

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H08-0290-24 **Applicant:** Mr P Waudby

Proposal: Erection of One Dwelling - approved under H08-0515-22. Re-siting of Dwelling

Location: Riseholme Farm Windmill Lane Gosberton Risegate

Terminal Date: 25th April 2024

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01 Spatial Strategy
02 Development Management
30 Pollution

National Guidance

National Planning Policy Framework 2023

Section 5 - Delivering a sufficient supply of homes
Section 9 - Promoting sustainable transport
Section 12 - Achieving well designed and Beautiful places
Section 14 - Meeting the challenge of climate change, flooding and coastal change
Section 15 - Conserving and Enhancing the Natural Environment

Planning Practice Guidance (PPG)

Representations:

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

Proposal

This application comprises a non-material amendment, under Section 96A of the TCPA 1990, to amend an approval gained under full planning permission for the erection of One Dwelling - approved under H08-0515-22.

This non-material amendment application relates to the re-siting of the dwelling.

The dwelling would be moved 4 metres westwards, closer to the Railway Line. The shape of the access road has also changed, the positions of the two trees has changed, and the access drive has been lengthened.

The application form states that the dwelling needs to move to be clear of an IDB outfall on adjacent site. This is not marked on the plans.

Site Description

The site is a farm on the northern side of Risegate Road, Gosberton Risegate. The red line of the application site is situated around a paddock and an area of hardstanding within the farm with a large barn in situ. The paddock has several distinctive trees on site, with a cluster at the front of the plot adjacent to the existing access, with 4 prominent trees towards the northern part of the paddock and a smaller tree on the boundary of the paddock and the hardstanding in the north east corner. The rest of the paddock is lain to grass. The railway line is in close proximity to the east of the paddock.

History

H08-0515-22 - Riseholme Farm, Gosberton Risegate - Erection of One dwelling - Approved 14.11.22.

Consultation Responses

None required as this is a non material amendment proposal.

Planning Considerations

The Local Planning Authority has powers under Section 96A of the Town and Country Planning Act 1990 to make a "non-material" change to a planning permission if the local Planning Authority is satisfied that the change is not material. There is no statutory definition of "non-material"; this is because it is dependent on the context of the overall scheme. As such, an amendment that is considered to be non-material in one context, may be material in another.

South Holland District Council's "Development Control Procedure Note: Non-Material Amendments to Planning Permissions" indicates that non material amendments will be approved subject to specific criteria being met. The Council's position on non material amendments is that they must:

- be within the scope of the original planning permission
- not result in a materially different scheme that has a differing impact.

The non material amendment criteria are as follows and the scheme will be assessed against this criteria:

1. There would be no change to the application site boundary and the proposal would be located within it (red line boundary)

The red line boundary is the same, as per H08-0515-22, so there is no change.

2. The amendment would not conflict with development plan policies or other Government guidance

There is no conflict with the SELLP or NPPF.

3. There would be no conflict with any conditions on the planning permission

There is no conflict with conditions on the planning permission.

4. The proposal would not make worse any concerns raised by third parties when the original planning permission was considered

During consideration of the previous approval, Network Rail were consulted and had no objection in principle subject to conditions, one of which was to ensure that adequate soundproofing could be undertaken to mitigate against potential trains running 24 hours a day. A noise condition was imposed as a result. Given that the dwelling is four metres closer to the railway line, this is a materially different situation and the views of Network Rail would need to be sought to see if the mitigations are the same, or if they wish to object to a property being located closer to the Railway Line.

5. The approved footprint/siting of the building will not be moved in any direction by more than 1 metre

The building will be moved 4 metres and re-positioned. This is moved 4 metres closer to the railway line. This criterion is not met as a result.

6. The proposal would not result in an extension to development already approved

There are no extensions, this is a single dwelling.

7. The height/volume of the building or extension would not be increased or significantly reduced

The shape of the access road in relation to an existing tree has changed, the access road has got longer and extends further northwards, also the positions of the proposed trees has changed.

8. The amendments must not result in a fundamental change in the design of the building

The fundamental design has not changed, it has moved 4 metres.

9. The change does not amount to new works or elements which have not been considered by any environmental statement submitted with the original application

This is not applicable.

10. Amendments to windows/doors/openings must not have any overlooking impact on neighbouring properties

No change to this criterion.

11. There would be no change to the description of development in respect of number of proposed units

No change to the number of dwellings as it is a single dwelling.

Conclusion

Criterion 8, as detailed above, has been exceeded which means that the proposed dwelling moving 4 metres, rather than one metre, is not considered to be a non material amendment. Therefore, a Section 73 application will be required.

The proposal cannot be accepted as a non-material amendment. In addition, given that Network Rail stipulated conditions previously required a noise condition (Condition 17 of H08-0515-22), the re-positioning of the property, it is questionable if Network Rail would allow a dwelling closer to the Railway in this location, therefore their opinion would be needed to verify that the revised position is acceptable.

The proposed amendment is therefore not within the scope of the original planning permission, and results in a materially different scheme with a differing impact compared with the approved scheme. As such, the proposed amendment is not considered to be non-material.

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.