DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H04-0793-25**	**Applicant:**	**The Nicholl-Smith Group SIPP**
Proposal:	Proposed erection of general industrial building and external works - Approved under H04-1066-24. Removal of conditions 4, 5 & 6 relating to archaeology		
Location:	Harvey'S Barn Days Lane Donington		
Terminal Date:	12th November 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
07	Improving South East Lincolnshire's Employment Land Portfolio
29	The Historic Environment
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 6: Building a strong, competitive economy
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	0

CASE OFFICER ASSESSMENT

Description of Proposal

This application is made under Section 73 of the Town and Country Planning Act, 1990, seeking to remove Conditions 4, 5 and 6 from planning approval H04-1066-24, on the basis that the approved scheme could not be developed whilst these conditions are imposed. The relevant conditions read as follows:

4 - No development shall take place until a written scheme of archaeological investigation has been submitted to and approved in writing by the Local Planning Authority. This scheme should include the following and should be in accordance with the archaeological brief supplied by the Lincolnshire County Council Historic Environment advisor on behalf of the Local Planning Authority:

1. An assessment of significance and proposed mitigation strategy (i.e. preservation by record, preservation in situ or a mix of these elements).
2. A methodology and timetable of site investigation and recording
3. Provision for site analysis
4. Provision for publication and dissemination of analysis and records
5. Provision for archive deposition
6. Nomination of a competent person/organisation to undertake the work
7. The scheme to be in accordance with the Lincolnshire Archaeological Handbook.
The archaeological site work shall only be undertaken in accordance with the approved written scheme.

Reason: To ensure the preparation and implementation of an appropriate scheme of archaeological mitigation in accordance with Section 16 of the National Planning Policy Framework, December 2024. 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 29 of the South East Lincolnshire Local Plan, 2019.

5 - The applicant shall notify the Lincolnshire County Council Historic Environment Department in writing of the intention to commence at least fourteen days before the start of archaeological work required in connection with Condition 4 above in order to facilitate adequate monitoring arrangements.

Reason: To ensure satisfactory archaeological investigation and retrieval of archaeological finds in accordance with Section 16 of the National Planning Policy Framework, December 2024.
This Condition is imposed in accordance with Policy 29 of the South East Lincolnshire Local Plan, 2019.

6 - A copy of the final report required in connection with Condition 4 above shall be submitted to the Local Planning Authority and the Lincolnshire Historic Environment Record, within three months of the work being carried out.

The material and paper archive required as part of the written scheme of investigation shall be deposited with an appropriate archive in accordance with guidelines published in The Lincolnshire Archaeological Handbook.

Reason: To ensure satisfactory arrangements are made for the recording of possible archaeological remains in accordance with Section 16 of the National Planning Policy Framework, December 2024.
This Condition is imposed in accordance with Policy 29 of the South East Lincolnshire Local Plan, 2019."

Site Description

The site is part of an existing established business and is located off Days Lane; however, the site is highly visible from Bicker Road. There is a residential dwelling located to the south of the site with open fields to the north, east and west.

History

H04-1157-00 - Full - Change of use from agricultural grain store to fabrication of windows and conservatories - Approved 08.12.2000

H04-1480-00 - Condition Compliance - Details of elevations showing proposed alterations to existing buildings (conditions 2 & 3 of H04/1157/00) - Approved 14.03.2001

H04-0057-01 - Full - Erection of temporary portakabin offices - Approved 19.04.2001

H04-0452-01 - Full - Erect three conservatories for display purposes - Approved 06.06.2001

H04-0718-01 - Condition Compliance - Details of landscaping (Condition 2 of H04/0452/01) - Approved 10.07.2001

H04-0938-01 - Condition Compliance - Details of screening to northern boundary (Condition 2 of H04/0057/01) - Approved 04.10.2001

H04-0111-02 - Condition Compliance - Details of materials (Condition 4 of H04/0452/01) - Approved 12.02.2002

