DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H04-0639-24**	**Applicant:**	**Wilf Hammond Homes Ltd.**
Proposal:	Residential Development - 6 Dwellings - approved under H04-0425-22. Modification of Condition 6 relating to waste collection		
Location:	Off Town Dam Lane Donington Spalding		
Terminal Date:	4th October 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
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 9: Promoting sustainable transport
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
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0

HIGHWAYS & SUDS SUPPORT	0	0	0	1
SHDC INTERNAL	0	0	1	0
RESIDENTS	3	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This application is a Section 73A seeking to vary Condition 6 of planning approval H04-0425-22 to allow amendments to previously approved wording of Condition 6 in relation to the waste collection.

Application H04-0425-22 granted planning permission for the erection of 6 dwellings.

Site Description

The site is within the settlement boundaries of Donnington, as outlined within the South-East Lincolnshire Local Plan, 2019. The site is located towards the south of the settlement. The existing site is flat, and is nearing the end of construction

The site is accessed via an existing access off Town Dam Lane that currently serves Barn View and Sileni. The existing boundary treatment of the site is varied with portions of timber, post fencing, tree planting and sporadic hedgerow planting.

History

H04-0425-22 - Full - Residential Development - 6 dwellings - Approved 8th August 2022.

H04-0789-22 - Condition Compliance - Details relating to contamination (Conditions 7 and 8 of H04-0425-22) - Approved - 15 August 2022.

H04-0934-22 - Condition Compliance - Details of proposed means of foul & surface water disposal and Construction Management Plan & Method Statement (Conditions 4 & 9 of H04-0425-22). Approved 4th January 2023.

H04-1112-22 - Section 73 application - Residential development, approved under H04-0425-22. Modification of condition 22. Amend plots 2 and 5. Handing of plot 2, correcting projecting gable to plot 5. Approved 16 February 2023.

H04-0672-23 - Section 73 - Residential development approved under H04-0425-22. Modification of condition 2 to allow amendments to previously approved plans. Change related to tarmac driveways. Approved 28 September 2023.

H04-0870-23 - Residential development approved under H04-0425-22. Modification of condition 2 to allow amendments to previously approved plans. Change related to tarmac driveways. Approved 6th November 2023.

H04-1134-23 - Section 73 - Residential Development - 6 Dwellings - approved under H04-0425-22. Modification of Condition 2 to allow amendments to previously approved plans. Approved 15th February 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:

LCC Highway and Lead Local Flood Authority

Residential Development - 6 Dwellings - approved under H04-0425-22. Modification of Condition 6 relating to waste collection - Addition of bin collection point - private development. The bin collection point will not have an adverse impact on the public highway.

SHDC Environmental Protection Officer

No comments regarding modification of condition 6.

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, six letters of representation have been received.
These can be summarised as follows:

-The waste collection is directly opposite residents only outdoor space
-The waste collection is under a maser bedroom
-Would attract vermin & wildlife
-Impact privacy
-Cause additional noise
-This will cause smells
-Need the waste collection at the houses entrances
-Will create an obstruction
-Primary issue is effecting standard of living and hygiene & pollution
-Who is responsible for maintenance

Evaluation - Section 73

The proposal relates to the variation of Condition 6 of H04-0425-22, 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 6 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".

Planning Considerations

The principle of development has been accepted by the host application, H04-0425-22.

The principle of development is considered to be acceptable as the site is included within Policy 11 of the adopted SELLP as a housing allocation site (Don030 - Land east of Town Dam Lane - site capacity of 12 dwellings).

It is noted that the proposed development includes the provision of six dwellings, where the Local Plan identifies a capacity of 12 dwellings. However, during the course of the application, the agent confirmed that a large portion of the allocated site is to retain within the ownership of the neighbouring property and therefore resulting in a site with a reduced capacity.

In any event, as outlined within the report above, the principle of development has been established, and therefore, remaining extant. When viewed as a whole, coupled with the proposal comprising a section 73 application to vary Condition 6, the proposal is acceptable in principle.

Waste Collection

This application is to modify Condition 6 of H04-0425-22. The original condition 6 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, the proposed refuse collection was to be made by a private collection contractor, which was the need for the waste collection condition (condition 6) to monitor the collection arrangements and drop off points.

However, the proposal now includes a section of the road to be adopted by LCC, with the refuse collection to be carried out by SHDC Waste Services. As the proposed dwellings would be served via a private drive with a distance greater than 30m with the closest dwelling being in excess of 77m to the public highway of Town Dam Lane, the proposal does not accord with the Private Drives - Waste Vehicle Collection Service Guidance Note, and is therefore not considered acceptable, as it exceeds the usual Building Control guidance and the proposal in this instance is tantamount to poor design.

It is noted that the applicant's agent has made reference to two alternative proposals that have utilised storage areas, beyond the 30.0m guidance. It is firstly noted that the appeal referred to by the applicant was clear within its decision in that, although limited in that instance, the 'Council's Waste Collection Service Guidance Note' "remains a material consideration". Secondly, it is also noted that each applicant must be considered on their own merits; as such, the previous approvals on these two alternative sites, does not set a precedent and does not result in this proposal immediately being deemed appropriate as a result.

In any event, the circumstances of these alternative proposals differ to that hereby proposed. Application reference H16-0061-22 which was subsequently allowed at appeal, comprised the development of two dwellings and comprised a site that was "located within the grounds of an existing apartment building". The quantum of development, and as such the resultant extent of refuse waste, is evidently lessened in comparison to the development hereby proposed, which comprises six independent residential dwellings; each being five bedroom. It is therefore evident that the nature of the overall development and extent of waste would far exceed that of this

alternative proposal.

Moving onto the second of the applications referred to, in reference H14-0042-24, the circumstances of the development and the characteristics of the resultant development are also different. Notwithstanding the fact that this approved development comprised a quantum of dwellings in excess of the aforementioned alternative proposal (H16-0061-22), this approved scheme was designed as to contain residential development that fell within the 30.0m carrying distance. The design was also amended to ensure that the proposed storage area, was sited with adequate separation distances from existing residential properties, and to ensure that it was appropriately sited as to be set away from the existing highway.

Section 12 of the National Planning Policy Framework (December 2023) specifically relates to 'Achieving well-designed and beautiful places' and details 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.

Policy 2 of the South East Lincolnshire Local Plan outlines sustainable development considerations for development proposals, providing a framework for an operational policy to be used in assessing the sustainable development attributes of all development proposals. 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.

Policies 2 and 3 of South East Lincolnshire Local Plan (2019) also sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.

The proposed bin collection point would be located 4.5m from the boundary of the neighbouring property to the south with the closest elevation being 7.3m from the bin collection point. It is considered that the close proximity of the bin collection point to the neighbouring property would be unacceptable and would have an adverse impact. It is therefore considered that the proposal does not accord with Policies 2 and 3 of the SELLP and the intentions of the National Planning Policy Framework (December 2023) 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 new waste collection area would materially harm the character and appearance of the locality, and the amenity of nearby residents, whilst being country to the South East Lincolnshire Local Plan (2019) and the provisions of the National Planning Policy Framework (December 2023) 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

Taking into consideration these factors, the proposal is considered to conflict with Policies 2 and 3 of the South East Lincolnshire Local Plan (SELLP), 2019, as well as advice within the National Planning Policy Framework (NPPF), December 2023.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be refused under Delegated Authority