

Our Ref: 2920-01/AR/S73-SHC

02 September 2025

By email only: daniel.allen@sholland.gov.uk

South Holland District Council
Planning Council Offices
Priory Road
Spalding
Lincolnshire
PE11 2XE

Dear Sir/Madam

APPLICATION UNDER SECTION 73 OF THE TOWN AND COUNTRY PLANNING ACT 1999 TO NOT COMPLY WITH CONDITION 13 OF PERMISSION H04-0849-22

Introduction

We write on behalf of our client, AGR Solar 2 Limited (the Applicant), to apply under Section 73 of The Town and Country Planning Act 1990 ('the TCPA') to amend Condition 13 of planning permission H04-0849-22 *Proposed development of a photovoltaic solar array, grid connection, access improvement works & ancillary development on land at Bicker Fen, Boston and South Holland*, ('the Consented Development').

The application comprises:

- This Covering Letter;
- Planning Application Form;
- Planning application fee of £2,000 (excluding the Planning Portal handling fee) – we note that a cross-boundary application should be subject to 150% of the application fee. Unfortunately, the Planning Portal website does not facilitate this type of cross-boundary fee; as such, we will contact the council on validation to determine whether any fee should be reimbursed to the Applicant.

A mirror application has also been submitted to the Boston Borough Council regarding Condition 7 of planning permission reference B/22/0356.

Proposed Amendment

Condition 13 states:

Unless agreed otherwise in writing by the Local Planning Authority, all vehicles making deliveries of materials and components to the permitted development shall arrive via the Viking Link haul road and North Ing Drove route described in the submitted Revised Access Strategy Technical Note, dated February 2023, and all departing, unloaded delivery vehicles shall leave the Application Site via the Cowbridge Road, Ing Drove and Bicker Wind Farm haul road route, also described in the same Technical Note. The arrival and departure of Heavy Goods Vehicles during the decommissioning of the permitted development shall be in accordance with routing that shall first be agreed in writing, at the time of decommissioning, by the Local Planning Authority in consultation with the Local Highway Authority and with regard to prevailing condition of the local highway at the time of decommissioning.

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Planning for a sustainable future.

No other roads between the A52 and the Application Site shall be used by delivery vehicles during the construction and decommissioning phases.

The Reason given for this condition is:

In the interests of highway safety, to reduce the likelihood and frequency of arriving and departing Heavy Goods Vehicles meeting on-coming vehicles on the narrow Fen roads serving the permitted development and having to over-run highway verges or undertake unreasonable reversing manoeuvres in order to pass one another in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan 2019.

The Applicant has been in discussions with Boston Borough Council and South Holland Council regarding construction access routes to the Consented Development. Further to these discussions, the Applicant made an application under Section 96A of the TCPA ('the S96A application') to South Holland Council (in relation to permission reference H04-0849-22) to amend the wording of Condition 13 to allow construction traffic to be managed as per the approved Construction Management Plan (CMP) i.e. facilitating the two-way use of the roads described in Condition 13 for the delivery of materials and components to the construction site.

This application was made on the 06 June 2025. South Holland Council informed the Applicant on 04 July 2025 that the application to revise the wording of Condition 13 was refused, as the request amounted to an amendment that was deemed to be more than non-material.

On this basis, the Applicant is now making an application under Section 73 of the TCPA. Planning Practice Guidance (Paragraph: 013 Reference ID: 17a-013-20230726) sets out the following:

"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."

The Applicant is applying to amend the wording of Condition 13 to allow the two-way use of Cowbridge Road and Ing Drove, subject to the current traffic control measures set out in the approved Construction Management Plan (CMP) being maintained (application ref. H04-0558-24). Should the Council be minded to approve the application, we propose the following:

Condition 13

All vehicles making deliveries of materials and components to the permitted development shall access the permitted development in accordance with the measures set out in the approved Construction Method Statement, Construction Management Plan, Axis, 3735-01-CMP02 Dated 14.06.2024 Revised July 2024 (ref. H04-0558-24). The arrival and departure of Heavy Goods Vehicles during the decommissioning of the permitted development shall be in accordance with routing that shall first be agreed in writing, at the time of decommissioning, by the Local Planning Authority in consultation with the Local Highway Authority and with regard to the prevailing condition of the local highway at the time of decommissioning. No other roads between the A52 and the Application Site shall be used by delivery vehicles during the construction and decommissioning phases.

We consider that the measures set out in the approved CMP ensure that the reasons stated by the Council for requiring Condition 13 are met i.e. they maintain highways safety and avoid vehicles from having to over-run highway verges or undertake unreasonable reversing manoeuvres in order to pass one another.

