DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H04-0799-25**	**Applicant:**	**Mr & Mrs J Rice**
Proposal:	Vehicular Access to rear of the site by means of a public right of way to be retained		
Location:	The Hawthorns 2a Bicker Road Donington		
Terminal Date:	21st October 2025		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	1	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
RESIDENTS	6	0	0	1

CASE OFFICER ASSESSMENT

Proposal

The application seeks consent for a lawful development certificate for a vehicular access to the rear of the site by means of a public right of way which is to be retained. The application is submitted under Section 191 of the Town and Country Planning Act (1990) (as amended).

Site Description

The site comprises land at Hawthorns, 2a Bicker Road, on the northern edge of Donington. There is a public footpath located to the south-west of the site. Hawthorns is a detached dwelling set back from the A52, which is located to the south of the site. There are other dwellings located to the east and south of the site and a cemetery to the west. There are various buildings located towards the rear of the Hawthorns dwelling which are within the red line boundary. This incudes an agricultural building. The application aims to seek consent to establish that vehicular access to this building is

lawful.

The red line boundary within the submitted location plan does not include the public footpath next to the site. This was queried with the applicant's agent and an amended plan was provided including the footpath within the red line boundary. It is unclear who the landowner of the footpath is. Lincolnshire County Council's Highways team have set out that they do not own the path. It is understood that part of the path is owned by the Parish Council, however, the exact area of ownership is unclear.

Planning History

H04-1124-91: (Outline) Two dwellings with garages and access - approved 18 February 1992

H04-1105-94: (Permission Renewal) Erection of two detached dwellings, including means of access (Renewal of H04/1124/91) - approved 22 December 1994

H04-0998-97: (Permission Renewal) Erection of two dwellings including details of means of access (renewal of application H04/1105/94) - approved 30 October 1997

H04-0432-00: (Permission Renewal) Erect two dwellings, incl. details of means of access (renewal of outline renewal application H04/0998/97) - withdrawn 03 July 2000

H04-0850-00: (Reserved Matters) Two proposed houses - approved 29 August 2000

H04-0172-17: (Full Application) Proposed agricultural storage building - approved 30 March 2017

H04-0766-20: (S192 Certificate of Lawfulness) Proposed Conservatory Conversion to Orangery and Internal Alterations - approved 06 November 2020

Consultation

There is no statutory obligation for the Local Planning Authority (LPA) to publicise an application for a certificate of lawful development. A site notice has however been displayed next to the site for 21 days.

Although consultation is not specifically required, the following consultation responses have been received:

Lincolnshire County Council: Highways and SUDS: Additional information is required. They are proposing to utilise the PROW to access their land - but the PROW is not included in the red line boundary. Under Section 34 of the Road Traffic Act 1988 it is an offence to drive along a public footpath without lawful authority. Given the nature of the access to the cemetery this is unlikely. The track does not lend itself to an increase in use by motor vehicles and the intended future use of the adjacent land is a concern. A statement detailing the proposed use is required - what types of vehicles would they intend to access their site?

Donington Parish Council: Grounds for Objection
1. Inaccurate Claims of Long: Term Use The applicant claims vehicular access to the property has occurred since 1 January 2010. However, the property was only acquired by the applicant in November 2024. We are unaware of any credible evidence supporting this claim and believe it to be factually incorrect.
2. No Vehicular Access to Public Footpath 13: Public Footpath 13 is accessible solely via a pedestrian kissing gate. There is no vehicular access point, nor has one ever existed.
3. Misrepresentation of Footpath Location: The applicant's survey inaccurately places the footpath along the centre of the Parish Council's cemetery roadway. In reality, the footpath runs along the northern edge of the roadway, adjacent to the applicant's boundary. Supporting maps and photographic evidence are available upon request.
4. Unlawful Access and Damage to Parish Property: The land appears to have been used unlawfully by vehicles.
5. No Easement or Vehicular Rights Granted: At no time has Donington Parish Council granted an easement or vehicular right of way across its land to the applicant or any previous owner. Temporary verbal permission was granted to the previous owner in 2018 for limited agricultural deliveries, and it was made explicitly clear that this permission was personal and non-transferable.
6. Legal and Safety Implications: According to planning guidance from Lincolnshire County Council

and Section 34 of the Road Traffic Act 1988, it is a criminal offence to drive a vehicle on a public footpath without lawful authority. The police have enforcement powers, and the Council may implement physical barriers to prevent unlawful use. Vehicular access on a public footpath presents significant health and safety risks.
7. Community and Religious Concerns: The Vicar of Donington Church has expressed strong opposition to this application, citing concerns over unscheduled vehicular access disrupting funerals and the interment of ashes. His representation has been submitted separately.