H04-0016-02 - Advertisement Consent - 4 freestanding signs - Refusal 11.03.2002

H04-1238-06 - Full - Continued use of portacabin office - Approved 23.11.2006

H04-0821-10 - Full - Continued use of 3 temporary buildings for office use (retrospective) - Approved 10.11.2010

H04-0425-11 - Full - Change of use of former window fabrication plant to B2 (General Industrial) use including external alterations and internal alterations to create additional floorspace and demolition and alterations to outbuildings - Approved 27.07.2011

H04-0769-11 - Non-material Amendment - Change of use of former window fabrication plant to B2 (General Industrial) use including external alterations and internal alterations to create additional floorspace and demolition and alterations to outbuildings - approved under H04-0425-11. Amendments to colour of cladding to exterior walls. - Approved 27.10.2011

H04-0071-13 - Section 73 - Modification of Condition 4 of H04-0425-11 relating to hours and days for machinery operation, processes and deliveries - Approved 28.03.2013

H04-0547-15 - Full - Rear extension to packing plant for flowers to provide additional cold storage/R&D workspace and loading/unloading facility, together with associated external works - Approved 07.09.2015

H04-1066-24 - Full - Proposed erection of general industrial building and external works - Approved 29.05.2025

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:

Historic Environment Officer

"Thank you for consulting us on this matter.

This office recommended a post-consent archaeological scheme of works as a result of the consultation on application H04-1066-24.

We reiterate our initial comments submitted on 27/01/25 and uploaded to the planning portal. The applicant did not submit an assessment of the archaeological or heritage potential of the site, as outlined in the NPPF (2025; paragraph 207). Nor was the HER (Historic Environment Record) consulted; paragraph 207 of the NPPF states, "As a minimum, the relevant historic environment record should have been consulted" or "the heritage assets assessed using appropriate expertise".

The site appraisal confirmed that the proposal lies within an area of archaeological potential, as indicated in our initial comments, including Monument MLI89080 located approximately 200 metres from the proposal area, among other heritage assets.

Currently, the applicant has applied under Section 73 to fully discharge the archaeological conditions attached to H04-1066-24.

Please see our comments on the submitted covering letter dated 11 August 2025 which states five main reasons for the application to remove the conditions, to which I am pleased to respond:

1. Each proposal is assessed on its own merits. The previous planning permission granted in 2015 (H04-0547-15) constitutes outdated archaeological advice. Please note that a proposal for a lower-impact access road (Construction of access track for use of vehicles in connection with Bicker Wind Energy Project, located 40 metres to the north-east of this proposal, ref. H04/0179/03) recommended archaeological evaluation, and no condition was imposed as a result of a design change which avoided any impact.

2. Private financial considerations are not regarded as archaeological material considerations.

3. No pre-application consultation was communicated to this office and a post-consent trench evaluation is a standard, proportionate and fit-for-purpose archaeological condition under current policy, national/local guidance, and industry practice - especially considering the non-agricultural current use of the proposed site, which is therefore not subject to land access compensations.

4. We reiterate that this is a proportionate and fit-for-purpose archaeological scheme. Moreover, significant heritage assets can occupy limited space yet hold significant heritage value, while larger assets may be of lesser significance. In all cases, this must be assessed in line with NPPF paragraphs 207, 216 and 218. All potential impacts across the site, beyond the building footprint and including temporary works, drainage, services, BNG and landscaping must be accounted for when assessing the development's impact.

5.Although the attached report "Architectural Professional Opinion Regarding Investigation Works" is welcome, it does not meet CIfA standards in relation to Heritage Impact Assessment. We expect this type of document to be submitted by a qualified, experienced, and competent heritage professional with sufficient or recognisable archaeological technical knowledge.

In relation to the suggestion of a Watching Brief: this is a mitigation scheme of works, and the site has not been evaluated as per NPPF 207. In any case, a watching brief would still require continuous archaeological monitoring under the supervision of a competent archaeologist, and it would need to be secured through the current Planning Obligation. Under no circumstances can the Watching Brief be delegated to the "developer", as suggested in the letter.

