

**APPEAL BY MR B. McDONAGH
AGAINST THE REFUSAL OF PLANNING PERMISSION BY
SOUTH HOLLAND DISTRICT COUNCIL**

**REMOVAL OF CONDITION 2 ATTACHED TO PLANNING PERMISSION
No. H23-0841-20 - CHANGE OF USE OF LAND TO USE AS A TRAVELLER'S
CARAVAN SITE WITHOUT COMPLYING WITH THE PERSONAL OCCUPANCY
CONDITION.**

FOXES LOWE, HURDLETREE BANK, WHAPLODE ST CATHERINE

**LPA REF: H23-0168-26
OUR REF: 26/BM/FOXES LOWE**

STATEMENT OF CASE PREPARED ON BEHALF OF THE APPELLANT.

1.0 INTRODUCTION

- 1.1 This statement has been prepared by Philip Brown, Managing Director of Philip Brown Associates Limited, town planning and development consultants based at 74 Park Road, Rugby. I hold a Bachelor of Arts degree in Urban and Regional Planning. I have been working in the field of town planning for over 40 years, both in local authorities and private practice. I have undertaken a wide range of planning work but, since 1994 have specialised in obtaining planning permission for gypsy and traveller pitches, and related development.
- 1.2 I regularly and frequently present planning evidence at Hearings and Inquiries, and have obtained planning permission for more than 350 gypsy/traveller caravan sites throughout England and Wales. Since setting up my own practice in 2003, we have become the premier planning consultancy dealing with gypsy and traveller site development.
- 1.3 This statement is arranged into 4 parts: firstly, I describe the site and its surroundings; secondly, I set out the planning history of the appeal site; thirdly, I give a précis of relevant planning policies; and, fourthly, I set out the case on behalf of the appellant.

2.0 SITE DESCRIPTION

- 2.1 The appeal site comprises 0.2 hectare of land located along the eastern side of Hurdletree Bank, Whaplode St. Catherine, Spalding. It is located at the northern end of a ribbon of 6 semi-detached dwelling houses.
- 2.2 Hurdletree Bank is a rural road, capable of two-way traffic but, with no footpaths or street-lighting. Access to the appeal site is via a gated entrance located in the north-western corner of the site. The site access opens onto the junction of Sparkes Lane with Hurdletree Bank. Both roads are subject to a 40mph speed limit. The access is situated on the outside of a right-angled bend in Hurdletree Bank providing excellent visibility along both Hurdletree Bank and Sparkes Lane.
- 2.3 The western half of the appeal site is hard-surfaced and, occupied with a mobile home, touring caravans and amenity/storage buildings. The eastern half of the appeal site is laid to grass. The site is enclosed by leylandii hedgerows to all sides.
- 2.4 The site lies within a flat, open fen landscape, part of Holbeach Fen, situated about 3kms south of Whaplode and about 6kms east of Spalding.

3.0 PLANNING HISTORY

3.1 Planning application No. H23-0841-20 was approved on 18 December 2020 for *“Change of use from paddock to travellers site for applicants' and family only (part retrospective)”*.

3.2 Condition 2 attached to planning permission No. H23-0841-20 reads as follows:

“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.”

The reason given for imposition of this condition was:

“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'.”

3.3 A copy of the Planning Officer's report is attached at **Appendix PBA 1** and, a copy of the decision notice is attached at **Appendix PBA 2**.

