

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Lead Development Management Planner (Interim) - BBC & SHDC

To: Planning Committee - 02 April 2025

(Author: Catherine Sutton - Planning Officer)

Purpose: To consider Planning Application H16-0114-25

Application Number: H16-0114-25

Date Received: 03 February 2025

Application Type: SEC 73 MODIFICATION

Description: Construction and operation of a micro energy storage facility - approved under H16-0586-24. Modification of Conditions 2 & 3 to allow amendments to previously approved plans

Location: Parkside Crescent Spalding Lincolnshire

Applicant: AMP Clean Energy

Agent: AMP Clean Energy

Ward: Spalding Wygate

Ward Councillors: Cllr J B Whitbourn
Cllr A J Spencer

You can view this application on the Council's web site at

<http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H16-0114-25>

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 The land is South Holland District Council owned.

2.0 PROPOSAL

2.1 This application is a Section 73 application seeking to vary Condition 2 and 3 of planning approval H16-0586-24 to allow amendments to previously approved plans.

2.2 Application H16-0586-24 granted planning permission for the installation and operation of a micro energy storage facility on land at Parkside Crescent, Spalding.

3.0 SITE DESCRIPTION

3.1 The site is within a residential area with properties to the north, east, south and west along Parkside Crescent. Immediately north and west is an area of public open space. Other street furniture, such as streetlights, were noted in the vicinity.

4.0 RELEVANT PLANNING POLICIES

4.1 The Development Plan

South East Lincolnshire Local Plan, March 2019

- 4.2 If regard is to be had to the development plan for the purpose of any determination to be made under 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.
- 4.3 Policy - 1 Spatial Strategy
Policy - 2 Development Management
Policy - 3 Design of New Development
Policy - 4 Approach to Flood Risk
Policy - 5 Meeting Physical Infrastructure and Service Needs
Policy - 30 Pollution
Policy - 31 Climate Change and Renewable and Low Carbon Energy
Policy - 32 Community, Health and Well-being
Policy - 36 Vehicle and Cycle Parking
Appendix 6 - Parking Standards
- 4.4 **National Guidance**
- 4.5 **National Planning Policy Framework (NPPF), December 2024**
- 4.6 Section 2 - Achieving sustainable development
Section 4 - Decision-Making
Section 6 - Building a strong, competitive economy
Section 9 - Promoting sustainable transport
Section 10 - Supporting high quality communications
Section 12 - Achieving well-designed places
Section 14 - Meeting the challenge of climate change, flooding and coastal change
- 4.7 **Planning Practice Guidance (PPG)**
- 5.0 RELEVANT PLANNING HISTORY**
- 5.1 H16-0586-24 - Full - Construction and operation of a micro energy storage facility - Approved 19th September 2024
- 6.0 REPRESENTATIONS**
- 6.1 The responses received from consultees during the initial consultation exercise, which can be viewed in their entirety through the South Holland website, can be summarised as follows:
- 6.2 **LCC Highway and Lead Local Flood Authority**
- 6.3 The proposal is for minor amendments to conditions 2 & 3 that already has approval under 0586-24. The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk.
- 6.4 **Lincolnshire Fire and Rescue**
- 6.5 In order to be successful in firefighting, adequate access to buildings for fire appliances and immediate access to adequate supplies of water, must be provided. The access to, and proximity of, those water supplies directly affects the resources that Fire and Rescue Authorities need to provide in protecting and mitigating their communities from the effects of fire.
- 6.6 **SHDC Environmental Protection**
- 6.7 No comments
- 6.8 **Public Representation**