Please see our comments on the submitted "Architectural Professional Opinion Regarding Investigation Works":
The initial part of the document presents cartographic information which, although welcome, does not provide supporting data or evidence regarding non-designated archaeological assets, which are the main indicators of archaeological potential.

The document refers to archaeology, but a HER (historic Environment record) search information is missing. Please note that data from Heritage Explorer is not as detailed or site-specific as the results of an HER search, nor does it include all the results from the PAS (Portable Antiquities Scheme), which contains more listed references than the quoted MLI23222 "Assorted Post-Medieval Coins and Tokens".

It is stated that saltern works are located at least 2.7 km from the proposal area; however, this disregards Monument MLI89080, situated only 200 metres away.

Overall, the document lacks archaeological technical rigour, sufficient evidential data, and a basic understanding of archaeological site formation processes, archaeological evaluation techniques, and post-depositional archaeological processes. Finally, following NPPF paragraph 207, we recommend that appropriate archaeological expertise be engaged.

Conclusion

The submitted cover letter and enclosed "Architectural Professional Opinion Regarding Investigation Works" does not meet the required industry standards for Desk-Based Assessments or Heritage Impact Assessments, does not include an HER search (as required by the NPPF, CIfA regulations and guidance). The submitted information also does not address the requirements of the NPPF and therefore we cannot recommend the removal of Conditions 4, 5, and 6 of H04-1066-24."

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, no letters of representation have been received.

These can be summarised as:

Key Planning Considerations

Evaluation - S73

The proposal seeks to remove Conditions 4, 5 and 6 of H04-1066-24, 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 Conditions 4, 5, and 6 removed, 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."

As outlined above, only matters pertinent to the application may be considered under the S73 process. To this end, matters which have no bearing upon the matters raised by the conditions proposed to be removed/varied should not be reconsidered within this application type. As the proposal relates to the removal of an archaeological condition, the assessment should focus on the

potential impact upon the site of archaeological interest weighed against the overarching benefits of the scheme.

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

Policy 1 of the SELLP sets out the settlement hierarchy in respect of delivering sustainable development, which meets the social and economic needs of the area whilst protecting and enhancing the environment; in order to provide enough choice of land for housing to satisfy local need, whilst making more sustainable use of land, and to minimise the loss of high-quality agricultural plots by developing in sustainable locations and at appropriate densities.

Policy 1 expresses this sustainable hierarchy of settlements, ranking the settlements deemed to be most sustainable in descending order. The most sustainable locations for development are situated within the 'Sub-Regional Centres', followed by 'Main Service Centres'. Lower down the hierarchy are areas of limited development opportunity including Minor Service Centres, with areas of development constraint comprising 'Other Service Centres and Settlements'. The countryside is at the bottom of the settlement hierarchy and represents the least sustainable location.

The application site in this instance lies beyond any defined settlement boundaries and as such is considered to lie within the 'countryside'.

Notwithstanding this, the principle of development has already been established under H04-1066-24. The removal of Conditions 4, 5 and 6 would have no bearing upon these spatial considerations, and therefore, the principle of development is considered to be acceptable.

Moreover, Policy 7 of the SELLP, "Improving South East Lincolnshire's Employment Land Portfolio", contains broad considerations which should be applied when considering whether the location of a proposed employment use is acceptable. The proposal was assessed against these considerations within H04-1066-24 and deemed to be acceptable. The location of the development would not be altered as part of this proposal, and the change would have no bearing upon the considerations of this Policy. On this basis, the proposal is considered to still be consistent with Policy 7.

The principle of development has been established under H04-1066-24, and the proposal is considered to be consistent with Policies 1 and 7 of the SELLP in this regard.

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.

No changes to the approved plans or design of the buildings are proposed. Therefore, the proposal is considered acceptable from a design perspective.

It should be noted at this time that the submitted design, as outlined in the Officer Report for H04-1066-24, is utilitarian in nature. Whilst the design was considered acceptable under H04-1066-24, and is consequently acceptable here also, no significant weight was given in favour of the proposal based on the design. The design of the proposal can therefore be seen as a neutral factor, which does not weigh significantly in favour of the proposal.

