

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H16-0688-26 **Applicant:** Rebecca Denaco Alliance

Proposal: Demolition of existing agricultural barns and greenhouse and erection of residential development - approved under H16-0689-24. Amendments to ground floor internal layout and associated elevation changes to make utility and gym space on all plots

Location: Land At Water Lane Nursery Low Road Spalding

Terminal Date: 19th August 2026

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Section 96A of the Town and Country Planning Act 1990.

Representations:

	Object	Support	No Obj.	Comments
RESIDENTS	0	0	1	0

CASE OFFICER ASSESSMENT

Proposal

This is an application for a non-material amendment. Planning permission was achieved for the 'demolition of existing agricultural barns and greenhouse and erection of residential development', approved under H16-0689-24.

The amendments seek changes to ground floor internal layout and associated elevation changes to create utility and gym space within the ground floor of all plots.

The applicant has provided a series of floor plans (including elevations) that show a gym located at ground floor, with garage-style doors removed on Plots 1, 5, 6, 8 and 9 and replaced with glazed openings.

Site Description

The application site is located outside the settlement boundary for Spalding and on the east bank of the Coronation Channel. The application site abuts the wildlife corridor that lines the Channel and the sustainable cycle/pedestrian link that follows along the east bank.

The site itself has a number of agricultural units including glass houses that are proposed to be demolished as part of this application. The application site is accessed from Low Road, this access already exists and serves Water Lane nurseries.

The application site is located in flood zone 3 in accordance with Environment Agency Flood Maps and the South East Lincolnshire SFRA predicted modelling for 2115 shows the site to be in a mix of Danger for some, danger for most.

History

H16-0689-24 - Demolition of existing agricultural barns and greenhouse and erection of residential development. Approved 02-04-25

Consultation Responses

None requested

Planning Considerations

The principal issue is whether the proposed amendments can be regarded as non-material under Section 96A of the Town and Country Planning Act 1990, having regard to their effect on the extant planning permission and the conditions attached to it.

Scope of Assessment for Non-material amendments

As a NMA is not an application for planning permission, section 38(6) of the Planning and Compulsory Purchase Act 2004 does not apply.

The local planning authority must have regard to the effect of the change, together with any previous changes made under section 96A. They must also take into account any representations made by anyone notified, provided they are received within 14 days of notification. In this instance no consultations were carried out.

Non-material amendment criteria

Each application will be considered on its merits. The proposed change may be a non-material amendment if:

1. There would be no change to the application site boundary and the proposal would be located within it (red line boundary)
2. The amendment would not conflict with development plan policies or other Government guidance
3. There would be no conflict with any conditions on the planning permission
4. The proposal would not make worse any concerns raised by third parties when the original planning permission was considered
5. The approved footprint/siting of the building will not be moved in any direction by more than 1 metre
6. The proposal would not result in an extension to development already approved
7. The height/volume of the building or extension would not be increased or significantly reduced
8. The amendments must not result in a fundamental change in the design of the building
9. The change does not amount to new works or elements which have not been considered by any environmental statement submitted with the original application
10. Amendments to windows/doors/openings must not have any overlooking impact on neighbouring properties
11. There would be no change to the description of development in respect of number of proposed

units These criteria are designed to prevent amendments being accepted that would have a harmful impact.

If the above cannot be met:

- a Section 73 application or
- a new full application, may be required.

Assessment

Planning permission H16-0689-24 was approved subject to condition 3 which stated:

"The ground floors of the properties hereby approved shall be used as a garage, garden store and WC only and as annotated on approved drawings reference: '594.PD2.01', '594.PD3.01', '594.PD4.01', '594.PD5.01', '594.PD6.01', and for no other habitable accommodation".

The applicant seeks to create a gym within the ground floor of all plots. Whilst a gym itself may not be classed as habitable accommodation the condition is explicit in that it allows the ground floors to be used "as a garage, garden store and WC only". The proposed use of a gym is therefore outside of this constraint and such a variation of the condition is considered to be material, and as such cannot be achieved under a non-material amendment.

The proposed change affects Condition 3 to the extent that it would require the condition to be varied. The proposed amendment would therefore result in development that is inconsistent with the extant planning permission. As the proposal cannot be implemented without varying the condition, it would alter the scope of the planning permission itself. Such a change goes beyond the scope of Section 96A of the Town and Country Planning Act 1990 and cannot reasonably be regarded as non-material.

The planning merits of the proposed amendment have not been assessed because the amendment cannot be considered under Section 96A. The proposed change would also require consideration of flood risk implications arising from the introduction of an alternative ground floor use, which falls outside the scope of a non-material amendment.

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

Having regard to the nature of the proposed amendments, it is considered that they cannot reasonably be regarded as non-material within the meaning of Section 96A of the Town and Country Planning Act 1990. The proposal would require the variation of Condition 3 attached to planning permission H16-0689-24 and would therefore materially alter the effect of the planning permission. The proposed amendments cannot be approved through the non-material amendment procedure. Should the applicant wish to pursue the changes, an application under Section 73 of the Town and Country Planning Act 1990 (or, if necessary, a fresh planning application) would be the appropriate route.