

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H02-0545-26 **Applicant:** Mr M Blackbird

Proposal: Erection of 3 dwellings together with a double garage to Plot 3 - approved under H02-0128-26. Modification of Condition 2 to allow amendments to previously approved plans

Location: Land At Blackbird Close Crowland

Terminal Date: 31st July 2026

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
28	The Natural Environment
29	The Historic Environment
30	Pollution
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework December 2024

Section 2 - Achieving sustainable development
Section 4 - Decision-Making
Section 5 - Delivering a sufficient supply of homes
Section 9 - Promoting sustainable transport
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

Representations:

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

NORTH LEVEL INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	0	0	0	1
RESIDENTS	1	0	0	0

CASE OFFICER ASSESSMENT

Description of Proposal

This application is made under Section 73 of the Town and Country Planning Act, 1990, seeking to modify condition 2 of H02-0128-26, relating to approved plans. It is proposed that the 2m high brick wall along the northern boundary would be removed and replaced with a timber fence.

It should be noted that the brick wall has already been demolished.

Site Description

The application site is located within the settlement limits of Crowland. It is bound by Peterborough Road to the west and Blackbird Close to the south. A private drive runs along the northern boundary with Kennulphs Close, to the east are two detached dwellings with James Road beyond.

The application site is located in Flood Zone 2 in accordance with the EA Mapping for Planning and in an area categorized as 'low hazard' within the South East Lincolnshire SFRA.

The site at present is vacant and fairly described as an infill site.

Relevant History

H02-0128-26 - Erection of 3 dwellings together with double garage to Plot 3. Approved 28-04-26

H02-1008-25 - Erection of 3 Dwellings with a Double Garage to Plot 3. Refused 30-12-25

H02-0568-24 - Erection of 3 dwellings with garages - re-submission of H02- 0899-22. Approved

H02-0899-22 - Erection of 3 bungalows & garages. Refused 22-09-23. Appeal dismissed 17-05-24

H02-1082-15 - Residential development 41 dwellings with associated parking and garages. Approved 21-08-17.

H02-0774-18 - Erection of detached dwelling and private drive access. Approved 12-10-18.

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:

Crowland Parish Council

CPC questions the wisdom of removing a solid brick boundary wall in favour of a wooden fence. Could a trellis not be put on top of the wall?

Environmental Protection

No comments regarding amendment to condition 2 my previous comment remains the same in previously approved plan H02-0128-26

Highway and Lead Local Flood Authority

The proposal is for minor amendments to the site plan that already has approval under H02-0128-26. The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk.

North Level Internal Drainage Board

Please note that North Level District Internal Drainage Board have no comments to make regarding the above planning application.

Public Representations

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, one letter of objection has been received.

This can be summarised as:

- Inaccuracies of neighbouring plots on plans
- Lack of clarity in plans
- Finished ground levels have not been agreed
- Query as to whether a fence would be strong enough to retain soil when levels raised
- Query long term maintenance of the fence
- Height of 2.5m section of fence is overly tall, and contrary to the findings of previous appeal decision
- Wall was more aesthetically pleasing than the proposed fence
- Notification should have been served prior to demolition of wall under the part wall act

Key Planning Considerations

Evaluation - S73

The proposal seeks to vary Condition 2 of H02-0128-26, 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 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 S73 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 effect of the change will be significant".

Paragraph 13 of the relevant section of the PPG states "In contrast to section 96A, an application made under section 73 of the Town and Country Planning Act 1990 can be used to make a material amendment by varying or removing conditions associated with a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission."

Evaluation - Key Considerations

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 adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019 (SELLP), is the development plan for the district, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework, 2024 (NPPF) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

Principle of Development

The principle of development was established under H02-0128-26. As a result, there is no requirement to reassess the principle here.

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

Section 12 of the NPPF, "Achieving well-designed places", states 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 NPPF, 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. Developments 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, among other considerations.

Likewise, Policy 2 of the SELLP outlines sustainable development considerations for proposals; providing a framework for an operational policy to be used in assessing the sustainable development attributes of all development proposals. Furthermore, Policy 3 of the SELLP 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 NPPF 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 wall which was previously on the site has been demolished at the time of writing. This wall was not an unattractive feature; however, it was found to be of poor construction by the Applicant. There is nothing before the Authority to refute this conclusion. As such, there is a degree of justification behind the loss of this feature.

Timber fencing is a common feature in the area. It is the primary boundary treatment within the wider area and is entirely typical of residential areas more widely. As a result, the fence, in isolation of its scale, would not appear immediately incongruous.

Details of the height of the fencing has been provided. These provisions are noted. However, Condition 9 of H02-0128-26 required details of site levels and any adaptations to boundary treatments which these changes would necessitate. On the basis of this condition, and the fact that finalised site levels have been provided, it is not considered appropriate to approve the finalised height of this fencing at this time. For these reasons, whilst the underlying principle of the proposed fencing is considered to be acceptable, an additional condition requiring finalised details should be placed upon any decision notice.

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 SELLP and Section 12 of the NPPF.

Impacts Upon Resident Amenity

Paragraph 135 of the NPPF 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.

Policies 2 and 3 of SELLP sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.

As outlined previously, finalised site levels have not been approved. As such, the fence's ability to prevent overlooking is dependent upon these finalised levels. However, the heights proposed are greater than the previously approved wall, meaning that a greater extent of views would be obscured, aiding in the preservation of residential amenity. With regards to the 2.5m section, there is a clear necessity for the rise here in order to wholly preserve residential amenity. On this basis, adequate justification of the chosen height has been put forward.

As detailed above, the scale and design of the proposal is considered to have 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 Section 12 of the NPPF and Policies 2 and 3 of the Local Plan in terms of impact upon residential amenity.

Other Matters

As only fencing is proposed to be altered, there would be no impact upon the other matters discussed within the host permission. All plans and conditions should be reapplied here, and updated to reflect the proposed amendments. Crucially, this would include finished site and floor levels, which are not approved as a part of this permission, and the effect of Condition 9 of the previous application, and to be reapplied here, are still relevant. An additional condition requiring finalised details of the boundary treatments is recommended.

A query has been raised regarding the fence's ability to hold back additional soil created by raised ground levels and the effect of this on the long term maintenance of the fence. Condition 9 of H02-0128-26, which is to be reimposed here, required finalised details of site levels and details of any mitigation or adaptation which these changes to ground levels necessitate. Accordingly, it is not considered appropriate to assess this matter here, and this matter should be assessed as per Condition 9 as part of the condition discharge process.

A resident has referenced the part wall act. This is a piece of civil legislation, broadly outside of the planning regime, and therefore, the actions of any part with regards to this act cannot be given

significant weight within the planning system.

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 proposal represents appropriate development within the defined settlement boundary. The development hereby proposed does not materially harm the character or appearance of the locality, or amenity of nearby residents, and provides adequate parking, whilst conforming with the SELLP and the provisions of the NPPF when viewed as a whole.

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.

Conclusion

In this instance the proposal is considered to accord with policies 1, 2, 3, 4, 28, 29, 30 & 36 of the South East Lincolnshire Local Plan (2019) and the relevant sections of the National Planning Policy Framework (December 2024)

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be approved

under Delegated Authority.