DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H06-0842-24**	**Applicant:**	**Mr J Rooney**
Proposal:	Change of Use of Agricultural Land to Provide 5 Gypsy/Traveller Family Pitches Each having a Static Mobile Home, Dayroom, Parking for a Tourer and 2 Vehicle Spaces together with a Treatment Plant, the Laying of Hardstanding and Associated Ancillary Works - re-submission of H06-0216-23 (part retrospective) - approved under H06-0532-23 (allowed on appeal). Modification of Condition 9 to change the timeframe for compliance relating to mitigation measures within Flood Risk Assessment		
Location:	The Orchards Blazegate Gedney		
Terminal Date:	6th January 2025		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
04	Approach to Flood Risk
10	Meeting Assessed Housing Requirements
11	Distribution of New Housing
17	Providing a Mix of Housing
19	Rural Exception Sites
20	Accommodation for Gypsies, Travellers and Travelling Showpeople
28	The Natural Environment
30	Pollution
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework December 2024

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	1
WARD MEMBER	0	0	0	0
ENVIRONMENT AGENCY	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

This application is a Section 73A seeking to vary Condition 9 of planning approval (allowed on appeal) H06-0532-23 to allow the change to the timeframe for compliance relating to mitigation measures within Flood Risk Assessment.

Application H06-0532-23 granted planning permission, via an appeal, for the change of use of agricultural land to provide 5 gypsy/traveller family pitches each having a static mobile home, dayroom, parking for a tourer and 2 vehicle spaces together with a treatment plant, the laying of hardstanding and associated ancillary works.

Site Description

The site was considered, during the assessment of the prior application, as agricultural in planning terms, but had not been maintained as such and had become more naturalised in terms of appearance. There are trees to the northern, western and southern boundaries. Only part of the eastern boundary is treed, with a large proportion of those that formerly stood along this boundary having been felled and replaced with closeboard fencing.

The overriding character of the area is rural countryside, with very limited development in the vicinity. The closest dwelling is immediately opposite the site to the north and there are a small number of dwellings and commercial premises to the north-east around the junction of Blazegate and Gipsy Lane.

History

H06-0772-21 - Change of use from agricultural land to provide 5 gypsy/travel - Refused 17.01.2022

This application contained two reasons for refusal. It was concluded that the application was contrary to Policy 4 of the South East Lincolnshire Local Plan (2019) due to the flood risk vulnerability of the site, as well as being contrary to Policy 1, due to the Council already granting permission for sufficient pitches within the plan period to satisfy both the known and unknown need outlined in the South East Lincolnshire Local Plan, 2019.

H06-0791-22 - Change of use of agricultural land to provide 5 gypsy/travel - Decline to Determine

South Holland District Council declined to determine application H06-0791-22 for the following reasons:

This decision follows the enforcement notice served by South Holland District Council ("Council") in respect of land at Silver Birch Lane, off Blazegate, Gedney, Spalding, PE12 0FU ("Site") with an effective date of 9 March 2022 ("Enforcement Notice") and the subsequent application for planning permission submitted to the Council by Mr Rooney ("Applicant") and given reference H06-0791-22 ("Application") for: "Change of use of agricultural land to provide 5 gypsy/traveller family pitches each having a static mobile home, dayroom, parking for a tourer and 2 vehicle spaces together with a treatment plant, the laying of hardstanding and associated ancillary works (part retrospective) - re-submission of H06-0772-21" ("Proposed Development").

The Council considers it clear that granting planning permission for the Proposed Development would require the grant of permission for "the matters specified in the enforcement notice as constituting a breach of planning control", thereby engaging Section 70C for the following reasons: Both the Application and the Enforcement Notice relate to the same area of land/part;

The Enforcement Notice specifies the residential use of the Site by gypsy/travellers and the stationing of caravans for human habitation and associated operational development on the Site as the breach of planning control; the Application seeks permission for gypsy/traveller family pitches

together with ancillary works. The Council therefore considers that the Application seeks permission for precisely the use and works specified in the Enforcement Notice.

The Enforcement Notice was issued on 2 February 2022 (predating the Application by over 6 months) and therefore was a "pre-existing enforcement notice" for the purpose of the Act.

H06-0216-23 - Change of use of agricultural land to provide 2 gypsy/travel - Withdrawn

This application was withdrawn.

