

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H16-0229-26 **Applicant:** Mr J Anderson

Proposal: Proposed Detached Garage with Home Gym/Games Room Above - Approved H16-1224-25. Modification to Condition 3 to amend wording relating to restriction limiting use to family members only

Location: 43 Cowbit Road Spalding Lincolnshire

Terminal Date: 8th May 2026

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
29	The Historic Environment
33	Delivering a More Sustainable Transport Network
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance**National Planning Policy Framework December 2024**

Section 9 - Promoting sustainable transport
Section 12 - Achieving well-designed places
Section 14 - Meeting the challenge of climate change, flooding and coastal change
Section 16 - Conserving and enhancing the historic environment

Representations:

	Object	Support	No Obj.	Comments
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
HISTORIC ENVIRONMENT OFFICER	0	0	0	1
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1

OTHER STATUTORY BODIES	0	0	0	2
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CASE OFFICER ASSESSMENT

Description of Proposal

This application is made under Section 73 of the Town and Country Planning Act, 1990, seeking to amend Condition 3 of H16-1224-25. It is proposed that the use of the site would be widened from the existing restriction to family members to include friends and family, without constituting a business use.

Site Description

The site is within the settlement boundaries of Spalding, as outlined within the South East Lincolnshire Local Plan, 2019. The site located fairly centrally within the settlement, approximately 100m north of the confluence of the Coronation Chancel and the river Welland. The site is located just within, but on the periphery of, the Conservation Area.

43 Cowbit Road is a semi-detached, red brick property, typical of the area. The dwelling features prominent bay windows, fronting on to a busy road. An access to 43 Cowbit Road's parking area and 43A Cowbit Road, a detached bungalow located to the immediate rear of 43, runs along the southern boundary. The ground slopes down to the rear of the property.

Relevant History

H16-1006-15 - Full. New vehicular access. Approved 11/12/15.

H16-0802-25 - Full. Proposed detached garage with gym / games room. Refused 08/10/25.

H16-1224-25 - Full. Proposed Detached Garage with Home Gym/Games Room Above. Approved 17/02/26.

Consultation Responses

The responses received from consultees during the initial consultation exercises, which can be viewed in their entirety through the South Holland website, can be summarised as follows:

South Holland Internal Drainage Board

Thank you for your consultation on planning application H16-0229-26. Having screened the application, whilst the site in question lies within the Internal Drainage District of the South Holland Internal Drainage Board the proposed application does not meet our threshold for commenting as per our Planning and Byelaw Strategy. Therefore the Board has no comments to make.

Conservation Officer

There are no material changes proposed. Therefore, we have no comments.

Highway and Lead Local Flood Authority

The proposal is for Detached Garage with Home Gym/Games Room Above - Approved H16- 1224-25. Modification to Condition 3 to amend wording relating to restriction limiting use to family members only. The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk.

Historic Environment Officer

Thanks for consulting us on this Sec73 modification. We reiterate our previous comments dated 15-01-26.

Public Representations

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.

Key Planning Considerations

Evaluation - S73

The proposal seeks to vary Condition 3 of H16-1224-25, 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 3 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 this instance, the subsequent amendments, submitted under this Section 73 application, have not varied the description of development.

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 S73 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 effect of the change will be significant".

Paragraph 13 of the relevant section of the PPG states "In contrast to section 96A, an application made under section 73 of the Town and Country Planning Act 1990 can be used to make a material amendment by varying or removing conditions associated with a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission."

Evaluation - Key Considerations

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 adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019 (SELLP), is 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, 2024 (NPPF) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

Principle of Development

The principle of development was established under H16-1224-25. It is not proposed that the use of the site is changed from its ancillary use, simply that those who can utilise the facilities is widened. Therefore, there is no requirement to revisit the principle of development here.

Assessment of Conditions

As no external changes to the scheme are proposed, there would be no wider implications. There is therefore no need to assess the design or amenity implications in detail.

The proposed amendment to Condition 3 is considered to be acceptable. The use of the site shall remain incidental to the host, and the owners of the site could not change the use to a business use. Whilst this may mean that more people may use the building, as friends as well as family could use the equipment, this is unlikely to result in any significant implications. There would be no fundamental alteration to the scope of the permission.

On this basis, it is recommended that Condition 3 be altered to reflect a less restrictive wording, enabling non-family members to use the site, whilst still preventing the use of the site as a business or independent unit, and maintaining the need for the building to be used as an incidental building to the host dwelling.

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 proposed alteration to Condition 3 would provide greater clarity, without having wider implications. The use would still be incidental, and could not be used for business purposes.

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

Taking these factors into consideration, the proposal is considered to comply with Policies 1, 2, 3, 4, 29, 33 and 36 of the SELLP, as well as Sections 9, 12, 14 and 16 of the NPPF. There are no significant factors in this case that would outweigh the benefits of the proposal; therefore, the planning balance is in favour of the proposal.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be approved under Delegated Authority.