DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H09-0228-26**	**Applicant:**	**713 Emmerson Limited**
Proposal:	Residential development comprising 5 detached dwellings off a private drive - approved under H09-0980-21. Modification of Condition 2 to allow amendments to previously approved plans and Modification of Condition 3 to amend external materials		
Location:	Land North Of Tudor Lodge Fen Road Holbeach		
Terminal Date:	10th June 2026		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

02	Development Management
03	Design of New Development
04	Approach to Flood Risk
28	The Natural Environment
30	Pollution
36	Vehicle and Cycle Parking

National Guidance

National Planning Policy Framework December 2024

Section 2 - Achieving sustainable development
Section 4 - Decision-Making
Section 5 - Delivering a sufficient supply of homes
Section 9 - Promoting sustainable transport
Section 12 - Achieving well-designed places
Section 14 - Meeting the challenge of climate change, flooding and coastal change
Section 15 - Conserving and enhancing the natural environment

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
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	1	0	0	0

SHDC INTERNAL	0	0	1	0
OTHER STATUTORY BODIES	0	0	0	1
RESIDENTS	1	0	0	1

CASE OFFICER ASSESSMENT

Proposal

This is an application made under Section 73 of the Town and Country Planning Act 1990. The application seeks to vary Condition 2 and amend Condition 3 of planning permission H09-0980-21, which granted permission for residential development comprising five detached dwellings off a private drive.

Condition 2 relates to the approved plans and Condition 3 required the submission and approval of a schedule of external materials before the commencement of development beyond oversite. The applicant seeks to regularise a number of amendments to the approved house types, elevational treatments, external materials and entrance gates. The dwellings are now substantially complete and the application is therefore retrospective in nature.

The submission is supported by an updated Location and Block Plan. Save for the detailed amendments identified below, the site layout remains materially consistent with the previously approved scheme. The development continues to comprise five detached dwellings served from a private drive, with the same broad plot arrangement, access position and relationship to Fen Road.

In respect of Plot 1, the revised plans show a large detached dwelling with an integral double garage and four ensuite bedrooms at first floor level. The principal change relates to the provision of additional accommodation above the garage, serving bedrooms 3 and 4. This results in an increase in the scale and massing of the first-floor element above the garage when compared with the previously approved scheme. There are also changes to fenestration, architectural detailing and external materials.

Plot 2 remains a detached five-bedroom dwelling. The changes to this plot are limited and primarily include the removal of the previously approved gable dormers serving the master bedroom. The dwelling otherwise remains broadly consistent with the approved house type in terms of its overall scale, form and layout.

Plot 3 remains a detached four-bedroom dwelling. The principal change to this plot is the removal of chimneys from either side of the dwelling. The overall design, footprint and built form remain substantially as previously approved.
Plot 4 comprises a detached five-bedroom dwelling arranged over three floors. The external changes principally relate to alterations to fenestration and the removal of the barn-style gallery opening from the principal elevation. The overall scale and form of the dwelling remain consistent with the approved scheme.

Plot 5 remains a detached four-bedroom dwelling. The changes are limited and include revised side fenestration and the removal of the faux hoist/lifting door feature from the side elevation. The amendments do not materially alter the overall size or form of the dwelling.

The application also includes details of proposed front entrance gates close to Fen Road. These comprise vehicular access gates together with a separate pedestrian opening.

The application therefore seeks to update the approved plan condition to reflect the development as

constructed and to amend Condition 3 so that the materials shown on the approved drawings and/or previously approved details are controlled by way of compliance rather than a pre-commencement submission requirement.

Site Description

Tudor Lodge comprises an existing dwelling set within extensive grounds on the western side of Fen Road, Holbeach. The application site relates to an area of former paddock land forming part of the wider residential curtilage of Tudor Lodge and lies within the defined settlement boundary of Holbeach as identified within the South East Lincolnshire Local Plan.

The site is accessed via the existing Tudor Lodge access from Fen Road and now accommodates a private residential development comprising five detached dwellings arranged off a private drive. From site inspection, it is evident that the dwellings are substantially complete.

