

Your Reference:

Our Reference: SMT/TL/RJ/OCT12

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Date: 12th October 2020

Ms. Tara Dickenson
Ministry of Housing, Communities and
Local Government
Fry House,
2 Marsham Street,
Westminster,
LONDON,
SW1P 4DF

Dear Ms Dickenson,

RE: Local Development Orders:

- **Fantasy Island Sea Lane Local Development Order, Ingoldmells, Skegness, Lincolnshire**
- **Coastal Zone Local Development Order for land situated within coastal East Lindsey**

- 1 Further to your letter dated 5th October 2020, I have been asked by the Chief Executive to set out the reasons why this authority decided to adopt the Fantasy Island and Coastal Local Development Orders, and the basis upon which it contends the Secretary of State ought not to accede to the Environment Agency's request that he should revoke or modify either instrument. This letter supplements and should be read alongside that of David Hardy, a partner in Messrs Squire Patton Boggs, who is retained by the Council to advise on the procedural and legal matters associated with the making of each order.

Background to the making of the orders

- 2 Skegness ranks amongst the top 4 most popular destinations for UK residents, attracting around 2 million tourists each year. More than 6,000 people are directly employed in these industries on the coast in East Lindsey. They support many other supply chain jobs in the district and the regional economy. The success of this sector is vital to the future growth and prosperity of coastal Lincolnshire and the wider regional economy. Policy SP20 of the Local Plan therefore encourages development which enhances the visitor economy along the Skegness foreshore, and more widely across the Coastal Zone.
- 4 In September 2019, Skegness and Mablethorpe were invited by the Secretary of State to bid for up to £50 million to invest in infrastructure calculated to transform and regenerate the economic futures of each town and the coastal zone in which

they are set. The invitation recognises each town is home to some of the most deprived communities in England. In response, the Council has formulated ambitious plans for growth. At their heart is a private sector led proposal to develop a major growth point, known as the "Skegness Gateway". The scheme will deliver up to 1,000 new homes, a flagship further education college, employment, retail and a range of other facilities. The new households and businesses associated with the scheme will inject substantial all-year round spending into the local economy, which will boost the range, number and quality of jobs for local people. The Skegness Gateway enjoys the full support of the "Connected Coast Board". The Environment Agency and Lincolnshire County Council (the s.19 Flood Authority) are members of the Board.

- 5 The Secretary of State's desire to regenerate and transform the economic prospects of Skegness and Mablethorpe illustrates a recent policy shift in the Coastal Zone. The need for growth has risen to the top of the agenda. Action needs to be taken now. Covid19 has caused severe harm to the coastal leisure and tourism industry. This fact, and the dire situation on the coast in East Lindsey, is underlined by a recent study by the Centre for Towns and the University of Southampton, which ranked Skegness and Mablethorpe as the first and second most vulnerable to economic damage caused by Covid19 in England. Around 35% of all workers in Skegness are furloughed, and notwithstanding the reopening of the season in June 2020, the Council's research reveals up to 80% of employees in the leisure and hospitality industry are at risk of losing their jobs.

The Fantasy Island Resort and LDO

- 6 The Fantasy Island resort is one of Skegness's principal attractions. It is also a major local employer. The resort is operated by the Mellors Group. The Group operates throughout the United Kingdom and abroad. "Winter Wonderland" in Hyde Park is another of its well-known attractions. Mellors Group's Managing Director, Edward Mellors, is a member of the Culture Secretary's Task Force charged with helping to get the recreation and leisure sector "up and running" again. In short, Fantasy Island is a top-class leisure and tourism asset, expertly led, and operated by an industry leader.
- 7 The Fantasy Island site is intensively developed as a theme park, with associated retail, leisure and food and drink uses, high quality holiday lodges, and extensive car parking. It is a sophisticated, substantial, and well-run business. The Mellors Group plans to continue to make a substantial investment in the resort. That investment is, however, contingent on it being able to adapt its offer rapidly to changes in the market without being hampered by the delay, cost and uncertainty occasioned by the need to make frequent planning applications. The Fantasy Island LDO addresses this requirement. It will enable existing attractions to be redeveloped and improved without the need to apply for planning permission. Such provisions accord with Local Plan policy SP20. They should be uncontroversial.
- 8 The order also allows the resort's existing holiday lodges to be occupied between 1st March and 5th January each year. That will help to maintain footfall over the late autumn and winter months, which will in turn boost and protect jobs. The order

does not permit the development of additional lodges. Conditions imposed on the order also require the submission and prior approval of an evacuation plan to ensure the lodges can be occupied safely during the winter. This is a tried and test approach. It also ought to be wholly uncontroversial.

