

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Lead Development Management Planner (Interim) - BBC & SHDC

To: Planning Committee - 10 September 2025

(Author: Gillian Pinna-Morell - Major Applications Officer)

Purpose: To consider Planning Application H16-0681-25

Application Number: H16-0681-25

Date Received: 11 July 2025

Application Type: SEC 73 MODIFICATION

Description: Construction and operation of a micro energy storage facility - approved under H16-0565-24. Modification of Conditions 2 & 3 to allow amendments to previously approved plans.

Location: Land On the Northwest Side of Roman Bank Spalding

Applicant: AMP Clean Energy **Agent:** AMP Clean Energy

Ward: Spalding St Pauls **Ward Councillors:** Cllr R A Gibson
Cllr G P Scalese

You can view this application on the Council's web site at

<http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H16-0681-25>

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 The land is South Holland District Council owned.

2.0 PROPOSAL

2.1 Planning permission was granted in October 2024 under application reference H16-0565-24 for the construction and operation of a micro energy storage facility.

2.2 A Section 73 application was subsequently approved under application H16-0116-25 to amend the design and position of the facility.

2.3 A further application seeking a non-material amendment to H16-0565-24 was received in May this year which sought consent to re-locate the equipment to the rear of the site, necessitating the removal of two trees (reference H16-0507-25). This non-material amendment was refused in June this year on the grounds that the effect of the removal of the trees on the character of the area is a material consideration which was not taken into account in assessing the merits of the original planning application H16-0565-24.

2.4 This current Section 73 application seeks to vary conditions 02 and 03 of application H16-0565-24 to allow amendments to the approved plans through the re-positioning of the facility to the rear of the application site and the removal of two to three existing trees within the grass verge.

3.0 SITE DESCRIPTION

3.1 The site is located on grass verge adjacent to Roman Bank, Spalding, close to an existing secondary substation. To the south are residential rear gardens to the dwellings that front Crown Drive. To the north, east and west are residential gardens serving dwellings located on Roman Bank. Roman Bank is tree lined on both sides of the highway.

4.0 RELEVANT PLANNING POLICIES

4.1 The Development Plan

4.2 South East Lincolnshire Local Plan, March 2019

4.3 If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, Section 38 (6) to the Town and Country Planning Act as amended by the 2004 Act states that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

4.4 01 Spatial Strategy
02 Development Management
03 Design of New Development
04 Approach to Flood Risk
05 Meeting Physical Infrastructure and Service Needs
30 Pollution
31 Climate Change and Renewable and Low Carbon Energy
32 Community, Health and Well-being
36 Vehicle and Cycle Parking
APPENDIX 6 - Parking Standards

4.5 National Planning Policy Framework (NPPF), 2024

4.6 Section 2 - Achieving sustainable development
Section 4 - Decision-Making
Section 6 - Building a strong, competitive economy
Section 9 - Promoting sustainable transport
Section 10 - Supporting high quality communications
Section 12 - Achieving well-designed places
Section 14 - Meeting the challenge of climate change, flooding and coastal change

4.7 Planning Practice Guidance (PPG)

5.0 RELEVANT PLANNING HISTORY

5.1 H16-0565-24: Construction and operation of a micro energy storage facility. Approved 11th October 2024.

5.2 H16-0116-25: Construction and operation of a micro energy storage facility approved under application H16-0565-24: Modification of Conditions 02 and 03 to allow amendments to previously approved plans. Approved 3rd April 2025.

5.3 H16-0507-25: Construction and operation of a micro energy storage facility approved under H16-0565-24. Amendment to remove trees. Refused 13th June 2025.

6.0 REPRESENTATIONS

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

6.2 Highway and Lead Local Flood Authority

6.3 The proposal is for minor amendments to conditions 2 and 3 that have already been approved. The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk.

6.4 Lincolnshire Fire and Rescue

6.5 Suitable environmental protection measures should be provided, this should include systems for containing and managing runoff. Lincolnshire Fire and Rescue recognise that this is not a large BESS site however LFR recommend the minimum safety standards to meet those in the National Fire Chiefs Council guidance, especially around the design, construction and installation of the guidance.

6.6 National Grid Electricity Distribution

6.7 Request contact is made with NGED regarding the UG 11KX cables in the area.

6.8 Environmental Protection Officer

6.9 No comment regarding land contamination or environmental protection.

6.10 **Public Representation**

6.11 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.

