

DECISION DELEGATED TO HEAD OF PLANNING**DECISION DELEGATED TO HEAD OF PLANNING**

Application No: H11-0289-25 **Applicant:** Seagate Homes

Proposal: Residential development comprising 48 dwellings approved under H11-0842-23 (allowed on Appeal). Modification of Condition 2 to allow amendments to previously approved plans and Conditions 17 and 18 relating to finished floor levels

Location: Land Off Lime Walk Long Sutton Spalding

Terminal Date: 15th August 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

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 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
ENVIRONMENT AGENCY	0	0	0	1
HIGHWAYS & SUDS SUPPORT	0	0	0	1
RESIDENTS	1	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This is an application made under S73 of the Town & Country Planning Act 1990. Planning permission under H11-0842-23 was achieved for a *Residential development comprising 48 dwellings*. This application seeks the following:

Modification of Condition 2 to allow amendments to previously approved plans and Conditions 17 and 18 relating to finished floor levels

Modification of Condition 2

The applicant is proposing to substitute all house types on the layout apart from S409V2 house type.

New House types include

House Type S213 V3 - Two bedroom semi-detached, 2 storey dwelling
House Type S213 V3 Rev A (Terrace) - 2 Bedroom, 2 Storey detached property
House Type S153 V2 (3Terrace) - 1 Bedroom, 2 storey property
House Type - S301 V5 - Detached, 3 bedroom, 2 storey
House Type - S303V4 - - Semi, 3 Bedroom, 2 Storey
House Type - S305 V3 - Detached 3 Bedroom Property, 2 storey
House Type - S306 V3 - Gable fronted detached, 3 bedroom property
House Type - (Boarding) - S308V3-01 - Hip Style Barn profile, detached 3 bedroom, 2 storey.
House Type - S312 V2 - Detached 3 bedroom, 2 storey
House Type S318V2, S318V2 & S319V2 - Rev A Two Storey Link Dwellings, 3 Bedroom.
House Type S318V2, S319V2 OPP - Two Storey Link Dwellings, 3 Bedroom.
House Type S318V2 & S319V2 - Detached, 4-bedroom, 2-storey property.
House Type S409 V2 - Detached, 4-bedroom, 2-storey property.
House Type - S430 V3 - Semi Detached, 2-storey, 4 bedrooms.

Site Layout & Landscaping

The applicant has also provided updated details of the site layout and Landscaping. The plot substitutions do not located or reorientate any plots but simply reflect the new house type, including chimney and roof changes. There are minor changes to the landscaping.

Conditions 17 and 18 relating to finished floor levels

The applicant has also requested that the FFL levels stated within the conditions 17 & 18 are changes to 3.4m AOD from 3.45m AOD.

Site Description

The application site relates to a housing allocation Los008 (which abuts Los026) the allocation site area is 1.72ha approximately (though this includes an existing dwelling and its curtilage) and the allocation sets a capacity for 34 number dwellings.

Number 36 Lime Walk is located immediately to the west. Phase 1 (70 dwellings) is located to the south west on the opposite side of a LCC footpath and estate (Anfield Road/Magpie Close) A play area is located to the south east and thereafter residential properties off St John Swains Way.

The application site abuts the open countryside along its northern boundary and recreational open

space to its east. To the south the settlement is located and Lime Walk runs along the west.

History

H11-0842-23 - Residential development comprising 48 dwellings - re-submission of H11-0994-22. Allowed at Appeal

H11-0418-25 - Details of Construction Method Statement (Condition 3 of H11-0842-23). Approved 25-06-25

Consultation Responses

Highways & Sud Support

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.

Comments - Residential development comprising 48 dwellings approved under H11-0842-23 (allowed on Appeal). Modification of Condition 2 to allow amendments to previously approved plans. The proposal is for minor amendments to 2 that already has approval under 0842-23. The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk.

Environment Agency

Last Response - I can confirm that the inclusion of no lower than 3.4mAOD will allow us to remove our objection.