Public Representations

Responses from 7 residents have been received during the determination of the application. The following summarises the responses:

- The land is private and is not accessed by vehicles.
- Granting access to the applicant's would open up use to any vehicles on the land.
- The footpath is not wide enough for vehicles.
- Neither the current or previous residents of the Hawthorns have ever been granted vehicular access from Donington Parish Council to use the Cemetery Roadway.
- The site of the Hawthorns was agricultural land until 2001,the land was accessed from Bicker Road as shown on Google maps.
- The Cemetery roadway access gate is locked and permission is given to disabled relatives visiting graves, stonemasons, undertakers and Cemetery maintenance teams.
- Permission is at the discretion of the Clerk to Donington Parish Council. If this application is approved it would mean that Donington Parish Council would loose control of its own land
- Permission has not previously been allowed to use vehicles on Cemetery Road to access the field. The previous point of access was to left of the row of houses on Bicker Road. The gateway being between the houses and the Old Clinic Building.
- Google Earth dated August 2016 clearly shows their access to, the rear of their property is through their Bicker Road access. A solid hedge along their entire boundary to the public footpath means no access could be used to enter their property. This means any existing use claimed is less than 10 years old.
- To open this access up to any other vehicles or unauthorised people would be upsetting and heartrending for people who visit their loved ones in the cemetery in a quiet and respectful place.
- This access is wholly owned by Donington Parish Council and should not be opened up to be used as any other roadway.
- Previous owners of the adjacent land, in my lifetime, have never used the access, except at the behest of Donington Parish Council.
- If vehicular use is granted this could block access to hurses.
- The Vehicular Access to the cemetery has always been locked, at no point in these years has the Parish Council
granted access to any third party. Infrequent temporary access has to be verbally permitted on an ad hoc basis when required

Key Planning Considerations

Relevant Legislation

Section 191 of the Town and Country Planning Act (TCPA) (1990) (as amended) - sets out the following:

"(2) For the purposes of this Act uses and operations are lawful at any time if:
- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force."

Section 191(4) further sets out that:

"(4) If, on an application under this section, the local planning authority is provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

National Planning Practice Guidance clarifies that it is the responsibility of the applicant to provide sufficient information to support the application (Paragraph 006 Reference ID: 17c-006-20140306). The evidence provided needs to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability rather than beyond reasonable doubt.

Section 171B(3) of the TCPA further sets out the following:

"(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of:
(a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed."

Planning Practice Guidance sets out that:

"In most cases, development becomes immune from enforcement if no action is taken:

-within 10 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place on or after 25 April 2024;
-within 10 years for an unauthorised change of use to a single dwellinghouse where the change of use took place on or after 25 April 2024;
-within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024;
-within 4 years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024; or
-within 10 years for any other breach of planning control (essentially other changes of use)."

However, the time limits set out above do not prevent enforcement action after the relevant dates in certain circumstances. These are:

-Section 171B(4)(b) of the Town and Country Planning Act 1990, which provides for the taking of "further" enforcement action in respect of any breach of planning control within 4 years of previous enforcement action (or purported action) in respect of the same breach. This includes the situation where earlier enforcement action has been taken, within the relevant time limit, but has later proved to be defective, so that a further notice may be issued or served, as the case may be, even though the normal time limit for such action has since expired. It also includes the situation where an enforcement warning notice is issued within the relevant time limit but further enforcement action is subsequently required. This is known as the "second bite" provision.
·where there has been deliberate concealment of a breach of planning control, local planning authorities may apply for a planning enforcement order to allow them to take action after the time limits in section 171B have expired.
·where a person has deliberately concealed a breach of planning control, the courts have found that in these circumstances, the time limits in section 171B do not engage until the breach has been discovered (see Secretary of State for Communities and Local Government and another v Welwyn Hatfield Borough Council and Bonsall / Jackson v Secretary of State for Communities and Local Government).

Therefore, in cases of deliberate concealment, a local planning authority may decide to serve an enforcement notice 'out of time' or apply for a planning enforcement order. It is for the local planning authority to decide which approach is appropriate in each case.

Assessment of Evidence

The application seeks consent for a lawful development certificate for a vehicular access to the rear of the site by means of a public right of way (PROW) which is to be retained. Consent is sought to establish that the applicant can use their vehicles on the PROW that is located to the south-west of the site for deliveries and for domestic use by the applicants. The Planning Statement sets out the following:

"The applicant wishes to submit an application to support the use of the access road for deliveries and secondary access for the feeding of livestock they own, this will not be the main entrance to the residence and the existing entrance off bicker road will be retained"

According to the application form, the certificate is sought on the grounds that the use began more than 10 years before the date of the application.

