tests, in immaterially different terms from that which was later set out in Annex 2 of the Core Strategy (dealt with below). The SFRA also said that the Council would use the Agency's Standing Advice Matrix relating to risks in 2115 to underpin its decision making. The matrix was at Appendix 1 to the SFRA. Mr Leader sought to make something of the fact that the Agency is willing to see new short let caravan sites go ahead with '*Appropriate Mitigation*' even in areas of Danger to All, Danger to Most or Danger to Some⁶⁷, but when the Excel version of the matrix⁶⁸ is used and

⁵⁷ Apparently since the 1960s: CD14 CS Inspectors' report §200, page 43.

⁵⁸ Opening passages of both EA Factsheets: CD16 and CD17.

⁵⁹ CD9.

⁶⁰ CD9 page 9.

⁶¹ CD9 page 14, box 1.

⁶² CD9 page 15, third bullet up from bottom of page.

⁶³ CD18.

⁶⁴ Although there is a rider to the policy of hold the line in the third epoch, providing for potential localised realignment in that epoch.

⁶⁵ CD10.

⁶⁶ CD2 paras 3.9 and 3.10.

⁶⁷ ID28.

⁶⁸ ID30.

the relevant boxes hovered over, the appropriate mitigation is the occupancy restriction in Policy SP19(7).

7.3.5. Also March 2017, the Council published its Coastal Topic Paper⁶⁹. This is a key piece of evidence because it shows that all of the concerns which seemingly drive the Council's current 'Extending the Season' initiative were weighed in the balance when the Council alighted upon the approach set out in Policy SP19(7) of the Core Strategy:

- 1) The severity of the flood risk issue was identified and the Council decided to tackle it "head on"⁷⁰;
- 2) It took into account objections which focussed upon the claimed difficulties that the restricted operating season would create⁷¹;
- 3) It recognised the importance of the economy and the tourist industry as a factor to weigh in policy formulation⁷²;
- 4) It describes the Hazard Mapping as a key piece of evidence⁷³ which provided a realistic understanding of how tidal flood waters would behave⁷⁴ and was conscious that it was addressing hazard, not risk, in relation to breaches because it noted that the probability of an event due to overtopping or breaching was "difficult to determine"⁷⁵;
- 5) It weighed the competing factors to arrive at a slightly longer operating season than that recommended by the Lincolnshire Coastal Study of 15 March to 31 October (or the following Sunday if 31 October was in half term)⁷⁶;
- 6) It identified that there was evidence that the proposed closed season was the most dangerous period with regard to flood risk⁷⁷; and,
- 7) It gave detailed reasons why evacuation plans were not an appropriate solution and that the position could not properly be controlled by condition, planning obligation or licensing arrangement⁷⁸.

7.3.6. It is abundantly clear, therefore, that the Council gave very careful consideration to the occupancy restriction in Policy SP19 and weighed all of the competing factors in arriving at the Policy. Nothing has changed since. The flood risk is the same. The practical difficulties with evacuation are the same. The available tools for securing evacuation are the same. The economic importance of the tourist industry is the same. Remarkably,

⁶⁹ CD25.

⁷⁰ CD25 para 1.3.

⁷¹ CD25 paras 1.4, 8.5 and 8.10.

⁷² CD25 para 5.3.

⁷³ CD25 page 5, bottom bullet.

⁷⁴ CD25 para 2.2.

⁷⁵ CD25 para §2.3.

⁷⁶ CD25 paras 8.8 and 8.9.

⁷⁷ CD25 para 8.12.

⁷⁸ CD25 para 8.13.

Mr Leader deals with none of this in his written evidence. It is as if the Development Plan, and the reasons for its strategy, are of no importance.

- 7.3.7. It is, contrary to the Council's position, relevant to see how the plan's approach was explained to the Inspectors who examined the Core Strategy in the MIQ paper⁷⁹. The Inspectors raised a series of questions about Policy SP19 which are set out in the MIQ paper⁸⁰. The Council then referred to the evidence base for the high risk period, set out that there was no evidence that the extant restrictions were having an adverse effect on the coastal economy, repeated its concerns about means of ensuring evacuation in the high risk period and then said this:

'With regard to the Sequential and Exception Tests, the Council is only agreeing that these tests are passed for caravan sites as set out in Annex 2 of the plan because of the occupancy period.'

- 7.3.8. The paper went on to explain why winter occupancy did not bring wider sustainability benefits that outweighed the flood risk. It is plain that the Council was not of the view that the Sequential Test and limb (a) of the Exception Test were passed in respect of unrestricted occupancy caravans.
- 7.3.9. That is not to say that the Agency is arguing that Annex 2 of the CS⁸¹ should be interpreted by reference to the MIQ paper. The argument is set out below. But it is a key indicator of what the Council said it was doing, and why. It would be bizarre in the extreme if the Council said it was doing one thing but really did another in Annex 2.
- 7.3.10. The Inspectors who examined the Core Strategy found Policy SP19 to be sound. The occupancy restriction was supported by evidence that the proposed closed season was the highest risk period for tidal inundation. The evidence pointed to by the Inspectors in footnote 45 of their report is the document which is CD16 in these Inquiries. CD17, which updates it, is to the same effect. The Inspectors noted that risks remained outside this period, particularly in October and April, but the evidence supported the proposed open season as an appropriate balance between risk reduction and economic benefit⁸². The Inspectors accepted that difficulty might be caused to emergency workers in a longer open period and that there was no evidence that the current closed season was causing the industry to decline⁸³. They found the occupancy restriction to be justified.
- 7.3.11. The Inspectors did recommend an amendment to ensure that no disadvantage would be caused to operators who might currently benefit from a longer period which might otherwise be put at jeopardy if a planning application was made. Provided that the proposals did not increase the number of units that already benefited from the longer season, the existing period of occupation should remain in place.

⁷⁹ CD39.

⁸⁰ CD39 para 8 pages 5-7.

⁸¹ CD1 Core Strategy page 134 et seq.

⁸² CD14 para 199.

⁸³ CD14 para 200.

- 7.3.12. The Core Strategy⁸⁴ was adopted with all of this justification and evidence base supporting it. The Coastal Zone encompasses the areas with all four hazard ratings shown on the plan at page 85. Paragraph 10.27 of the plan sets out the difficulties posed by year-round occupation of caravans by reason of the pressure it adds to the health service, together with the fact that caravans are vulnerable developments in terms of flood risk. For those reasons, the paragraph explains that the Council will not support year-round occupancy or permanent living in caravans 'in the Coastal Area'. That must be a reference to the Coastal Area shown on the plan at page 85, namely all four hazard areas.
- 7.3.13. Paragraph 10.28 refers to the period of highest risk of flood events and the inadequacy of mitigation. As a result, the occupancy restriction to a season between 15 March and (generally) 31 October will apply to '*all caravan sites in the coastal zone in the high risk areas*'. Whilst not defined, the sensible interpretation is that these areas are a subset of the Coastal Zone and if one is looking for the high risk areas, then that would correspond to the areas with a Flood Hazard Rating of Danger for Some, Most or All.
- 7.3.14. Policy SP19(7) imposes a clear occupancy restriction to a specified period, albeit one with a flexible end of the open season, depending upon how 31 October falls. The exemption to the imposition of the restricted occupancy period is tolerably clear. It applies where:
- 1) An existing site is proposed to be extended or redeveloped; and,
 - 2) That application site currently has a longer occupancy period; and,
 - 3) The application would not lead to an increase in numbers of caravans.
- 7.3.15. In such cases, 'the existing occupancy period will continue to be applied to the whole site'. That means the site as extended or redeveloped. It does not mean an application site, if part of a larger site with different occupancy periods, takes the benefit of the longest period of occupancy currently to be found on the site if that part of the site benefiting from the longer period is not part of the application. Nor is there any warrant for saying that part (7) does not apply to section 73 applications. Such applications are not treated any differently in terms of the application of Development Plan policy or component parts of policies. Nor does the interpretation render part (8) redundant – parts (7) and (8) have different geographical coverage as explained above.
- 7.3.16. Mr Leader's interpretation of Policy SP19 is absolutely critical to his case. Many points challenged in cross-examination came back to a reliance by him upon his interpretation of the policy. If he is wrong his case falls apart.
- 7.3.17. Policy SP19 is capable of coherent interpretation. It would be surprising if it were not. The three applications all fail to meet the terms of Policy SP19(7). Mr Clover's approach was that applications A and B conflicted with Policy SP19 until he was persuaded by Mr Leader's interpretation of Policy SP19 and the FRA for site C is written on the basis that the proposal breaches the

⁸⁴ CD1 Core Strategy.

CS⁸⁵. The delegated decision record for site C was right to recognise that application C breaches the policy⁸⁶.

- 7.3.18. Annex 2 of the Core Strategy is expressly referred to in part 4 of Policy SP17 of the plan, but that cannot explain the relationship between Policy SP19 and Annex 2. Policy SP19 says nothing about Annex 2 in the Policy itself or its supporting text, but paragraph 10.8 explains that the Annex is there to provide clarity as to what will and will not be supported by the Council. Page 134 of the plan says that:

'Chapter 10 – Coastal East Lindsey sets out the Council's policy approach to development in the Coastal Zone. This policy sets out the development the Council will and will not support in this area of flood risk.'

- 7.3.19. The reference to 'this policy' is a reference to the policy in chapter 10, not just to Policy SP17. The end of the next paragraph provides that:

'Development supported by the policy is deemed to have passed the Sequential Test, it must then demonstrate how it passes the Exception Test.'

- 7.3.20. Again, reference to 'the policy' must mean the policies in chapter 10 and in the reference to demonstrating how 'it' passes the Exception Test must also be a reference to development supported by the policy framework in chapter 10.

- 7.3.21. This interpretation is supported by how the table under the heading 'Sequential Test' on page 136 is introduced. The table is introduced by the words 'With regard to the Coastal Zone and Strategic Policies SP17, 18, 19, 20 and 21'. The table, read in context with its introduction and the passages on page 134 set out above, is clearly referring not to all caravan sites, but to those which accord with Policy SP19. The table on the Exception Test has to be read in the same way, otherwise the Annex would be internally inconsistent.

- 7.3.22. The upshot is that development which is not in accordance with Policy SP19 is not deemed to have passed the Sequential or Exception Tests. This is just the sort of situation envisaged by the second sentence of paragraph 166 of the Framework. If that is right, it brings serious consequences for these applications: there is no sequential assessment and no testing of the proposals against limb (a) of the Exception Test. Pointing to economic benefit is not enough, given the wide ranging content of the Sustainability Appraisal Form on page 138 and following of the plan.

Limb (b) of the Exception Test: Whether the development proposed in the applications would be safe for their lifetime without increasing flood risk elsewhere.

- 7.3.23. The developments proposed in these applications would be permanent, in the light of Mr Chappell's answers to the Inspector on the basis for the application for site C. Mr Leader raised the prospect of sites A and B having

⁸⁵ CDC1-1.4 page4, fourth para.

⁸⁶ CDC1-1.6 para 8.6.

temporary permissions, but that is not how the applications were put, is not how the evidence was explored for them and such a late suggestion which has not been properly explored or tested ought to be disregarded.

- 7.3.24. In short, neither the applicants nor the Council have shown that these developments will be safe either in the current day or over their lifetimes.
- 7.3.25. All three sites lie within Flood Zone 3a with a high probability of flooding in that, ignoring defences, they have a 0.5% or greater annual probability of sea flooding.
- 7.3.26. All three sites benefit from the protection afforded by coastal defences. Those defences are a mixture of dune systems or hard defences. In some places, the beaches in front of dunes or hard defences are also treated as part of the defence system. The dunes that form defences and the relevant stretches of beach that are treated as part of the defences are subject to annual replenishment in a programme that commences at around Easter each year.
- 7.3.27. The defences are maintained to the provide protection from a storm event with a 0.5% annual probability of occurrence. Over the course of the annual interval between replenishment, natural processes work upon the replenished beach such that prior to the next round of replenishment works, sections of the whole defence system could have eroded such that the whole system provides protection only from a surge with as high as a 2% annual probability of occurring. That position may have endured for some time prior to the annual replenishment works. The hard assets are visually inspected annually and reports made about them. Currently, there are ten assets below required condition⁸⁷ and two with a residual life of less than ten years⁸⁸.
- 7.3.28. In assessing risk of sea flooding, the Environment Agency uses a range of scenarios:
 - 1) For the Design Flood, the Agency uses an event with 0.5% probability of occurrence. Such an event may lead to some overtopping.
 - 2) For a severe event causing overtopping but not breaches, the Agency uses a storm with a 0.1% annual probability in the year 2006.
 - 3) The Agency uses the 2006 overtopping scenarios as applicable in all future years, as the assumption is made that the height of defences will increase with sea level rise due to climate change, such that the degree of overtopping in a 0.5% or 0.1% event is the same whatever the year.
 - 4) For breaches, the Agency uses four scenarios. It assesses the effects of breaches occurring during:
 - a. A 0.5% annual probability event in the year 2006;
 - b. A 0.5% annual probability event in the year 2115;

⁸⁷ ID15.

⁸⁸ ID17.

- c. A 0.1% annual probability event in the year 2006; and
 - d. A 0.1% annual probability event in the year 2115.
- 7.3.29. The future years are considered in order to take account of sea level rise due to climate change and thus the greater height and volume of water being released onto the floodplain after a breach, compared to the event with the same annual probability but related to the year 2006.
- 7.3.30. The scenarios were modelled in an exercise which was published in 2010. At the time that work was done, it was not possible to model overtopping and breaches in combination. As a result, separate maps are produced for the two overtopping scenarios and for the four breach scenarios. Such an approach may understate the extent of flooding in a breach scenario because such breach events may be preceded by overtopping of the defences. The breach models assume that the breach starts to add water onto a dry floodplain, but it might, in a real life event, add water to a floodplain already affected by flood water which has overtopped defences.
- 7.3.31. The models for breaches were prepared by simulating breaches of various kinds depending on the type of defence. Different size breaches are modelled for dunes and for hard defences, as set out in table 1 on page 12 of Mrs Morris' evidence. The model assumes that the breach is open and admitting water onto the floodplain for 72 hours before it can be closed. The breach locations are modelled at 1 km intervals. The model was a 2D model conducted using Tuflow software. The model "pours" the water through the breach location and the software then simulates the water passing across the terrain behind the defences. As the model covers a large area and is at a strategic scale, the model uses LIDAR with 20 metre grid squares. It assumes that terrain at the same level fills before the water moves into the next level of terrain, to simulate the water "filling up" the available volume available to it. The grid squares are modelled at maximum flood depths in 5 different bands. The water could be at any point in the range contained by the band, so water shown in the model at a depth of between, for example, 0.25 metres and 0.5 metres could actually be within the model at any depth within that range. It is not therefore appropriate to compare neighbouring cells as though they are showing 'stepped' blocks of water across the floodplain with a wall of water of up to 0.25 metres at its outer edge. It is also important to note that the LIDAR has an accuracy tolerance within it of ± 150 mm.
- 7.3.32. The model also shows the maximum velocity of the water in 5 bands of speed expressed as metres per second.
- 7.3.33. Velocity and flood depth are then combined with a debris factor in order to produce an overall hazard rating that the flood water poses to people. The resulting matrix of speed and depth produces ranges of danger expressed as:
 - 1) Danger for some, which includes children, the elderly and the infirm;
 - 2) Danger for most, which encompasses the general public; and
 - 3) Danger for all, which encompasses the emergency services.

- 7.3.34. These ratings are derived from Table 13.1 in R&D Technical Report FD2320/TR2⁸⁹ as expanded in a later Supplementary Note⁹⁰ to add an allowance for the effect of two different degrees of presence of debris. Neither the Council nor the applicants dispute the Hazard to People classification arising from the table.
- 7.3.35. It is important to note how the hazard shown for specific areas relates to the modelled breaches. The maps show not the effect of all of the modelled breaches in combination, but the maximum hazard for that location created by any one of the breach locations modelled. In cross-examination of Mrs Morris the suggestion that the breach modelling relied upon an “Armageddon” scenario where all breaches happen at the same time was mistaken. The position is as shown on the breach location plans⁹¹:
- 1) Site A is affected by three modelled breaches: E22, E24 and E25 which are all dunes. The maximum hazard is produced by breach E25;
 - 2) Site B is affected by two modelled breaches: E12 and E13, which are both hard defences with the maximum hazard being produced by breach E12; and
 - 3) Site C is affected by three modelled breaches: E29, E30 and E31. The first two are hard defences and the third is a dune defence which is also the breach creating the maximum hazard for that site.
- 7.3.36. Sites A and B are not affected by overtopping in either the 2006 0.5% or 0.1% annual probability scenarios. Site C is affected by overtopping in both overtopping scenarios. The worst hazard, as is to be expected, arises during breach events. Mrs Morris produces summary tables setting out the maximum hazard and potential flood depths for each breach scenario for each site⁹².
- 7.3.37. The applicants have not made cases to challenge the hazard mapping. Mr Cage does challenge the map outputs, but does so on an inadequate basis. He stated in evidence in chief that the hazard mapping is appropriate for use at a strategic level. That is what it is designed for. He stated that they were a suitable resource to base a site-specific flood risk assessment upon in which the modelled outputs could be compared to a more refined site specific assessment. However, the Council has not carried out that more refined site-specific assessment using more detailed modelling as it has not given itself the time to do so. It could have asked for the Agency’s model at any time after it settled upon the ‘Extending the Season’ initiative, which seems to have been in place by the January 2020 meeting at Butlins, at the latest. Mr Cage has not re-run the model as sent to him, nor tried to re-run it with finer-grained LIDAR, nor even tried to incorporate the topographical surveys for each site into the model. It does not appear that he has even used the tools inherent in the model whereby any grid square on the

⁸⁹ CD5.

⁹⁰ CD6.

⁹¹ ID13.

⁹² EA1.1 Site A on page 29, Site B on pages 32 to 33 and Site C on pages 36 to 37.

on-screen presentation of flood depth can be interrogated⁹³ to see the flood depth recorded at that point, not just the flood depth banding which that point falls within. Mrs Morris gave the results of her exercise to establish heights when asked questions by the Inspector and they are recorded in the Agency's comments on the proposed conditions.⁹⁴

7.3.38. Instead of taking any of these steps, Mr Cage has used a rather crude manual method for checking the maps. He has chosen to draw transects across the sites to other locations to try and find a suitable level fix from which he has tried to work out a flood height in metres AOD (rather than depth) which he has then applied to the sites. He has done that in respect of one breach scenario only, the 0.1% 2006 breach event. There are flaws in that approach:

- 1) For site A: Mr Cage noted that the main part of the village of Hogsthorpe was free from water. He therefore drew a line from Hogsthorpe, through the site and beyond, for a total chainage of 1200 metres. He then inferred that the level of 3 metres Above Ordnance Datum (AOD) shown at the point where the A52 has a junction in the village could be applied to the point where the flood waters met dry land at about 210m along his chainage. There is simply no robust basis for believing that the height at that transition point between dry land and water is also at 3 metres. The 3 metres reference point is not on the transect drawn on the plan. Hogsthorpe is not shown as being at one level on the OS base and there are height differences around the village such that Mr Cage had to eventually accept in questions from the Inspector that the 3 metres spot height location used in the centre of Hogsthorpe could actually be shielded by a ring of higher ground around it. It is simply not safe to use the 3 metres benchmark for the flood height. If that is correct, then Mr Cage's sole basis for (i) challenging the Hazard Map outputs for the 2006 0.1% scenario and (ii) the height of his suggested mitigation measures evaporates. It is also not safe to draw conclusions based on one cross-section through the site, as Mrs Morris explained;
- 2) For site B, Mr Cage has used the same inaccurate method, based on trying to use a location where flood water abuts dry land to extrapolate a flood height from. That approach is equally lacking in robustness for site B. His point that there is a significant flood and inexplicable flood depth difference between the land to the west and to the east of the site is undermined by (i) his failure to recognise that the level in one cell could be at the top of one depth band whereas the depth in the adjoining cell could be at the bottom of the next depth band up the scale, and (ii) the potential combination of the presence of Brickyard Lane and the failure of the LIDAR to detect any smaller ditches which may cross the line of the Lane. The location of the cross-section also misses the part of the site where the caravans would be placed, which is north of the line on lower land. Mr Cage also accepted that his attempt to fix a flood level could be

⁹³ By clicking on it.

⁹⁴ ID16.

undermined by the effect of land level changes which post-date the model in the region where the edge of flooding is shown;

- 3) The same general criticism applies to Mr Cage's approach to setting a flood level in a 0.1% 2006 event for site C. The benchmark for the site level is derived from an area shown as free from flooding on the eastern edge of that site. However, it is not clear at all that that feature on the site is anything other than an anomaly in the model, where the LIDAR upon which it was based has wrongly recorded some feature as a ground level. There is no sensible explanation of what that area free from flooding could have been. In particular, the topographical survey for site C does not support the claim that the area shown as dry in a 0.1% 2006 event would be free from water as there are no levels in that general area which could produce that result.

7.3.39. There is thus no basis for rejecting the breach map outputs shown on the 0.1% breach event in 2006. There is no basis for rejecting the outputs shown on the breach maps for the other three breach scenarios because Mr Cage has not challenged them.

7.3.40. If the breach map outputs are fit for purpose and Mr Cage's extrapolated flood heights are wrong, then the level to which the top of the physical mitigation works have been related by Mr Cage are wholly unreliable. His suggested bunds and gates would not protect the sites which was their purpose. But even if he had got the flood height correct, his approach would still be wholly defective. That is because he has simply not addressed any future scenario. He accepted that demonstrating that development (and the people using it) would be safe for its lifetime requires the future scenarios to be assessed. Sites A and B would be permanent sites and whilst caravans in Mr Leader's words "fall apart fairly quickly" the permissions would relate to a use, not operations, and the caravans could be legitimately replaced over time. The absence of consideration of the future is a fatal flaw in the Council's case, particularly given that a comparison of the breach maps for the 0.1% 2006 breach and the 0.5% 2115 breach show that the less severe future event produces worse outcomes for each site. Mr Cage's attempt to explain how the 0.1% 2006 breach scenario somehow accounted for future climate change was unfortunately incoherent and later abandoned.

7.3.41. There are other problems with the physical works proposed for the three sites:

- 1) They have not been consulted upon;
- 2) Their impacts are not at all clear, particularly as regards required tree and vegetation removal and the impacts that would have;
- 3) Mr Cage was not able to clearly explain how the bunds would be constructed in terms of materials;
- 4) The proposals for sites A and C would involve building across footpaths, the diversion of or interference with which would require separate statutory authorisation with no certain outcome; and,

- 5) Most seriously, none of Mr Cage's proposals for physical works at any of the sites have been shown not to increase flood risk elsewhere, as required by paragraph 164(b) and 167 of the Framework.

7.3.42. The Council's case on safety ultimately comes down to the ability to clear the sites in the event of a flood event.

7.4. ***The proposed evacuation triggers***

- 7.4.1. Like other elements of the Council's case, the position on the appropriate trigger for evacuation has changed over time. The Council's Statement of Case, in all three iterations of it, seems to have been predicated on the use of the Agency's Flood Warning. Mr Cage's evidence was advanced in writing on the basis of the use of the Agency's Flood Alert or something he called a 'Yellow Warning', which the Agency interpreted as a reference to the 'yellow' risk banding in the Flood Guidance Statement but the definition was never clarified by Mr Cage as the point was abandoned. There is no such thing, as Miss Stubenrauch's evidence made clear, the nearest 'proxy'⁹⁵ is not appropriate and that option was not put to any of the Agency's witnesses and was abandoned when Mr Cage gave evidence. The Council's case then appeared to crystallise around the use of the Flood Alert, until Mr Leader raised the idea of using a Flood Warning in chief, only to revert to relying upon the Alert in cross-examination. The vacillation about which trigger to use is a clear indication of the weakness of the Council's position.
- 7.4.2. It should be obvious that the ability to forecast storm events is limited by the state of scientific knowledge. However, given the Council's and applicant's reliance upon supposed certainty, it requires spelling out.
- 7.4.3. A tidal flood risk from overtopping is a product of a number of variables:
 - 1) Astronomical tide;
 - 2) Atmospheric pressure which creates a surge;
 - 3) Wind speed;
 - 4) Wind direction; and
 - 5) Wave height.
- 7.4.4. Of those, only the astronomical tide is predictable with certainty. The rest are subject to limits of scientific knowledge and forecasting. Miss Stubenrauch sets out the limitations inherent in being able to forecast a surge event:
 - 1) At five days prior to an event, the Agency will not be able to predict forthcoming events with any certainty. There may be some indication of how meteorological factors might affect astronomical tide levels⁹⁶;
 - 2) Between 5 and 3 days prior to an event, the Agency has access to ensemble forecasts which produce a range of 36 possible outcomes,

⁹⁵ The Agency's 5 day forecast.

⁹⁶ EA2.1 Miss Stubenrauch's proof para 3.3.

all of which are equally likely to occur and which may vary significantly in their effect upon tide levels, as the variation in the input variables can magnify the variation of the forecast outcomes. Five days is the maximum notice that could be given to the LRF of a forecast surge, the outcome "is by no means guaranteed"⁹⁷; and,

- 3) 36 hours prior to an event, deterministic forecasts are used, which means that one forecast outcome is created. That forecast may have a confidence rating of low, medium or high. The forecast therefore contains, but does not convey, uncertainty⁹⁸.

- 7.4.5. A good example of this is the tidal surge event of the 5 December 2013. There was a large spread in the ensemble forecast at 5 days ahead of the event with the tidal level forecast ranging by about 2 metres. As a result, the full potential impact was not picked up at that stage and so there was limited preparation and escalation by the LRF at the event minus 3 to 5 days stage. As time passed, uncertainty actually increased, with the forecast tidal ranges varying by 2.5 metres. The wide range of variables meant that the range of possible response actions covered the spectrum from 'no action' to widespread flood warnings. Even at the event minus 36 hours, the tidal level prediction was 0.8 metres below what actually transpired in respect of one tidal gauging station⁹⁹.
- 7.4.6. A similar picture emerges from the 'near miss' event in January 2017, with forecast tide heights varying by 1.5 metres even at 3 days before the event¹⁰⁰.
- 7.4.7. The Council has suggested that forecasting of events is sufficiently certain to allow for Flood Alerts to be relied upon as a trigger for evacuation. That is simply not the case. Miss Stubenrauch, who developed the Agency's Flood Warning Service for the Lincolnshire Coast cogently explained the position. She chairs the Lincolnshire Resilience Forum Flood Group and is deeply involved in participating in decision making when serious events are possibly in prospect. She knows what she is talking about and her evidence deserves significant weight. The challenge to her evidence consisted of bare assertions that she was "confused", which is hardly likely given her obvious expertise and the obvious care and skill with which she gave her evidence, and a dogged refusal on the Council's part to accept that events cannot be forecast with such precision to mean that flood events can be predicted with sufficient certainty to mean that a Flood Alert will be issued in sufficient time to permit the three application sites to be evacuated in time.
- 7.4.8. All of what has been said on this subject so far relates to the overtopping event itself. The inherent uncertainty and fallibility of the forecasting systems used by the Agency and others has to be overlain with the fact that breaches cannot be predicted. A severe event and overtopping of defences will increase the risk of breaches but it cannot be said that a breach will only occur after a Flood Alert has been already been issued. That is important

⁹⁷ Ibid para 3.4.

⁹⁸ Ibid para 3.5.

⁹⁹ Ibid para 3.7.

¹⁰⁰ Ibid para 3.8.

because the unchallenged breach progression maps in Appendices 8 to 10 of Mrs Morris' evidence show that the sites would see the onset of flooding in less than two hours after a breach in a storm event in 2006 with a 0.5% annual probability of occurrence.

- 7.4.9. Miss Stubenrauch explained how the Agency will aim to issue an alert, then flood warning and then severe flood warning, if the criteria for each are met. But it is critical to note that that cannot always be guaranteed. She explained that there may well be circumstances where flooding occurs with no alert having been issued, depending upon the changeability of the conditions and how the event plays out.
- 7.4.10. Further, breaches cannot be forecast or predicted. Alerts and Warnings that relate to breaches are necessarily reactive. The Agency has to verify the breach and then set in train the issuing of whatever level of warning or alert was appropriate to the situation with which it is confronted. The time for the Agency to issue the alert, after the breach is verified, is about an hour, in Miss Stubenrauch's assessment. So, if one assumes, wholly unrealistically, that a breach is detected and verified instantaneously, and an Alert (or Warning) is issued within an hour, then each of the application sites would still have lost half of the time available to them to evacuate the sites before the onset of flooding affects them.
- 7.4.11. The prospect of a mass evacuation has to be added to this. The flooding of the East Coast is an identified risk in the Community Risk Register¹⁰¹. The LRF is obliged to plan for it to comply with the requirements of the *Civil Contingencies Act 2004*. Its planning assumptions (not predictions) are set out in the Coastal Mass Evacuation and Shelter Plan¹⁰² for both overtopping and multiple breach scenarios¹⁰³, making allowances for those who refuse to evacuate and those who are willing to evacuate but need assistance. The nature of the local traffic network means that in order to evacuate the number of people in the planned-for scenarios, the estimate is that between 21 and 30 hours would be required for an evacuation (which assumes caravan sites are closed) depending upon whether the event was a 0.5% or 0.1% probability event. As Miss Stubenrauch explained, that poses an acute dilemma for the LRF of how to balance the need for prompt action with the inherent uncertainties of prediction. If extended winter occupancy were granted then this would add to the overall time requirement to carry out mass evacuation, due to the potentially hazardous travel conditions, such as snow or ice on the roads.
- 7.4.12. The Agency is a Category One responder which participates in decision making within the LRF. But it is the Police who would make the final judgement call on whether to order evacuation. Miss Stubenrauch was absolutely clear in her evidence that the LRF would not wait for the Agency to issue a Flood Alert before making a decision on evacuation. It is perfectly possible that a mass evacuation may have to start before a Flood Alert is even issued, let alone before the three application sites were evacuated in response to that Alert.

¹⁰¹ CD40.

¹⁰² CD11.

¹⁰³ Ibid page 14 to 15.

