

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H23-0168-26 **Applicant:** Mr B McDonagh

Proposal: Full planning application to remove the personal occupancy restriction attached to planning permission H23-0841-20 to allow occupation of the authorised Gypsy/Traveller site by Gypsy/Traveller families not limited to the originally named occupants

Location: Foxes Lowe Hurdletree Bank Whaplode St Catherine

Terminal Date: 15th May 2026

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Section 4 - Decision-making

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SHDC INTERNAL	0	0	1	0
RESIDENTS	2	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This application has been submitted using a full planning application form; however, the substance of the proposal is to remove a condition attached to an extant planning permission. As such, the

application is considered under the provisions of Section 73 of the Town and Country Planning Act 1990.

The application seeks to remove Condition 2 attached to planning permission H23-0841-20, which restricts occupation of the authorised Gypsy/Traveller site to the named individuals and their immediate family. The applicant proposes that this be replaced with a condition allowing occupation by any Gypsy/Traveller household, as defined in national policy.

Planning Practice Guidance confirms that applications made under Section 73 result in a new planning permission subject to amended conditions; however, such applications must relate to the same development as originally permitted and cannot be used to alter the description of development.

In this case, the original permission expressly relates to the use of the land as a traveller site for the named individuals and their family. The proposed removal of the personal occupancy restriction would result in a permanent Gypsy/Traveller site not limited to the originally approved occupants.

The application is therefore assessed on the basis of whether the proposed change falls within the scope of Section 73 and, if so, whether the development would remain acceptable without the personal occupancy restriction.

Site Description

The application site is located on the eastern side of Hurdletree Bank, approximately 2.4km to the 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 along the highway.

The site itself comprises a former paddock which benefits from planning permission, granted in 2020, for its change of use to a Gypsy/Traveller site for occupation by the named individuals and their immediate family only.

Vehicular access is taken directly from Hurdletree Bank at a point along a corner bend. The site is set back from the highway and is enclosed by established boundary treatments, including mature planting and gated access, which provide a degree of screening from the surrounding area

History

H23-0841-20 - Change of use from paddock to travellers site for applicants' and family only (part retrospective). Approved 18-12-20

Consultation Responses

Environmental Protection

No Comments

Highways

No - objection - The proposal is to remove the personal occupancy restriction attached to planning permission H23-0841-20 to allow occupation of the authorised Gypsy/Traveller site by Gypsy/Traveller families not limited to the originally named occupants and it does not have an impact on the Public Highway or Surface Water Flood Risk.

Representations

This application has been advertised in accordance with the Development Management Procedure Order 2015 (as amended).

Two letters of objection have been received against the application which state:

Objection 1:

"Concerned about impact on environment. Dumping of rubbish in surrounding areas. Noise level increase. This application appears to have already occurred as there are a number of static homes already placed over the last two weeks. This is going to impact house prices due to the possibility of increase in crime, noise and care of property."

Objection 2:

"The road is not much more than a track ! Totally unsuitable for many trucks vans or Lorrie's to be traveling on day & night There are no footpaths or streets lights The area is on a junction which is very narrow and unsuitable for larger vehicles It is in a lovely agricultural area and would be detrimental to the houses opposite and nearby . The area is unsuitable for gypsy caravans and I believe it has planning for one static caravan which is ample for the plot size"

Planning Considerations

The following are key topics in this assessment:

- Principle of Development
- Scope of Section 73
- Validity of the Condition
- Planning Balance

Principle of Development

The application site is located within the open countryside, outside of any defined settlement boundary, and is therefore subject to the overarching spatial approach set out in Policy 1 of the South East Lincolnshire Local Plan. Policy 20 of the Local Plan provides specific criteria for the consideration of Gypsy and Traveller sites.

Planning permission was previously granted for the use of the site as a Gypsy/Traveller site; however, this permission was expressly limited to occupation by the named individuals and their immediate family, as reflected in both the description of development and the imposed planning condition.

Accordingly, the principle of development established by planning permission H23-0841-20 relates specifically to a personal permission for the named occupants, rather than a general Gypsy/Traveller site available to the wider travelling community.

