the planning hub

Planning and Development Consultancy

Mr D Gedney
Development Management
South Holland District Council
Council Offices
Priory Road
Spalding
Lincolnshire
PE11 2XE

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| Previous Refs: | **H05-0780-19 & H05-0077-16** |
| Our Ref: | PH/452/23 |
| Date: | 22nd March 2024 |

Dear Mr Gedney

**DISCHARGE OF CONDITION (23) APPLICATION PURSUANT TO THE GRANT OF PLANNING PERMISSION FOR THE RESIDENTIAL DEVELOPMENT AT ORCHARD HOUSE, FLEET ROAD, HOLBEACH, PE12 7BS.**

My clients at Holbeach House Management Company Ltd. have instructed me to submit this discharge of condition (DoC) application for your consideration, following on from the original grant of planning permission for the development on the 24th March 2016 (under application H05-0077-16).

Planning permission was granted on the 24th March 2016 for the conversion of the redundant health facility into 14 dwellings and the erection of 18 terraced dwellings, with associated parking facilities. Since the grant of permission there have been numerous submissions to the Council to discharge the conditions imposed, which are not referenced again here for reasons of clarity.

Condition 23 of the permission required the submission and approval of the details of a site management company, who would be responsible for the upkeep of the grounds, access roadway and footpaths, maintenance of the buildings and the disposal of waste from the site.

Planning History

In an attempt to address this condition, the Applicant's Agent (at that time) submitted a DoC application to the Council on the 8th August 2019, which was referenced H05-0780-19.

Noting that the condition only required the submission of 'details of the site management company', the application was supported by an email form the Agent, which gave the full details of the management company accordingly. A copy of that email can be found at **Appendix A** to this letter, and remains relevant to this DoC application.

Between mid-2019 and the determination of the DoC application there were various discussion with the Council over the waste management at the site. It is understood that, despite dedicated bin stores being proposed and constructed as part of the overall development, the Council's waste management team refused to enter the site to collect the waste from these dedicated locations, as it would result in refuse vehicles having to use a private road in order to do so.

As the properties became occupied, this resulted in waste being deposited within the bin stores, and then transferred to the roadside on collection day, by the residents, to be piled up within the public highway and collected by the waste management team when passing.

This was resulting in unsightly piles of refuse being left at the roadside on a weekly basis, when it could, and should be stored in the dedicated bin stores, and collected directly from there by the local authority (with consent to access the site).

It is understood that the Applicant reached agreement with the Council to allow them to enter the site to collect the waste from the bin stores, and that the correct paperwork to indemnify the Council in doing this, via a private drive, was in place at the time. For some reason, the Council reneged on this agreement and, to date, have never entered the site to remove the waste (although it is understood that they do enter the site to remove the waste for 1 disabled person).

In considering the original DoC application, the Case Officer's report stated:

*'The applicant has indicated that the management company in this case is Holbeach Property Management Company Ltd. The Articles of Association for the management company have been submitted as part of the application. They state that the Company's objects include the following: "to provide services of every description in relation to the Managed Property and to maintain, repair, renew, redecorate, repaint, clean, construct, alter and add to the Managed Property and to arrange for the supply to it of services and amenities and the maintenance of the same and the cultivation, maintenance, landscaping and planting of any land, gardens and grounds comprised in the Managed Property and to enter into contracts with builder, tenants, contractors and others and to employ appropriate staff and managing or other agents accordingly". This appears to cover the management company's responsibilities in condition 23, with the exception of waste.'*

The report goes on to state that the Council are not collecting waste from within the site unless substantial improvements are made to the private drives within the site, especially in relation to the road widths. Despite certain assurances from the Council that the waste could be collected from within the site, the Case Officer maintained a stance that insufficient evidence has been provided to this effect and, as a result, the DoC application would have to be refused. The refusal was issued on the 6th July 2023.

I was asked to look into this matter again, as it seemed perverse that the Applicant provided dedicated bin stores as part of the development, and agreed to allow the Council to enter the site to remove waste from those bin stores, yet the Council were not prepared to do so (despite it being indemnified). They went on to refuse the original DoC application, stating that the waste collection arrangements from the roadside were unsuitable, the depositing of waste at the roadside was unsatisfactory and that the current situation is contrary to the Council's Guidance Note on Private Drives – Waste Vehicle Collection Service.

It appeared that the only way to address this matter was to confirm that the Council can enter the site for the collection of waste, with the full agreement of the Applicant, hence the submission of a 'follow up' DoC application to try and provide more evidence to this effect.