- 7.4.13. On the evidence, the only reasonable conclusion is that the applicants' and Council's complete reliance upon a Flood Alert as a trigger is entirely misplaced. Given the scientific limitations on forecasting and prediction, the Agency's systems (and those of the LRF in a mass evacuation event) cannot ensure that a Flood Alert (or either kind of warning) is issued with sufficient notice to ensure the safe evacuation of the sites, with or without the added complication of a mass evacuation.
- 7.4.14. The Council and applicant have no answer to this other than a limp claim that the Agency cannot be right, or is being over-cautious or that the witnesses are 'confused' or, at the extreme, that a mass evacuation event that the LRF are statutorily obliged to plan for is "absolutely fanciful". Stripping away the Councils rhetoric, they simply have no answer to the Agency's concerns.
- 7.4.15. Even if a timely Flood Alert could be issued, there is still the question of whether the clearance of the sites can be ensured. It cannot. The applicants and Council point to the evacuation of the sites when Covid lockdowns commenced. The details of that evidence support the Agency's concerns:
- 1) The evacuations took place in the context of a Government direction, but not against the background of a storm event;
 - 2) Site A took three hours to clear whatever proportion of the 64 caravans permitted to be occupied in November which were actually occupied¹⁰⁴ and gave about 2.5 days' notice for the evacuation in November¹⁰⁵;
 - 3) In the March lockdown, "most" of the occupants of site C left the site within 9 hours, but "a couple of stragglers" left the site 28 hours after being told to evacuate¹⁰⁶; and,
 - 4) In the November lockdown, the evacuation of site C was completed 18 hours after occupants were told to leave.
- 7.4.16. These timescales for evacuation, without the pressure of weather and immediate threat, do not instil confidence about the ability to evacuate the sites swiftly in a true emergency.
- 7.4.17. Further still, there is bound to be some degree of resistance to leaving, particularly if people are aware what a Flood Alert actually means. Anyone aware of the Agency's public statements when an Alert was issued will know that the site is being evacuated when the Agency's public position is to the effect that low lying coastal paths, promenades and car parks should not be used. It is entirely foreseeable that some people might resist a request to evacuate, especially if the Alert has been preceded by others, which may have appeared to be false alarms. Further, some people will require assistance to leave from the emergency services, who will already be under severe pressure. The PPG points out, at paragraph 057, that the emergency services are unlikely to regard as safe development that

¹⁰⁴ Oral evidence.

¹⁰⁵ ID34 Mr Clover's email sent to Mr Salter timed at 14.05 on 13th May.

¹⁰⁶ Mr Chappell's oral evidence.

increases the scale of any required rescue operation. The applicants have no 'Plan B', other than pre-emptive self-evacuation, with wholly undefined prompts for such self-evacuation.

- 7.4.18. There is real world evidence of such difficulties in the Billing Aquadrome holiday park floods from December 2020. There was a level of refusal to leave, with people left on site even as it flooded, some of whom changed their mind when cold set in, putting extra burden on the emergency services. There is no evidence to allow this experience to be rejected as simply the reaction of long term residents of caravans, as there is no evidence of the characteristics of the occupants on that site.
- 7.4.19. In any event, the Council's supposed distinction between the reluctance of permanent or semi-permanent residents to leave and the reluctance of holiday makers is unsupported assertion. Two, or possibly all three of the sites would be for owner-occupiers with no ability to sub-let. The caravans would function as second homes. People would fill them with their own possession and clothes. It cannot be said that they would have no attachment to their caravans and any reluctance to leave can be dismissed. The suggestion that willingness or ability to comply with an evacuation order can be guaranteed is entirely lacking in evidential support.
- 7.4.20. To try and meet this argument, Mr Hardy suggested ways in which contractual arrangements could be put in place between the operators and the occupants to compel compliance on pain of losing their right to remain on site and to ensure only car owners and drivers use the site. Such mechanisms are unreliable:
- 1) In the absence of a planning obligation, there is no means for the planning system to supervise and enforce contractual provisions;
 - 2) A condition that refers to the review of FWEPs needs to ensure that the Council can (assuming it would be willing to) police other parties' private contractual arrangements;
 - 3) A contractual arrangement, by its nature, could change over time;
 - 4) The Council could have no means (assuming it wanted to) to ensure that operators enforced the contractual terms;
 - 5) The ability to secure an adequate FWEP cannot be left to the discharge of a condition. A judgment about the safety of the development over its lifetime has to be reached at application stage, given the terms of paragraphs 164(b) and 167 of the Framework, and inherent in that is the need to ensure that an adequate FWEP has been or can be provided and that the mechanisms chosen to secure the evacuation of the sites can be properly supervised and enforced by the planning authority. Further, it is a basic principle that where a condition is integral to the validity of the permission granted it is irrational and unreasonable for a decision maker to give what is intended to be a definitive approval to an application but subject that decision to a condition that requires later consideration of whether the approval should have been granted in the first place: *R (Hillingdon LBC) v Secretary of State for Transport* [2020] EWCA Civ 1005 at

[85] to [91]. The safety of these schemes has been the key issue during the 9 days of these Inquiries. It cannot be postponed to a later decision on discharging conditions;

- 6) Mr Chappell's response to these concerns about the enforceability of contractual provisions was to point out that if someone ignored a request to evacuate, then their breach of contract would not be remediable because they would be dead. That makes the Agency's case for it.

7.5. ***Economic Issues***

7.5.1. The Agency's role is not to conduct an overall planning balance. The tourist industry is undoubtedly important to the District. That is not in dispute. However, the Agency points to the following aspects of the economic case for the applications:

- 1) The figures in the Rose Regeneration report¹⁰⁷ for the economic value of the extended season to the District overall is irrelevant to these applications. The applications would patently not generate between £47m and nearly £64m into the local economy. On the basis that the Rose Regeneration report uses an aggregate figure for caravans in the District of 35,121 units, each caravan would create between £1,342.40 and £1,822.16 of value in an extended season; and,
- 2) The job creation for the application schemes would be limited; Site A would generate no new jobs. Site B would generate a small number, but linked to the holiday let development next to the caravan park. Site C would, at best, unlock the 20 to 25 jobs which were envisaged by the original permission, assuming that the base permission (with its shorter season) would not be fully implemented.

7.5.2. The Council sought to criticise the characterisation of the economic benefits as "modest" in the Agency's opening. The Council was right to do so. It is probably too generous.

7.6. ***Other matters***

7.6.1. A discrete issue has arisen about the interpretation of planning permissions granted in relation to site B, referred to in Mr Leader's evidence and the Council's ID11. The Agency has addressed those matters in two notes at ID12 (section 1) and ID24, which demonstrate that the two grants of permission discussed in ID12 do not permit the material change of use of site B as a static caravan site.

7.7. ***Conclusions***

7.7.1. By way of summary, the Environment Agency would address the Secretary of State's issues as follows:

- 1) None of the applications are consistent with the Development Plan for the area because they conflict with Policy SP19(7), properly

¹⁰⁷ EL2-2C.

interpreted, and can thereby be taken to conflict with the Development Plan taken as a whole.

2) None of the three applications are consistent with Government policies in Chapter 14 of the Framework because:

- a. They are each required to address the Sequential Test but have not done so;
- b. They are each required to address limb (a) of the Exception Test, but have not done so;
- c. None of the schemes are accompanied by a comprehensive site-specific FRA; and,
- d. None of the schemes have demonstrated that they would be safe for their lifetime, nor have they shown that they would not increase flood risk elsewhere, and so they each fail to pass limb (b) of the Exception Test (the applicability of which is not in dispute).

7.7.2. There are no material considerations which indicate taking a decision otherwise that in accordance with the Development Plan. The concerns about flood risk and the inability to ensure the sites, with an extended season, would be safe over their lifetime are overwhelming considerations.

7.7.3. The Environment Agency asks the Inspector to recommend and the Secretary of State to decide that each of the three applications should be refused planning permission.

8. The Case for East Lindsey District Council (the Council)

8.1. *Introduction*

8.1.1. The Council considers that the Agency has persisted in making the determination of these applications far more complicated than it needs to be. It has misinterpreted national policy and local Development Plan policy and in doing so has adopted an obstructive, pessimistic and exaggerated stance. As was so very eloquently articulated by Mr Chappell, there is every need to 'get on' and secure economic regeneration in the Coastal Zone in what are some of the most deprived parts of England; based on that conservative obstinacy, the Agency appears content to frustrate growth based on modelled assumptions of hazard which have nothing to do with residual risk to human life in the real world. It is fair to say that frustration at the 'dead hand' of the Agency is palpable through what has been said by the operators. Mr Chappell spoke about life growing up in Skegness and the need for improvement, which the Agency is stopping.

8.1.2. In closing the Agency indicated that it is seriously concerned about the direction of travel being pursued by the Council. That is a nice try at down-playing the Agency's dogged obstruction of the Council. The words have changed from those set out in the Agency's consultation response on

application A; '...the Environment Agency is vehemently opposed to your authority's direction of travel in terms of extending the caravanning season'.¹⁰⁸ Nonetheless, there is no doubt that the Agency is vehemently opposed and its 'serious concern' is a deft way of playing down its in-principle objection.

- 8.1.3. The Agency has also provided a mass of detailed evidence in this case, much of which is irrelevant to the determination which has to be made. Further, as with any lengthy inquiry, inconsequential points of detail have assumed apparent significance when, in reality, they can safely be ignored by the Secretary of State. These Closing Submissions are not going to rehearse the evidence, of which the Inspector has taken a full note but will instead adopt a thematic approach and focus on what actually matters.
- 8.1.4. In what were extremely lengthy Closing Submissions, no doubt designed to be comprehensive, it is of the highest significance, in the Council's view, that there was no mention of the point which became fundamental to success of the Agency's case. That is, Miss Stubenrauch agreed that a weather event likely to trigger a Flood Alert would be forecast. That left her to rely exclusively on hitherto unknown, spontaneous breaches. This became the sole basis on which the Agency maintained its objection that the trigger of a Flood Alert would not work and why a condition would not eliminate residual risk. That is of central importance. You can't always predict a breach, but no relevant examples were given. The only examples she could point to at Tilbury and the Washbanks were manifestly different; to do with unauthorised storage in one case and cutting through an embankment for cabling in the other. There isn't a single mention of this argument in the Closing Submissions, presumably because it has been abandoned.
- 8.1.5. The essential points can be boiled down to the following 18 summary propositions:
- 1) Risk = probability x potential consequences;
 - 2) Hazard = potential consequences;
 - 3) Hazard must not be used as shorthand for risk;
 - 4) Residual risk = risk which remains after taking mitigating action;
 - 5) It is vitally important to identify the precise nature of the risk contemplated. The Agency has focused on the risk arising in the case of an assumed breach whereas the LPA has focused (a) on the fact that risk is not the same as the risk the sites will flood given a 1:200 year event (or worse) and (b) residual risk after mitigation (which, as will be shown, is zero);
 - 6) The Secretary of State anticipates use of Flood Warning and Evacuation Plans (FWEP) to mitigate flood risk to caravan sites;

¹⁰⁸ CDA1-1.1.

- 7) The 'in principle' objection of the Agency to use of FWEPs as mitigation to eliminate material residual risk is contrary to national policy and is based on a misunderstanding of the Core Strategy and Strategic Flood Risk Assessment;
- 8) FWEPs, incorporating all of the necessary safeguards can be secured by way of Grampian condition; shorthand for a condition precedent. Unless and until the Council has approved the FWEPs, the planning permissions may not be implemented;
- 9) The private contractual details lying behind the FWEPs are not a matter for the planning system; unless the Council is satisfied that what is required can be provided, the FWEP will not be approved;
- 10) FWEPs for the three subject sites will mean that there is no residual risk;
- 11) Whether a FWEP is sensible in any particular context is a matter for the Council in consultation with the Council's emergency planning officer;
- 12) It is common ground, as set out in paragraph 8.1.3 above, that any significant weather event likely to lead to a tidal surge can be forecast and a Flood Alert will be issued;
- 13) To cover the Agency's concern that it might overlook publication of a Flood Alert, the FWEPs can be made to contain a requirement for evacuation upon a Flood Alert or Flood Warning, whichever is earliest in time;
- 14) The Agency has produced no credible evidence whatever of spontaneous breach and even if the same were to occur, nothing more than localized evacuation would be needed which would not be impeded by evacuation of the sites;
- 15) Properly construed, all three applications comply with the adopted Development Plan, including Policy SP19 and Annex 2; it is common ground with the Agency that the developments pass the Sequential Test¹⁰⁹;
- 16) It would be irrational to embargo extensions of the season beyond 31 October in circumstances where development may be made safe for their lifetime by appropriate mitigation and where the Flood Hazard Rating is zero;
- 17) On the evidence before these Inquiries, the risk that is said by the Agency to underly the objection to these applications is exactly the same in April and October and November through to 5 January: that is a 1 in 200 year event x a calculated hazard. This result obtains because the Agency has not shown that a breach is more likely to occur in the period for which an extension is sought; and

¹⁰⁹ In cross-examination, Ms Hewitson said 'likely to pass'.

- 18) Hitherto the Agency has been content that exactly the same risk of flooding from a breach and exactly the same residual risk (the two things being different) are managed by FWEPs which are inferior to those which will result from these Inquiries; so magic happens on a day in the year when FWEPs don't work? It would be irrational to embargo extensions in circumstances now contemplated, where FWEPs are currently in widespread use in the Coastal Zone.

That is all the Secretary of State needs to determine the applications.

- 8.1.6. The risk that the Agency has assessed is the risk of an assumed flood which fails to take account of proved effectiveness of flood defences in the present day and the commitment to maintaining and improving them to 2105. That may be fine for the purposes of a SFRA. However, it is wholly inadequate for the purposes of part (b) of the Exception Test. It is therefore wholly inadequate for the purpose of applying SP19, which requires the application of part (b) to development it deems to pass the Sequential Test (which portrays exactly the same risk in April and October as it does November to 5 January).
- 8.1.7. The Council considers that, in practical terms, this means it is wholly inadequate as a basis for the stubborn and inflexible stance of refusal taken by the Agency towards development which is objectively perfectly safe because:
- 1) No one will be on site if a highly unlikely exceptional event produces a highly improbable breach; and,
 - 2) Even if anyone is on site, the risk of death or injury is statistically acceptable using a methodology devised by the Agency and producing a calculation which was not challenged when measured against a benchmark which was not challenged.
- 8.1.8. There then remain three issues which appear to have gained currency during the course of these Inquiries and which need to be dealt with head on:
- 1) No party before this inquiry has suggested that there is a breach of paragraph 167(a) of the Framework; micro sequential testing is irrelevant for caravans which already have permission and which are safely in situ. Moreover, Ms Hewitson expressly agreed that all of the applications passed the Sequential Test on their own merits anyway;
 - 2) Separate legal submissions have been provided to deal with the Court of Appeal decision in Hillingdon¹¹⁰. However, the subsequently agreed position on the imposition of a pre-commencement condition has taken the point away.¹¹¹ There is no legal difficulty in imposing a Grampian condition which requires submission of a FWEP including all of the suggested requirements; private contractual matters between the operators and caravan owners which lie behind satisfaction of the requirements of the FWEP are not a matter for the planning system;

¹¹⁰ ID11 and ID12.

¹¹¹ ID44.

- 3) The ADEPT/Agency guidance, entitled '*Flood risk emergency plans for new development, September 2019*', does nothing to prevent the imposition of a Grampian condition. The document itself is simply guidance and cannot change the position in law. Page 8 readily accepts that there will be circumstances where it is appropriate to use a condition to defer provision of an Evacuation Plan¹¹². In this case, FWEPS have been submitted; based on a huge amount of evidence, the Secretary of State is able to determine that a scheme incorporating the required information is capable of making the developments safe for their lifetimes. As Mr Carter attempted to explain the Agency's position, it was simply a matter of preference rather than a matter of law. Indeed, given that FWEPS are not on the national list or local list for validation purposes, the only way of securing a FWEPS is by means of condition.

- 8.1.9. The Council considers that really should be an end of the matter. That is the core of the Council's case. Planning permission should be granted.

8.2. **Policy**

National Policy

- 8.2.1. In its 'vehement' opposition to the direction of travel articulated by the Council, the Agency has misdirected itself. Nowhere in the Framework or the PPG does it state that flood warning and evacuation cannot be used as the sole mitigation to ensure that development is safe for its lifetime. Indeed, paragraph 056 of the PPG expressly countenances use of FWEPS to satisfactorily deal with residual risk. Mrs Morris and Miss Stubenrauch were unable to identify references in the PPG to support the Agency's position on this matter.

- 8.2.2. National policy in the Framework is important of course but it is subservient to the Local Plan Core Strategy which was adopted in July 2018. The purpose of the Framework is to provide a framework for the promulgation of local plans. A local plan which is Framework compliant will incorporate and integrate the policies of the Framework. Assuming the CS is Framework Compliant which the Council says that it is, there is no need to ask further questions about whether the proposed developments would accord with national policy. Put another way, if the applications comply with the Core Strategy, they will comply with the Framework.

Development Plan Policy

- 8.2.3. Each application would comply with Policy SP19, which is the main and most important policy in the adopted Development Plan. As Mr Leader explained, Policy SP19 must be read as a whole, in its proper context and not over-simplistically. Whilst the Agency say they are experts, the custodians

¹¹² Inspector's note: Flood risk emergency plans for new development, September 2019 indicates that '*an emergency plan (EP) is a document developers submit with their planning applications where emergency response is an important component of the safety of the proposed development... it will rarely be appropriate to use a planning condition to defer the provision of an emergency plan to a later date, because it may show that the development cannot be made safe and therefore call into question whether the development is acceptable in principle*'.

of the Core Strategy are the Council and its officers and strategic management well understand the Plan, so great weight should be given to their interpretation.

- 8.2.4. The strategy for the Coastal Zone is one which places great weight on proposals that support economic growth and the creation of year-round jobs on the coast. The local holiday park industry is nationally significant, comprising more than 35,000 units of accommodation of which around 24,500 are sited in the Coastal Zone. This accommodation underpins the district's tourism and leisure sector, which, as Mr Leader put it, is the beating heart of the economy. It employs thousands of people, accommodates hundreds of thousands of visitors each year and generated up to £309m for the local economy in 2019.
- 8.2.5. The vital importance of the sector led the Inspectors who examined the Local Plan to recommend that the submission draft policy should be amended to prevent different occupancy conditions from discouraging the modernisation and improvement of facilities¹¹³. Modernisation (1) helps to maintain the vitality and viability of the industry and when coupled with an extension of the season and (2) will generate increased wealth and prosperity.
- 8.2.6. Coastal East Lindsey includes all shaded flood hazard areas, including green areas of low flood hazard on the map on page 85. This is confirmed on page 85 and 86 and by FN1 on page 33 of CD 1. SP19(1) to (3) guide the development of built tourist accommodation in the Coastal Zone. Sub-paragraphs (4), (5) and (6) provide guidance on the spatial location of new caravan site development. Paragraph (8) restricts all-year round occupation of holiday parks. Within this framework, paragraph (7) restricts the occupation of sites to the period 15 March to 31 October, unless a site which is to be extended or redeveloped already benefits from a longer occupancy period and there would be no net increase or an overall reduction in unit numbers; in that event, the longer period applies to the area which is extended or redeveloped.
- 8.2.7. The Council considers that SP19(7) does not expressly address or apply to applications under section 73 of the 1990 Act to vary an existing condition. This omission can be approached in two ways:
 - a) Variations are controlled by paragraph (7), so that SP19 operates to prevent an application to extend the season unless it is accompanied by an application to extend or redevelop a site which already benefits from a season that lies outside the period 15 March to 31 October, in which case it accords with the policy; or,
 - b) Variations are controlled by paragraph (8), so that provided a section 73 application does not propose all year round use or permanent living on a site, or any part of it, permission may be granted subject to compliance with part (b) of the Exception Test (i.e., that the development is safe for its lifetime).

¹¹³ CD39.

8.2.8. Mr Leader is clear in saying that the first approach a), which arises from treating SP19(7) as a freestanding policy, is wrong for five reasons:

- 1) Policy SP19(8) would be otiose unless it applied to a class of application which falls outside that controlled by paragraph (7), and it arises from treating SP19(7) as a freestanding policy;
- 2) If approach a) were applied it would admit "gaming" in the sense that where the object is really to extend the season that could be achieved by submitting an application for notional redevelopment or an extension which maintains or reduces the number of caravans. By way of example, the applications for Skegness Water Leisure Park and Hill View Park would comply with the approach a) if a single caravan were to be deleted from those authorised. The Agency did not dispute that and Ms Hewitson acknowledged that 'gaming' should not be encouraged;
- 3) Paragraph 10.28 of the written justification to Policy SP19 states in terms that it is concerned with the extension or redevelopment of an existing site. It does not broach the variation of a site occupancy condition.
- 4) Approach 2) is also consistent with the Local Plan examiner's stated object not to deter investment in modernisation or improvement where that would mean sites have several different occupancy periods, or there is no increase in the number of caravans. The first of those characteristics would make site management (including evacuation) more complicated. The second would be antithetical to the development of the tourism offer in the Coastal Zone. A more restrictive reading of Policy SP19(7) would also jar with the development of the "Wild Coast Vision" that is promoted by Policy SP20(6), which depends for its success on the provision of increased amounts of high-quality accommodation and supporting infrastructure that is found or proposed on the application sites; and,
- 5) The Secretary of State's policy is directed at allowing development in areas that flood, provided it is safe for its lifetime.

8.2.9. The Council submits that variations to extend the season are controlled by paragraph SP19(8), so that providing a section 73 application does not propose all year round use or permanent living on a site or any part of it, permission may be granted subject to compliance with part (b) of the Exception Test; that is the development must be safe for its lifetime.

8.2.10. If Mr Leader is wrong in his interpretation of Policy SP19 and the Agency is right (which it is not) that, outside of 15 March to 31 October, the Policy absolutely prohibits Framework compliant development that passes the Sequential and Exception Tests, including that it would be safe for the lifetime of the development, then the Policy should be regarded as out of date and weighed in the planning balance, subject to the important provisions of the Framework at paragraph 11d.¹¹⁴

¹¹⁴ EL2-1 para 100.

- 8.2.11. Chapter 14 of the Framework indicates planning permission should be granted for schemes that pass the Sequential Test and both parts of the Exception Test. By virtue of the provisions of Annex 2 of the Local Plan, each application passes the Sequential Test and part (a) of the Exception Test. However, the Agency has sought to argue that the deeming provisions of Annex 2 only run in respect of development that engages SP19 if that development first accords with paragraph (7) of the policy, in so far as it impacts on the period of occupation of a caravan.
- 8.2.12. Annex 2 is introduced in the written justification to Policy SP17 on page 87 of the Local Plan. Paragraphs 10.2 and 10.3 confirm that the Shoreline Management Plan underpins the approach to development in the Coastal Zone, as do the robust nature of the coastal defences. Deprivation and the need for economic growth and year round jobs are all referenced in the following paragraphs. This general policy is then operationalised in the context of the Sequential Test at paragraph 10.8.
- 8.2.13. Annex 2 sets out how development meets the Sequential Test so that the exercise can be '*precluded from the application process*'. The whole point is to make the process of submitting an application and understand how it will be dealt with easier. Paragraph 10.9 is clear in stating that development which is not listed in Annex 2 is required to demonstrate wider sustainability benefits. The only rational interpretation is that which is listed in Annex 2 does not because they are deemed to be supportive of economic growth.
- 8.2.14. Paragraph SP17(4) provides that development will need to demonstrate that it satisfies the Sequential and Exception Test as set out in Annex 2 of the Plan. This provision is an overarching policy provision which sits above other Coastal East Lindsey policies and incorporates Annex 2 by reference, bearing in mind its purpose as set out in paragraphs 10.8 and 10.9. Annex 2 is not some sort of add-on to policy as Ms Hewitson suggested; it is Development Plan policy.
- 8.2.15. Paragraph 3 of Annex 2 repeats its function in relation to the Sequential Test. The Annex is then said to show how development meets the Sequential Test and is definitive. Reference to '*development supported by the policy is deemed to have passed the sequential test*' means Policy SP17, incorporating Annex 2; it is discussion of 'the policy'. The words on page 136 do not say the categories of development listed below are only deemed to pass the Exception Test if a proposal otherwise accords with the policy. That is a 'gloss' not allowed in interpretation of the statutory Plan.
- 8.2.16. The question of whether the proposal otherwise accords with the policy has got nothing to do with the Sequential Test; that is whether, as a matter of fact, an alternative less flood prone location for that kind of development. The answer is deemed to be "no". The question of whether having passed the Sequential Test a proposal is otherwise policy compliant is an entirely distinct one. Holiday accommodation comprising caravans of all kinds passes the sequential test. Page 137 then adopts the same approach in relation to part (1) of the Exception Test. A number of questions have been asked about whether there are sequentially preferable sites within the red line of the applications, most notably at Skegness Water Leisure Park. For the reasons set out above, this is a complete red herring.

- 8.2.17. Page 145 then requires part (2) of the Exception Test to be applied and passed and directs the decision maker to the Advice Matrix in the SFRA. The printed version is the one that was contained in the Core Documents albeit the Agency has now submitted an electronic Excel spreadsheet. Whatever the Agency might wish, a person using the plan will of course rely on the printed version, which is the document incorporated into the plan by reference.
- 8.2.18. The Council submits that it would be irrational to embargo extensions of the season beyond 31 October in circumstances where development may be made safe by appropriate mitigation.
- 8.2.19. The key issue then is whether each application passes part (2) of the test, which requires that they will be safe for their lifetime from the residual risk of an exceptional flood that creates a hazard by the breach or overtopping of flood defences. The Council submits that safety would be assured by the imposition of a condition that require the sites to be evacuated on receipt of a Flood Alert, well in advance of a general evacuation of the coast.
- 8.2.20. Whilst the Council does not consider physical works to be necessary, if a different view was taken by the Secretary of State out of an abundance of caution, certain works such as the erection or heightening of bunds and the insertion of floodgates, as articulated by Mr Cage, would reduce the velocity of water flowing through the sites, the entrainment of debris and thus the hazard that is posed. The applicants also take the view that such physical measures are not necessary but would be prepared to accept a condition if the Secretary of State disagrees. Mr Clover and Mr Chappell confirmed that costings had been seen and were acceptable in return for the benefits of an extended season. Mr Cage gave evidence that the physical measures would have no appreciable impact on flood risk elsewhere; given the extent of the flood plain, that is a matter of common sense. Details of physical measures, including any assessment, can form the subject of the suggested condition in the normal way and the Council doing its job would only pass that which meets with its approval.

8.3. ***Risk and hazard***

- 8.3.1. The notion that risk is something which can be handled qualitatively is wrong. Hazard has nothing to do with risk and it is simply not right to contend, as the Agency does that hazard equals risk. The approach it takes fails to address risk at all and in effect states that if a site could under certain conditions be dangerous, it would be too risky to grant planning permission. That is meaningless. Risk is also relative and the question has to be asked whether the subject degree of risk is acceptable or not in the public interest. That is the point at the development management stage.
- 8.3.2. Residual risk is the risk that remains after taking mitigating actions. If a condition passes the six tests set out in paragraph 55 of the Framework then it may be assumed that it will be complied with. Construing paragraphs 041 and 069 of the PPG correctly and applying them to the facts of this case, the correct approach is to look at risk to life after the mitigation proposed which means after everyone has left. Residual risk in this case will be zero.

- 8.3.3. FD2320/TR2 is a bespoke piece of guidance for assessing flood risk associated with new development. It is intended to assist practitioners in undertaking assessments of flood risk for new development and enable improved decision making by improving transparency and accountability. It is not policy but it is a tool set that practitioners are encouraged to use. It was introduced into the Inquiries through CD5 and CD6, the CS and the SFRA. It is also cited in the ADEPT Guidance at CD7.¹¹⁵
- 8.3.4. The Agency makes much use of Table 13.1 and Table 4 from CD6 which is the supplementary Guidance Note. This is a pictorial representation of flood hazard, which is a combination of depth, velocity (plus a constant) and debris entrained and transported. This requires some calculations, which practitioners said were too complicated. What the authors do is calculate different hazard ratings for different depths and velocities of water and tabulate them as a shorthand and convenient way of explaining the hazard that floods with different characteristics pose.
- 8.3.5. Chapter 22 of FD2320/TR2 confirms that the overarching objective of flood risk management is to reduce the risks of death to people or serious harm. For that purpose, it introduces a 'flood risks to people calculator'. Box 2 on page 185 develops a key principle of what is acceptable and unacceptable risk based on annual risk to an individual. It presents a range of different risks and the calculator chooses to define an acceptable risk as one where the probability of death is less than 1:10,000. As Mr Leader made plain, he could have chosen a lower level of risk on the basis that the Council has not discovered any death associated directly with coastal flooding in the sense of someone being drowned by a breach or overtopping since 1953. To that important extent, he has been highly precautionary. Of course, thousands of people live on, work at and visit the coast and just accept the risk of dangerous flooding from the sea as pretty improbable. It is highly illuminating that Mr Chappell and the site owners live immediately adjacent their parks.
- 8.3.6. Flood hazard rating then feeds into Table 13.1 and Table 4. However, the calculation of the danger posed by a flood is just the starting point, a component, of the assessment of risk. It is not the same as 'risk' except in a colloquial and highly inaccurate way.
- 8.3.7. The map on page 85 of the CS is a modelled application of Equation 2 on pages 117 and 186 of FD2320/TR2. Mr Leader articulated seven important points about it:
- 1) As a matter of fact, it maps a 1:200 year flood assuming no flood defences and a breach; it maps hazard to life and not risk to life;
 - 2) In 2115, not now or any period before then;
 - 3) It maps hazard assuming a 1:200 year flood event occurs in combination with a breach which is taken for granted;

¹¹⁵ Inspector's note: in closing, Mr Hardy indicated that this had him "thinking about 'Conservation Principles' for heritage; a philosophical tool designed to get people thinking. It was directed at English Heritage employees, but indicated that the principles are useful for others and it was used up and down the country, including by the Secretary of State."

- 4) It does not tell the decision maker how likely such an event arising from a breach is;
 - 5) It does not map the risk of death or serious injury from such a flood event;
 - 6) It does not map residual risk; and,
 - 7) The map tells the decision maker nothing about whether development will be safe such that it passes part (b) of the Exception Test.
- 8.3.8. The Council considers that neither the Agency nor members of the planning staff hitherto at East Lindsey District Council have grasped the import of the above. If a decision maker wants to get a rounded picture of risk integrated with hazard then the method set out in Chapter 22-Flood risks to people calculator of FD2320/TR2 should be used.
- 8.3.9. In his calculation of Area Vulnerability, Mr Leader used a value of 1 because although a breach is sudden, the water coming through it will spread out and take up to 2 hours to reach the sites. He drew a comparison with his experience of an incident at Steeping, which evolved gradually. It is not like a dam or reservoir bursting next to a town. If the Area Vulnerability is adjusted to a highly precautionary value of 3, so that there is "rapid onset", the results are still less than 1:10,000. Mr Leader may have used only 2 events in the risk calculation, contrary to guidance set out in FD2321, but was not challenged on the calculation or conservative assessment. The risk of major events was fed in. Lesser events would make a lower contribution. The Agency, which did not engage with this evidence and was not interested in applying its own methodology, is detached from the real world. The Council considers that Mr Leader's calculation produces a risk of death profile which is entirely acceptable.
- 8.3.10. Page 187 of Chapter 22 indicates that the calculator can be used in conjunction with the guidance provided in *Guidance Note S3.2-Risks to people behind defences* to estimate risks to people behind defences, at page 96-113 of S3.2. Notwithstanding its title, this is a method for assessing hazard and three approaches, Simple, Intermediate and Complex are presented. What is striking, in the Council's view, is the importance given to assessing the probability of a breach based on its condition which indicates that the assessment of hazard should be gauged by reference to the risk that defences will fail in a rational, evidence based way; failure should not just be assumed. As Mr Leader stated, we only have data to operationalise the simple approach which is based on distance of the chosen receptor from an assumed breach, the height of the flood plain at the receptor and the head of water against a defence. That is used to create a set of hazard descriptors, which can be related to distance from a breach. This produces some interesting results. It indicates a consistently lower and acceptable level of hazard than that suggested and used by Mrs Morris. However, it still tells the decision maker nothing about whether there would be an acceptable or unacceptable risk of death or serious injury.
- 8.3.11. The Council considers that the methodology in Chapter 22 is the best way of assessing risk to life and limb by reference to objective risk thresholds. Moreover, it is based on a hazard rating which is greater than the hazard

rating generated by the Simple methodology in Chapter 12 *S3.2-Risk to People Behind Defences* (Guidance Note S3.2). So, the risk to life and risk of serious injury is, if anything, overstated. The methodology is robust, even though it assumes that someone is still on site. The whole point is that that acceptable risk is not the residual risk. The residual risk is the risk to someone who is not there because they will be evacuated.