There are a number of factors which justify that there is no requirement to restrict vehicles to one-way movements along the roads identified in Condition 13 to ensure the safety of road users and / or the condition of the highway, namely:

1. Since this matter was considered as part of the original planning application several factors have occurred which reduce the potential risks / impacts to a position where the safety of road users and / or the condition of the access roads is protected. Furthermore, the Council now have the benefit of how the measures prescribed within the approved CMP are operating successfully.
2. Boston Borough Council and South Holland District Council have considered and approved the CMP submitted pursuant to Condition 10, in consultation with Lincolnshire County Council as highways authority. The CMP describes a range of measures to be employed to manage the safe operation of two-way traffic along the site access roads.
3. The temporary traffic management arrangements, implemented by AGR (jointly with the developers of the Vicarage Drove Solar Farm) in accordance with the approved CMP have proved effective in mitigating the risks associated with two-way construction traffic flows along both Cowbridge Road and Ing Drove. Whilst we recognise the concerns of residents living on Cowbridge Road, we are confident that the measures AGR have implemented to manage construction traffic address all matters raised by the Council, Bicker Parish Council, local residents and the local Highway Authority. On this basis, we are confident that there has been no reduction in highway safety, as evidenced by the absence of reports of highway accidents or damage to the highway's structure along either Cowbridge Road or Ing Drove.
4. We recognise that reports were received in relation to delivery vehicles driving through the village of Bicker in the summer of 2024. Some of these vehicles related to the Vicarage Drove Solar Farm, but some were associated with AGRs development. The issue giving rise to this was, we believe, related to the fact that the National Grid Haul Road, which provides a 'bypass' for vehicles travelling between the A52 and Ing Drove to avoid the village, is a private road and does not appear on satellite navigation software used by drivers. This issue was addressed and the matter resolved by providing all drivers with the temporary traffic management 'gatehouse' at the junction of the A52 and the haul road as a reference point to navigate to. The 'Gate Men' on the start of the haul road are in radio connect with 'Gate Men' at the site entrance on Cowbridge Road and ensure no vehicles is allowed to progress to site unless their passage is clear of vehicles travelling in the opposite direction (which is the central matter Condition 13 sought to address).
5. In recognition that Ing Drove and Cowbridge Road are used by agricultural, commercial and resident vehicles that are not under the applicants control, AGR escort their construction HGVs along this route to further minimise the risks posed by the relatively narrow minor rural roads with limited opportunities for two vehicles to pass each other without overrunning (and damaging) verges or using private access property access bellmouths.
6. It is worth noting that other permitted developments in the area, namely the Vicarage Drove Solar Farm (which generates two-way construction traffic movements along Cowbridge Road and Ing Drove), are now substantially complete, and HGV construction traffic movements associated with this development have ceased, further reducing risks associated with highway safety and road conditions.
7. Notwithstanding that the developers of the Vicarage Drove Solar Farm will drop away from the provisions of Joint Working in terms of the temporary traffic management arrangements along Cowbridge Road / Ing Drove route, the arrangements will remain in place by AGR in accordance with the approved CMP until such time as all of the construction works have completed.

8. In relation to vehicle numbers passing along the access roads it should be noted that splitting construction traffic movements between two accesses (i.e. Route 1 and Route 2 on Image 4.3 of the CMP), rather than circulating all traffic in a wider one-way system, does not significantly increase the overall numbers of construction traffic vehicles using the Cowbridge Road / Ing Drove route. In simple terms 100 movements in one access and out another is the same as 50 in and out of two.

We have discussed the above with Lincolnshire Highways. They agree that the proposed arrangement for formalising two-way movements along Ing Drove and Cowbridge Road, controlled via the approved CMP is acceptable. Appendix A contains correspondence on this matter between Axis and Lincolnshire Highways.

We note that the S96A application was refused as it was not considered that the change would be non-material owing to the sensitivity of construction matters on the amenity of residents in the wider area. The decision did not provide a judgment on whether the changes proposed would indeed give rise to unacceptable amenity effects, this now falls to be determined via this application.

As set out above, and as recognised by Lincolnshire Highways in Appendix A, there would be no increase in vehicle numbers using Ing Drove and Cowbridge Road. Furthermore, with the cessation of traffic from other developments, the number of heavy vehicles using these roads is less than it has been in the past two years. The approved CMP provides adequate controls to ensure that highway safety and amenity are adequately protected to avoid unacceptable effects on highway safety and amenity from the impacts arising from the temporary use of these roads for the remainder of the construction period.

We trust the contents of this letter are self-explanatory, and we look forward to receiving your decision on the application.

A mirror application has also been submitted to the South Holland District Council regarding permission reference H04-0849-22.

If you have any queries regarding the proposed amendments or wish to discuss this application in further detail, then please do not hesitate to contact the undersigned.

Yours sincerely

Andrew Russell

Andrew Russell
Director

Cc: Tim Edmunds – AGR
Anna Ambroziewicz – AGR

Encl:

Appendix A - Email correspondence between Axis and Lincolnshire Highways (dated 12th February to 28th February 2025)