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 the proposal would not impact upon the design of the building, no additional impact upon residential amenity would occur. This factor would be a neutral factor in this specific context.

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.

Highway Safety and Parking

Section 9 of the NPPF is titled 'Promoting sustainable transport'. Within this, Paragraph 116 advises that "development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios".

In respect of highway matters, Policy 2 details that proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met, specifically in relation to access and vehicle generation. Policy 3 details that development proposals will demonstrate how accessibility by a choice of travel modes including the provision of public transport, public rights of way and cycle ways will be secured, where they are relevant to the proposal. Policy 33 further reinforces the need for developments to be accessible via sustainable modes of transport.

Policy 36 of the SELLP, in conjunction with Appendix 6, sets out minimum vehicle parking standards.

No alterations to the site access, or parking arrangements, would occur.

The proposal would therefore be acceptable and would not have an unacceptable adverse impact on highway safety in accordance with Policies 2, 3, 33 and 36 of the SELLP, as well as Section 9 of the NPPF.

Flooding Considerations

Section 14 of the NPPF and Policy 4 of the SELLP outline broad considerations relating to flood risk and drainage issue which should be considered as part of an application.

As the proposal would not alter the footprint, the use or nature of the proposal, there is no need to revisit the flood risk of the site in this instance.

Overall, when considering the development on balance, it is considered, given the mitigation measures detailed and recommended by condition, that the proposal accords with Policies 2, 3 and 4 of the SELLP and the intentions of the NPPF with regards to flood risk.

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.

The proposal would have no bearing upon the need for biodiversity net gain on the site. The relevant biodiversity net gain conditions have not been discharged prior to this application being made. On this basis, condition 7 and the statutory biodiversity gain condition imposed on H04-1066-24 should be reimposed here.

Economic Sustainability

As previously outlined, Policy 7 concerns the creation of new employment spaces. Policy 7 provides a broad spatial strategy for the consideration of these applications. It states that: "The South East Lincolnshire authorities will, in principle, support proposals which assist in the delivery of economic prosperity and some 17,600 jobs in the area,"

Importantly, Policy 7 does not state anywhere within it that weight is transferred in favour of proposals which support economic development, merely that they would be supported in principle. On this basis, where a proposal would conflict with another section of the SELLP or Framework, conformity with Policy 7 cannot necessarily be used as an instant or immediate outweighing factor.

That being said, Section 6 of the NPPF does explicitly transfer weight in favour of proposals which support economic gains. Paragraph 85 states:

"Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development".

Paragraph 88 expands upon this, stating:

"Planning policies and decisions should enable: a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, new buildings"

To this end, significant weight is transferred in favour of the development via Section 6 of the NPPF. The proposal would produce an economic benefit for the area, through the creation of 4 new employment opportunities (see Application Form submitted as part of H04-1066-24) and additional workspaces. These jobs are relatively high skilled, as stated within the submitted Covering Letter, and offer a clear boon for the local economy.

It should be noted that the actual level of monetary gain generated by this proposal has not been explicitly stated. That being said, Section 6 of the NPPF does not state that the level of weight in favour should be proportionate to the level of economic gains, simply transferring weight in favour of economic development regardless of its scale. Paragraph 88 of the NPPF is explicit that LPAs should support the growth of business in rural areas. Therefore, even though the exact level of economic benefit is unknown, the weight in favour of the proposal is not significantly tempered.

It has also been stated that the current occupants of the site may leave should they outgrow the existing facilities, which would in turn lead to a loss of employment in the area (although not loss of employment space). It is considered that this claim is entirely hypothetical, and no tangible evidence is before the Council that the current occupants would leave should the additional space approved not be implemented. In any event, the current occupants may leave regardless of the outcome of any planning application and there is no indication that an empty unit would subsequently not be occupied. Furthermore, the proposal could come forward as previously permitted, in such instance where the applicant provided the relevant archaeological information.