The Coastal LDO

- 9 There are around 25,000 static caravans in the Coastal Zone. Caravan and holiday parks are the bedrock of the coastal holiday industry. Many are of a very high quality, run by substantial, experienced, and reputable operators. The industry invests millions of pounds in its sites every year. They attract hundreds of thousands of staying visitors to the coast. The success of the industry is thus closely linked to the health of the wider coastal economy.
- 10 The Coastal LDO was promulgated directly in response to requests for help by numerous operators of coastal caravan sites, whose businesses have been severely harmed by Covid19. The principal purpose of the order is to enable operators to recover a proportion of the income they have lost by extending the season beyond the default period of 15th March to 31st October that is provided for by Local Plan Policy SP19.
- 11 The order also permits limited operational development to improve the amenity of existing sites. That provision accords with Local Plan Policy SP20. It ought to be entirely uncontroversial. The terms of the order have been drafted in close consultation with operators. The Council has listened and responded to what it has been told is necessary to protect businesses and jobs in the sector. Industry representatives have indicated that action is needed *now* to protect the sector. This urgent imperative, and the existential difficulties faced by the industry, are recognised by the Secretary of State in his Written Ministerial Statement of 14th July 2020. He describes caravan and holiday parks as a "...a mainstay of their local economies, providing employment and supporting local services and businesses", and invites local planning authorities to "consider the benefits of longer opening season times to the local economy as it recovers from the impact of Covid19".
- 12 The primary purpose of the Coastal LDOs thus accords exactly with the Secretary of State's own policy to support caravan and holiday parks in areas such as coastal East Lindsey as they strive to recover from Covid19. That is a critically important consideration, since it indicates restrictive development plan policies that operate to curtail growth in the Coastal Zone are out of date. Thus, whilst Local Plan policy SP19 generally restricts applications to extend the occupation of caravan and holiday parks outside the period 15th March to 31st October, the Secretary of State's policy renders it "out of date" within the meaning of paragraph 11 of the National Planning Policy Framework. Whilst paragraph 11(d)(i) precludes the operation of the "tilted balance", the Council may nevertheless lawfully attach reduced weight to the policy as it works with site operators through the LDO process to protect this vital sector of the local economy.

The key issue: can the potential harm arising from the risk of flooding be mitigated by condition?

- 13 East Lindsey's Coastal Zone is defined by the area shown on the Coastal Flood Hazard Maps. It follows that any development within the Zone should incorporate measures that protect its occupants from flooding due to a breach of sea defences. The Council's approach to this issue is to recognise that a general breach of the sea defences could pose a risk to life in the Coastal Zone. Therefore, it has adopted the highly precautionary approach of incorporating a condition in the Fantasy Island and Coastal Zone LDOs which require the operator to carry out a thorough risk assessment and devise a scheme for managing risk, including (in every case) the evacuation of any caravan or holiday park. Operators have agreed that the trigger for an evacuation of their parks should be based on warnings provided by the Flood Information Service, and that it should be "pulled" in advance of a severe flood warning. That is what the Council will expect and require before an operator is permitted to rely on either LDO. The condition undoubtedly meets the 6 tests of NPPF paragraph 55. The approach has already been implemented by operators along the Coastal Zone. When applied to sites that utilise the LDO it will eliminate the kind of risk adverted to by the Environment Agency: quite simply, any caravan park which has taken advantage of the LDO will be evacuated before the highest state of flood alert is declared.
- 14 In that context, it is striking that the Environment Agency do not contend the condition fails to meet the tests of NPPF paragraph 55. Instead, it has merely expressed a generalised concern, which is unsupported by any evidence, that operators will not comply with the condition. That stance is *Wednesbury* unreasonable. It flies in the face of the industry's support for the imposition of a condition. Their representatives have stated categorically that they are prepared to accept the evacuation of their sites triggered by occasional false alarms as part and parcel of this recovery initiative. The Agency's objection ignores the fact that many sites are operated by sophisticated and well managed businesses, such as Fantasy Island. They are well equipped to evacuate their parks quickly and efficiently. It also takes no account of the fact operators have already adopted evacuation plans based on information provided by the FIS.
- 15 There are other compelling reasons why the Secretary of State ought not to be swayed by the Agency's objections.
- (1) The take up of the LDOs will be accompanied by the widespread adoption of up-to-date, site-based, flood risk assessments and evacuation plans of a uniformly high quality. That will enhance safety on the coast.
 - (2) Consultation with operators has revealed that the LDO is most likely to be taken up by the larger, better resourced operators, who possess more modern, winterised units, comprehensive infrastructure and on-site facilities for guests. Thus, the overall level of occupation of caravan and holiday parks is judged likely to be significantly lower than during the summer (which is also subject to a risk of flooding, due to an event with a 0.5% chance of occurring in any one year).