- 6.9 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.
- 7.0 CONSIDERATIONS**
- 7.1 Evaluation - Section 73**
- 7.2 The proposal relates to the variation of Condition 2 and 3 of H16-0586-24, 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.
- 7.3 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 and 3 amended, together with any other relevant conditions from the original permission, or subsequent relevant revisions since this permission.
- 7.4 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'.
- 7.5 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".
- 7.6 In this instance, the subsequent amendments, submitted under this Section 73 application, have not varied the description of development.
- 7.7 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".
- 7.8 Principle of Development and Sustainability
- 7.9 The principle of the installation and operation of a micro energy storage facility has already been established by virtue of the previous approval (ref. H16-0586-24).
- 7.10 This application is to modify condition 2 (approved plans) and condition 3 (materials) of H16-0586-24.
- 7.11 This variation seeks to change the design and specifications of the Battery Box, as the project now involves a different Original Equipment Manufacturer (OEM). While the OEM has changed, the capacity of the units and the overall operational functionality of the system remain entirely unchanged. The system will continue to function as originally intended, importing electricity during periods of low demand or high renewable energy availability and exporting it during peak demand.

- 7.12 The differences with the design are as follows:
- 7.13 -Approved footprint (sqm) 24.00m²
-Proposed new footprint (sqm) 24.26m²
- 7.14 -Approved Battery Unit Height - 2.78m
-Proposed new Battery Unit Height - 2.41m
- 7.15 -Approved Battery Units/PCS/Electrical Cabinet - 2 Battery units, 1 PCS, 1 Electrical Cabinet
-Proposed Battery Units/PCS/Electrical Cabinet - 4 Battery Units (PCS Included), 1 Electrical Cabinet
- 7.16 Layout, Design and Consideration of the Character and Appearance of the Area
- 7.17 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.
- 7.18 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.
- 7.19 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.
- 7.20 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.
- 7.21 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.
- 7.22 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.
- 7.23 This variation seeks to change the design and specifications of the Battery Box. While the OEM has changed, the capacity of the units and the overall operational functionality of the system remain entirely unchanged.
- 7.24 The differences with the design are as follows:
- 7.25 -Approved footprint (sqm) 24.00m²
-Proposed new footprint (sqm) 24.26m²

- 7.26 -Approved Battery Unit Height - 2.78m
-Proposed new Battery Unit Height - 2.41m
- 7.27 -Approved Battery Units/PCS/Electrical Cabinet - 2 Battery units, 1 PCS, 1 Electrical Cabinet
-Proposed Battery Units/PCS/Electrical Cabinet - 4 Battery Units (PCS Included), 1 Electrical Cabinet
- 7.28 As shown above, the amendments of the design of the equipment are minimal and are considered to be acceptable. The alterations listed above are considered to be modest in nature and do not alter the context of the overall scheme.
- 7.29 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 South East Lincolnshire Local Plan and Section 12 of the National Planning Policy Framework (December 2024).
- 7.30 Impact on Residential Amenity/Land Users
- 7.31 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.
- 7.32 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.
- 7.33 The amendments to the proposal are considered minimal, and as such, the proposed amendments would not adversely impact upon the residential amenities of neighbouring occupiers.
- 7.34 The site is surrounded by residential dwellings. The nearest neighbouring dwelling is located to the east approximately 4m away (27 Parkside Crescent). Notwithstanding this proximity, the development would be of a minor nature. This proposal is unlikely to have an impact on pollution, living conditions and the natural environment when viewed in respect of the proposed built form. Further to the above, the proposal is not considered to result in any undue overshadowing, overbearing impact or loss of privacy to surrounding occupiers.
- 7.35 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).
- 7.36 Highway Safety and Parking
- 7.37 Section 9 of the National Planning Policy Framework (December 2024) specifically relates to 'Promoting sustainable transport'. Paragraph 116 of the National Planning Policy Framework (December 2024) 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".
- 7.38 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.

