DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H01-1118-23**	**Applicant:**	**East Anglian Civils Holdings Ltd**
Proposal:	Details of ecological biodiversity measures, contamination of land or pollution of controlled waters and ecological survey (Conditions 3, 5 and 9 of H01-0639-22)		
Location:	Land At 66 Barrier Bank Cowbit Spalding		
Terminal Date:	13th February 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
28	The Natural Environment
30	Pollution
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

Representations:

	Object	Support	No Obj.	Comments
SHDC INTERNAL	0	0	0	1
OTHER STATUTORY BODIES	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

The application is to discharge conditions 3, 5 and 9 of H01-0639-22 (Details of ecological biodiversity measures, contamination of land or pollution of controlled waters and ecological surveys)

Site Description

The site is located on the northern side of Barrier Bank close to the western fringe of the village. It is presently occupied by a commercial building within the centre of the site. A hedge is located along the site's frontage and a number of trees are situated along the western boundary. It is accessed via a layby. Houses are located to the east and west of the site. Open land is situated to the north.

History

H01-0639-22 - Residential Development - 6 Dwellings - Approved

H01-0640-22 - Proposed replacement offices & storage buildings including demolition of existing buildings - Approved

H01-0368-20 - Residential Development - approved under H01-0120-17. Removal of Condition 4 relating to maximum number of dwellings and maximum floorspace - Approved

H01-0359-20 - RM - Erection of 5 dwellings - Outline approval H01-0120-17 - Approved

H01-0120-17 - Outline - Residential development (5 plots) - Approved

Consultation Responses

Lincolnshire Bat Group

Thank you for referring the ecological survey to Lincs Bat Group. We agree with the ecologist's general conclusions of low potential for bats roosting. Note time span of report (<1 year) before repeat survey needed.

Lincolnshire Wildlife Trust

Happy for Condition 9 to be discharged, however I cannot find any information relating to Condition 3. Are the swift boxes the only biodiversity measures being carried our re: Condition 3?

The Condition does mention a net gain for biodiversity, and while I don't expect full BNG, what the applicant has provided so far does not constitute sufficient detail to satisfy the condition. A plan of swift box locations throughout the site as well as bat bricks would be the expected minimum, alongside a planting scheme detailing the species of trees and shrubs to be planted. There is no further ecological information available on either application on the planning portal, so I would be unable to speculate further on what biodiversity enhancements they may be able to implement on site.

Team Leader Environmental Protection SHDC

I have reviewed the Elemental GI Ltd report 'PHASE I GEO-ENVIRONMENTAL ASSESSMENT: LAND NORTH OF BARRIER BANK, COWBIT' ref E23169/1/0 dated Oct 2023 and am in general agreement with the findings. I therefore recommend discharge of part i of condition 5 of H01-0639-22

I have reviewed the Elemental GI Ltd report 'PHASE 2 ENVIRONMENTAL INVESTIGATION: LAND

NORTH OF BARRIER BANK, COWBIT' ref E23169/2/0 dated Oct 2023 and am unable to recommend discharge of part ii at this time.

I request clarification on the following points:

- Ground gas monitoring was not recommended, nor completed, yet CS2 ground gas protection measures were proposed. Are they to be installed and if so, why?

- Elevated levels of some determinants were recorded, at over ten times the screening level in one sample, and 8 times in another. Does the consultant consider the site to be adequately characterised? Only four samples were selected for that testing suit and elevated levels (relative to the selected assessment criteria) were identified in two of them.

- Remediation was not recommended as site levels were due to be raised by 600mm. Presumably the consultant is suggesting that the pathways has been broken. However, no comment was made as to the appropriateness or effectiveness of a simple cover system given the elevated levels recorded.

I consider that potentially further characterisation and remediation is required at this location. Any imported soils should be suitable for use and at a concentration level to support a simple cover system, if that is what is proposed.

Planning Considerations

The application is to discharge conditions 3, 5 and 9 of H01-0639-22 (Details of ecological biodiversity measures, contamination of land or pollution of controlled waters and ecological surveys).

Condition Details

The conditions detail:

Condition 3

Before the commencement of the development hereby permitted beyond oversite full details of ecological biodiversity measures to be installed in conjunction with the development shall be submitted to and approved in writing by the Local Planning Authority. The measures shall be constructed and retained in accordance with the details so approved.

