



PINS Ref: 6010219
LPA Ref: H23-0168-26

TOWN AND COUNTRY PLANNING ACT 1990

WRITTEN REPRESENTATIONS PROCEDURE

APPEAL BY

Bernard McDonagh

For

The refusal of a Section 73 application for the Change of use of land to use as a residential Gypsy/Traveller caravan site without complying with condition 2 attached to planning permission H23-0841-20

STATEMENT OF CASE FOR THE LOCAL PLANNING AUTHORITY

Enclosures:

- Statement
- Conditions recommended by the Local Planning Authority if the appeal is allowed
- Applicants Planning Statement from H23-0841-20
- Officers report to planning committee from H23-0841-20

South Holland District Council
Council Offices
Priory Road
Spalding
Lincs
PE11 2XE

Statement of Case for the Local Planning Authority

Background

- 1.1 Planning permission was refused under delegated powers 7th May 2026 for the reasons set out within the decision notice.
- 1.2 The appeal relates to an application made under Section 73 of the Town and Country Planning Act 1990 seeking planning permission without complying with Condition 2 attached to planning permission H23-0841-20.
- 1.3 The application seeks to remove Condition 2, which restricts occupation of the site to Mr and Mrs M. Smith and their immediate family and requires the residential use to cease once those named occupiers permanently vacate the site.

This does not result in the simple removal of a condition. The appellant is not simply seeking to remove a planning condition; they are seeking to remove the legal mechanism that gives effect to the very permission they originally sought, the officer assessed, and the Planning Committee approved, whilst leaving untouched a description of development that still refers to "the applicants and family only" which evidently creates conflict.

- 1.4 The Council's position is that this condition formed a defining feature of the planning permission originally granted and cannot lawfully be removed through the Section 73 process.
- 1.5 Although the application was submitted using a full planning application form, the description of development sought planning permission for the existing development *"without complying with Condition 2 attached to planning permission H23-0841-20."* No physical alterations to the approved development were proposed, no amended plans were submitted and no changes were sought to the approved layout, scale or extent of the development. The sole purpose of the application was to remove Condition 2 attached to planning permission H23-0841-20.
- 1.6 The Local Planning Authority therefore considered the application on the basis of its substance. As the proposal sought only the removal of a condition attached to an existing planning permission, it was assessed by reference to the principles applicable to Section 73 of the Town and Country Planning Act 1990.

Proposal

- 2.1 Planning permission H23-0841-20 was granted on 18th December 2020 for the following development:

"Change of use from paddock to travellers site for applicants' and family only (part retrospective)."
- 2.2 The current application seeks the removal of Condition 2, which presently identifies the named occupiers for whose benefit planning permission was granted and requires the residential use to cease once those occupiers permanently vacate the site. The Council's position is that the removal of this condition would fundamentally alter the nature and effect of the planning permission originally granted and cannot lawfully be achieved by means of a Section 73 application.

- 2.3 The site benefits from a personal permission attached to the applicant, upon their request as part of planning approval H23-0841-20. The terms of that permission are '*Change of use from paddock to travellers site for applicants' and family only (part retrospective)*'. Condition 2 the parameters of what has actually been approved, rather than merely regulating how the development is carried out and so is fundamental to that decision.
- 2.4 The current submission is based on the same plans, supporting information and continued use approved under planning permission H23-0841-20 and, as submitted, narrows the Council's assessment to the effects of removing Condition 2 only. On the basis of the information provided, the condition cannot be removed as it is fundamental to the personal planning permission originally sought and granted. If permission for a non-personal traveller site or a broader gypsy and traveller use had been proposed, this would constitute a materially different form of development requiring a separate assessment of the principle of development, demonstrated need, and flood risk, together with consideration of additional and different planning policies. No such information or justification has been provided because the current submission mirrors that originally submitted under application H23-0841-20.

Appeal Site and Surrounds

- 3.1 The appeal site is located on the eastern side of Hurdletree Bank, approximately 2.4 kilometres north-west of Whaplode St Catherine. The site lies within the open countryside for planning policy purposes and is characterised by a predominantly rural setting interspersed with sporadic residential development fronting the highway.
- 3.2 The site extends to approximately 0.19 hectares and comprises a former paddock which benefits from planning permission for its change of use to a Gypsy and Traveller site. The site is currently occupied by a twin-unit static caravan, touring caravans and associated ancillary structures
- 3.3 Vehicular access is taken directly from Hurdletree Bank. The site is set back from the highway and is enclosed by established boundary hedging, mature planting and gated access, which provide a significant degree of screening from the surrounding area.
- 3.4 Residential properties are located immediately to the south of the appeal site, with the surrounding land otherwise remaining predominantly agricultural in character.

Relevant Site History

- 4.1 The appeal site has the following relevant planning history:
- H23-0841-20** – *Change of use from paddock to travellers site for applicants' and family only (part retrospective)*. Approved on 18th December 2020.
- 4.2 Planning permission H23-0841-20 authorised the use of the land as a Gypsy and Traveller site for the benefit of Mr and Mrs M. Smith and their immediate family.