- 7.39 The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk. The Local Highway Authority have been consulted and raised no objections to the amendments of the previously approved scheme.
- 7.40 The proposal would therefore be acceptable and would not have an unacceptable adverse impact on highway safety in accordance with Policies 2, 3 and 36 of the South East Lincolnshire Local Plan (2019), and Section 9 of the National Planning Policy Framework (December 2024).
- 7.41 Flooding Considerations
- 7.42 Section 14 of the National Planning Policy Framework (December 2024) explains that "Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere".
- 7.43 This goes on to state, within Paragraph 172, that all plans "should apply a sequential, risk-based approach to the location of development - taking into account all sources of flood risk and the current and future impacts of climate change - so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by: a) applying the sequential test and then, if necessary, the exception test as set out below".
- 7.44 Paragraph 173 of the National Planning Policy Framework (December 2024) goes on to state that "A sequential risk-based approach should also be taken to individual applications in areas known to be at risk now or in future from any form of flooding", by following the steps set out within Section 14 of the National Planning Policy Framework (December 2024).
- 7.45 Paragraph 174 goes on to state that, "Within this context the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding", with the strategic flood risk assessment being the tool to demonstrate this.
- 7.46 Paragraph 175 details that "The sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk)".
- 7.47 If, following the application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in Zones with a lower probability of flooding, the Exceptions Test can be applied if appropriate.

The site lies within Flood Zones 3 of the Environment Agency's Flood Maps. These have been created as a tool to raise awareness of flood risk with the public and partner organisations, such as Local Authorities, Emergency Services and Drainage Authorities. The Maps do not take into account any flood defences.

- 7.48 The South East Lincolnshire Strategic Flood Risk Assessment (SFRA) provides an overview of how flood risk has been considered in shaping the proposals of the Local Plan; including the spatial strategy and the assessment of housing and employment sites. Policy 4 of the South East Lincolnshire Local Plan (2019) is clear in 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" in instances where specific criteria is met.

- 7.49 It is worth noting that large parts of the district of South Holland lie within Flood Zone 3. It is therefore necessary to use the refined flood risk information (Hazard and Depth maps) within the South East Lincolnshire Strategic Flood Risk Assessment (2017) as a basis to apply the sequential test.
- 7.50 This application solely relates to the variation of the design and specifications of the Battery Box. It is therefore considered that the minor amendments proposed will not have an adverse impact to flood risk.
- 7.51 Overall, when considering the development on balance, it is considered that given the mitigation measures detailed and recommended by condition, the proposal accords with Policies 2, 3 and 4 of the South East Lincolnshire Local Plan (2019) and the intentions of the National Planning Policy Framework (December 2024) in this regard.
- 7.52 **Biodiversity Net Gain**
- 7.53 Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) requires developers to deliver a minimum of 10% Biodiversity Net Gain using standardized biodiversity units measured by statutory biodiversity metrics. This is often referred to as the mandatory requirements for Biodiversity Net Gain.
- 7.54 "Under the statutory framework for biodiversity net gain, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met ("the biodiversity gain condition"). This objective is for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat. This increase can be achieved through onsite biodiversity gains, registered offsite biodiversity gains or statutory biodiversity credits".
- The biodiversity gain condition is a pre-commencement condition. This relates to a condition that seeks, once planning permission has been granted, a Biodiversity Gain Plan that must be submitted and approved by the planning authority before commencement of the development, alongside the need to submit a Habitat Management and Monitoring Plan.
- 7.55 The effect of Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission is deemed to have been granted subject to the "biodiversity gain condition". The effect of this "biodiversity gain condition" is that development granted by this notice must not begin unless:
- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
 - (b) the planning authority has approved the plan, or
 - (c) the development is exempt from the biodiversity gain condition.
- 7.56 For applications that are submitted prior to the introduction of this requirement, the development would be exempt from the mandatory 10% requirement and as such, the Biodiversity Gain Condition would not apply. However, this application was submitted following the introduction of this legislation. As such, unless comprising development that is exempt from this mandatory Biodiversity Net Gain (10%), a condition would be required, as mandatorily set.
- 7.57 When taking the above into account, the development in this instance is exempt from the statutory 10% Biodiversity Net Gain requirements.
- 7.58 **Planning Balance**
- 7.59 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.
- 7.60 The proposed modification does not materially harm the character or appearance of the locality, or amenity of nearby residents, whilst conforming with the South East Lincolnshire Local Plan and the provisions of the National Planning Policy Framework (December 2024) when viewed as a whole.

