DECISION DELEGATED TO HEAD OF PLANNING

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| **Application No:** | **H16-0175-25** | **Applicant:** | **Dukesmead Industries Ltd.** |
| **Proposal:** | Erection of 2 single storey restaurant/cafe units with associated drive thru's (sui generis) and 1 single storey restaurant/cafe unit (Use Class E), 42 car parking spaces, access & landscaping - Approved under H16-0723-24. Modification of Condition 3 to remove the requirement to demonstrate biodiversity net gain through the biodiversity metric. | | |
| **Location:** | Plot 3 Lincolnshire Gateway Business Park Spalding | | |
| **Terminal Date:** | 21st April 2025 | | |

**Planning Policies**

**South East Lincolnshire Local Plan - Adopted: March 2019**

28 The Natural Environment

**National Guidance**

**National Planning Policy Framework December 2024**

Section 2 - Achieving sustainable development
Section 4 - Decision-Making
Section 15 - Conserving and enhancing the natural environment

**Representations:**

| | Object | Support | No Obj. | Comments |
|---|---|---|---|---|
| WARD MEMBER | 0 | 1 | 0 | 0 |

CASE OFFICER ASSESSMENT

**Proposal**

This is a planning application made under Section 73 of the Town & Country Planning Act 1990 (as amended). Previous permission for the *Erection of 2 single storey restaurant/cafe units with associated drive thru's (sui generis) and 1 single storey restaurant/cafe unit (Use Class E), 42 car parking spaces, access & landscaping - Approved under H16-0723-24.*

This application seeks to remove the requirement to demonstrate biodiversity net gain through the biodiversity metric, that was conditionally required (Condition 3).

**Site Description**

The application site comprises approximately 0.4 hectares of land to the south of Spalding. The site comprises a vacant plot of land that is being developed (under permission H16-0395-23). The site is part of the wider Lincolnshire Gateway Business Park site granted outline planning permission in 2014 under permission reference H16-0009- 14 and is situated to the west of the existing Applegreen petrol filling station and services built under that permission.

The site itself is bound to the north and west by Barrier Bank Road, to the east by the access road (Goodison Road) into the wider Business Park site and to the south by undeveloped land. Immediately adjacent to this is two new restaurant and takeaway units (KFC and Taco Bell) developed under permission reference H16-0172-21.
The site is located within Flood Zone 1 is not within a Conservation Area and there are no listed buildings in close proximity to the site.

## History

H16-0723-24 - Erection of 2 single storey restaurant/cafe units with associated drive thru's (sui generis) and 1 single storey restaurant/cafe unit (Use Class E), 42 car parking spaces, access & landscaping - Approved under H16-0395-23. Modification of Condition 2 to allow amendments to previously approved plans and Modification of Conditions 3, 5, 8 & 9 to allow amendments to the wording relating to landscaping & tree planting, site & floor levels, external lighting & CCTV system. Approved 22-10-24

H16-0395-23 - Erection of 2 single storey restaurant/cafe units with associated drive thru's (sui generis) and 1 single storey restaurant/cafe unit (Use Class E), 42 car parking spaces, access & landscaping. Approved 03-07-23

H16-0009-14 - Proposed business park, hotel, public house/restaurant, conference and function centre, petrol filling station, restaurant/cafe with ancillary retail together with associated landscaping, access, highways, parking, drainage, utilities and services and infrastructure works - Approved 10 October 2014

H16-1081-14 - Details of detailed design for the arrangements for the construction management plan (Condition 6 of H16-0009-14) - Approved 20 October 2016 H16-0157-15 - Details of engineering drawings for construction of the access to the B1173 (condition 21 of H16-0009-14) - Approved 27 October 2016

*Pending*

H16-0177-25 - Details of scheme of landscaping, tree planting, existing and proposed site levels, proposed floor levels, hard surfaced areas and garden/amenity areas (Conditions 3 and 5 of H16-0723-24).

## Consultation Responses

Ward Member

In support of the application.