4.0 PLANNING POLICY

National Planning Policy Framework

- 4.1 Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development and states in paragraph 11d): *“where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:*
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed;*
 - or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination”.*
- 4.2 Footnote ⁸ explains that development plan policies are out-of-date for applications involving the provision of housing, in situations where: the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer as set out in paragraph 78); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.
- 4.3 Paragraph 63 states that: *“Within this context of establishing need, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. These groups should include (but are not limited to) those who require affordable housing (including Social Rent); families with children; looked after children; older people (including those who require retirement housing, housing-with-care and care homes); students; people with disabilities; service families; travellers²⁷; people who rent their homes and people wishing to commission or build their own homes.”*

- 4.4 Footnote ²⁷ makes clear that Planning Policy for Traveller Sites sets out how travellers' housing needs should be assessed for those covered by the definition in Annex 1 of that document.
- 4.5 Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:
1. necessary;
 2. relevant to planning;
 3. relevant to the development to be permitted;
 4. enforceable;
 5. precise; and
 6. reasonable in all other respects.
- 4.6 These are referred to in the Planning Practice Guidance (PPG) for the use of planning conditions as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply. Any proposed condition that fails to meet one of the 6 tests should not be used. This applies even if the applicant suggests or agrees to it (paragraph 005).
- 4.7 Paragraph 015 of the PPG provides that: *"Planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission."*

Planning Policy for Traveller Sites

- 4.8 *Planning policy for traveller sites* (PPTS) sets out the Government's aims in respect of traveller sites which include, *inter alia*, local authorities developing fair and effective strategies to meet need through the identification of land for sites; protecting Green Belt from inappropriate development; promoting more private traveller site provision while recognising that there will always be those travellers who cannot provide

their own sites; and to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply.

- 4.9 Policy C suggests that gypsy sites may be located in rural or semi-rural areas, provided that they are of a scale appropriate to their specific location. This is reiterated in paragraph 25 of Policy H. Paragraph 22 of Policy H sets out issues which should be considered in the determination of planning applications for gypsy sites. Policy H states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan.

South-East Lincolnshire Local Plan

- 4.10 Policy 20: Accommodation for Gypsies, Travellers and Travelling Showpeople states as follows:

“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.

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, South East Lincolnshire Local Plan 2011-36 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.

5.0 STATEMENT OF CASE

Preliminary Matters

- 5.1 Planning permission No. H23-0841-20 was approved on 18 December 2020 for *“Change of use from paddock to travellers site for applicants’ and family only (part retrospective)”*. As such, the approved development was for the change of use of land to use as a Gypsy/Traveller caravan site. The description of development does not limit occupation of the caravan site to particular persons. It refers to the applicants’ and family but, does not define who the applicant is.
- 5.2 The only restriction on who can occupy the caravan site is contained in Condition 2 attached to the planning permission. This condition limits occupation of the site to *“Mr and Mrs M. Smith and their immediate family.”* Removal of this condition would not change the nature of the development from that described by the permission. The land would remain in use as a residential caravan site, occupied by a single Gypsy/Traveller household.

Legal Framework

- 5.3 There is no doctrine of implied conditions in planning law but the courts have recognised that the scope of a permission may be restricted otherwise than by express conditions. The description of development has the effect of authorising only that particular use. Once that use has been implemented, any change to a different use requires planning permission only if it constitutes “development”. Breach of such a limitation, unlike breach of an express condition restricting future use, is not in itself a breach of planning control.
- 5.4 In *I’m Your Man Ltd v. SOSE* [1999] 4 P.L.R. 107 an Inspector had granted permission on appeal for the use of certain buildings for *“sales, exhibitions and leisure activities for a temporary period of seven years”*, but had failed to impose a condition which would have made it a *“planning permission for a limited period”*. The court declined to accept

that the wording of the permission nonetheless imposed a time limitation and, although unambiguously applied for and granted as a temporary permission, was to be regarded as a permanent permission. In other words, the continuation of the use on a permanent basis would not result in a material change of use of the land requiring planning permission and, would not constitute a breach of condition or limitation imposed on the grant of planning permission.

