Planning Inspectorate

Appeal Decision

Site visit made on 24 February 2026

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th March 2026

Appeal Ref: 6001967
Rectory Farm, Rectory Road, Tydd St Mary, Spalding, Lincolnshire PE13 5QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mrs K & Miss K & J Fathers & Hallifax against the decision of South Holland District Council.
- The application Ref is H21-0878-25.
- The application sought planning permission for the erection of two dwellings on former farm/depot yard, without complying with a condition attached to planning permission Ref H21-0785-24, dated 12 December 2025.
- The condition in dispute is No 3 which states that:
  Before the commencement of the development hereby permitted above slab level, a schedule of external materials shall be submitted to and approved in writing by the Local Planning Authority. This shall include details of the proposed brickwork, roof materials, and window/door frames. The development shall thereafter be constructed in accordance with the materials so approved.
- The reason given for the condition is:
  To ensure that the Local Planning Authority retains control over the external materials of construction of the development in the interests of the appearance of the development, and the character and visual amenity of this part of the Conservation Area in which it is set. This Condition is imposed in accordance with Policies 2, 3 and 29 of the South East Lincolnshire Local Plan, 2019 and Sections 12 and 16 of the National Planning Policy Framework, December 2024.

Decision

1. The appeal is invalid and no further action can be taken on it.

Preliminary Matters

2. Correspondence issued to the parties on 10 February 2026 set out my concerns regarding the statutory basis for this appeal. I have taken account of the responses received.

Background

3. Planning permission was granted for the erection of 2 dwellings within the Tydd St Mary Conservation Area (CA). Condition 3 required details of the proposed external materials to be submitted to and approved in writing by the Council, prior to development proceeding above slab level[1].

4. The Council states that details were submitted and the condition was discharged under application reference H21-0283-25 in May 2025. This included approval for, amongst other things, cream coloured timber windows and a solid oak door for plot 1 and taupe/antique coloured timber windows and an oak front door to plot 2.

[1] Planning application reference H21-0785-24.

5. The appellant now wishes to use uPVC instead of timber for the windows of the approved houses. During my visit I observed that plot 1 was under construction up to midway between slab and first floor level, while plot 2 remained at slab level. No windows or doors had yet been installed.

Reasons for Invalidity

6. The Town and Country Planning Act 1990 sets out the statutory procedures for different types of applications and appeals, amongst other things. S73 enables the removal or variation of conditions following the grant of planning permission. In determining such an application, the decision-maker may only consider the question of the conditions that should be attached to the permission. This differs from an 'application for approval of details reserved by condition,' which is the mechanism through which a developer seeks the authority's approval of details required by an existing condition, such as external materials. The distinction between the two procedures is important.

7. There is no power under s73 of the Act to approve details reserved by condition. That is in substance, what the appellant seeks; approval to use uPVC windows instead of the previously agreed timber ones. It would have been open to the appellant to submit a revised application for approval of details reserved by condition. If refused, the appellant would then have had the right to appeal under s78(1)(b) of the Act. Such an appeal would have required the consideration of whether uPVC windows would preserve or enhance the character or appearance of the CA, having regard to the development plan, the statutory duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, and any other material considerations.

8. However, under a s73 appeal I may only consider whether planning permission should be granted subject to the same or different conditions. The appellant does not dispute the need for a condition to control the external materials. The specific wording of the condition does not prevent the appellant from proposing uPVC windows, it is precise and enforceable. Given the importance of securing an appropriate external appearance in a designated CA, the condition remains relevant to planning and the development permitted, necessary and is reasonable in all other regards. It therefore meets the 6 tests of conditions laid out in the Planning Practice Guidance[2] and paragraph 57 of the National Planning Policy Framework.

9. Moreover, elevation drawings or manufacturer specifications have not been provided to show the form, profile or finish of the proposed uPVC windows. Any amendment to Condition 3 would therefore still require the submission and approval of further details to ensure that the window proportions and detailing in the amended material were appropriate to the historic context. This would serve little practical purpose, as it would be no different to the condition already in place. If the condition was amended to specify the use of uPVC for the windows it would, in effect, amount to approving that material. As I have said, this is beyond the scope of s73.

10. I am aware that the s73 application was accepted and validated by the Council. However, the Council's view on validity is not binding on the Secretary of State and the officer report appears to express uncertainty over the intention of the

[2] Paragraph: 003 Reference ID: 21a-003-20190723.

appellants application. On the evidence before me, the planning application as submitted to the Council was invalid and an invalid application may not lawfully be determined. It follows that any appeal relating to such an application is also invalid. Consequently, I am unable to consider the substantive matter of the appeal. It would be open to the appellant to submit an application for approval of details reserved by condition to the Council, if they wish to pursue this proposal further. Whilst I understand this may be frustrating for the appellant, the legislation does not allow procedures to be used interchangeably. Alternatively, the appellant may complete the development with the materials already approved.

11. An application under s73 of the Act has the effect of granting a new stand-alone permission with the same, different or no conditions. Had I been able to determine the appeal, the appellant could then have chosen whether to implement the original or the newly varied permission. The Council advises that the original permission was accompanied by a unilateral undertaking (UU), securing the proposal as self-build development to provide an exemption from the requirement for biodiversity net gain (BNG). No such undertaking has been provided with this proposal. Without one, the development would not be exempt from BNG, which is mandatory for new development unless specific exemptions apply[3]. I have not been advised that any exemption would be met. Even if I could have accepted uPVC windows in principle, the lack of a UU or other legal agreement would have prevented me from granting a new permission in any event.

Conclusion

12. For the reasons given, I find the appeal to be invalid. Accordingly, no further action can be taken upon it.

M Clowes

INSPECTOR

[3] Schedule 7A of the Town and Country Planning Act 1990 as inserted by Schedule 14 of the Environment Act 2021.