7.61 Taking into consideration these factors, the proposal is considered to comply with Policies 2 and 3 of the South East Lincolnshire Local Plan (SELLP), 2019, plus advice within the National Planning Policy Framework (December 2024). There are no significant issues in this case that would outweigh factors in favour of the proposal; therefore, in considering all the matters raised above the planning balance is in favour of the proposal and the policies referred to above.

7.62 **Additional Considerations**

7.63 Public Sector Equality Duty

7.64 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.

7.65 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.66 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.

7.67 It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

7.68 Human Rights

7.69 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).

7.70 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.

7.71 **Conclusion**

7.72 Taking the above considerations into account, the proposal is considered to be in accordance with Policies 1, 2, 3, 4 and 36 (including Appendix 6) of the South East Lincolnshire Local Plan (SELLP) (2019), along with the identified sections contained within the National Planning Policy Framework (NPPF) (December 2024). There are no significant factors in this case that indicate against the proposal and outweigh the consideration in favour of the proposal and the policies referred to above.

8.0 **RECOMMENDATIONS**

- 8.1 **Based on the assessment detailed above, it is recommended that the proposal should be approved subject to those conditions listed at Section 9.0 of this report.**

9.0 CONDITIONS

1. The development hereby approved must be begun no later than the expiration of three years beginning with the date of the permission granted under reference H16-0586-24 on 19th September 2024.

Reason: As required by Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans and/or documents:

H16-0586-24

Planning Statement by AMP Clean Energy dated July 2024

Flood Risk Assessment dated June 2024

BNG Exemption Statement

H16-0114-25

Plan 1 - Location Plan

Plan 2 Rev A - Site Layout Plan

Plan 4 - Plans & Elevations - Battery Box Battery Equipment

Plan 5 - Plan & Elevations - Electrical Cabinet Equipment

Supporting Statement by AMP Clean Energy dated January 2025

Reason: For the avoidance of doubt and in the interests of proper planning.

3. The materials of the development hereby permitted shall be carried out in accordance with those detailed within the application form and approved plans.

Reason: In the interests of the architectural and visual integrity of the overall development and the visual amenity of the area in which it is set.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

4. Before the commencement of the development hereby permitted beyond oversight, the approval of the Local Planning Authority is required to a scheme of landscaping and tree planting for the site (including screening of bin collection points) indicating, inter alia, the number, species, heights on planting and positions of all the trees, together with details of post-planting maintenance. Such scheme as is approved by the Local Planning Authority shall be carried out and completed in its entirety during the first planting season following practical completion of the development. All trees, shrubs and bushes shall be maintained by the owner or owners of the land on which they are situated for the period of five years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary.

Reason: To ensure that the development is adequately landscaped, in the interests of its visual amenity and that of the area in which it is set, and that Biodiversity Net Gain will be achieved. This Condition is imposed in accordance with Policies 2, 3 and 28 of the South East Lincolnshire Local Plan, 2019 and the Environment Act 2021.

5. Prior to its installation, details of the proposed boundary treatments, including a schedule of fencing levels, heights and materials, and details of the size and species of any hedging, shall be submitted to and approved in writing by the Local Planning Authority, and the details so approved shall be implemented in full before the development is first brought into use and retained thereafter.

Note: Where levels are raised above existing ground levels, the submission shall be supported by cross-sectional drawings showing the relationship with adjoining uses and buildings to enable the Local Planning Authority to be satisfied that sufficient mitigation measures will be in place.

Reason: In the interests of the character and appearance of the development and the amenity of the area in which it is set including the amenity of nearby occupiers.
This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

6. **Biodiversity Net Gain**

The applicant's attention is drawn to the following Biodiversity Net Gain requirement.

The effect of Paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990 is that planning permission is deemed to have been granted subject to the "biodiversity gain condition". The effect of this "biodiversity gain condition" is that development granted by this notice must not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan, or
- (c) the development is exempt from the biodiversity gain condition.