Condition 2 restricted occupation accordingly and required the residential use to cease once the named occupiers permanently vacated the site. The reason for imposing the condition confirms that permission was granted having regard to the personal circumstances and justification of the applicants.

- 4.3 The application was supported by a Planning Statement which repeatedly identified the proposal as being for the sole use of Mr and Mrs Smith and their immediate family. The applicants expressly confirmed that no other members of the family would occupy the site, that no strangers would be permitted to reside there, and stated that they were prepared to have their immediate family named on any planning permission as the sole occupiers. The planning statement from that application is key supporting evidence to this and is attached as an enclosure.
- 4.4 The officer's report adopted the proposal on that basis, describing the development as a traveller site for the applicants and their immediate family only before recommending the grant of planning permission subject to the personal occupancy restriction contained within Condition 2. This is the proposal and officer recommendation that the Planning Committee subsequently based their decision on.

Relevant Legislation & Policy

- 5.1 Section 73 of the Town and Country Planning Act 1990 enables an application to be made for the development of land without complying with conditions subject to which a previous planning permission was granted.
- 5.2 A decision under Section 73 results in the grant of a new planning permission subject to a different set of conditions. However, the power is limited to varying or removing conditions attached to an existing planning permission and cannot be used to authorise a materially different development from that originally approved.

National Planning Policy

- 5.3 The National Planning Policy Framework (December 2024) is a material consideration in the determination of this appeal.
- 5.4 Planning Practice Guidance (PPG) confirms that an application made under Section 73 cannot be used to alter the description of development associated with the original planning permission. The local planning authority must therefore be satisfied that the development, as varied, remains the same development as originally permitted.

Reasons for Refusal

6.1 Reason 1

The proposed development seeks the removal of a personal occupancy restriction attached to planning permission H23-0841-20. The original permission expressly relates to the use of the site as a Gypsy/Traveller site for the named individuals

and their immediate family, as defined within both the description of development and the imposed condition. This restriction formed an integral component of the development as proposed and assessed.

The removal of this restriction would result in a materially different form of development, namely a permanent Gypsy/Traveller site capable of occupation by any persons meeting the relevant definition. This would extend beyond the scope of the development originally permitted and would not constitute the same development for the purposes of Section 73 of the Town and Country Planning Act 1990.

As such, the proposal falls outside the scope of Section 73 and cannot be lawfully granted.

7. The Councils Case

7.1 The Scope of Section 73

- 7.1.1 Section 73 of the Town and Country Planning Act 1990 enables an application to be made for development without complying with conditions attached to an existing planning permission. The resulting permission is a new planning permission but must relate to the same development as that originally approved (Town and Country Planning Act 1990, s.73).
- 7.1.2 Planning Practice Guidance confirms that an application under Section 73 cannot be used to alter the description of development associated with the original planning permission and must therefore relate to the same development that was previously authorised (MHCLG, *Planning Practice Guidance: Flexible options for planning permissions*, Paragraph: 013, Reference ID: 17a-013-20140306).
- 7.1.3 The Council therefore considers that the primary issue in this appeal is not whether Condition 2 continues to satisfy the policy tests for planning conditions, but whether its removal would alter the nature of the planning permission originally granted such that the proposal falls outside the scope of Section 73.

7.2 The Original Planning Permission

- 7.2.1 In considering that issue, it is necessary to examine the basis upon which planning permission H23-0841-20 was originally sought, assessed and granted.
- 7.2.2 The planning application was not advanced as a proposal for an unrestricted traveller site. The Planning Statement submitted in support of the application repeatedly stated that the site was intended solely for occupation by Mr and Mrs Smith and their immediate family. The applicant expressly confirmed that no other members of the family would occupy the site, that no strangers would reside on the site and that they were prepared to have their immediate family named within any planning permission as the sole occupiers. (As set out in the applicant's planning statement for H23-0841-20)

"Our Clients have asked us to make it very clear within this Planning Application, that the site is for the sole use of Mr M Smith, his Wife and children... No other

members of the family will live on the site and certainly there will be no strangers allowed on the site. For the avoidance of doubt, Mr Smith is prepared to have his immediate family named on the approval as sole occupiers."

- 7.2.3 Those representations formed part of the planning justification advanced in support of the application and were not merely descriptive. They were relied upon by the applicant to explain the need for the development and the basis upon which planning permission was sought.
- 7.2.4 The officer's report considered the proposal on that same basis, describing the development as a traveller site for the applicants and their immediate family only before recommending that planning permission be granted subject to a personal occupancy condition. That recommendation, together with the officer's planning assessment, was presented to the Planning Committee, who subsequently resolved to grant planning permission on that basis. The resulting decision notice reflected that resolution through both the description of development and the imposition of Condition 2. (As set out in the officer's report to planning committee for H23-0841-20).
- 7.2.5 The reason attached to Condition 2 expressly confirms that planning permission was granted having regard to the personal circumstances and justification of the applicants. In the Council's opinion, the condition therefore reflected the planning balance reached in determining the original application rather than representing an unrelated or ancillary planning control. (As set out in the decision notice for H23-0841-20).