8.4. ***Use of conditions***

- 8.4.1. Paragraph 056 of the PPG expressly anticipates the use of warning and evacuation for caravan sites. The Council submits that the Secretary of State therefore thinks that warning and evacuation is a good idea and practicable as a means of handling residual risk. The question of whether warning and evacuation is sensible in a particular context is to be answered in consultation with the Council's Emergency Planning Officer. In these cases, he was consulted and he was content with the plans as submitted.
- 8.4.2. The Agency has repeatedly stated it is unwise to rely solely on warning and evacuation to mitigate residual risk; the inference seems to be that each site needs to be hardened with flood resilience and resistance measures. What PPG paragraph 060 says is the converse of that. It tends to point to the utility of warning and evacuation, compared with resilience and resistance.
- 8.4.3. In terms of resilience and resistance, caravans properly anchored will have stable floor levels above the depth of any flood water that reaches a site. If anyone was on site, they would be safe above the flood. As Mr Leader observed, they would be in a much safer position than those who live in properties which the PPG assesses to be of equal vulnerability such as bungalows. The inherent advantages of living in a caravan in the event of a flood being something the Agency entirely overlooks.
- 8.4.4. A 'Grampian' condition of the kind proposed by the Council would be necessary, reasonable, relevant to planning, precise, enforceable and relevant to the particular developments. It would be expressed to require the prior approval by the local planning authority of an evacuation plan, which would need to contain all of the information specified in the draft condition.
- 8.4.5. As has been made clear, the caravan parks in East Lindsey have an excellent record of compliance with the sudden imposition of a requirement that they close quickly and remain closed to visitors. In March 2020, the degree of risk was not what you would get in a flood and yet the clear evidence from the applicants is that the SWLP and HVCP sites were cleared within 3 hours, with most occupants leaving within an hour. Site owners and operators can be trusted to comply with a requirement to close and that they will do so swiftly and effectively. As Mr Chappell stated, caravan owners are well informed, careful and responsible, given the scale of their investment. The owners of the caravan sites before the Secretary of State are fastidious about keeping their clients safe. Mr Chappell's 'accident' evidence demonstrates the rigour and care for the safety of SWLP clients. Furthermore, the Secretary of State can rely on the Council to properly enforce requirements.

8.5. ***Use of Flood Alert as a trigger for evacuation***

- 8.5.1. The hazard which is of principal concern is from a breach of the coastal defences rather than overtopping. The risk of a flood caused by a breach occurring will depend on a combination of (1) a spring tide (2) a deep low pressure system travelling south east down the North Sea (3) strong onshore winds (4) high waves (5) occurrence of (1) to (4) over many hours and (6) failure of the defence itself. Whilst it may be impossible to forecast the location of a breach site ahead of time, both Mrs Morris and Miss Stubenrauch expressly agreed that the sort of major tidal surge that might lead to mass evacuation as envisaged by the LRF would be forecast and a Flood Alert would be issued.
- 8.5.2. The whole risk-based assessment of the impact of a breach is assessed on a 1 in 1,000 year event which is a significant event to occur. As Mr Cage said, when considering the potential risk to a site of this scale of impact occurring, information such as weather and flood alerts about the event will be available across all forms of media to both professionals and members of the public alike. It is 2021 and the circumstances are different from those associated with the event that occurred in 1953, 70 years ago, which was before computers, mobile phones and mass communications.
- 8.5.3. The Seasonal Occupancy Restrictions on the *Lincolnshire Coast Factsheet 2020*¹¹⁶ shows the majority (79%) of storm surges were recorded in the period 1 November to 15 March which forms the current occupancy restriction period for caravan and camping sites. By far the worst month is January, which is outside of the proposed extended period, which was the same for the previously issued data up to 2010¹¹⁷. Whilst November and December are high, October which is outside the restricted period is almost as bad as March, which is within, suggesting some magic turning of the calendar page. In relation to offshore waves, again the worse recorded month was March, which would be outside the extended period. For nearshore waves, March was the worst month by far and October was worse than November to February. Nearshore waves are a better indication of events that may result in overtopping. In terms of closing the Thames Barrier, the worst period is January/February with almost twice as many events as December and 5 times as many as in November.
- 8.5.4. The Council considers that an accurate assessment of these tide/surge results is that January/February are by far the worst risk periods, with an additional peak in March. The other results outside of this period fluctuate too much to take any real certainty from them.
- 8.5.5. In terms of historic flood events, virtually all events apart from the December 2013 event occurred outside of the proposed extended operating period of November through December. There is no historic evidence that would lead to the need for the closed season to cover these months. The reality is that any major surge event would be identified and tracked with an increasing degree of confidence over time and a Flood Alert would be issued in plenty of time for safe evacuation of the sites to take place.

¹¹⁶ CD17.

¹¹⁷ CD16.

- 8.5.6. Whilst the Agency has placed a great degree of emphasis on mass evacuation plans created by the LRF, the reality is that the probability of such a catastrophic failure against the backdrop of the Shoreline Management Plan is so fanciful that Mr Leader was able to indicate that it should not be a material consideration in these cases. It is scare mongering and decision making based on doom mongering of the highest order. In closing the Agency indicated that the model 'pours' water through the breach location. It is a bit like pouring a bucket of water over a model village. Whilst it is no surprise that the village gets flooded, for that to happen you need someone to pour the bucket of water. Furthermore, the Council maintains that the application sites could be evacuated and the model would have to show that the shoreline management plan is so wrong that mass evacuation would be triggered.
- 8.5.7. Setting to one side the mass evacuation scenario, as it would relate to a forecast event, the reality is that the Agency was forced to rely on the notion of unforeseen, spontaneous breaches of the defences, which Miss Stubenrauch suggested may be caused by winter waves. When pushed, the Agency could only identify two examples which form the subject of its note at Tilbury and at the Washbanks. In the Council's view, reference to these examples is patently absurd and neither support the description of hidden undercutting of the defences by waves which is what Miss Stubenrauch was trying to depict. There is no evidence before the Secretary of State of any example of a spontaneous breach which might cause the sort of unpredictable problem the Agency claims. Even if it did, it is clear that evacuation, if it was required, would be targeted and focused. The detailed report on The East Coast Tidal Surge-5 December 2013¹¹⁸ indicates that whilst plans were in place for the evacuation of 18,000 properties, in the event only 203 people were evacuated.¹¹⁹ That amounts to targeted evacuation. It would not be a problem mixed with the application sites and concerns regarding the burdening of emergency services are not well founded.
- 8.5.8. There are no technical reasons why Flood Alerts cannot be used as a trigger for evacuation. Mr Cage's unchallenged evidence is that 19 Flood Alerts have been issued in 17 years; that is not 'frequent' as was suggested by Miss Stubenrauch. Far from it. The Council has every confidence that robust FWEPS can be created which will result in timely evacuation. Whatever the Agency thinks it is doing with its 'Flood Alert' doesn't matter, evacuation from the sites would be triggered by FWEPS on 'Alert'.

¹¹⁸ CD26.

¹¹⁹ Inspector's note: CD26 page 5 'We were certainly better prepared and were able to 'get ahead' of this storm through three key strategies:...Removing people from danger: ranging from timely public safety and flood warning messages to road closures and planning for the evacuation of up to 18,000 properties. In the end, within a very limited time, we achieved a safe assisted evacuation of 203 people from properties at immediate risk. Many more self-evacuated without assistance.', page 44 'A total of 203 residents from 78 households...represents 13.5% of the 577 residential properties that flooded...Numerous people self-evacuated. We do not know at this point how many additional people remained 'in-situ', although there is anecdotal evidence that some people ignored the flood warnings.'

8.5.9. The research undertaken by CRESR in *The Caravan Communities of the Lincolnshire Coast*¹²⁰ identified that 88% of the residents would be able to make their way to a safe place using their own car. Importantly, this survey clearly focussed on longer term caravan residents and not holiday caravan occupiers. This is a completely different user profile to the owners of the caravan sites in these Inquiries. The Council notes the evidence of Mr Chappell and Mr Clover to the effect that everyone has a car.

8.6. **Hazard mapping**

8.6.1. *Meadowbank*

8.6.1.1. Mr Cage reviewed the actual levels on the site and provided a diagrammatic representation on Plan Number 2205/02/005 of what would happen following a worst case breach event using a 0.1% 2006 event¹²¹. The deepest area of flooding is in the lake, which due to the existing depth of water that is already there. Most of the site is within the 0.25 to 0.5 metre depth. Mr Cage demonstrates that the Agency's Hazard Mapping is incorrectly exaggerating the real risk of danger on this site.

8.6.1.2. Mrs Morris' comments about evacuation routes being under 1.4 metres of water and 1.6 metres of water, is clearly made on the basis that the breach has occurred already and that the site is being evacuated after the event. The Council considers that, given evacuation would be triggered by a Flood Alert, the site would be evacuated well in advance of any potential breach occurring. The proposed evacuation routes would be clear and safe.

8.6.2. *Willow Tree Farm*

8.6.2.1. Again, Mr Cage has undertaken a detailed review of the actual levels on the site and has produced Plan Number 2205/02/004 based on a worse case breach event using a 0.1% 2006 event¹²². The deepest area of flooding is in the lake, which is due to the existing depth of water that is already there. Most of the site is within the 0.25 to 0.5 metres depth. Mr Cage demonstrates that the Agency's Hazard Mapping is incorrectly exaggerating the real risk of danger on this site.

8.6.2.2. Again, Mrs Morris' comments about evacuation routes being under 1.3 metres were clearly made on the basis that the breach had occurred already and that the site is being evacuated after the event. The Council considers that, given evacuation would be triggered by a Flood Alert, the site would be evacuated well in advance of any potential breach occurring. The proposed evacuation routes would be clear and safe.

8.6.3. *South Fields*

8.6.3.1. In the same way, Mr Cage has reviewed the actual levels on the site and has produced Plan Number 2205/02/006 based on a worst case breach event using 2006 1 in 1000 year event¹²³. The deepest area of flooding is in

¹²⁰ CD24.

¹²¹ EL1.4c.

¹²² EL1.4d.

¹²³ EL1.4e.

the lake. A further area of lower land which is subject to deeper flooding is located to the south of the site, away from the main caravan pitches. Most of the site is within the 0.25 to 0.5 metres depth. Mr Cage demonstrates that the Agency's Hazard Mapping is incorrectly exaggerating the real risk of danger on this site.

- 8.6.3.2. Again, Mrs Morris' comments about evacuation routes being under 1.3 metres were clearly made on the basis that the breach had occurred already and that the site is being evacuated after the event. The Council considers that, given evacuation would be triggered by a Flood Alert, the site would be evacuated well in advance of any potential breach occurring. The proposed evacuation routes would be clear and safe.

8.7. ***Economic benefits***

- 8.7.1. Economic benefits are plainly material and are brought into play through Annex 2 and the Framework. Mr Leader has submitted written evidence of what he was told in relation to each of the three sites.
- 8.7.2. The Council has commissioned a bespoke report from Rose Regeneration¹²⁴. They interviewed 23 people about 21 sites and the list was based on a list of key site owners, many with more than one site. In terms of the representation issue, the sample was very large representing owners of approaching 40% of all stock. The report demonstrates the massive importance of the caravan sector to East Lindsey. Whilst the Council does not advocate this approach, the Agency suggested the range of benefits accruing per caravan was between £1,342 and £1,820 per calendar month. Even on this basis, the economic benefits flowing from these three applications are substantial and significant, not trivial as suggested by the Agency. The Agency has not produced any economic evidence to these Inquiries, notwithstanding that regeneration is at the heart of Development Plan policy.
- 8.7.3. STEAM¹²⁵ is not designed to provide a precise and accurate measurement of tourism in a local area, but rather to provide an indicative base for monitoring trends. STEAM data does not, in its national sampling frame, collect data in sufficient nuanced depth, to adequately reflect the disproportionate scale of caravan accommodation which makes resorts in the Coastal Zone atypical in terms of its overarching approach.

8.8. ***Other matters***

8.8.1. *La Rochelle*

- 8.8.1.1. The La Rochelle floods were the result of a fairly minor storm. A combination of a badly managed and non-existent flood warning system, the lack of any coordinated and funded defence management processes and the extensive use of security shutters on properties led to the resultant disaster and loss of life. None of those factors apply to the Coastal Zone of East Lindsey. It is not a good comparator.

¹²⁴ EL2-2c

¹²⁵ CD19, 20 and 21.

8.8.2. *Billing Aquadrome*

8.8.2.1. Over a 1000 people were evacuated from around 500 caravans. One of the main issues appears to have been that most of the people did not have a permanent address to evacuate to and were effectively living on the park, which resulted in the emergency services having to evacuate the residents, some of whom refused to leave, even though areas of the site were 1.5 metres deep in water.

8.8.2.2. Without seeing the full details of the site's FWEP and understanding how it was operated, it is not clear how this could be used either as a good or bad example of what happens when a FWEP is triggered. What is clear to the Council is that the number of permanent residents on the site immediately results in a different set of issues to be considered than would need to be considered on the sites subject of these Inquiries.

8.8.3. *Willow Tree Farm*

8.8.3.1. The Council has submitted a note on the legal status of land use at Willow Tree Farm¹²⁶. The Agency is simply wrong in its interpretation of the permissions and the effect of the section 73 permission having been implemented. The Council considers that, with reference to the existing permission(s), the site at Willow Tree Farm is not restricted in respect of tourers vs statics and that there is no occupancy/seasonal control on the siting of static caravans. Therefore, the development that is proposed may lawfully be carried out without the grant of planning permission that is sought.¹²⁷

8.8.4. *The Written Ministerial Statement of 14th July 2020 (WMS)*

8.8.4.1. The Written Ministerial Statement¹²⁸ recognises that the closure of caravan parks in March 2020 had a significant adverse impact on caravan businesses which are a mainstay of local economies for areas like East Lindsey, providing employment and supporting local services and businesses. Whilst it refers to a temporary measure, the Council considers that the WMS is supportive of the grant of planning permission because it shows that the Secretary of State is encouraging flexibility in a way the Agency is not even prepared to countenance. Indeed, the Agency's witnesses expressly said that they would maintain an in-principle objection to extended opening pursuant to the WMS.

8.9. ***Conclusions***

8.9.1. The PPG expressly contemplates reliance on warning and evacuation to manage residual risk. The system is already in general use along the coast and is required at all times of year. Council considers that it is tried and tested. It works. In the Council's view, this should be enough to justify the grant of planning permission. Site occupancy and evacuation procedures operate in essentially the same way; they remove people from the risk of being exposed to the hazard that would arise from a breach. Flood warning

¹²⁶ ID11.

¹²⁷ EL2-1 paras 26-31.

¹²⁸ CD12.

and evacuation is the accepted method of safeguarding the occupiers of two of the application sites, parts of which already open between 1 March and 5 January. Indeed, it is the accepted method of safeguarding the entire population of the Coastal Zone.

- 8.9.2. The application sites would be evacuated on a precautionary basis before any general evacuation of the Coastal Zone by site operators who have recently demonstrated during Covid 19 that they can evacuate sites completely, very quickly and very safely. It is always possible for the Agency to hypothesise and create potential shortcomings but planning decisions are to be made in the public interest and for the real world.
- 8.9.3. The Agency makes reference to the Coastal Mass Evacuation and Shelter Plan¹²⁹ which indicates 'the nature of the local traffic network means that in order to evacuate the number of people in the planned-for scenarios, the estimate is that between 21 and 30 hours would be required for an evacuation (which assumes caravan sites are closed) depending upon whether the event was a 0.5% or 0.1% probability event'. However, 21-30 hours is not mandated, it is an aspiration. The Agency suggests that an Alert may provide as little as 2 hours notice of flooding. If that is right, there would never be enough time for the LRF planned evacuation. The Agency has not asked itself how sensible its evidence is in relation to the time for evacuation versus the timing warnings, in relation to which it takes a pessimistic view.
- 8.9.4. The reasons why the Agency contends conditions will not work are incredible. It is effectively relying on the failure of its own warning systems notwithstanding they have been proved reliable and a refusal to accept that operators and owners will execute plans to evacuate people. Evacuation is the method by which the entire population of the coast would be kept safe if the defences appear likely to be breached.
- 8.9.5. The reality is that the defences are likely to hold for the most part even in an extreme event such as that which occurred December 2013, where the defences held up better than expected. The reality is that the SMP aim of 'hold the line' will work. Where there is a localised risk of flooding from a breach or overtopping, people would be evacuated. As the 2013 event illustrated, that is unlikely to involve the wholesale evacuation of the Coastal Zone. Instead, limited evacuations would take place on or about the issue of a Severe Flood Warning using information provided by the Flood Forecasting Centre. What that illustrates is that in reality people who live in the Coastal Zone are safe, and that is because flood awareness, warning and evacuation is a safe strategy for dealing with residual risk arising from extreme events.
- 8.9.6. The Council considers the strategy that it advocates for each of the application sites is, however, safer than that which is applied to the general population because it will trigger an evacuation well before a flood occurs, and does not depend on the assistance of Blue Light services. Viewed in that way, the Agency's approach is revealed to oppose development that would be absolutely safe, and safer than the same and more vulnerable development. That stance is plainly wrong. It is unreasonable. It is not a

¹²⁹ CD11.

proper approach to development management on the coast. It will inhibit growth, reduce prosperity and tend to perpetuate deprivation, which is not what the Secretary of State wants to see.

8.9.7. In the Council's view, properly construed, all three applications comply with the adopted Development Plan and benefit from the presumption in favour of policy compliant development enshrined within section 38(6) of the *Planning and Compulsory Purchase Act 2004*. If, a different view of Development Plan compliance is taken then the Council submits that will be because the decision maker will have found that Policy SP19 does not comply with the Framework's support for developments which have demonstrated that they are safe for their lifetime.

8.9.8. In that event, all of the material considerations relevant to these Inquiries are set out below and the Council considers that they justify planning permission being granted without delay regardless¹³⁰:

a) Willow Tree Farm

- 1) For the reasons given in paragraphs 26 to 31 of EL2-1, the substitution of 15 touring pitches by 15 static caravans is not development. Nor is the use of the site, as a caravan site, restricted by a seasonal occupancy condition.
- 2) The application for Willow Tree Farm is a proposal to redevelop an existing site without increasing the number of caravans. The use would be instituted between 1 March and 5 January in any year. It would thus cut back the lawful use from 12 to 10 months.
- 3) The development that is proposed may lawfully be carried out without the grant of the planning permission that is sought.

b) Hill View Caravan Park and Skegness Water Leisure Park

- 1) Both applicants propose to extend the season on the application sites to bring them into line with other parts of the same sites without in either case increasing the number of caravans. The schemes satisfy the Sequential Test and both limbs of the Exception Test.
- 2) The robust and effective sea defences in the vicinity of each site and the Environment Agency's settled policy to maintain, improve and raise the height of the defences in response to any rise in sea level over the lifetime of the developments.
- 3) Each site is inherently safe from flooding because of the level of the land and/or the potential to anchor and raise caravans above the level of flood water in an extreme event that overtops or breaches the sea defences, and to prevent the flow of water into each site.

¹³⁰ EL2-1 section 16.

- 4) The potential to impose conditions requiring effective, robust flood awareness, warning and evacuation procedures that would ensure every occupant is required to leave the sites ahead of any flood or a general evacuation of the coast. In that way, the safety of the occupants would be absolutely assured.
- 5) The significant economic benefits that are associated with the development of the caravan park sector close to Skegness and Mablethorpe, which the government recognises are in urgent need of regeneration through the Towns Fund, especially in the aftermath of Covid-19.
- 6) The significant number of jobs, direct, indirect, and induced that would be generated by each scheme in the local economy.
- 7) Compliance with the National Planning Policy Framework's policies for areas subject to the risk of flooding and those which promote development to secure economic growth and prosperity.
- 8) Linked to 7), compliance with the Written Ministerial Statement, which promotes extending the season of caravan parks to promote growth and recovery from Covid19, even in areas subject to flood risk, albeit I accept that is subject to the implied caveat the development should be safe.
- 9) Compliance with the Framework's policy for building a strong and competitive economy.
- 10) The presumption in favour of sustainable development, either because the schemes accord with the Development Plan or, if they do not, through the operation of the tilted balance.

8.9.9. A more balanced approach is required, which does not compromise on safety but which strikes a proper balance between the environmental, social and economic dimensions of sustainable development. The Council and the applicants strike that proper balance, which the Council respectfully commends to the Secretary of State. Mr Chappell, who lives, breathes and works in the sector, eloquently set out the "heck of a hit to the sector" caused by Covid 19 and the need for the Agency to work with the Councils and park operators to give the Coastal Zone the safe helping hand that it needs.

9. The Case for Mr Kevin Palmer (KP)

- 9.1. In this case the planning balance needs to be found between the flood risk element of environmental issues and the significantly greater economic and social benefits of the proposal.
- 9.2. Paragraphs 12 and 47 of the Framework state that planning decisions may depart from an up-to-date Development Plan if material considerations in a

particular case indicate that the plan should not be followed. These justify approving the application.

- 9.3. There is a well-established system of national and local weather and flood forecasting that will continue to provide sufficient advance warning to enable KP to instruct occupiers of the caravans to leave the site. This process would be implemented through a site-specific FWEP.
- 9.4. KP's evidence to the Inquiries includes a new draft Flood Risk Assessment¹³¹ and a draft FWEP¹³² with evacuation triggered by a Met Office amber weather warning. Whilst the likelihood of a breach of the sea defences is low, it is acknowledged that the consequences could be severe and the aim of the FWEP is to ensure that occupiers of the caravans would not be at risk from coastal flooding and would not be a burden on the emergency services if flooding were to occur in the area. In light of evidence given at the Inquiries, such as the changes recommended by the Council¹³³, it is acknowledged that the submitted FWEP is inadequate. Further discussion with the Council would be necessary to determine what is required and can be agreed to by KP. Revisions can be required by planning condition to be submitted to and approved by the Council before development commences. The condition could also require that the FWEP shall be updated and maintained annually during the lifetime of the development as part of the continuing management of flood risk in the area. The FWEP would be backed up by site licencing and occupancy contracts between the owner and the occupiers.
- 9.5. The Agency contends that all or some of the holiday caravan occupiers will require emergency evacuation by the authorities prior to an imminent or during a live flood event. This concern is misplaced.
- 9.6. Unlike permanent residents in the area, the occupiers of caravans on the site would have a permanent or main home elsewhere. The owner of the site can be required by planning condition to maintain an up-to-date register of the details of the home address. The register could for example be based on production of a valid and current council tax bill or on a current utility bill in the name of the occupier of the caravan. The owner of the site can be required by planning condition to make the register available to inspection by the planning authority. In this instance KP has produced his own Holiday Home Pitch Agreement (HHPA). The regime to manage the occupancy of the site would operate whenever the site is open and not just in the two-month additional opening period being sought in this case. As public transport is not the best, occupiers tend to arrive by car.¹³⁴
- 9.7. It is therefore reasonable to assume that when they are obliged to leave the site the occupiers will be able to return to their main home and will not remain on site so as to be a burden on emergency services. It would be reasonable to require occupiers to evacuate within 24 hours of being instructed to leave and this could be a requirement of the FWEP. When the

¹³¹ KP1.2c.

¹³² KP1.2d.

¹³³ EL1.1.

¹³⁴ Mr Clover cross-examination.

Government announced on the 23 March 2020 that sites of this type would have to close on 24 March, all occupiers had left by 11 am on the 24 March 2020. Notice was given by the Government on the 31 October 2020 that parks should close again, this time by 5 November 2020. At 8 am on the 2 November, KP notified all occupiers of that requirement and they had all gone by 1 pm on the 4 November 2020.

- 9.8. The application site is sufficiently separated from the consequences of rapid inundation following a breach of sea defences to allow time for occupiers to safely leave the site itself and to drive the short distance to the main road and then follow the evacuation route.
- 9.9. The caravans subject of the application are already in position and there is no alternative position within the site at lower flood risk. Physical measures to protect the caravans and to prevent damage to the wider area are not covered by the submitted FRA, but could be required by planning condition; for example, they can be anchored to the ground by chains to prevent movement and floatation. Gas bottles can be tethered to a post and decking can be anchored by foundations, to prevent debris floating about. In addition to these management and physical controls, KP complies with the Agency guidance on how to prepare his site to minimise flood risk. However, KP considers that the physical works suggested by the Council¹³⁵, comprising perimeter bunds and a flood gate are not necessary, firstly, as occupiers would be evacuated in advance of flooding and secondly, that the floor levels of the units are 3.0 metres AOD, which KP considers to be the relevant flood level flood level.
- 9.10. The availability of the longer season elsewhere on the site as well as on other sites in the area is a strong disincentive for potential investors to purchase an expensive caravan (minimum cost of £35,000) on Meadowbank with only the shorter season available. This is holding back re-investment of sales receipts into the business.
- 9.11. Approval and implementation of the application would not increase direct employment on the site, but it would increase expenditure into the local economy by attracting a longer-term holiday clientele to gain maximum benefit from a substantial outlay. This would add to spending into local services and facilities such as shops and eating establishments, and cultural and sporting venues.
- 9.12. The Agency is challenging whether the proposal can meet the Exception Test as set out in Framework paragraphs 163, 164, 165 and 166. The Exception Test can be satisfied by the imposition and implementation of planning conditions and by local authority licencing of the site. These measures will reduce flood risk to a minimum during the additional two months of seasonal opening and they will add to the beneficial management of flood risk during the remainder of the year.
- 9.13. Framework paragraph 82 expects planning policies to positively encourage sustainable economic growth, to seek to address potential barriers to investment such as inadequate infrastructure and be flexible enough to

¹³⁵ EL1.1.

accommodate needs not anticipated in the plan. Paragraph 84 expects planning decisions to enable sustainable rural tourism and leisure developments which respect the character of the countryside and to retain and develop accessible local services and community facilities including local shops, meeting places, sports venues, open space, cultural buildings, public houses, and places of worship. Paragraph 92 expects planning decisions to achieve healthy, inclusive, and safe places including support for healthy lifestyles, safe and accessible green infrastructure, sports facilities, local shops, and encouragement of walking and cycling.

- 9.14. The Agency states that it is not possible to mitigate the impact of the development by evacuation of caravan sites and that there would be increased risk to the resident population by overstretching the emergency services. This misses the point that by implementing the FWEP there would be no holidaymakers to evacuate because they would already have left the site prior to a flood event. Therefore, approval of the application would not cause the "extreme difficulty" for the emergency services that the Agency suggests.
- 9.15. The LRF advises that with all year-round occupancy a small additional number of residents may need assistance with evacuation.
- 9.16. The Agency places significant emphasis on the appeal decision reference APP/D2510/W/19/3224108¹³⁶. However, each planning proposal should be considered on its own merits. Whilst in that other case the Inspector concluded that flood risk was unacceptable there is no indication in his decision that he was made aware of the LRF 2010 statement that its concerns were principally related to year-round occupancy and not the extended season. Obviously, he would not be aware of the LRF Coastal Mass Evacuation & Shelter Plan dated January 2020 which is dealt with below. There is no indication that he was asked to consider the conditions that are now put forward in KP's case. Therefore, that appeal decision has little weight in considering the current application.
- 9.17. It is important for the purposes of this case that the LRF Coastal Mass Evacuation & Shelter Plan dated January 2020¹³⁷ significantly updates the LRF position on caravan occupancy. In summary it states that '*An essential early step in any evacuation will be to engage the District Council Licensing teams, Environment Agency, and other stakeholders in order to reinforce contact with all sites known to have all year around occupancy. It is anticipated a small additional number of residents may need assistance with evacuation.*' The likelihood of 100% evacuation is reinforced considerably in respect of KP's proposal because planning permission could be granted subject to stringent seasonal and holiday only occupancy and flood risk management conditions.
- 9.18. Contrary to the Agency's contentions there is no evidential basis for its assumption that occupiers on the site would require assistance with evacuation. If they could not drive, the site operator would be able to assist.

¹³⁶ CD27.

¹³⁷ CD11.

- 9.19. KP considers that the Agency has adopted an overly simplistic approach to extending the holiday season, without giving proper weight to the means by which its concerns over flood risk can be overcome by the imposition and implementation of planning conditions. It has not adequately considered the advice of the LRF regarding the likelihood of holiday caravan occupiers requiring evacuation.
- 9.20. For these reasons, approval and implementation of the application is the only realistic future for the business

10. The Case for Ms Anne Nash (AN)

- 10.1. In this case the planning balance needs to be found between the flood risk element of environmental issues and the significantly greater economic and social benefits of the proposal.
- 10.2. Paragraphs 12 and 47 of the Framework set out that planning decisions may depart from an up-to-date Development Plan if material considerations in a particular case indicate that the plan should not be followed. These justify approving the application.
- 10.3. Whilst the likelihood of a breach of the sea defences is low, it is acknowledged that the consequences could be severe. However, there is a well-established system of national and local weather and flood forecasting that will continue to provide sufficient advance warning to enable AN or a future owner and operator to instruct occupiers of the caravans to leave the site. This process would be implemented through a site-specific FWEP.
- 10.4. In light of evidence given at the Inquiries, such as the changes recommended by the Council¹³⁸, it is acknowledged that the FWEP submitted in support of the application¹³⁹ is inadequate. A revised FWEP could be required by planning condition to be submitted to and approved by the Council before development commences. The condition could also require that the FWEP shall be updated and maintained annually during the lifetime of the development as part of the continuing management of flood risk in the area. The FWEP would be backed up by site licencing and occupancy contracts between the owner and the occupiers, which have yet to be drafted. Implementation of the FWEP would ensure that occupiers of the caravans would not be at risk from coastal flooding and would not be a burden on the emergency services if flooding were to occur in the area. The adequacy of the FWEP is not a matter for the Agency to determine. It is a matter for the Council to consider through its Emergency Planning Officer.
- 10.5. The Agency contends that all or some of the holiday caravan occupiers will require emergency evacuation by the authorities prior to an imminent or during a live flood event. This concern is misplaced.
- 10.6. Unlike permanent residents in the area, the occupiers of caravans on the site would have a permanent or main home elsewhere. The owner of the

¹³⁸ EL1.1.

