Our Ref: JWID2297/L065

2nd October 2023

Planning Department
South Holland District Council
Priory Road
Spalding
Lincolnshire
PE11 2XE

FAO Mr M Simmonds

Dear Sir/ Madam

Planning Portal Ref: PP-12405732

APPLICATION BY TRITON PROPERTY FUND – SPRINGFIELDS OUTLET SHOPPING AND LEISURE, SPALDING, PE12 6EU

APPLICATION UNDER SECTION 73 OF THE TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED) TO ALLOW VARIATION OF CONDITION 2 (APPROVED PLANS), CONDITION 6 (ARCHAEOLOGICAL INVESTIGATION), CONDITION 7 (ARCHAEOLOGICAL - NOTIFICATION OF COMMENCEMENT), CONDITION 11 (EXISTING/PROPOSED SITE LEVELS), CONDITION 12 (TERRORISM PREVENTION MEASURES) AND CONDITON 13 (CONTAMINATION) OF FULL PLANNING PERMISSION H16-0104-20, DATED 4th FEBRUARY 2021 TO VARY APPROVED PHASING PLAN AND TIMESCALE FOR WHEN DETAILS PURSUANT TO THE CONDITIONS ARE TO BE SUBMITTED AND APPROVED

PROPOSED EXTENSION OF SPRINGFIELDS OUTLET SHOPPING & LEISURE, TO COMPRISE DEMOLITION OF THE EXISTING NFU MUTUAL OFFICES AND PROVISION OF COMPARISON RETAIL FLOORSPACE (CLASS A1), FLEXIBLE RETAIL AND/OR COFFEE SHOPS/RESTAURANTS FLOORSPACE (CLASS A1/A3), ACCESS, REVISED CAR PARKING, LANDSCAPING AND ASSOCIATED WORKS.

As you will be aware we act for Triton Property Fund (c/o UBS Asset Management (UK) Ltd) in relation to the above site and following discussions with officers we have been instructed by our client to submit an application seeking variation of appropriate conditions in order to amend the phasing approach to facilitate lawful implementation of the permitted extension to the Springfields Outlet Shopping & Leisure complex.

As discussed, the permitted extension scheme was granted on 4th February 2021 and therefore requires to be lawfully implemented by 4th February 2024. You will also be aware of the current uncertainties in the economy over the past two years and as a consequence in order to safeguard the investment at Springfields a lawful start needs to be made on site within the above timescale to ensure the proposed investment and all associated benefits do not fall away.

The above would enable the full investment to be realised over time along with all the associated benefits, including delivering the aspirations of Policy 27 of the adopted Local Plan, substantial potential job creation and other spinoff benefits in the local economy.

Without a formally implemented planning permission, the significant benefits previously outlined could not be delivered.

Against this background the intention is to amend the proposed phasing as set out on the approved site Masterplan Phasing Plan (SPFDS-WBA-SI-ZZ-DR-A-90_102 P5 - Site Master Plan Phasing 1) to facilitate implementation of the permitted scheme initially through the construction of the small expansion of the staff car park. This is shown on the approved plan to be included as part of the Phase 4 works but would be brought forward and constructed as Phase 1 works.

The revised phasing as proposed to be taken forward would include the following phases:

- **Phase 1** - Construction of additional staff parking spaces (2 spaces). The spaces would be constructed as shown on the approved layout as an extension to the eastern side of the existing staff car parking area. This is set out in the Transport Statement submitted in support of the permitted scheme as comprising two additional spaces (Paragraph 3.4, Page 14-15). The new spaces would be created perpendicular to the existing tarmac area of the car park and would entail provision of kerb edging, ground preparation works and tarmac.
- **Phase 2** – demolition of Dromedary Lodge
- **Phase 3** – demolition of the existing NFU building on the Phase 3 extension site and site preparation works
- **Phase 4** – main works to build out Phase 3 extension, alter main car park, construct additional parking and implement amends to garden area to the north of the Phase 3 extension.

The above phasing is reflected on an updated Masterplan Phasing as referenced below:

- SPFDS-WBA-SI-ZZ-DR-A-90_102 - P6 Site Masterplan Phasing

This would replace and supersede the following plan:

- SPFDS-WBA-SI-ZZ-DR-A-90_102 P5 - Site Master Plan Phasing 1

All other plans would remain unchanged as the proposed works relating to the overall completion of the extension to the centre are not being altered, just the phasing approach.