- (3) The Council will not hesitate to take robust action against any operator that fails to comply with the requirement to prepare a flood risk assessment and evacuation plan.
- (4) The LDOs only extend the season by a matter of weeks. The Environment Agency have not provided any facts which demonstrate this incremental change will materially impact on the probability or magnitude of flooding on sites that take up the LDO, or any consequent risk to life. On the contrary, it merely advances a policy objection, which is based on bald assertion rather than evidence.
- (5) The Coastal LDO is time limited to a temporary period of 2 years, whereas the risk of flooding that is indicated on the Combined Flood Hazard Map at p.85 of the Local Plan indicates the higher level of risk that is anticipated in 2115.
- (6) The LDOs do not authorise the provision of additional caravans or lodges, or the physical extension of caravan parks.

16 The Environment Agency has declined to grapple with any of these arguments. It has produced no evidence. It has failed entirely to balance the economic and social dimensions of sustainability with environmental considerations. In short, it has closed its mind to the obvious utility of mandatory site-specific flood assessments and evacuation plans. The Council understands the Environment Agency is entitled to adopt a narrow environmental perspective. However, that has caused it to maintain an objection in the face of a clear solution to its particular concern.

Other matters

17 By virtue of the fact each LDO has been formulated in close consultation with operators, the industry has already begun to invest in preparation for an extended season on the coast. In that context, the Secretary of State advises: -

“Given the current situation, while local planning authorities must have regard to their legal obligations, they should not seek to undertake planning enforcement action which would unnecessarily restrict the ability of caravan and holiday parks to extend their open season”.

18 Enforcement is a discretionary activity. The Council could rely on the Secretary of State’s policy should it decide not to enforce strictly planning controls on the length of the season, provided it is satisfied that in every case operators have carried out a flood assessment and have an effective plan for evacuation. However, it is plainly desirable for caravan sites and holiday parks to be properly regulated by the LDO regime, which facilitates coherent and comprehensive management of the sector. If the LDOs were to be revoked, it would be difficult for the Council to identify and proactively manage sites that stay open beyond 31st October. Revocation or modification would thus be a retrograde step, which would tend to increase rather than mitigate risk.

19 For all of these reasons, and for the reasons that are set out in Mr Hardy’s letter, the Secretary of State is invited to decline to revoke or modify either LDO. Further,

having regard to operators' reliance on each order, and the significant financial loss that would be occasioned by revocation or modification, and the likelihood the same would be met by claims for substantial compensation, the Secretary of State is further invited to consult with the sector and other interested parties, including the Skegness Town Council and the Skegness Chamber of Commerce (many of whose members have indicated they support the coastal LDO), before deciding what action he should take.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Timothy Leader'. The signature is written in a cursive style with a large initial 'T'.

Timothy Leader BSc (Hons) MA MPA MRTPI Barrister
Deputy Chief Executive (Strategy)
Boston Borough Council and East Lindsey District Council