For guidance on the contents, in respect of the details that must be submitted and agreed by the Local Planning Authority, prior to the commencement of the consented development, please see the GOV.uk website and Planning Practice Guidance.

Statutory exemptions and transitional arrangements

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These can be found at Paragraph: 003 Reference ID: 74-003-20240214 of the Planning Practice Guidance, which can be found at <https://www.gov.uk/guidance/biodiversity-net-gain>.

Based on the information available and submitted in support of this application, the Local Planning Authority considers that the development hereby permitted is exempt and therefore will not require the approval of a biodiversity gain plan, prior to the commencement of development; with the development comprising a statutory exemption as listed below: -

The application is subject to the de minimis exemption, due to the proposal not impacting a priority habitat and the development impacts less the 25 square metres of onsite habitat.

As such, the development hereby permitted will not be subject to the biodiversity gain condition.

Irreplaceable habitat

If the onsite habitat includes irreplaceable habitat (within the meaning of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) there are additional requirements for the content and approval of Biodiversity Gain Plans.

For clarity the LPA do not consider that irreplaceable habitats are present at this site.

The Biodiversity Gain Plan must include, in addition to information about steps taken or to be taken to minimise any adverse effect of the development on the habitat, information on arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat.

The planning authority can only approve a Biodiversity Gain Plan if satisfied that the adverse effect of the development on the biodiversity of the irreplaceable habitat is minimised and appropriate arrangements have been made for the purpose of compensating for any impact which do not include the use of biodiversity credits.

Effect of Section 73(2D) of the 1990 Act

Under Section 73(2D) of the Town and Country Planning Act 1990 (as amended) where

- (a) a biodiversity gain plan was approved in relation to the previous planning permission ("the earlier biodiversity gain plan"), and
- (b) the conditions subject to which the planning permission is granted:
 - (i) do not affect the post-development value of the onsite habitat as specified in the earlier biodiversity gain plan, and
 - (ii) in the case of planning permission for a development where all or any part of the onsite habitat is irreplaceable habitat within the meaning of regulations made under paragraph 18 of

Schedule 7A, do not change the effect of the development on the biodiversity of that onsite habitat (including any arrangements made to compensate for any such effect) as specified in the earlier biodiversity gain plan.

- the earlier biodiversity gain plan is regarded as approved for the purposes of paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990 (as amended) in relation to the planning permission.

7. Please contact the Lincolnshire County Council Streetworks and Permitting Team on 01522 782070 to discuss any proposed statutory utility connections Section 50 licences and any other works which will be required within the public highway in association with the development permitted under this Consent. This will enable Lincolnshire County Council to assist in the coordination and timings of these works.

For further guidance please visit:

Traffic Management - <https://www.lincolnshire.gov.uk/traffic-management>

Licences and Permits - <https://www.lincolnshire.gov.uk/licences-permits>

8. For the avoidance of doubt, Condition 3 (Landscaping) seeks to ensure that a Biodiversity Net Gain is achieved on site, alongside obtaining an appropriate scheme of landscaping. This 'net gain' is in respect of Policy 28 and is independent of the mandatory requirements, in which this development is exempt.

The following links are provided to assist in any future submissions of details for Condition 3:

- <https://www.plantlife.org.uk/learning-resource/road-verge-green-space-management-best-practice/>

- <https://www.plantlife.org.uk/learning-resource/road-verge-and-greenspace-grass-cuttings/>

9. The Local Planning Authority has acted positively and proactively in determining this application by assessing it against all material considerations, including national guidance, planning policies and representations that have been received during the public consultation exercise, and subsequently determining to grant planning permission.

This decision notice, the relevant accompanying report and the determined plans can be viewed online at <http://planning.sholland.gov.uk/OcellaWeb/planningSearch>

Background papers:- Planning Application Working File

Lead Contact Officer

Name and Post: Mark Simmonds , Lead Development Management Planner (Interim) - BBC & SHDC

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Appendices attached to this report:

Appendix A Plan A

