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18 February 2025

Our Ref: 2153449/9/MM/LY

Planning Portal Reference: PP-13772371

Dear Sir/Madam

PROPOSED SECTION 73 APPLICATION TO PERMISSION REF: H16-0723-24 TO VARY 3 (LANDSCAPING)
PLOT 3 LINCOLNSHIRE GATEWAY BUSINESS PARK, SPALDING
ERECTION OF 2 SINGLE STOREY RESTAURANT/CAFÉ UNITS WITH ASSOCIATED DRIVE THRUS (SUI GENERIS) AND 1 SINGLE STOREY RESTAURANT/CAFÉ UNIT (USE CLASS E), 42 CAR PARKING SPACES, ACCESS AND LANDSCAPING

We act on behalf of Dukesmead Industries Limited ("the Applicant") and are instructed to submit this Section 73 application to vary the wording of Condition 3 (Landscaping) of planning permission ref. H16-0723-24.

This application is supported by this Covering Letter and the following information:

- Completed Application Form; and
- Proposed Site Plan
- Landscape Planting Plan (Prepared by Squires Young, Ref: SY24-390-LPP-24-01 Rev A);
- Phasing Plan (Prepared by Frowsbury, Ref: *FRO-DUK-003-P-20*)

The application fee of £363 (inclusive of Planning Portal service charge) has been paid via the Planning Portal.

Background

In July 2023 full planning permission was granted by South Holland District Council ("SHDC") for a drive thru/restaurant/café development comprising three units. The site forms part of the wider Lincolnshire Gateway Business Park and is to the west of Applegreen Services and west/north of various other similar food and drink uses.

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Subsequently, a Section 73 application was approved in October 2024 (ref: H16-0723-24) to vary conditions 2 (Approved Plans), 3 (Landscaping), 5 (Levels), 8 (Lighting) and 9 (CCTV) to vary the approved drawings to incorporate changes to Unit 1 and introduce a proposed sub-station, and to allow for phasing of the development. The wording of Condition 3 specifically was varied to allow for a phased implementation of the development.

A recent application has been submitted to South Holland District Council to discharge conditions 3 and 5 of permission ref: H16-0723-24. The details which have been submitted pursuant to condition 3 include a Landscape Plan for Phase 1 of the development. The variation of the wording of condition 3 sought by this S73 application is proposed to reflect the Landscape Plan which has been submitted to discharge the condition in this application. Therefore, this S73 application should be determined concurrently with that permission, and we request that the decision notice makes reference to the approved plan.

Proposed Amendments – Condition 3

Condition 3 is a pre-commencement conditions that sets out that that, for each phase of the development, the approval of a scheme of landscaping and tree planting by the Local Planning Authority is required. The condition states:

"Before the commencement of any phase of the development (as identified on drawing FRO-DUK-003-P-20) hereby permitted beyond oversite, the approval of the Local Planning Authority is required to a scheme of landscaping and tree planting for that particular phase 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 that particular phase of 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.

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)."

The original outline permission for the development at the Site (LPA ref: H-16-0395-23) was approved in July 2023, which was before the mandatory Biodiversity Net Gain (BNG) requirement came into effect in February 2024.

The Site cannot achieve a Biodiversity Net Gain using the biodiversity metric due to the loss of vegetation on the vacant land which is being replaced with a large area of developed land as approved under permission ref: H16-0723-24. Whilst the Site had previously been cleared, and was considered to be of low ecological value, the operation of the metric means that it is not possible to deliver net gain with the development as approved.

The Landscape Plan which has been submitted with the application to discharge Condition 3 , a copy of which is enclosed with this application, sets out the variation in habitats which are being proposed at the Site through the addition of hedgerow, meadow grassland, new trees and plants.

Whilst the site will not deliver biodiversity net gain in accordance with the Biodiversity Metric, the landscaping scheme will deliver an increase in habitats and provide landscaping which will approve the visual appearance of the site.

The Applicant therefore proposes to revise Condition 3 as follows, to remove the requirement to demonstrate biodiversity net gain through the biodiversity metric:

"The development of Phase 1 should be undertaken in accordance with the landscaping scheme shown on drawing ref SY24-390-LPP-24-01, dated 20.08.24. Before the commencement of any further phase of the development (as identified on drawing FRO-DUK-003-P-20) hereby permitted beyond oversite, the approval of the Local Planning Authority is required to a scheme of landscaping and tree planting 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 that particular phase of 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.

~~*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)."*~~

Conclusion

Overall, this S73 application to vary the wording of Condition 3 will allow for the landscaping scheme of the Site to be carried out in accordance with the Landscape Plan for Phase 1 which has been submitted under a separate discharge of condition application. That landscape plan allows for an increase in variety of habitats at the site within the realms of what is possible with the development that has been approved. This application should therefore be determined concurrently with that discharge of conditions application. Future phases of development will be required to submit a detailed landscaping plan which complies with the requirements of the updated condition.

The Development Plan for SHDC remains as per when the previous Section 73 permission was granted in October 2024. The scheme continues to accord with the Development Plan policies identified in the original planning statement and in the Officer's report for the original decision. We would ask that approval be granted at the earliest opportunity to aid delivery plans for Phase 1.

Yours faithfully,

This letter is approved but unsigned as it is sent electronically.

Maisie McCann
Graduate Planner
Freeths LLP
Please respond by e-mail where possible