DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H13-0378-24**	**Applicant:**	**Miss L Jordan**
Proposal:	Erection of 2m high fence including expansion of residential curtilage - Retrospective		
Location:	25 Lowther Avenue Moulton Spalding		
Terminal Date:	26th June 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
28	The Natural Environment
31	Climate Change and Renewable and Low Carbon Energy

National Guidance

National Planning Policy Framework 2023

Section 8 - Promoting healthy and safe communities
Section 12 - Achieving well designed and beautiful 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	0	0	0	1

CASE OFFICER ASSESSMENT

Description of Proposal

The proposal seeks full planning permission for the erection of a two-metre-high close boarded wooden fence and extension to the residential curtilage of 25 Lowther Avenue. This is a retrospective application, with the works being completed in late January 2023.

Site Description

The site is within the settlement boundaries of Moulton, as outlined within the South-East Lincolnshire Local Plan, 2019. The site is located to the far west of the settlement, approximately 200 metres west of the John Harrox school. Lowther Avenue is part of a new build estate, characterised by a mixture of dwelling types. Each property has a well-defined boundary.

25 Lowther Avenue is typical of the area, being a two-storey red brick dwelling. A driveway is located to the north, to the front of the fencing.

Relevant History

H13-0746-14 - Full. Residential development of 39 dwellings. Withdrawn.

H13-0013-15 - Full. Residential development of 39 dwellings - resubmission of H13-0746-14. Approved 30/11/16.

H13-0558-17 - Section 73A Continuation. Residential development of 39 dwellings - re-submission of H13-0746-14 - approved under H13-0013-15. Modification to Condition 2 to allow amendments to previously approved plans. Approved 26/07/17.

H13-0512-17 - Condition Compliance. Details of Conditions 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17 and 18 of H13-0558-17. Approved 26/07/17.

H13-0372-18 - Section 73A Continuation. Residential development of 39 dwellings - approved under H13-0558-17. Modification of Condition 2 to allow amendments to previously approved plans. Approved 12/11/18.

H13-0309-23 - Full. Erection of boundary fence - retrospective. Withdrawn 27/03/24.

Consultation Responses

The responses received from consultees during the initial consultation exercises, which can be viewed in their entirety through the South Holland website, can be summarised as follows:

South Holland Internal Drainage Board

Whilst the site falls below our threshold for commenting, I'd like to ensure the applicant is aware of the riparian watercourse adjacent to the site and the associated riparian responsibilities. Guidance on owning a watercourse is available on the Government website https://www.gov.uk/guidance/owning-a-watercourse.
Please note that consent would be required from the Board for any alterations or discharges to a watercourse, more information can be found on our website - https://www.wlma.org.uk/ .

Highway and Lead Local Flood Authority

Requests proof of ownership

Public Representations

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

Key Planning Considerations

Evaluation

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019 (SELLP), is the development plan for the district, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework, December 2023 (NPPF) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

Principle of Development

Policy 1 of the SELLP sets out the settlement hierarchy in respect of delivering sustainable development, which 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 need, whilst making more sustainable use of land, and to minimise the loss of high-quality agricultural plots by developing in sustainable locations and at appropriate densities.

Policy 1 expresses this sustainable hierarchy 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 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.

The site is within the settlement of Moulton which is classed as a minor service centre within Policy 1. As such development will be permitted that supports Moulton's role as a service centre, helps sustain existing facilities or helps meet the service needs of other local communities.

As the site is within the defined settlement of Moulton, development within this location is considered appropriate. The submission states that the application site, comprising the land that is to be extended into, is owned by the applicant and was previously open communal space. That being said, the land was not designated within the previous applications for the development as public or green space and is of little strategic importance.

Annex 2 of the NPPF gives the following definition of open space "All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for
sport and recreation and can act as a visual amenity". Paragraph 103 of the NPPF states that "Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless: a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements".

It is considered that the land is of no significant public value. The scale of the site means that it offers no functional use for sports or recreation. There would be no wider public benefits (e.g., benefits to nature, addressing the impacts of climate change etc) from maintaining this land under its previous use.

Therefore, the proposal is considered to be in accordance with Policy 1 of the SELLP and Section 8 of the NPPF. The principle of development on this site is considered acceptable subject to other material considerations being met.

Layout, Design, Scale and Consideration of the Character of the Area

Section 12 of the NPPF, "Achieving well-designed and beautiful places", states 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 NPPF, states that new development should function well and add to the overall quality of the area (including beyond the short term) and should be visually attractive as a result of good architecture 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. Developments 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, among other considerations.