- 5.5 This can be contrasted with the case of *Barton Park Estates v Secretary of State for Housing, Communities and Local Government* [2022] EWCA Civ 833, planning permission was granted in 1987 and amended in 2013 for the stationing of nine “*residential vans*”, 16 holiday chalets, 18 static caravans and 30 touring caravans. Conditions were imposed to prevent permanent residential occupation by limiting the number of months that the chalets, static caravans and touring caravans could be occupied. There was, however, no condition limiting the number of caravans and chalets to those listed in the description of the development. The Claimant had appealed against a decision upholding the Local Planning Authority’s refusal to grant it a Certificate of Lawful Use or Development for “*the stationing of up to eighty caravans for the purposes of human habitation*”.
- 5.6 The Claimant had unsuccessfully argued that, in the absence of a condition restricting the number of caravans which could be in residential use on the site, the stationing of 80 residential caravans was permitted under the aforementioned existing planning permission for caravan use on the site. Notwithstanding the absence of a condition specifically restricting the number of residential caravans on the site, the Court ruled, amongst other matters, that it did not have the effect of altering the description of development in the grant itself. In plain terms, the planning permission was for the development described in the brief particulars (namely, the stationing of nine “*residential vans*”, 16 holiday chalets, 18 static caravans and 30 touring caravans) and, when constructed as a whole, the permission did not envisage that all caravans on the site would be used for permanent residential occupation. Clearly, the use applied for was of a different nature to that which had been permitted and, would have amounted to a material change in the use of the land.
- 5.7 In this case, the permitted use of the appeal site is described as being a travellers [caravan] site and, its occupation by someone other than the

original applicant, would not amount to a material change in the use of the land requiring planning permission. It would, however, be a breach of condition 2 attached to the planning permission.

Tests for Conditions

- 5.8 Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy 6 tests. Each of the 6 tests need to be satisfied for each condition which an authority intends to apply. This applies even if the applicant suggests or agrees to it. Any proposed condition that fails to meet one of the 6 tests should not be used. In this case, the tests of necessity and reasonableness are those relevant to this appeal.
- 5.9 In the latter regard, paragraph 015 of the PPG provides that: *“Planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission.”* Thus, there need to be exceptional circumstances to justify retention of the personal condition limiting occupation of the caravan site to Mr and Mrs Smith, rather than gypsies and travellers in general.

Need for Traveller Sites

- 5.10 Local planning authorities are required to use a robust evidence base to establish accommodation needs to inform the preparation of local plans and make planning decisions (PPTS Policy A). In producing their local plans, local planning authorities should, *inter alia*, set pitch targets; identify and maintain a rolling 5-year supply of specific deliverable sites; and relate the number of pitches to the circumstances of the specific size and location of the site and the surrounding population’s size and density.
- 5.11 Paragraph 28 of PPTS states that, if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, the provisions in paragraph 11(d) of the National Planning Policy Framework apply.

5.12 The latest Gypsy and Traveller Accommodation Assessment (GTAA) appears to have been published in 2016 and, the Council clearly does not have an up-to-date understanding of the accommodation needs of Gypsies and Travellers living in its area. The Local Plan has only allocated land for travellers identified as Gypsies in the GTAA, based on the 2015 definition which has subsequently been found by the Courts to unlawfully discriminate against Gypsies and Travellers. The target set out in the Local Plan pre-dates and hence fails to take into account the change in definition that occurred in December 2024. Reliance on the target figure in Policy 20 would likely unlawfully discriminate against those travellers whose status was unknown in 2016 and, therefore, without an up-to-date GTAA, cannot demonstrate that it has a five-year supply of deliverable land for traveller sites. As such, the “tilted balance” is engaged by which planning permission should be granted unless the adverse impacts significantly and demonstrably outweigh the benefits.

Planning Considerations

5.13 Planning policy for traveller sites (PPTS) recognises that sites may be found in rural and semi-rural areas. Paragraph 26 advises that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.

5.14 Paragraph 26 is clearly envisaging that traveller sites may be permitted outside of existing settlements which, by definition, will be in the open countryside. Development is to be strictly limited on land away from settlements but, this does not infer that planning permission cannot be granted in such circumstances. Furthermore, PPTS does not specify what is meant by “away from” or, require that the settlement the site is not away from is designated as such in a development plan or that it contains any services.