The site is located within Flood Zone 3, an area identified as having a high probability of flooding. There are existing riparian drains within the site and along the southern site boundary, whilst the western boundary is defined by an Internal Drainage Board (IDB) High Priority Watercourse.

The site benefits from a good degree of enclosure and screening from adjoining land uses by established boundary vegetation and hedging. In particular, the boundary with the adjacent commercial garage frontage to Fen Road is defined by a substantial mature conifer hedge which provides effective visual screening. The surrounding area is characterised by a mixture of residential development, commercial uses and open land on the edge of the settlement.

History

H09-0980-21 - Residential development comprising 5 detached dwellings off a private drive. Approved 03-05-22
H09-0439-23 - Details of external materials, surface water disposal, landscaping & tree planting, construction management and deposit of mud. (Conditions 3, 4, 8, 13 and 14 of H09-0980-21). Approved 24th January 2024.

Consultation Responses

South Holland IDB

The Board are yet to receive the relevant applications for Land Drainage Consent for the proposed works. Construction works are close to completion and we are seeking to expedite the necessary legal formalities. Resultantly, the Board currently objects to this planning application.

The applicant proposes to discharge surface water to a watercourse, however the discharge rate has not been provided. It is unclear from the plans provided if the applicants intend to utilise the existing surface water pipe along the southern site boundary or if a new discharge point is proposed.

Highways & Suds Support

No objections - The proposal is for minor amendments to Residential development comprising 5 detached dwellings off a private drive - approved under H09-0980-21. Modification of Condition 2 to allow amendments to previously approved plans and Modification of Condition 3 to amend external materials. The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk.

Lincs Fire & Rescue

We would ask that fire hydrants are installed in number and location at the developer's cost as follows otherwise we would object to this development: Fire Hydrant Placement Regulations: Building regulations require that there must be a fire hydrant located within 90 metres of any

building so that firefighters have access to a water source in case of a fire. On a residential site we will need one hydrant at least every 180 metres with no property further than 90 meters from the nearest hydrant.

Environmental Protection

No comments regarding modification of condition 2 and 3

Representations

This application has been advertised in accordance with the Development Management Procedure Order 2015 (as amended). One objection has been received which states:

"We note that this application appears to omit the link footpath to the adjacent Ashwood Homes Development which has not yet been constructed."

A letter of representation has also been received that considers the scheme should provide a habitat for swifts.

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 (December 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 able to demonstrate a supply of deliverable sites equivalent to in excess of 5 years through the latest Housing Land Supply Assessment.

Evaluation - Section 73

The proposal relates to the variation of Conditions 2 and remove/make compliance condition 3 of the original permssion 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 Conditions 2 & 3 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 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 conditions 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".

Planning Considerations

The development is substantially complete, with all five dwellings erected on site. The amendments are therefore being considered retrospectively. Given the nature of the application, the principle of residential development is not revisited. Planning permission has already been granted for five detached dwellings off a private drive, and the current application is limited to the question of whether the development should be permitted subject to revised and updated conditions.
The proposed amendments remain within the operational scope of the original permission and do not conflict with the description of development. The development remains one for "residential development comprising 5 detached dwellings off a private drive". The application is therefore considered to have been appropriately made under Section 73 of the Act.

The key topics for consideration are:

· Character and Design
· Amenity
· Previously attached conditions
· Section 106
· Other Matters
· Planning Balance

Character and Design
Policies 2 and 3 of the South East Lincolnshire Local Plan are relevant to the assessment of character and design. Policy 2 requires development to be sustainable, appropriate in terms of size, scale, layout and relationship to its surroundings, and to avoid adverse impacts upon the character of the area. Policy 3 requires development to demonstrate a high standard of design which responds positively to local distinctiveness, layout, scale, density, appearance and materials.

At national level, Section 12 of the National Planning Policy Framework is also relevant. Paragraph 135 of the NPPF states that planning decisions should ensure that developments will function well, add to the overall quality of the area, be visually attractive as a result of good architecture, layout and appropriate landscaping, and be sympathetic to local character and history while not preventing appropriate innovation or change.