On this basis, I submitted a further DoC application on the 6th October 2023. The application, which was referenced H05-0892-23, still met with resistance from the Council, and after several emails with you to try and argue our stance, the application was refused on the 20th December 2023, with the following reason for refusal cited:

*The applicant has not provided satisfactory details of how the management company will deal with the disposal of refuse from the site, as required by Condition 23. The current waste collection arrangement is considered unsatisfactory and materially harmful to the amenity of residents. As such, it is contrary to Policies 2, 3 and 30 of the South East Lincolnshire Local Plan (SELLP), 2019. Policy 2 states that sustainable development considerations should be met in relation to impact on the amenity of an area. Policy 3 states that new development should be high quality and secure residential amenity, with the provision of facilities for the storage of refuse. Policy 30 indicates that development proposals will not be permitted where, taking into account of any mitigation measures, they would lead to unacceptable adverse impacts upon the health and safety of the public, the amenities of the area and air quality, including odour. Policies 2, 3 and 30 of the SELLP are in accordance with advice within the National Planning Policy Framework, 2023. Paragraphs 131 and 133 promote the creation of high quality, beautiful and sustainable buildings and places. Paragraph 135 states that planning policies and decisions should ensure that developments function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development. It also stresses that planning decisions should create places that are safe and which promote health and well-being, with a high standard of amenity for existing and future users.*

Whilst I had the opportunity to appeal against the above decision, you were amenable to further discussions on the matter, which resulted in the arrangement of a site visit for all interested parties on the 17th January 2024. The purpose of the visit was to discuss all the possible options for waste collection from the site and to see whether an agreement could be reached that would satisfy the Council, the applicant, and all the residents accordingly.

The meeting was successful, with agreement reached that, if a new Indemnity Agreement was signed and submitted, and if the bin store areas could be reconfigured to separate the general waste from the recycling, then the Council were prepared to access to the site to collect the waste from the bin stores directly.

The DoC Application Now Proposed

Following on from the site meeting the applicant completed and signed a new **Indemnity Agreement**, and forwarded this to the Council on the 22nd January 2024. A copy of this agreement is submitted as part of this DoC application.

Despite the submission of this document, verbal undertakings from Council staff at the site visit, and various follow-up emails from the applicant, the Council are yet to enter the site to collect the waste from the bin store areas. It is hoped that the submission of this DoC application will help to action on-site collections accordingly.

I am submitting a **Site Layout Plan** in support of this DoC application, which shows the subdivision of the bin stores on site, so that general waste and recycling can be separated 'at source', to aid in its collection as the operatives will not have to separate the waste before it goes into the bin lorry. The plan shows the bin stores to the sides of the site subdivided in such a manner, with the central bin store converted to a secure cycle stores for the residents of the development.

I can confirm at this juncture that the subdivision works to the bin stores has already taken place, and residents are duly depositing their waste in the correct areas, as instructed (see below).

I am also submitting a copy of the **template of the letter** that was handed to every resident on the site, which sets out the new regime of separating their waste and depositing it in the correct part of the bin store for future collection.

It is hoped that, based on our on-site discussions, coupled with the details now submitted as part of this application, Condition 23 of the planning permission can now be discharged accordingly.

Legal or Procedural Matters

There is a statutory duty on the Council to collect controlled waste under the Environment Protection Act 1990. The Act states (at s45) that it is the duty of the waste collection authority to arrange for the collection of household waste in its area, except where:

*(i) It is situated at a place which, in the opinion of the authority, is so isolated or inaccessible that the cost of collecting it would be unreasonably high.*
*(ii) The authority is satisfied that adequate arrangements for its disposal have been or can reasonably be expected to be made by a person who controls the waste.*

Neither of these 2 caveats apply to this DoC application that is now before the Council for consideration. The application site is neither isolated nor inaccessible. The development is within Holbeach itself and the bin store areas are within 100m of the access point into the site, which can be seen on the photograph on the following page.



The access point itself is easily wide enough to provide access for a refuse vehicle and the (private) roadway within the site, which forms a loop passing the bin store structures, is easily wide enough to allow a refuse vehicle to access the bin stores and collect the waste from within the site, in an unrestricted manner.

The Council's representatives have confirmed that their bin lorry's are able to access the site in order to collect waste from the designated bin store structures. This tallies with historic on-site discussions with Glen Chapman, Councillor Coupland and Mick Ashworth from the Waste Management Team, who foresaw no problems with the collection of waste from within the site.

For clarity, Glen Chapman's email of the 28th October 2011 stated the following:

*'For your information Mick Ashworth from our Depot has met with the developer of the above site (forgive me for not remembering his name) in respect to arrangements for refuse/recycling collections. There are a couple of places on the site where if cars are parked could cause an issue but basically, we will be able to carry out collections without too much trouble. As the roadways will remain in private ownership, we would require an indemnity from the developer and he is more than happy to provide this.'*

It is understood that the indemnity form/disclaimer was completed, signed, dated and returned to the Council, at that time, thus permitting Council refuse vehicles to enter the site without the Council being liable for any damage to the on-site roads that may occur as a result of the refuse collection.

The completion of this form was in full compliance with the Council's Guidance Note on Private Drives – Waste Vehicle Collection Service where, under the title 'The Council's Waste Collection Policy' it states:

**The Council's insurers expect the Council to keep collection of waste from private drives to a minimum. The Council's adopted waste collection policy is therefore not to collect waste from private drives.**

**The Council may very exceptionally agree to take waste collection vehicles onto private drives in order to collect household waste, but only where the developer:**

**A Can show that they have applied the hierarchy detailed below; and**

**B Having applied the hierarchy can provide full documentary evidence that exceptional circumstances apply; and**

**C Provides the private drive to an appropriate standard; and**

**D Enters into an indemnity agreement.**

It should be noted in the first instance that that this Guidance Note serves only as 'guidance' in development control matters and is not a Local Plan policy. It therefore has minimal weight in the determination of a planning application or, as in this case, an application for the discharge conditions imposed on a planning permission.