¹³⁹ AN1.2c

site can be required by planning condition to maintain an up-to-date register of the details of the home address. The register could for example be based on production of a valid and current council tax bill or on a current utility bill in the name of the occupier of the caravan. The condition could require that the register is available to inspection by the planning authority. The regime to manage the occupancy of the site would operate whenever the site is open and not just in the two-month additional opening period being sought in this application. As public transport is not the best, occupiers tend to travel by car, although some may not have a vehicle on site when an evacuation is ordered.¹⁴⁰

- 10.7. It is reasonable to assume that when they are obliged to leave the site the occupiers will be able to return to their main home and will not remain on site to be a burden on emergency services.
- 10.8. The application site is sufficiently separated from the consequences of rapid inundation following a breach of sea defences to allow time for occupiers to safely leave the site itself and to drive the short distance to the main road and then follow the evacuation route.
- 10.9. Whilst some of the land towards the southern end of the site has a higher ground level than the proposed location of the caravans, the higher ground could not accommodate all of the proposed units and units sited there may also adversely impact on the amenity of neighbours. Therefore, the proposed arrangement is preferred. Physical measures to protect the caravans and to prevent damage to the wider area are not covered by the submitted FRA, but could be required by planning condition; for example, they can be anchored to the ground by chains to prevent movement and floatation. Gas bottles can be tethered to a post and decking can be anchored by foundations, to prevent debris floating about. However, AN considers that the physical works suggested by the Council¹⁴¹, comprising perimeter bunds and a flood gate are not necessary, firstly, as occupiers would be evacuated in advance of flooding and secondly, that the floor levels of the units could be set at 3.0 metres AOD, above the flood level anticipated by the Council.
- 10.10. In addition to these management and physical controls, AN complies with the Agency guidance on how to prepare the site to minimise flood risk.
- 10.11. The business is not currently sustainable notwithstanding the possibility of partial recovery from recent lockdowns. The scheme would enable AN to establish the site as a higher end business that still has the lake as a leisure attraction with a tranquil natural environment. The twin unit static holiday lodges would accommodate a maximum occupancy of 6 people in 3 bedrooms and would have an ex-works starting price of between £72,000 and £89,000 plus optional extras. The capital income from the initial sale and selling-on of units plus an annual site fee to cover costs will generate a guaranteed income irrespective of weather conditions that impact on touring site occupancy.

¹⁴⁰ Mr Clover re-examination.

¹⁴¹ EL1.1.

- 10.12. Investment of this level of expenditure in a holiday lodge can only be justified by gaining the maximum permissible seasonal occupancy. Without the premium rate high season of the Christmas/New Year period, investors would simply look elsewhere. The availability of the longer season on other sites in the area is a strong disincentive for potential investors to purchase an expensive caravan with only the shorter season available.
- 10.13. A small increase in direct employment on the site would be likely to result from approval and implementation of the application and it would increase expenditure into the local economy by attracting a longer-term holiday clientele to gain maximum benefit from a substantial outlay.¹⁴² This would add to spending into local services and facilities such as shops and eating establishments, and cultural and sporting venues.
- 10.14. The Agency challenges whether the proposal can meet the Exception Test as set out in Framework paragraphs 163, 164, 165 and 166. The Exception Test can be satisfied by the imposition and implementation of planning conditions and by local authority licencing of the site. These measures will reduce flood risk to a minimum during the additional two months of seasonal opening and they will add to the beneficial management of flood risk during the remainder of the year.
- 10.15. Framework paragraph 82 expects planning policies to positively encourage sustainable economic growth, to seek to address potential barriers to investment such as inadequate infrastructure and be flexible enough to accommodate needs not anticipated in the plan. Paragraph 84 expects planning decisions to enable sustainable rural tourism and leisure developments which respect the character of the countryside and to retain and develop accessible local services and community facilities including local shops, meeting places, sports venues, open space, cultural buildings, public houses, and places of worship. Paragraph 92 expects planning decisions to achieve healthy, inclusive, and safe places including support for healthy lifestyles, safe and accessible green infrastructure, sports facilities, local shops, and encouragement of walking and cycling.
- 10.16. The Agency contends that it is not possible to mitigate the impact of the development by evacuation of caravan sites and that there would be increased risk to the resident population by overstressing the emergency services. This misses the point that by implementing the FWEP there would be no holidaymakers to evacuate because they would already have left the site prior to a flood event. Therefore, approval of the application would not cause the "extreme difficulty" for the emergency services that the Agency suggests.
- 10.17. The LRF advises that with all year-round occupancy a small additional number of residents may need assistance with evacuation.
- 10.18. The Agency places significant emphasis on the appeal decision reference APP/D2510/W/19/3224108¹⁴³. However, each planning proposal should be considered on its own merits. Whilst in that other case the Inspector

¹⁴² ID37b.

¹⁴³ CD27.

concluded that flood risk was unacceptable there is no indication in his decision that he was made aware of the LRF 2010 statement that its concerns were principally related to year-round occupancy and not the extended season. Obviously, he would not be aware of the LRF Coastal Mass Evacuation & Shelter Plan dated January 2020 which is dealt with below. There is no indication that he was asked to consider the conditions that are now put forward in AN's case. Therefore, that appeal decision has little weight in considering the current application.

- 10.19. It is important for the purposes of this application that the LRF Coastal Mass Evacuation & Shelter Plan dated January 2020 – CD11 significantly updates the LRF position on caravan occupancy. In summary it states that *'An essential early step in any evacuation will be to engage the District Council Licensing teams, Environment Agency, and other stakeholders in order to reinforce contact with all sites known to have all year around occupancy. It is anticipated a small additional number of residents may need assistance with evacuation.'* The likelihood of 100% evacuation is reinforced considerably in respect of AN's proposal because planning permission could be granted subject to stringent seasonal and holiday only occupancy and flood risk management conditions.
- 10.20. Contrary to the Agency's contentions, there is no evidential basis for its assumption that occupiers on the site would require assistance with evacuation. If they could not drive, the site operator would be able to assist.
- 10.21. AN considers that the Agency has adopted an overly simplistic approach to extending the holiday season, without giving proper weight to the means by which its concerns over flood risk can be overcome by the imposition and implementation of planning conditions. It has not adequately considered the advice of the LRF regarding the likelihood of holiday caravan occupiers requiring evacuation.
- 10.22. For these reasons, approval and implementation of the application is the only realistic future for the business.

11. The Case for Ellis Bros Contractors Ltd (EBC)

- 11.1. In January 2020, the Council hosted a seminar at Butlins asking us all, if we wanted to extend our seasons, to let Mr Leader and Mr Edwards know and submit appropriate applications to vary conditions. The response was immense.
- 11.2. EBC wishes to stress the point that its application is to extend the holiday season on an existing, trading holiday park and is not a new site application. Skegness Water Leisure Park (original areas) currently has permission for 700 static holiday caravans, allowed to be occupied from 1 March to 5 January. It is only the South Fields development, which is wholly within the same Park, intrinsically linked by the same roads and infrastructure, that is subject to 15 March to 31 October season. The caravans at South Fields are 50 metres from the nearest other Park caravans.
- 11.3. One of the key influencing factors behind EBC's application, other than the difficulty in attracting customers to South Fields, is that in recent years, the

Council has granted extended season permissions to a number of existing and new sites in the Skegness & Ingoldmells areas and all EBC is asking for is a 'level playing field'. For example, 'Priory Park' on Anchor Lane, Ingoldmells has a 1 March to 5 January season, but EBC's other site, 'Waterford', on the opposite side of the A52 and 50m further from the sea than Priory Park is restricted to the similar 15 March to 31 October season.

The Framework

- 11.4. The Inspector has confirmed that evidence to the Inquiry should address the extent to which the application is consistent with Chapter 14, the extent to which the application is consistent with the Development Plan and any relevant other matters, including economic arguments.
- 11.5. Paragraph 159 of the Framework seeks to avoid inappropriate development in areas at risk by directing development away from the risk area. However, the enormous tourist industry, including caravan parks on the Lincolnshire coast cannot be directed elsewhere. 95% of tourists want to be at the coast. Paragraph 163 indicates that if it is not possible to re-direct a development proposal to an area with a lower risk of flooding, the Exception Test may be required, the details of which are set out in paragraph 164.
- 11.6. For the Exception Test to be passed it should be demonstrated that the development would provide wider sustainability benefits to the community that outweigh the flood risk. The previously approved scheme¹⁴⁴ includes a phased development of community facilities such as football pitch, indoor sports facilities and tennis bubble, all to be available to the general public and the plan also included extensive environmental improvements, including an additional lake, nature trails, wild butterfly garden and bee hotels. The scheme would also generate jobs and result in increased local spending by customers in local businesses.
- 11.7. In accordance with the requirement of paragraph 167 of the Framework, EBC has submitted a site-specific FRA in support of the application and has also submitted a copy of its 2010 FRA for the approved scheme. The Framework seeks to ensure that within the site, the most vulnerable development is located in areas of lowest flood risk and that development is appropriately flood resistant and resilient.
- 11.8. The 2010 FRA confirmed that in February 1953, the only recorded previous instance of coastal flooding in Lincolnshire and before hard sea defences existed, Skegness and in particular the land forming SWLP, were unaffected by the flooding. It made reference to the 2005 SFRA, which indicated in the context of flooding from the sea that:

'in general the defences are in good condition. It is considered that the defence system will remain robust up to about a 2% AEP¹⁴⁵ event, although the section within the SFRA specifically about Ingoldmells notes that some areas may be protected up to a 1% AEP event...The EA confirmed that the current strategy provides an overall 0.5% AEP

¹⁴⁴ CD42 Appendix 6.

¹⁴⁵ Annual exceedance probability.

standard of protection, with this likely to extend at least into 2014...the SMP2 is currently under development...The EA confirmed that the draft preferred policy being put forward for consultation adjacent to the proposed development is 'Hold the Line' for the plan period (100 years) with 'Managed Retreat' to be considered where appropriate from 50 to 100 years following the commencement of the SMP...It can be concluded that the current level of protection-which is likely to be to 0.5% AEP-will be maintained for a significant proportion of the lifetime of the proposed development...Part c) of the Exception Test requires it to be demonstrated that the site is safe from flooding to an acceptable standard. The standard of protection afforded to this site by existing flood defences exceeds 0.5% annual probability, which is considered to be an insurable risk by the insurance industry.' The 2010 FRA concluded that 'Flooding of the site from the sea could occur for events exceeding 0.5% AEP or from breaches (residual risk)...There is however, adequate time for flood warnings to be issued and evacuation of the site to be safely conducted'.

- 11.9. Around half of the total approved site, the eastern section, was set aside for a community football field, nature walks, fishing pond and wild butterfly garden. This reflected the situation that this half of the site was naturally at lower ground levels. The approved development incorporated flood resilience measures, including ensuring that finished floor levels are no lower than 2.3 metres AOD or 0.6 metres above ground level, whichever is highest, and all caravans are securely anchored to their bases. The purpose being to reduce the risk and impact of flooding.
- 11.10. The application site has a FWEP in place. EBC acknowledges that, in light of evidence given at the Inquiries, the FWEP submitted in support of the application is inadequate and would need to be reviewed. However, EBC knows that it can evacuate all of its customers from the site quickly and safely. When the Covid-19 lockdown was announced on 23 March 2020, nearly all of EBC's static holiday caravans and seasonal tourers were occupied. By mid-day on 24 March 95% of owners had been evacuated off site, with the stragglers gone by lunchtime on 25 March. This was repeated when SWLP was forced to close again on 5 November 2020, with all occupiers having left the site within 18 hours of the announcement. In the event of evacuation, everyone who comes to the site has their own vehicle and EBC has 4 vehicles that could be used to assist people to evacuate if necessary.
- 11.11. More generally, by 23 March 2020, most static and seasonal touring caravan parks on the coast were open and approaching 75% occupancy, as happens every March. By noon on 25 March 2020, all had been evacuated due to Covid-19 and the national lockdown and as a business manager and Chairman of Lincolnshire Caravan Park Watch, Mr Chappell is not aware of one site having to call on the emergency services to assist anyone to return to their permanent home.
- 11.12. At the request of the Council, a circular email was sent by Mr Chappell to all Caravan Park Watch members on 16 March 2021, asking if any site owners or operators have ever had to evacuate their sites due to a flood risk, whether they had to call on the emergency services to assist with

evacuation and whether any customers have been trapped by, injured or harmed by or killed by flood risk events. He has confirmed that not one site owner/operator, nor Lincolnshire Police have experienced any of these occurrences since 1953.

- 11.13. EBC considers that its proposal complies with the Framework.

The Development Plan

- 11.14. EBC considers that the application complies with the following Development Plan Policies:

- 1) Policy SP2-Sustainable Development. It contains a presumption in favour of sustainable development (as defined in the Framework) and developments that accord with the policies in the Local Plan will be approved without delay unless material circumstances indicate otherwise.
- 2) Policy SP10-Strategic Policy-Design. In particular criteria 2 to 9.
- 3) Policy SP17-Coastal East Lindsey. 'A high priority will be given to development that extends and diversifies all-year round employment opportunities, contributes directly to the local economy and infrastructure or extends and diversifies the tourism market'.
- 4) Policy SP19-Holiday Accommodation. Criterion 5 indicates that the Council will support new and extensions to caravan, camping and touring sites, where the development adjoins or is in a town, if the applicant can demonstrate that the development will add to the built and natural environment.
- 5) Policy SP21-Coastal Employment. 'Support the coastal rural economy where it provides local Employment and helps support local services'.
- 6) Policy SP23-Landscape. EBC considers that there is no doubting its green credentials. The warden of the Gibraltar Point nature reserve, who carries out our wildlife audit under the David Bellamy Awards, has frequently stated that Park visitors can see more diverse wildlife at the Park than they can at the nature reserve.
- 7) Policies SP24-Biodiversity and Geodiversity and SP25-Green Infrastructure. EBC has won David Bellamy Gold Conservation Awards for ten consecutive years via the British Holiday & Home Parks Association for its outstanding contributions to the environment, creating numerous wildlife habitats all within a busy holiday park. EBC has no problem adding the land to the east of South Fields to this environmentally friendly area of the Park but again, this has a cost effect on the business and to be able to "do justice" to the environment, EBC need to be able fund this and support it from business revenue in the future.
- 8) Policy SP26-Open Space, Sport and Recreation. As indicated the approved scheme includes a community football field, nature walks, fishing pond and wild butterfly garden.

Economics

- 11.15. The CS was adopted in 2018. The review process is already out for consultation and EBC has contributed to that. However, the world, including East Lindsey, is very different today to how it was in 2018 and the prolonged impact of Covid-19 means that with the effective loss of 5 months' trade for caravan and holiday parks out of a 10-month season, including three major bank holiday weekends, the local economy, like many, was very badly hit and 2021 has started out in the same vein. It is therefore even more important now that Local Plan policies to encourage economic growth are supported and approved. The Lincolnshire coastal resorts have been identified by HM Treasury as having 'deprived' status, due to the seasonal employment patterns and Skegness has been awarded £25 million under the Towns Fund to try to redress part of the problem. The biggest cause of this deprivation is seasonal unemployment and lower average wages.
- 11.16. By allowing businesses like SWLP to trade over part of the winter, to certainly include the potentially lucrative Christmas & New Year period, EBC can afford to retain some seasonal staff for longer. If allowed to open until 5 January, by the time those staff return from their paid annual holiday entitlements, they could start returning to work to re-open on 1 March.
- 11.17. Under the terms of the planning permission for the site EBC is obliged to provide the sports facilities after it sells the first 50% of the 189 no. approved caravan units. In the 6 years since opening there are currently around 27 units on site. With the current 15 March–31 October season, a leisure centre such as that contained in the approved scheme would not be viable. Not only would EBC be unable to sell enough caravans on to the development to pay for the money invested in developing it, but the leisure facilities will never get built and nor will the remaining 97 pitches, which would also lead to a loss of construction jobs from the company.
- 11.18. Numerous letters of support for this and the other applications from businesses within the area have already been sent directly to the Planning Inspectorate, outlining the importance of and contribution made to the local economy by the caravan sector.
- 11.19. The GB Tourist Report 2019, produced for Visit England, concluded that the home tourist market accounts for almost 10% of GDP and 11% of all jobs. Of course, in an area like East Lindsey and in particular on the coast, these figures bear no relation to the percentages, which are more likely to account for 90% of local GDP directly and indirectly and similar percentage of jobs.
- 11.20. *Pitching the Value: 2019 Economic Benefit Report: Holiday Parks and Campsites UK* by Frontline and the UK Caravan & Camping Alliance (Pitching the Value Report) identifies a significant weakness as being 'Planning Issues', more specifically, planning policy reduces the ability of businesses to expand to align to any growth in visitor numbers. It also indicated that static holiday caravan owners spend on average £89 per day when they visit their caravan. If we could build out the development of 189 pitches by having the extended season, that would equate to 189 x £89 (2018 prices) = £16,821 per day additional income into the local area.

Conclusion

- 11.21. In January 2020, ELDC hosted a seminar at Butlins asking if operators wanted to extend their seasons, to let Mr Leader know and submit appropriate applications to vary conditions. The response was immense. EBC considers, as it originally did with this development, that it has satisfied the Sequential and Exception Tests as well as the requirements of Framework.
- 11.22. EBC estimates that the 2020 lockdown cost its business alone £1.5 million, representing 25% of its gross income. Whilst Government aid measures have helped EBC to survive, this is a massive loss to a family company like EBC, which is just one of many such businesses. These losses also apply to the café and bar owners, the burger joints, the seasonal shops and the attractions. These are all businesses that like EBC, could trade 12 months a year if enough customers are about and it needs to recoup income and reserves as quickly as possible as lockdown eases to not only survive but get back to growth. There is therefore a strong argument that EBC should in fact be applying for 12-month seasons, not 10.5 months, but as outlined at least 1 March to 5 January opening would enable the caravan park sector to make a huge difference to seasonal unemployment and deprivation.
- 11.23. Furthermore, very strong signals are being sent out by the UK Government at the moment that foreign holidays could be prohibited until at least September 2021. Whilst this means that the summer season of 2021 could therefore be a record breaker, when schools re-open in September, family holidays with children in the UK tend to wither away, except for October half-term. However, to maximise income and make up for lost ground over 2020/21, UK destinations such as Scotland, Wales, West Country, Yorkshire etc will all be gearing up to pull in Autumn & Winter trade from people without children, desperate to make up for lost time. These are all areas subject to regular rainwater flooding in winter. Are East Lindsey businesses going to be deprived of this market because of one incident that occurred 70 years ago, following which huge initial and ongoing maintenance of hard sea defences has been made by successive UK Governments?
- 11.24. EBC is in business, and therefore has to make money to survive, this isn't about business wanting to blatantly ride roughshod over flood advice from the Agency.
- 11.25. Finally, EBC takes its safety responsibilities seriously. In 2011 a toddler drowned in one of SWLP's lakes and Mr Chappell dealt with the Police, the Health and Safety Executive, the Council, the Coroner and brought in counsellor to support staff. EBC does not want staff to die or be injured. It doesn't want staff to have to deal with the after-effects of a massive flood such as multiple deaths or injuries, nor to lose customers, many of whom are friends, not just a number. That is the whole point of building flood resilience into the design stage in planning terms and with an effective evacuation plan in case 1953 happens again. Furthermore, it is very common for business owners and operators to live either on their Parks or in the same local community, so if there's a flood risk event, it won't just affect EBC's businesses, customers or staff, it will affect families, friends and homes as well. Therefore, EBC takes great issue with any person or

organisation who may try to insinuate that approving such applications may constitute a reckless or needless disregard of a possible risk.

12. Written Representations

12.1. This section summarises the gist of the responses received in support of the proposals from other parties by the Planning Inspectorate.

12.2. ***D Baxter-Saife*¹⁴⁶, *L Boulter*¹⁴⁷, *N Spalding*¹⁴⁸, *T Owen*¹⁴⁹, *T Hall*¹⁵⁰, *L Hall and Dean Wann*¹⁵¹ (IP1)**

12.2.1. IP1 consider that the caravan park sector contributes greatly to the Lincolnshire Coast economy, and the benefits that would arise from parks being able to operate with extended seasons are many:

- 1) The East Lindsey coast only has one 'industry', leisure and tourism and it needs to become more competitive with other areas of the UK and Europe;
- 2) Areas with annual winter rainwater flooding, e.g. the Lake District and Wales have year-round tourism. IP1's customers also want longer seasons;
- 3) Caravan parks form by far the largest sector of the leisure and tourism industry in East Lindsey and customers support many local businesses and trades;
- 4) Cottage industry in this area is predominant and IP1's shops sell products on behalf of those businesses;
- 5) The holiday industry has been decimated by Covid-19, with parks shut from 24 March to 4 July and again from 4 November for those allowed to open until 5 January. In February 2021 IP1 had no idea when they would be allowed to reopen in 2021, causing significant stress and uncertainty for site owners and customers;
- 6) Longer seasons would generate significant additional income locally and drastically reduce winter seasonal unemployment;
- 7) The only recorded flood on the coast occurred nearly 70 years ago. In 1953, there were no permanent, hard sea defences. Now there are significant defences, for businesses, homes and families; and,
- 8) Any application to extend the season should be accompanied by a Flood Risk Assessment and Flood Evacuation Plan, IP1 want customers to return, not drown.

¹⁴⁶ The Nurseries Caravan Park.

¹⁴⁷ Woodhall Country Park.

¹⁴⁸ East View Caravan Park.

¹⁴⁹ Manor Farm Caravan Park.

¹⁵⁰ George Bateman and Son Ltd.

¹⁵¹ Manor Crest Construction Ltd.

- 12.2.2. In their view, if the applications are approved, East Lindsey District Council can formally adopt the proposed Local Development Order (LDO) and extend park seasons to at least cover the 1 March to 5 January period. This would provide exactly the sort of 'bounce back' economic activity that the Government wishes to encourage.
- 12.2.3. IP1 indicate that the GB Tourist 2019 Report, pre-Covid-19, assessed the holiday tourism industry in England as generating £11 billion, with £6.3 billion spent on accommodation and travel and a massive £4.7 billion on shopping, food and drink and entertainment. The UK tourism industry accounts for almost 10% of the UK's total GDP and over 11% of all jobs in the UK. It is therefore a highly significant 'economic player' nationally.
- 12.2.4. Furthermore, the UK Caravan and Camping Alliance's 'Pitching the Value' report highlighted 'planning issues, reducing the ability to expand to align to growth in visitor numbers' and 'restrictive legislation' as key issues in holding back the caravan and camping sector's ability to develop and grow.
- 12.2.5. IP1 consider that as the UK emerges from current Covid-19 restrictions, people will want to holiday more and for longer and those areas of the UK with longer holiday seasons will benefit significantly over those areas with restricted seasons. Most park businesses operate at full capacity in July and August and over Bank Holidays. Therefore, the greatest opportunity for growth is in the 'shoulder months' of March-June and November-January, especially Christmas and New Year periods.
- 12.2.6. IP1 indicate that most modern/new holiday caravans come with double glazing, insulation packs, central heating, lagged pipes etc. They are easily capable of accommodating tourists year-round in comfort, as are glamping pods, camping pods, yurts etc.
- 12.2.7. Furthermore, many park businesses employ local staff and buy local wherever possible. Many also support their local communities through hosting charity events and sponsorship.
- 12.2.8. IP1 therefore wish to support East Lindsey District Council and the three applicants in applying to allow season lengths on caravan parks to be extended to include a minimum 1 March to 5 January period, if backed by suitable Flood Risk Assessments and Flood Evacuation Plans.
- 12.3. **M Wright**¹⁵² (MW)
- 12.3.1. In addition to the points made by IP1, MW indicates that:
- 1) Holiday caravan owners invest significant sums in their holiday accommodation and want to feel a justified return for that investment; and,
 - 2) The 'bounce back' economic activity that would result from the proposals would create more employment, improve customer spend and boost Treasury coffers with respect to increased revenues from VAT, PAYE, Corporation Tax and self-assessment earnings.

¹⁵² Springs Holiday Estates (Lincolnshire) Ltd.

- 12.3.2. Furthermore, MW believes it is highly disingenuous and inaccurate for anyone to suggest that his industry is trying to put profits before the safety of staff and customers. The Agency has implied that it is 'unreasonable and unrealistic to assume that Caravan Park businesses would be able to effect their Flood Evacuation Plans in the event of a flood occurring'. This is deeply offensive and highly inaccurate. Most sites have now signed up to 'Flood Alert'. The last times storms were predicted that could cause localised flooding in 2012, there was 5 days clear warning of the event.
- 12.3.3. On 24 March 2020, the Prime Minister ordered the first national Covid-19 lockdown and in the detail, it identified that this included caravan parks and holiday homes with immediate effect, which had only just opened for the 2020 season. MW indicates that parks effectively enacted their Flood Warning Evacuation Plans to follow this instruction and all achieved the total closure of parks within 24 hours. This occurred again locally on the 4 November 2020. He asks on what basis do the Agency claim that the Parks are unable to evacuate when required to do so?;
- 12.3.4. Springs Holiday Estates (Lincolnshire) Ltd has previously been granted planning permission by the Council for the extension to an existing park where the season length of the park is 1 March to 5 January. Although the existing opening dates were unanimously supported by the Planning Committee during the planning meeting, the Agency required a condition to be included that the extension could only open from 15 March to 31 October each year, notwithstanding that this extension was only 5 metres from the existing caravans. The approved extension would have meant an investment in the local area of £1.2 million in infrastructure (including wages and materials), a further two full time and one part times staff being employed. It included environmental improvements and improved road safety measures. Sadly, due to the restrictive opening period imposed by the Agency, even though it approved the submitted Flood Risk Assessment and Flood Evacuation Plan, it is highly unlikely the investment will take place in East Lindsey unless the restrictions are removed.
- 12.3.5. Springs Holiday Estates (Lincolnshire) Ltd has three holiday parks which are currently permitted to open until 5 January each year and a further two parks which are restricted to opening until 30 November each year, all within 2 miles of the coast. The picking and choosing of restrictions by the Agency make it impossible to plan for investment and discourages new businesses from investing in the area.
- 12.3.6. MW believes it is for the local planning authority to decide a planning application and other departments feed into the process as advisors. For the Agency to impose these restrictions on development shows that it does not have the breadth of knowledge to understand the demands and benefits of, and for, the local economy and it is no longer acting as an advisor to the local planning authority but is deciding on its future failure.

12.4. ***R Surtherland***¹⁵³ (RS)

- 12.4.1. RS indicates that a healthy coastal economy is vital for East Lindsey and the old notion of a holiday season beginning at Easter and ending in October is outdated and the accompanying licence periods are archaic. The caravan product and the parks have modernised and yet the criteria for being able to use those facilities have remained firmly in the past; it is inconsistent and not fit for purpose.
- 12.4.2. Seacroft Holiday Estate Ltd has to compete with the rest of the UK and provide an attractive environment to encourage customers to come to the area. To do this requires investment and a return on investment. RS considers it is obvious when you go to local seaside towns that they have suffered from a lack of investment and it is no surprise or coincidence that the East Lindsey coastal strip features in the Government's most deprived areas in England map. Whilst extending the season isn't a silver bullet for all social and economic problems, it would be a step in the right direction. There would be more direct and indirect employment, and sites could say "we are open" and "we can do" not "we are closed and we can't accommodate you".
- 12.4.3. With regard to the Agency's objection, RS considers there is no doubt that, in a worst-case scenario, parks would be able to put their evacuation plans into practice and effectively and safely clear parks of their occupants. This has been proven in recent closures. There has been no coastal flooding since 1953, which pre-dates the defence wall and beach nourishment, and instant access is now available to advance weather warnings ensuring risks would be identified well in advance.
- 12.4.4. RS expects that as we emerge from the current restrictions there is going to be demand for UK holidays. There is an opportunity to provide a great customer experience and for that business to be repeated. If holiday park accommodation can be offered for some additional weeks, the benefits in more employment and additional investment would impact on the local economy, which is precisely what the country and the Government needs to begin to recover from the crisis. It would take the coastal strip of East Lincolnshire forwards and allow the area to compete with other destinations.

12.5. ***Lincolnshire Coastal Destination BID*** (LCDB)

- 12.5.1. The Council wanted to introduce a Local Development Order (LDO), which LCDB fully supports to enable site owners/operators to extend their season to:
- 1) Claw back extra seasonal weeks of business for sites and local ancillary businesses (e.g. attractions, restaurants, cafes, pubs and shops etc) following lockdown as part of the 'bounce back' initiative of the Government to boost the UK economy;
 - 2) Enable businesses to retain seasonal staff for longer to minimise the cycle of winter benefit and dependency;

¹⁵³ Seacroft holiday Estate Ltd.

- 3) Provide an economic stimulus to the Lincolnshire coast resorts, which the Government identifies as a deprived area; and,
 - 4) Assist in attracting additional investment into the area, creating additional new jobs and career prospects, obviously revolving around leisure and tourism.
- 12.5.2. The LCDB catchment area includes over 20 miles of coastline and within that area, approximately 1450 levy paying businesses are working hard to survive the implications of Covid-19. The main thrust of the case for change, put forward by the Council, is that of economics and the importance that leisure and tourism, in this case specifically the holiday park industry, has the freedom in planning terms to respond to future challenges and customer demand. The most likely outcome of Covid-19 in tourism terms is a much greater demand for 'staycations'. It is imperative that the opportunity is taken to utilise future year winter seasons to recover the deprived economy. Implementation of the proposals can only increase much needed regeneration of the area and mitigate the risk of customers visiting alternative destinations within the UK, where winter tourism is not only permitted, but actively encouraged.
- 12.5.3. The extension of the season and Coastal LDO is of paramount importance to assist in the rejuvenation and transformation of the local economy, as well as supporting coastal businesses and communities, who have suffered tremendously as a result of Covid-19 and the ongoing and ever changing restrictions. According to data derived from the 'Indices of Deprivation 2019' maps, these areas are currently recorded as amongst the 20% most deprived neighbourhoods in the country and therefore, this process can only bring much needed positivity, economic growth and prosperity to the area.
- 12.6. **G Rowland**¹⁵⁴ (GR)
 - 12.6.1. East Lindsey has a wide range of parks, each one different; from small camping and touring parks all the way to the large 'Butlins', each providing a different choice of facilities and entertainment. The key factor here is the customer has the ability to choose what sort of lifestyle they want from the parks. With respect to planning and the Agency, Holivans Ltd ability to choose the length of season is restricted and this affects the investments it makes.
 - 12.6.2. GR indicates that Holivans Ltd puts the safety of its staff and customers at the top of the list. 15 years ago it used to lay its staff off for the winter. Now under normal circumstances, it employs the majority of staff all year round. It has to, as staff retention is critical. Otherwise the more mobile work force leaches away to London and with the new Brexit employment laws, this could happen even more. If it loses its trained and qualified staff, the business has to re-train what employees are left in the area, which is costly and time consuming. In GR's view, the length of the holiday season has a direct effect on this.

