

## DECISION DELEGATED TO HEAD OF PLANNING

<b>Application No:</b>	<b>H09-0432-25</b>	<b>Applicant:</b>	<b>Ashwood Homes Ltd</b>
<b>Proposal:</b>	Erection of 285 dwellings including parking, public open space, drainage, infrastructure, landscaping, access, appearance, layout and scale (Phase 3) - outline approval H09-0521-14 and re-submission of H09-0845-22 and H09-1118-22 - Approved under H09-1044-23. Modification of Condition 7 to allow amendments to the wording		
<b>Location:</b>	Land Off Hallgate & Fen Road Holbeach Spalding		
<b>Terminal Date:</b>	23rd September 2025		

### 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
05	Meeting Physical Infrastructure and Service Needs
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

#### 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 6 - Building a strong, competitive economy  
Section 11 - Making effective use of land  
Section 12 - Achieving well designed  
Section 14 - Meeting the challenge of climate change, flooding and coastal change  
Section 15 - Conserving and enhancing the natural environment.  
Section 16 - Conserving and enhancing the historic 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
RESIDENTS	0	0	0	1

**CASE OFFICER ASSESSMENT****Proposal**

This application is a Section 73A seeking to vary Condition 7 of planning approval H09-1044-23, to allow amendments to the timescale need for the implementation of the off-site highway works in Fen Road and the provision of the pedestrian and cycle link in the north eastern corner of the development site.

The application in which this submission seeks to vary, under reference H09-1044-23, was a reserved matters application which permitted the erection of 285 dwellings including parking, public open space, drainage, infrastructure, landscaping, access, appearance, layout and scale.

This reserved matters approval comprised Phase 3 of outline permission H09-0521-14, which granted permission for residential development in the form of up to 900 dwellings.

This Section 73A application specifically seeks to vary Condition 7, which relates to a 'pre-occupation condition' that refers to the completion of the off-site highway works in Fen Road and the provision of the pedestrian and cycle link in the north eastern corner of the development site, with a view to alter the 'trigger point' for this condition to a future date which ties in with completion of homes in the vicinity of the eastern boundary.

**Site Description**

The site lies on the southern edge of Holbeach. The immediate surroundings are residential in character to the north and east and agricultural to the south and west.

The site is within the settlement boundary of Holbeach and is a large development site that will be built out over approximately 19 years, with outline consent for 900 dwellings in total. The site is generally flat, crossed by a number of drainage ditches, which contains the Holbeach Old River in the east and with tree belts and older hedgerows crossing the site. Hall Gate, outside the site, runs east-west from the southern edge of Holbeach town centre and is to the north of the overall site. The wider site is partially developed.

The wider site is divided into phases, which were redefined as a result of more recent Section 73 applications and an amended legal agreement under applications H09-1031-22 and H09-1093-22, with Phase 1A and B in the north western portion of the site fronting Hall Gate which is nearing completion. Land for the education facility to the east of Phase 1 behind The Boundaries (currently undeveloped) exists to the east of Phase 1.

Phase 2 is divided into 2 areas, Phase 2A and Phase 2B. Phase 2A was approved under H09-1031-22 and is under construction. Phase 2B fronts the Holbeach Old River with 115 plots and was approved on 8th May 2024 under reference H09-0219-23.

Phase 3, the subject of this application, is split into two areas, with 'Phase 3 North' in the north east of the site behind Oxford Gardens, and next to the land for the education facility, stretching up to land behind Fen Road and The Boundaries. 'Phase 3 South', along the western boundary of the overall site, to the south of Phase 1 and the Care Home granted under H09-1172-20.

The developed areas resemble a conventional housing estate, the undeveloped areas are made up of undeveloped flat farmland, with deep drainage channels.

The site has levels ranging from +2.7m AOD to +3.4m AOD. There is an existing public sewer to Fen Road.

## **History**

H09-0521-14 - Residential development of up to 900 dwellings, with access off Hall Gate and Fen Road, including public open space, drainage infrastructure, landscaping, including demolition of two dwellings and agricultural buildings (but not listed Manor Farm and adjacent buildings). Outline planning permission - Approved 07.12.16.

