DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H13-0412-25**	**Applicant:**	**Mr J Howling**
Proposal:	Proposed Extensions & Alterations - approved under H13-0773-24. Modification of Condition 2 to allow amendments to previously approved plans		
Location:	49 Ashby Gardens Moulton Spalding		
Terminal Date:	27th June 2025		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework December 2024

Section 9 - Promoting sustainable transport
Section 12 - Achieving well designed places

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

CASE OFFICER ASSESSMENT

Proposal

This is a Section 73 application seeking permission to modify Condition 2 of H13-0773-24 to allow for a change to the materials of the dwelling.

The variations proposed comprise a change to the walls and roof tiles. The original proposal permitted brickwork to match the existing dwelling whilst all windows and doors were also to match The variation in this instance seeks to change this to a cream K Render or equivalent on the ground floor and oak NeoTimber Dulux cladding on the first floor, the windows and doors would be changed to anthracite throughout.

Site Description

The site is located within the defined settlement boundary of Moulton as outlined in the South East Lincolnshire Local Plan, 2019 (SELLP). The dwelling is down a cul-de-sac of Ashby Gardens and comprises a two-storey dwelling, constructed from brickwork with a tiled roof and white uPVC windows.

To the rear of the site there is a large farming field located outside the settlement.

History

H13-0478-08 - Proposed conservatory to rear of dwelling - Approved

H13-0773-24 - Proposed Extensions & Alterations- Approved

Consultation Responses

Lincolnshire County Council Highways Authority

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:

The proposal is for minor amendments to 2 that already has approval under H13-0773-24. The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk.

Planning Considerations

Evaluation - Section 73

The proposal relates to the variation of Condition 2 and 14 of H23-0070-23, 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 2 being amended.

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 this instance, the subsequent amendments, submitted under this Section 73 application, have not varied the description of development. Likewise, the red outline provided with the ordnance survey site location plan has not been altered and matches that of the initial submission.

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".

Taking all of the above into account, the Local Planning Authority are content that the proposed amendments can be considered under a variation application, via a Section 73 application.

Principle of Development and Sustainability

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, 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 above.

The policies and provisions set out in the National Planning Policy Framework (updated December 2024) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

This application seeks to modify condition 2 (approved plans) of the previous approval. This variation seeks amendments to choice of materials throughout, in the form of an rendering and cladding .

In light of the above, 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. As outlined within the report above, the principle of development has been established, with the development having commenced and therefore, remaining extant. When viewed as a whole, coupled with the proposal comprising a section 73 application to vary the approved plans, the proposal is acceptable in principle.

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 proposal in this instance only seeks to modify the previously approved plans through a change in materials. Initially, the walls were to be brickwork to match, roof to be tiles to match and windows and doors would all match as well; as they were all in keeping this meant the design would be in character with the area. Despite this, the proposal seeks somewhat significant changes to the design through the implementation of cream K rend on the ground floor and oak neo timber dulux cladding on the first floor for the walls whilst proposing anthracite on all windows and doors. The roof tiles would remain as matching the existing. Whilst the windows and doors could be changed without necessarily needing permission and as such would cause no material harm to the area, the change to the walls throughout would cause serious harm. Upon the officers visit to the site it was clear that the immediate area was all made from brickwork of various colours, there was no identified incorporation of rendering or cladding and as such if this was approved it would appear at odds and incongruous and would set a harmful and unacceptable precedent for the surrounding area. This is a direct conflict with the SELLPs design policies and relevant sections of the NPPF.

Taking account of the design of the development, as detailed above, the proposal is considered to be unacceptable. The proposal, through the use of contrasting and conflicting materials, would cause an adverse impact to the character and appearance of the area and would therefore conflict 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.

As the proposal is purely a change in materials used there would be no material harm to the amenity of the residents in the area. No new first floor windows are proposed nor is there any extension proposed which could overshadow or appear overbearing in this instance.

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).

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 inappropriate development inside the defined settlement boundary.

The development hereby proposed would materially harm the character and appearance of the locality through the use of materials which contrast and conflict with the extant built form and would therefore appear incongruous and set a harmful precedent. Whilst it would not harm the amenity of the nearby residents or the highway, it would not conform with the South East Lincolnshire Local Plan (2019) or the provisions of the National Planning Policy Framework (December 2024) when viewed as a whole.

In this instance, this is a material consideration that weighs against the proposal and as such, the planning balance is not in favour of the development.

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 direct conflict with Policies 2 and 3 of the South East Lincolnshire Local Plan (2019), along with the identified sections contained within the National Planning Policy Framework (NPPF) (December 2024). This is at direct conflict and is therefore a significant factor that weights against the proposal and outweighs the consideration against the favour of the proposal and the policies referred to above.

Recommendation

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