The approved scheme established the principle, layout, scale and overall design approach for five large detached dwellings within the grounds of Tudor Lodge. The current application does not seek to alter the fundamental form of the development. The plot arrangement, private drive, spacious layout and overall residential character remain as previously approved.

The most notable change relates to Plot 1, where additional first-floor accommodation has been provided above the integral garage. This increases the built form at first-floor level and results in a dwelling of greater mass than previously approved in this part of the site. However, the dwelling remains a large detached property within a generous plot. Its scale remains compatible with the character of the approved development, which already comprised substantial individual dwellings.

The additional built form does not appear incongruous within the overall site context and does not undermine the spacious character of the development.

The changes to Plots 2, 3, 4 and 5 are more limited. The removal of gable dormers from Plot 2, chimneys from Plot 3, the barn-style gallery opening from Plot 4, and the faux hoist/lifting door feature from Plot 5 simplify aspects of the previously approved elevational treatment. Whilst these changes reduce some of the architectural detailing originally shown, they do not result in poor design or an unacceptable visual appearance. The dwellings retain a coherent domestic character and continue to read as substantial detached properties within a private residential setting.

The revised fenestration arrangements and changes to external materials are also considered acceptable. The materials are shown on the submitted drawings and, when read alongside the previously approved discharge of condition details under H09-0439-23, provide sufficient certainty over the final appearance of the development. The palette of materials is considered appropriate to the character of the dwellings and the surrounding area.

The proposed front entrance gates would introduce a formal access feature close to Fen Road. Given the nature of the development as a small private residential scheme, and having regard to the existing boundary treatment and established screening around the site, the gates would not appear unduly prominent or harmful within the street scene.
Overall, the amendments do not result in a development that is substantially different in character from that previously approved. The proposal would continue to provide an acceptable standard of design and would preserve the character and appearance of the area. The development is therefore considered to accord with Policies 2 and 3 of the South East Lincolnshire Local Plan and paragraph 135 of the National Planning Policy Framework.

Amenity

Policy 2 of the South East Lincolnshire Local Plan requires development to be appropriate in terms of its relationship to neighbouring land uses and to avoid unacceptable impacts upon residential amenity. Policy 30 is also relevant and seeks to ensure that development does not result in unacceptable adverse impacts upon the amenities of the area, including by reason of noise, disturbance, light, air quality or other environmental effects.

Paragraph 135 of the NPPF is also relevant insofar as it requires developments to create places which are safe, inclusive and accessible, with a high standard of amenity for existing and future users.

The development remains arranged in accordance with the broad layout previously approved. The dwellings are positioned within generous plots and are served from a private drive. The amendments do not introduce additional dwellings, alter the access arrangements, or materially change the relationship between the development and adjoining land uses.

In terms of overlooking, the revised fenestration arrangements do not give rise to any materially greater loss of privacy than the approved scheme. The dwellings remain set within spacious plots, with sufficient separation distances between properties and neighbouring boundaries. The additional accommodation above the garage at Plot 1 is noted; however, this does not create an unacceptable overlooking relationship when assessed in the context of the approved residential layout and surrounding separation distances.

In terms of overshadowing and overbearing impact, the increase in scale to Plot 1 is limited to part of the dwelling above the garage. Whilst this increases the massing of that unit, it remains proportionate within the plot and does not result in an unacceptable impact upon neighbouring occupiers or future residents of the development. The remaining amendments to the other plots are largely elevational and decorative in nature and would not materially affect daylight, outlook or sense of enclosure.

Each dwelling continues to benefit from a satisfactory level of private amenity space. The overall layout maintains an acceptable relationship between built form, garden areas, parking and access arrangements. The development would therefore provide an acceptable standard of amenity for future occupiers.

The proposed amendments would not give rise to any unacceptable impacts in terms of noise,

disturbance, traffic generation or environmental quality. Environmental Protection has raised no comments in respect of the proposed modification of Conditions 2 and 3.

Accordingly, the development is considered acceptable in amenity terms and would accord with Policies 2 and 30 of the South East Lincolnshire Local Plan and paragraph 135 of the National Planning Policy Framework.

