DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H16-0723-24**	**Applicant:**	**Dukesmead Industries Limited**
Proposal:	Erection of 2 single storey restaurant/cafe units with associated drive thru's (sui generis) and 1 single storey restaurant/cafe unit (Use Class E), 42 car parking spaces, access & landscaping - Approved under H16-0395-23. Modification of Condition 2 to allow amendments to previously approved plans and Modification of Conditions 3, 5, 8 & 9 to allow amendments to the wording relating to landscaping & tree planting, site & floor levels, external lighting & CCTV system		
Location:	Plot 3 Lincolnshire Gateway Business Park Spalding		
Terminal Date:	23rd October 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

02	Development Management
03	Design of New Development
07	Improving South East Lincolnshire's Employment Land Portfolio
30	Pollution
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2023

Section 2 - Achieving sustainable development
Section 4 - Decision-Making
Section 6 - Building a strong, competitive economy
Section 9 - Promoting sustainable transport
Section 12 - Achieving well-designed & beautiful places

Representations:

	Object	Support	No Obj.	Comments
WARD MEMBER	0	2	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1

SHDC INTERNAL	0	0	2	0
OTHER STATUTORY BODIES	0	0	0	3

CASE OFFICER ASSESSMENT

Proposal

This is a section 73 application that seeks to amend the design of unit 1 (which now has secured an operator). The changes are brought about by the operators requirements and would involve 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

This application also introduces a 'phased approach' to the scheme in which unit 1 and the majority of the parking is provided. Units 2 and 3 form later phases. Due to this, the wording of certain conditions becomes restrictive, these include conditions, 3, 5, 8 & 9 all of which would have the wording amended to allow for phases of this development to occur. The conditions would still retain their purpose but allow for the permission to proceed flexibly through the phases.

Site Description

The application site comprises approximately 0.4 hectares of land to the south of Spalding. The site comprises a vacant plot of land that is being developed (under permission H16-0395-23). The site is part of the wider Lincolnshire Gateway Business Park site granted outline planning permission in 2014 under permission reference H16-0009- 14 and is situated to the west of the existing Applegreen petrol filling station and services built under that permission.

The site itself is bound to the north and west by Barrier Bank Road, to the east by the access road (Goodison Road) into the wider Business Park site and to the south by undeveloped land.

Immediately adjacent to this is two new restaurant and takeaway units (KFC and Taco Bell) developed under permission reference H16-0172-21. The site is located within Flood Zone 1 is not within a Conservation Area and there are no listed buildings in close proximity to the site.

History

H16-0395-23 - Erection of 2 single storey restaurant/cafe units with associated drive thru's (sui generis) and 1 single storey restaurant/cafe unit (Use Class E), 42 car parking spaces, access & landscaping. Approved 03-07-23

H16-0009-14 - Proposed business park, hotel, public house/restaurant, conference and function centre, petrol filling station, restaurant/cafe with ancillary retail together with associated landscaping, access, highways, parking, drainage, utilities and services and infrastructure works - Approved 10 October 2014

H16-1081-14 - Details of detailed design for the arrangements for the construction management plan (Condition 6 of H16-0009-14) - Approved 20 October 2016

H16-0157-15 - Details of engineering drawings for construction of the access to the B1173

(condition 21 of H16-0009-14) - Approved 27 October 2016

Consultation Responses

Anglian Water

This application is not relevant to Anglian Water - we have no comments to make.

South Holland IDB

Thank you for your consultation on planning application H16-0723-24. 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.

Highways and SuDs Support

No Objections- Having given due regard to the appropriate local and national planning policy guidance (in particular the National Planning Policy Framework), Lincolnshire County Council (as Highway Authority and Lead Local Flood Authority) has concluded that the proposed development would not be expected to have an unacceptable impact upon highway safety or a severe residual cumulative impact upon the local highway network or increase surface water flood risk and therefore does not wish to object to this planning application.
Comments - The proposal is for minor amendments to condition 2 that already has approval under H16- 0395-23. The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk. Conditions 3, 5, 8 & 9 are not highway related conditions.

Crime Prevention Design Officer

Lincolnshire Police do not have any objections to this application.

Pedals

Pedals has no objection to this application, subject to there being no reduction in the provisions for parking bicycles

Environmental Protection

No comments regarding land contamination

Ward Member

Support the development and the further tidying up of this messy site

Evaluation

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.

In this case, the adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019, forms 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 (December 2023) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.
Furthermore, where a Neighbourhood Plan has been adopted, this alongside the adopted Local Plan, forms part of the Development Plan for the District, and must be considered when assessing development proposals. In this instance, no relevant neighbourhood plans have been adopted.

