DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H01-0660-24**	**Applicant:**	**Scenic Homes Ltd.**
Proposal:	Erection of 5 Dwellings - approved under H01-0757-22. Modification of Condition 1 to allow amendments to previously approved plans		
Location:	Adj. 128 Barrier Bank Cowbit Spalding		
Terminal Date:	2nd October 2024		

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
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2023

Section 2: Achieving sustainable development
Section 5: Delivering a sufficient supply of homes
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
Section 16: Conserving and enhancing the historic environment

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	1	0
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
HISTORIC	0	0	0	1

ENVIRONMENT OFFICER				
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

This application is a Section 73A seeking to vary Condition 1 of planning approval H01-0757-22 to allow amendments to previously approved plans.

Application H01-0757-22 granted planning permission for the erection of 5 dwellings.

Site Description

The site is located on the eastern side of Barrier Bank close to the western edge of the village, between no. 134 and 128 Barrier Bank. The site is currently under construction following planning approval H01-0597-21.

History

H01-0597-21 - Outline - Residential Development - Approved 11.10.2021

H01-0757-22 - Reserved Matters - Erection of 5 Dwellings - outline approval H01-0597-21 - Approved 26.09.2022

H01-0767-22 - Condition Compliance - Details of contamination of land and pollution of controlled waters, refuse and recycling, existing site levels and proposed floor/site levels, surface water disposal, foul water disposal and proposed boundary treatments. (Conditions 6(i), 7, 9, 10, 11 and 13 of H01-0597-21) - Approved 16.11.2022

H01-0658-24 - Condition Compliance - Details of storage & disposal of refuse & recycling, existing & proposed site levels & proposed floor levels of buildings, hard surfaced areas & garden/amenity areas, surface water disposal and foul water disposal (Conditions 7, 9, 10 & 11 of H01-0597-21) - To be determined

H01-0659-24 - Condition Compliance - Details of scheme to deal with contamination (Condition 6 - parts ii, iii & iv of H01-0597-21) - To be determined

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:

Cowbit Parish Council

The Parish Council has no objections to this application.

South Holland Internal Drainage Board

Byelaw 3 (Surface Water)

The applicant proposes to discharge surface water to a watercourse and has approached the Board to make an application for consent under Byelaw 3, which is currently under determination under reference 22_07305_C.

Byelaw 3 (Treated Foul Water)

I note that the applicant intends to dispose of foul water to a main sewer. Should the applicant's proposals change to include the discharge of treated foul water to a watercourse, consent would be required under Byelaw 3.

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 eastern 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).

The Board recommends that adequate space (3-5 metres) is left flat and free from obstruction adjacent to the riparian watercourse in order to enable maintenance by future riparian owners or a designated maintenance company/contractor.

Byelaw 10

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

Historic Environment Officer

Thank you for consulting us on this.

Having reviewed the application documents and the updated available Historic Environment information for this application, the proposal is unlikely to have an impact on significant archaeological remains. Consequently, no further archaeological input is necessary for this application.

No objection to Modification of Condition 1.

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 1 of H01-0757-22, 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 1 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

The principle of 5 dwellings has already been established by virtue of the previous approval (ref. H01-0597-21).

This application is to modify condition 1 (approved plans) of H01-0757-22.

This variation seeks amendments to the elevations of all dwellings and to the site plan. The site amendments include:

-The location of the bin collection point
-The relabelling from Plot 2 Garage to Plot 1 Garage
-Alteration to Plot 1 garage design
-Minor alterations to the separation distance of the location of the dwellings of Plots 3, 4, and 5 to the rear boundary

Planning Considerations

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 elevation alterations are a reduction in the glazing to the front elevations of Plots 1, 2, and 3.

This variation seeks amendments to the elevations of all dwellings and to the site plan. The site amendments include:

-The location of the bin collection point
-The relabelling from Plot 2 Garage to Plot 1 Garage
-Alteration to Plot 1 garage design
-Minor alterations to the separation distance of the location of the dwellings of Plots 3, 4, and 5 to the rear boundary

The elevation alterations are a reduction in the glazing to the front elevations of Plots 1, 2, and 3.

Whilst the reduction of the glazing on Plots 1, 2 and 3 would change the appearance of the dwellings, the proposed amendments will not fundamentally alter the design of the scheme as a whole; therefore they are considered to be acceptable.

The application also seeks to amend the location of the bin collection point, alterations to Plot 1 garage design, and minor alterations to the separation distance of the location of the dwellings of Plots 3, 4, and 5 to the rear boundary. The separation distance is lager that what was previously proposed for Plots 3 and 4 with Plot 5 having a smaller separation distance of 0.003m from the dwelling to the boundary.

The alterations listed above are considered to be modest in nature and the context of the overall scheme. It is considered that the amenity of neighbouring residents would not be materially harmed in terms of overlooking, lack of privacy, overshadowing, overbearing effect, noise and disturbance, etc.

Taking the above into account, it is concluded that the layout, scale and appearance of the scheme satisfactorily accords with Policies 2 and 3 of the Local Plan. The proposal is also considered to accord with Policies 2 and 3 of the Local Plan in respect of their provisions on residential amenity. Policy 2 of the Local Plan requires development proposals to take into account sustainable development considerations such as: quality of design; size, scale, layout, density, impact on character and appearance of the area and the relationship to existing development. Policy 3 requires development proposals to respect the density, scale and massing of neighbouring buildings and the landscape character of the location.

Conditions

This Section 73 application is subsequent to the Reserved Matters approval, under reference H01-0757-22. This Reserved Matters approval was pursuant to Outline Planning Approval H01-0597-21, which itself comprised a number of conditions. These conditions required a formal submission to the Local Planning Authority, along with written agreement that the details, specifically relating to the conditions imposed, where acceptable. The development must be carried out in accordance with these details.

It is noted that discharge of conditions applications have been submitted and approved by the Local Planning Authority. The development, notwithstanding this Section 73 application, must be carried out in accordance with these details and as such, the recommendation in this instance is subject to a number of conditions which ties the permission alongside the details that have subsequently been approved. In instances where this may not be possible, a further discharge of conditions application will be required. This approach has been discussed and agreed by the applicant's agent.

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 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 and 3 of the South East Lincolnshire Local Plan (SELLP), 2019, plus advice within the National Planning Policy Framework (NPPF), 2023. 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 and 3 of the South East Lincolnshire Local Plan (SELLP) (2019), along with the identified sections contained within the National Planning Policy Framework (2023). 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.