

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H01-0140-24 **Applicant:** Coda Builders Ltd

Proposal: Erection of 3 detached dwellings - approved under H01-0234-23.
Modification of Condition 2 to allow amendments to previously approved plans and Condition 3 to allow amendments to external surfaces and removal of chimney to Plot 3

Location: Land North Of 68 Stonegate Cowbit Spalding

Terminal Date: 30th May 2024

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

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
28	The Natural Environment
30	Pollution
31	Climate Change and Renewable and Low Carbon Energy
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2023

Section 2 - Achieving sustainable development
Section 4 - Decision-making
Section 5 - Delivering a sufficient supply of homes
Section 8 - Promoting healthy and safe communities
Section 11 - Making effective use of land
Section 12 - Achieving well-designed and beautiful places
Section 14 - Meeting the challenge of climate change, flooding and coastal change
Section 15 - Conserving and enhancing the natural environment

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
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

This application is a Section 73A seeking to vary Condition 2 and 3 of planning approval H01-0234-23, to allow amendments to the previously approved plans and to allow amendments to external surfaces and removal of chimney to Plot 3. This initial application comprised proposed residential development of three detached dwellings.

Site Description

The application site lies to the northern side of Stonegate, Cowbit and had previously consisted of residential garden of approximately 0.42ha. The site is accessed via Stonegate, with access having also been as part of the garden of No.68 which contains a number of mature trees.

The site lies within the defined settlement boundary of the area, which is characterised by residential properties of varying ages, scales and designs. The site also lies within Flood Zone 3.

Work has now commenced on site, following approval of application H01-0234-23.

History

H01-0234-23 - FULL - Erection of three detached dwellings - previously approved under H01-0452-21. Amendments to house types, drainage details and boundary treatments. APPROVED 23.05.23

H01-0452-21 - RESERVED MATTERS. Erection of 3 dwellings - outline approval H01-0759-18. Also, modification of Condition 8 relating to visibility splays, in accordance with H01-1075-18. APPROVED 09-09-21.

H01-0759-18 - OUTLINE. Residential development (3 dwellings). APPROVED 20-09-18.

H01-1075-18 - SEC 73 MODIFICATION. Residential development (3 dwellings) - approved under H01-0759-18 - Modification of Condition 8 relating to visibility splays. APPROVED 27-11-18.

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:

South Holland Internal Drainage Board

Byelaw 3 (Surface Water)

The applicant has indicated that they intend to dispose of surface water via infiltration from plots 1

and 2, however, as previously advised the Board has concerns about the viability of this proposal in this location (under your refs H01-0452-21 and H01-0234-23). The local water table is known to be high, as evidenced by the applicant's own ground investigation.

Whilst I note the applicant has undertaken infiltration testing, this was carried out in the summer. As per best practice, the Board recommends that soakaway testing is undertaken during winter-spring, when the water levels are at their highest. This ensures that a drainage strategy reliant on infiltration is viable at this site year round, as the ground is more likely to be waterlogged during the winter. Our recommendation above is to prevent flood risk within the Board's IDD, in line with the National Planning Policy Framework, specifically paragraph 173.

If you determine that infiltration is not feasible at these plots, following the drainage hierarchy, we would expect the applicant to propose to discharge surface water to a watercourse. In this case, consent would be required under Byelaw 3.

The applicant proposes to discharge surface water to a watercourse from plot 3, and I note that the site plan (074 P01, Seven 22 Architecture Ltd) indicates that this is agreed by the IDB. I am not aware of the Board having granted consent for this proposal, however I recommend the applicant contacts this office should they have any information to suggest otherwise.

I recommend that the applicant contacts this office to make an application for this consent at their earliest convenience. Please note that we recommend that any discharge is in line with the Non-Statutory technical standards for sustainable drainage systems (SuDS), therefore the Board is unlikely to grant consent for discharges in excess of greenfield rate.

Section 23, Land Drainage Act 1991

I note the presence of a watercourse which is not maintained by the Board (a riparian watercourse) adjacent to the site boundary. Whilst not currently proposed, should the applicant's proposals change to include works to alter the riparian watercourse, or if works are proposed to alter the watercourse at any time in the future, consent would be required under the Land Drainage Act 1991 (and byelaw 4).

