

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H08-0798-24 **Applicant:** Elsoms Seeds Ltd

Proposal: Proposed Portable Buildings - Approved under H08-1182-22. Modification of Condition 2 to allow amendments to previously approved plans.

Location: White House Farm Boston Road Gosberton

Terminal Date: 19th November 2024

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
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2023

National Planning Policy Framework December 2023

Section 2 - Achieving sustainable development
Section 4 - Decision-making
Section 12 - Achieving well-designed and beautiful places
Section 14 - Meeting the challenge of climate change, flooding and coastal change

National Guidance

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
WELLAND AND DEEPINGS INTERNAL DRAINAGE BOARD	0	0	0	1

SHDC INTERNAL	0	0	1	0
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CASE OFFICER ASSESSMENT

Proposal

The proposal seeks permission to vary condition 2 of permission H08-1182-22. Permission H08-1182-22 was approved on 27 January 2023 and granted permission for portable buildings for a temporary period of five years.

Condition 2 set out the approved plans and permission is sought to substitute the amended plans in order to alter the approved buildings. For example, the proposed canteen building is proposed to be larger than previously approved, whereas the proposed toilet block building is proposed to be smaller.

Site Description

The site is part of a nursery located to the northeast of Gosberton, on the eastern side of Boston Road. White House Bungalow and White House are located to the west of the site. The site is outside any defined settlement limit as identified by the Local Plan and is therefore within the countryside in planning policy terms.

Relevant Planning History

H08-0510-14: Erection of glasshouses - approved 17 September 2014

08-0460-20: Proposed Polytunnels - approved 11 September 2020

H08-1182-22: Proposed portable building - approved 27 January 2023

Consultation Responses

Responses have been received from the below referenced consultees. The responses are summarised below, however, the responses can be viewed in their entirety on the South Holland website.

Gosberton Parish Council: No response received.

CLlr H J W Bingham: No response received.

CLlr M A Geaney: No response received.

CLlr J L King: No response received.

Welland and Deepings Internal Drainage Board: The previous comments made under H08-1182-22, dated 03 January 2023 still apply. If planning permission is granted then an application for consent to discharge surface water will need to be submitted to the Board.

Highways and SUDS Support: The changes include the removal of the toilet and canteen buildings which does not impact the public highway.

Environmental Protection: No comments.

Public Representations

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, no letters of representation have

been received.

Key Planning Considerations

Evaluation - Section 73

The proposal relates to the variation of Condition 2 of H08-1182-22, 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.

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 2 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.

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".

Development Plan

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.

The adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019 (SELLP), is 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, December 2023 (NPPF) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

There are no adopted Neighbourhood Plans for the area within which the site is located. A Neighbourhood Plan has been designated for Long Sutton, however, a draft version of the plan has not yet been issued.

The principle of development has already been established through the approval of permission H08-1182-22. The principle of allowing ancillary welfare accommodation relating to a horticultural use within the countryside has therefore already been found to be acceptable. The main considerations which are relevant to the assessment of the current application therefore relate to whether the proposed alterations are acceptable, and include the following matters:

- Design and Visual Impact;
- Impact on Amenity; and
- Flood Risk.

These matters are assessed in turn below.

Design and Visual Impact

Policy 2 of the Local Plan similarly outlines sustainable development considerations for development proposals, providing a framework for an operational policy to be used in assessing the sustainable development attributes of all development proposals.

Policy 3 accords with the provisions of Section 12 of the NPPF as 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.

The site comprises land within the nursery business. The site is set back from Boston Road and is mostly screened by existing planting, buildings and glasshouses.

Permission H08-1182-22 granted consent for two relatively small-scale buildings including a canteen building and a toilet block building. The current application still seeks consent for two buildings. The canteen building and toilet building are proposed to be in similar positions to the previously approved buildings. The toilet block would be located slightly further to the east.