H06-0532-23 - Change of Use of Agricultural Land to Provide 5 Gypsy/Traveller Family Pitches Each having a Static Mobile Home, Dayroom, Parking for a Tourer and 2 Vehicle Spaces together with a Treatment Plant, the Laying of Hardstanding and Associated Ancillary Works - re-submission of H06-0216-23 (part retrospective) - Appeal Allowed 05.07.2024

This application was allowed at appeal.

H06-0839-24 - Condition Compliance - Details of foul & surface water drainage, existing & proposed site levels & flood warning & evacuation plan (Conditions 5(i), 6(i) & 8(i), of H06-0532-23) - Approved 18.12.2024

This application was approved.

Consultation Responses

The responses received from consultees during the initial consultation exercises, which can be viewed in their entirety through the South Holland website, can be summarised as follows:

Gedney Parish Council

Council feels that condition 9 should stand, unmodified, as enough time was given to complete the required work.

The Environment Agency

We have no objection to the proposed variation of condition 9 to allow the flood risk mitigation to be implemented within 9 months instead of 3 months. However we would stress the importance of raising the caravans as soon as possible as this will protect occupants in the event of a flood.

Evaluation - Section 73

The proposal relates to the variation of Condition 9 of H06-0532-23, through seeking permission under Section 73 of the Act. The purpose of an application made under Section 73 of the Town and Country Planning Act 1990 is to vary or remove conditions associated with an existing planning permission. These applications are used to allow for amendments to an approved scheme and can be made both retrospectively and prior to a permission being implemented, as long as the permission is extant.

The Act is very clear that: "On such an application the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted." As such, the Local Planning Authority are not able to revisit the principle of development and only matters relevant to the specific conditions can be considered. The effect of granting permission would be to issue a new permission with Condition 9 amended, together with any other relevant conditions from the original permission, or subsequent relevant revisions since this permission.

Planning practice guidance highlights that where less substantial changes are proposed, amending a proposal can occur through 'Amending the conditions attached to the planning permission, including seeking to make minor material amendments'.

The PPG clarifies that "Permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted". There is no statutory definition of a 'minor material amendment'; but this is

likely to include any amendments where its scale and/or nature results "in a development which is not substantially different from the one which has been approved".

In this instance, the subsequent amendments, submitted under this Section 73 application, have not varied the description of development.

In the case of R (Vue Entertainment Limited) v City of York Council, it was concluded that the decision gives clear support for use of s.73 in respect of changes to condition which go beyond 'minor' amendments. It places a clear emphasis on preserving the precise terms of the grant. If an amendment to a condition can be made which keeps the description of the development intact it may well be appropriate to make such an application under a s.73, even if the affect of the change will be significant".

Planning Considerations

The original application H06-0532-23 was recommended for refusal on 29th January 2024. This decision was then appealed by the applicant with an appeal hearing being held on 11th June 2024, with the outcome that the appeal was allowed.

The principle of development has therefore been accepted by the host application, H06-0532-23. The key matter for consideration is, therefore, whether the modification to condition 9 relating to the change of the timeframe for compliance relating to mitigation measures within Flood Risk Assessment would be acceptable.

The applicant has requested the timeframe be changed from 3 months to 9 months to implement the flood risk mitigation. The reasons submitted are due to the financial burden and what the requirements involve implementing the mitigation. There are no objections to the extension of time for condition 9 to be met from the Environment Agency.

Overall, when considering the development on balance, the proposal accords with Policies 2, 3 and 4 of the South East Lincolnshire Local Plan (2019) and the intentions of the National Planning Policy Framework (December 2024) in this regard.

Planning Balance

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The proposed modification does not materially harm the character or appearance of the locality, or amenity of nearby residents, whilst conforming with the South East Lincolnshire Local Plan and the provisions of the National Planning Policy Framework when viewed as a whole.

Taking into consideration these factors, the proposal is considered to comply with Policies 2, 3 and 4 of the South East Lincolnshire Local Plan (SELLP), 2019, plus advice within the National Planning Policy Framework (NPPF), December 2024. There are no significant issues in this case that would outweigh factors in favour of the proposal; therefore, in considering all the matters raised above the planning balance is in favour of the proposal and the policies referred to above.

Conclusion

Taking the above considerations into account, the proposal is considered to be in accordance with Policies 2, 3 and 4 of the South East Lincolnshire Local Plan (SELLP) (2019), along with the identified sections contained within the National Planning Policy Framework (December 2024). There are no significant issues in this case that indicate against the proposal and outweigh factors in favour of the proposal and the policies referred to above.

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.