DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H14-0707-25**	**Applicant:**	**Industro Tech Ltd**
Proposal:	Proposed office and associated amenities, workshop and cycle shelter - approved under H14-0951-23. Modification of Condition 2 to allow amendments to previously approved plans		
Location:	5 Cresswell Close Pinchbeck Spalding		
Terminal Date:	22nd September 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
28	The Natural Environment
30	Pollution
APPENDIX 6	Parking Standards

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 9 - Promoting sustainable transport
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
HIGHWAYS & SUDS SUPPORT	0	0	0	1
WELLAND AND DEEPINGS INTERNAL DRAINAGE BOARD	0	0	0	1

SHDC INTERNAL	0	0	1	0

CASE OFFICER ASSESSMENT

Proposal

This is an application made under Section 73 of the Town & Country Planning Act 1990 as amended. The applicant seeks to vary condition 2 'Approved Plans' associated with planning application H14-0951-23.

Planning permission has been granted (under H14-0951-23) for:

- Proposed office and associated amenities, workshop and cycle shelter.
The office block which was described as 'building C' was a two-storey building with meeting rooms, canteen and a high number of offices contained at 1st floor.

Proposed Changes

-Removal of 'IPAF' training from building 'B' and replace with store.
- Proposed building B 'delete' office use and raise eaves height to match proposed building B, split building into 3 units and rent.
- Reduce Car Parking Spaces.

Site Description

The application site is currently an industrial warehouse, and it is bound on all sides by industrial/commercial land, with a Morrisons store to the north, GF Automotive Services to the east and Hilton's Distributions to the west. An existing Industro Tech facility borders the Application Site to the south at 6 Cresswell Close.

Cresswell Close is a cul-de-sac which serves a number of industrial units. Cresswell Close is connected to Benner Road via a simple priority junction, with a footway on the south side of the carriageway.

There are no parking restrictions within Cresswell Close. The application site is located within a Main Employment Area, allocated by the plan and within flood zone 3 in accordance with EA mapping systems.

Planning permission was achieved for a proposed office building.

History

H14-0951-23 - Proposed office and associated amenities, workshop and cycle shelter. Approved 20-12-23
H14-0826-15 - Proposed extension. Approved 26-10-15

Consultation Responses

IDB

Further to receipt of the above, I confirm that Welland & Deepings IDB have no comment to make.
Highways & SuDs Support

No objection - The proposal is for minor amendments to office and associated amenities, workshop and cycle shelter - approved under H14-0951-23. Modification of Condition 2 to allow amendments to previously approved plans. The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk.

Environmental Protection

No comments regarding land contamination.

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 of H14-0951-23, 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 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

The following issues are relevant to this assessment.
-Scope of S73 -Principle of Development
- Other Matters
- Planning Balance

Scope of Section 73

In terms of restrictions for which a S73 application can be used for, Planning Practice Guidance 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: 014 Reference ID: 17a-014- 20140306).

The applicant is seeking to modify condition 2 of H23-0343-87. This includes changing both building operations, as well as a change in its use. The term of the permission are: *Proposed office and associated amenities, workshop and cycle shelter*. The applicant seeks to remove the office use element within the permission, as well as increasing the height of previously approved building 'B'.

The use change element (given nature of the permission granted), goes beyond what can be achieved under this application type. This would result in giving a new permission (one that is substantially different by removing the proposed office use).

Planning Practice Guidance is clear on this matter, in that Section 73 cannot be used to change the description of the development (Paragraph: 014 Reference ID: 17a-014- 20140306). The removal of the office use therefore, if approved under this amendment would result in giving a materially different planning permission.

The terms of the permission are explicit, that the permission in itself is more restrictive than the condition applied (condition 2) in that the development is for a 'Proposed Office'. Therefore, in effect the applicant is seeking to change the description of the development by amending/removing the approved plans condition, something which cannot be achieved through the S73 process.

On this basis, the permission sought by the applicant cannot be achieved and would require the submission of a full planning application.

Other Matters

Highways, Environmental Protection and the IDB have been consulted none of which have any objections. The scheme may well be acceptable in these terms but would need to be submitted as a new full planning application.

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 applicant however has, through this submission, attempted to alter the terms of the permission given, namely its use. Whilst the proposal may be acceptable in broader planning terms, given its location within the employment zone, this amendment cannot be considered (or achieved) under a section 73 application.

This is due to the original terms of the permission being for a 'Proposed Office and associated amenities, workshop and cycle shelter'. Removing the office, would not be in line with this permission, a new full planning application must be submit.

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

The proposed amendment, which seeks to change the terms of the original permission cannot be achieved through a Section 73 application. The proposal is therefore refused.