On this basis, only limited weight is attached to this argument.

It has been clearly stated within the submission that the development cannot occur whilst Conditions 4, 5 and 6 are imposed. However, this appears to be wholly due to funding issue on the side of the developer. There is no requirement within the original permission that the development must be undertaken by a specific party, nor that their funding streams must be derived from a specified method. On this basis, it is considered that these issues are superficial, private issues which can only carry limited planning weight. The granting of planning permissions, in circumstances such as this, should not be contingent upon private finances, with no substantive evidence in support of such claim, and to conclude as much would be inappropriate.

Historic Environment

Policy Context and Background Information

Policy 29 of the SELLP, alongside Section 16 of the NPPF, relates to the preservation of the historic environment. Both outline that all applications which may impact upon the historic environment, including archaeological remains, should preserve or enhance historic assets.

Paragraph 205 of the NPPF states:
"Local planning authorities should maintain or have access to a historic environment record. This should contain up-to-date evidence about the historic environment in their area and be used to:
a) assess the significance of heritage assets and the contribution they make to their environment; and
b) predict the likelihood that currently unidentified heritage assets, particularly sites of historic and archaeological interest, will be discovered in the future."

In this instance, the historic environment record comes from the Lincolnshire Historic Environmental Record (LHER). The Local Planning Authority's interpretation of the information within the LHER is

informed via consultation with the Historic Places Team of Lincolnshire County Council (HPT), who maintain the LHER.

The public information relating to the LHER is taken from the Lincolnshire Heritage Explorer (LHE). The LHE is not a comprehensive database, and the information contained within it is constantly evolving. The LHE webpage is explicit that "the information provided through the Lincolnshire Heritage Explorer is only part of that held by the LHER, and will not be sufficient on its own to inform the planning process".

Paragraph 208 of the NPPF states:
"Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal."

As outlined above, the HPT would be the "necessary expertise" stated in Paragraph 208. The LHER would be the available evidence to the Local Planning Authority.

The LHER identifies that the site is within a reasonable proximity to several sites of potential archaeological interest. The provisions of these sites of potential interest are discussed in greater detail later in this report.

Paragraph 207 of the NPPF states:
"In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation."

This paragraph is further supported by Paragraph 41 of the PPG (Reference ID: 18a-041-20190723), which states:
"Where an initial assessment indicates that the site on which development is proposed includes or has potential to include heritage assets with archaeological interest, applicants should be required to submit an appropriate desk-based assessment and, where necessary, a field evaluation. However, it is estimated that following the initial assessment of archaeological interest only a small proportion - around 3% - of all planning applications justify a requirement for detailed assessment."

The phrase "archaeological interest" contained within Paragraph 207 of the NPPF is defined in Annexe 2 of the same document. The following definition is given:
"There will be archaeological interest in a heritage asset if it holds, or potentially holds, evidence of past human activity worthy of expert investigation at some point".

As outlined above, an assessment of the extent of archaeological interest, the significance of a historical asset and the harm caused, is informed upon the information available to the Local Planning Authority, with this information coming both from the LHER and the applicant themselves.

Part C of Policy 29 concerns "archaeology and scheduled monuments". This Policy outlines five assessment points for an application which may impact upon archaeological remains, the first three of which are particularly relevant here:

"1. Proposals that affect archaeological remains, whether known or potential, designated or non-designated, should take every reasonable step to protect and, where possible, enhance their significance.
2. Planning applications for such development should be accompanied by an appropriate and proportionate assessment to understand the potential for and significance of remains, and the impact of development upon them.
3. If initial assessment does not provide sufficient information, developers will be required to undertake field evaluation in advance of determination of the application. This may include a range of techniques for both intrusive and non-intrusive evaluation, as appropriate to the site."

These points are expanded upon in Paragraph 7.3.15 of the SELLP which states: "Local Planning Authorities may require developers to assess the potential impacts of their proposal on archaeological remains in order to reach a decision on a development proposal". In essence, the SELLP establishes a need for the relevant information to be presented to the Local Planning Authority prior to a decision being formed on the application, with this potentially including field work.