¹⁵⁴Holivans Ltd.

- 12.6.3. Holivans Ltd chooses to employ local staff and buy local wherever possible. GR indicates that during the season its customers support local retail businesses that would not be able to survive otherwise. As the East Coast emerges from the Covid-19 restrictions, there are over 6 million people within 2.5 hours driving time of the East coast. With future Covid-19 restrictions and international travel compromised for some time to come, a new customer is choosing a longer-term domestic holiday, such as a central heated, double glazed caravan that can be used in the extended season. This is a compelling argument in support of longer seasons.
- 12.6.4. With a longer season comes extra responsibility; parks have submitted Flood Risk Assessments and Flood Evacuation Plans. Holivans Ltd has also advised customers to sign up for the Agency's flood warnings.
- 12.6.5. The Holivans Ltd.'s evacuation plan was enacted when the Covid-19 lockdowns were ordered by the Government in March and November 2020. GR identifies that the parks were shut within 24 hours of the instruction being given.
- 12.6.6. GR indicates that flood risk on the east coast only happens twice a day. That is at high tide. This is predictable and at the times of the year when the risk is greater, there can be up to 5 days notice. Furthermore, this is a time of year when holiday homes are not so well occupied and so evacuation would not result in a mass exodus. This is different to a sustained flood risk from rivers, which can be the subject of flash flooding resulting from localised rainfall.
- 12.6.7. GR considers that the proposals provide an opportunity for the parks to expand their customer base, to include those who now choose not to fly and chose a reduced carbon emissions holiday. If they cannot be accommodated, they will go elsewhere, to the detriment of the East coast.

13. Inspector's Conclusions

13.1. The following conclusions are based on the oral and written evidence given to the Inquiries as well as the accompanied and unaccompanied visits made to the sites and the surroundings. The numbers in square brackets [] refer back to earlier paragraph numbers.

13.2. *The extent to which the proposed developments are consistent with the Development Plan for the Area*

Application of CS Policy SP19

- 13.2.1. Whilst I acknowledge that CS Policy SP19(7) does not expressly address applications made under section 73 of the *Town and Country Planning Act 1990* (1990 Act), in my experience it is not usual for Development Plan policies to make express reference to particular types of application. Furthermore, such applications are not treated differently from other types in terms of the application of Development Plan policy. In any event, CS Policy SP19(7) seeks to control occupancy periods and so, contrary to the view of the Council, I consider that it is clearly applicable to applications to vary such conditions.^[7.3.15, 8.2.7]
- 13.2.2. As to the two approaches to the interpretation/application of CS Policy SP19 suggested by the Council, in my view, both Policy SP19(7) and SP19(8) potentially have a part to play in the consideration of applications to vary occupancy periods.^[4.11-14, 8.2.8]
- 13.2.3. The reasoned justification for Policy SP19 indicates that SP19(8) is intended to apply to 'caravans in the coastal area', whereas SP19(7) is intended only to apply to those 'in the coastal zone in the high risk areas'. Firstly, it appears to me the 'coastal area' and 'coastal zone' are one and the same. The CS Key Diagram¹⁵⁵ identifies the area at risk from tidal flooding along the eastern side of the District as Coastal East Lindsey, the definitive boundaries of which are shown on the Policies Map. *Policies Map 2-Coastal Zone/Coastal Flood Hazard Areas*¹⁵⁶ shows the red (danger for all), orange (danger for most), yellow (danger for some) and green (low hazard-caution) areas. The introduction to CS Chapter 10 confirms that the coastal area is defined by the area shown on the Coastal Flood Hazard Maps and Annex 2 indicates that the Coastal Zone is defined in the same way. Secondly, the precise meaning of 'high risk areas' is not set out in the CS. However, in the absence of any indication in the CS that the likelihood of the breach scenario relied upon is other than constant along the coast, then the sensible interpretation is that the high risk areas include the three 'flood hazard danger' areas and exclude the low hazard area.^[7.3.13] My view in this regard is reinforced by:
- The SFRA which indicates that 'For the purposes of the Plan it has been agreed that only the areas defined by the red, orange and yellow zones will be considered at risk...'¹⁵⁷

¹⁵⁵ CD1 page 5.

¹⁵⁶ CD1 page 7.

¹⁵⁷ CD2 page 23.

- the Excel version of the SRFA Appendix 1-Advice Matrix, referred to by CS Annex 2, which advises that an occupancy restriction consistent with SP19(7) should apply to caravans in the three flood hazard danger areas, but does not advise that for those in the low hazard area.¹⁵⁸
- 13.2.4. Therefore, SP19(8) is intended to apply to a wider area (all four areas) than SP19(7) (the three high risk areas).
- 13.2.5. As regards the first approach to the interpretation of SP19 suggested by the Council;^[8.2.7] I consider that the Council is wrong to say that *'SP19 operates to prevent an application to extend the season unless it is accompanied by an application to extend or redevelop a site which already benefits from a season that lies outside the period 15 March to 31 October, in which case it accords with policy'*. The SP19(7) exemption only applies if there is also no net increase or an overall reduction in units.
- 13.2.6. Furthermore, I do not agree with the five reasons given by the Council for its preference for the second approach, to the effect that *'provided a section 73 application does not propose all year round use or permanent living on a site, or any part of it, permission may be granted subject to compliance with part (b) of the Exception Test'*.^[8.2.8] I respond to each in turn:
- 13.2.7. First, as set out above, the scope for application of Policy SP19(8) is wider than SP19(7) and so the control exercised by the latter over applications to vary occupancy does not render SP19(8) otiose.^[8.2.8.1]
- 13.2.8. Second, CS Policy SP19(7) indicates that *'where it is proposed to extend the area of or redevelop an existing site that currently has a different occupancy period...the existing occupancy period will continue to be applied to the whole site'*. I have had regard to the Council's view that if the proposals at South Fields and Meadowbank involved notional redevelopment, through the deletion of a single caravan, then they would accord with its suggested first approach.^[8.2.8.2] However, neither of the proposals associated with those applications before me involves an extension to the area of or redevelopment of those existing sites and so they do not qualify under the Policy SP19(7) exemption. Even if they did involve extension or redevelopment, I do not agree with the suggestion that SP19(7) would admit "gaming", for the reasons that follow.
- 13.2.9. I share the view of the Agency that the exemption does not mean an application site, if part of a larger caravan park with different occupancy periods, takes the benefit of the longest period of occupancy currently to be found on the larger caravan park if that part of the caravan park benefiting from the longer period is not part of the application.^[7.3.13-15] It means the site as extended or redeveloped. Neither of those application sites has a different occupancy period to that in Policy SP19(7). Therefore, irrespective of whether those applications included the deletion of a single caravan, the exemption would not apply.

¹⁵⁸ ID30.

- 13.2.10. Furthermore, the exemption does not make provision for an application site that has 2, or more, different occupancy periods. It refers to *'an existing site that currently has a different occupancy period, but where no net increase or an overall reduction...would result'* and indicates that *'the existing occupancy period will continue to be applied to the whole site'*, and the reasoned justification explains the aim is that *'no disadvantage should result, i.e. the existing occupancy period will be retained'*. I consider that, in effect, the policy seeks to prevent any increase in the number of units with an occupation period longer than that set out in Policy SP19(7). Therefore, even if an application site with 2 or more different occupancy periods fell within the scope of the exemption, it would be expected that the number of units with occupancy periods longer than that set out in the Policy would not increase.
- 13.2.11. Third, Policy SP19(7) indicates that *'Occupancy of caravan, log cabin, chalets, camping and touring sites will be limited to between 15th March and 31st October in any one year, or the following Sunday, if the 31st does not fall on a Sunday, except where it is proposed to extend the area of or redevelop an existing site that currently has a different occupancy period..'* Whilst the exemption to the occupancy period in Policy SP19(7) is concerned with the extension or redevelopment of an existing site, the application of the SP19(7) occupancy restriction is not otherwise limited. As set out above, I consider that it is applicable to proposals to vary site occupancy conditions.^[8.2.8.3] For example, if as a result of a proposed extension to a season, the occupancy period remained within that set out in Policy SP19(7), there would be no conflict with the Policy. Furthermore, if a site with a longer occupancy period is to be extended or redeveloped, providing there is no net increase in the number of holiday units, the longer occupancy period would continue to apply to the units within the whole site and there would be no conflict with Policy SP19(7). However, if the effect of the proposal would be to increase the number of units with a longer season, it would conflict with the Policy.
- 13.2.12. Fourth,^[8.2.8.4] the Inspectors who examined the CS recommended that Policy SP19 be amended to ensure that no disadvantage should result from a proposal which would not increase the number of units and would reasonably allow operators to upgrade and renew their facilities. To that end CS Policy SP19(7) was amended to include an exemption from the occupancy restriction, which applies to existing sites under certain specified circumstances. Had they intended that proposals to extend occupancy periods would only be controlled by Policy SP19(8) and not Policy SP19(7), as proposed by the Council, that could have been recommended but was not. Insofar as there may be any disadvantage to having more than one occupancy period associated with different parts of SWLP and HVCP, those circumstances pre-date the adoption of Policy SP19 and are managed at present. For these and the other reasons given above regarding the applicability of SP19(7) to proposals to extend occupancy periods, I give little weight to the Council's view that SP19(7) should not apply in these cases.
- 13.2.13. Furthermore, in my view, whilst the exemption is limited to proposals that would not increase or would reduce the number of units on an existing site, it does not follow that Policy SP19 is antithetical to the development of the

tourism offer in the Coastal Zone. The Policy makes provision for such development subject to the occupancy condition. Both Meadowbank and South Fields are subject to the same occupancy restriction and yet have each added units to the tourism offer.

- 13.2.14. In addition, the introduction to Chapter 10 of the CS indicates that its aims include that the Coastal Country Park will be a flourishing area within the coast with farming at its core, providing all year round tourism, access to the coast and business diversification in line with the objectives of the Park, and a place for local people and visitors to go and enjoy its landscape and biodiversity. CS Policy SP20(6) indicates that the Council will support development of the Wild Coast Vision of the Coastal Country Park where it conforms to the principles of sustainable development set out in the policies of this Plan. Insofar as it does not make provision for year-round tourism, CS Policy SP19(7) might be said to jar with the aims of Policy SP20 as regards increasing the choice offered to visitors. However, the same could be said for Policy SP19(8), which does not allow for year-round occupation either. Furthermore, insofar as there is any conflict between Policies SP20 and SP19, the reasoned justification for Policy SP19 acknowledges that a balance has been struck between risk and the impact on the economy of the coast. In my view, this does not weigh in favour of the Council's preferred approach.
- 13.2.15. Fifth, the PPG explains that the Framework sets strict tests to protect people and property from flooding which all local planning authorities are expected to follow. Where these tests are not met, national policy is clear that new development should not be allowed.¹⁵⁹ Whilst I acknowledge that there may be some circumstances in which it is acceptable to allow development in areas that flood, providing it can be made safe for its lifetime, that is not the starting point.^[8.2.8.5] The PPG indicates that the broad approach of assessing, avoiding, managing and mitigating flood risk should be followed.¹⁶⁰ It is first necessary to assess the flood risk, undertake the Sequential Test, with the aim of steering the development to areas with the lowest probability of flooding, and then undertake the first part of the Exception Test, to determine whether the development would provide wider sustainability benefits to the community that outweigh flood risk. Where this is not possible the Exception Test has not been satisfied and planning permission should be refused. Where development needs to be in a location where there is a risk of flooding as alternative sites are not available, local planning authorities and developers should ensure development is appropriately flood resilient and resistant, safe for its users for the development's lifetime, and will not increase flood risk overall.
- 13.2.16. I consider that the approach set out in CS Chapter 10 and the associated Annex 2 is consistent with national Policy and Guidance.^[8.2.10]
- 13.2.17. CS Policy SP17(4) states that '*development will need to demonstrate that it satisfies the Sequential and Exception Test as set out in Annex 2 of this Plan*'. Annex 2 confirms that:

¹⁵⁹ PPG Flood Risk & Coastal Change para 001.

¹⁶⁰ PPG Flood Risk & Coastal Change para 029.

- *'Chapter-10 Coastal East Lindsey sets out the Council's policy approach to development in the Coastal Zone. This policy sets out development the Council will and will not support in this area of flood risk.'*¹⁶¹
- *'One of the aims of the Coastal Policy is to make it clear to those wishing to develop what will and will not be supported by the Council. Development supported by the policy is deemed to have passed the Sequential Test, it must then demonstrate how it passes the Exception Test'.*¹⁶²
- *'With regard to the Coastal Zone and Strategic Policies SP17, SP18, SP19, SP20 and SP21 Coastal East Lindsey, the following developments will be deemed to have passed the Sequential Test...Holiday Accommodation (static caravans...'*¹⁶³
- *'The Exception Test is split into 2 parts. For the Exception Test to be passed: Part 1: it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared;...The table below indicates which type of development is deemed to have passed Part 1 of the Exception Test...Holiday Accommodation (static caravans...'*¹⁶⁴

13.2.18. In my judgement, it is clear, under the terms of Annex 2, that, in order to be deemed to have passed the Sequential Test, development must be supported by the Coastal Policy, which comprises, amongst others, Policy SP19. Policy SP19 supports the provision of holiday accommodation in the coastal zone, in principle, and it is deemed to have passed the Sequential Test. Furthermore, given that the Exception Test is only relevant for development that has passed the Sequential Test, it follows that in order to be deemed to have passed Part 1 of the Exception Test (which is consistent with Part a) of the Exception Test set out in the Framework¹⁶⁵), the development must be supported by Policy SP19.[7.3.17-22]

13.2.19. Further support for the position that compliance with CS Policy SP19(7) plays a part in satisfying Part 1 of the Exception Test is provided by the reasoned justification for the restrictions set out in that Policy. Paragraph 10.28 indicates that they are intended to strike an appropriate balance between risk and the impact on the economy. Furthermore, Chapter 10 sets out the context in which the Council struck that balance. This includes an acknowledgement that the present Shoreline Management Plans advocate a 'hold the line' policy in respect of the coastal defences until 2105. Furthermore, that *'there is a need for an integrated approach to resolving the social, health and economic issues in the coastal area, including the need to diversify the economy and tackle the facets of multiple deprivation associated with low income. To that end, the Council will place a high level*

¹⁶¹ CD1 page 134.

¹⁶² CD1 page 134.

¹⁶³ CD1 page 136.

¹⁶⁴ CD1 page 137

¹⁶⁵ Framework para 164 a).

of weight on proposals that support economic growth and the creation of year round jobs in the coast. In addition, the Council supports tourism development that broadens the range of the present offer'. The reasoned justification for Policy SP19 also acknowledges that 'part of the success of the coast relies on the availability of accommodation for visitors, including caravans...These facilities...are part of a buoyant coastal economy'. To my mind, CS Policy SP19(7) directly addresses Part 1 of the Exception Test.

- 13.2.20. The Council's interpretation appears to suggest that as static caravans are supportive of economic growth, they provide wider sustainability benefits to the community that outweigh flood risk, thereby passing Part 1 of the Exception Test, irrespective of compliance with CS Policy SP19(7).^[8.2.12-16] In my view, that position conflicts with the reasoned justification for CS Policy SP19(7), set out above, which indicates that occupancy needed to be restricted in order to find an appropriate balance between risk and the impact on the economy of the coast. For the reasons set out above, I consider that the Council's position before these Inquiries is wrong.
- 13.2.21. The Council's responses to the Examination of the *East Lindsey Core Strategy and Settlement Proposals Development Plan Document-Inspectors' matters, issues and questions* (MIQs) include, in relation to CS Policy SP19, *'With regard to the Sequential and Exception Test, the Council is only agreeing that these tests are passed for caravan sites as set out in Annex 2 of the plan because of the occupancy restriction'*.^[7.3.7-9] Whilst reference to the MIQs is not necessary to explain the meaning of Annex 2, it adds further weight to my finding that in order to be 'deemed' by Annex 2 to have passed Part 1 of the Exception Test the development must be supported by Policy SP19(7).

Compliance with CS Policy SP19

- 13.2.22. Turning to whether the schemes would comply with CS Policy SP19. With reference to the Agency's Hazard Mapping 0.5% 2115 scenario, which defines the Coastal Area of East Lindsey under the terms of CS Chapter 10 ^[4.1-2], there are parts of the Meadowbank site within the danger for most and danger for all areas. I consider therefore that it falls within the high risk areas of the Coastal Zone. Furthermore, the scheme does not involve an extension to the area or the redevelopment of an existing site that currently has a different occupancy period to that set out in Policy SP19(7). Therefore, it does not meet the exemption criteria. Whilst the proposed occupancy period would not allow for all year round occupancy or permanent living in accordance with Policy SP19(8), it would extend beyond that set out in Policy SP19(7). I conclude overall, that the Meadowbank proposal would conflict with CS Policy SP19.
- 13.2.23. In relation to the site at Willow Tree Farm the Council suggests, with reference to planning permission Ref. N/110/00592/11¹⁶⁶, that the site is not restricted in respect of touring caravans as opposed to static caravans, as the use of the site by touring caravans is not controlled by condition. Furthermore, with reference to planning permission Ref. N/100/00276/13¹⁶⁷,

¹⁶⁶ CD42.

¹⁶⁷ CD42.

the Council suggests that there is no occupancy or seasonal control on the siting of static caravans. Therefore, it considers that the substitution of 15 touring pitches by 15 static caravans would not be development. Nor is the use of the caravan site restricted by a seasonal occupancy condition. Furthermore, on this basis, it considers that the grant of planning permission in the subject case would provide an opportunity to restrict occupancy, reducing it from an unrestricted 12 months per annum to 10 months [8.8.3.1, 8.9.8]. These matters are disputed by the Agency [7.6.1]. Inquiry documents ID11, ID12 and ID24 set out the legal submissions of each party. While I give my recommendations below, this is a legal matter for the Secretary of State to determine.

- 13.2.24. In my view, it was not necessary to attach a condition to planning permission Ref. N/110/00592/11 limiting the site to a touring caravan use, as the permission itself did so properly¹⁶⁸. The description of development in planning permission Ref. N/110/00592/11 defines that a 15 no. touring caravan park is permitted. That this was the limit of the approved use is consistent with the conditions imposed, in particular no. 2, which confirms that all caravans must be removed from the application site outside of the limited annual occupancy period. It is a distinct and narrower use than a general caravan park, which might include static caravans that typically remain in-situ for a number of years.
- 13.2.25. Furthermore, the application subject of planning permission Ref. N/100/00276/13 was made under section 73 of the 1990 Act and only sought to vary condition no. 2 attached to planning permission Ref. N/110/00592/11. In my view, it did not alter the approved use of the site as a touring caravan park.¹⁶⁹ There is no dispute that when issuing a new planning permission under section 73 it is highly desirable that all the conditions to which the new planning permission will be subject should be restated in the new permission and not left to a process of cross referencing. Whilst it appears that the Council was not aware of that, its intention was made clear in the 'note to the applicant' set out in the planning permission. It states that *'the applicant is reminded that this application only varies the terms of condition no. 2 imposed on application N/110/592/11. All other conditions imposed on application N/110/592/11 remain applicable and should be read in conjunction with this Decision Notice'*. In my view, there is nothing inconsistent in their continued operation and the later permission on the same piece of land is compatible with the continued effect of the earlier permission.¹⁷⁰
- 13.2.26. Under the circumstances, I consider that both permissions should be read as only granting planning permission for a material change of use to use as a touring caravan park and that touring caravans must only be on site between 15 March and the 31 October in any one year, except that, in years when the Autumn half term school holiday falls within November then the period is extended to the Sunday at the end of that half term holiday. In my

¹⁶⁸ ID12-Wallv Winchester CC [2015] EWCA Civ 563.

¹⁶⁹ ID12-Finney v Welsh Ministers [2019] EWCA Civ 1868.

¹⁷⁰ ID24-Lambeth London Borough Council Secretary of State for Housing, Communities and Local Government and others [2019] UKSC 33.

view, substituting 15 touring pitches with 15 static caravans without a seasonal occupancy restriction would amount to a material change of use. Therefore, I do not agree with the Council that planning permission is not required for the Willow Tree Farm application before me.

- 13.2.27. With reference to the Agency's Hazard Mapping 0.5% 2115 scenario, there are parts of the Willow Tree Farm site within the danger for most and danger for all areas. I consider therefore that it falls within the high risk areas of the Coastal Zone. The scheme would involve the redevelopment of the site, which is currently used as a touring caravan site for up to 15 no. caravans. However, the occupancy period set out in planning permission, Ref. N/100/00276/13 is consistent with that set out in CS Policy SP19(7). Under the terms of that permission the site would not meet the exemption criteria. Whilst the proposed occupancy period would not allow for all year round occupancy or permanent living in accordance with Policy SP19(8), it would extend beyond that set out in Policy SP19(7). I conclude that the WTF proposal would conflict with CS Policy SP19.
- 13.2.28. There is no evidence before me to show that it would be AN's intention to use the site as described above by the Council (substitution of 15 touring pitches by 15 static caravans and occupied without seasonal restrictions), if planning permission were to be refused in this case. On the contrary, the physical works for which planning permission Ref. N/110/00357/21 was recently granted¹⁷¹, described as '*a change of use of part of the existing touring caravan site for the siting of 11 no. static caravans*' are consistent with those subject of the application before me. Furthermore, in that other case, the occupancy period of the approved static caravans is limited by condition no. 4 to a period consistent with Policy SP19(7). If it had been implemented, the proposed occupancy period extension would not fit within the exemption criteria either.
- 13.2.29. With reference to the Agency's Hazard Mapping 0.5% 2115 scenario, there are parts of the South Fields site within the danger for most and danger for all areas. I consider therefore that it falls within the high risk areas of the Coastal Zone. Furthermore, the scheme does not involve an extension to the area or the redevelopment of an existing site that currently has a different occupancy period to that set out in Policy SP19(7). Therefore, it does not meet the exemption criteria. Whilst the proposed occupancy period would not allow for all year round occupancy or permanent living in accordance with Policy SP19(8), it would extend beyond that set out in Policy SP19(7). I conclude overall, that the South Fields proposal would conflict with CS Policy SP19.
- 13.2.30. I conclude that each of the proposals would conflict with CS Policy SP19, which in relation to these cases concerning holiday accommodation is rightly recognised by the Council as the main and most important Policy in the Development Plan.^[8.2.3] This weighs heavily against each of the proposals.

¹⁷¹ ID33.

Compliance with CS Policy SP17(4)

- 13.2.31. The Agency accepts that, as the caravans provide non-serviced accommodation for people visiting the coastal resorts, it is unlikely that there would be any reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding, and so the schemes are likely to pass the Sequential Test¹⁷².^[8.1.5.15), 8.1.8.1] To my mind, given: the applications relate to established sites at Meadowbank and South Fields and a site at WTF with planning permission for the type of development proposed, and that the applications are for an extension of previously approved occupancy periods, it is likely to be impractical to suggest that there are more suitable alternative locations for that development elsewhere. The PPG indicates that in such circumstances, a pragmatic approach on the availability of alternatives should be taken. Based on the evidence before me, I have no reason to disagree that the schemes are likely to pass the Sequential Test.¹⁷³ The development of holiday accommodation within the Coastal Zone is supported in principle by CS Policy SP19 and it is deemed to have satisfied the Sequential Test.^[13.12.18]
- 13.2.32. Consistent with Part a) of the Exception Test set out in the Framework¹⁷⁴, Part 1 of the Exception Test set out in CS Annex 2 states it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared. I have concluded that the application schemes would not comply with CS Policy SP19 and, for the reasons set out above, I consider therefore that they are not 'deemed' to have passed the Part 1 of the Exception Test under the terms of Annex 2.^[13.12.18-30] Annex 2 indicates that development not 'deemed' to have passed Part 1 of the Exception Test must demonstrate that it passes the test using the Annex 2 Sustainability Appraisal Form (SAF). Furthermore, it indicates that, whilst the Council strongly supports economic growth on the coast, all relevant development should score positively and demonstrate that it provides wider environmental, social and economic benefits to the community. Neither the Council nor the applicants have provided a completed SAF.^[7.3.22] I conclude that, under the terms of the CS, each of the proposals fails Part 1 and therefore the Exception Test taken as a whole and they conflict with CS Policy SP17(4).^[7.7.1]

Compliance with other CS Policies

- 13.2.33. CS Chapter 10-Coastal East Lindsey indicates *'it is recognised that there is a need for an integrated approach to resolving the social, health and economic issues in the coastal area including the need to diversify the economy and tackle the facets of multiple deprivation associated with low income*. To that end, CS Policy SP17(1) indicates that the Council will give a high priority to development that extends and diversifies all-year round employment opportunities, contributes directly to the local economy, infrastructure or extends and diversifies the tourism market. CS Policy SP21 also gives encouragement to development that provides local employment.

¹⁷² EA3.1 para 6.3.

¹⁷³ PPG para 033.

¹⁷⁴ Framework para 164 a).

- 13.2.34. Whilst the Rose Report, commissioned by the Council, is based to an extent on the 'Pitching the Value Report' and a number of other UK wide studies, the former provides an assessment of the economic contribution of caravan parks to the economy of East Lindsey, whereas the latter deals with the UK.¹⁷⁵ Therefore, I give greater weight to the more directly relevant findings of the Rose Report.^[11.20, 12.2.3-4] The Rose Report estimates that the contribution of caravan parks to the economy of East Lindsey in 2019 was around £424-£576 million in terms of visitor spend and around £159-310 million in terms of gross value added.¹⁷⁶ There is no dispute that the caravan park sector makes a significant contribution to the local economy in a relatively deprived part of the country.^[8.2.4-5, 11.18-19, 12.2.1]
- 13.2.35. Furthermore, based on the assumptions that the current caravan park opening season is 9 months (March to November) and a straight-line trajectory, the Rose Report calculates that a one-month extension of the season would deliver around £47-£64 million in visitor spend.^[7.5.1] However, in my view, sector wide contribution figures are of little assistance in assessing the economic value of the particular proposals before me. Based on those figures and the reported total number of caravan units, 35,121 no., the Agency has calculated that, on average, each unit would attract around £1,342-£1,822 of visitor spend per month.^[7.5.1, 8.7.2]
- 13.2.36. I consider, for a number of reasons, that this is likely to represent an exaggeration of the benefits to the local economy. Firstly, averaging expenditure across all units (owned static, rented static and touring caravans) is likely to give undue credit to the owned static caravans, which are likely to make up most, if not all of the units before me, as the Rose Report indicates that owned static caravans represent a high percentage of the total number of units but a much lower percentage of the total expenditure.¹⁷⁷^[7.4.19] Secondly, in comparison with visitor spend, the associated gross value-added figures are far lower.
- 13.2.37. I have had regard to the desire of the applicants and some other interested parties for a 'level playing field' between caravan parks within the local area and elsewhere, specifically in relation to occupancy periods.^[9.10, 11.3, 12.2.1, 12.3.4-5, 12.4.2, 12.4.4] However, the reason for the existing occupancy restriction at the application sites relates to the particular flood risk circumstances. There is no detailed evidence before me with respect to the specific circumstances of other sites, such as whether the flood risks are directly comparable to those in the current cases, which would be necessary to draw reliable comparisons. Against this background, I consider that little weight is attributable to the view that there should be a 'level playing field' with respect to occupancy across the East Lindsey District and the wider UK. Although some other parts of the SWLP and HVCP have longer open seasons than the application sites, it appears that the associated permissions were granted well before the adoption of the CS and so the circumstances are not directly comparable to those in the cases before me.¹⁷⁸

¹⁷⁵ EL2.2C page 6.

¹⁷⁶ EL2.2C page 8.

¹⁷⁷ EL2.2C page 18.

¹⁷⁸ CD42.

- 13.2.38. I acknowledge that the proposed extension to the occupancy period would be likely to make the units on all of the application sites a more attractive investment, potentially improving the competitiveness of each enterprise in the marketplace.^[10.12, 12.3-6] However, I give only moderate weight to the assertion that the proposals provide the only realistic future for the sites, given that on the application sites where the approved developments have commenced, some, if not all, of the units have been sold.^[9.20, 10.11, 10.22, 12, 22]
- 13.2.39. In light of the above, I consider that the GVA associated with the proposed extension to the occupancy period at the Meadowbank and WTF sites would be small. To the extent that the proposed extension unlocks sales of the remaining pitches at SWLP the benefit would be greater there, but modest overall, in my view.^[11.3, 12.3.1, 12.4.2-4]
- 13.2.40. The jobs directly created by the application schemes would be limited: at HVCP no new jobs; at WTF a small number, but linked to the holiday let development next to the caravan park; and, at SWLP, at best, it would unlock the 20 to 25 jobs which were envisaged by the original permission, assuming that the base permission (with its shorter season) would not otherwise be fully implemented.^[9.11, 10.13]
- 13.2.41. Whilst EBC indicates that the existing season poses challenges in terms of staff retention, which would be eased to some extent by the proposed extension, the Rose Report indicates that most operators have been running their provision for a long time and have developed effective strategies to enable them to respond to such challenges¹⁷⁹.^[11.16, 12.6.2]
- 13.2.42. I acknowledge that local businesses are likely to have suffered significant losses as a result of the Covid-19 pandemic.^[11.15, 12.2.1] I have had regard to the *Written Ministerial Statement of 14 July 2020*, which encouraged the temporary relaxation of conditions that restrict open seasons, in order to support local economies as they recover from the impact of Covid-19.^[8.8.4] An initiative welcomed by local operators.^[8.9.9, 11.22-23, 12.5-6] However, I am also conscious that the Rose Report identifies the caravan sector in the district as *'having a strong growth trend, challenged in the short term by coronavirus but ultimately resilient and capable of strong growth in the context of new tourism patterns likely to emerge from the pandemic'*¹⁸⁰. To my mind, those short-term needs would not justify the grant of planning permissions which would remain in place for much longer periods.
- 13.2.43. EBC has suggested that the proposed extension to the season would be likely lead to improved sales of caravans within the site and would increase the likelihood that the approved development of the eastern section of the site, such as leisure facilities and works to enhance the biodiversity of the site would be completed. In these respects, it would gain some support from CS Policies SP24 and SP26.^[11.17]
- 13.2.44. I conclude that in relation to the Meadowbank and WTF proposals the economic and tourism benefits would be small. If the proposed extension were to unlock sales of the remaining pitches and development of the other

¹⁷⁹ EL2.2c page 14.