Pre-Commencement Conditions

Aligned to the amended phasing sought above, there are a number of conditions which require certain details to be submitted and agreed prior to commencement of development.

The majority of these conditions relate to matters more directly concerning the actual phase 3 extension works to the east of the existing east mall and need not apply to the limited works to construct two staff car parking spaces to secure lawful implementation of the permitted development.

In addition, there are some conditions where the wording needs to be amended to reflect the phased approach to development across the site.

In light of the above the S73 application also seeks to vary the wording of a number of conditions to secure the submission and approval of certain details prior to commencement of Phase 3 and Phase 4 (main extension preparation works) given they relate more directly to that phase.

We set out below the proposed amended wording of relevant conditions sought under this S73 application. Red font has been used for additional text and strikethrough for text to be deleted.

Condition 2 – Approved Plans

The list of approved plans should be amended to remove the following plan:

- SPFDS-WBA-SI-ZZ-DR-A-90_102 P5 - Site Master Plan Phasing 1

Replace the above plan with the plan listed below:

- SPFDS-WBA-SI-ZZ-DR-A-90_102 - P6 Site Masterplan Phasing

Condition 6 – Scheme of Archaeological Investigation

Condition 6 addresses archaeological investigations. It is considered that given the limited area affected by the works to implement the two staff car parking spaces and given that general area has already been subject to disturbance with earlier archaeological investigations when the original Outlet Centre and staff car park was built, we consider it unlikely that further investigations would be required and consequently seek variation to the wording of Condition 6.

Email discussions have taken place pre-submission of this application with Ian George (Historic Places Manager) at Lincolnshire County Council (email dated 19/09/23 to Prospect Archaeology) who has confirmed the amended wording as acceptable and requested a further amendment to reflect the current name of the team at Lincolnshire County Council dealing with such matters. This is reflected in the wording below and it is therefore anticipated there will be no issues arising from the Historic Places Team.

The proposed amended wording would be as follows:

"Before the commencement of Phase 3 and Phase 4 as shown on Phasing Plan SPFDS-WBA-SI-ZZ-DR-A-90_102 - P6, ~~No development shall take place until~~ a written scheme of archaeological investigation shall be ~~has been~~ submitted to and approved in writing by the Local Planning Authority. This scheme should include the following and should be in accordance with the archaeological brief supplied by the ~~Lincolnshire County Council Historic Environment~~ Lincolnshire County Council Historic Places Team advisor on behalf of the Local Planning Authority:……..."

Condition 7 – Notification of Lincolnshire County Council historic environment (phasing)

In light of the above, the wording to Condition 7 would also require amendment to ensure that relevant notification is provided before works are carried out in Phase 3 and Phase 4. Condition 7 should be amended as follows:

"The applicant shall notify the Lincolnshire County Council Historic Environment Department in writing of the intention to commence at least fourteen days before the start of archaeological work on Phase 3 or Phase 4 as shown on Phasing Plan SPFDS-WBA-SI-ZZ-DR-A-90_102 - P6, required in connection with Condition 6 above in order to facilitate adequate monitoring arrangements."

Condition 11 – Existing and proposed site and floor levels

The details pursuant to Condition 11 relate to the main extension development on the site of the existing NFU building and car park in order to ensure that proposed site and floor levels are appropriate and have full regard to their context. Those details are not necessary for implementation of Phase 1 (additional staff car park spaces) or Phase 2 (demolition of Dromedary Lodge).

In light of the above the wording of Condition 11 should be amended to require those details before commencement of Phase 3 and Phase 4. The proposed wording is as follows:

"Before the commencement of Phase 3 and Phase 4 of the development as shown on Phasing Plan SPFDS-WBA-SI-ZZ-DR-A-90_102 - P6 ~~the development hereby permitted~~, full details of the existing and proposed site levels and proposed floor levels of the buildings and hard surfaced areas shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the details so approved."