H09-0331-17 - Application for access, appearance, landscaping, layout and scale for highways infrastructure (new link road, roundabout, junctions and modifications to Hall Gate and Fen Road (Phase 1A)), and two phases of residential development totalling 330 dwellings (Phases 1B and 2). Development Brief and Masterplan for phased development of remainder of site (Outline permission H09-0521-14) at Manor Farm, Fen Road (Land south of Hall Gate) Holbeach. Reserved Matters - Approved 09.11.17.

H09-0416-19 - Modification of Section 106 agreement to: -Reduce the percentage of affordable housing from 33.3% to 25% of the remaining balance of 570 dwellings; -Manor Farmhouse scheme to be submitted by the 100th occupation; -Indexation calculation to commence as each phase starts. Approved 12.06.19.

The Section 106 agreement with the outline permission (H09-0521-14) sought to provide policy compliant affordable housing but also included a viability review mechanism. The reserved matters application included a significant amount of upfront infrastructure which would service the whole development, i.e. the roundabout, main roads and drainage. The developer submitted a viability report which was independently checked on behalf of the Council. The result of this was, it was accepted on the basis of the viability evidence that the first phases of development of 330 dwellings could not support the provision of any affordable housing units.

H09-1172-20 - Erection of a 66 bed two storey care home for the elderly with access, car parking and associated works. Approved 28.04.21.

H09-0845-22 - Land to the West of Fen Road - Erection of 100 dwellings with associated parking, roads and drainage. Withdrawn 16.11.23.

H09-1118-22 - Holbeach Meadows - Reserved Matters - Erection of 170 dwellings including parking, public open space, drainage, infrastructure and landscaping (Phase 3) - outline approval H09-0521-14. Withdrawn 16.11.23.

H09-1093-22 - Holbeach Meadows - Revised S106 Application - Modification of 106 Agreement relating to affordable housing - planning approval H09-0521-14. Approved 05.03.24.

This application modified the overall Section 106 agreement to reduce the number of affordable housing units to 140, reduced the overall payment to Peppermint Junction to £900,000 and altered other trigger levels associated with the agreement enabling later payments for various pieces of infrastructure. The amount associated with Education contributions of £2,159,920 remains unchanged, as does the requirement to provide a serviced parcel of land for Education, plus the restoration of Manor Farm House to use as a community facility. The £5,000 town centre regeneration payment, the £150,000 Traffic Signals contribution, The £40,000 'CallConnect' Bus contribution and a £290,000 'CallConnect' Bus Service Maintenance contribution are still required

as part of the legal agreement.

H09-1031-22 - Holbeach Meadows - Section 73 Application - Access, appearance, landscaping, layout and scale for highways infrastructure (new link road, roundabout, junctions and modifications to Hall Gate and Fen Road (Phase 1A)), and two phases of residential development totalling 330 dwellings (Phases 1B & 2). Development Brief and Masterplan for phased development of remainder of site (Outline permission H09-0521-14) - approved under H09-0331-17. Modification of Condition 1 to allow amendments to previously approved plans. Approved subject to S106 agreement. Approved 11.03.24.

H09-0598-23 - Manor Farm - Change of use from farmhouse and outbuilding to community use. Approved 12.03.24.

H09-0591-23 - Manor Farm - Listed Building Consent - Demolition of modern additions and refurbishment of farm house and outbuilding to provide community facilities. Approved 12.03.24.

H09-0219-23 - Holbeach Meadows Phase 2B, Land off Hall Gate - Access, appearance, landscaping, layout and scale for highways infrastructure (new link road, roundabout, junctions and modifications to Hall Gate and Fen Road (Phase 1A)), and two phases of residential development totalling 330 dwellings (Phases 1B & 2). Development Brief and Masterplan for phased development of remainder of site (Outline permission H09-0521-14) - approved under H09-0331-17. Modification of Condition 1 to allow amendments to previously approved plans. Approved 08.05.2024.

H09-1044-23 - Land off Hallgate & Fen Road, Holbeach - Reserved Matters - Erection of 285 dwellings including parking, public open space, drainage, infrastructure, landscaping, access, appearance, layout and scale (Phase 3) - outline approval H09-0521-14 and re-submission of H09-0845-22 and H09-1118-22. Approved - 09.09.2024.

H09-0775-24 - Jasmine Crescent, Holbeach - Condition Compliance - Details of Construction Management Plan and Method Statement (Condition 4 of H09-1044-23). Approved 23.10.2024.