Sites of archaeological interest can broadly be separated into two categories: designated assets and non-designated assets. Designated assets, such as scheduled monuments, are far rarer and only occur in places where the requirements of the Ancient Monuments and Archaeological Areas Act 1979 can be applied. These are sites which have a pre-established significance to archaeological understanding at a wider national level, and must be designated by the Secretary of State as such. Accordingly, such sites are rare and are often designated after the scope of the asset has been established. The site in this instance is not designated.

Footnote 75 of the NPPF states that: "Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets."

This broadly outlines that an assessment of harm should be consistent with the provisions of Paragraphs 212 to 216 of the NPPF. Broadly, these paragraphs require an assessment of the potential significance of a heritage asset (based upon the evidence sources outlined above), the potential harm generated by the proposal and an assessment as to whether said harm is outweighed by public benefits emerging from the proposal.

Archaeological Interest and Rationale Behind Original Conditions

Two locations of potential interest have been identified within the HER in close proximity to the site. These are MLI89080, a possible hearth or saltern site, and MLI23222, an artefact scatter of post-medieval coins and tokens from the 17th century.

Within the submission for H04-1066-24, no comprehensive assessment of the archaeological or heritage potential of the site, as required by Paragraph 207 of the NPPF, was submitted. This led to the request from the HPT for the archaeological conditions to which this application relates.

Assessment

The site has been identified as having the potential to be of archaeological interest, with the comments made by the HPT Officer during H04-1066-24 outlining that should development occur on the site without proper mitigation, any potential archaeological remains would be totally or partially lost if present.

A short desk based assessment has been provided. That being said, the level of detail provided in this desk based assessment is limited and is not necessarily comprehensive as to lead to a complete disregard of the potential historical importance of the site. This has been affirmed through the comments of the Historic Environment Officer who has identified key deficiencies in the submitted information.

On this basis, it is considered that the Local Planning Authority do not have the information required to make an informed assessment of the potential significance of the asset or the level of harm caused by the proposal. As such, the proposal fails to meet the requirements of Paragraph 207 of the NPPF and Policy 29 of the SELLP. The intention to of the recommended conditions was to, in part, meet the requirements of this Paragraph, and therefore, their removal would stymie the LPA in their duty conferred by the NPPF.

The site may still be considered as a non-designated heritage asset (NDHA), as no significant evidence to the contrary has been provided. Paragraph 216 of the NPPF outlines that "In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."

Paragraph 216 is clear that a balanced judgement would be required. However, seeing as the requirements of Paragraph 207 have not been met, the ability for the LPA to make such an

evaluation is limited. Therefore, in accordance with the principles of Section 16 of the NPPF and the relevant section of the PPG, the Authority should err on the side caution and the weight attributed to the protection of the NDH should be balanced accordingly.

Discussion surrounding the potential benefits of the scheme can be found above. On balance, whilst significant weight is transferred under Section 6 of the NPPF (albeit this weight is tempered due to the mitigating circumstances outlined previously), the potential harm to a site of archaeological interest outweighs this.

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 removal of Conditions 4, 5 and 6 of H04-1066-24 would lead to an increased risk of harm to a site of archaeological interest considered to be an NDHA. In line with Paragraph 216 a balanced approach should be taken. Whilst significant weight must be given in favour of the proposal under Section 6 of the NPPF, the economic gains emerging from this proposal are not contingent upon the development being carried out by a specific developer.

Taking a balanced approach, it is considered that the potential harm to a site of archaeological interest that would be generated through the removal of Conditions 4, 5, and 6 of H04-1066-24 would outweigh the economic gains emerging.

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 these factors into consideration, the proposal is considered to be contrary to Policy 29 of the SELLP, as well as Section 16 of the NPPF. There are no significant factors in this case that would outweigh the harm of the proposal; therefore, the planning balance is against the proposal.

Recommendation

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