Condition 12 – Terrorism Prevention Measures

As with Condition 11, the details sought pursuant to Condition 12 relate to those terrorism prevention measures in connection with the main extension to Springfields and not the delivery of two staff car parking spaces. Consequently, we also seek amendment to Condition 12 as follows:

"Before the commencement of Phase 3 and Phase 4 of the development as shown on Phasing Plan SPFDS-WBA-SI-ZZ-DR-A-90_102 - P6 ~~The development hereby permitted shall not be commenced until~~ the applicant shall consult ~~has consulted~~ with Lincolnshire Police Counter Terrorism Security Advisors and DOCO to ensure that appropriate measures are in planned that address approved standards in relation to hostile vehicle mitigation and other measures as determined by the principles outlined in the NaCTOs Crowded Places Guidance and CPNI 'Integrated Security' guidance are followed. The measures identified shall be submitted to and approved in writing by the Local Planning Authority, and subsequently installed prior to the occupation of any unit.

Condition 13 – Contamination including site investigation and remediation strategy

We are advised by our client's consulting engineers (Hydrock, formerly 3E) that based on the findings of the environmental risk assessment provided in section 6.2 of the Phase 1 Geo-Environmental Assessment, the risk of on-site contamination is generally low. Any potential sources of contamination are linked to imported ground from the previous development works.

The planned extension of the staff car park will involve minor and shallow kerbing and surfacing, within an area of the site with a very low likelihood of encountering imported ground from previous phases.

In light of the above, the following amended wording for Condition 13 is proposed:

"Before the commencement of Phase 3 and Phase 4 of the development as shown on Phasing Plan SPFDS-WBA-SI-ZZ-DR-A-90_102 - P6, ~~The development hereby permitted shall not be commenced until~~ a scheme to deal with any contamination of land or pollution of controlled waters in Phase 3 or Phase 4 shall be ~~has been~~ submitted to and approved in writing by the Local Planning Authority (LPA) and ~~until~~ the measures approved in that scheme shall have been implemented. The scheme shall include all of the following measures unless the LPA dispenses with any such requirement in writing:……."

To assist your Environmental Health team, we enclose the previously submitted Phase 1 Geo-Environmental Assessment Report.

Early discussions were held with your Environmental Health Team and their response by email to John Mitchell of Hydrock (dated 14th September 2023) confirmed the amended condition wording to be acceptable in terms of details required by Condition 13 to be addressed pre-commencement of the new Phase 3 / Phase 4 of the development.

Condition 9 (CMP) and Condition 10 (Wheel Wash Details)

The following two conditions would remain as pre-commencement conditions to be discharged before construction of the two additional staff parking spaces:

Condition 9 – Construction Management Plan
Condition 10 – Details to prevent deposit of mud on the public highway.

We trust the above and enclosed can be progressed through to a positive decision to facilitate implementation of the permitted development in phases.

It is considered the above changes to the permitted Phasing is a minor material variation to the approved scheme. All other details remain unchanged other than those conditions listed further above where the timing trigger for submission of relevant information is proposed to be amended. The proposed S73 is therefore considered to be acceptable when regard is had to adopted planning policy for the area provided by the South East Lincolnshire Local Plan 2011-2036 and the current permission.

Lawful Implementation of Planning Permission H16-0104-20 (4th February 2021)

During discussions with officers before submission of the application, it was indicated the intention to implement the new Phase 1 works (two car parking spaces in the staff car park) to ensure lawful implementation of the planning permission granted for the extension to Springfields. Officers requested that the submission sets out the applicant's view as to whether such works would constitute lawful implementation. Our client's legal advisers, CMS (Cameron McKenna Nabarro Olswang LLP), have provided their views on this matter and they are set out below.

Legal Context

Section 191 of the Town and Country Planning Act 1990 (as amended) ("**Act**") allows applications to the Local Planning Authority for the issue of Certificates of Lawfulness for Existing Use or Development.

This provides a statutory mechanism for obtaining confirmation that some operational development is lawful.

Condition 1 of the Planning Permission states that the development must be begun not later than the expiration of three years beginning with the date of this permission [4th February 2021] - that is 4th February 2024 ("**Deadline**").

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

Lawful implementation of the Planning Permission before the Deadline will preserve it in perpetuity.

Section 56(1)(a) of the Act provides that development of land shall be taken to be initiated: "*if the development consists of the carrying out of operations, at the time those operations begun*".