Byelaw 10

There are no Board maintained watercourses within or adjacent to the site boundary therefore Byelaw 10 does not apply.

SHDC Environmental Protection Officer

I request a precautionary land contamination condition be applied at this location (as was applied on the previous approved application for this location), as follows:

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported immediately to the Local Planning Authority (LPA). An investigation and risk assessment must be undertaken in accordance with details to be agreed with the LPA. Where remediation is necessary, a remediation scheme must be submitted to and approved in writing by the LPA. Following completion of measures identified in the approved remediation scheme a verification report shall be submitted to and approved by the LPA.

No deviation shall be made from this scheme without the express written agreement of the LPA. If during redevelopment contamination not previously considered is identified, then the LPA shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspected contamination has been submitted to and agreed in writing by the LPA.

Reason: To assess whether the site is polluted and to address any pollution to ensure a satisfactory development. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works.

This Condition is imposed in accordance with Policy 30 of the South East Lincolnshire Local Plan, 2019.

LCC Highway and Lead Local Flood Authority

The changes are acceptable and do not have an impact on the public highway. All other details would remain the same as those which have been Consented previously, the highway authority does not wish to object to the grant of Consent for this Application.

Public Representation

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, no letters of representation have been received.

Evaluation - Section 73

The proposal relates to the variation of Condition 2 and 3 (approved plans and materials) of H01-0234-23, 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 2 and 3 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".

Principle of Development and Sustainability

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

In this case, the adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019, forms the development plan for the District, and is the basis for decision making in South Holland. The relevant development plan policies are detailed above.

The policies and provisions set out in the National Planning Policy Framework (updated July 2021) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

The principle of development has been accepted by the host application, H01-0234-23. However, it

is noted that since that approval, the cNational Planning Policy Framework has been updated (December 2023).

As clarified by the SELLP, Cowbit is considered to be a Minor Service Centre. Within the settlement boundaries of the Minor Service Centres development will be permitted that supports their role as a service centre for the settlement itself, helps sustain existing facilities or helps meet the service needs of other local communities. Development will normally be limited to Allocated and Committed sites and infill.

The application site in this instance is within Cowbit and lies within the defined settlement boundaries. In the context of this, the principle of residential development within this location is considered to be of an appropriate form of development for the location and would be in accordance with the overall principles of the spatial strategy. As such, the proposal is considered to be in accordance with the requirements of Policy 1 of the South East Lincolnshire Local Plan in principle.

As outlined within the report above, the principle of development has been established, with the development having commenced and therefore, remaining extant. When viewed as a whole, coupled with the proposal comprising a section 73 application to vary the approved plans, the proposal is acceptable in principle.

Layout, Design and Consideration of the Character and Appearance of the Area

Section 12 of the National Planning Policy Framework (December 2023) specifically relates to 'Achieving well-designed and beautiful places' and details that the "creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve" and as such, it is generally accepted that good design plays a key role towards sustainable development.

Paragraph 135, contained within Section 12 of the National Planning Policy Framework (December 2023), states that new development should function well and add to the overall quality of the area (including beyond the short term) and should be visually attractive as a result of good architecture and appropriate landscaping. This goes on to establish that it is important that new development should be of the highest quality to enhance and reinforce good design characteristics, and that decisions must have regard towards the impact that the proposed development would have on local character and history, including the surrounding built environment and landscape setting such as topography, street patterns, building lines, boundary treatment and through scale and massing.

Development proposals should also ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users, among other considerations.

Likewise, Policy 2 of the South East Lincolnshire Local Plan outlines sustainable development considerations for development proposals, providing a framework for an operational policy to be used in assessing the sustainable development attributes of all development proposals. Furthermore, Policy 3 accords with the provisions of Section 12 of the National Planning Policy Framework, in that it requires development to comprise good design; identifying issues that should be considered when preparing schemes so that development sits comfortably with, and adds positively to, its historically-designated or undesignated townscape or landscape surroundings.

These policies accord with the provisions of the National Planning Policy Framework and require that design which is inappropriate to the local area, or which fails to maximise opportunities for improving the character and quality of an area, will not be acceptable.