Planning Considerations

Evaluation - Section 73

This application relates in the main to physical alterations to unit 1 approved under H16-0395-23. The changes which are listed above (proposal section) relate to character and design of the development. The applicant has also introduced a phased approach to the build out of the site and this would necessitate changes, to the wording of certain condition to allow that specific information to come forward at a time when it is appropriate.

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 the conditions 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 affect of the change will be significant".

Given the above it is considered that there is no requirement to revisit matters of planning principle and the assessment will focus on the following key issues:

Character & Design
Environmental Issues/Amenity
Highway Safety & Parking
Site Phasing and Conditions

Character & Design

SELLP Policy 2 point 1 states that proposal should meet with sustainable development considerations specifically in relation to 'size, scale, layout, density and impact on the amenity, trees, character and appearance of the area and the relationship to existing development and land uses'.

SELLP Policy 3 sets out the 'Design of new development' in part it states that "Design which is inappropriate to the local area, or which fails to maximise opportunities for improving the character and quality of an area, will not be acceptable"

The site layout is only subject to minor changes including changes to the footprint of building 1. The proposed footprint which in the main is positioned over the previous approved footprint is shifted north slightly. It also shows very minor charges to the locations of kerbing.

In appearance terms the proposed charges to the scale and massing of the building are commensurate with the previous approval. Whilst there is a change to the proposed palate of materials that would align with the operators branding. These materials, given the restaurants and services that are already located within the wider Lincs Gateway Site are not out of keeping and so acceptable. It should be noted that the signage is likely to require a separate advertisement

consent.

It is therefore considered that the proposal would accord with SELLP Policies 2 & 3.

Environmental Issues

NPPF Paragraph 135 of the National Planning Policy Framework (December, 2023) 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; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

SELLP Policy 2 sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.

SELLP Policy 30 is concerned with pollution and places impacts in relation to noise, disturbance and air quality as important consideration when considering proposals for planning.

The building (building 1) would retain a similar separation distance from buildings 2 & 3 as well as the buildings/business in the wider Lincs Gateway. The proposal does not seek to amend the approved operating use of the building. Lastly the control of external light is still retained through condition. There are ultimately no changes that would result in additional harmful environmental issues as a result of the variation.

On this basis it is considered that the proposal would accord with SELLP Policies 2 and 30.

Highway Safety & Parking

SELLP Policy 2 details that proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met, specifically in relation to access and vehicle generation.

SELLP Policy 3 details that development proposals will demonstrate how accessibility by a choice of travel modes including the provision of public transport, public rights of way and cycle ways will be secured, where they are relevant to the proposal.

The previously approved parking would remain unaltered, as would the access/egress points to this approved site. LCC Highways have been consulted and have no objections to the proposed variation of plans or conditions.

On this basis it is considered that the proposal would accord with SELLP Policy 2 and 3.

Site Phasing and Conditions

A series of pre-commencement and prior to first use conditions were applied to planning permission H16-0395-23. This S73 seeks to introduce phasing to the construction of the site which in total includes 3 number building and a parking area. The applicant has provided a phasing plan (ref: FRO-DUK-003-P-20) which shows that building 1, the access/egress as well as the majority of parking are included within the first phase. Phase 2 relates to buildings 2 & 3 and some additional parking as well as the drive thru element associated with building 2.

This necessitates the requirement to change the time phasing within the following conditions:

-Condition 3 - scheme of landscaping
-Condition 5 - site levels and proposed floor levels of the buildings
-Condition 8 - external lighting scheme
-Condition 9 - details of a CCTV system

The conditions are requested to be changed to 'prior to any phase' (rather than commencement of the entire scheme) or prior to the first use of that phase.

It is considered that given the condition still retains its purpose and mitigation is still in place then this approach is considered acceptable. Furthermore given that the conditions are proposed themselves as part of this application they are already agreed by the applicant and so no

requirement to return to the applicant with respect to the agreement of pre-commencement conditions is necessary.

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 represents an acceptable variation to an already approved permission. The development hereby proposed does not materially harm the character or appearance of the locality, or amenity of nearby residents, and provides adequate parking, whilst conforming with the South East Lincolnshire Local Plan and the provisions of the National Planning policy Framework 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.

Conclusion

Taking the above considerations into account, the proposal is considered to be in accordance with policies 1, 2, 3, 4, 7, 28 and 36 (including Appendix 6) of the South East Lincolnshire Local Plan (SELLP) (2019), along with the identified sections contained within the National Planning Policy Framework (NPFF) (December 2023). The are no significant factors in this case that indicate against the proposal and outweigh the consideration in favour of the proposal and the policies referred to above.

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.