7.0 CONSIDERATIONS

7.1 **Evaluation - Section 73**

7.2 The proposal relates to the variation of Conditions 02 and 03 of H16-0565-24, 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.

7.3 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 Conditions 02 and 03 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'.

7.4 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".

7.5 In this instance, the subsequent amendments, submitted under this Section 73 application, have not varied the description of development.

7.6 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 affect of the change will be significant".

7.7 Principle of Development and Sustainability

7.8 The principle of the installation and operation of a micro energy storage facility has already been established by virtue of the original planning permission granted in October 2024 under reference H16-0565-24, and a subsequent Section 73 application approved under reference H16-0116-25 in April this year, amending the design and specification of the Battery Box.

7.9 This current Section 73 application seeks to vary condition 02 (approved plans) and condition 03 (materials) of planning permission H16-0565-24, to allow an amendment to the approved site layout through the re-positioning of the facility to the rear of the application site, which will necessitate the removal of two to three existing trees within the grass verge. The design, scale and height of the equipment are as approved under application H16-0116-25 and these plans of the installation also form part of this current Section 73 application.

7.10 Layout, Design and Consideration of the Character and Appearance of the Area

7.11 The National Planning Policy Framework (Framework) December 2024 sets out the Government's planning policies for England and how they should be applied. It advises that the purpose of the planning system is to contribute to the achievement of sustainable development. Achieving sustainable development means that the planning system has three overarching objectives; an economic objective, a social objective, and an environmental objective, which are interdependent and should be pursued in mutually supportive ways.

7.12 The Framework advises, at paragraph 131, good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

7.13 Policy 2 of the South East Lincolnshire Local Plan (2019) outlines sustainable development considerations for development proposals, providing a framework for an operational policy to be used in assessing the sustainable development attributes of all development proposals. Furthermore, Policy 3 accords with the provisions of Section 12 of the National Planning Policy Framework (December 2024), in that it requires development to comprise good design; identifying issues that should be considered when preparing scheme so that development sits comfortably with its surroundings and adds positively to its landscape surroundings.

7.14 As permitted under application H16-0565-24 the storage facility was sited adjacent to Roman Bank. This Section 73 application seeks to re-locate the unit to the rear of the site, approximately 4.5metres back from the public highway, which will necessitate the removal of two to three existing trees.

7.15 Although individually these trees are of limited visual quality, collectively these and other trees along the grass verge contribute to the amenity value and character of the area. To mitigate the loss of these trees the application is accompanied by a landscaping plan showing the planting of three Common Elder trees along the site frontage. It is considered that this replacement planting would adequately compensate the loss of the trees in visual amenity terms. A condition will be attached to this Section 73 permission requiring the formal submission and approval of this landscaping scheme, in accordance with condition 04 of the extant consent H16-0565-24.

7.16 The design, size and scale of the facility are as proposed and approved under application H16-0116-25 and form part of this Section 73 application, the details of which are:

- the facility has a footprint of 25square metres, comprising 4 Battery Units and 1 Electrical Cabinet
- the Battery Unit will have a height of 2.41metres

7.17 It is therefore concluded the proposal will safeguard the character and appearance of the area without resulting in any demonstrable degree of harm, and in this regard would accord with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019, along with advice contained within Section 12 of the National Planning Policy Framework, December 2024.

7.18 Impact on Residential Amenity

7.19 The Framework advises, at paragraph 135, development should create places with a high standard of amenity for existing and future users.

7.20 Policies 2 and 3 of South East Lincolnshire Local Plan (2019) sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.

7.21 The closest residential properties are located to the south on Crown Drive, the re-positioning of the unit further from Roman Bank frontage will increase the separation distance from the previously approved scheme. The facility will be sited closer to the group of garages serving residential dwellings beyond, but given the proposed equipment will be screened from these dwellings by the garage structures there will be no detriment caused to residential amenity.

7.22 The proposal will not create overlooking nor have an overbearing or enclosing impact on residential properties adjacent to the site. The development will therefore safeguard the level of amenity currently afforded to nearby residential properties and in the regard accords with the provisions of the Framework and Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

7.23 Biodiversity Net Gain

7.24 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.

7.25 "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".

7.26 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.

7.27 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.

