DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H02-1179-25**	**Applicant:**	**Push Power**
Proposal:	Proposed Solar Farm and associated infrastructure - approved under H02-0606-18. Modification of Condition 1 to allow amendments to previously approved plans.		
Location:	Decoy Farm Spalding Road Crowland		
Terminal Date:	1st May 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
30	Pollution
31	Climate Change and Renewable and Low Carbon Energy

National Guidance

National Planning Policy Framework December 2024

Section 2 - Achieving sustainable development
Section 4 - Decision-Making
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
Section 16 - Conserving and enhancing the historic environment

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	1
WARD MEMBER	0	0	0	0
NORTH LEVEL INTERNAL DRAINAGE BOARD	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

This application is made pursuant to Section 73 of the Town and Country Planning Act 1990 and seeks to vary planning permission H02-0606-18 which granted consent a solar farm and associated infrastructure. The current proposal seeks to amend condition 1 by making changes to the approved site layout plan.

The current proposal seeks to regularise minor amendments to the layout of the Decoy Farm Solar Farm, reflecting as built and operational changes, and to update the approved drawing to reflect these changes. The proposals would not result in an increase in panel height or to the overall site area.

The amendments include:

1.The westernmost field of panel arrays (immediately northwest of Field 2 on submitted layout PPP027.301.02) have been removed and will not be required as part of the scheme moving forward.

2.A small number of panels will be removed at the southern section of Field 1.

3.Panels have been introduced to Field 3.

4.Minor changes to the boundary fencing and ancillary infrastructure locations.

Site Description

The application site comprises a parcel of land located approximately 2km to the north-east of Crowland. The site is located to the east of Spalding Road and a dog walking field (Field for Paws).

The site is outside any defined settlement boundary, as identified by the South East Lincolnshire Local Plan (2019) and the accompanying policies map.

The site is within Flood Zone 3, as identified by the Environment Agency's flood risk maps.

Planning History

H02-0454-14: (Full Application) Proposed solar farm with associated infrastructure - approved 12 August 2014

H02-0430-15: (Non Material Amendment) Proposed solar farm with associated infrastructure - approved under H02-0454-14. Amendments to include revised panel and infrastructure layout - approved 09 September 2015

H02-1004-15: (S73 Application) Proposed solar farm and associated infrastructure-approved under H02-0454-14. Modification of Condition 2 to delete reference to Flood Risk Assessment - approved 16 December 2015

H02-0131-16: (Non Material Amendment) Proposed solar farm with associated infrastructure - approved under H02-0454-14. Amendment to colour for inverters from Holly Green to Pure White - approved 09 March 2016

H02-0448-16: (Non Material Amendment) Proposed solar farm with associated infrastructure - approved under H02-0454-14 - Amendments to include 6 bunded oil tanks - approved 20 May 2016

H02-0606-18: (S73 Application) Proposed solar farm and associated infrastructure - approved under H02-1004-15. Modification of Condition 3 relating to amended wording - approved 28 August 2018 (Within this application, condition 3 was amended to an unrestricted time period and for all

infrastructure to be removed on cessation of the use)

H02-0991-18: (Full Application) Installation and operation of associated infrastructure in relation to approved solar farm (part retrospective) - approved 05 December 2018

H02-1025-18: (Non Material Amendment) Proposed solar farm with associated infrastructure - approved under H02-0454-14 - various amendments to overall scheme - approved 01 November 2018

H02-0053-19: (Full Application) Landscaping works (retrospective) - approved 06 March 2019

H02-1180-25: (Full Application) Revised access route from the public highway & a new internal access track linking two consented solar farm fields - pending determination

Consultation Responses

The responses received from consultees during the consultation period are summarised below. The responses can be viewed in their entirety on South Holland District Council's website.

Crowland Parish Council: Crowland Parish Council has considered the above application. Given the lack of clarity within the submitted plans and supporting information, the Parish Council is unable to make a detailed assessment of the proposed amendments. In these circumstances, the Parish Council is content to rely on the professional judgement and expertise of the Planning Officer dealing with the application, particularly in respect of whether the proposed changes materially alter the approved scheme or give rise to any additional impacts. The Parish Council requests that, should the Local Planning Authority be minded to approve the application, it is satisfied that the amendments do not result in increased harm to the character of the area, residential amenity, highway safety, or drainage arrangements when compared with the originally approved plans

Northern Level Internal Drainage Board: No Comments

Cllr B Alcock: No response received.

