DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H08-0597-23**	**Applicant:**	**D & R Homes (Gosberton) Ltd**
Proposal:	Residential Development - 28 dwellings - approved under H08-1335-21. Modification of Condition 1 to allow amendments to previously approved plans.		
Location:	Land Off Spalding Road Gosberton Spalding		
Terminal Date:	27th October 2023		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
04	Approach to Flood Risk
06	Developer Contributions
10	Meeting Assessed Housing Requirements
11	Distribution of New Housing
17	Providing a Mix of Housing
18	Affordable Housing
28	The Natural Environment
29	The Historic Environment
30	Pollution
31	Climate Change and Renewable and Low Carbon Energy
32	Community, Health and Well-being
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards
APPENDIX 8	Developer Contributions for Education Facilities
APPENDIX 9	Developer Contributions for Health Care Facilities

National Guidance

National Planning Policy Framework 2023

Section 4 - Promoting sustainable transport
Section 6 - Delivery a wide choice of high quality homes
Section 7 - Requiring good design
Section 10 - Meeting the challenge of climate change, flooding and coastal change
Section 11 - Conserving and enhancing the natural environment
Section 12 - Conserving and enhancing the historic environment

Representations:

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

CASE OFFICER ASSESSMENT

Proposal

The site has outline planning permission and reserved matters approval for 28 dwellings. This application is a Section 73A seeking to vary approved plans Condition 1 of planning approval H08-1335-21. This variation seeks to add solar panels to all the dwellings to accord with energy efficiency requirements under part L of the Building Regulations. Amendments to House type C are also proposed, to remove the window on the side elevations.

Site Description

The application site measures 1.7ha. It is rectangular in shape, with mature hedgerow and trees to the east, west and southern boundaries. The land is essentially flat agricultural land.

The north of the site is characterised by a group of old agricultural buildings, which vary in age and condition, and a bungalow. There is an existing access from Spalding Road that serves both the existing bungalow (7 Spalding Road) and the agricultural land and buildings beyond. In the northern corner of the site there is a further access track from Spalding Road, which is also used to access the field to the south.

A track runs between the commercial unit (garage) to the north west. There is a Grade II Listed Church to the south east and a Grade II Listed milestone on the opposite side of Spalding Road.

The application site abuts the current settlement boundary and there is existing residential development along the western boundary.

Gosberton Primary School, the village shops, employment opportunities and bus stop are all a short walk from the application site.

History

H08-1216-17 - Outline - Proposed residential development of up to 38 dwellings - Approved January 2019, with S106 legal agreement - minimum of 25% affordable dwellings, education contribution and healthcare contribution.

H08-1335-21 - Reserved Matters - Residential Development - 28 dwellings. Outline Approval H08-1216-17 - Approved November 2022

Consultation Responses

No responses have been received.

Evaluation - Section 73

The proposal relates to the variation of condition 1 (Approved Plans) of H08-1335-21, through seeking permission under section 73 of the Act. 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 1 amended, together with any other relevant conditions from the original permission, or subsequent relevant revisions since this permission.

Planning practice guidance highlights that where less substantial changes are proposed, amending a proposal can occur through 'Amending the conditions attached to the planning permission, including seeking to make minor material amendments'.

The PPG clarifies that "Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted". There is no statutory definition of a 'minor material amendment'; but this is likely to include any amendments where its scale and or nature results "in a development which is not substantially different from the one which has been approved".

In this instance, the subsequent amendments, submitted under this Section 73 application, have not varied the description of development. Likewise, the red outline provided with the ordnance survey site location plan has not been altered and matches that of the initial submission.

In the case of R (Vue Entertainment Limited) v City of York Council, it was concluded that the decision gives clear support for use of s.73 in respect of changes to condition which go beyond 'minor' amendments. It places a clear emphasis on preserving the precise terms of the grant. If an amendment to a condition can be made which keeps the description of the development intact it may well be appropriate to make such an application under a s.73, even if the affect of the change will be significant".

Taking all of the above into account, the Local Planning Authority are content that the proposed amendments can be considered under a variation application, via a Section 73 application.

Planning Considerations

The principle of 28 dwellings has already been established by virtue of the previous approval (ref. H08-1335-21). This application is to modify condition 1 (approved plans) of H08-1335-21. This variation seeks to add solar panels to all the dwellings to accord with energy efficiency requirements under part L of the Building Regulations. Amendments to House type C are also proposed, to remove the window on the side elevations.

Paragraph 130 of the National Planning Policy Framework (NPPF), 2023 establishes that planning policies and decisions should ensure that developments will function well and add to the overall quality of the area, that they are visually attractive, as a result of good architecture, and are sympathetic to local character. Likewise, Policy 2 of the SELLP, states that design which is inappropriate to the local area, or which fails to maximise opportunities for improving the character and quality of an area, will not be acceptable. Furthermore, policy 3 accords with the provisions of section 12 of the National Planning Policy Framework, in that it requires development to comprise good design; identifying issues that should be considered when preparing schemes so that development sits comfortably with, and adds positively to, its historically-designated or undesignated townscape or landscape surroundings.

Whilst the installation of solar panels would change the appearance of the roofs of the properties, not all would not face toward the public realm and their installation is to accord with energy efficiency requirements under part L of the Building Regulations. The proposed amendments will not fundamentally alter the design of the scheme as a whole; therefore they are considered to be acceptable.

The application also seeks to amend house type C by removing the window to the side elevations. This alteration to house type C is considered to be modest in nature and the context of the overall scheme. It is considered that the amenity of neighbouring residents would not be materially harmed

in terms of overlooking, lack of privacy, overshadowing, overbearing effect, noise and disturbance, etc.

Taking the above into account, it is concluded that the layout, scale and appearance of the scheme satisfactorily accords with Policies 2 and 3 of the Local Plan. The proposal is also considered to accord with Policies 2 and 3 of the Local Plan in respect of their provisions on residential amenity. Policy 2 of the Local Plan requires development proposals to take into account sustainable development considerations such as: quality of design; size, scale, layout, density, impact on character and appearance of the area and the relationship to existing development. Policy 3 requires development proposals to respect the density, scale and massing of neighbouring buildings and the landscape character of the location.

Conditions

The full application to which this subsequent Section 73 application relate, comprises a number of conditions. These conditions required a formal submission to the Local Planning Authority, along with written agreement that the details, specifically relating to the conditions imposed, where acceptable. The development must be carried out in accordance with these details.

It is noted that discharge of conditions applications have been submitted and approved by the Local Planning Authority. The development, notwithstanding this Section 73 application, must be carried out in accordance with these details. In instances where this may not be possible, a further discharge of conditions application will be required.

Planning Balance

As detailed above, Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The proposed modification does not materially harm the character or appearance of the locality, or amenity of nearby residents, whilst conforming with the South East Lincolnshire Local Plan and the provisions of the National Planning Policy Framework when viewed as a whole.

Taking into consideration these factors, the proposal is considered to comply with Policies 2 and 3 of the South East Lincolnshire Local Plan (SELLP), 2019, plus advice within the National Planning Policy Framework (NPPF), 2023. There are no significant issues in this case that would outweigh factors in favour of the proposal; therefore, in considering all the matters raised above the planning balance is in favour of the proposal and the policies referred to above.

Conclusion

Taking the above considerations into account, the proposal is considered to be in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan (SELLP) (2019), along with the identified sections contained within the National Planning Policy Framework (2023). There are no significant issues in this case that indicate against the proposal and outweigh factors in favour of the proposal and the policies referred to above.

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.