Previously attached conditions

As this is an application under Section 73 of the Town and Country Planning Act 1990, the grant of permission would result in a new standalone planning permission. It is therefore necessary to consider which conditions from the original permission remain necessary, relevant, enforceable, precise and reasonable, having regard to the current circumstances of the development and the statutory tests for planning conditions.

The original permission H09-0980-21 was subject to a number of conditions. Since that permission was granted, details pursuant to Conditions 3, 4, 8, 13 and 14 were approved under application H09-0439-23 on 24th January 2024. The development is now substantially complete. This materially affects the way in which the previous conditions should be carried forward.

Condition 1 related to the time limit for commencement. As the development has commenced and is substantially complete, this condition no longer serves a useful planning purpose and would not need to be reimposed in the same form.

Condition 2 secured the approved plans. This condition remains necessary and should be updated to reflect the revised drawings submitted with this application. The revised plan condition will provide certainty over the approved form of development and ensure that the dwellings, site layout and entrance gates are controlled by reference to the approved drawings.

Condition 3 originally required a schedule of external materials to be submitted before the development progressed beyond oversite. Details of external materials were subsequently approved under H09-0439-23. The current application also identifies the materials through the submitted drawings. Given the advanced stage of construction, it would not be reasonable or necessary to impose this as a pre-commencement or pre-oversite condition. However, control over materials remains relevant in the interests of character and appearance. It is therefore appropriate for this condition to be amended to a compliance condition requiring the development to be carried out and retained in accordance with the approved materials/details, this will be achieved through approving the elevation plans.

Condition 4 related to surface water drainage. Details were approved under H09-0439-23 and the principle of the drainage strategy has therefore already been considered by the Local Planning Authority. The IDB has objected on the basis that separate Land Drainage Consent has not yet been secured and that further clarity is required regarding discharge arrangements. However, Land Drainage Consent is controlled under separate legislation and does not, in itself, prevent the grant of planning permission. There is no evidence before the Local Planning Authority to indicate that the drainage strategy previously approved has materially changed as a consequence of the amendments now proposed. It is therefore considered appropriate to reattach this condition as a compliance condition requiring implementation and retention in accordance with the details previously approved under H09-0439-23, together with any necessary reference to separate consents.

Condition 5 required the private drive and footway serving each dwelling to be constructed to a specification suitable for an 18-tonne fire appliance before occupation of each dwelling, and for the private drive to be retained as such. This remains relevant to access, emergency access and the proper functioning of the development. Lincolnshire Fire and Rescue has commented on the need for fire hydrant provision. Whilst detailed fire safety requirements are also addressed through Building Regulations and separate statutory regimes, the access condition remains necessary and will be reattached.

Condition 6 required highway improvement works, including the provision of the footway shown on the approved drawing, to be certified complete before occupation. A representation has raised concern that the link footpath to the adjacent Ashwood Homes development has not yet been constructed. The current application does not alter the highway works previously required and the

obligation/requirement for those works remains secured through the relevant highway mechanism. The condition will be retained to ensure the required highway works are completed prior to occupation if that trigger remains outstanding.

Condition 7 required details of private refuse/recycling collection and management of the private drive and adjacent open space/landscaping prior to occupation. This remains relevant to the long-term management and functioning of the development. This will be reattached.

Condition 8 related to landscaping, tree planting and biodiversity net gain. Details were approved under H09-0439-23. Landscaping remains important to the character and appearance of the development, particularly given the site's established boundary screening and relationship with Fen Road and adjoining land. The condition should therefore be reattached as a compliance condition requiring implementation, maintenance and replacement planting in accordance with the approved details, under H09-0439-23.

Condition 9 related to the retention of existing hedging and the approval of additional boundary treatments. This remains relevant because the existing hedging contributes significantly to the screening and character of the site. It also assists in safeguarding the amenities of adjoining occupiers and neighbouring land uses. This condition will be reattached to reflect any details already approved or shown on the revised plans.

Condition 10 required the development to be carried out in accordance with the approved Flood Risk Assessment, including finished floor levels and flood resilient construction. The site lies within Flood Zone 3 and this condition remains necessary in the interests of flood risk and future occupier safety. It will be reattached as a compliance condition.