¹⁸⁰ EL2.2c page 6.

approved facilities at SWLP, the economic, tourism, community facility and biodiversity benefits would be modest. Insofar as there are such benefits, the proposals would accord with CS Policy SP17(1), SP21, SP24 and SP26, which are consistent with the aims of the Framework, insofar as it indicates that significant weight should be placed on the need to support economic growth and gives encouragement to: tourism developments; biodiversity gain; as well as the provision of leisure facilities and green space of benefit to the community.^[7.5.2, 9.13, 10.15, 11.14]

13.2.45. There is no dispute that the developments associated with the proposed occupancy period extensions meet the requirements of CS Policy SP10 as regards the quality of the built environment as well as Policy SP23, being in keeping with the local landscape, policies also consistent with the aims of the Framework. However, in my view, these factors would not be materially affected by the proposed extension to the occupancy season.^[11.14]

13.2.46. It has been suggested that the extended occupancy period proposed would provide an opportunity for the parks to expand their customer base, to include those who now choose not to fly abroad on holiday in favour of a holiday with lower associated carbon emissions.^[12.6.7] However, there is no compelling evidence before me to show that the impact of the proposals in terms of reduced carbon emissions would be significant and so I give it little weight.

13.2.47. I acknowledge that, with reference to the benefits set out above, the proposals would score positively against a number of the Sustainability Objectives set out in the SAF. However, to my mind, they would not do so in relation to the objective of fully mitigating against the impacts of flooding where it cannot be avoided, given the conflict I have identified with CS Policy SP19(7). I consider on balance, that the proposals would not score positively overall against the SAF.

Consistency with the Development Plan-Conclusions

13.2.48. Each of the proposals would conflict with CS Policy SP19, which in relation to these cases concerning holiday accommodation is rightly recognised by the Council as the main and most important Policy in the Development Plan. This weighs heavily against each of the proposals. They would also conflict with CS Policy SP17(4).

13.2.49. Whilst, insofar as there are any, the wider sustainability benefits to the community of each proposal would gain some support from other elements of Development Plan Policy, I consider overall that those benefits associated with the Meadowbank and WTF proposals would be small and in the case of the SWLP proposal they would be modest. These matters would not outweigh the conflict with CS Policy SP19 and this reinforces my finding concerning CS Policy 17(4).

13.2.50. The Council suggests that if CS Policy SP19(7) operates so as to prohibit the use of a site outside the period 15 March to 31 October, even though it is deemed to have passed the Sequential Test and Part 1 of the Exception Test according to Annex 2 and a site-specific flood risk assessment demonstrates that it would be safe for its lifetime outside the period 15 March to 31 October, then the Policy should be regarded as inconsistent with the

Framework and out of date.^[8.2.10] However, as I have indicated above, in my view, that is not the way that CS Policy SP19(7) operates. It informs whether the development is amongst those deemed by Annex 2 to have passed Part 1) of the Exception Test. The approach set out in Council's Coastal Policy is not inconsistent with the Framework. That is unsurprising given that the Examining Inspectors found it, and the modelling upon which it was based, sound.^[7.2.18] In my judgement, the CS is not out of date and the tilted balance set out in the Framework does not apply in these cases.^[8.9.7-8]

13.2.51. I conclude on balance, that none of the proposals would amount to sustainable development, contrary to CS Policy SP2, and they would each conflict with the Development Plan taken as a whole.

13.3. ***The extent to which the proposed development is consistent with Government policies for meeting the challenge of climate change, flooding and coastal change (the Framework Chapter 14)***

13.3.1. I have found that the proposals would be likely to pass the Sequential Test and so I turn to consider Part a) of the Exception Test set out in the Framework and the associated PPG.

Part a) of the Exception Test

13.3.2. The PPG indicates that local planning authorities will need to consider what criteria they will use in this assessment having regard to the objectives of their Local Plan's Sustainability Appraisal framework. If a planning application fails to score positively against the aims and objectives of the Local Plan Sustainability Appraisal or Local Plan policies, or other measures of sustainability, the local planning authority should consider whether the use of planning conditions and/or obligations could make it do so. Where this is not possible, the Exception Test has not been satisfied and planning permission should be refused.¹⁸¹

13.3.3. I have found that each of the proposals would not score positively overall against the Sustainability Objectives identified by the SAF or the Development Plan taken as a whole. Furthermore, I consider that the use of conditions and/or obligations would not make them do so, absent of a condition limiting occupancy to the period required by CS Policy SP19(7), which would negate the purpose of the applications. I deal in more detail with conditions suggested by the parties below. The proposals would fail Part a) of the Framework's Exception Test, with which Part 1 of the Exception Test set out in Annex 2 of the CS is consistent.^[7.2.7]

Part b) of the Exception Test

13.3.4. In common with Part (2) of the Exception Test set out in CS Annex 2, Part (b) of the Exception Test set out in the Framework requires that '*a site-specific flood risk assessment must demonstrate that 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*'.

¹⁸¹ PPG para 037.

13.3.5. The PPG states that the *'developer must provide evidence to show that the proposed development would be safe and that any residual flood risk can be overcome to the satisfaction of the local planning authority, taking account of any advice from the Environment Agency. The developer's site-specific flood risk assessment should demonstrate that the site will be safe and that people will not be exposed to hazardous flooding from any source. The following should be covered by the flood risk assessment:*

- *the design of any flood defence infrastructure;*
- *access and egress;*
- *operation and maintenance;*
- *design of development to manage and reduce flood risk wherever possible; resident awareness;*
- *flood warning and evacuation procedures;*
- *and any funding arrangements necessary for implementing the measures.'*¹⁸²

13.3.6. Whilst the Framework is concerned with protecting people and property from flooding, in the cases before me the particular area of concern is the protection of people, as planning permissions have already been granted for caravans to be stationed on each site without a requirement to remove them outside of the occupation season.^[4.16.3, 7.2.26]

Flood risk-Flood Hazard

13.3.7. The development types in this case are classified as 'more vulnerable' in Table 2 of the PPG. All three application sites are on land having a 1 in 200 annual probability of sea flooding, ignoring the presence of defences, and so, under the terms of the PPG, they fall within 'Flood Zone 3a-High Probability' on the Agency's Flood Zone Maps. The SFRA indicates that whilst the Flood Zone Maps have provided the starting point for assessing the risk of flooding since they were introduced in 2004. Flood Hazard Mapping produced by the Agency since then provides a greater level of detail on the areas at risk. It confirms that the Council has chosen to use those maps to establish the Coastal Zone in the Local Plan and the Plan uses the 2115 flood event scenario to underpin the Council's planning policies and decision making for development management.¹⁸³

13.3.8. The Agency's Flood Hazard Mapping, which was published by the Agency around 2010, comprises a series of flood scenario based Coastal Flood Hazard Maps, which represent the results of modelling the impact of a series of potential tidal flooding scenarios. The purpose of the mapping is to inform the assessment of the risks from tidal flooding. The maps result from the combination of depth and velocity modelling outputs with debris factors to generate flood hazard ratings and associated hazard to people classifications (very low hazard, danger for some, danger for most and danger for all),

¹⁸² PPG para 038.

¹⁸³ CD2 pages 13-14.

with reference to the Defra/EA *Research and Development FD2320/TR2 Flood Risk Assessment Guidance for New Development* (2005), Table 13.1 and the Agency/HR Wallingford *Supplementary Note On Flood Hazard Ratings and Thresholds for Development Planning and Control Purposes* (2008).^[7.3.34, 8.3.4, 6] As the model covers a large area and is at a strategic scale, it utilised a 20 metre grid square pattern of LIDAR ground level data.^[7.3.31]

- 13.3.9. Prompted by the identification of a number of potential anomalies in the Hazard Mapping local to the application sites, the Council has sought to try and establish its own benchmark flood level figure for each site, based on the 0.1% 2006 breach event, and then to assess the associated impacts in terms of flood levels. The method chosen by the Council to try to establish a benchmark flood level involved drawing a cross section, with reference to a more recent 1 metre grid square pattern of LIDAR ground level data, through each site and its surroundings along a single transect to the edge of the flood extents shown on the flood Hazard Mapping. It has then taken the level of the ground from the cross section at a point along the transect at which the hazard map indicates that the land would not be affected by the flood event, just beyond the extent of flooding, and used it as a benchmark for the flood level.^[7.3.38] The Council indicates that if the Hazard Map is correct at the point used as a benchmark, the application of the benchmark flood level suggests that elsewhere along the transect, including within the sites, the flood depths identified by the Agency's Hazard Mapping are exaggerated.^[8.6.1, 2, 3]
- 13.3.10. To my mind, it seems unlikely that the modelled extent of the flood is precisely correct in the location along the transect chosen by the Council as a benchmark and yet is generally wrong elsewhere along the transect. Furthermore, there are a number of other factors which indicate that the Council's approach is not to be relied upon. The Council has indicated that it was unable to match up the LIDAR data used to inform the 2010 modelling outputs with the more recent LIDAR data used to draw the cross sections.¹⁸⁴ To my mind, if the levels are different, then the extent of the flooding at the benchmark location would be likely to be different, whereas the Council's approach relies on it being the same. The Council accepted that its attempt to fix a flood level could be undermined by the effect of land level changes which post-date the model in the region where the edge of flooding is shown.^[7.3.38. 2]
- 13.3.11. The clearest evidence that that is likely to be the case relates to SWLP. In that case, the benchmark location used by the Council is a limited area indicated to be clear of flooding on the Hazard Map, which is otherwise surrounded by flooded land, suggesting it is either a high point relative to its surroundings or an anomaly. However, the Council has acknowledged that since the flood hazard maps were published in 2010, the ground levels in that area have been reprofiled as part of the works to form a pond further to the west.¹⁸⁵ With reference to the applicant's topographical survey and my own site observations, a localised high spot that might explain the modelling

¹⁸⁴ Mr Cage in Inspector's questions.

¹⁸⁵ EL1.1 para 2.22.

results is not identifiable on site.^[7.3.38. 3)] It is not clear at all that that feature on the Hazard Map, used by the Council as a benchmark, is anything other than an anomaly in the model. As regards the other 2 applications, the benchmark location is situated outside of each site and there is no specific evidence to show whether or not ground levels have altered, resulting in greater uncertainty there.

13.3.12. Whilst it may have been possible to verify the identified benchmark to an extent by drawing more than one transect/cross section across the local area, no such evidence has been provided. Furthermore, I share the view of the Agency that many transects would be likely to be required in order to gain a reasonable degree of confidence in the Council's approach and resulting benchmarks.^[7.3.38. 1)]

13.3.13. Turning to the potential hazard map anomalies identified by the Council, which prompted its alternative approach:

- In relation to WTF, the Council suggests that there is no obvious visual sign as to why the area to the east of Brickyard Lane appears to be significantly affected by flooding, whilst the fields immediately to the west of the site are clear of flooding. In my view, this outcome may be due to the model interpreting Brickyard Lane as blocking some east-west flood flows, as a result of: the level of Brickyard Lane being higher than much of the land to the east, according to the Council's transect cross-section; and, drainage connecting one side of the road to the other, which would otherwise provide a pathway, not being accounted for by the model;^[7.3.38. 2)] and,
- In relation to HVCP, the absence of flooding at a junction towards the centre of nearby Hogsthorpe, which has a spot level of 3 metres AOD, caused the Council to doubt the hazard map indications that areas within the site of a similar level would be flooded. However, as acknowledged by the Council, it is possible that higher ground around the spot height location in Hogsthorpe may have shielded it from higher flood levels in the surrounding area. Based what I have read and seen, this may well be the case. For example, with reference to the Council's cross section and the spot heights on the hazard maps, it appears that levels along the road leading into Hogsthorpe from the application site rise from 2 metres AOD up to 4 metres AOD before falling to 3 metres AOD at the central junction.^[7.3.38. 1)]

13.3.14. Under the circumstances, I consider that greater weight is attributable to the general pattern of flooding across the area shown on the Agency's 0.1% 2006 event Hazard Mapping than the Council's predictions of site flood levels based on a benchmark derived from the predicted extent of flooding along a transect for each site. I have no reason to take a different view regarding the other Hazard Mapping, which has not been challenged by the Council.^[7.3.39]

Design Flood Risk

13.3.15. The PPG confirms that in relation to tidal flooding, the Design Flood, against which the suitability of a proposed development is assessed and mitigation measures, if any, are designed, is tidal flooding with a 0.5% (or 1 in 200)

annual probability.¹⁸⁶ As indicated by the Agency, the probability of occurrence is inherent in the scenario.^[7.2.13] With reference to the Design Flood, the PPG indicates that access routes should allow occupants to safely access and exit their dwellings in design flood conditions and consideration should be given to measures to avoid properties being flooded, for example by raising them above the Design Flood level.¹⁸⁷

- 13.3.16. All of the sites are safeguarded from tidal flooding to some degree by the mitigation provided by the sea defences, which are designed to limit, although not prevent altogether, the impact of a storm event with a 0.5% annual probability of occurrence on the landward side of the defences. The Agency uses the 0.5% 2006 scenario to represent both current (2006) and all future years, as the assumption is made that the height of defences will increase with sea level rise due to climate change, such that the degree of overtopping in a 0.5% event is the same whatever the year.
- 13.3.17. With reference to the 0.5% 2006 Hazard Mapping, the Meadowbank and WTF application sites are not affected by the Design Flood. Whilst some sections of the escape route from Meadowbank would be affected by flood water, given the short lengths of highway involved and depths in the range 0-0.25 metres, with a low hazard rating, I regard it as acceptable under that scenario. FD2320/TR2 indicates that when designing safe access and exit routes the combination of velocity and depth should fall below the 'danger for some' classification. The escape route from WTF would not be affected by the Design Flood.
- 13.3.18. However, the northwestern corner of the SWLP application site, where the site entrance and a number of caravans are located, would be affected by the Design Flood. The indicated depths there are generally in the range 0-0.25 metres (low hazard) with limited areas of 0.25-0.5 metres (danger for some) in the vicinity of the site entrance. The depths identified would not flood caravans on the site, the floor levels of which are set above the ground by approximately 0.6-0.7 metres.¹⁸⁸ However, the site entrance and its surroundings would be flooded and in light of the potential depths and that the route is across a bridged ditch, I consider that the conditions resulting from the Design Flood raise significant safety concerns.

Residual Flood Risk

- 13.3.19. Turning to residual risk, which is defined in the PPG as the risk remaining after applying the Sequential Test and the taking of 'mitigating actions'. The PPG indicates that relevant examples include:
- 1) the failure of flood management infrastructure such as a breach of a raised flood defence' (a breach event); and,
 - 2) a severe flood event that exceeds a flood management design standard, such as a flood that overtops a raised flood defence' (a severe event).

¹⁸⁶ PPG para 055.

¹⁸⁷ PPG paras 039 and 060.

¹⁸⁸ EL1.1 para 2.22, EL1.2e.

Residual Flood Risk-potential consequences

- 13.3.20. For a severe event (greater than the Design Flood) causing overtopping but not breaches, the only available modelled scenario is a storm with a 0.1% annual probability in the year 2006 (0.1% 2006). In common with the Design Flood scenario (0.5% 2006), this is taken to represent all future years based on the expectation that the height of defences will be increased as sea levels rise due to climate change.^[7.3.28]
- 13.3.21. In order to assess the potential impact of breaches, the Agency uses four scenarios. It assesses the effects of breaches occurring during: a 0.5% and 0.1% annual probability event in the year 2006; and, a 0.5% and 0.1% annual probability event in the year 2115.^[7.3.28]
- 13.3.22. The Agency considers that the 0.1% 2006 and 2115 breach scenarios provide the appropriate information to be used in decision making for these applications.¹⁸⁹ In contrast, the Council considers that the 0.1% 2006 breach scenario should be used to assess the proposals and for the design of mitigation, on the basis that it is more severe than the Design Flood (0.5% 2006) and so provides some leeway over and above that standard.^[7.3.40]¹⁹⁰
- 13.3.23. To my mind, it is necessary to start with the 0.5% 2006 breach scenario, which reflects the Design Flood and gives an indication of present-day impact.
- 13.3.24. With respect to the lifetime of a development, the PPG indicates that residential development should be considered for a minimum period of 100 years, unless there is a specific reason for considering a shorter period. In these cases, planning permission in perpetuity is sought for residential type development and whilst caravan units would be replaced from time to time, there would be no requirement to seek planning permission for that. However, the Agency suggests that as the current hazard mapping outputs do not extend beyond 2115, that is taken as the appropriate lifetime of development for the purposes of assessment. Under the circumstances, I consider that to be a reasonable approach.
- 13.3.25. In relation to the 'in perpetuity' extension to the occupancy period proposed, I consider that less weight is attributable to the Council's suggested use of the 0.1% 2006 breach scenario than the 0.5% or 0.1% 2115 breach scenarios, for a number of reasons. The latter scenarios account for the lifetime of the development consistent with the PPG. Furthermore, a comparison of the breach maps for the 0.1% 2006 breach and the 0.5% 2115 breach show that the less severe future event produces worse outcomes for each site. In addition, the SRFA indicates that the 0.5% 2115 scenario will be used for planning policy decisions along the coast in the future and this is reflected in the CS.^[7.3.40]¹⁹¹
- 13.3.26. The Meadowbank application site would not be affected by the 0.1% 2006 overtopping scenario. However, the 0.5% and 0.1% 2006 breach scenarios,

¹⁸⁹ EA1.1 para 3.3.

¹⁹⁰ Mr Cage's oral evidence.

¹⁹¹ CD2 page 23 para 5.2 and CD1 Core Strategy page 85.

resulting from a breach in the dune defences at E25, are predicted to result in danger for most with depths in the range 0.5-1.0 metres. The 0.5% and 0.1% 2115 breach scenarios generally result in danger for most with depths in the range 1.0-1.6 metres. At WTF the situation in terms of depth ranges, although associated with a breach of hard defences at E12, would be broadly comparable to Meadowbank.¹⁹²

- 13.3.27. With reference to the 0.1% 2006 overtopping scenario; in comparison with the 0.5% 2006 Design Flood, a larger part of the SWLP application site allocated for caravan pitches would be categorised as low hazard with depths in the range 0-0.25 metres. However, the 0.5% and 0.1% 2006 breach scenarios, resulting from a breach in dune defences at E31, are predicted to result in danger for most with depths in the range 0.5-1.0 metres. The 0.5% and 0.1% 2115 breach scenarios generally result in danger for most with depths in the range 1.0-1.6 metres.¹⁹³
- 13.3.28. The PPG indicates that access considerations should include not only the voluntary and free movement of people during a 'Design Flood', but also the potential for evacuation before a more extreme flood.¹⁹⁴ Modelling associated with the 0.5% 2006 breach scenarios for the Meadowbank and WTF application sites indicates that flooding could be expected to reach each site within two hours and with depths of flood water exceeding 0.5 metres along parts of the associated evacuation routes within four hours. At the SWLP application site it is predicted that there would be flood water exceeding 0.5 metres in depth along parts of the associated evacuation routes within 2 hours.¹⁹⁵ [7.4.8]
- 13.3.29. Based on the Agency's modelling, breach events have the potential to cause flooding within the application sites to depths exceeding caravan floor levels, which are typically range from around 0.6-0.8 metres above ground level¹⁹⁶, and classed as danger for most.^[8.4.3, 8.9.8, 9.9, 10.9, 11.9] Contrary to the views of KP and AN that their sites are sufficiently separated from the consequences of rapid inundation following a breach of sea defences to allow time for occupiers to safely leave, the Hazard Mapping indicates that the evacuation routes could also be affected within short periods of a breach event.^[9.8, 10.8]

Residual Flood Risk-FD2320/TR2 Risks to people calculator

- 13.3.30. The Council has drawn attention to the FD2320/TR2 flood risks to people calculator (FRPC), which builds on the established flood hazard rating and combines it with 'area vulnerability' and 'people vulnerability' factors to provide an estimate of the number of injuries or deaths for a given flood. Whilst the document identifies an acceptable level of probability of death as 1 in 10,000 per year (equivalent to the risk of being killed in a car accident or being killed at work (construction industry)), it confirms that this is only a suggestion and used as an example in the calculator, and it is the

¹⁹² EA1.1 sections 4-6, ID16.

¹⁹³ EA1.1 sections 4-6, ID16.

¹⁹⁴ PPG para 039.

¹⁹⁵ EA1.9-11.

¹⁹⁶ EL1.2d & f.

responsibility of the planning authorities to decide what level of risk is acceptable.^[8.3.3-9]

- 13.3.31. At the Inquiry, the Council expressed support for the FRPC as well as the suggested benchmark of acceptable risk and provided example calculations which indicated that risk of death associated with each of the sites, if defences were to be breached, would be likely to be below the benchmark. Whilst the Agency did not challenge the detail of Mr Leader's FRPC calculation, it does not follow that weight should be attached to it, given the 'in principle' reasons given by the Agency for affording the method little weight, which in my view are well founded.^[7.2.21-22, 8.1.7]
- 13.3.32. For example, the Executive Summary to FD2320/TR2 states that '*at the present time, the project outputs should only be considered R & D recommendations; they do not represent the policies of Defra...or the EA. However, some of the guidance and tools are useful to support practitioners in the short-term and this is being encouraged*'. '*The project outputs need to be tested and parallel policies and practices need developing by the relevant stakeholder*'.^[7.2.22] Based on the evidence before me, it appears that neither the Agency nor the Council nor any other party has undertaken further testing of the FRPC or formally developed any parallel policies or practices regarding its use.¹⁹⁷^[7.2.23, 8.3.3] In contrast, as referred to above, the flood hazard ratings and thresholds referred to in Table 13.1 have been taken forward. They form the basis of the Agency's Flood Hazard Mapping, which inform the Council's adopted Coastal Policy.
- 13.3.33. Furthermore, I am not convinced that the benchmark relied on by Mr Leader is appropriate. In my view, people staying in holiday accommodation could reasonably expect to be subject to a lower risk of death than that associated with being killed in a car accident or being killed at work (construction industry).
- 13.3.34. Therefore, on the one hand there is the detailed assessment of the consequences of flooding resulting from a breach in the form of the Agency's Flood Hazard Mapping and on the other, there is the output from the FRPC. Neither addresses the probability of breach. Furthermore, and insofar as the former has been taken forward in the way envisaged by FD2320/TR2, whilst the latter has not, I consider that greater weight is attributable to the former and little weight is attributable to the FRPC calculations submitted by the Council.^[7.2.21-25]

Residual Flood Risk-Likelihood of the breach of tidal defences

- 13.3.35. My attention has been drawn to Guidance Note S3.2, included in FD2320/TR2, which is entitled '*Risks to people behind defences*'. Contrary to the view expressed by the Council that it is limited to methods for assessing hazard, it states that it '*presents methods for assessing flood risk in defended areas...(i.e., as part of a Strategic Flood Risk Assessment (SFRA) or site-specific flood risk assessment (FRA)*'.¹⁹⁸^[8.3.10] Having acknowledged

¹⁹⁷ Inspector's note: the circumstances appear to be materially different from those associated with 'Conservation Principles', as related by Mr Hardy-footnote 115 of this report.

¹⁹⁸ CD5 page 96.

that flood risk behind defences is related to the probability of flooding and the magnitude of the consequence, the guidance recommends three levels of complexity in approach: simple; intermediate; and, complex.

- 13.3.36. The simple approach is based on distance of the chosen receptor from an assumed breach, the height of the flood plain at the receptor and the head of water against a defence resulting from the annual probability scenario under consideration. For example, the 0.1% 2006 overtopping scenario. That is used to create a set of hazard descriptors, which can be related to distance from a breach.^[8.3.10] Whilst the probability of occurrence is partly addressed by the annual probability of the flood event being assessed, the simple approach does not include an assessment of the probability of defence failure, rather it is assumed.^[7.2.13]¹⁹⁹
- 13.3.37. In contrast, the complex approach is based on the use of detailed hydraulic modelling and topographical information to assess the potential consequences of flooding in more detail. In addition, the intermediate and complex approaches require information on the coastal defences, such as their type and condition, in order to assess the probability of defence failure.²⁰⁰
- 13.3.38. As I have indicated, detailed hydraulic modelling, having regard to local topography, has been undertaken resulting in the Agency's Hazard Mapping, which allows detailed assessment of the consequences of flooding. Guidance Note S3.2 indicates that this approach is the most rigorous and provides the best results.²⁰¹ Against this background, whilst the simple approach to the assessment of the consequences of flooding may indicate a lower level of hazard, as the Council suggests, I consider that greater weight is attributable to the more detailed assessment represented by the Agency's Flood Hazard Mapping.^[8.3.11]
- 13.3.39. As regards the probability of flooding, the Council suggests that the probability of a breach in tidal defences should be addressed in a rational, evidence-based way and failure should not be assumed. However, contrary to that view, an assessment of the probability of defence failure is not required for the simple approach, failure can be assumed. An assessment of the probability of a defence breaching is part of the other two approaches (intermediate and complex). However, that is not based on an assessment as to whether there have been failures in the past. It is influenced by the type of defence and its structural condition. Therefore, I consider that little weight is attributable to the Council's argument that there is limited evidence of past failures. The past events at Tilbury and Washbanks are of little relevance.^[7.1.2, 8.1.4, 8.5.7, 11.12]
- 13.3.40. The Council's SFRA and the applicants' FRAs contain little information with respect to the probability of breach and in my view, certainly insufficient to indicate that the probability of failure is negligible. Whilst a number of the FRAs suggest that the likelihood of breach is low, they do not provide any detailed assessment of condition to support that view. Guidance Note S3.2

¹⁹⁹ CD5 pages 99-106.

²⁰⁰ CD5 pages 101, 109-112.

²⁰¹ CD5 page 111.

of FD2320/TR2 indicates that responsibility for commissioning any survey and detailed modelling work required as part of: a SFRA rests with the local planning authority; and, a FRA rests with the developer.²⁰² Insofar as information related to the probability of defence failure is limited in the subject cases, it appears to me that the responsibility for any shortfall rests with the Council and the applicants.

- 13.3.41. Although the tidal defences are designed to cater for a 0.5% Design Flood and the SMP seeks to ensure that defences of that standard are retained in the future, there are periods of time during which existing defences fall below the required standard and require reactive maintenance. This is evidenced for example, by the Agency's hard assets condition assessment and by the routine beach replenishment works to address erosion which has occurred during the winter months.^[7.3.25-27]
- 13.3.42. It appears to me that, in practice, the Council, in the SFRA and CS, and the applicants, in their FRAs, have followed a hybrid approach to the assessment of flood risk, based on detailed information regarding flooding consequences provided by the Agency's Hazard Mapping (complex approach) and little, if any, information with respect to the probability of defence failure (simple approach).^[7.2.22] Notwithstanding the Council's view that that the probability of a breach in tidal defences should be addressed in a rational, evidence-based way and failure should not be assumed, it stated in closing 'we only have the data to operationalise the simple approach'.
- 13.3.43. Based on what I have read, heard and seen regarding the types, condition and maintenance regimes associated with the tidal defences, I consider that the risk of failure may well be low. However, in the absence of a detailed assessment of defence condition in the SFRA or FRAs, this is far from certain. Guidance Note S3.2 indicates '*it should be appreciated that even if the probability of flooding is low, the consequences can be high...Should defences fail, the consequences could be severe*'.^[7.2.19, 9.4, 10.3]²⁰³ The PPG points out that '*areas behind flood defences are at particular risk from rapid onset of fast-flowing and deep-water flooding, with little or no warning if defences are overtopped or breached*'.²⁰⁴ The guidance provides that the SFRA should assess what would happen if flood risk management features and structures failed or were breached or if the design standard were exceeded. Assumptions made should be cautious as '*its difficult to predict changes to flood risk management features and structures over the lifetime of the development*'.^[7.2.14-17. 4)]
- 13.3.44. Against this background, I consider that the hybrid approach to flood risk assessment related to defence failure, involving a 'complex' approach to flooding consequences, provided by the Agency's Hazard Mapping, coupled with a 'simple' approach to probability of occurrence, including in relation to defence failure, is cautious as advised by the PPG and reasonable.^[7.2.18]

²⁰² CD5 page 101.

²⁰³ CD5 page 99.

²⁰⁴ PPG para 041.

Residual Flood Risk-Timing of hazardous tidal conditions

- 13.3.45. The Community Risk Register for Lincolnshire 2018-2021 indicates that 'low atmospheric pressure allows the sea's surface to bulge upwards in what is called a 'storm surge'...If there is a very large sea surge in the North Sea, with tides, gale force winds and potentially heavy rainfall, many coastal regions and tidal reaches of rivers could be affected...Many coastal and estuary defences would be overtopped or breached...Inundation from these breaches would be rapid and dynamic, with minimal warning and for some people, no time to evacuate.'^[7.4.3]²⁰⁵
- 13.3.46. As I have identified, the key tidal events of concern in these cases are those of a level which is likely to be equalled or exceeded on average: once every 200 years, a tide level which has a 0.5% chance of occurring in any one year; and, once in every 1,000 years, a tide level which has a 0.1% chance of occurring in any one year. The same events of concern in the November through to 5 January proposed extension period are of concern in April and October.^[8.1.5-6] However, analysis of actual recorded data for components most likely in combination to cause tidal inundation shows an increased occurrence for the months of November to March. Whilst in that period there may be worse months than November and December, such as January, in relation to a number of components there is a significant increase in occurrence for the months of November to December relative to October and April.^[7.3.10, 8.5.3-5]
- 13.3.47. In my judgement, it is reasonable to conclude that the likelihood of combining factors leading to hazardous tidal conditions is greater in the period November to 5 January, the proposed extension period, than in April and October. In the recent past, the two tidal events significant enough to merit the issue of a flood warning by the Agency occurred in December and January, albeit a short time after the 5 January.^[8.5.5]
- 13.3.48. Having regard to my findings with respect to Design Flood Risk and Residual Flood Risk, I consider overall that the flood risk associated with the proposed extension to the period of occupancy would be significant and greater than that associated with the existing occupancy season in each case.

Flood Risk Management and Mitigation-flood resistance works

- 13.3.49. Having identified that the site-specific flood risk assessments submitted did not offer any additional protection or prevention measures and generally relied on FWEs, the Council has suggested that the application sites could each be protected from flood water by raising ground levels, such as by the erection or heightening of bunds around the area of the site containing caravans and the provision of a flood gate between bunds at the entrance.²⁰⁶ However, it has not demonstrated that flood water displaced by those works would not increase flood risk elsewhere. The Council argues that there is no need to, on the basis that, as a matter of common sense, it would have no appreciable effect on flood risk elsewhere due to the extent

²⁰⁵ CD40 page 10.