H09-0133-25 - Jasmine Crescent, Holbeach - Condition Compliance - Details of Estate Road Phasing and Completion Plan (Condition 6 of H09-1044-23). Approved 05.03.2025.

H09-0363-25 - Land off Hallgate & Fen Road, Holbeach - Condition Compliance - Details of construction management plan & method statement, estate road & associated footways that forms junction with main road shall be laid out & constructed to finished surface levels, frontage footways from development site on to Fen Road with pedestrian crossing points & tactile paving to connect development to existing footway network, public art, materials, signage, utilities & other street furniture as part of the public realm, timetable & programme of works & water consumption (Conditions 4, 5, 7, 8, 9 & 11 of H09-1044-23). Approved 06.06.2025.

## **Consultation Responses**

### Lincolnshire County Council Highways/SuDS

The proposal is for minor amendments for Erection of 285 dwellings including parking, public open space, drainage, infrastructure, landscaping, access, appearance, layout and scale (Phase 3) - outline approval H09-0521-14 and re-submission of H09-0845-22 and H09-1118-22 - Approved under H09-1044-23. Modification of Condition 7 to allow amendments to the wording. The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk.

No Objections: Having given due regard to the appropriate local and national planning policy guidance (in particular the National Planning Policy Framework), Lincolnshire County Council (as Highway Authority and Lead Local Flood Authority) has concluded that the proposed development would not be expected to have an unacceptable impact upon highway safety or a severe residual cumulative impact upon the local highway network or increase surface water flood risk and therefore does not wish to object to this planning application.

### Public Representation

This application has been advertised in accordance with the Development Procedure Order and the

Council's Statement of Community Involvement. In this instance, one letter of representation has been received.

This can be summarised as follows:

- Presence of bat activity and queries regarding historical habitat surveys.

## **Planning Considerations**

### Evaluation - Section 73

The proposal relates to the variation of Condition 7 of H09-1044-23, 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 7 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 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".

In this instance, the subsequent amendments, submitted under this Section 73 application, have not varied the description of development.

It is considered that the proposed variation, seeking to vary the timeframe whereby the cycling provision and highway works are required, is suitable and can be achieved under a Section 73 application.

### Principle of Development and Sustainability

The South East Lincolnshire Local Plan sets out the settlement hierarchy in respect of delivering sustainable development that meets the social and economic needs of the area whilst protecting and enhancing the environment; in order to provide enough choice of land for housing to satisfy local housing need, whilst making more sustainable use of land and to minimise the loss of high-quality agricultural land by developing in sustainable locations and at appropriate densities.

Policy 1 of the South East Lincolnshire Local Plan sets out a spatial strategy for delivering sustainable development across South East Lincolnshire to 2036. Policy 1 (Spatial Strategy) expresses this sustainable framework of settlements, ranking the settlements deemed to be most sustainable in descending order.

The most sustainable locations for development are situated within the 'Sub-Regional Centres',

followed by 'Main Service Centres'. Lower down the hierarchy in respect of sustainable development are areas of limited development opportunity including 'Minor Service Centres', with areas of development constraint comprising 'Other Service Centres and Settlements'. The countryside is at the bottom of the settlement hierarchy and represents the least sustainable location.

Policy 1 (Spatial Strategy) of the South East Lincolnshire Local Plan indicates that within 'Minor Service Centres', development will be permitted that supports their role as a service centre for the settlement itself, helps sustain existing facilities or helps meet the service needs of other local communities. This policy goes on to detail that development within Minor Service Centres will normally be limited to Allocated and Committed sites and infill.

The National Planning Policy Framework, (NPPF) (December 2024) outlines, within Paragraph 61, that "To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay".

Para 73 of the National Planning Policy Framework (December 2024) also emphasises the importance that the contribution of small to medium sized sites can make in meeting the housing requirements. This states that "Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, are essential for Small and Medium Enterprise housebuilders to deliver new homes, and are often built-out relatively quickly". This policy seeks to ensure that there is a sufficient supply of homes and advises that sites of all sizes make a contribution to the housing requirement of an area.

The application in this instance comprises a Section 73A, whereby permission is sought to vary condition 7 of a previously permitted development, which was approved under reference H09-1044-23. The variations relate solely to a 'pre-occupation condition' that refers to the completion of the off-site highway works in Fen Road and the provision of the pedestrian and cycle link in the north eastern corner of the development site, with a view to alter the 'trigger point' for this condition to a future date which ties in with completion of homes in the vicinity of the eastern boundary.