7.3 The Appellant's Case

- 7.3.1 The appellant submits that the removal of Condition 2 would not alter the nature of the development authorised by planning permission H23-0841-20 because the description of development would remain unchanged. The Council considers this interpretation to be incorrect.
- 7.3.2 Whilst the description of development is an important component of any planning permission, it cannot properly be read in isolation from the remainder of the permission. The application documents, officer's assessment, planning conditions and reasons for those conditions all assist in identifying the development that was considered acceptable and ultimately authorised.
- 7.3.3 In the present case, those documents consistently demonstrate that planning permission was sought and granted on the basis of the personal circumstances of the named applicants. Condition 2 was the mechanism by which that personal limitation was given effect. Accordingly, the Council considers that the condition formed a central element of the planning permission rather than a freestanding planning restriction capable of being removed without consequence.
- 7.3.4 The Council also notes that the personal occupancy restriction was not imposed contrary to the applicant's wishes. On the contrary, the applicant expressly indicated within the original Planning Statement that they were willing for the planning permission to name their immediate family as the sole occupiers. The condition therefore reflected the development proposed by the applicant rather

than a restriction introduced independently by the Local Planning Authority. (Please see the applicant's planning statement for H23-0841-20).

- 7.3.5 The Council accepts the general principle, reflected within the Planning Practice Guidance, that planning permission ordinarily runs with the land and that personal permissions should only be granted in exceptional circumstances. However, that guidance is directed towards the appropriateness of imposing personal conditions when granting planning permission. It does not remove the statutory limitations upon the exercise of powers under section 73, nor does it answer the preliminary question before the Inspector as to whether the proposed development remains the same development as that originally permitted.

7.4 The Appellant's Reliance on Case Law

- 7.4.1 The appellant relies upon the decisions in *I'm Your Man Ltd v Secretary of State for the Environment* and *Barton Park Estates v Secretary of State for Housing, Communities and Local Government* in support of the proposition that the description of development alone defines the scope of the planning permission.
- 7.4.2 The decision in *I'm Your Man Ltd* concerned the interpretation of a planning permission where no express condition had been imposed limiting the duration of the permission. It did not concern an application under section 73 or the removal of a condition which formed part of the planning justification upon which permission was originally granted. The Council therefore considers the factual circumstances to be materially different from those before the Inspector in the present appeal.
- 7.4.3 In particular, *Barton Park Estates* confirms that planning permissions should be interpreted as a whole. In the Council's view, reading planning permission H23-0841-20 as a whole demonstrates that the personal occupancy restriction was fundamental to the permission granted, reflecting both the applicant's own case and the planning balance undertaken by the Local Planning Authority.

7.5 The Effect of the Appeal Proposal

- 7.5.1 The current application seeks to remove the condition that gives legal effect to the personal nature of the planning permission originally granted. The applicant sought permission from the LPA to consider the ongoing use of this site without complying with condition 2 of permission H23-0841-20.
- 7.5.2 Whilst the description of development would remain unchanged, the Council considers that the removal of Condition 2 would fundamentally alter the basis upon which planning permission H23-0841-20 was granted. The resulting permission would no longer contain the operative restriction securing the personal planning justification relied upon by both the applicant and the Local Planning Authority.
- 7.5.3 The Council therefore considers that the proposal extends beyond the variation or removal of a planning condition. Instead, it seeks to remove a fundamental component of the planning permission upon which the original planning balance was undertaken.

- 7.5.4 The appellant's Statement of Case places significant reliance upon the Planning Practice Guidance relating to the use of personal planning conditions, the six tests for planning conditions and authorities including *I'm Your Man Ltd v Secretary of State for the Environment* and *Barton Park Estates v Secretary of State for Housing, Communities and Local Government*. The Council accepts the general principles arising from that guidance and case law. However, none displace the preliminary question before the Inspector in this appeal, namely whether Section 73 may lawfully be used to remove a condition that formed an integral part of the development originally applied for, justified and approved.
- 7.5.5 In particular, the Council considers that *Barton Park Estates* supports the principle that planning permissions should be interpreted as a whole. In the present case, reading planning permission H23-0841-20 as a whole—including the application documents, officer's report, decision notice and the reason for Condition 2—demonstrates that the personal occupancy restriction was not an isolated planning control but formed part of the planning permission as granted.
- 7.5.6 For these reasons, the Council considers that the proposal would result in a planning permission that is materially different from that originally granted and therefore falls outside the lawful scope of Section 73 of the Town and Country Planning Act 1990.

