

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H16-0193-24 **Applicant:** Triton Property Fund

Proposal: Confirmation of lawful implementation of planning permission H16-0879-23 by construction of staff car park (2 spaces) on the western part of the site.

Location: Car Park West Of Springfields Outlet Centre Camel Gate Spalding

Terminal Date: 29th April 2024

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Representations:

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

Proposal

This is an application submitted under section 191 of the Town and Country Planning Act (TCPA) 1990. It seeks confirmation that lawful implementation of planning permission H16-0104-20 (2021 Permission) as varied by H16-0879-23 (2024 Permission) has been made.

The applicant has formulated two staff car parking spaces (described as Phase 1 under H16-0879-23) and considers this to represent the carrying out of a material operation under S56 of the TCPA 1990 and has also provided evidence of the timing of works, in that they have been lawfully implemented when considering condition 1 of H16-0104-20.

Site Description

Springfields Outlet Shopping and Leisure is located at the north-east of Spalding. The application site is bounded to the south by the A151/Holbeach Road, while to the west the site adjoins the Coronation Channel. The eastern site boundary extends along the edge of the existing outlet centre but also includes a strip of land situated between the A16 and Festival Gardens, which is currently occupied by wind turbines associated with the outlet centre. The northern part of the site adjoins the Marsh Lane employment site and the A16 to the east. South west of the site are residential properties.

Included within the application site boundary is the existing South Car Park, NFU Mutual offices and its associated car park, part of the Festival Gardens, the Springfields Garden Centre Car Park, Springfields Events and Conference Centre and associated land and a strip of land running

adjacent to the A16 to the east. It also includes Camel Gate and land to the west which includes the Springfields Main Customer Car Park, an existing bus layby and drop-off and land at the Grade II Listed Fulney Hall.

A section 73 application has recently been approved which phased the development into 4 stages.

History

H16-0879-23 - Proposed Extension of Springfields Outlet Shopping & Leisure, to comprise demolition of the existing NFU Mutual offices and provision of comparison retail floorspace (Class A1), flexible retail and/or coffee shops/restaurants floorspace (Class A1/A3), access, revised car parking, landscaping and associated works approved under H16-0104-20. Modification of Conditions 2, 6, 7, 11, 12 & 13 relating to approved plans, archaeological investigation, notification to LCC historic environment, existing & proposed site levels, terrorism prevention measures and contamination including site investigation & remediation strategy. Approved 09-01-24

H16-0104-20 - Proposed Extension of Springfields Outlet Shopping & Leisure, to comprise demolition of the existing NFU Mutual offices and provision of comparison retail floorspace (Class A1), flexible retail and/or coffee shops/restaurants floorspace (Class A1/A3), access, revised car parking, landscaping and associated works.

H16-0579-19 - Proposed external alterations to Fens Centre and provision of car parking (approved July 2019). Approved 04-02-21

H16-0290-19 - Proposed relocation of the existing National Farmers Union Mutual Offices (Class B1a) (approved May 2019)

H16-0645-17 - Proposed Family Entertainment Centre, including change of use of Play barn from Class D1 (leisure) to Class A3 (cafe and restaurant) use and associated works (approved September 2017)

H16-0401-06 - Alterations to Springfields Gardens including additional retail floorspace, hotel, creation of new gardens and revised car parking (approved December 2006)

H16-0361-02 - Redevelopment to include leisure, horticultural, food & drink, retail; craft workshop & related uses; associated landscaping; provision of car parking and highway works (Outline application H16/0569/98) (approved September 2002)

H16-0569-98 - Redev. to inc. leisure/retail/ horticultural/food & drink etc with assoc. parking, highways works and landscaping (allowed by Secretary of State February 2001)

Consultation Responses

None requested.

Planning Considerations

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

Material Operation

The Applicant has provided a document that sets out the legislative context surround this submission.

Section 56(1)(a) of the TCPA 1990 provides that development of land shall be taken to be initiated: "if the development consists of the carrying out of operations, at the time those operations begun".

Section 56(2) of the Act provides that: "development shall be taken to have begun on the earliest date on which any material operation comprised in the development begins to be carried out".

Section 56 of the TCPA defines material operation, d and e are considered relevant they state:

- (d) any operation in the course of laying out or constructing a road or part of a road;
- (e) any change in the use of any land which constitutes material development".

The applicant has provided a definition of the term 'building' set out under Section 336(1) of the Act. However, this includes any structures or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in H16-0104-20 a building. The proposed works do not relate to a building, the works represent an 'engineering activity'.

That said the formulation of two staff car parking spaces would likely be considered an operation under D & E of Section 56 of the Act. The works therefore are considered to represent a 'Material Operation'.

Lawful Implementation

Planning permission for the development expired on 4th February 2024. The applicant has provided a supporting information entitled 'Site Diary Implementation Works' these contain contractor notes and a photo montage of the construction steps taken. These include digging out, membrane installation, kerb race, kerbing and laying of subbase and tarmacadam. The photos are also time dated, these are all within the periods described by the documents (January 2024).

It is considered that without any information to the contrary and on the balance of probabilities the works were carried out prior to February 4th 2024.

Conclusion

The works which are described as; Construction of additional staff parking spaces (2 spaces). The spaces are constructed as shown on the approved layout as an extension to the eastern side of the existing staff car parking area car park and would entail provision of kerb edging, ground preparation works and tarmac are considered to represent a material operation under Section 56 of the Town & Country Planning Act 1990, meeting with the definitions of parts D and E.

In terms of implementation, it is considered that sufficient evidence has been presented to confirm that the permission is extant, with the completion of Phase 1, (defined under H16-0879-23) prior to the 4th February 2024 when planning permission H16-0104-20 was due to lapse. It is therefore considered that planning permission H16-0104-20 as varied by H16-0879-23 has been lawfully implemented.

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.