These amendments do not seek to alter the siting, quantum of development proposed, or any physical alterations to the permitted development beyond this.

The site has been subject to a longstanding extant permission for housing development. Initially obtained through an outline planning application under reference H09-0521-14 for the 'Residential development of up to 900 dwellings, with access off Hall Gate and Fen Road, including public open space, drainage infrastructure, landscaping, including demolition of two dwellings and agricultural buildings (but not listed Manor Farm and adjacent buildings).

Most pertinent to this specific site, Reserved Matters application reference H09-1044-23 granted approval for the erection of 285 dwellings, within the two areas identified as Phase 3.

In light of this, the principle of developing this site has been established within the earlier approvals. As such there is no objection in principle with the development.

The proposal is considered to be in accordance with the requirements of Policy 1 of the South East Lincolnshire Local Plan when viewed in principle, being a committed site, given the aforementioned extant permissions on site. This is subject to the assessment against site specific criteria; including (but are not limited to) the impact of the proposal on the character or appearance of the area, impact on the residential amenities of neighbouring occupiers, impact on highway safety and flood risk, which are discussed in turn as follows.

#### Layout, Design and Consideration of the Character and Appearance of the Area

Section 12 of the National Planning Policy Framework (December 2024) specifically relates to 'Achieving well-designed places' and details that the "creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve" and as such, it is generally accepted that good design plays a key role towards sustainable development.

Paragraph 135, contained within Section 12 of the National Planning Policy Framework (December

2024), states that new development should function well and add to the overall quality of the area (beyond the short term and over the lifetime of the development) and should be visually attractive as a result of good architecture, layout and appropriate landscaping. This goes on to establish that it is important that new development should be of the highest quality to enhance and reinforce good design characteristics, and that decisions must have regard towards the impact that the proposed development would have on local character and history, including the surrounding built environment and landscape setting such as topography, street patterns, building lines, boundary treatment and through scale and massing.

Development proposals should also ensure that developments 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, among other considerations.

Likewise, Policy 2 of the South East Lincolnshire Local Plan (2019) 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. Furthermore, Policy 3 accords with the provisions of Section 12 of the National Planning Policy Framework (December 2024), 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.

These policies accord with the provisions of the National Planning Policy Framework (December 2024) and require 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. Proposals for new development would therefore require the aforementioned considerations to be adequately assessed and designed, including the siting, design and scale to be respectful of surrounding development and ensure that the character of the area is not compromised.

The proposed variation would not seek to alter the overall quantum of development or layout of the development previously approved. The resultant development, following the variation proposed, would not be materially different, with all built form, highways and access routes being unaltered.

As such, the variation proposed, would not give rise to any additional adverse impact upon the character or appearance of the area.

Taking account of the design, scale and nature of the development, as detailed above, the proposal is considered to be acceptable. The proposal would not cause an adverse impact to the character or appearance of the area and would therefore be in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan (2019) and Section 12 of the National Planning Policy Framework (December 2024).

#### Impact on Residential Amenity/Land Users

Paragraph 135 of the National Planning Policy Framework (December 2024) 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 South East Lincolnshire Local Plan (2019) sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.

The proposed variation would not seek to alter the overall quantum of development or layout of the development previously approved. The resultant development, following the variation proposed, would not be materially different, with all built form, highways and access routes being unaltered.

As such, the variation proposed, would not give rise to any additional adverse impact upon the residential amenities of neighbouring occupiers.

IT is noted that the footpath and cycle routes, given that these would not be required until a later stage within the development of Phase 3, would result in a delay in their use by any future or current occupiers of the wider site; however, this variation would not result in its total loss and the

implementation of this provision would be required prior to the entire completion of Phase 3, or by January 2028; whichever is earlier.

As detailed above, the scale and design of the proposal is considered to be such that there would be no significant or unacceptable impact on the residential amenities of the occupiers of adjacent properties or land users, when also taking account of the conditions recommended. As such, the proposal is considered to accord with the provisions of the Section 12 of the National Planning Policy Framework (December 2024), and Policies 2 and 3 of the South East Lincolnshire Local Plan (2019).

### Highway Safety and Parking

Section 9 of the National Planning Policy Framework (December 2024) specifically relates to 'Promoting sustainable transport'. Paragraph 116 of the National Planning Policy Framework (December 2024) advises that "development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios".

