

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H16-0322-25 **Applicant:** S Dungarwalla

Proposal: Residential Development - comprising 2 semi-detached dwellings - Approved under H16-1053-17. Modification to remove condition 4 (iv) relating to full closure report

Location: Land Adjacent To 37 St Pauls Road Spalding Lincolnshire

Terminal Date: 27th May 2025

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

02 Development Management
03 Design of New Development
30 Pollution

National Guidance

National Planning Policy Framework December 2024

Section 12 - Achieving well designed places
Section 14 - Meeting the challenge of climate change, flooding and coastal change

Representations:

	Object	Support	No Obj.	Comments
WARD MEMBER	0	0	0	0
SHDC INTERNAL	0	0	0	1

CASE OFFICER ASSESSMENT

Description of Proposal

This Section 73 application seeks the removal of 4(iv) of H16-1053-17. This related to a closure report on remediation measures of contaminated land.

Site Description

The site is within the settlement boundaries of Spalding, as outlined within the South East Lincolnshire Local Plan, 2019. The dwellings appear to be complete, comprised of a pair of semi-

detached, red brick dwellinghouses.

Relevant History

H16-1053-17 - Full. Residential development - comprising 2 semi-detached dwellings. Approved 08/03/18.

H16-0740-18 - Condition Discharge. Details of contamination and external materials (Conditions 4 i), ii), iii) and 5 of H16-1053-17). Approved 20/12/18.

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:

Environmental Protection

"Following receipt of a confirmation statement from East Anglian Civils Ltd dated 27/03/2025, that no soils have been imported onto site I can recommend that part iv of condition 4 is removed"

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 - Section 73

The proposal relates to the variation of Condition 4 of H16-1053-17, 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 4 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 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 effect of the change

will be significant".

Principle of Development

Policy 1 of the SELLP sets out the settlement hierarchy in respect of delivering sustainable development, which meets the social and economic needs of the area whilst protecting and enhancing the environment; in order to provide enough choice of land for housing to satisfy local need, whilst making more sustainable use of land, and to minimise the loss of high-quality agricultural plots by developing in sustainable locations and at appropriate densities.

Policy 1 expresses this sustainable hierarchy of settlements, ranking the settlements deemed to be most sustainable in descending order. The most sustainable locations for development are situated within the 'Sub-Regional Centres', followed by 'Main Service Centres'. Lower down the hierarchy are areas of limited development opportunity including Minor Service Centres, with areas of development constraint comprising 'Other Service Centres and Settlements'. The countryside is at the bottom of the settlement hierarchy and represents the least sustainable location.

This is a Section 73A application, seeking to vary condition 4 of H16-1053-17. The amendment solely relates to the submission of a closure report. These amendments do not seek to alter the siting, or quantum of development proposed beyond this. In any event, the dwellings appear to have already been completed on site.

In light of this, the principle of developing this site has been established within the earlier approvals. As such there is no objection in principle with the development.

The proposal is considered to be in accordance with the requirements of Policy 1 of the South East Lincolnshire Local Plan when viewed in principle given the aforementioned extant permissions on site. This is subject to an assessment of the relevant considerations, namely pollution and residential amenity.

Impacts Upon Resident Amenity

Paragraph 135 of the NPPF 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.

Policies 2 and 3 of SELLP sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions. Policy 30 of the SELLP concerns pollution, including contaminated land.

Condition 4 of H16-1053-17 concerned the submission of information related to contaminated land on the site. The condition was requested by the relevant consultee within the Environmental Protection Department. Condition 4 is broken into four subsections, i through to iv. The condition has been copied below for reference:

"i) a desk-top study carried out to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the site. The desk-top study shall establish a 'conceptual site model' and identify all plausible pollutant linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/Quantitative Risk Assessment (or state if none required). Two full copies of the desk-top study and a non-technical summary shall be submitted to the LPA without delay upon completion.