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

7.29 A Biodiversity Net Gain Exemption Statement was submitted as part of the extant consent H16-

0565-24, which states the development was subject to the de minimis exemption due to the proposal not impacting a priority habitat and the development impacting less than 25 square metres of on-site habitat. It was concluded the development was exempt from the statutory 10% Biodiversity Net Gain requirements.

7.30 Given this Section 73 application does not involve any increase in built form beyond that already permitted, there is no material reason to deviate from the conclusion previously reached and as such the development meets the requirements of exempt development and is not required to provide Biodiversity Net Gain.

7.31 **Other Matters**

7.32 ***Highway Safety and Parking***

7.33 The application seeks to amend the layout of the approved scheme with the development set further back from the highway. The Highway and Local Lead Flood Authority has no objection to the proposal. Overall it is considered that the proposed minor amendments would not materially effect existing highway conditions from either a safety or capacity perspective.

7.34 ***Flooding Considerations***

7.35 A Flood Risk Assessment was submitted as part of application H16-0565-24 and forms part of the approved plans to which the development must adhere. This Flood Risk Assessment will also be attached as an approved document to this current Section 73 development.

7.36 **Planning Balance**

7.37 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.

7.38 The proposed modification of conditions 02 and 03 of planning permission H16-0565-24 will safeguard the character and appearance of the surrounding area along with the level of amenity currently afforded to the occupants of nearby residential properties.

7.39 The proposal accords with the South East Lincolnshire Local Plan (2019) and the provisions of the National Planning Policy Framework (December 2024) when viewed as a whole. In this instance there are no material considerations that weigh against the proposal and as such the planning balance is in favour of the development.

7.40 **Additional Considerations**

7.41 **Public Sector Equality Duty**

7.42 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.

7.43 The protected characteristics are age, disability, gender reassignment, pregnancy and

maternity, race, religion or belief, sex and sexual orientation.

7.44 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.

7.45 It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

7.46 Human Rights

7.47 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).

7.48 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.

7.49 **Conclusion**

7.50 Taking the above considerations into account, the proposal is considered to be a minor amendment to the previously approved scheme which remains in accordance with Policies 1, 2, 3, 4 and 36 (including Appendix 6) of the South East Lincolnshire Local Plan, 2019, along with the identified sections contained within the National Planning Policy Framework, December 2024. There are no significant factors in this case that indicate against the proposal and outweigh the consideration in favour of the development and the policies referred to above.

8.0 RECOMMENDATIONS

8.1 **Based on the assessment detailed above, it is recommended that the proposal should be approved subject to those conditions listed at Section 9.0 of this report.**

9.0 CONDITIONS

1. The development hereby approved must be begun no later than the expiration of three years beginning with the date of the permission granted under reference H16-0565-24 on 11th October 2024.

Reason: As required by Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans and/or documents:

H16-0565-24

425.064703.00001 (070) - Flood Risk Assessment by SLR dated June 2024
Planning Statement dated June 2024
BNG Statement

H16-0681-25

Plan 1 - Location Plan

Plan 2 Rev B - Site Layout Plan

Plan 4 - Plans & Elevations - Battery Box Battery Equipment

Plan 5 - Plan & Elevations - Electrical Cabinet Equipment

Plan 9- Rev B Proposed Landscaping Plan

Supporting Statement by AMP Clean Energy dated January 2025

Reason: For the avoidance of doubt and in the interests of proper planning.

3. The materials of the development hereby permitted shall be carried out in accordance with those detailed within the application form and approved plans.

Reason: In the interests of the architectural and visual integrity of the overall development and the visual amenity of the area in which it is set.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

4. Before the commencement of the development hereby permitted beyond oversite, the approval of the Local Planning Authority is required to a scheme of landscaping and tree planting for the site (including screening of bin collection points) 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 the 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, in the opinion of the Local Planning Authority, 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).

Reason: To ensure that the development is adequately landscaped, in the interests of its visual amenity and that of the area in which it is set, and that Biodiversity Net Gain will be achieved. This Condition is imposed in accordance with Policies 2, 3 and 28 of the South East Lincolnshire Local Plan, 2019 and the Environment Act 2021.

5. Prior to its installation, details of the proposed boundary treatments, including a schedule of fencing levels, heights and materials, and details of the size and species of any hedging, shall be submitted to and approved in writing by the Local Planning Authority, and the details so approved shall be implemented in full before the development is first brought into use and retained thereafter.