Condition 11 required water consumption for each dwelling not to exceed 110 litres per person per day. This remains relevant and will be reattached to ensure compliance with Policy 31 of the South East Lincolnshire Local Plan.

Condition 12 required three swift nest bricks to be incorporated within the external walls of each dwelling and retained thereafter. A representation has requested the provision of habitat for swifts. This matter is already addressed by the existing condition and it remains appropriate to reattach it in the interests of biodiversity and Policy 28 of the Local Plan.

Condition 13 related to construction management, including noise, dust, vibration, smoke, construction traffic, site personnel vehicles, deliveries and site accommodation. Details were approved under H09-0439-23. Given that the development is now substantially complete, a pre-commencement construction management condition would no longer be necessary or reasonable. If any residual construction works remain, these are unlikely to justify the reimposition of the original condition in its full form. It is therefore considered that this condition will be linked as a compliance related condition.

Condition 14 related to precautions to prevent the deposit of mud on the public highway during construction. Details were approved under H09-0439-23. As with Condition 13, the development is substantially complete and the main construction phase has passed. It would not be necessary or reasonable to reimpose this condition in its original form.
In summary, conditions with ongoing planning purpose should be reattached and, where details have already been approved, converted to compliance conditions. Conditions that related solely to pre-commencement construction management and have served their purpose should not be reimposed unless there is a clear and evidenced need to do so.

Section 106

A Section 106 Agreement dated 25th April 2022 was completed in association with the original permission. The agreement secured a contribution towards a Traffic Regulation Order.

Paragraph 16 of the agreement confirms that the obligations continue to bind the development in the event of subsequent Section 73 permissions. Accordingly, a Deed of Variation is not required in this instance and the obligations remain secured notwithstanding the grant of any new permission under Section 73.

A comment has been received regarding the footway on Fen Road. However, the current

application does not alter the previously approved highway arrangements and does not amend the relevant legal or highway agreements. This matter therefore does not weigh against the current proposal.

Planning Balance

The application seeks to regularise amendments to a residential development that already benefits from planning permission and is substantially complete on site. The principle of five detached dwellings off a private drive has already been established and cannot be revisited through this Section 73 application.

The amendments to the approved plans are largely limited to elevational changes, revised fenestration, the removal of certain architectural features, changes to materials, the provision of additional first-floor accommodation above the garage to Plot 1, and the inclusion of entrance gates. These changes do not alter the overall number of dwellings, the broad layout of the site, the access arrangements or the fundamental character of the development.
There is some increase in scale to Plot 1; however, when assessed in the context of the spacious plot, the approved form of development and the character of the wider scheme, this change is not considered harmful. The remaining alterations are limited in nature and would not result in unacceptable harm to the appearance of the development or the character of the area.

The development would continue to provide acceptable living conditions for future occupiers and would not result in unacceptable overlooking, overshadowing, overbearing impact, noise or disturbance to neighbouring occupiers. The Highway Authority and Environmental Protection raise no objections.

The objection from the IDB is noted. However, the surface water drainage details were previously approved under H09-0439-23 and there is no evidence that the amendments now proposed materially alter the approved drainage strategy. Separate Land Drainage Consent is a matter controlled under separate legislation and does not justify refusal of this Section 73 application.

The previous Section 106 obligations remain binding and no Deed of Variation is required. Matters raised in representations relating to the footway and swift provision are already addressed through existing controls and conditions.

Overall, the proposed amendments are considered acceptable and would not result in a development that is substantially different from that previously approved. Subject to the reattachment and updating of relevant conditions, the proposal would accord with the South East Lincolnshire Local Plan and the National Planning Policy Framework.

Conclusion

The application is considered to be an appropriate use of Section 73 of the Town and Country Planning Act 1990. The proposed amendments remain within the scope of the original permission and do not conflict with the description of development.

The revised plans and amended materials are acceptable in design, character and amenity terms. The proposal would not give rise to unacceptable impacts upon neighbouring occupiers, highway safety, flood risk, biodiversity or the general character of the area.

Accordingly, the application is recommended for approval, subject to the reattachment, amendment and updating of relevant planning conditions.

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.