DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H08-0121-24**	**Applicant:**	**Penstar Developments Ltd**
Proposal:	Conversion of semi-detached house into two 2 bed houses - approved under H08-0175-19. Modification of Condition 3 to allow 2 upvc windows to front elevation in lieu of timber		
Location:	1a Hall Drive Gosberton Spalding		
Terminal Date:	11th April 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
11	Distribution of New Housing
17	Providing a Mix of Housing
29	The Historic Environment

National Guidance

National Planning Policy Framework 2023

Section 16 of the National Planning Policy Framework (December 2023) (NPPF)

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This application is for the modification of Condition 3 of application reference H08-0175-19, which stated the following;

"Unless otherwise agreed in writing by the Local Planning Authority, all new window frames, glazing bars and external door frames on the front elevation of the building shall be of timber construction, painted white and thereafter so maintained.

Reason: In the interests of the architectural composition and appearance of the development and the character and visual amenity of this part of the Conservation Area in which it is set.
This Condition is imposed in accordance with Policies 2, 3 and 29 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 16 of the National Planning Policy Framework, 2019."

This application is effectively retrospective as the applicant has already replaced various windows throughout the property with UPVC, without the express written consent of the local planning authority and therefore the development as approved under H08-0175-19 is currently in breach of its own conditions. The applicant proposes, with this application to regularise by amending condition 3 to permit the use of UPVC windows.

Site Description

1A (or 30) High Street, Gosberton, is a locally significant non-designated heritage asset, sitting at a prominent point in the street scene and is within the Gosberton Conservation Area.

The building is recorded in the Lincolnshire Historic Environment Record as having been identified as being of historic interest and sufficient preservation by South Holland District Council to warrant inclusion in its local list.

History

H08-0175-19

Conversion of semi-detached house into two 2 bed houses. Approved 29-04-19.

Consultation Responses

None received.

Evaluation

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.

In this case, the adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019, forms 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 (updated 2023) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

Furthermore, where a Neighbourhood Plan has been adopted, this alongside the adopted Local Plan, forms part of the Development Plan for the District, and must be considered when assessing development proposals. In this instance, no relevant neighbourhood plans have been adopted.

The Authority is also able to demonstrate a supply of deliverable sites equivalent to in excess of 5 years through the latest Housing Land Supply Assessment.

Planning Considerations

The application seeks the retrospective discharge/removal of condition 3 in order to allow the freedom to utilise non-timber windows at this site. The purpose of an application made under section 73 of the Town and Country Planning Act 1990 is to vary or remove conditions associated with an existing planning permission. These applications are used to allow for amendments to an approved scheme and can be made both retrospectively and prior to a permission being

implemented, as long as the permission is extant.

The Act is very clear that: "On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted." As such, the Local Planning Authority are not able to revisit the principle of development and only matters relevant to the specific conditions can be considered.

The effect of granting permission would be to issue a new permission with condition 3 removed, together with any other relevant conditions from the original permission, or subsequent relevant revisions since this permission.

As indicated in paragraph 47 of the NPPF, planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

The proposal site is in a prominent conservation area location right at the very centre of the Gosberton Conservation Area, in visual range of a number of elements of significant contribution to the wider appreciation of the area's character and setting. Furthermore, the building itself is recorded in the Lincolnshire Historic Environment Record as having been identified as being of historic interest and sufficient preservation by South Holland District Council to warrant inclusion in its local list. As such, it can itself, be considered to be of substantial contribution to the wider conservation area and its setting.

Paragraph 205 of the NPPF states that when considering the impacts of a proposed development upon the significance of a designated heritage asset (in this case, the conservation area), great weight should be given to the asset's conservation.

With regard to Conservation Areas, Policy 29, Section B of the SELLP confirms that proposals within, affecting the setting of, or affecting views into or out of, a conservation areas should preserve (and enhance or reinforce, as appropriate) features that contribute positively to the area's character, appearance and setting. This includes, but is not limited to; the retention of architectural details that contribute to the character and appearance of the area; and the retention and reinforcement of local distinctiveness with reference to materials (subsections 2 and 4)

As per the wording of the condition, the requirement for white-painted timber windows was established at this property in the interests of the architectural composition and appearance of the development and the character and visual amenity of this part of the Conservation Area in which it is set. This would therefore imply that failure to satisfy and uphold this condition would place the architectural composition and appearance of the development and the character and visual amenity of this part of the Conservation Area at risk.

As per Policy 29, Section B, Subsection 4 of the SELLP, UPVC is not considered to be a traditional, vernacular material to the conservation area, and indeed, in this section of the conservation area timber windows form the primary traditional vernacular. Plainly, allowing windows other than white painted timber would not respect the local vernacular with regards to material, failing to meet the requirements of that subsection. It should also be noted that the existence of UPVC windows at other properties is the result of permitted development rights afforded to other properties that are not permitted at this site (by virtue of Condition 3) or of previous policy regimes, and therefore does not represent justification for the introduction of further UPVC via the planning process.

Moreover, because they are considered to be an important part of the local vernacular, the removal of traditional, timber windows (which is implied by the request of this application) does not represent the retention of architectural details that contribute to the character and appearance of the area, and therefore the proposal also fails to meet the requirements of subsection 2 of Policy 29. Therefore, for the above failings with regard to Policy 29 Section B of the SELLP, it can be established that the proposal to permit UPVC would represent a form of harm to the designated heritage asset.

Paragraph 206 of the NPPF outlays the categories of harm, and also confirms that any form of harm should require clear and convincing justification. This requirement has not been met to the satisfaction of the Local Planning Authority.

As discussed above, the effect of granting permission would be to issue a new permission with condition 3 removed, together with any other relevant conditions from the original permission, or

subsequent relevant revisions since this permission. Because the proposal is retrospective, H08-0175-19 is currently already in breach, and the nature of the advice received by the applicant does not change that fact. When factoring in that to grant this application would be to, in effect, grant new consent without that condition, the same rationale that lead the local planning authority to apply condition 3 originally remains valid, in that allowing freedom to install UPVC without further scrutiny would represent a risk and form of unjustified harm to the character and significance of the historic environment, and therefore, the granting of this application would represent a direct and clear violation of Policy 29 of the SELLP.

Conclusion

For the reasons listed above, this application is considered to fail to meet the requirements of Policy 29 of the SELLP in addition to Section 16 of the NPPF. Therefore, the recommendation is to refuse.

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.