Section 56(2) of the Act provides that: *"…development shall be taken to have begun on the earliest date on which any material operation comprised in the development begins to be carried out*".

Material Operation

Section 56(4) of the Act defines the term "material operation":

> *(a) any work of construction in the course of the erection of a building;*
> *(aa) any work of demolition of a building;*
> *(b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;*
> *(c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);*
> *(d) any operation in the course of laying out or constructing a road or part of a road;*
> *(e) any change in the use of any land which constitutes material development*".

The creation of two car parking spaces as shown on the approved plans listed in the Planning Permission will comprise a material operation under 56(4)(d), being *(d) any operation in the course of laying out or constructing a road or part of a road.*

The general approach of the Courts in this respect, as set out in *Malvern Hills District Council v Secretary of State for the Environment* {1982} 3 WLUK 272 and subsequent cases, has been that the works undertaken need not be particularly extensive in order to lawfully implement a planning permission. Works carried out in accordance with the relevant planning permission that are more than trivial (or not de minimis) and which objectively constitute a material operation comprised in the development will be sufficient to lawfully implement the Planning Permission. For example, in *Malvern Hills* simply pegging out of an access way was sufficient and in *Thayer v Secretary of State for the Environment* {1992} JPL 264 opening a gap in a hedge and limited ground works relating to the provision of an access was sufficient.

The works to construct and complete two parking spaces as part of the development authorised by the Planning Permission are *more* material than the works in the two leading cases and therefore meet the statutory tests for lawful implementation.

Section 106 Agreement Deed of Variation

In addition to the above, there will be a need to amend the S106 Agreement attached to the previous grant of permission and this would be done through a Deed of Variation (DoV). This would seek to tie the payment of the town centre contribution to the commencement of works

on the main extension development area, ensuring the benefits of the contribution are still delivered in a timely fashion and at the time of the major investment in the extension building itself. A similar timing amendment would be required to the obligation requiring the defined 'green land' to be bound by a Confirmatory S106 before implementation of the planning permission.

Once the above submission has been validated, I suggest our client's solicitors engage further with you and your legal department to progress alongside consideration of the S73 application.

Environmental Impact Assessment Screening Opinion

The previous application (H16-0104-20) was subject to EIA screening as the proposal fell within the description of 'Infrastructure Projects' at paragraph 10(b) of Schedule 2 of the Town & Country Planning (EIA) Regulations 2017 and exceeds 0.5 hectares in Column 2 of the table in the updated schedule.

For Schedule 2 developments, Part 1 of the Regulations confirm EIA development is that which is *"likely to have significant effects on the environment by virtue of factors such as its nature, size or location"*.

In deciding whether Schedule 2 development is EIA development, Regulation 5(4) states the local planning authority must take into account the selection criteria set out in Schedule 3 as are relevant to the development. Selection criteria outlined by Schedule 3 paragraphs 1 to 3 are:

- Characteristics of development
- Location of development
- Types and characteristics of potential impacts

The previous application was concluded not to trigger a requirement for a formal EIA in that the proposal would not result in significant effects on the environment and consequently was not required to be subject to an EIA. The current proposal is for an amendment to the phasing approach in delivering the permitted development and does not alter the quantum of development or indeed the impacts arising from the proposed development.

Consequently, we consider the current S73 application, although a major application, would not trigger the need to be subject to EIA for reasons previously concluded. It is not therefore EIA development and a screening opinion should be issued to reflect the position.

Application Submission

The application is submitted as comprising the following:

- Application forms and completed certificate C
- Cover letter providing a planning statement
- Site Location Plan
- Amended Phasing Plan (SPFDS-WBA-SI-ZZ-DR-A-90_102 - P6 Site Masterplan Phasing)
- Details listed above of amendments sought to the wording of specific conditions
- Phase 1 Geo-Environmental Assessment Report (previously submitted under extension application H16-0104-20 to assist your consultees)
- Spalding Guardian Public Notices Section 21st September 2023

We trust the above reflects our recent conversation and trust the enclosed can be validated and sent out to relevant consultees. If there are any queries, please do not hesitate to contact the undersigned.

Yours faithfully



Jeremy Williams BA (Hons) MA MRTPI
Director

Enc – as detailed above