²⁰⁶ EL1.1 section 9.

of the flood plain. I do not agree. Whilst the flood plain is large, it is clear from the Agency's Hazard Mapping that flood water would not spread across it in a uniform manner. It may be therefore, that flood water displaced from the application sites, depending on the topography of the surroundings, would have an impact on a localised area in the vicinity of the site. For example, Brickyard Lane is higher than the ground level around the dwelling at Willow Tree Farm and also the section of the site to the rear of the dwelling. It appears to me that the same relationship, in terms of levels, exists between the neighbouring dwelling (to the south) and the highway to the front and the caravan site to the rear. Based on what I have read, heard and seen, I consider that flood water displaced by new bunding within the site may well increase flood depths and risk around that neighbouring dwelling, which would be at a lower ground level.^[7.3.41, 8.2.20]

- 13.3.50. Furthermore, the suggested works did not form part of any of the planning applications and have not been subject to public consultation. In my view, the construction of new bunds and the erection of flood gates would materially alter the character of the sites, potentially giving the impression of a compound rather than a holiday park in the view of EBC²⁰⁷, and the heightening of some existing bunds would be likely to adversely affect existing planting around the sites, which contributes to visual amenity. I consider that in each case, the suggested works would be likely to amount to a substantial change to the development originally proposed, upon which those who have invested in the neighbouring caravans and other interested parties could reasonably expect to be given an opportunity to comment.^[7.3.41]
- 13.3.51. In my judgement, failure to demonstrate that the suggested works would not increase flood risk elsewhere and the absence of consultation are each a compelling reason why seeking to secure such works at the sites by condition would not be reasonable. Therefore, I give the suggested works little weight.
- 13.3.52. There are areas of the SWLP and WTF application sites with a lower risk of flooding than the areas where caravans are/would be located. However, at the SWLP the siting of caravans in accordance with the previously approved layout has commenced. Furthermore, I consider that stationing caravans on the higher ground at the WTF site would be likely to adversely impact on the amenities of neighbouring residents.^[10.9] Under these circumstances, whilst the most vulnerable development would not be located in areas of lowest flood risk within the sites, the requirement of paragraph 167(a) of the Framework is satisfied. There are no alternative locations for caravans within the Meadowbank site.^[8.1.8.1)]

Flood Risk Management and Mitigation-occupancy restrictions and FWEPS

- 13.3.53. The PPG indicates that *'where residual risk is relatively uniform, such as within a large area protected by embanked flood defences, the Strategic Flood Risk Assessment should indicate the nature and severity of the risk remaining, and provide guidance for residual risk issues to be covered in site-specific flood risk assessments. Where necessary, local planning*

²⁰⁷ Mr Chappell's oral evidence.

authorities should use information on identified residual risk to state in Local Plan policies their preferred mitigation strategy in relation to...risk management...'.²⁰⁸

- 13.3.54. I consider it is clear from CS Policy SP19(7) that the CS's preferred mitigation strategy includes the imposition of an occupancy restriction. In addition, CS Annex 2 indicates that *'applicants are advised to refer to the Advice Matrix within the Council's SFRA for guidance on the mitigation requirements that will be expected to be incorporated into proposals in order to demonstrate that they will be safe. The Council will seek bespoke advice from the Environment Agency, where appropriate, to confirm if Part 2 of the Exception Test is passed'*. The copy of the Advice Matrix included in the SRFA makes reference to the need for a flood warning and evacuation plan (FWEP) and indicates that *'appropriate mitigation'* will be required²⁰⁹, which according to the animation included in the electronic version of the Advice Matrix includes the imposition of an occupancy restriction between 1 November and 14 March.²¹⁰ Whether or not a person using the plan only has the printed version, I consider that there is no room for doubt that the preferred mitigation strategy includes the Policy SP19(7) occupancy restriction, which I have found the proposals would not comply with.^[7.3.4, 8.2.17]
- 13.3.55. The Agency considers that the occupancy restriction, the aim of which is to provide certainty that people are not on site, is necessary to demonstrate that residual risk can be safely managed for the lifetime of the developments, whereas the Council and applicants consider that, in the event of the season being extended as proposed, that requirement could be achieved by FWEPs alone
- 13.3.56. The Council has indicated that none of the site-specific flood risk assessments submitted offered any additional protection or prevention measures and generally relied on FWEPs.²¹¹ The Council and applicants consider that, in the event of the season being extended as proposed, flood risk could be mitigated by implementing a FWEP that ensures everyone has left site before it is affected by a flood event and as a result of that mitigation, residual risk would be zero.^[8.3.2, 9.14, 10.16] Furthermore, the Council considers that whether a FWEP is sensible in any particular context is a matter for the Council to determine, in consultation with its Emergency Planning Officer, and can be left to be resolved in these cases by condition.^[8.1.5, 8.4.1, 10.4] In support of this view, the Council has indicated that FWEPs are not on the national list or local list for planning application validation purposes and so cannot be secured other than by condition. In addition, the PPG indicates that *'in consultation with the authority's emergency planning staff, the local planning authority will need to ensure that evacuation plans are suitable through appropriate planning conditions or planning agreements'*.

²⁰⁸ PPG para 042.

²⁰⁹ CD2 pages 79-80. ID28.

²¹⁰ ID30.

²¹¹ EL1.1 para 9.1.

- 13.3.57. I acknowledge that FWEPs can play a part in the management of flood risk. However, in the particular circumstances of these cases, I do not agree that the adequacy of the FWEPs is a matter to be left to be resolved by conditions, for the reasons set out below.^[7.4.20, 7.2.26, 8.1.8, 8.2.1]
- 13.3.58. The Framework confirms that applications for all development in Flood Zones 2 and 3 should be supported by a site-specific flood risk assessment (SSFRA). The PPG indicates that *'one of the considerations to ensure that new development is safe, including where there is a residual risk of flooding, is whether adequate flood warnings would be available to people using the development. A flood warning and evacuation plan is a requirement for sites at risk of flooding used for holiday or short-let caravans and camping and is important at any site that has transient occupants'*.²¹²
- 13.3.59. The planning applications before me were each accompanied by a site-specific flood risk assessment with flood warning and evacuation procedures, in the form of a flood warning and evacuation plan (PA-FWEP). Between them, the PA-FWEPs identified a range of different potential triggers for evacuation of the site including flood warnings or severe flood warnings issued by the Agency and weather warnings issued by others. I understand that the PA-FWEPs had been approved by the Council's Emergency Planning Officer and the Statements of Common Ground agreed between the Council and the applicants in advance of the Inquiries sought to secure adherence to those PA-FWEPs through the imposition of proposed conditions²¹³.^[8.4.1] However, in other written evidence to the Inquiries the outcome of the Council's review of the adequacy of the PA-FWEPs for the purposes of the Inquiries indicated that modifications were necessary. The Council expressed the concern that the identified triggers may come too late to allow safe evacuation and made recommendations for an earlier trigger based on a Flood Alert issued by the Agency along with a number of other modifications.^[7.4.1, 7.4.20, 8.2.19]²¹⁴ In oral evidence the applicants acknowledged that the PA-FWEPs were inadequate.^[9.4, 10.4, 11.10]
- 13.3.60. The Council has suggested that safety could be assured through the imposition of conditions requiring modifications to the PA-FWEPs. To my mind, it follows that in the Council's view the modifications contained within the conditions it promotes are reasonable and necessary.^[8.4.4] Against this background, I consider that little weight is attributable the Council's argument that FWEPs are in widespread use throughout the Coastal Zone which are inferior to those which it now promotes.^[8.1.5 18), 8.9.1-6] To my mind, if existing FWEPs are inadequate, that would be a matter for the Council to address, as would any shortcomings in the flood safety provisions associated with buildings, such as bungalows, elsewhere in the area.^[8.1.5. 11), 8.4.3] In respect of the Council's view of the Agency's approach to the adequacy of FWEPs hitherto, whilst consistency is desirable, cases that have gone before may not be directly comparable to those subject of these Inquiries and each case must be considered primarily on its own merits.^[8.1.5.18)]

²¹² PPG para 056.

²¹³ CDA3-3.1 para 2.33, CDB3-3.1 para 2.30, CDC3-3.1 para 2.36.

²¹⁴ EL1.1 sections 7 and 9, ID16-revised draft conditions agreed between the Council and the applicants.

- 13.3.61. As to whether the PPG requirement of adequate warnings would be met, the Agency's *'Flood Warnings-What are they and what do they do'* confirms that its public flood warning regime includes three warnings: Flood Alert; Flood Warning; and, Severe Flood Warning. At the Inquiries, the Council proposed that the FWEP for each application site should include a requirement that the sites would be evacuated in the event that a Flood Alert or Flood Warning for the area is issued by the Agency. I acknowledge that there are no technical reasons why the Agency's Flood Alerts or Flood Warnings (if sooner) could not be used as a trigger for site evacuation. Anyone can sign up to receive those notifications.^[8.5.8] However, I consider that, in order to be adequate for the purpose proposed in the cases before me, the trigger to evacuate would need to be received in sufficient time for all occupants of the sites to safely evacuate to a safe place off site. This is necessary due to the vulnerability of caravans on the sites with respect to flooding and so as not to burden the emergency services with having to rescue occupants from flooded units.^[8.2.9]
- 13.3.62. In the last 17 years 19 flood notifications of one type or another have been issued by the Agency related to the Lincolnshire coastline. Since the creation of the current Flood Warning regime in 2010, events significant enough to merit the issue of a Flood Warning, as opposed to just a Flood Alert, have occurred twice; on 5 December 2013 and 13 January 2017. In relation to those events Flood Alerts were not issued days in advance, they were issued the day before the high tide of concern, with flood warnings following in 2013 around 10 hours before the peak of the high tide and some 8 hours before in 2017.²¹⁵ However, the Agency has indicated that lead times such as that cannot be guaranteed. Whilst the nationally set target lead time for coastal Flood Warnings is at least 9 hours before the peak time of the high tide, there is no such target for Alerts.²¹⁶ Furthermore, the Agency's *'Flood Warnings-What are they and what do they do'* confirms that: a Flood Alert is used two hours to two days in advance of flooding; a Flood Warning is used half an hour to one day in advance of flooding; and, a Severe Flood Warning is used when flooding poses a significant risk to life or significant disruption to communities. The triggers for a Severe Flood Warning include, amongst other things, actual flooding where conditions pose a significant risk to life or a breach of defences.²¹⁷ In the case of the 2013 event, the period between the issue of the Flood Alert and Severe Flood Warning was around 21 hours.
- 13.3.63. I acknowledge that a significant weather event likely to lead to a tidal surge is likely to be forecast and the Agency's flood warning regime triggered in advance.^[8.1.4.12), 8.5] However, the reliability of the lead time estimates remains a concern.^[7.4.9-10] Based on the evidence before me, each event is likely to be unique, with different forecast timelines, and to my mind, past performance in relation to only 2 events does not provide any significant degree of certainty with respect to future lead times.^[7.4.4-7] I consider that it would be reasonable to assume that a lead time before flooding of between 21 and 9 hours would be likely to be achieved for the first notification,

²¹⁵ CD26, EL1.1 section 8, EA2.1 para 4.14.

²¹⁶ EA2.1 para 4.11, corrected in oral evidence.

²¹⁷ ID14.

whether that be an Alert or a Warning. Furthermore, to my mind, the likelihood of a breach of the defences, would be greatest when they are under greatest load around high tide. As I have indicated, should a breach occur, flood water might be expected to reach the sites within 2 hours and escape routes obstructed shortly after.

- 13.3.64. There is limited information concerning the speed with which the application sites could be completely evacuated and that which there is relates to the recent Covid-19 lockdown events. The time taken to completely evacuate ranges from 3 hours on one occasion at HVCP, up to 18 hours on one occasion at SWLP and 28 hours on another.^[7.4.15, 8.4.5, 11.10] A number of park operators have suggested that it would be reasonable to expect occupiers to evacuate within 24 hours of being instructed to leave.^[9.7, 12.3.3, 12.6.5] In my view, this casts some doubt over whether the operators would be able to ensure site occupants are safely evacuated before they are impeded from doing so by flood water.^[8.9.2]
- 13.3.65. Furthermore, as I have indicated, the Council and others have promoted a number of ways in which the FWEPs for the sites could be re-drafted.²¹⁸^[7.4.20, 8.5.9, 9.4-6, 10.4-6, 9.18, 10.18] For example: details of how the need for evacuation would be communicated to occupants; arrangements to ensure every occupier of each caravan is able to leave the site immediately using their own vehicle or with the assistance of the operator ^[9.6, 10.6]; as well as formal agreements between operators/occupiers and penalties to encourage compliance by those who resist evacuation instructions. However, no such FWEF has been drafted. Although the types of measures suggested by the Council at the Inquiries may well be necessary, many of the details of the FWEFs now proposed have yet to be resolved, giving rise to significant uncertainty.
- 13.3.66. For example, I share the concerns of the Agency that some occupiers would be likely to resist an instruction to evacuate, either due to a wish to stay on site to try to minimise the impact of flooding on their property, albeit most likely a second home, or if armed with the knowledge that Flood Alerts may be issued by the Agency in circumstances unlikely to affect their site, such as spray on the coast.^[7.4.17-19, 8.8.1-2, 9.6, 10.7] During the Inquiries it was suggested on behalf of the Council that contractual arrangements could be put in place between the operators and the occupants to ensure compliance with the FWEF, in the interests of timely evacuation and limiting the likelihood that emergency services would need to be called on to assist.^[7.4.20] A version of the FWEF condition agreed between the Council and the applicants included a requirement that the details of such arrangements be provided for the Council's approval.^[9.12, 10.14]²¹⁹ However, towards the end of the Inquiries the Council cast doubt over whether that requirement could be relied upon, on the basis of its view that private contractual details lying behind the FWEFs are not a matter for the planning system.^[8.1.8]

²¹⁸ ID16, 31, 38.

²¹⁹ ID16, 31.

13.3.67. Whilst the Council suggests that a condition could be imposed requiring FWEPS to be submitted for the approval of the Council²²⁰, based on the evidence before me, I am far from convinced that the outcome would provide an effective means of reducing flood risk to an acceptable level at the application sites in the absence of the existing occupancy restriction. This is particularly important as breach events have the potential to cause flooding within the application sites to depths exceeding caravan floor levels. Therefore, if the FWEPS fails in any way, such that people are still on site when those conditions occur, they would be exposed to danger and likely to be in need of rescue. It is conceivable that failure of a FWEPS may result from shortcomings in procedure and/or implementation. In my view, the adequacy of the FWEPS is integral to the approval being sought from the Secretary of State and key matters such as the way in which it would operate and a judgement made as to whether it would be effective cannot be left until a later date.^[7.4.20] I consider that there is significant uncertainty as to how the proposed re-drafted FWEPS would operate and significant doubt about the effectiveness and reliability of them in these particular cases.

13.3.68. In its *Core Strategy Topic Paper-The Coast-Updated and Revised March 2017*, the Council itself said the following in support of the CS Policy SP19(7) occupancy restriction:²²¹

'A further major event occurred in January 2017, this was a near miss. The prediction for this event was worse than in 2013 but the weather conditions altered and it was avoided. The window for this change was just 2 hours. Whilst those that run or own caravan sites would ascertain that their residents could evacuate within a relatively short period; the Council and Emergency Planning Services could not enforce this evacuation and this does not take into account those that did not come in a car but arrived in the coast by train. There is no planning condition, licensing agreement or section 106 agreement that can be put in place which could be enforced within the time period of a flood event and need to evacuate. Therefore, whilst some residents of caravan sites could self-evacuate it would leave too many question marks over the situation around what would happen if the residents refused, site owners did not co-operate or could not make their residents leave and what would happen to those that did not have vehicles.'

I consider that this adds further weight to my view that provision of the proposed FWEPS and the making of a judgement as to whether they would be effective cannot be left until a later stage.^[7.3.5]

13.3.69. The ADEPT/Agency guidance *'Flood risk emergency plans for new development, September 2019 indicates that an emergency plan (EP) is a document developers submit with their planning applications where emergency response is an important component of the safety of the proposed development... it will rarely be appropriate to use a planning condition to defer the provision of an emergency plan to a later date,*

²²⁰ ID44.

²²¹ CD25 pages 22-23.

because it may show that the development cannot be made safe and therefore call into question whether the development is acceptable in principle'. It also indicates that 'where the LPA concludes that an EP is inadequate or fails to demonstrate that a development can be regarded as safe throughout its lifetime, and the applicant has failed to resolve these issues by amending the EP, planning permission should be refused.'^[8.1.8]

13.3.70. The LRF Coastal Mass Evacuation & Shelter Plan identifies the most likely worst case scenario that would require external assistance would be multiple breach scenarios. It acknowledges the potential for multiple breaches along the coastline is subject to a wide range of factors, but for evacuation planning purposes the Environment Agency have assessed the "most likely" multiple breach scenario in a 1:200 year to affect up to a total of 53,500 properties, not including caravans. In that context, it indicates that partners should plan to assist up to 14,800 with evacuation and shelter. Having regard to the nature of the traffic network, it estimates that between 21 and 30 hours would be required for an evacuation, depending upon whether the event was a 0.5% or 0.1% probability event. Whilst identified as the most likely worst case scenario, the likelihood of such an event is not defined and, based on the evidence before me, is likely to be very low. In any event, I consider that the relatively limited number of caravans associated with the applications before me would not materially increase traffic levels involved in mass evacuation or the time taken to evacuate. I give concerns in that regard little weight.^[7.4.11-14, 8.5.6, 8.9.3]

13.3.71. Nonetheless, based on the evidence presented, I consider it cannot be concluded with any reasonable degree of confidence that re-drafted FWEPs, secured by condition in these cases, would ensure everyone would leave sites before they are affected by a flood event. The residual risk would be unlikely to be zero, contrary to the view of the Council. It should also be borne in mind that FWEP implementation during the proposed extension period may not be possible due to factors outside the control of the operators and occupiers, such as hazardous winter highway conditions.^[7.4.11, 13]

Flood Risk-Conclusions

13.3.72. The flood risk behind tidal defences is related to the probability of flooding and the magnitude of the consequence. In my judgement, the Agency's Flood Hazard Mapping provides a reliable basis upon which to assess the likely consequences of flood events in and around the application sites. I give little weight to the use of the Flood Risk to People Calculator, which has not been taken forward in the manner envisaged by FD2320/TR2. Furthermore, I consider that the hybrid approach to flood risk assessment related to defence failure, reflected in the SFRA and CS, involving a 'complex' approach to flooding consequences, provided by the Agency's Hazard Mapping, coupled with a 'simple' approach to probability of occurrence is reasonable. The Council acknowledges 'we only have the data to operationalise the simple approach'. In addition, it is reasonable to conclude that the likelihood of combining factors leading to hazardous tidal conditions is greater in the period November to 5 January, the proposed extension period, than in April and October.

- 13.3.73. Having regard to my findings with respect to Design Flood Risk and Residual Flood Risk, I conclude that, in each case, the flood risk associated with the proposed extension to the period of occupancy would be significant and greater than that associated with the existing occupancy season.
- 13.3.74. I give little weight to the flood resistance works suggested by the Council as a means of mitigating flood risk, as I consider its failure to demonstrate that those works would not increase flood risk elsewhere and the absence of consultation are each a compelling reason why seeking to secure such works at the sites by condition would not be reasonable. I also give little weight to the Council's assertion that re-drafted FWEPS would ensure everyone would leave site before it is affected by a flood event or that the residual risk would be zero. The Council suggests that a condition could be imposed requiring FWEPS to be submitted for the approval of the Council. However, based on the evidence before me, I am far from convinced that the outcome would provide an effective means of managing residual flood risk at the application sites in the absence of the existing occupancy restriction. Furthermore, in my view, the adequacy of the FWEPS is integral to the approval being sought from the Secretary of State and key matters such as the way in which it would operate and a judgement made as to whether it would be effective cannot be left until a later date.
- 13.3.75. Guidance Note S3.2 indicates *'it should be appreciated that even if the probability of flooding is low, the consequences can be high...Should defences fail, the consequences could be severe'*. I conclude overall that tidal flooding during the proposed extension period represents a significant risk to the occupants of the application sites and a greater risk than during the existing season.
- 13.3.76. Whilst the SWLP application was with the Council for consideration, EBC indicated that it would be willing to accept a condition that limited the extension of the occupancy period to 2049, rather than the 'in perpetuity' extension applied for. I have not been provided with Hazard Mapping for 2049 flood events upon which to base an assessment of flood risk. Having regard to the flood risks associated with the 2006 scenarios referred to above as well as the potential for climate change related increases in sea level over the period²²², I consider that the overall conclusions drawn in relation to the 'in perpetuity' proposal with respect to flood risk would also be likely to apply to the 2049 suggestion. The same can be said in relation to HVCP and WTF.^[7.3.23]
- 13.3.77. Whilst the SRFA indicated that the Council may grant temporary 20 year permissions for year round use of holiday sites which are situated outside the extents of the 0.1% 2006 breach scenario²²³, this was not taken forward in the CS. Although I understand that the Agency has not objected to some developments situated outside the extents of the 0.1% 2006 breach scenario, on the basis that the short term threat from flooding was judged to be sufficiently low²²⁴, that would not apply to any of the application sites

²²² CD2.

²²³ CD2 page 25.

²²⁴ EA1.1 para 2.38

before me, all of which fall within an area likely to be affected by such an event.

13.3.78. Under these circumstances, I consider it likely that in the event of a flood affecting an application site during the proposed extension of the occupancy period, some occupants may well find themselves in danger and add to the burden on the emergency services with respect to rescue.^[9.5, 9.17-18, 10.5, 10.19-20] The PPG indicates that in advising the local planning authority, the emergency services are unlikely to regard developments that increase the scale of any rescue that might be required as being safe.^[7.4.17]

13.3.79. I conclude it has not been demonstrated that any of the subject developments would be safe for their lifetime during the proposed extension to occupancy period and it follows that they have failed to satisfy Part b) of the Exception Test and the requirements of paragraphs 167 d) and e) of the Framework.

Consistency with Government Policy-Conclusions

13.3.80. With reference to the Framework, the proposals would be likely to pass the Sequential Test. However, they would fail Part a) of the Exception Test. The PPG indicates that where this is the case the Exception Test has not been satisfied and planning permission should be refused, thereby avoiding flood risk.^[8.3.1] Furthermore, I have found that the schemes would also fail part b) of the Exception Test.

13.3.81. I have had regard to the planning conditions promoted by the parties. Nevertheless, in my judgement, it would not be possible to make any of the proposals acceptable in planning terms through the imposition of planning conditions, such as those promoted by the Council in relation to FWEPS and bunding/flood gates.

13.3.82. I conclude that, with particular reference to flood risk, the proposals would each conflict with Chapter 14 of the Framework.²²⁵

13.4. Other matters

13.4.1. Appeal decision Ref. APP/D2510/W/19/3224108²²⁶ has been referred to, which was dismissed and involved a proposal to extend the allowable occupancy period of holiday accommodation to the same extent as is proposed in the cases before me. I consider that my approach is consistent with that of my colleague.^[9.16, 10.18]

13.4.2. Whilst I note the Agency's serious concerns about the "direction of travel which is being pursued by the Council", with reference to the significant number of other applications now before the Secretary of State, I have considered each of the planning applications before me on its own merits.^[7.1]

²²⁵ Inspector's note: This would amount to a clear reason for refusing the developments proposed (Ref. Framework para 11d) and its footnote 7) and as such, even if I had found the Development Plan policies which are most important for determining the applications to be out of date (which I have not), the tilted balance would not apply.

²²⁶ CD27.

13.5. **Conditions**

- 13.5.1. Without prejudice to my conclusions set out above, in Appendix C to this report I have identified those conditions which I consider should be imposed in each case in the event that the Secretary of State decides to grant planning permission for the proposals. My reasons are set out below.
- 13.5.2. The Statements of Common Ground, agreed between the Council and each of the applicants prior to the Inquiries, contained a list of agreed suggested conditions.²²⁷ However, a number of agreed modifications to the lists were set out in ID16 and the updated lists of conditions are set out in ID31, along with the Agency's initial comments. There was further discussion of the suggested conditions at the Inquiries.²²⁸ I have considered the suggested conditions in light of that evidence and the advice set out in the PPG.
- 13.5.3. In some instances, similar conditions are suggested for two or more of the sites. I will deal with those first, before considering the conditions only associated with a single site.
- 13.5.4. A commencement condition²²⁹ is not necessary in relation to Meadowbank and South Fields, as the development for which planning permission was previously granted has begun. A commencement condition²³⁰ would be necessary in relation to WTF and, due to the difficulties associated with progressing development while the impacts of the Covid-19 pandemic remain, the four-year period suggested by the Council would be reasonable. In the interests of creating certainty for all parties a condition²³¹ would be necessary in each case to ensure that the development is undertaken in accordance with the approved plan(s).
- 13.5.5. A condition²³² would be necessary, with reference to the requirements of Policy SP19(8), to ensure that the proposed caravans would not be occupied as a person's sole or main place of residence. A condition²³³ would also be necessary to restrict the period during which the caravans may be occupied to that applied for, in order to limit the risk of flooding to occupiers of the caravans to that which has been applied for and assessed.
- 13.5.6. A condition²³⁴ would be necessary to ensure that the number of holiday units stationed on each site is limited in accordance with the previously approved scheme, in the interests of the visual amenities of the locality.
- 13.5.7. The Council has suggested that the application sites could each be protected from flood water through the erection or heightening of bunds around the area of the site containing the units and the provision of a flood gate between bunds at the entrance²³⁵. Whilst the Council has identified potential

²²⁷ CDA3-3.1, CDB3-3.1 and CDC3-3.1.

²²⁸ Including in relation to ID38.

²²⁹ ID31-HVCP condition no. 1.

²³⁰ ID31-WTF condition no. 1

²³¹ ID31-HVCP and WTF condition no. 2, SWLP condition no. 1.

²³² ID31-HVCP, WTF and SWLP condition no. 3.

²³³ ID31-HVCP and WTF condition no. 4, SWLP condition no. 2.

²³⁴ ID31-HVCP condition no. 5, SWLP condition no. 7. WTF planning permission Ref. N/110/00357/21.

²³⁵ EL1.2-drawing nos. 2205/02/001, 002 and 003.

conditions²³⁶ to secure such works, neither it nor the applicants consider those measures are necessary.^[8.2.20, 9.9, 10.9] In any event, I have already indicated that failure to demonstrate the suggested works would not increase flood risk elsewhere and the absence of consultation are each compelling reasons why seeking to secure such works at the sites by condition would not be reasonable.

- 13.5.8. A condition²³⁷ would be necessary to secure the provision of a more robust FWEP than previously approved by the Council, reflecting the controls promoted by the Council as a means of limiting the risk of flooding to occupiers of the holiday units. If successful, the section 73 applications submitted in relation to Meadowbank and South Fields would result, in each case, in the creation of a new planning permission. As I have previously indicated, when issuing a new planning permission under section 73 it is highly desirable that all the conditions to which the new planning permission will be subject should be restated in the new permission and not left to a process of cross referencing. To my mind, it would be necessary for the FWEP to address requirements not only during the season extension sought, but also during the existing season, irrespective of whether the caravans happened to be occupied during the extension. Under the circumstances, it would be necessary to amend the wording of the condition proposed by the Council, to require that the 'approved FWEP shall be implemented in full thereafter' and not just 'so long as any caravan accommodation hereby approved is used for the stated purpose during the extended season hereby approved'.

Meadowbank, Hill View Caravan Park

- 13.5.9. In the absence of compelling evidence to show that condition nos. 5, 6, 7, 8, 9 and 10 attached to planning permission Ref. N/084/00176/13 have been discharged, it would be necessary to reimpose them.

Willow Tree Farm

- 13.5.10. Conditions²³⁸ would be necessary to ensure the provision of adequate surface water and foul water site drainage systems to serve the proposed holiday units, in the interests of the amenity of the occupiers and ensuring that the drainage systems themselves would not increase the risk of flooding on or off site.

South Fields, Skegness Water Leisure Park

- 13.5.11. At the Inquiries, the Council confirmed that condition no. 5 attached to planning permission Ref. S/153/00268/12 has been discharged. In the absence of compelling evidence to show that condition nos. 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 19 attached to planning permission Ref. S/153/00268/12 have been discharged, it would be necessary to reimpose them.

²³⁶ ID31-HVCP condition no. 6 and 8, WTF condition no. 8 and 10, and SWLP condition no. 8 and 10.

²³⁷ ID31- HVCP condition no. 7, WTF and SWLP condition no. 9, and ID38.

²³⁸ ID31 WTF condition nos. 6 and 7.

13.6. Planning balance

- 13.6.1. Whether or not planning permission would be needed for the development proposed at WTF, planning application B-Ref. N/110/00906/20, is a matter of law upon which the Secretary of State may wish to take advice. In the event that the Secretary of State determines planning permission would not be necessary, I consider that such a fallback position would weigh heavily in favour of the grant of planning permission in that particular case. However, for the reasons set out above, in my view, planning permission would be necessary.^[13.2.24]
- 13.6.2. I conclude on balance that the proposals would each be contrary to the Development Plan taken as a whole, Chapter 14 of the Framework and the Framework taken as a whole. Furthermore, the other material considerations in each case would not justify a decision other than in accordance with the Development Plan.^[9.2, 10.2] The flood risk associated with each of the proposals would be unacceptable. Refusal of planning permission under the circumstances of these cases would not be irrational, contrary to the view of the Council.^[8.1.5, 8.2.18].
- 13.6.3. For the reasons given above, I conclude overall, and consequently recommend that planning permission should be refused in each case.

14. Inspector's Recommendations

- 14.1. I recommend that planning application A (Ref. N/084/00587/20, dated 27 March 2020) be refused.
- 14.2. I recommend that planning application B (Ref. N/110/00906/20, dated 4 June 2020) be refused.
- 14.3. I recommend that planning application C (Ref. S/090/00770/20, dated 4 May 2020) be refused.

I Jenkins
INSPECTOR

APPENDIX A-APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Hardy

Of Counsel

He called

Mr J Cage

BEng Hons MSc CEng MICE MCIHT

Mr T Leader

BSc Hons MA MPA MRTPI Barrister

Mr P Edwards

(conditions)

Create Consulting Engineers Ltd.

East Lindsey District Council

East Lindsey District Council

FOR MR K PALMER:

Mr A Clover

M(T&CP)

Lincs Design Consultancy

FOR MS A NASH:

Mr A Clover

M(T&CP)

Lincs Design Consultancy

FOR ELLIS BROS CONTRACTORS LTD:

Mr J Chappell

Ellis Bros Contractors Ltd.