Cllr J R Astill: No response received.

Cllr A Harrison: No response received.

Lincolnshire County Council: Highways and SUDS: No response received.

Public Representations

This application has been publicised in accordance with the Development Management Procedure Order 2015 (as amended). In this instance, no representations from members of the public have been received.

Key Planning Considerations

Development Plan

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, December 2024 (NPPF) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

There are no adopted Neighbourhood Plans for the area within which the site is located.

The principle of development for the development of a solar farm and its associated infrastructure

has already been found to be acceptable through the approval of the original permission H02-0454-14. The current application only seeks to amend condition 1 of the latest Section 73 permission by changing the approved plans. As such, the main issues and considerations in this case include the following:

- Section 73 Eligibility;
- Impact of Proposed Changes to Approved Plans;
- Re-Attachment of Conditions; and
- Biodiversity Net Gain.

These matters are assessed in turn below.

Section 73 Eligibility

The proposal relates to the variation of Condition 1 of H02-0606-18, through seeking permission under Section 73 of the Town and County Planning Act (1990) (the Act). The purpose of an application made under Section 73 of the Act 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 the relevant conditions 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'.

National Planning Practice Guidance clarifies the following:

"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'; however, 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 effect of the change will be significant".

Impact of Proposed Changes to Approved Plans

As established above, the scope of this application is limited to the variation of condition 1 which seeks amendments to the plans as described below (but not limited to).

1.The westernmost field of panel arrays (immediately northwest of Field 2 on submitted layout PPP027.301.02) have been removed.

2.A small number of panels will be removed within the south-western section of Field 1 (the northernmost field).

3.Panels have been re-arranged within Field 3. This appears to accommodate an access track and overhead power lines. The proposed access track is pending determination under application H02-1180-25.

4.Minor changes to the boundary fencing and ancillary infrastructure locations are proposed.

In terms of point 1 listed above, the removal of panels on Field 2 and the south-western part of Field 1 is acceptable in terms of its visual impact.

In terms of point 3, a number of panels would be introduced to Field 3 which is located at the south eastern part of the site, closest to 'Field for Paws' (a dog park) and Spalding Road. The previously approved site layout under the latest Section 73 application (ref: H02-0606-18) showed panels in Field 3; however, the panels have been re-arranged within the current layout. Furthermore, panels were shown within Field 3 within the original approval H02-0454-14. As such, the principle of allowing panels within this field is considered to be acceptable. The visual impact of the proposed re-arrangement is also acceptable given that the panels would remain contained within the site.

The re-arrangement of the panels within the site has been queried with the applicant due to the significant re-arrangement proposed. For example, it was unclear if the proposed re-arrangement would affect the energy output from the site. Previously the site layout plan from application H02-0606-18 showed 61,200 PV modules generating 15.5 MW. These details are not confirmed on the updated site layout plan; however, the applicant has confirmed that the proposed output would be 16.15 MW. The original description of development did not refer to a maximum output, nor did any of the conditions limit this. Therefore, it is considered that the revised output is acceptable.

In terms of point 4, new fencing is proposed around the boundaries of Fields 1, 2 and 3. Initially no details were provided to confirm the height of appearance of the fencing. Details have subsequently been provided showing deer fencing that would be a maximum of 2m in height. Although the proposed fencing is extensive, it is considered that the type of fencing is acceptable for a rural location such as the application site. Condition 4 would continue to limit permitted development rights for other fencing and gates and condition 3 would still require any fencing to be removed upon the cessation of the use of the site as a solar farm.

The previously approved site layout plan from application H02-0606-18 also referred to 7 transformers / inverter containers and 1 grid connection cabinet. Within the revised layout, the ancillary infrastructure is proposed to be largely grouped together within the north-eastern section of Field 3. Transformers / inverters are no longer proposed sporadically throughout Fields 1 and 2 for instance. According to the applicant, the revised location and infrastructure elements are proposed in the interest of operational efficiency.