Proposals for new development would therefore require the aforementioned considerations to be adequately assessed and designed, including the siting, design and scale to be respectful of surrounding development and ensure that the character of the area is not compromised.

The purpose of this Section 73 application is to amend the proposed materials and the elevations of Plot 3 to remove a proposed chimney, the general layout form remains the same.

The approved materials comprised the facing brickwork to be Vandersanden, in Flemish Antique with imitation slate roof tiles. The new proposed materials are facing brickwork to be TSB Traditional Brick & Stone in Audley Antique with imitation slate roof tiles.

It is considered that the change of Vandersanden, in Flemish Antique Brick to TSB Traditional Brick & Stone in Audley Antique Brick are acceptable.

The proposal also seeks to remove the proposed chimney on the east elevation to Plot 3. The removal of the proposed chimney is considered to be acceptable and would not have an adverse impact to the character and appearance to the area.

Taking account of the design, scale and nature of the development, as detailed above, the proposal is considered to be acceptable. The proposal would not cause an adverse impact to the character or appearance of the area and would therefore be in accordance with policies 2 and 3 of the South East Lincolnshire Local Plan and Section 12 of the National Planning Policy Framework (December 2023).

Impact on Residential Amenity/Land Users

Paragraph 135 of the National Planning Policy Framework (December 2023) states that development should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Policies 2 and 3 of South East Lincolnshire Local Plan (2019) sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.

It is not considered that any adverse impacts would arise from the development. The proposed variations, when assessed in comparison to that of the extant permission, is not considered to give rise to an increased impacts to residential amenities of either existing or future occupants.

As detailed above, the scale and design of the proposal is considered to be such that there would be no significant or unacceptable impact on the residential amenities of the occupiers of adjacent properties or land users, when also taking account of the conditions recommended. As such, the proposal is considered to accord with the provisions of the Section 12 of the National Planning Policy Framework (December 2023), and Policies 2 and 3 of the Local Plan.

Highway Safety and Parking

Section 9 of the National Planning Policy Framework (December 2023) specifically relates to 'Promoting sustainable transport'. Paragraph 115 of the National Planning Policy Framework (December 2023) advises that "development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe".

In respect of highway matters, Policy 2 details that proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met, specifically in relation to access and vehicle generation. Policy 3 details that development proposals will demonstrate how accessibility by a choice of travel modes including the provision of public transport, public rights of way and cycle ways will be secured, where they are relevant to the proposal.

Further, policy 36, to be read in conjunction with Appendix 6 of the South East Lincolnshire Local Plan, sets out minimum vehicle parking standards and requires at least two spaces for dwellings of up to three bedrooms and three spaces for dwellings with four or more bedrooms.

It is not considered that the proposal would have any detrimental impact on highway safety and this view is shared by Highway officers at Lincolnshire County Council confirming "the changes are acceptable and do not have an impact on the public highway. All other details would remain the same as those which have been Consented previously, the highway authority does not wish to object to the grant of Consent for this Application." The variations hereby proposed are not considered to give rise to an unacceptable increase in highway impacts in comparison to that of the extant permission.

The proposal would therefore be acceptable and would not have an unacceptable adverse impact on highway safety in accordance with Local Plan Policies 2, 3 and 36, and Section 9 of the National

Planning Policy Framework (December 2023).

Flooding Considerations

The host application was supported by a flood risk assessment and the development is to be controlled via a condition to ensure adherence to the recommendations of this document.

Foul and Surface Water Drainage

These matters have been considered by the statutory undertakers and can be controlled via conditions. It is noted that comments have been raised by the internal drainage board and as such, given that the development of three dwellings has been established and given that the amendments would not result in a significant change to the drainage on site, informative have been added.

Planning Balance

As detailed above, 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 development does not materially harm the character or appearance of the locality, or amenity of nearby residents, and provides adequate parking. Taking into consideration these factors, the proposal is considered to comply with Policies 2, 3, 4, 10, 11, and 36 and Appendices 6 of the South East Lincolnshire Local Plan (SELLP), 2019, plus advice within the National Planning Policy Framework (NPPF), 2023.

There are no significant factors in this case that indicate against the proposal and outweigh factors in favour of the proposal and the policies referred to above.

Conclusion

It is recommended that the Section 73 permission should be granted.

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.