In respect of highway matters, Policy 2 details that proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met, specifically in relation to access and vehicle generation. Policy 3 details that development proposals will demonstrate how accessibility by a choice of travel modes including the provision of public transport, public rights of way and cycle ways will be secured, where they are relevant to the proposal.

During the previous assessment of planning approval H09-1044-23, the item appeared before Planning Committee on two occasions, During its initial presentation at Planning Committee, concerns were raised that resulted in amendments to remove Tudor Way as an access to the development. This resulted in simplified footway arrangements and pedestrian crossing arrangements to Fen Road. The Local Highway Authority raised no objections.

During this previous assessment, it was concluded that "Overall, in highway terms, the proposal is considered acceptable and would not have an unacceptable adverse impact on highway safety in accordance with Local Plan Policies 2, 3 and 36, and Section 9 of the National Planning Policy Framework".

The proposal seeks to vary condition 7, which reads:

*The development hereby permitted shall not be occupied before frontage footways from the development site on to Fen Road with pedestrian crossing points and tactile paving, to connect the development to the existing footway network, has been provided in accordance with details that shall first have been submitted to, and approved in writing by, the Local Planning Authority. The works shall also include appropriate arrangements for the management of surface water run-off from the highway.*

The proposal seeks to vary this condition, to alter the timeframe for this implementation. In part, this is due to the current construction management plan, which permits the access from Fen Road. The submitted details state that "The existing site access point from Fen Road was the old farm access road and has been the agreed route for construction access into the site since the development began. LCC Highways have been consulted during the discharge of conditions 4 and 6 (approved) and have expressed their preference that this construction access is maintained during this phase of development. With construction of new homes progressing from the west towards the eastern boundary and in order to maintain safe access for new residents, it is not feasible to provide the final connection to Fen Road until later in the project programme".

The proposed variation to this condition, which would require an equal provision to that previously required, would require the frontage footways from the development site on to Fen Road with pedestrian crossing points and tactile paving, to connect the development to the existing footway network, in addition to the cycle route and the appropriate arrangements for the management of surface water run-off from the highway, as approved under reference H09-0363-25, prior to the occupation of plots 365 and 366, or prior to January 2028, whichever comes first.

This would ensure that the provision would be retained, whilst also affording the developers an appropriate route in accordance with the agreed construction management plan.

Lincolnshire County Council, as Local Highway Authority, have raised no objections to this proposal and the proposal would not alter the resultant provision, access or have further highway implications in respect of the overall scheme.

The proposal would therefore be acceptable and would not have an unacceptable adverse impact on highway safety in accordance with Policies 2, 3 and 36 the South East Lincolnshire Local Plan (2019), and Section 9 of the National Planning Policy Framework (December 2024).

### Biodiversity Net Gain

Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) requires developers to deliver a minimum of 10% Biodiversity Net Gain using standardized biodiversity units measured by statutory biodiversity metrics. This is often referred to as the mandatory requirements for Biodiversity Net Gain.

"Under the statutory framework for biodiversity net gain, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met ("the biodiversity gain condition"). This objective is for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat. This increase can be achieved through onsite biodiversity gains, registered offsite biodiversity gains or statutory biodiversity credits".

The biodiversity gain condition is a pre-commencement condition. This relates to a condition that seeks, once planning permission has been granted, a Biodiversity Gain Plan that must be submitted and approved by the planning authority before commencement of the development, alongside the need to submit a Habitat Management and Monitoring Plan.

The effect of Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission is deemed to have been granted subject to the "biodiversity gain condition". The effect of this "biodiversity gain condition" is that development granted by this notice must not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan, or
- (c) the development is exempt from the biodiversity gain condition.

For applications that are submitted prior to the introduction of this requirement, the development would exempt from the mandatory 10% requirement and as such, the Biodiversity Gain Condition would not apply. However, this application was submitted following the introduction of this legislation. As such, unless comprising development that is exempt from this mandatory Biodiversity Net Gain (10%), a condition would be required, as mandatorily set.

Notwithstanding this, the proposal relates to a section 73A and as such, the development, given the timeframe of the initial approval in which the proposal seeks to vary, is exempt and therefore not subject to the mandatory biodiversity net gain.