8. Conclusion

- 8.1 The Council considers that the appeal proposal falls outside the lawful scope of Section 73 of the Town and Country Planning Act 1990. Whilst Section 73 provides a mechanism for varying or removing planning conditions, it does not permit the grant of planning permission for a materially different development from that originally approved.
- 8.2 The evidence demonstrates that planning permission H23-0841-20 was promoted, assessed and ultimately granted as a personal planning permission for the benefit of Mr and Mrs Smith and their immediate family. The applicant's own Planning Statement expressly advanced the proposal on that basis and invited the Local Planning Authority to name the family as the sole occupiers. Those representations were subsequently reflected in the officer's assessment presented to the Planning Committee, the Committee's resolution to grant planning permission, the description of development and the imposition of Condition 2.
- 8.3 The Council considers it to be of particular significance that the personal occupancy restriction now challenged by the appellant did not arise solely from the Local Planning Authority's assessment of the proposal. Rather, it reflected the development that the applicant themselves promoted, justified and expressly invited the Local Planning Authority to approve. Having secured planning permission on that basis, the appellant now seeks to remove the very restriction that formed part of the planning justification upon which permission was granted.
- 8.4 Furthermore, the approved description of development continues to refer to a "*travellers site for applicants' and family only.*" The current application therefore seeks to remove the condition identifying those applicants whilst leaving unchanged the description of development upon which the original permission was granted. In the Council's view, this further demonstrates that Condition 2 cannot properly be considered in isolation from the planning permission as a whole.

- 8.5 For these reasons, the Council considers that the proposed removal of Condition 2 would fundamentally alter the basis upon which planning permission H23-0841-20 was granted. It would not constitute the same development as originally permitted and therefore cannot lawfully be achieved by means of an application under Section 73 of the Town and Country Planning Act 1990.
- 8.6 Accordingly, the Council respectfully requests that the Inspector dismiss the appeal and uphold the decision of the Local Planning Authority.

9. Suggested Conditions (Without Prejudice)

9.1 Without prejudice to the Council's primary position that the appeal should be dismissed, should the Inspector be minded to allow the appeal, the Local Planning Authority respectfully requests that planning permission be granted subject to the conditions attached to planning permission H23-0841-20, save for Condition 2 should the Inspector conclude that its removal is lawful under Section 73.

9.2 In particular, the Council considers that the following conditions remain necessary, relevant and reasonable:

1. Approved Plans:

Application Form
Location Plan
137488/2 - Proposed Block Plan

2. Restriction on the number of caravans and prohibition of commercial activities:

No more than 1 static caravan and 3 touring caravans shall be sited on the land at any one time and no storage or sales of materials, machinery, vehicles, waste or other commercial uses or processes, shall take place on the site.

Reason: To define the terms of the permission, in the interests of the appearance of the development, levels of residential amenity and the visual amenity of the area in which it is set. This Condition is imposed in accordance with Policies 1, 2 and 3 of the South East Lincolnshire Local Plan, March 2019 which reflect national guidance contained in both the National Planning Policy Framework 2024 (December) and 'Planning Policy for Traveller Sites, 2015'.

3. Restriction of permitted development rights:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order or Statutory Instrument revoking and re-enacting that Order), none of the following developments or alterations shall be carried out other than approved by virtue of this permission: i) the erection of freestanding curtilage buildings or structures including car ports, garages, sheds, greenhouses, pergolas or raised decks; ii) the erection of extensions including conservatories, garages, car ports, porches or pergolas; iii) alterations including the installation of replacement or additional windows or doors and the installation of roof windows; iv) the erection of walls, fences or other means of enclosure.

Reason: To ensure that the Local Planning Authority retains control over the future extension and alteration of the development, in the interests of its architectural and visual integrity, levels of residential amenity and the visual amenity and character of the area within which it is set. This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

4. Retention and maintenance of boundary hedging

The existing hedging along the boundaries of the site shall be retained and maintained at a height of at least 3 metres. In the event of the existing hedgerow being removed or dying, it shall be replaced to a specification that shall first have been approved in writing by the Local Planning Authority. The new hedgerow plants shall be maintained by the owner or owners of the land on which they are situated for the period 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.

Reason: To ensure the protection of the existing hedging on the site, in the interests of the amenities of the locality. This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 15 of the National Planning Policy Framework, 2024 (December)

5. Flood mitigation measures, including securing the static caravan and minimum finished floor levels

The following flood mitigation measures shall be incorporated within the development:

- The static caravan shall be secured to the ground to prevent it becoming mobile during a flood event;
- The floor level of the static caravan and utility room shall be set a minimum of 300mm above the existing ground level.

Note: The applicants' are advised to sign up to the Environment Agency's free Floodline Warnings Direct Service.

Reason: To reduce the risk and impact of flooding on the development and future occupants. This Condition is imposed in accordance with advice within Section 14 of the National Planning Policy Framework, 2024 (December)

- 9.3** Should the Inspector determine that Condition 2 may lawfully be removed, the Council respectfully requests that consideration be given to whether an alternative occupancy condition is necessary to ensure that the use of the site remains consistent with the approved description of development and the planning purpose for which permission was originally granted.