In response to Point A, we cannot show that we can apply the hierarchy as detailed in the Guidance Note, due to the constraints of the site and the form of the development as approved. As a conversion and redevelopment project, keeping many of the original buildings, we were not able (or required) to access the properties via an adopted road and clearly needed to serve more than 6 properties from a private drive. The bin stores that have been constructed need to serve more than 6 properties due to the high-density nature of the development approved, and these are located within the site to avoid any impact on the road frontage of the development.

This being the case, we need to show that there are 'exceptional circumstances' as to why the hierarchy cannot be applied (Point B) to show that these matters could not have been addressed at the time of submitting/securing the planning permission and that there is no other way to overcome these issues. In this case, both the Council and the Highway Authority deemed the original development to be acceptable with private drive access at the planning application stage, and the Applicant was never asked to remove or reposition the bins stores as part of that proposal. The development therefore proceeded in good faith, the hope that on-site waste collections could take place once the properties became occupied.

In response to Point C, we can confirm that the private drives within the site are made up to an appropriate standard, which was agreed by Council Officers during their visit to the site way back in 2011 and again in January 2024. The condition of the private drive has not diminished since 2011. Moreover, with the control of the Management Company, and in reaction to the further development that has taken place on the site since then, the condition and standard of the private drives has arguably improved. There will be no requirement for refuse vehicles to turn within the site, as access to the bin stores is via a loop road around the site, thus facilitating easy and unrestricted access for these vehicles.

In response to Point D, the Applicant has completed a further (new) Indemnity Agreement with the Council, to facilitate on site waste collection in the future. This document as already been completed and signed by the Applicant, and submitted to the Council on the 22nd January 2024.

Based on the above comments, it is clear that if the Council accept the Indemnity Agreement, then Condition 23 can be discharged in full and the collection of waste from within the site can proceed accordingly. Our stance on this matter can be summarised as set out below:

The 'Wants' of the Applicant:

- To allow the occupiers of the development to utilise the bin stores provided for their intended use, without the need to then relocate domestic waste to the edge of the adopted highway for collection.
- To allow the Council's waste collection vehicles in to the site to facilitate this, without any responsibility on the Council for damage or wear and tear to the private roads within the site.

The 'Wants' of the Council:

- To avoid domestic waste piling up at the edge of the adopted road on collection days, which can be unhygienic and unsightly within the general area.
- To know that they can safely and suitably access the site to empty the bin stores, with the correct agreement in place to do so via a loop of private road.

It is hoped that, by way of this third DoC application in relation to Condition 23, all parties can agree that this is the preferred solution for the wider development for the reasons as set out above.

The application has been submitted electronically, via the Planning Portal, and the application fee of £145 will be paid directly by the Applicant, on the submission of this application.

I trust this application is complete and can be validated without delay.

I look forward to the receipt of your acknowledgement of the registration of this DoC application in due course and it would be appreciated if you could keep me informed on the progress of the application as it moves forward.

Yours sincerely

M Hubbard

**Matt Hubbard**
PG Dip TP, MRTPI
Director

CC - Clients by email

# Appendix A

Details of the Management Company (as Previously Submitted)

**_planningadvice**

**From:** Richard Willows Plan-It Design <richard@plan-itdesign.co.uk>
**Sent:** 19 August 2019 12:25
**To:** _planningadvice
**Cc:** 'David Goodridge'; 'Pritpal Singh Swarn'
**Subject:** RE: Invalid App - H05-0780-19 - Applicant: Holbeach House Management Company Ltd.

**This message originated from outside your organization**

Dear Sir/Madam
Please find details of company status which is available on Companies House web site.

**HOLBEACH PROPERTY MANAGEMENT COMPANY LIMITED (08762570)**

Registered office address
**Bcs House, Pinfold Road, Bourne, United Kingdom, PE10 9HT**

Company status
**Active**

Company type
**Private company limited by guarantee without share capital**

Incorporated on
**5 November 2013**

**Nature of business (SIC)**

68320 - Management of real estate on a fee or contract basis

We refer you to Condition 23

Condition 23 states:
'Prior to the first occupation of the development hereby permitted the applicant shall submit to and have approved in writing by the Local Planning Authority details of a site management company responsible for the upkeep of grounds, access roadway and footpaths, maintenance of buildings and waste disposal. The management company shall be formed in accordance with the details so approved before the development is first occupied, and shall thereafter remain in place.

The above regulation does not require the applicant to provide information regarding how these services are provided only details of the Site Management Company which is responsible for providing these services.

Richard Willows

**PLAN-IT DESIGN LTD**
**RICHMOND HOUSE**
**LONG BENNINGTON BUSINESS PARK**
**Long Bennington**