Likewise, Policy 2 of the SELLP outlines sustainable development considerations for proposals; providing a framework for an operational policy to be used in assessing the sustainable development attributes of all development proposals. Furthermore, Policy 3 of the SELLP 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 NPPF 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 extension to the residential curtilage would not significantly impact upon the character of the area. The site, while communal space, is not used as such and offers little strategic importance to the function of the area. The extension would not significantly reduce the open plan nature of the site, with views into the neighbouring fields still readily available from the roadside. As such, it is not considered that the proposal would be significantly out of character or detract from the setting of the area.

While not all of the same height as the fencing here, each property does have a clearly defined boundary demarcated by fencing. The vast majority of rear gardens, even on visible corner plots, have a two-metre-high fence. This would help to naturalise the fencing, ensuring it does not appear anomalous.

As the application is retrospective, it was noted on the officer's site visit that the fencing here does not appear incongruous in its setting. The existing fencing has naturalised the proposal and it appears as an extension to the rear boundary fencing as opposed to a new or standalone item. The materials and construction are typical, further ensuring it appears well blended.

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 SELLP and Section 12 of the NPPF.

Impacts Upon Resident Amenity

Paragraph 135 of the NPPF states that development should create places that are safe, inclusive, and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

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

The proposal would have no severe or unacceptable impact upon residential amenity. The fencing is located approximately 12 metres from the nearest dwelling and at this distance no overshadowing would occur. By virtue of its nature, the proposal would not increase overlooking,

As detailed above, the scale and design of the proposal is considered to have 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 Section 12 of the NPPF and Policies 2 and 3 of the Local Plan in terms of impact upon residential amenity.

Environmental Sustainability

In respect of the climate emergency, Section 14 of the NPPF states that new development should be planned for in ways that: 'avoid increased vulnerability to the range of impacts arising from climate change' with care taken to manage and adapt where development is brought forward in areas which are vulnerable; and that 'can help to reduce greenhouse gas emissions, such as through its location, orientation and design'.

Section 15 of the NPPF promotes the conservation and enhancement of the natural environment. Paragraphs 180 and 185 ensure sites of biodiversity value are protected through the planning system; while Paragraph 186 states that "if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused".

In line with both aforementioned sections of the NPPF, Policies 28 and 31 of the SELLP ensure the preservation and enhancement of the natural environment and that suitable mitigation and adaptation to the climate crisis is in place.

Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) requires the vast majority of proposal to achieve a biodiversity net gain of 10%. Exemptions to this rule are listed within The Biodiversity Gain Requirements (Exemptions) Regulations 2024 and expanded upon in the relevant section of the Planning Practice Guidance.

While the proposal would impact more than 25sqm of land, it is considered that the proposal be exempt from the above requirement for 10% net gain. Biodiversity net gain does not apply to retrospective applications made under Section 73A of the Town and Country Planning Act 1990. Section 73A states the following:

"(1)On an application made to a local planning authority, the planning permission which may be granted includes planning permission for development carried out before the date of the application.
(2)Subsection (1) applies to development carried out
(a)without planning permission;"

The proposal appears to conform to this requirement and as such, is considered exempt in respect of the statutory requirements. Regardless, the biodiversity impacts of this development are discussed below.

The proposal would not have an unacceptable impact upon biodiversity within the area. The minor scale of the proposal means that the relative impact upon the local environment is negligible. The alteration from unvegetated garden, used purely for mown grass, to vegetated garden would have a small but significant biodiversity benefit.

Taking the above into account it is considered that given the details submitted, and those required by suitably worded condition, the proposal is acceptable with regards to environmental sustainability. The proposal would therefore be in accordance with Policies 28 and 31 of the SELLP and Sections 14 and 15 of the NPPF.

Other Matters

Lincolnshire County Council Highway Authority requested proof of ownership for the land. The applicant has submitted Certificate A with their application. In addition to this, further clarification was sought by the LPA following receipt of these comments and confirmation of the applicants ownership has been gained. As the Council does not currently have access to any evidence to the contrary, it is considered appropriate to assume this is correct.

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 proposal represents appropriate development within the defined settlement boundary. The development hereby proposed does not materially harm the character or appearance of the locality, or amenity of nearby residents, whilst conforming with the SELLP and the provisions of the NPPF when viewed as a whole.

Conclusion

Taking these factors into consideration, the proposal is considered to comply with Policies 1, 2, 3, 28 and 31 of the SELLP, as well as Sections 12, 14 and 15 of the NPPF. There are no significant factors in this case that would outweigh the benefits of the proposal; therefore, the planning balance is in favour of the proposal.

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

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.