ii) if identified as being required following the completion of the desk-top study, a site investigation shall be carried out to fully and effectively characterise the nature and extent of any land contamination and/or pollution of controlled waters. It shall specifically include a risk assessment that adopts the Source-Pathway-Receptor principle, in order that any potential risks are adequately assessed taking into account the sites existing status and proposed new use. Two full copies of the site investigation and findings shall be forwarded to the LPA without delay upon completion.

iii) thereafter, a written method statement detailing the remediation requirements for land contamination and/or pollution of controlled waters affecting the site shall be submitted to and approved in writing by the LPA, and all requirements shall be implemented and completed to the satisfaction of the LPA. No deviation shall be made from this scheme. If during redevelopment contamination not previously considered is identified, then the LPA shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspect contamination has been submitted to and agreed in writing by the LPA.

iv) two full copies of a full closure report shall be submitted to and approved in writing by the LPA. The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post-remediation sampling and monitoring results shall be included in the closure report to demonstrate that the required remediation has been fully met."

Parts i, ii, and iii were discharged under application H16-0740-18. The submitted and approved strategy involved the import of materials from off of the site to raise ground levels. It was agreed that this method was acceptable on the grounds that a verification report was submitted in order to discharge part iv. It should be noted that within the preliminary site assessment submitted within H16-0740-18 it was not considered that there was a significant risk of contamination at the site; however, additional test results to verify this were requested. Said requested results were not submitted due to the proposal of using imported materials.

It is stated within the "Brief Statement" submitted as part of this application that only site won material was used, and that no importing of materials took place. Accordingly, it is put forward by the applicant that there is no requirement to submit the verification report as the stipulations of the informative condition placed on H16-0740-18 have not been triggered.

Seeing as the site previously did not clearly display evidence of contamination, thereby in effect conforming to the requirements of part i of Condition 4 which subsequently would result in no need for further information, it is considered appropriate to remove the requested condition.

The Environmental Protection Department have stated "Following receipt of a confirmation statement from East Anglian Civils Ltd dated 27/03/2025, that no soils have been imported onto site I can recommend that part iv of condition 4 is removed". In light of these comments, and the above assessment, it is considered that the proposal would not have an unacceptable impact upon residential amenity or the control of polluted land.

As detailed above, the scale and design of the proposal is considered to have 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 Section 12 and 14 of the NPPF and Policies 2, 3 and 30 of the Local Plan in terms of impact upon residential amenity.

Biodiversity Net Gain

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.

"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.

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.

For applications that are submitted prior to the introduction of this requirement, the development would 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.

Notwithstanding this, the proposal relates to a section 73A and as such, the development, given the timeframe of the initial approval in which the proposal seeks to vary, is exempt and therefore not subject to the mandatory biodiversity net gain.

Conditions

Seven conditions, and two informative conditions, were placed on the host application, H16-1053-17. A brief commentary on their imposition here is found below:

Condition 1: As the development has been implemented, there is no requirement to reimpose the time condition.

Condition 2: An amended version of this condition, updated to reflect the updated plans, is recommended.

Condition 3: This related to construction in accordance with the submitted flood risk assessment. Whilst the dwellings have since been completed, it is considered appropriate to reimpose the condition here to ensure the dwellings are safe for their lifetime.

Condition 4: Parts i, ii, and iii have been discharged as part of H16-0470-18. The removal part iv is the crux of this application and the merits of this are discussed above. Consequently, it is considered that the condition can be removed in its entirety.

Condition 5: This condition was a pre-commencement condition relating to materials. Details have been provided here, and so a reworded condition ensuring the proposal is constructed in accordance with details is recommended.

Condition 6: This related to the protection of a tree during construction. As construction has finished, there is no need to reapply this condition.

Condition 7: This required an existing building to be demolished pre-occupation. To ensure that this has been complied with, it is recommended that this condition be reimposed.

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 to remove Condition 4iv is considered acceptable, given the information provided and the extent of the existing construction on the site.

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 2, 3 and 30 of the SELLP, as well as Sections 12 and 14 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.