Firstly, it is necessary to establish the type of PROW the footpath relates to. There are four different types of PROWs:

-Footpaths: walking only;
-Bridleways: walking, horse riding, cycling;
-Restricted Byways: walking, horse riding, cycling, and non-motorised vehicles; and
-Byways Open to All Traffic: any kind of transport, including cars.

In this case, the PROW is a footpath, not a Byway Open to All Traffic. To obtain permission to use a public footpath with a vehicle, it is considered that consent must be sought via a legal easement from the landowner through a deed or similar legal instrument. Therefore, the LPA's planning department cannot provide this consent.

Alternatively, the applicant could attempt to change the public footpath to a Byway Open to All Traffic (BOAT). This process is typically managed by the relevant responsible authority, typically the local highway authority. A Public Path Order would need to be made to facilitate this.

The applicant could also submit a full application to change the use of the footpath to a road. The LPA would be required to determine such an application in accordance with the South East Lincolnshire Local Plan (2019) and the National Planning Policy Framework (December 2024), both of which set out the importance of retaining and improving public rights of way. The requirement to obtain landowner consent to use vehicles on the land would also still apply as the PROW would remain a public footpath and not a Byway Open to All Traffic.

Therefore, it is considered that regardless of whether the site has been used by vehicles in for the past 10 years, this would not mean that the site can be used by the applicant's vehicles.

In the interests of clarity, it is considered appropriate to assess the applicant's evidence of the use of the site over the past 10 years in case an appeal is submitted and if a planning inspector disagrees with the above assessment.

Use of the Site in the Past 10 Years

According to the submitted Planning Statement, the applicants purchased the site in 2024, gaining access on 23 October and subsequently moving into the dwelling on 19 November 2024. The Planning Statement sets out that the PROW was used by the previous owners with their vehicles, as set out below:

"The site has a gate onto the public right of way running to the West of the site and was used for deliveries and vehicular access prior to their ownership, this is the only way vehicles can access the animals and barn areas at the back, there is no access via the residence as seen below."

As set out above, the applicants moved into the property in 2024 and prior to this the site was occupied by other occupants. As such, the applicants do not appear to have personal experience as to how deliveries were managed prior to when they moved in. Furthermore, the footpath was not included within the red line boundary for the application that was granted for the agricultural building under permission H04-0172-17. As such, it is not considered that the presumed access was via the footpath. There is also no reference to this within application H04-0172-17.

The Planning Statement also sets out the following:

"The site prior to their occupation was part of HAWTHORNS FARM LIMITED. Which nature of the business was 01420
-Raising of other cattle and buffaloes
-Raising of sheep and goats
-Raising of other animals

The information below shows that they had deliveries to this business at the back of the site to the gate shown via the public right of way see below."

An extract is then provided from a text message dated 28 April (the year is not confirmed) with text

that relates to deliveries. It is not considered that the extract of this text message provides sufficient evidence that the site has been used by vehicles for the relevant period (over a 10 year period).

The Planning Statement subsequently sets out the following:

"The building could not be built with no access to the site from the front as per the picture, also the use of the building indicates the deliveries of feed as per the images above."

As set out previously, the footpath was not included within the red line boundary for 2017 permission and there is no reference to the use of the footpath for deliveries or another use by vehicles. Hawthorns has another vehicular access at the front of the property. Based on previous plans and aerial imagery since 2007, it appears that access could have been provided along the eastern side of the site. Deliveries could be provided via the other access and carried to the rear of the property. Although no evidence is provided, it is presumed that larger deliveries for items such as straw or feed might have been allowed by vehicles on occasion via the public footpath. This would not prove that the footpath has been used regularly by vehicles though.

The Planning Statement includes 10 statements from residents setting out that they think the PROW has been used by vehicles for an 'extended period' over the past few years. Some of the responses refer to a shorter period than 10 years. Whilst residents might have seen the footpath being used by vehicles, this does not mean that the use by vehicles was lawful. Furthermore, the responses do not clarify how regularly the path has been used by vehicles.

As such, it is considered that insufficient evidence has been provided to show that the site has been used by vehicles for the past 10 years.

Additional Considerations

Public Sector Equality Duty

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.

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

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.

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

Human Rights

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).

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.

Conclusion

Insufficient evidence has been provided to demonstrate that the public footpath has been used by vehicles over the past 10 years. Furthermore, even if it was considered that the footpath has been used by vehicles over the past 10 years, this would not enable the LPA to grant a certificate of lawfulness for the use of the site by vehicles. It is considered that consent would be required from the relevant landowner to establish that the applicant can use vehicles on the footpath when required. The LPA's planning department is not able to grant this consent.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be refused under delegated authority.