

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H14-0077-26 **Applicant:** Remway Design

Proposal: Extensions and Alterations - Approved under H14-0931-19. Modification of Condition 2 to allow amendments to previously approved plans

Location: 3 Penway Drive Pinchbeck Spalding

Terminal Date: 25th March 2026

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
33	Delivering a More Sustainable Transport Network
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	1	0
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
WELLAND AND DEEPINGS INTERNAL DRAINAGE BOARD	0	0	0	1

CASE OFFICER ASSESSMENT

Description of Proposal

This application is made under Section 73 of the Town and Country Planning Act, 1990, seeking to amend Condition 2 of H14-0931-19, which related to approved plans.

A new two-storey rear extension is proposed. This would measure approximately 6.6m (depth) by 4.16m (width). It would measure 5m to the eaves, rising to 6.35m at the apex of the dual pitched roof.

A series of alterations to windows are also proposed. This includes two west facing first floor windows, a west facing ground floor window and door and alterations to the proposed windows on the principal elevation. A proposed integral garage, which included a garage door, would be replaced by a home office.

Site Description

The site is within the settlement boundaries of Pinchbeck, as outlined within the South East Lincolnshire Local Plan, 2019. The site is within the residential south-east corner of Pinchbeck. The surrounding area is characterised by dwellings of a similar age and varying design.

Relevant History

H14-0931-19 - Full - Extensions and Alterations - Approved 07/11/19.

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:

Highway and Lead Local Flood Authority

"The proposal is for minor amendments to Condition 2 that already has approval under H14- 0931-19 (LCC were not consulted on this application). The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk."

South Holland Internal Drainage Board

Further to receipt of the above, I confirm that Welland & Deepings IDB have no comment to make with regard to this application.

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

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Evaluation - S73

The proposal seeks to vary Condition 2 of H14-0931-19, 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 amended, together with any other relevant conditions from the original permission, or subsequent relevant revisions since this permission.

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".

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 S73 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 effect of the change will be significant". *Armstrong v SSLUHC & Cornwall Council* (2023) affirmed the position that a Section 73 does not necessarily relate to a minor amendment, with the judge noting that Section 73 of the TCPA was never explicit in limiting the scope of an amendment.

Paragraph 13 of the relevant section of the PPG states "In contrast to section 96A, an application made under section 73 of the Town and Country Planning Act 1990 can be used to make a material amendment by varying or removing conditions associated with a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission."

Paragraph 14 of the PPG states "Planning permission cannot be granted under section 73 to extend the time limit within which a development must be started or an application for approval of reserved matters must be made. Section 73 cannot be used to change the description of the development."

Paragraph 001 of the PPG states, with regards to alterations to an application which has been approved: "Where these modifications are fundamental or substantial, a new planning application under section 70 of the Town and Country Planning Act 1990 will need to be submitted".

Whilst the proposal would not necessarily alter the description of development for the original proposal, which itself was very broad, it would fundamentally alter the scope of the permission. The original approval was for a modest rear and side extension. The proposal adds an entirely new, large rear extension, which bears no relationship to the existing scheme on the site. The considerations arising from the proposal are entirely new considerations, the consideration of a large rear two-storey extension was not within the scope of the original application. The proposed 'variations' comprise a new extension.

On this basis, whilst the above sections of the PPG and the relevant rulings have been considered, it is judged, on balance, that the introduction of an entirely new element would represent an alteration outside of the scope of the original permission, thereby exceeding what would be reasonably possible via a S73. As such, it is the LPA's position that the proposal cannot procedurally be conducted under this route.

Evaluation - Commencement of Development

As outlined previously, S73 cannot be used to extend the time limit within which a development must be started. Therefore, only a development which has lawfully commenced would be eligible to be altered under a S73 application.

The existing extension on site has not been conducted in accordance with the approved plans. H14-0931-19 showed an extension running the length of the building. This has not been implemented, with the extension only running partially along the rear elevation. There is an external wall at the end of this section of extension. As a result, the development is not consistent with the plans approved under H14-0931-19. As a result, it is not abundantly clear if H14-0931-19 has been implemented within the time frame.

Therefore, it has not been demonstrated that H14-0931-19 has been implemented. As S73 cannot extend the timeframe for development, it is considered that H14-0931-19 is not capable of being modified. The proposal would therefore exceed the limitations of S73.

Evaluation - Key Considerations

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, 2024 (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 Pinchbeck which is classed as a main service centre within Policy 1. As such development will be permitted that supports Pinchbeck's role as a service centre, helps sustain existing facilities or helps meet the service needs of other local communities.

The principle of development was established under H14-0931-19 and so does not need to be revisited here. In any event, the proposal solely relates to the extension of an existing and established residential dwelling and therefore, the principle of such development is considered to be appropriate.

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

Section 12 of the NPPF, "Achieving well-designed 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 proposed alterations to the fenestration on the principal elevation are considered acceptable, making only a minor alteration to the appearance of the dwelling.

Taken in isolation of the surrounding area, the extension is reasonably well integrated into the host. The lowering of the ridge height in the proposed rear element would help to create visual subservience, making it appear as a subservient addition.

The proposed changes to the rear are substantial, in comparison to the original permission H14-0931-19. That being said, as the change is to the rear, from a visual perspective, the perceived mass would not be overly substantial.

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 proposed additional west facing first floor windows connect onto bathrooms. Therefore, whilst these features would ordinarily represent a potential overlooking concern, it would not be unreasonable to request that these windows are obscure glazed, thereby preventing an adverse impact.

The windows within the extension would not create an overlooking impact, as sufficient distance to neighbouring dwellings has been maintained to prevent an overly substantial impact.

That being said, the amendment would have a significant adverse overshadowing effect. The distance to the neighbouring plot is approximately 1.44m, with a distance to the nearest elevation being approximately 3m. At this distance, the proposal would significantly restrict light entering the large rear facing windows of 5 Penway Drive. These windows are north-east facing, and so would be anticipated to receive a good level of light and would not be subject to the usual allowances for windows facing true north conferred under the BRE guidelines. It has not been evidenced by the applicant that the proposal would not cut significantly reduce residential amenity.

As detailed above, the scale and design of the proposal is considered to have a significant and unacceptable impact on the residential amenities of the occupiers of adjacent properties. As such, the proposal is considered contrary to Section 12 of the NPPF and Policies 2 and 3 of the Local Plan in terms of impact upon residential amenity.

Highway Safety and Parking

Section 9 of the NPPF is titled 'Promoting sustainable transport'. Within this, Paragraph 116 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. Policy 33 further reinforces the need for developments to be accessible via sustainable modes of transport.

Policy 36 of the SELLP, in conjunction with Appendix 6, sets out minimum vehicle parking standards and requires at least two spaces for dwellings of up to three bedrooms and three spaces for dwellings with four or more bedrooms. Adequate on site parking has been maintained.

The changes to the rear of the property would not exacerbate parking or highway safety concerns.

The proposal would therefore be acceptable and would not have an unacceptable adverse impact on highway safety in accordance with Policies 2, 3, 33 and 36 of the SELLP, as well as Section 9 of the NPPF.

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 a significant change to an extant permission, introducing a fundamental change, which goes beyond the scope of the original permission.

However, the significant scale of the change would result in an unacceptable overshadowing impact upon the dwelling to the west. It is considered that the extent of the shadow cast would result in a level of harm contrary to Policies 2 and 3 of the SELLP and Section 12 of the NPPF.

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 these factors into consideration, the proposal is considered to contrary to Policies 2 and 3 of the SELLP and Section 12 of the NPPF. The planning balance is against the proposal.

Recommendation

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