Initially, no elevation plans or specification details were provided to show the appearance of these elements. Further information has subsequently been provided after being requested. The following infrastructure is now proposed in Field 3:

- A private substation measuring 5.75m by 3m, featuring a flat roof form that measures 2.7m in height.

- A communications cabinet measuring 2.7m by 2.4m and 2.8m in height.

- A pad mount transformer measuring 1m by 1.1m and 1m in height.

- A storage container measuring 6m by 2.4m, and 2.6m in height.

- A storage container measuring 12m by 2.4m, and 2.6m in height.

- Within the northern section of Field 3, the revised layout shows a 40 foot container, a 20 foot container, a communications cabinet and a private substation.

Whilst the above referenced infrastructure elements were not referenced on the previously approved plans, the original description of development was for a 'Proposed Solar Farm and associated infrastructure'. It is considered that the infrastructure shown within the current submission would be ancillary to the solar farm as a whole and can be accepted as part of the current proposals.

Lastly, a new HV cable route is proposed between Field 3 and the main grid connection building. This was not shown within the previously approved plans. Condition 9 requires all cabling to be installed underground and this condition would still need to be complied with if the current proposals are approved.

Re-Attachment of Conditions

Section 73 of the Town and Country Planning Act 1990 enables the Local Planning Authority to grant a new planning permission subject to varied or amended conditions. A permission issued under Section 73 constitutes a new, standalone planning permission which sits alongside the original consent.

In accordance with established practice and Planning Practice Guidance, where a Section 73 permission is granted, all conditions from the parent permission must be reattached to the new decision notice unless they are expressly varied or removed. This ensures clarity and enforceability and avoids any ambiguity as to which controls apply to the development.

In this instance, it is proposed that 9 conditions attached to planning permission H02-0606-18 be re-attached, save where specifically amended or removed by this application, namely:

Condition 1 - Plans - as amended by this application;
Condition 2 - Cessation of use;
Condition 3 - Removal of infrastructure upon cessation of use;
Condition 4 - PD rights removed;
Condition 5 - New hedge;
Condition 6 - Noise limitation;
Condition 7 - No external lighting;
Condition 8 - Glint and glare mitigation; and
Condition 9 - Cabling must be underground.

All the conditions are compliance conditions and do not require the submission of further details.

Biodiversity Net Gain

Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) requires developers to deliver a minimum of 10% Biodiversity Net Gain using standardized biodiversity units measured by statutory biodiversity metrics. This is often referred to as the mandatory requirements for Biodiversity Net Gain.

"Under the statutory framework for biodiversity net gain, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met ("the biodiversity gain condition"). This objective is for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat. This increase can be achieved through onsite biodiversity gains, registered offsite biodiversity gains or statutory biodiversity credits".

The biodiversity gain condition is a pre-commencement condition. This relates to a condition that seeks, once planning permission has been granted, a Biodiversity Gain Plan that must be submitted and approved by the planning authority before commencement of the development, alongside the need to submit a Habitat Management and Monitoring Plan.

The effect of Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission is deemed to have been granted subject to the "biodiversity gain condition".

The effect of this "biodiversity gain condition" is that development granted by this notice must not begin unless:
(a) a Biodiversity Gain Plan has been submitted to the planning authority, and
(b) the planning authority has approved the plan, or
(c) the development is exempt from the biodiversity gain condition.

It is considered that the proposal would be exempt from BNG as the original planning permission was applied for prior to 12 February 2024.

Planning Balance

The application does not seek to revisit the principle of the solar farm which has been established, nor does it materially alter the scale or lifespan of the development. The proposed changes to the approved plans are considered to be acceptable in terms of their visual and amenity impact. No material planning harm has been identified arising from the proposed variations. The amendments do not result in a development that is substantially different from that previously approved and fall within the scope of Section 73. In this instance, there are no material considerations that weigh against the proposal and as such, the planning balance is in favour of the development.

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

Taking the above considerations into account, the proposal is considered to accord with Policies 1, 2, 3, 4 and 31 of the Local Plan, along with the identified sections contained within the NPPF. There are no significant factors in this case that indicate against the proposal and outweigh the consideration in favour of the proposal and the policies referred to above.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be approved under delegated authority.