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Development Manager

To: Planning Committee - 16 December 2020

(Author: David Gedney - Senior Planning Officer)

Purpose: To consider Planning Application H23-0841-20

Application Number: H23-0841-20

Date Received: 28 September 2020

Application Type: FULL

Description: Change of use from paddock to travellers site for applicants' and family only (part retrospective)

Location: FOXES LOWE HURDLETREE BANK WHAPLODE ST CATHERINE

Applicant: Mr & Mrs M Smith

Agent: Fraser Dunchurch Ltd.

Ward: Whaplode and Holbeach St Johns

Ward Councillors: Cllr A C Beal
Cllr P A Redgate

You can view this application on the Council's web site at

<http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H23-0841-20>

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 Policy issues merit Committee consideration.

2.0 PROPOSAL

2.1 Full planning permission is sought for the change of use of a paddock to a travellers' site for the applicants' and their immediate family only. It would consist of a 12m x 6m twin unit static caravan (with skirt and veranda), 3 pitches for touring caravans, a timber tool shed, a small utility building and a hard-cored access drive. The pitches would be for the applicants' caravans and one for Mr Smith's mother to visit on an occasional basis. The twin unit and timber shed are presently on site and an existing polythene tunnel would be removed, along with some other small sheds.

2.2 The supporting statement indicates that this is typical of a normal travellers pitch, which comprises one static unit, two pitches for travelling vans and a utility block for washing, showering, washing cloths etc. It also stresses that the applicants' comply with the definition of "gypsies and travellers" within the definitions set out in DCLG document Planning Policy for Traveller Sites, published August 2015. It comprehensively outlines their family history, including photographs, and their present circumstances.

2.3 For the purposes of the above Planning Policy "gypsies and travellers" means: 'Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporally'.

3.0 SITE DESCRIPTION

3.1 The site (some 0.19ha) is located on the eastern side of Hurdletree Bank some 2.4km to the north-west of Whaplode St Catherine. It is currently occupied by a twin unit static caravan (with veranda), a number of timber sheds and a polythene tunnel. It has high hedging around its perimeter.

3.2 Three pairs of semi-detached houses are situated to the south of the site.

4.0 RELEVANT PLANNING POLICIES

4.1 The Development Plan

4.2 South East Lincolnshire Local Plan, March 2019

If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, Section 38 (6) to the Town and Country Planning Act as amended by the 2004 Act states that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Policy 1 - Spatial Strategy
Policy 2 - Development Management
Policy 3 - Design of New Development
Policy 4 - Approach to Flood Risk
Policy 11 - Distribution of New Housing
Policy 17 - Providing a Mix of Housing
Policy 19 - Rural Exception Sites
Policy 20 - Accommodation for Gypsies, Travellers and Travelling Showpeople
Policy 28 - The Natural Environment
Policy 31 - Climate Change and Renewable and Low Carbon Energy
Policy 32 - Community, Health and Well-being
Policy 36 - Vehicle and Cycle Parking
Appendix 6 - Parking Standards

4.3 National Guidance

4.4 National Planning Policy Framework (NPPF), 2019

2. Achieving sustainable development
4. Decision-making
5. Delivering a sufficient supply of homes
8. Promoting healthy and safe communities
11. Making effective use of land
12. Achieving well-designed places
14. Meeting the challenge of climate change, flooding and coastal change
15. Conserving and enhancing the natural environment

4.5 DCLG Planning Policy for Traveller Sites (August 2015)

Policy A: Using evidence to plan positively and manage development
Policy B: Planning for traveller sites
Policy C: Sites in rural areas and the countryside
Policy D: Rural exception sites
Policy H: Determining planning applications for traveller sites
Policy I: Implementation
Annex 1

4.6 The Housing and Planning Act 2016

4.7 Caravan Sites and Control of Development Act 1960 - Section 5

4.8 Planning Practice Guidance (PPG)

5.0 RELEVANT PLANNING HISTORY

- 5.1 H23-1471-06 - Full - Change of use of agricultural land to paddock (retrospective) - Granted 20 December 2006.
- 5.2 Recent planning decisions within the District preceding the adoption of the SELLP
- 5.3 H16-1003-13. Land off Drain Bank North, Spalding - Provision of gypsy and traveller caravan site with 10 pitches each accommodating up to 10 caravans (permanent site). Approved 20 May 2014.
- 5.4 H23-0440-17. Eccles Place, Hurdletree Bank, Whaplode St Catherine - Use of land for siting of caravan. Approved. 22 January 2018.
- 5.5 Recent planning decisions within the District post adoption of the SELLP (March 2019).
- 5.6 H06-0233-19. Green Acres Park, Ropers Gate, Gedney - Change of use of land (part retrospective) to provide five additional gypsy/traveller pitches with one day room per pitch and existing stables converted to dayrooms. Also, erection of one new store and retention of sheds for pitch 1, with construction of internal road to facilitate separate ingress and egress to and from the site, including hardstanding. Approved 5 September 2019.
- 5.7 H16-0734-19. Akita Place, Clay Lake, Spalding - Siting of mobile home (retrospective) - re-submission of H16-0030-17. Approved 20 September 2019.
- 5.8 H23-0848-19. Bleu Raye Farm, Millgate, Whaplode - Proposed residential gypsy/traveller site. Approved 26 June 2020.
- 5.9 H20-0513-20. The Stables, Baulkins Drove, Sutton St James - Residential gypsy caravan site for one family with 2 caravans (retrospective) - approved under H20-0287-06. Modification of Condition 1 to allow the name on the planning approval to be changed to Ms West. Approved 25 August 2020.