The approved canteen building measured 9.7m by 3m. The building measured 2.8m in height and featured a flat roof. The amended canteen building now measures 12.2m by 3.58m. The height remains 2.8m. The building is therefore of a similar scale and appearance to the previously approved building. The visual impact is therefore acceptable.

The approved toilet building measured 4.9m by 3m. The building measured 2.8m in height and featured a flat roof. The amended toilet building now measures 2.4m by 1.4m, and the height is slightly reduced down to 2.2m. The building is therefore smaller and the visual impact of this is acceptable.

Condition 1 of permission H08-1182-22 required the buildings to be removed from the site within five years of the decision date. This condition was imposed as the buildings were not considered to comprise an appropriate form of permanent development due their visual appearance. It is therefore considered appropriate to retain this condition, however, the condition has been updated to clarify that the buildings need to be removed by 27 January 2028, which is five years from the original decision date.

The proposed development would have an acceptable impact on the character and appearance of the area and would therefore accord with Policies 2 and 3 of the Local Plan and Section 12 of the NPPF.

Impact on Amenity

Paragraph 135 of the NPPF states that development should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Policies 2 and 3 of Local Plan sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.

The proposed building would not be directly adjacent to dwellings and the proposed development is not expected to generate significant levels of noise. The proposed development is therefore expected to have an acceptable impact on the amenity of the nearest dwellings.

As such, the proposed development accords with the provisions of the Section 12 of the NPPF and Policies 2 and 3 of the Local Plan.

Flood Risk

Section 14 of the NPPF sets out guidance relating to how local authorities should assess and determine applications which are subject to flood risk concerns.

The site lies within Flood Zone 3 of the Environment Agency's Flood Maps. These have been created as a tool to raise awareness of flood risk with the public and partner organisations, such as Local Authorities, Emergency Services and Drainage Authorities. The Maps do not take into account any flood defences.

The South East Lincolnshire Strategic Flood Risk Assessment (SFRA) provides an overview of how flood risk has been considered in shaping the proposals of the Local Plan; including the spatial strategy and the assessment of housing and employment sites. Policy 4 of the Local Plan is clear in that "Development proposed within an area at risk of flooding (Flood Zones 2 and 3 of the Environment Agency's flood map or at risk during a breach or overtopping scenario as shown on the flood hazard and depths maps in the Strategic Flood Risk Assessment) will be permitted" in instances where specific criteria is met.

The proposed development has already passed the sequential and exception tests through the approval of permission H08-1182-22. There is an operational need for the proposed development to be located within the wider site to support the nursery business. There are no areas within a lower risk flood zone within the wider site where the proposed development could go instead of the application site. The sequential test has therefore been passed. In terms of the exception test, the proposed development incorporates a sustainable drainage strategy in the form of a soakaway and the proposed development is relatively small scale, thereby limiting the increase in the impermeable area that would result. The proposed development therefore also passes the exception test.

The site is within Flood Zone 3 on the Environment Agency Maps, however, it is within an area of "no hazard" as identified within the South East Lincolnshire Strategic Flood Risk Assessment. Moreover, the proposed development is for commercial 'less vulnerable' development as identified by Annex 3 of the NPPF. The structures are not for habitation and would only be used by employees for temporary periods. Consequently, there are no significant flood risk issues. The development therefore satisfactorily accords with Policy 4 in the SELLP, 2019.

Planning Balance

As detailed above, 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. The proposed development represents appropriate development within the defined settlement boundary. The development hereby proposed does not materially harm the character or appearance of the locality, or amenity of nearby residents. The proposed development therefore accords with the Local Plan and the NPPF. In this instance, there are no material considerations that weigh against the proposal and as such, the planning balance is in favour of the development.

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.

Conclusion

Taking the above considerations into account, the proposal is considered to be in accordance with policies 1, 2, 3, 4 and 36 (including Appendix 6) of the Local Plan, along with the identified sections contained within the NPPF. There are no significant factors in this case that indicate against the proposal and outweigh the consideration in favour of the proposal and the policies referred to above.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be approved under Delegated Authority.