DECISION DELEGATED TO HEAD OF PLANNING

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| **Application No:** | **H09-0884-23** | **Applicant:** | **Aldi Stores Ltd** |
| **Proposal:** | Demolition of existing buildings and construction of foodstore (Use Class E) together with car parking, landscaping, and associated works - approved under H09-1057-22. Amendments to the wording of Conditions 7 & 10. | | |
| **Location:** | Fleet Street Holbeach Spalding | | |
| **Terminal Date:** | 30th October 2023 | | |

**Planning Policies**

**South East Lincolnshire Local Plan - Adopted: March 2019**

**National Guidance**

**National Planning Policy Framework 2023**

National Planning Policy Framework 2023

**Representations:**

| | Object | Support | No Obj. | Comments |
|---|---|---|---|---|
| SHDC INTERNAL | 0 | 0 | 0 | 1 |

CASE OFFICER ASSESSMENT

**Proposal**

This application comprises a non-material amendment, under Section 96A of the TCPA 1990, to amend an approval gained under full planning permission. Application H09-1057-22, granted full planning permission for the "demolition of existing buildings and construction of a foodstore (Use Class E) together with car parking, landscaping, and associated works".

This non-material amendment application seeks only to amend the the wording of conditions 7 and 10, seeking to alter the 'trigger point' from the current trigger of pre-commencement, to allow for the approved demolition to take place prior to the submission of details.

**Site Description**

The application site, as per the initial grant full planning permission approval under reference H09-1057-22, comprises a suite area of "0.86 hectares and occupies brownfield land within the settlement boundaries of Holbeach. The most recent use of the site was a Council Depot (Sui

Generis) which was recently vacated by the council and is now just used for the storage of wheelie bins. A Boxing Academy (Class E(d)) was also on site and closed around 5 years ago. Some of the existing trees on site are protected under a Tree Preservation Order and will be retained and enhanced through the proposed development.

Site access is via an existing access with B1515 Fleet Street to the north of the site. The site is situated on land to the south of B1515 Fleet Street and is approximately 500m to the east of the Centre of Holbeach".

## History

H09-1613-07 - Outline application for residential development - Withdrawn 2008.

H09-0937-09 - Part change of use of SHDC works depot (sui generis) to boxing academy (D2) - Approved 2010.

H09-1057-22 - Demolition of existing buildings and construction of a foodstore (Use Class E) together with car parking, landscaping, and associated works - Approved 2023.

## Consultation Responses

SHDC Environmental Protection - No Objection

No objections to the proposed change in wording of condition 10.

## Planning Considerations

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

The Council has therefore introduced a system whereby 'minor amendments' to a scheme can be considered as a way of allowing the planning system to respond in a reasonable and flexible manner to small changes to an approved scheme without seeking a fresh application.

South Holland District Council's "Development Control Procedure Note: Non-Material Amendments to Planning Permissions" indicates that non material amendments will be approved subject to the following criteria being met:

1. There would be no alteration to the application site boundary (red edge).
2. The amendment would not conflict with Development Plan Policies or other Government Guidance.
3. The proposal would not exacerbate concerns raised by third parties at original planning application stage.
4. The proposed change would not be contrary to a condition on the original approval.
5. The approved footprint/siting of the building will not be moved materially and will not have a material impact on a neighbour.
6. The height of the building or extension would not be increased.
7. The amendment would not result in any potential overlooking of any neighbouring property.
8. The amendments must not result in a fundamental change in the design of the building.
9. The proposal does not amount to new works or elements not considered by any Environmental Statement submitted with the application.

The criteria set out above is designed to prevent amendments being accepted that would have a detrimental impact upon neighbours or amenity in the wider public interest.

The proposal is for a non-material amendment to the previously approved development, which seeks only to amend the wording of conditions 7 and 0. this amendment seeks to alter the 'trigger point' of the condition, which currently requires the approval of details for surface water scheme and in respect of contamination, prior to any works commencing on site. The submission seeks to alter this to allow for the approved demolition to take place prior to the approval of details controlled by conditions 7 and 10.

The initial wording of each condition commences as follows:

- Condition 7: "No development shall take place until a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed before the development is used. The scheme shall:..."

- Condition 10: "The development hereby permitted shall not be commenced until a scheme to deal with any contamination of land or pollution of controlled waters as identified in the Geo-Environmental Appraisal as undertaken by Groundtech Consulting (dated May 2022) has been submitted to and approved in writing by the Local Planning Authority (LPA)...".

The proposed wording for the conditions shall remain unchanged beyond the initial wording which would read as follows as a result of the proposed amendment:

- Condition 7: "No development shall take place, with the exception of the demolition works hereby approved, until a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority...".

- Condition 10: "No development hereby permitted shall be commenced, with the exception of the demolition works hereby approved, until a scheme to deal with any contamination of land or pollution of controlled waters as identified in the Geo-Environmental Appraisal as undertaken by Groundtech Consulting (dated May 2022) has been submitted to and approved in writing by the Local Planning Authority (LPA)...".

It is also noted that the permission has additional pre-commencement conditions that require the submission and approval of details prior to any development commencing. These conditions remain unaltered as a result of this non-material amendment submission, or any subsequent decision.

The revised wording of these two conditions is not considered to result in a fundamental change to the initially permitted development. The amendments are considered to be modest in nature and the context of the overall scheme, and whilst the amendments would alter the conditions previously attached, this would not result in development that would be contrary to a condition on the original approval; therefore would not result in a conflict with any of the criteria outlined above.

The proposal satisfactorily complies with the criteria of the South Holland District Council's "Development Control Procedure Note: Non-Material Amendments to Planning Permissions", and as such is acceptable as a Non-Material Amendment.

## Conclusion

It is considered that these details are acceptable and can be considered as a non-material amendment to the scheme; with the amended conditions being attached.

## 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.