The current proposal seeks to remove that personal limitation. Whilst this would not introduce a new form of land use in broad terms, it would alter the nature and scope of the development previously approved by extending its benefit beyond the individuals for whom the proposal was originally justified.

The key issue is therefore not whether a Gypsy/Traveller site is acceptable in principle, but whether the removal of the personal occupancy restriction would result in the same development as originally permitted.

Scope of Section 73

The proposal is assessed under Section 73 of the Town and Country Planning Act 1990, which enables the Local Planning Authority to consider applications for development without compliance with conditions previously attached to a planning permission.

Section 73 allows for the variation or removal of conditions; however, it is well established through legislation and guidance that such applications must relate to the same development as originally permitted. Planning Practice Guidance confirms that Section 73 cannot be used to alter the description of development.

In this instance, the original planning permission was granted for the "Change of use from paddock to travellers' site for applicants' and family only (part retrospective)". This limitation is not solely

contained within Condition 2, but is explicitly embedded within the description of development and reflects the nature of the proposal as submitted by the applicant.

It is material that the application submission for H23-0841-20 expressly sought permission for occupation by the named individuals and their immediate family. The personal nature of the development was therefore an intrinsic component of the proposal, rather than a standalone restriction imposed by the Local Planning Authority.

The current application seeks to remove this defining limitation and replace it with a general occupancy condition allowing use by any Gypsy/Traveller household. This would result in a materially different form of development from that originally permitted.

As such, the proposal would not constitute the same development for the purposes of Section 73 and instead would amount to the grant of a fundamentally different planning permission.

Assessment

The central issue in the determination of this application is whether the removal of the personal occupancy restriction would result in the same development as originally permitted.

For the reasons set out above, it is considered that the personal occupancy restriction forms an integral component of the approved development and is intrinsically linked to its planning acceptability.

The removal of this condition would materially alter the nature and scope of the development, extending its benefit beyond the specific individuals for whom the proposal was originally justified.

Accordingly, the proposal would not result in the same development being carried out subject to different conditions, but instead would amount to a fundamentally different planning permission. This falls outside the scope of what can be lawfully achieved under Section 73.

Validity of the Condition

The applicant's submission asserts that the personal occupancy condition fails to meet the tests for planning conditions set out within national policy, including those within the National Planning Policy Framework (December 2024).

This position is not accepted.

The original application explicitly proposed a traveller site for the named individuals and their immediate family. The personal nature of the development was therefore a defining characteristic of the proposal and formed the basis upon which the application was assessed and approved.

The imposition of Condition 2 was necessary to ensure that the development carried out remained consistent with that which was applied for and justified. The condition is directly related to the development permitted, is precise, enforceable, and reasonable in all other respects.

It is a well-established principle that personal conditions may be imposed where development would otherwise be unacceptable, but can be justified by specific personal circumstances. In this case, the condition reflects the nature of the proposal as advanced by the applicant and is not considered to be an unreasonable or unnecessary restriction.

Other Matters

The concerns raised by third parties are noted. However, the relevant consultees have raised no objection, and these matters are not determinative in the assessment of this application.

Planning Balance

The proposal would allow the site to be occupied by a wider range of Gypsy/Traveller households and may therefore contribute more flexibly to the supply of traveller accommodation within the District.

However, this must be weighed against the fact that the proposal would fundamentally alter the nature of the development approved and extend beyond the scope of the original planning permission.

Significant weight is attached to the fact that the personal occupancy restriction formed an intrinsic component of the development as applied for and approved. Its removal would result in a materially different form of development which has not been assessed or justified on its own merits.

Accordingly, the proposal is not considered to be acceptable.

Conclusion

The personal occupancy restriction attached to planning permission H23-0841-20 is an integral component of the development as approved and reflects the nature of the proposal as submitted and assessed. The applicant has failed to justify why a removal of this restriction is necessary or warranted in this instance.

The removal of this condition would result in a materially different form of development, extending beyond the scope of the original permission. As such, the proposal does not fall within the scope of Section 73 of the Town and Country Planning Act 1990.

The application is therefore considered to be unacceptable and planning permission should be refused.

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.