Note: Where levels are raised above existing ground levels, the submission shall be supported by cross-sectional drawings showing the relationship with adjoining uses and buildings to enable the Local Planning Authority to be satisfied that sufficient mitigation measures will be in place.

Reason: In the interests of the character and appearance of the development and the amenity of the area in which it is set including the amenity of nearby occupiers.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

6. The Local Planning Authority has acted positively and proactively in determining this application by assessing it against all material considerations, including national guidance, planning policies and representations that have been received during the public consultation exercise, and by identifying matters of concern within the application and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal.

This decision notice, the relevant accompanying report and the determined plans can be viewed online at <http://planning.sholland.gov.uk/OcellaWeb/planningSearch>

7. For the avoidance of doubt, Condition 4 (Landscaping) seeks to ensure that a Biodiversity Net Gain is achieved on site, alongside obtaining an appropriate scheme of landscaping. This 'net gain' is in respect of Policy 28 and is independent of the mandatory requirements, in which this development is exempt.

The following links are provided to assist in any future submissions of details for Condition 4:

- <https://www.plantlife.org.uk/learning-resource/road-verge-green-space-management-best-practice/>
- <https://www.plantlife.org.uk/learning-resource/road-verge-and-greenspace-grass-cuttings/>

8. Please contact the Lincolnshire County Council Streetworks and Permitting Team on 01522 782070 to discuss any proposed statutory utility connections and any other works which will be required within the public highway in association with the development permitted under this Consent. This will enable Lincolnshire County Council to assist in the coordination and timings of these works.

For further guidance please visit:

- Traffic Management - <https://www.lincolnshire.gov.uk/traffic-management>
- Licences and Permits - <https://www.lincolnshire.gov.uk/licences-permits>

9.

Biodiversity Net Gain

The applicant's attention is drawn to the following Biodiversity Net Gain requirement.

The effect of Paragraph 13 of Schedule 7A of 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 guidance on the contents, in respect of the details that must be submitted and agreed by the Local Planning Authority, prior to the commencement of the consented development, please see the GOV.uk website and Planning Practice Guidance.

Statutory exemptions and transitional arrangements

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These can be found at Paragraph: 003 Reference ID: 74-003-20240214 of the Planning Practice Guidance, which can be found at <https://www.gov.uk/guidance/biodiversity-net-gain>.

Based on the information available and submitted in support of this application, the Local Planning Authority considers that the development hereby permitted is exempt and therefore will not require the approval of a biodiversity gain plan, prior to the commencement of development; with the development comprising a statutory exemption as listed below: -

The development comprises a 'de minimis exemption' under Regulation 4.

As such, the development hereby permitted will not be subject to the biodiversity gain condition.

Irreplaceable habitat

If the onsite habitat includes irreplaceable habitat (within the meaning of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) there are additional requirements for the content and approval of Biodiversity Gain Plans.

For clarity the LPA do not consider that irreplaceable habitats are present at this site.

The Biodiversity Gain Plan must include, in addition to information about steps taken or to be taken to minimise any adverse effect of the development on the habitat, information on arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat.

The planning authority can only approve a Biodiversity Gain Plan if satisfied that the adverse effect of the development on the biodiversity of the irreplaceable habitat is minimised and appropriate arrangements have been made for the purpose of compensating for any impact which do not include the use of biodiversity credits.

Effect of Section 73(2D) of the 1990 Act

Under Section 73(2D) of the Town and Country Planning Act 1990 (as amended) where

- (a) a biodiversity gain plan was approved in relation to the previous planning permission ("the earlier biodiversity gain plan"), and
- (b) the conditions subject to which the planning permission is granted:
 - (i) do not affect the post-development value of the onsite habitat as specified in the earlier biodiversity gain plan, and
 - (ii) in the case of planning permission for a development where all or any part of the onsite habitat is irreplaceable habitat within the meaning of regulations made under paragraph 18 of Schedule 7A, do not change the effect of the development on the biodiversity of that onsite

habitat (including any arrangements made to compensate for any such effect) as specified in the earlier biodiversity gain plan.

- the earlier biodiversity gain plan is regarded as approved for the purposes of paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990 (as amended) in relation to the planning permission.

Background papers:- Planning Application Working File

Lead Contact Officer

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Appendices attached to this report:

Appendix A - Plan A