### Section 106

It is noted that the original grant of permission, when considering the wider application site, under H09-0521-14, was subject to a S106 agreement dated 29 November 2016. Further to this, the Local Planning Authority received subsequent 'Modifications of S106 Agreement', which varied this agreement. As such, the Agreement was varied by the Deeds of Variation dated 10 June 2019 and the 28 February 2024.

This application relates to a Section 73A application, with a view to solely altering the timeframe and trigger point of specific cycle and highway provisions and routes. The proposal does not seek to alter any contributions or requirements as set out within the aforementioned legal agreements.

Likewise, the permission to which this Section 73A proposal seeks to vary, was itself a Reserved Matters application within the assessment of that case, it was stated that the proposal related to "reserved matters to an outline application that has already been granted with the required mitigation set out in a Section 106 agreement - up to 900 units of which this is simply a part of the dwellings already permitted. It is at the outline stage that the overall housing numbers for the site, as well as impacts of the development are determined, with required funding for infrastructure set

out in the associated Section 106 agreement. Applications can only address the impacts that the development directly creates - not any actual or perceived deficiencies in infrastructure that exist in the locality more generally - that is outside of the planning regime. The reserved matters are details associated with conditions set out in the outline application. It is not revisiting the entire outline scheme in principle and is not additional to the outline approval. Reserved matters do not modify the existing consent nor the overall Section 106 package associated with mitigating the impact of the development on the locality".

As such, the development, irrespective of this decision, shall be carried out in accordance with the application and details submitted under S106A of the Town and Country Planning Act 1990 and can only be implemented as a consequence of meeting the provisions of those Agreements.

For information, 140 affordable housing units are required to be provided across the remaining phases of this development in total. For Phase 3, 70 affordable housing units are being provided in accordance with the details hereby approved. This leaves a balance of 70 affordable housing units to be provided across Phases 4 and 5.

### Conditions

This Section 73 application is subsequent to the grant of Reserved Matters approval for 285 dwellings. The development is therefore controlled by conditions attached to this aforementioned Reserved matters approval and the outline permission to which that approval was pertinent to.

As such, given that any subsequent approval issued through this Section 73 application would form a new permission, any conditions relevant from the original outline and reserved matters approval must be brought forward.

It is noted that a number of conditions have been discharged, are not required in respect of this particular phase of development, or have since been discharged.

In respect of the reserved matters approval, all condition shave been brought forward; albeit, comprising variations where necessary. This includes the rewording of conditions that have been subject to the submission of details, refiring these conditions to the subsequent approved details as opposed to seeking the submission of such details.

Likewise, conditions that are relevant to this phase of development, which were previously controlled through the outline permission, have been brought forward.

Overall, it is recommended that eighteen conditions are attached, with condition 7, the purpose of this application being attached with varied wording to reflect the nature of the proposal. It was sought to vary this condition, to ensure that the construction management and access could be maintained in accordance with the details approved, which would otherwise conflict with the provision sought by Condition 7; should this be provided in accordance with the timescales set out by the condition.

It is therefore evident that the variation of this condition, to require this provision at a later stage of the development, would appear reasonable and necessary.

This condition shall read:

*The frontage footways from the development site on to Fen Road with pedestrian crossing points and tactile paving, to connect the development to the existing footway network, in addition to the cycle route and the appropriate arrangements for the management of surface water run-off from the highway, as approved under reference H09-0363-25, shall be carried out prior to the occupation of plots 365 and 366, or prior to January 2028, whichever comes first.*

*Reason: To ensure the provision of safe and adequate pedestrian access to the permitted development, without increasing flood risk to the highway and adjacent land and property. This Condition is imposed as a result of Policy 36 of the South East Lincolnshire Local Plan, 2019.*

### **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**

The wider site is subject to the grant of planning permission for up to 900 dwellings, with this specific phase, Phase 3, having permitted 285 dwellings. This application seeks to vary the conditions attached to this Reserved matters approval - reference H09-1044-23.

The principle of development is established, with the aforementioned permission having been commenced and therefore being extant.

This proposal solely seeks to vary condition 7, in order to vary the timeframe for implementing the off-site highway works in Fen Road and the provision of the pedestrian and cycle link in the north eastern corner of the development site.

The proposed variation to the condition, given the agreed construction management plan and route, as illustrated within the submission, is considered to be acceptable. As such, the proposal is considered acceptable and it is recommended that the application be approved subject to conditions.