DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H01-0693-23**	**Applicant:**	**Mr N Marshall**
Proposal:	Erection of 5 Dwellings - approved under H01-0820-22. Modification of Condition 1 to allow amendments to previously approved plans.		
Location:	Land Off Stonegate Cowbit Spalding		
Terminal Date:	20th October 2023		

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
05	Meeting Physical Infrastructure and Service Needs
10	Meeting Assessed Housing Requirements
11	Distribution of New Housing
17	Providing a Mix of Housing
28	The Natural Environment
29	The Historic 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 12. Achieving well designed 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	0	0

WARD MEMBER	0	0	0	0

CASE OFFICER ASSESSMENT

Proposal

The site has planning permission for 5 dwelling approved under H01-0820-22, with access off an existing private roadway. This application is to modify condition 1 (approved plans) of H01-0820-22 to amend the levels of Plots 1 and 2 to facilitate gravity drainage system. Development has commenced on site.

Site Description

The application site is part of the old railway yard that is no longer need and is currently under construction. The site is positioned within the settlement boundary for the settlement as set out in the Inset Map for Cowbit.

History

H01-0823-19 - Outline - Residential development for five dwellings - Approved 21-01-20

H01-0820-22 - Reserved Matters. Erection of 5 Dwellings - outline approval H01-0823-19 - Approved 04.11.22

H01-1144-22 - Condition Compliance - Details of external materials, construction management, storage and disposal of refuse and recycling and boundary treatments (Conditions 6, 12, 14 and 16 of H01-0823-19) - Refusal 20.01.2023

H01-1162-22 - Condition Compliance - Details of cycle storage - (Condition 2 of H01-0820-22) - Approved 20.01.2023

H01-0230-23 - Condition Compliance - Details of external materials, construction management, storage & disposal of refuse & recycling and proposed boundary treatment. (Conditions 6, 12, 14 and 16 of H01-0823-19) - Approved 16.05.23

H01-0352-23 - Condition Compliance - Details of proposed soakaway system, surface water disposal and foul water disposal (Conditions 9, 10 and 11 of H01-0823-19) - Approved 01.06.2023

H01-0558-23 - Non Material Amendment - Erection of 5 Dwellings - outline approval H01-0823-19 - approved under H01-0820-22. Amendments to levels on Plots 1 and 2 to facilitate gravity drainage system - Withdrawn

H01-0779-23 - Condition Compliance - Details of scheme to deal with contamination (Condition 13 of H01-0823-19) - To be determined

H01-0220-23 - Condition Compliance - Details of contamination of land or pollution of controlled waters (Conditions 13(i) & 13(ii) of H01-0823-19) - To be determined

Consultation Responses

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 (Approved Plans) of H01-0820-22, 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. Likewise, the red outline provided with the ordnance survey site location plan has not been altered and matches that of the initial submission.

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".

Taking all of the above into account, the Local Planning Authority are content that the proposed amendments can be considered under a variation application, via a Section 73 application.

Planning Considerations

The principle of 5 dwellings has already been established by virtue of the previous approvals (ref. H01-0820-22). This application is to modify condition 1 (approved plans) of H01-0820-22 to amend the levels of Plots 1 and 2 to facilitate gravity drainage system. The main issue therefore is the implications in terms of visual impact and also the amenity of nearby residents in terms of overlooking, lack of privacy, overbearing effect, overshadowing, etc.

Paragraph 130 of the National Planning Policy Framework (NPPF), 2023 establishes that planning policies and decisions should ensure that developments will function well and add to the overall quality of the area, that they are visually attractive, as a result of good architecture, and are sympathetic to local character. Likewise, Policy 2 of the SELLP, states 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. 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.

The Finished Floor Levels of Plot 1 are increasing from 3.53m to 3.75m and the Finished Floor Levels of Plot 2 are decreasing from 3.53m to 3.35m. The ground level to the north of Plot 1 is altering from 3.38m to between 3.34m-3.60m.

The amendments are considered to be modest in nature and the context of the overall scheme; therefore, it is considered that they would not lead to a significant alteration to the character of the

approved development. The proposal therefore satisfactorily complies with Policies 2 and 3 in this respect.

Policies 2 and 3 of the SELLP also set out residential amenity and the relationship to existing development and land uses as main considerations when making planning decisions. They are consistent with advice within the National Planning Policy Framework (2023). Paragraph 130, amongst other matters, seeks places with a high standard of amenity for existing and future users.

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. The changes to the finished floor levels and ground levels of Plot 1 and 2, will not cause an unacceptable impact by way of overshadowing. The changes are very minimal to what has previously been approved on site.

The proposal is therefore in accordance with Policies 2 & 3 of the South East Lincolnshire Local Plan and Section 12 of the National Planning Policy Framework.

Outline Conditions

The outline application to which the initial Reserved Matters and this subsequent Section 73 application relate, comprises 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. In instances where this may not be possible, a further discharge of conditions application will be required.

Planning Balance

As detailed above, 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.

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.