FOR THE ENVIRONMENT AGENCY:

Mr M Carter

Of Counsel

He called

Mrs D Morris

BSc Hons

Miss S Stubenrauch

BSc Hons

Ms A Hewitson

MSc MRTPI

Environment Agency

Environment Agency

Environment Agency

APPENDIX B-DOCUMENTS

Core Documents (CD)

- 1 East Lindsey Local Plan Core Strategy, July 2018
- 2 East Lindsey Strategic Flood Risk Assessment, 2017
- 3 Coastal Lincolnshire Strategic Housing Market Assessment-Executive Summary, September 2012
- 4 Coronavirus Planning update on cultural venues and holiday parks-MHCLG, July 2020
- 5 R & D Technical Report FD2320/TR2-Defra/Environment Agency, October 2005
- 6 Supplementary note on flood hazard ratings and thresholds for development planning and control purposes, May 2008
- 7 Flood risk emergency plans for new development-ADEPT/Environment Agency, September 2019
- 8 Joint Lincolnshire Flood Risk Water Management Strategy (FR&WM), 2019-2050
- 9 Lincolnshire Coastal Study Summary Report-Atkins, May 2010
- 10 Lincolnshire Resilience Forum-Position Statement re. Caravan Occupancy, March 2016
- 11 Lincolnshire Resilience Forum Coastal Mass Evacuation and Shelter Plan, January 2020
- 12 Ministerial Statement-MHCLG, 14 July 2020
- 13 National Flood and Coastal Erosion Risk Management Strategy for England-Environment Agency, 2020
- 14 Report on the Examination of the East Lindsey District Council Core Strategy
- 15 Saltfleet to Gibraltar Point Strategy-Environment Agency,
- 16 Seasonal Occupancy Restrictions on the Lincolnshire Coast-Factsheet-Environment Agency, 2013
- 17 Seasonal Occupancy Restrictions on the Lincolnshire Coast-Factsheet-Environment Agency, 2020 update
- 18 Flamborough Head to Gibraltar Point Shoreline Management Plan-Scott Wilson, 2010
- 19 STEAM Report 2009-2015
- 20 STEAM Final Trend Report for 2013-2015-Skegness and Ingoldmells
- 21 STEAM Final Trend Report for 2009-2018
- 22 Lincolnshire Resilience Forum Strategic Alliance Guidance and Memorandum of Understanding, January 2020
- 23 Lincolnshire Resilience Forum Strategic Coastal Flooding Plan for Lincolnshire, December 2019
- 24 The Caravan Communities of the Lincolnshire Coast-East Lindsey District Council/CRESR, July 2011
- 25 Core strategy Topic Paper: The Coast, March 2017
- 26 The East Coast Tidal Surge 5 December 2013-Lincolnshire Resilience Forum's Response & Recovery 'After Action' Report
- 27 Appeal decision Ref. 3224108-Trusthope Springs Leisure Park
- 28 The Wash Shoreline Management Plan 2-Gibraltar Point to Old Hunstanton-East Lindsey District Council et al, August 2010
- 29 East Inshore and East Offshore Marine Plans Executive Summary-HM Government, April 2014
- 30 Lincshire 2010-2015 Scoping Report-Environment Agency, July 2009
- 31 East Lindsey District Council Duty to Cooperate Statement, November 2016
- 32 Appendix 3-Summary Draft Core Strategy Responses 2009
- 33 Core Strategy Consultation Results, 2012

- 34 Environment Agency comments received as part of the Main
- 35 Modifications consultation MM Ref. No 19
- 36 Greater Lincolnshire Local Enterprise Partnership Water Management
- 37 Plan, 2016
- 38 The Humber Flood Risk Strategy-Environment Agency, March 2008, Part
- 39 1
- 40 The Humber Flood Risk Strategy Part 2 Planning for the rising tides
- 41 Lincolnshire County Council Hearing Statement-Matter 15 Coastal East
- 42 Lindsey (Policies SP18-21)
- 43 Inspector's MIQs Stage 1-Core Strategy-Matter 15 Coastal East Lindsey
- 44 (Policies SP18-21)
- Community Risk Register for Lincolnshire, 2018-2021
- National Risk Register, 2020-HM Government
- Synopsis of site planning histories
- National Planning Policy Framework, February 2019
- Extracts from the national Planning Practice Guidance

Application A

CDA1-Application Documents

- 1.1 Planning application and representations
- 1.2 Existing site plan
- 1.3 Proposed site plan
- 1.4 Hill View Flood Risk Assessment
- 1.5 Hill View Flood Warning and Evacuation Plan
- 1.6 Original Case Officer Referral

CDA2-Statements of Case

- 2.1 Statement of Case Kevin Palmer
- 2.2 Statement of Case Council
- 2.2a Statement of Case Council-Further particulars
- 2.2b Statement of Case Council-8 March 2021
- 2.3 Statement of Case Environment Agency
- (Appendices 2a-2g and 2.3.2-3)

CDA3-Statements of Common Ground

- 3.1 Statement of Common Ground Mr Palmer/Council

Proofs of evidence on behalf of Mr Palmer

- KP1.1 Proof of evidence of Andrew Clover
- (Appendices KP1.2a-d and Summary KP1.3)

Proofs of evidence on behalf of the Council

- EL1.1 Proof of evidence of Jonathan Cage
- (Appendices EL1.2a-r, Appendix drawings EL1.2 and Summary
- EL1.3)
- EL1.4 Rebuttal proof of evidence Jonathan Cage
- (Appendices EL1.4a-e)
- EL2.1 Proof of evidence of Timothy Leader
- (Appendices EL2.2a-d and Summary EL2.3)
- EL2.4 Rebuttal proof of evidence of Timothy Leader
- (Appendices EL2.4a and EL2.4(i))

Proofs of evidence on behalf of the Environment Agency

- EA1.1 Proof of evidence of Debbie Morris
- (Appendices EA1.1a-EA1.13 and Summary EA1.14)
- EA2.1 Proof of evidence of Sandra Stubenrauch
- (Appendices EA2.1a-2.4 and Summary EA2.5)
- EA2.6 Rebuttal proof of evidence of Sandra Stubenrauch
- (Appendix EA2.7)
- EA3.1 Proof of evidence of Annette Hewitson

(Appendices EA3.1a-3.10 and Summary EA3.11)

Application B

CDB1-Application Documents

- 1.1 Planning application and representations
- 1.2 Existing site plan
- 1.3 Proposed site plan
- 1.4 Flood Risk Assessment and Flood Warning and Evacuation Plan

CDB2-Statements of Case

- 2.1 Statement of Case Anne Nash
- 2.2 Statement of Case Council
- 2.2a Statement of Case Council-Further particulars
- 2.2b Statement of Case Council-8 March 2021
- 2.3 Statement of Case Environment Agency
(Appendices 2.3.1 3a-3g)

CDB3-Statements of Common Ground

- 3.1 Statement of Common Ground Ms Nash/Council

Proof of evidence on behalf of Ms Nash

- AN1.1 Proof of evidence of Andrew Clover
(Appendices AN1.2a-c and Summary AN1.3)

Proofs of evidence on behalf of the Council

- EL1.1 Proof of evidence of Jonathan Cage
(Appendices EL1.2a-r, Appendix drawings EL1.2 and Summary EL1.3)
- EL1.4 Rebuttal proof of evidence Jonathan Cage
(Appendices EL1.4a-e)
- EL2.1 Proof of evidence of Timothy Leader
(Appendices EL2.2a-d and Summary EL2.3)
- EL2.4 Rebuttal proof of evidence of Timothy Leader
(Appendices EL2.4a and EL2.4(i))

Proofs of evidence on behalf of the Environment Agency

- EA1.1 Proof of evidence of Debbie Morris
(Appendices EA1.1a-EA1.13 and Summary EA1.14)
- EA2.1 Proof of evidence of Sandra Stubenrauch
(Appendices EA2.1a-2.4 and Summary EA2.5)
- EA2.6 Rebuttal proof of evidence of Sandra Stubenrauch
(Appendix EA2.7)
- EA3.1 Proof of evidence of Annette Hewitson

Application C

CDC1-Application Documents

- 1.1 Planning application and representations
- 1.2 Drawing no. 10663 40- Variation of condition drawing
- 1.3 Drawing no. RDS 10663 41
- 1.4 Hill View Flood Risk Assessment, April 2020
- 1.5 Flood Warning and Evacuation Plan, April 2020
- 1.6 Original Case Offer Report

CDC2-Statements of Case

- 2.1 Statement of Case Ellis Bros Contractors Ltd
- 2.2 Statement of Case Council
- 2.2a Statement of Case Council-Further particulars
- 2.2b Statement of Case Council-8 March 2021
- 2.3 Statement of Case Environment Agency
(Appendices 2.3.1 1a-1h)

CDC3-Statements of Common Ground

3.1 Statement of Common Ground Ellis Bros Contractors Ltd/Council

Proofs of evidence on behalf of Ellis Bros Contractors Ltd

EB1.1 Proof of evidence of John Chappell
(Appendices I-IV)

Proofs of evidence on behalf of the Council

EL1.1 Proof of evidence of Jonathan Cage
(Appendices EL1.2a-r, Appendix drawings EL1.2 and Summary EL1.3)

EL1.4 Rebuttal proof of evidence Jonathan Cage
(Appendices EL1.4a-e)

EL2.1 Proof of evidence of Timothy Leader
(Appendices EL2.2a-d and Summary EL2.3)

EL2.4 Rebuttal proof of evidence of Timothy Leader
(Appendices EL2.4a and EL2.4(i))

Proofs of evidence on behalf of the Environment Agency

EA1.1 Proof of evidence of Debbie Morris
(Appendices EA1.1a-EA1.13 and Summary EA1.14)

EA2.1 Proof of evidence of Sandra Stubenrauch
(Appendices EA2.1a-2.4 and Summary EA2.5)

EA2.6 Rebuttal proof of evidence of Sandra Stubenrauch
(Appendix EA2.7)

EA3.1 Proof of evidence of Annette Hewitson

Inquiries Documents (ID)

- 1 Letters notifying interested parties of the Inquiry arrangements
- 2 Consultation responses
- 3 Opening statement on behalf of KP and AN
- 4 Opening statement on behalf of EBC
- 5 Opening statement on behalf of the Council
- 6 Opening statement on behalf of the Environment Agency
- 7 Photo of South Ferriby flood gate
- 8 Extract from the Council's Facebook page, dated 3 November 2020, 'Holiday Caravan Sites and Covid 19'
- 9 Best Available Ground Level Transect plans for HVCP, WTF and SWLP
- 10 Historic aerial photos of HVCP and WTF
- 11 Council's notes in respect of Inspector's Points of Clarification
- 12 Environment Agency Note in respect of Inspector's Points of Clarification
- 13 Environment Agency Breach Location Plans for HVCP, WTF and SWLP
- 14 Environment Agency 'Flood Warnings-What they are and what they do'
- 15 Environment Agency note 'Below required condition assets'
- 16 Revised conditions agreed between the Council and respective applicants, 5 May 2021
- 17 Environment Agency note assets with a 'Residual life <10 years'
- 18 WTF drawing no. LDC0415-01 Concept Plan, April 2011-Proposed Touring Caravan Site for 15 no. Plts
- 19 Environment Agency note 'Provision of Standard of Protection by Dune Systems'
- 20 Council notes on Tilbury and Washbanks breaches
- 21 Appendix to Rebuttal Evidence of Timothy Leader-Explanation of workings
- 22 Environment Agency note 'Examples of tidal defences failing whilst not under loading from the tide'
- 23 Environment Agency 'note on site-specific sequential approach'

- 24 Supplemental note by the Environment Agency in respect of Inspector's points of clarification
- 25 Historic aerial photo SWLP 1999-2006
- 26 FD2321/TR1-Environment Agency/Defra-Flood and Coastal Defence R & D Programme-R&D Outputs: Flood Risks to People Phase 2, March 2006
- 27 Historic aerial photo of SWLP locality marked up by the Council to show areas free from flooding in a 2006 1 in 1,000-year breach scenario
- 28 Environment Agency Standing Advice Matrix
- 29 PPG para 017- 'How to prepare a strategic flood risk assessment'
- 30 Environment Agency Standing Advice Matrix-advice screen shots
- 31 Council's composite revised draft conditions actioning suggestions in ID16 but retaining the Environment Agency comments
- 32 Council note Fantasy Island LDO, Coastal LDO and s.73s to 'Extend the Season'
- 33 Council notes on Willow Tree Farm Approval 357/21
- 34 A Clover email, dated 13 May 2021-Pitch Licence Agreement and Evacuation during the pandemic
- 35 Details of flood alert and flood warning areas that will need to be specifically requested as areas of interest when signifying up to the flood warning service
- 36 SWLP Licence Agreement
- 37a KP email, dated 18 March 2021-employment
- 37b AN email, dated 17 March 2021-employment
- 38 Council's suggested revised FWEP condition
- 39 R. (on the application of London Borough of Hillingdon Council) and (1) Secretary of State for Transport (2) Secretary of State for Housing Communities and Local Government and High Speed Two (HS2) Limited [2020] EWCA Civ 1005
- 40 Council notes on ID39
- 41 SWLP drawing no. RDS 10663/01E Location Plan
- 42 A Clover email, dated 14 May 2021-agreement to pre-occupation conditions
- 43 J Chappell email, dated 14 May 2021-agreement to pre-occupation conditions
- 44 Statement of Common Ground between the Council and the Environment Agency on pre-commencement conditions
- 45 Closing statement on behalf of the Environment Agency
- 46 Closing statement on behalf of the Council

APPENDIX C-SCHEDULES OF CONDITIONS

Application A-File Ref: APP/D2510/V/20/3262525

Hill View Caravan Park, Skegness Road, Hogsthorpe, Skegness, PE24 5NR

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan:
 - Proposed Site Plan and Amenity Block LDC drawing no. LDC0774-02 (received by the local planning authority on 30 January 2013).
- 2) The caravans hereby permitted shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence. The owners/operators of the site shall maintain an annually reviewed register of the names of all occupiers of the accommodation on site, and of their main home addresses, and shall make this information available to the local planning authority upon request.
- 3) The caravans hereby permitted shall only be occupied between the 1 March and 5 January the following year.
- 4) Not more than eighteen caravans shall be stationed on the application site at any time and shall be laid out in accordance with drawing no. LDC0774-02 (received by the local planning authority on 30 January 2013).
- 5) The caravan accommodation hereby approved shall not be occupied at any time between 1 November and 14 March the following year until a revised Flood Warning and Evacuation Plan (the FWEP) has been submitted to and approved in writing by the local planning authority. The approved FWEP shall be implemented in full thereafter. The FWEP shall include (but not be limited to) each of the following matters:
 - a) The name of the designated flood warden who will assume overall responsibility for the management of the FWEP;
 - b) The trigger for an evacuation for this application site shall be the issue of a Flood Alert code 053WAT601TLCa (or any successor flood alert code for tidal flooding of areas near the Lincolnshire Coastline) or either of the Flood Warning codes 053FWTLINC4A or 053WTLINC4B (or any successor flood warning codes for the area near to the sea defences in Anderby Creek and Chapel St Leonards or the low lying areas in Chapel St Leonards and Hogsthorpe) (whichever is the earlier) issued by the Environment Agency and the same shall bear the meaning set out in '*Flood Warnings: what they are and what they do*' (or any successor document published by the Environment Agency);
 - c) Arrangements made by the operator of the site to register for, receive and continue to receive all forms of Flood Alert/Warning from the Environment Agency's Flood Warning system;
 - d) The arrangements that will be made to ensure every occupier of each caravan is able to leave the site immediately in the event of the issue of a trigger for evacuation, including the arrangements that will be made to ensure persons who may not be able to use their own private car are able to leave the site with the assistance of the operator;

- e) Details of how the need for evacuation will be communicated to any occupier of a caravan who is on site at the time of the issue of a trigger for evacuation;
 - f) Provision for the periodic review and updating of the FWEP; and,
 - g) The arrangements for incorporating compliance with the requirement to evacuate the site under the terms of the FWEP into the terms and conditions regulating the site licence entered into between the site operator and the occupier of any caravan.
- 6) Within 9 months of the site hereby approved being first brought into use the proposed landscaping scheme shown on drawing no. LDC0774-02 (received by the Local Planning Authority on the 30 January 2013) must be fully implemented in accordance with the details specified on the said plan. All planting must be maintained for a minimum of 5 years from the date of planting with any losses replaced with a matching plant.
 - 7) The existing landscaping as shown on drawing no. LDC0774-02 (received by the Local Planning Authority on the 30 January 2013) must be retained to a height of at least 3.0m at all times whilst the site is in use.
 - 8) No caravan, caravan hardstanding or other feature may be positioned which obstructs the route of the definitive footpath than runs through the site, as shown on drawing no. LDC0774-02 (received by the Local Planning Authority on the 30 January 2013).
 - 9) The proposed roadside path shown on drawing no. LDC0774-02 (received by the Local Planning Authority on the 30 January 2013) must be fully implemented prior to the caravan site hereby approved being brought into use.
 - 10) The proposed facilities block must be built using Ibstock Birtley Commercial Red bricks, Redland Saxon slates and green oak for the timber detail unless otherwise agreed in writing by the Local Planning Authority.
 - 11) All foul waste from the facilities building must be connected to a biotechnical unit unless otherwise agreed in writing by the Local Planning Authority.

Application B-File Ref: APP/D2510/V/20/3262551
Willow Tree Farm, Brickyard Lane, Sutton on Sea, LN12 2RN

- 1) The development hereby permitted must be begun not later than the expiration of four years beginning with the date of this permission.
- 2) The development hereby permitted shall be completed in accordance with the following approved drawings:
 - LDC3008-PL-01 (received by the local planning authority on the 4 June 2020); and,
 - LDC3008-PL-02 (received by the local planning authority on the 4 June 2020).

- 3) The accommodation hereby permitted shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence. The owners/operators of the site shall maintain an up-to-date register of the names of all occupiers of the accommodation on site, and of their main home addresses, and shall make this information available to the Local Planning Authority upon request.
- 4) The holiday units hereby permitted shall only be occupied between the 1 March and the 5 January in the following year.
- 5) Not more than eleven holiday units shall be stationed on the application site at any time and shall be laid out in accordance with drawing no. LDC3008-PL-02 received by the local planning authority on 4 June 2020.
- 6) Before any unit of accommodation hereby approved is first brought onto the site a surface water drainage strategy shall be submitted to and approved in writing by the Local Planning Authority. No unit of accommodation hereby approved shall be occupied until it has been connected to the surface water drainage system completed in accordance with the surface water strategy so approved.
- 7) Before any unit of accommodation hereby approved is first brought onto the site a foul water drainage strategy shall be submitted to and approved in writing by the Local Planning Authority. No unit of accommodation hereby approved shall be occupied until it has been connected to the foul water drainage system in accordance with the foul water strategy so approved.
- 8) The holiday units hereby approved shall not be occupied at any time between 1 November and 14 March the following year until a revised Flood Warning and Evacuation Plan (the FWEP) has been submitted to and approved in writing by the Local Planning Authority. The approved FWEP shall be implemented in full thereafter. The FWEP shall include (but not be limited to) each of the following matters:
 - a) The name of the designated flood warden who will assume overall responsibility for the management of the FWEP;
 - b) The trigger for an evacuation for this application site shall be the issue of a Flood Alert code 053WAT601TLCa (or any successor flood alert code for tidal flooding of areas near the Lincolnshire Coastline) or either of the Flood Warning codes 053FWTLINC3B, 053WTLINC3C or 053WTLINC3D (or any successor flood warning codes for: the area near to the sea defences in Trusthorpe, Sutton on Sea and Huttoft Bank; low lying areas in Mablethorpe, Trusthorpe and Sutton on Sea; or, the wider area at risk of tidal flooding between Theddlethorpe and Huttoft) (whichever is the earlier) issued by the Environment Agency and the same shall bear the meaning set out in '*Flood Warnings: what they are and what they do*' (or any successor document published by the Environment Agency);
 - c) Arrangements made by the operator of the site to register for, receive and continue to receive all forms of Flood Alert/Warning from the Environment Agency's Flood Warning system;

- d) The arrangements that will be made to ensure every occupier of each holiday unit hereby approved is able to leave the site immediately in the event of the issue of a trigger for evacuation, including the arrangements that will be made to ensure persons who may not be able to use their own private car are able to leave the site with the assistance of the operator;
- e) Details of how the need for evacuation will be communicated to any occupier of a holiday unit hereby approved who is on site at the time of the issue of a Flood Alert or Flood Warning;
- f) Provision for the periodic review and updating of the FWEP; and,
- g) The arrangements for incorporating compliance with the requirement to evacuate the site under the terms of the FWEP into the terms and conditions regulating the site licence entered into between the site operator and the occupier of any holiday unit hereby approved.

Application C-File Ref: APP/D2510/V/20/3262549

Skegness Water Leisure Park, Wall's Lane, Ingoldmells, Skegness, PE25 1JF

- 1) The development hereby permitted shall be completed in accordance with the following approved drawing no.:
 - RDS 10663/01 E (received by the local planning authority on 23 March 2012).
- 2) The static caravans hereby permitted shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence. The owners/operators of the site shall maintain an up-to-date register of the names of all occupiers of the accommodation on site, and of their main home addresses, and shall make this information available to the Local Planning Authority upon request.
- 3) The caravans hereby permitted shall only be occupied from 1 March in one year to 5 January in the following year.
- 4) The scheme of landscaping and tree planting shown on drawing No. RDS 10663/24A (received by the Local Planning Authority on 23 February 2012) shall be carried out in its entirety within a period of 6 months beginning with the date on which development is completed, or in line with a phasing strategy agreed in writing by the Local Planning Authority. All trees, shrubs and bushes shall be maintained by the owner or owners of the land on which they are situated for a minimum of five years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary.
- 5) Not more than 189 static holiday caravans shall be sited on the application site outlined in red, as shown on approved drawing no. RDS 10663/01 E (received by the local planning authority on 23 March 2012) at any one time.
- 6) The caravan accommodation hereby approved shall not be occupied at any time between 1 November and 14 March the following year until a revised Flood Warning and Evacuation Plan (the FWEP) has been submitted to and approved in writing by the Local Planning Authority. The approved FWEP

shall be implemented in full thereafter. The FWEP shall include (but not be limited to) each of the following matters:

- a) The name of the designated flood warden who will assume overall responsibility for the management of the FWEP;
 - b) The trigger for an evacuation for this application site shall be the issue of a Flood Alert code 053WAT601TLCa (or any successor flood alert code for tidal flooding of areas near the Lincolnshire Coastline) or either of the Flood Warning codes 053FWTLINC5A, 053WTLINC5B, 053WTLINC5C or 053WTLINC5D (or any successor flood warning codes for: the area near to the sea defences in Ingoldmells; the area near to sea defences in Skegness and low lying areas near Gibraltar Point; low lying areas in Ingoldmells and Addlethorpe; or, the low lying areas in Skegness) (whichever is the earlier) issued by the Environment Agency and the same shall bear the meaning set out in '*Flood Warnings: what they are and what they do*' (or any successor document published by the Environment Agency);
 - c) Arrangements made by the operator of the site to register for, receive and continue to receive all forms of Flood Alert/Warning from the Environment Agency's Flood Warning system;
 - d) The arrangements that will be made to ensure every occupier of each caravan is able to leave the site immediately in the event of the issue of a trigger for evacuation, including the arrangements that will be made to ensure persons who may not be able to use their own private car are able to leave the site with the assistance of the operator;
 - e) Details of how the need for evacuation will be communicated to any occupier of a caravan who is on site at the time of the issue of a trigger for evacuation;
 - f) Provision for the periodic review and updating of the FWEP; and,
 - g) The arrangements for incorporating compliance with the requirement to evacuate the site under the terms of the FWEP into the terms and conditions regulating the site licence entered into between the site operator and the occupier of any caravan.
- 7) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the Local Planning Authority. The archaeological scheme of works must include an assessment of significance and proposed mitigation strategy (i.e., preservation by record, preservation in situ or a mix of these elements); a methodology and timetable of site investigation and recording; provision for site analysis; and provision for publication and dissemination of analysis and records.

The development shall not be carried out otherwise than in strict accordance with the agreed scheme and the applicant / developer must notify the Local Planning Authority of the intention to commence at least fourteen days before the start of archaeological work in order to facilitate adequate monitoring arrangements. No variation shall take place without prior consent of the Local Planning Authority.

A report of the archaeologist's findings shall be submitted to the Local Planning Authority and the Historic Environment Record Officer at Lincolnshire County Council within 3 months of the works hereby given consent being commenced unless otherwise agreed in writing by the Local Planning Authority; and the condition shall not be discharged until the archive of all archaeological work undertaken hitherto has been deposited with the County Museum Service, or another public depository willing to receive it.

- 8) No development in relation to the proposed reception and leisure centre buildings hereby permitted shall commence until a scheme for flood-proofing measures for each building has been submitted to and approved in writing by the Local Planning Authority. The buildings shall only be constructed in accordance with the approved details.
- 9) Prior to the commencement of any development in relation to the leisure centre, reception building, 'tennis bubble' or walls adjacent to the revised entrance to the site, a schedule of external materials of construction of these buildings and walls shall be submitted to and approved in writing by the Local Planning Authority. The details shall include the following:
 - a) The external facing brick(s) to be used in the construction of the proposed leisure centre and reception buildings and the walls adjacent to the revised entrance;
 - b) The materials of construction, profile and finish of the windows to be used in the construction of the proposed leisure centre and reception buildings;
 - c) The roof tiles to be used in the construction of the roof of the proposed reception building;
 - d) The composite insulation steel roof cladding to be used in the construction of the roof of the proposed leisure centre;
 - e) The colour, profile and finish of the vertical panel plank cladding system for external facing of the elevations of the proposed leisure centre; and
 - f) The colour, profile and finish of the membrane for the proposed 'tennis bubble'.

Samples shall be provided as may be required by the Local Planning Authority of the materials in the schedule and the use of such samples shall be approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the schedule and samples so approved.

- 10) Before the commencement of the development hereby granted, full details of the proposed means surface water disposal shall be submitted to and approved in writing by the Local Planning Authority. The details so approved shall be implemented in full before there are any flows into the receiving system.
- 11) Prior to the erection of any means of enclosure, full details of the materials of construction and design of all means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. The walls, fences and other means of enclosure as approved shall only be erected in accordance with the details hereby permitted.

- 12) No development in relation to the fishing pond hereby permitted shall commence until a scheme for the design and construction of the raised banks proposed to serve the pond has been submitted to and approved in writing by the Local Planning Authority. The fishing pond shall only be constructed in accordance with the approved details, and thereafter so maintained.
- 13) Prior to the proposed leisure centre or reception buildings or tennis bubble first being brought into use, the car parking facilities shown to serve each proposal shall be provided in accordance with the details as shown on drawing nos. RDS 10663/14C and RDS 10663/03A (received by the Local Planning Authority on 29 and 13 February 2012 respectively), and retained as such thereafter, unless otherwise agreed in writing by the Local Planning Authority.
- 14) Prior to any of the caravan pitches, the leisure centre building or 'tennis bubble' hereby permitted first being brought into use, the land between the highway boundary and the vision splays for the access to serve the development as indicated on drawing no. RDS 10663/03A (received by the Local Planning Authority on 13 February 2012), shall be cleared of all obstacles as shown on that plan. Thereafter the visibility splay shall be maintained free of all obstacles exceeding 0.6 metres in height.
- 15) Prior to any of the caravan pitches, the leisure centre building or 'tennis bubble' hereby permitted first being brought into use, the vehicular access to Walls Lane shall be improved in accordance with the details shown on drawing no. RDS 10663/23 (received by the Local Planning Authority on 13 February 2012).
- 16) Within seven days of the proposed revised access first being brought into use, the existing access onto Walls Lane shall be permanently closed to the public and retained for use only by commercial deliveries, emergency vehicles and pedestrians, in accordance with a scheme that shall first be submitted to and approved in writing by the Local Planning Authority.
- 17) Prior to the outdoor playing field hereby permitted first being brought into use the new pedestrian footbridges shall be provided in accordance with the details as shown on approved drawing no. RDS 10663/25 (received by the Local Planning Authority on 29 February 2012), and retained as such thereafter, unless otherwise agreed in writing by the Local Planning Authority.
- 18) Prior to any part of the development hereby permitted first being brought into use, foul water disposal from the development shall be connected to the main foul water sewer and maintained as such thereafter, unless otherwise approved in writing by the Local Planning Authority.
- 19) The scheme of internal and perimeter landscaping and tree planting shown on the approved drawing no. RDS 10663/24A (received by the Local Planning Authority on 23 February 2012), shall be carried out in its entirety within a period of 6 months beginning with the date on which development is commenced, or within such longer period as may be agreed in writing with the Local Planning Authority. All trees, shrubs and bushes shall be maintained by the owner or owners of the land on which they are situated for the period of ten years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when

necessary, unless the Local Planning Authority gives written consent to any variation.

- 20) The access works to be undertaken as part of the application hereby approved shall be carried out fully in accordance with details shown on the approved plans before the caravan site is first brought into use.
- 21) The development shall only be carried out in accordance with the Flood Risk Assessment received by the Local Planning Authority on 24 February 2012. In particular the following mitigations measures:
 - a) Finished floor levels of the caravans shall be set no lower than 2.30 metres Above Ordnance Datum (AOD) or 600 mm above ground level, whichever is the highest; and,
 - b) Caravans shall be anchored down to prevent them floating away during the flood.

It shall be confirmed to the Local Planning Authority that this has taken place, in writing within one month of completion.

APPENDIX D-ABBREVIATIONS

Agency	Environment Agency
AN	Ms Anne Nash
Call-in letters	Secretary of State call-in letters, dated 30 October 2020
CD	Core document
Council	East Lindsey District Council
CS	CD1-East Lindsey Local Plan Core Strategy, 2018
EBC	Ellis Bros Contractors Limited
ETa	Exception Test part a)
Fantasy Island LDO	The Fantasy Island Local Development Order 2020
FD2320/TR2	CD5-R & D Technical Report FD2320/TR2-Defra/Environment Agency, October 2005
FD2321	CD26-Environment Agency/Defra-Flood and Coastal Defence R & D Programme-R&D Outputs: Flood Risks to People Phase 2, March 2006
Framework	National Planning Policy Framework, July 2021
FRA	Flood Risk Assessment
FRPC	Flood Risk to People Calculator
FWEP	Flood Warning and Evacuation Plan
GR	G Rowland-interested party
HHPA	Holiday Home Pitch Agreement
HVCP	Hill View Caravan Park
ID	Inquiries document
IP1	Interested parties-D Baxter-Saife, L Boulter, N Spalding, T Owen, T Hall, L Hall and Dean Wann
KP	Mr Kevin Palmer
LCDB	Lincolnshire Coastal Destination BID-interested party
LDO	Local Development Order
LRF	Lincolnshire Resilience Forum
Meadowbank	The application site at HVCP
MW	M Wright-interested party
PA-FWEP	Flood Warning and Evacuation Plan submitted in support of a planning application
PPG	National Planning Practice Guidance-Flood Risk and Coastal Change
RS	R Sutherland-interested party
SAF	Sustainability Appraisal Form
SFRA	CD2-East Lindsey Strategic Flood Risk Assessment, 2017
South Fields	The application site at SWLP

SMP	Shoreline Management Plan
SWLP	Skegness Water Leisure Park
Guidance note S3.2	CD5-Chapter 12 S3.2-Risk to people behind defences
WMS	CD12-Written Ministerial Statement, July 2021
WTF	Willow Tree Farm
1990 Act	The Town and Country Planning Act, 1990
2000 Inquiries Procedure Rules	The Town and Country Planning (Inquiries Procedure)(England) Rules 2000



Department for Levelling Up, Housing & Communities

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.