6.0 REPRESENTATIONS

6.1 Whaplode Parish Council

This is not a designated travellers site and it is unsustainable in its present location.

6.2 LCC Highways/SUDs

Does not wish to restrict the grant of planning permission.

6.3 Environmental Protection

No comments or objections.

6.4 Private Sector Housing Community and Neighbourhood Services

If approved the applicant will be required to apply for a site licence with the Caravan Sites and Control of Development Act, 1960.

6.5 Residents

No comments received.

7.0 CONSIDERATIONS

7.1 Planning Considerations

7.2 The main issues in this case are the principle of the development, the likely impact upon the amenity of nearby residents and flood risk.

7.3 Policy/Principle

7.4 The principle of this proposal is to be considered in the light of the NPPF, the Government's Planning Policy for Traveller Sites (August 2015, published by DCLG) and the policies of the South East Lincolnshire Local Plan, 2019.

7.5 The DCLG document, Planning Policy for Traveller Sites, sets out that in determining planning applications for such sites, applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the National Planning Policy Framework and this planning policy for traveller sites.

7.6 Policy C of the DCLG document sets out that:

When assessing the suitability of sites in rural or semi-rural settings, Local Planning Authorities should ensure that the scale of such sites does not dominate the nearest settled community.

Policy H sets criteria for determining planning applications for traveller sites and, in particular, paragraph 24 states:

Local Planning Authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:

- a) the existing level of local provision and need for sites*
- b) the availability (or lack) of alternative accommodation for the applicants*
- c) other personal circumstances of the applicant*
- d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites*
- e) that they should determine applications for sites from any travellers and not just those with local connections*

7.7 The South East Lincolnshire Local Plan, 2019 (SELLP) acknowledges there is both a 'known' and 'unknown' unmet need for additional Gypsy/Traveller residential accommodation within its district between the period 2011-36.

7.8 At 3.2.17, the SELLP states *Housing needs may also, by exception, be justified in the Countryside; for example, for Gypsy, Traveller and Travelling Showpeople accommodation (Policy 20: Accommodation for Gypsies, Travellers and Travelling Showpeople)...*

7.9 Below, Policy 20, Accommodation for Gypsies, Travellers and Travelling Showpeople, is set out in full.

7.10 *The redevelopment or change of use of an Existing Residential Gypsy/Traveller Site or Existing Residential Travelling Showperson's Site (as identified on the Policies Map) will be permitted only if an assessment has been undertaken which has clearly shown that the site is no longer required to meet the accommodation needs of the Gypsy/Traveller or Travelling Showpersons communities.*

Between 2011 and 2036, evidence suggests that, in South East Lincolnshire, there will be a need for the provision of:

4 new permanent residential pitches for gypsies and travellers; and 1 new permanent residential plot for travelling showpeople.

This need will be met through the development of the sites identified on the Policies Map and listed below:

Land at The Stables, Baulkins Drove, Sutton St James allocated as a 'Proposed Residential Travelling Showperson's Site', to provide accommodation for one additional household; and

Land at Bleu Raye Farm, Mill Gate, Whaplode Fen, allocated as a 'Proposed Residential Gypsy/Traveller Site', to provide accommodation for four households.

Planning permission will be granted for the development of these sites, provided that proposals:

- 1. will be adequately provided with appropriate infrastructure such as electricity, drinking-water, waste-water treatment and recycling/waste management;*
- 2. will not have a significant adverse effect on the amenities of existing local residents or adjoining land users (and proposals must, therefore, give careful consideration to layout, landscaping, external lighting schemes, and the type of business uses that would be appropriate (if mixed residential and business use is proposed); and*
- 3. will be successfully assimilated into both their immediate environs and the wider landscape. the SELLP identifies 4 new permanent residential pitches for gypsies and travellers; and 1 new permanent residential plot for travelling showpeople, subject to criteria relating to appropriate infrastructure, such as electricity, drinking-water, waste-water treatment and recycling/waste management; no significant adverse effect on the amenities of existing local residents or adjoining land users; and will be successfully assimilated into both their immediate environs and the wider landscape.*

Additional needs which may arise during the Local Plan period will be met through the determination of planning applications on other, unallocated sites. Planning permission will be granted for proposals on such sites, provided that they meet criteria 1 to 3 above, and they:

- a. provide occupants with an acceptable standard of amenity;*
- b. are not located adjacent to uses likely to endanger the health of occupants, such as a refuse tip, water recycling centres or contaminated land;*
- c. respect the scale of the nearest settled community;*
- d. will not place undue pressure on local infrastructure;*
- e. will not adversely affect heritage assets or areas of importance to nature conservation;*
- f. will not prejudice highway safety or give rise to problems of parking or highway access;*
- g. for sites for permanent residential use they:*
 - i. provide occupants with access to education, health care and recreational facilities, shops and employment within reasonable travelling distances, preferably by walking, cycling or public transport;*
 - ii. are suitable (or capable of being made suitable) for mixed residential and business use;*
 - iii. are not located within Flood Zone 3a or 3b and, if located in Flood Zone 2, the Sequential and Exception Tests have been passed; and*
- h. for sites for transit or stopping place use, are not located within Flood Zone 3b and, if located within Flood Zone 3a, the Sequential and Exception Tests have been passed.*

7.11 It is considered that this application proposal meets all points of this policy and is, therefore, acceptable in principle. The matters of flooding and impact on neighbouring properties is addressed further below.

7.12 Identifiable Need for this Development

7.13 As part of the SELLP work, an independent Gypsy and Traveller Accommodation Assessment was undertaken on behalf of the Joint Planning Unit, and the report published in November 2016. At the time of the report, in South Holland there were no public sites; 10 private sites with a total of 57 pitches; 1 unauthorised site with 10 pitches; and 3 Travelling Showpeople yards with 14 plots. There was no other provision for Gypsies, Travellers or Travelling Showpeople.

- 7.14 This report concluded that at the time of publication there are 5 Gypsy or Traveller households identified in South Holland that meet the government definition and 37 'unknown' households that may meet the definition. This approach is consistent with the outcomes of a recent Planning Appeal where access to a site was not possible but basic information was known about the number of households residing there. (Planning Inspectorate Ref: APP/Z6950/A/14/2212012).
- 7.15 The components of future need are as follows:
- Older teenage children in need of a pitch of their own.
 - Households living on sites with temporary planning permissions.
 - New household formation.
 - In-migration.
- 7.16 The need for 4 additional pitches for the household that meets the definition is made up of new household formation based on the demographics of household members - this allocation has been set as the land at Bleu Raye Farm.
- 7.17 In addition, the report goes on to set out that there may be a need across the plan period for up to 13 additional pitches for 'unknown' households.
- 7.18 It is considered that the provision of a site for the applicants' and their family would contribute to the future need for pitches within the local plan period, in accordance with the policies set out above.
- 7.19 Sustainability
- 7.20 During the past four years, the applicants' have been searching for a parcel of land, whereby they could settle down on a more continual basis than they currently are able to - with the view of finding a site to call home and settle down with their growing family. The location of the new piece of land is vital to the family as they now have 4 children in total and need to settle in the area where they currently live, to provide security and stability for the children. Mr Smith has, within the last 3 years moved very successfully into the motor trade - buying and selling second hand cars. He now runs his business from a separate pitch, with sufficient capacity to store and sell the cars. It is within this trade where his future lies.
- 7.21 The application site is located adjacent to existing residential accommodation, and although within the open countryside, is part of a small enclave of development and reads as part of the ribbon development that has occurred. It is not closely related to large Sub-Regional or Main Service Centres such as Spalding and Holbeach, although it does have road links. It would enable the 3 school age children to continue to attend the Cowbit Primary School, since it is within the school catchment area. The family have also registered with a doctor, dentist and other agencies in the area.
- 7.22 Taking into account that the proposal would contribute to the future need for pitches within the Local Plan period and the aforementioned socio and economic factors it is considered, on balance, that the proposed development is sustainable.
- 7.23 Impact on Neighbouring Dwellings
- 7.24 The nearest residential properties are three pairs of semi-detached houses situated to the south. The site is well screened by high hedging, which would be retained. The twin static unit has its main openings facing north and the three pitches are within the northernmost section of the site. The caravans would be occupied by a single family and their immediate relatives. No business activity would be undertaken on site. It is considered that the amenity of nearby residents would not be materially harmed in terms of lack of overlooking, lack of privacy, noise and disturbance, etc.
- 7.25 Flood Risk
- 7.26 The site lies within Flood Zone 1 defined by the Environment Agency Flood Maps. The hazard

mapping within the South East Lincolnshire Flood Risk Assessment shows the site to be unaffected if a breach of the flood defence were to occur. The site is therefore sequentially preferable in flood risk terms. Concerning the exceptions test, it is recommended that the finished floor level of the new utility block be set 300mm above existing ground level. The twin unit should be attached to the ground by means of chains.