Note: Development can incorporate a number of simple, low-cost measures to deliver biodiversity benefits and enhance priority habitats and species such as the use of bat and barn owl roost boxes and integrating nesting opportunities into buildings. The use of swift bricks on new developments would help minimise the decline in swifts, a priority species.

Reason: To ensure that the development is able to deliver a net gain in biodiversity.
This Condition is imposed in accordance with Policy 28 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in the National Planning Policy Framework, 2021.

The details provided are insufficient to be acceptable to discharge Condition 3. The sole ecological 'benefit' illustrated is the inclusion of 'one swift brick per dwelling' totalling four swift bricks for the development. The provision of four swift bricks is not sufficient to ensure the proposal complies with policy 28. Lincolnshire Wildlife Trust were consulted and proved the following comments.

"The Condition does mention a net gain for biodiversity, and while I don't expect full BNG, what the applicant has provided so far does not constitute sufficient detail to satisfy the condition. A plan of swift box locations throughout the site as well as bat bricks would be the expected minimum, alongside a planting scheme detailing the species of trees and shrubs to be planted. There is no further ecological information available on either application on the planning portal, so I would be unable to speculate further on what biodiversity enhancements they may be able to implement on site."

These details are therefore unacceptable and Condition 3 cannot be discharged.

Condition 5

The development hereby permitted shall not be commenced until a scheme to deal with any contamination of land or pollution of controlled waters has been submitted to and approved in writing by the Local Planning Authority (LPA).

The scheme shall include all of the following measures unless the LPA dispenses with any such requirement in writing:
i) A preliminary risk assessment (desk study) shall be carried out to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the site. The desk-top study shall establish a 'conceptual site model' and identify all plausible pollutant linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/Quantitative Risk Assessment (or state if none required). A full copy of the desk-top study and a non-technical summary shall be submitted to the LPA without delay upon completion.
ii) If identified as being required following the completion of the desk-top study, an exploratory site investigation shall be carried out to fully and effectively characterise the nature and extent of any land contamination and/or pollution of controlled waters. It shall specifically include a risk assessment that adopts the Source-Pathway-Receptor principle, in order that any potential risks are adequately assessed taking into account the sites existing status and proposed end use. A full copy of the site investigation and findings shall be forwarded to the LPA without delay upon completion.
iii) Thereafter, a written method statement detailing the remediation strategy for land contamination and/or pollution of controlled waters affecting the site and a timetable for their completion shall be submitted to and approved in writing by the LPA. This shall include details of the proposed verification plan including compliance criteria and monitoring details.

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.

The details provided are insufficient to be acceptable to discharge Condition 5.

Environmental Health have been consulted on this application and have confirmed that they are in general agreement with the findings of 'PHASE I GEO-ENVIRONMENTAL ASSESSMENT: LAND NORTH OF BARRIER BANK, COWBIT' ref E23169/1/0 dated Oct 2023 and therefore recommend discharge of part i of condition 5 of H01-0639-22.

However, on reviewing the Elemental GI Ltd report 'PHASE 2 ENVIRONMENTAL INVESTIGATION: LAND NORTH OF BARRIER BANK, COWBIT' ref E23169/2/0 dated Oct 2023 further clarification is required and therefore unable to recommend the discharge of part ii at this time.

It is concluded that the Local Planning Authority does not have sufficient information to discharge Condition 5.

Condition 9

The existing buildings on site shall not be demolished until an ecological survey has been carried to establish the presence, or otherwise, of protected species upon the site and the results have been submitted to and approved in writing by the Local Planning Authority. If protected species are found to be present a working design, method and timetable to mitigate any harm to the species involved shall be submitted to and approved in writing by the Local Planning Authority and the development shall thereafter be carried out in accordance with the approved details.

Reason: In the interests of nature conservation.

This condition is imposed in accordance with advice within Section 15 of the National Planning Policy Framework, 2019.

Lincolnshire Bat Group and Lincolnshire Wildlife Trust have been consulted on this application and have confirmed that they are in general agreement with the ecologist's general conclusions of low potential for bats roosting, therefore have recommended the discharge of Condition 9.

Conclusion

To conclude, for the reasons outlined above, it is considered that the details submitted in relation to Condition 9 are acceptable and as such can be discharged. However, the details in relation to Conditions 3 and 5 lack adequate information and/or comprise unacceptable detail and as such it is the recommendation that these conditions are refused and not discharged.

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.