## 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.

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 (updated December 2024) 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 application is for a S73 to vary partly the wording of condition 3 associated with H16-0723-24. The nature of the condition was landscaping, however a sentence is inserted that requires the developer to *demonstrate that Biodiversity Net Gain will be achieved on site, using the Biodiversity Metric 3.1 (or any successor).* The main topic for consideration is therefore Biodiversity Net Gain.

Given this is application is a variation of planning application matters of planning principle do not need to be considered, however, previous condition applied need to be considered.

Biodiversity

SELLP Policy 28 is concerned with the Natural Environment and part 3 is specifically concerned with biodiversity and geodiversity. It states that:

*a. by ensuring that all development proposals shall provide an overall net gain in biodiversity, by: i. protecting the biodiversity value of land, buildings and trees (including veteran trees) minimising the fragmentation of habitats;*

*ii. maximising the opportunities for restoration, enhancement and connection of natural habitats and species of principal importance;*

*iii. incorporating beneficial biodiversity conservation features on buildings, where appropriate; and maximising opportunities to enhance green infrastructure and ecological corridors, including water space; and*

*iv. conserving or enhancing biodiversity or geodiversity conservation features that will provide new habitat and help wildlife to adapt to climate change, and if the development is within a Nature Improvement Area (NIA), contributing to the aims and objectives of the NIA.*

*NPPF Paragraph 187 is concerned with Conserving and enhancing the natural environment* Part D is relevant, it states that *Planning policies and decisions should contribute to and enhance the natural and local environment by - minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures and incorporating features which support priority or threatened species such as swifts, bats and hedgehogs*

The applicant seeks to remove the following insert from Condition 3, the rest of the condition will be unaffected:

*NOTE: The submitted landscaping proposals shall demonstrate that Biodiversity Net Gain will be achieved on site, using the Biodiversity Metric 3.1 (or any successor).*

An application considering the landscaping is currently with the authority and pending (H16-0177-25). The applicant cannot achieve a net gain on this site and so the amendment of the condition is necessary.

It is material to note that the original planning application (ref: H16-0395-23) was approved before the Environment Act 2021, became law. This means that the application site is not subject to mandatory net gain, but policy net gain only, this policy is outlined above.

Given the permission that was issued *Erection of 2 single storey restaurant/cafe units with associated drive thru's (sui generis) and 1 single storey restaurant/cafe unit (Use Class E), 42 car parking spaces, access & landscaping* it was likely unreasonable to attach such a requirement to this applications site, that was originally covered in grass land. Should this application have come in post Environment Act, then its likely the only method for net gain would have been through securing off-site habitats.

Therefore, it is considered that this element of the condition, attached at that time was likely to be unreasonable in this instance given the nature of the approval granted, which was not only for 3

number restaurants but also 42 number parking spaces.

On this basis, despite no compliance with policy  it is considered that the condition will be amended to remove the requirement to provide a net gain, given the request (based upon the type of permission granted) was likely unreasonable at that time.

Reattachment of Planning Conditions

Given that the details of landscaping and site levels have been submitted for consideration under H16-0177-25, and these detail acceptable. The associated conditions will be changed to a compliance nature.

Conditions relating to operating hours, the requirement for both details relating to lighting and CCTV will be reattached as will the condition requiring the submission and agreement of boundary treatments.

## 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 would not comply with SELLP Policy 28, nor with Paragraph 187d of the NPPF. However, at the time when this permission was granted, which allowed for 3 number restaurants and 42 parking spaces, considering the size of the red line boundary (and the nature of the permission) it was never likely that a net gain for BNG could have been achieved on site. This element therefore of condition 3, which requires a net gain, is likely to have been unreasonable.

In this instance, there are material considerations that weigh for the proposal and as such, the planning balance is in favour of amending the condition.

## Conclusion

Taking into consideration these factors, it is considered that material considerations (outlined within this report) exist that would support the request to remove a net gain requirements from condition 3, attached to planning permission H16-0723-24.

On this basis the proposal is recommended for approval.

## 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.