First Response - *The submitted Amendment Form dated 30 May 2025 appears to propose to amend the wording of Condition 17 to remove the reference to the finished floor levels being set at 3.45 metres above Ordnance Datum.*

Representations

This application has been publicised in accordance with the Development Management Procedure Order 2015 (as amended). The following objection has been received:

I have a concern with the new proposed buildings, they appear to have sprouted chimney stacks, compared to the old versions. Are these just for display? There should not be any increase in wood burning or gas usage, I would expect all these houses to be fitted with only heat pumps as standard

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 Condition 2, 17 & 18 of H11-0842-23, 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 Conditions 2, 17 & 18 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

This is a S73 application making changes only to the house types across the site and some minor changes to the landscaping. There are also changes to the wording of conditions 17 & 18 proposed, which relate to finished floor levels for flood risk purposes.

The key considerations for this application are therefore:

- Character and Landscape
- Flood Risk
- Previously attached conditions
- Impact upon legal agreement

Character & Landscape

Policy 2 of the SELLP states that design which is inappropriate to the local area, or which fails to maximise opportunities for improving the character and quality of an area, will not be acceptable.

Policy 2 point 1 states that proposals should meet with sustainable development considerations

specifically in relation to 'size, scale, layout, density and impact on the amenity, trees, character and appearance of the area and the relationship to existing development and land uses'.

Policy 3 sets out the 'Design of new development' in part it states that "Design which is inappropriate to the local area, or which fails to maximise opportunities for improving the character and quality of an area, will not be acceptable".

The proposal essentially provides the updated developers catalogue of house types. There are no material changes to scale or location of these dwellings. The changes are mainly to architectural features like chimneys and roofscapes. The materials whilst different are secured through planning condition, which require the submission of details in any event.

The changes to the landscaping are minimal and this includes edge planting and some planting on internal roads. The landscaping however is also secured through planning condition.

On this basis it is considered that the proposal would accord with SELLP Policies 2 and 3.

Flood Risk

SELLP Policy 4 sets out the districts approach to flood risk, it states 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, where:

The application is supported with a site-specific flood risk assessment, covering risk from all sources of flooding including the impacts of climate change

The application site benefits from an extant residential planning permission and so flood risk principle is already established; this submission was accompanied by a site-specific flood risk assessment. The permission which was allowed at appeal was subject to conditions linked to the flood risk assessment as well as the finished floor levels.

Condition 17

This condition states that "The development hereby permitted shall be carried out in accordance with the measures set out in the Flood Risk Assessment forming part of this planning application, unless otherwise agreed in writing by the Local Planning Authority, including/plus the following measures:

- Finished floor levels shall be set at 3.45m AOD;
- Flood resilient construction shall be incorporated within the development up to 300mm above finished floor level.

The mitigation measures shall be fully implemented prior to occupation of each dwelling.

Following discussion with the Environment Agency this condition, can be amended to substitute 3.45m AOD with 3.40m AOD, which is in line with the EA advice given under application H11-0842-23.

Condition 18

This condition states that "Notwithstanding any submitted details finished floor levels shall be set at 3.45m AOD and ground levels shall be at least 150mm below finished floor levels, unless otherwise approved in writing by the Local Planning Authority. The development shall be constructed and retained in accordance with the details so approved."

This presents the same scenario where 3.45m AOD will be replaced by 3.40m AOD, based on the same justification as the change to condition 17.

Previously attached conditions

The only condition discharged is condition 3 (see planning history) and this relates to details of

Construction Method Statement. This condition will become compliance as part of any proposal. All other conditions will be attached.

The exception to this is that condition 2 will include the house types and amend layout and landscaping plans submitted as part of this application. Conditions 17 & 18 will be reworded to include reference to FFLS of 3.4m AOD (rather than 3.35m AOD).

Impact upon Legal Agreement

Paragraph 26 of the appeal statement considered the submitted unilateral undertaking and confirmed that this scheme was subject to contributions (as well as affordable). The terms of this UU will remain unaltered by this application.

The UU also contains under section 15, terms that would link any future S73 application to the terms set out. Therefore, it is considered that the changes made by this application, are not such that would require a deed of variation or a new UU to be submitted.

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 application represents changes to the house types previously approved as well the wording of conditions 17 & 18. The proposal is considered acceptable and meets with the terms of what is achievable under S73.

In this instance there are no material considerations that would weigh against this proposal so as to result in a reason for refusal.

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 of the South East Lincolnshire Local Plan (2019), along with the identified sections contained within the National Planning Policy Framework (December 2024).