

DECISION DELEGATED TO HEAD OF PLANNING

Application No:	H04-0050-25	Applicant:	Loosegate Developments
Proposal:	Residential Development of 6 Dwellings - Approved under H04-0429-22. Modification of Condition 2 to allow for an extended rear projection to Plot 1 and Condition 5 to change private bin collection to Local Authority bin collection		
Location:	Off Maple Way Donington Spalding		
Terminal Date:	25th April 2025		

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
31	Climate Change and Renewable and Low Carbon Energy
32	Community, Health and Well-being
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	0

WARD MEMBER	0	0	0	1
RESIDENTS	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

This application is a Section 73A seeking to vary Condition 2 and 5 of planning approval H04-0429-22 to allow amendments to previously approved plans, to allow for an extended rear projection to Plot 1 and the wording of Condition 5 in relation to the waste collection.

Application H04-0429-22 granted planning permission for the erection of 6 detached bungalows.

It should be noted that amendments have been received and accepted during this application. The assessment has been made on the amended scheme.

Site Description

The application site is located off Maple Way in Donington. The site is bound on all sides with residential properties to the north, west and south and abuts Donington Village Park to the east.

The site is currently under construction following the previous planning approval.

History

H04-0237-08 - Erection of 7 detached bungalows and associated works - Application Withdrawn April 2010.

H04-0429-22 - Residential Development of 6 Dwellings - Approved September 2022

H04-1155-22 - Condition Compliance - Details of external materials, construction management plan/method statement, refuse/recycling collection, landscaping/tree planting, boundary treatments and ecological biodiversity measures (Conditions 3, 4, 5, 6, 7 and 9 of H04-0429-22) - Approved 20th January 2023

H04-1045-23 - Full - Proposed Residential Development - Plot 1 Dwelling - Approved 16th January 2024

H04-0051-24 - Condition Compliance - Details of external materials, landscaping & tree planting & boundary treatments (Conditions 3, 4 & 5 of H04-1045-23) - Approved 29th January 2024

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:

Ward Member Cllr J L King

The new occupiers need to be aware that early presentation must not happen and bags only go out after 6pm the evening before or the morning of collection.

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, 1 letter of representation has been

received.

These can be summarised as follows:

- Private waste collection cannot be relied upon.
- If not approved there will be an increase in fly tipping.
- Why does 30m have any bearing?
- What would the Council Tax reduction be?

Evaluation - Section 73

The proposal relates to the variation of Condition 2 and 5 of H04-0429-22, 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 2 and 5 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 development has been accepted by the host application, H04-0429-22.

The principle of development is considered to be acceptable as the site is located within the settlement boundary of Donington, which Policy 1 of the adopted South East Lincolnshire Local Plan (SELLP, 2019) identifies as a 'Main Service Centre'. Policy 1 goes on to state that within the settlement boundaries of Main Service Centres, development will be permitted that supports their role as a Service Centre for the settlement itself, helps sustain existing facilities or helps meet the service needs of other local communities.

As outlined above, the principle of the erection of 6 dwellings has already been established by virtue of the previous approval (ref. H04-0429-22).

Plot 1

This variation seeks an amendment to Plot 1 of the development. The amendment comprises an

increase from the rear projection from 4.874m to 8.362m. This alteration is 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.

It should also be noted that this enlarged dwelling has previously been permitted under a separate Full Planning Application and as such, this amendment would not result in an alternative built form than that which currently has extant permission for this plot.

Waste Collection - Condition 5 Wording

This application is to modify Condition 5 of H04-0429-22. The original condition 5 stated:

Prior to the occupation of any dwelling, full details of the arrangement for private refuse/recycling collection shall be submitted to and approved in writing by the Local Planning Authority. The approved management arrangements shall be implemented upon first occupation of any dwelling and thereafter retained for the lifetime of the development.

Reason: This application has been approved on the basis that waste collection will be carried out by a private company and to ensure appropriate arrangements are in place for the collection of refuse/recycling.

This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019.

The previously proposed development comprised a private road and, as a result of it being private, it is not possible in some instances for refuse vehicles to actively travel onto such private areas, which was to be the case in the previous approval and the need for the waste collection condition (condition 5).

Waste Collection - Assessment

The submitted plan indicate that refuse storage would be available at each individual property, requiring transportation of waste only in advance of the day of collection. Whilst the distance to deposit refuse at the kerbside would be more than 30m, it would not be excessive. Future occupiers of the dwellings would be aware of the distance to the kerbside, and Plots 2 - 5 would be provided with trolleys transport the waste.

The collection point comprises a concrete base and would be enclosed by a 1.8m high close boarded fence on three sides. The provision of a collection point on this occasion is not considered to result in a visually unacceptable development when viewed from the public realm.

It is noted that the carrying distance for the future occupants still remains in excess of 30.0m to a collection point, which is not considered acceptable, as it exceeds the usual Building Control guidance and can be an indicator of poor design. However, given the nature of this site and provision provided in respect of the bin collection point, when viewed on balance, it is considered that on this occasion that it would be unreasonable to insist upon further means in this respect.

It is considered that the proposal accords with Policies 2 and 3 of the SELLP and the intentions of the National Planning Policy Framework (December 2024) in this regard.

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 amendment to Plot 1 and the new waste collection area would not materially harm the character or appearance of the locality, or amenity of nearby residents, and provides adequate parking, whilst conforming with the South East Lincolnshire Local Plan (2019) and the provisions of the National Planning Policy Framework (December 2024) when viewed as a whole.

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 be in accordance with policies 1, 2, 3, 4, 10, 11, 17, 28, 30, 31, 32 and 36 (including Appendix 6) of the South East Lincolnshire Local Plan (2019), along with the identified sections contained within the National Planning Policy Framework (December 2024). 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.