7.27 Planning Balance

There is an identified need for the development, which is considered to be a sustainable form of development because of socio and economic factors. The proposal satisfactorily complies with Policies C and H of the Government's Planning Policy for Traveller Sites (August 2015, published by DCLG) and Policy 20 of the South East Lincolnshire Local Plan, 2019. The amenity of neighbouring residents would not be materially harmed and the proposal satisfies the sequential test in flood risk terms. Whilst the site is not closely related to large Sub-Regional or Main Service Centres such as Spalding and Holbeach, it does have road links. This alone is not sufficient in this case to indicate against the proposal and to outweigh factors in favour of the proposal.

Additional Considerations

7.28 Public Sector Equality Duty

7.29 In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).

C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.30 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.31 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

7.32 It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

7.33 Human Rights

7.34 In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

7.35 It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

7.36 **Conclusion**

- 7.37 There is an identified need for the development, which is considered to be a sustainable form of development because of socio and economic factors. The proposal satisfactorily complies with Policies C and H of the Government's Planning Policy for Traveller Sites (August 2015, published by DCLG) and Policy 20 of the South East Lincolnshire Local Plan, 2019. The planning balance is in favour of the proposal.

8.0 RECOMMENDATIONS

- 8.1 Grant permission subject to conditions outlined in Section 9.0 of this report.

9.0 CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
1:1250 Location Plan;
137488/1;
137488/2;
137488/3;
Planning Statement submitted by Fraser Dunchurch Ltd.

Reason: For the avoidance of doubt and in the interests of proper planning.
2. This permission shall operate for the benefit of Mr and Mrs M. Smith and their immediate family. The static/touring caravans hereby approved shall be removed in their entirety from the site and the residential occupation cease at such time as Mr & Mrs M. Smith cease to occupy the site.

Reason: Permission has been granted based on the personal circumstances and justification of the applicants'. Occupation of this site by non-gypsy/traveller individuals or families would be contrary to established national and local policies of rural restraint.
This Condition is imposed in accordance with Policies 1, 2 and 20 of the South East Lincolnshire Local Plan, March 2019 which reflect national guidance contained in both the National Planning Policy Framework 2019 and 'Planning Policy for Traveller Sites, 2015'.
3. No more than 1 static caravan and 3 touring caravans shall be sited on the land at any one time and no storage or sales of materials, machinery, vehicles, waste or other commercial uses or processes, shall take place on the site.

Reason: To define the terms of the permission, in the interests of the appearance of the development, levels of residential amenity and the visual amenity of the area in which it is set. This Condition is imposed in accordance with Policies 1, 2 and 3 of the South East Lincolnshire Local Plan, March 2019 which reflect national guidance contained in both the National Planning Policy Framework 2019 and 'Planning Policy for Traveller Sites, March 2015'.
4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order or Statutory Instrument revoking and re-enacting that Order), none of the following developments or alterations shall be carried out other than approved by virtue of this permission:
 - i) the erection of freestanding curtilage buildings or structures including car ports, garages, sheds, greenhouses, pergolas or raised decks;
 - ii) the erection of extensions including conservatories, garages, car ports, porches or pergolas;
 - iii) alterations including the installation of replacement or additional windows or doors and the installation of roof windows;
 - iv) the erection of walls, fences or other means of enclosure.
Reason: To ensure that the Local Planning Authority retains control over the future extension and alteration of the development, in the interests of its architectural and visual integrity, levels of residential amenity and the visual amenity and character of the area within which it is set. This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

5. The existing hedging along the boundaries of the site shall be retained and maintained at a height of at least 3 metres. In the event of the existing hedgerow being removed or dying, it shall be replaced to a specification that shall first have been approved in writing by the Local Planning Authority. The new hedgerow plants shall be maintained by the owner or owners of the land on which they are situated for the period 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.
- Reason: To ensure the protection of the existing hedging on the site, in the interests of the amenities of the locality.
This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 15 of the National Planning Policy Framework, 2019.
6. The following flood mitigation measures shall be incorporated within the development:
- The static caravan shall be secured to the ground to prevent it becoming mobile during a flood event;
 - The floor level of the static caravan and utility room shall be set a minimum of 300mm above the existing ground level.
- Note: The applicants' are advised to sign up to the Environment Agency's free Floodline Warnings Direct Service.
- Reason: To reduce the risk and impact of flooding on the development and future occupants.
This Condition is imposed in accordance with advice within Section 14 of the National Planning Policy Framework, 2019.
7. The Local Planning Authority has acted positively and proactively in determining this application by assessing it against all material considerations, including national guidance, planning policies and representations that have been received during the public consultation exercise, and subsequently determining to grant planning permission.
- This decision notice, the relevant accompanying report and the determined plans can be viewed online at <http://planning.sholland.gov.uk/OcellaWeb/planningSearch>
8. Note: The applicants' are advised of the requirement to apply for a site licence in accordance with the Caravan Sites and Control of Development Act, 1960.

Background papers:- Planning Application Working File

Lead Contact Officer

Name and Post:	Richard Fidler , Development Manager
Telephone Number:	01775 764428
Email	rfidler@sholland.gov.uk

Appendices attached to this report:

Appendix A Plan A

