the planning hub

Planning and Development Consultancy

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

Previous Refs:	**H05-0780-19 & H05-0077-16**
Our Ref:	PH/452/23
Date:	6th October 2023

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) and the more recent refusal issued by the Council on the 6th July 2023, for the discharge of Condition 23 of the original planning permission (DoC application H05-0780-19).

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.

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 H05-0790-19.

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 this 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 have become occupied, this has 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 has/is 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 DoC application, the Case Officer's report states:

'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 have been asked to look into this matter again, as it does seem perverse that the Applicant has 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 are not prepared to do so (despite it being indemnified). They have then gone on to refuse the DoC application, stating that the current waste collection arrangements from the roadside are unsuitable, the depositing of waste at the roadside is unsatisfactory and that the current situation is contrary to the Council's Guidance Note on Private Drives – Waste Vehicle Collection Service.

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

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 the 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 below.



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.

It is understood that, well in advance of the approval of the development, discussions were had with Glen Chapman from Environmental Services, and latterly on-site with Glen Chapman, Councillor Coupland and Mick Ashworth from the Waste Management Team, who foresaw no initial problems with the collection of waste from within the site.

Glen Chapman's email of the 28th October 2011 states 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.'

A subsequent email of the 3rd November 2011 included the Council's indemnity form, which the Applicant would have to complete before any on-site collections could take place. A copy of these emails and the indemnity form can both be found at **Appendix B** to this letter.

It is understood that the indemnity form/disclaimer was completed, signed, dated and returned to the Council, 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 is 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 <u>not</u> 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 joint storage areas, i.e. 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 has 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. The condition of the private drive has not diminished since that time. 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 is entirely happy to complete a further (new) Indemnity Agreement with the Council (see Appendix B) in order to facilitate on site waste collection in the future. This document as already been completed and signed by the Applicant for the previous DoC application, but can be re-done accordingly as part of this submission if required.

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:

<u>The 'wants' of the Applicant:</u>

- 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 second 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 £116 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

Appendix B

Original Correspondence and Indemnity Agreement Template

From: Pritpal Singh Swarn <Pritpal.SinghSwarn@knightsplc.com>
Sent: Tuesday, February 11, 2020 1:09 PM
To: 'lbuttery@sholland.gov.uk' <lbuttery@sholland.gov.uk>
Cc: 'Davies, Lisa' <ldavies@sholland.gov.uk>
Subject: FW: Fleet Road, Holbeach H05-0780-19

Good afternoon Lucy

Kindly note, I act for Invicta Developments Limited and have been asked by Mr Goodridge to respond to you direct regarding Waste Collection from the above site.

I appreciate you are new to this site and the planning history but 4 planning officers on (the original case officer being Colin Crew in 2010/2011), there seems to be no clear progress and the Council appear to be asking the same questions relating to waste collection which have been dealt with. Out of common courtesy, I have copied in Lisa Davies of your legal department with whom I have been having dialogue with in the past on this matter (amongst others).

Please note email trail below.

I understand an agreement was reached with the Council's Waste services at the onset of Invicta commencing this whole scheme. I am instructed this agreement was discussed with Glen Chapman (Environmental Health) on site with Councillor Coupland present.
The agreement was based on the Council's collection of waste from designated points on site using the circular route around Holbeach House. The scheme was therefore designed by Invicta's retained architect Richard Willows (Plan It Design), around waste collection in agreement with Environmental Health and I also understand Colin Crew.

This was subject matter of a disclaimer that was signed by the director of Invicta Developments Ltd to allow Council vehicles on site but without the Council being liable for any damage to the onsite roads etc, they might cause in the collection of said waste.

If you check the history of this matter and indeed more than happy for you to make direct contact with Councillor Coupland and/or glen Chapman, who should verify the arrangements that were discussed and agreed with Invicta.

This requirement to collect waste by the Council is over and above the discussion Lisa and I have had in the past on the Council's statutory duty to collect waste.

I trust this settles the matter.

Regards

Pritpal Singh Swarn
Partner

Knights plc
M 07548 223141
D 0116 478 6196
T 0116 262 4225
W www.knightsplc.com

Please click here to view our email disclaimer.

From: Tim Allan <tim.allan@bosscabins.co.uk>
Date: 14 November 2017 at 09:50:50 GMT
To: David Goodridge <DGoodridge@stanhayboss.local>
Subject: FW: Fleet Road, Holbeach

-----Original Message----------
From: Chapman Glen [mailto:gchapman@sholland.gov.uk]
Sent: 03 November 2011 15:16
To: tim.allan@invictadevelopments.co.uk
Subject: FW: Fleet Road, Holbeach

Afternoon Tim

Further to your meeting on site with Mick Ashworth and our telephone conversation please find attached an example of the disclaimer we use.

As you will see it is fairly straight forward

Regards

Glen

Glen Chapman
Environmental Services Team Leader

T: 01775 761161 ext 4503
F: 01775 711054
E: gchapman@sholland.gov.uk

-----Original Message----------
From: Chapman Glen
Sent: 28 October 2011 11:41
To: Crew, Chris
Subject: Fleet Road, Holbeach

Morning Chris

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 to 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.

I said I would forward a copy of a form of indemnity to the developer,
have you his email address by chance?

Regards

Glen

Glen Chapman
Environmental Services Team Leader

T: 01775 761161 ext 4503

F: 01775 711054
E: gchapman@sholland.gov.uk

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

Date: / /

DISCLAIMER

Refuse / Recycling Collections –

In order for South Holland District Council to collect recycling and refuse material from the above location I hereby indemnify the Council against any damage that may be caused to the access roadway during collections.

I understand that refuse and recycling materials need to be presented separately and by **7.00 a.m** on the correct collection day and that bulky items (fridge, wardrobe, chairs etc) will not be removed unless payment has been received by the Council.

Signed with authority on behalf of Spalding Town Husbands

……Signature

…….. …….Please print name

……..Position

……Date