5.15 I attach an appeal decision at **Appendix PBA 3** in which the Inspector found that a site 800 metres away from a hamlet comprising 11 houses, with no community services or facilities, was not away from settlements

for the purposes of PPTS. The site was 2 miles from the closest service centre of Shawbury and, 5 miles from Shrewsbury. The Inspector found that the site residents would be reliant on the use of private motor vehicles to access those services. Nevertheless, the Inspector did not consider such reliance to be unusual in a rural area or, the distances involved to be excessive. The Inspector concluded that the site was reasonably sustainable for a small traveller site (2 pitches).

5.16 In this case, the appeal site adjoins an existing ribbon of residential properties and not, therefore, away from an existing area of settlement. The site is not located in an area subject to the national designations set out in footnote 7 of the NPPF. It is, therefore, an appropriate location for a traveller site in principle.

5.17 Policy 20 of the Local Plan does not preclude the location of traveller sites in the open countryside and, of the criteria relevant to both allocated and unallocated sites, the appeal site: is already provided with satisfactory on-site infrastructure; its occupation for residential purposes would be unlikely to adversely affect the amenities of nearby residents; and, the site is already satisfactorily assimilated by existing hedgerows into its rural surroundings.

5.18 With regard to the criteria relevant to windfall sites: the site provides a satisfactory residential environment (criterion a); is not affected by any environmental hazards (criterion b); is not out of scale with the closest settled community (criterion c); would not place an undue strain on local infrastructure (criterion d); adversely affect any assets of historic or nature conservation importance (criterion e); the site has safe access (criterion f); and, criterion h is not relevant to permanent sites.

5.19 Criterion g is in 3 parts. As far as parts (ii) and (iii) are concerned, the site is not intended for business use and, the site is located in Flood Zone 1. The remaining criterion requires that sites should 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. There is no definition of a reasonable travelling distance and access by walking, cycling or public transport is only expressed as a preference.

5.20 In this case, the appeal site is about 4 kilometres by road from Whaplode and, about 7 kilometres by road from Spalding for access to community services and facilities. These distances are similar to those found acceptable and reasonably sustainable in the Shawbury appeal (**Appendix PBA 3**). Although it is likely that the site residents will be largely dependant on private motor vehicles for access, the distances involved are not excessive for a rural area and, the site complies with criterion g(i) of Local Plan Policy 20.

5.21 In granting planning permission under application No. H23-0841-20 the Planning Officer compared the proposed development against Local Plan Policy 20 and, at paragraph 7.11 of his report, states that:

“It is considered that this application proposal meets all points of this policy and is, therefore, acceptable in principle.”

In the planning balance section of the Officer’s report, at paragraph 7.27, it was considered that:

“There is an identified need for the development, which is considered to be a sustainable 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 (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 meets the sequential test in flood risk terms [the site is in Flood Zone 1]. 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.”

5.22 The Officer’s report found that the proposed development complied with national and local planning policies. Planning permission should, therefore, have been granted and, the Officer’s report does not provide any justification for imposing a personal condition. Imposition of condition 2 was unnecessary and, an unreasonable restriction on the occupancy of the site.

5.23 The reason for imposing condition 2 included that: *Occupation of this site by non-gypsy/traveller individuals or families would be contrary to established national and local policies of rural restraint.* This objective is not necessarily achieved by imposition of a personal condition at a time when the definition of Gypsy did not allow for the site occupants to cease travelling permanently. Had the site occupants ceased to travel permanently, the site would have been occupied by non-gypsy/traveller individuals.

5.24 The exceptional circumstances for imposing a condition limiting occupancy of the site to a particular class of person, relate to the need for traveller accommodation and, the allowance made in national and local planning policies for the provision of traveller sites in the open countryside. The personal occupancy condition should, therefore, be replaced with the following condition:

“The residential caravan site hereby approved shall not be occupied by any persons other than Gypsies and Travellers, defined as, 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 temporarily or permanently, and all other persons with a cultural tradition of nomadism or of living in a caravan, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.”