FREETHS

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Our Ref: MBA/2003/2153449/9/MB

Dear Sir/Madam

PROPOSED SECTION 73 APPLICATION TO PERMISSION H16-0395-23 TO VARY CONDITIONS 2 (APPROVED PLANS); 3 (LANDSCAPING); 5 (LEVELS), 8 (LIGHTING) AND 9 (CCTV)
PLOT 3 LINCOLNSHIRE GATEWAY BUSINESS PARK, SPALDING
ERECTION OF 2 SINGLE STOREY RESTAURANT/CAFÉ UNITS WITH ASSOCIATED DRIVE THRUS (SUI GENERIS) AND 1 SINGLE STOREY RESTAURANT/CAFÉ UNIT (USE CLASS E), 42 CAR PARKING SPACES, ACCESS AND LANDSCAPING

We are instructed by our client, Dukesmead Industries Ltd, to submit a Section 73 application to vary planning conditions in respect of the above permission. The S.73 application has two main purposes;

(1) To vary the approved drawings to incorporate proposed changes to Unit 1 and to introduce a proposed sub-station.
(2) To vary conditions to allow a phased implementation of the development.

Background

In July 2023 full planning permission was granted by South Holland District Council ("SHDC") for a drive thru/restaurant/café development comprising three units. The site forms part of the wider Lincolnshire Gateway Business Park and is to the west of Applegreen Services and west/south of various other similar food and drink uses.

An operator for Unit 1 has been secured, and this will be a Wendy's fast-food outlet. The occupier has requested some amendments to the approved unit, and it has been identified that an electrical sub-station is required as part of the scheme to deliver the required power. The Wendy's unit will come forward in advance of the rest of the development and therefore it is necessary to introduce phasing to the planning conditions. The details of the proposed changes to Unit 1 and the planning conditions are set out below.

The application is supported by the following drawings:

- Location Plan

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- LINCS-FRO-DUK-003-P09D - Proposed Building 1 - Plan 1:50 @ A1
- LINCS-FRO-DUK-003-P10D Proposed Building 1 - Elevations 1:50 @ A1
- LINCS-FRO-DUK-003-P14B Planning Comparison Plan 1:200 @ A1
- LINCS-FRO-DUK-003-P15A Proposed Site Plan 1:200 @ A1
- LINCS-FRO-DUK-003-P16A Proposed Building 1 - Roof Plan 1:50 @ A1
- LINCS-FRO-DUK-003-P17 Substation - Plans & Elevations 1:25 @ A1
- LINCS-FRO-DUK-003-P20 Phasing Plans 1:250 @ A1

The Proposed Development

Condition 2 sets out the approved drawings for the planning permission. The changes are restricted to Unit 1 and include the following:

- Minor reduction in footprint of building
- Minor variations in height of building
- Fenestration changes & introduction of turret feature
- Change to materials to reflect operator's brand
- Three delivery collection spaces to the south of the unit

Please see comparison plan and elevations for full details.

We therefore would suggest that condition 2 is varied as follows:

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

- WPS-WEN-003-P-02
- LINCS-FRO-DUK-003-P09D
- LINCS-FRO-DUK-003-P10D
- LINCS-FRO-DUK-003-P14A
- LINCS-FRO-DUK-003-P15A
- LINCS-FRO-DUK-003-P16A
- LINCS-FRO-DUK-003-P17
- LINCS-FRO-DUK-003-P20
- BBANK-WPS-WEN-003-P-11
- BBANK-WPS-WEN-003-P-12
- WPS-WEN-003-P-01 Rev D (Location Plan only)
- BBANK-WPS-WEN-003-P-06C Rev C
- BBANK-WPS-WEN-003-P-07B Rev B
- BBANK-WPS-WEN-003-P-08B Rev B
- Planning Statement dated April 2023
- Kitchen Extraction Specification dated March 2023
- Sustainable Drainage Statement dated March 2023
- Transport Statement dated 20 April 2023
- Freeths Letter dated 16 August 2024

Please note we have proposed that the site elevations and CGI is removed from the approved drawing list as they include the superseded versions of Unit 1. We have also included a note that it is the location plan only that is approved on WPS-WEN-003-P-01 Rev D

We have included a phasing plan within the submission (LINCS-FRO-DUK-003-P20). This divides the scheme into two phases, with Unit 1 being the first phase, with a significant proportion of the car parking being delivered with this unit. Units 2 and 3 comprise the second phase. On this basis we propose to the vary the following conditions as follows

Condition 3

Before the commencement of ***any phase of*** the development (***as identified on drawing LINCS-FRO-DUK-003-P20***) hereby permitted beyond oversite, the approval of the Local Planning Authority is required to a scheme of landscaping and tree planting for ***that particular phase*** 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 ***that particular phase of*** 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 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).

Condition 5

Before the commencement of ***any phase of*** the development ***(as identified on drawing LINCS-FRO-DUK-003-P20***) hereby permitted, full details of the existing and proposed site levels and proposed floor levels of the buildings, hard surfaced areas and garden/amenity areas ***for that phase***, including any mitigation measures arising as a consequence (for example increased height of boundary treatment), shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed and retained in accordance with the details so approved.

Note: Site levels and finished floor levels have not been approved. 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.

Condition 8

Prior to the first use of ***any phase of*** the development***(as identified on drawing LINCS-FRO-DUK-003-P20***), details of an external lighting scheme for the car park of the premises ***within that phase*** shall be submitted to and agreed in writing by the Local Planning Authority. The external lighting scheme shall be implemented in accordance with the approved scheme.

Condition 9

Prior to the first use ***of any phase*** of the development, details of a CCTV system (including programme for its implementation, ongoing maintenance and management) for both security and monitoring purposes ***for that phase*** shall be submitted to and agreed in writing by the Local Planning Authority. The CCTV scheme shall be implemented, managed and maintained in accordance with the approved scheme and programme.

Assessment

The proposed changes to the scheme are minor in nature and the siting, scale and general appearance of Unit 1 remains similar to that approved. The changes introduce the occupier branding and are acceptable in appearance and will complement the existing character of this part of the business park, which is a hub for food and drink uses. The proposed changes to the conditions will allow a phased delivery of the site and will enable Unit 1 to come forward in advance of the other units. The phasing has been apportioned in a logical way and will ensure suitable access and car parking provision.

A discharge of conditions application for Phase 1 will follow shortly.

The Development Plan for SHDC remains as per when the original planning permission was granted. The scheme continues to accord with the Development Plan policies identified in the original planning statement and in the Officer's report for the original decision. Given the minor and uncontroversial nature of the proposals, we would ask that approval be granted at the earliest opportunity to aid delivery plans for Unit 1.

Yours faithfully

This letter is approved but unsigned as it is sent electronically.

Freeths LLP
Please respond by e-mail where possible