

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H17-0566-25 **Applicant:** Mr I Bates

Proposal: Demolition of 180 Station Road, associated outbuildings, adjacent shed and erection of 7 two and three bed houses - approved under H17-0130-23. Modification of Condition 2 to allow amendments to previously approved plans and modification of Condition 3 to amend brick type from Vandersanden Bellona to Forterra St Lawrence for all house types.

Location: Land Off Station Road Surfleet Spalding

Terminal Date: 29th August 2025

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development

National Guidance

National Planning Policy Framework December 2024

Section 4: Decision-making
Section 12: Achieving Well-designed Places

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

Planning permission was granted in August 2023 to demolish an existing residential property, 180

Station Road, and associated outbuildings and construct seven dwellings on the site (reference H17-0130-23). The frontage properties will be served by their own access points with the remainder sharing a single access onto Station Road located to the east of the site. A re-located and widened public footpath is proposed along the eastern boundary with a 1.2metre high post and rail fence forming the boundary with the residential dwellings.

Several conditions forming part of the extant consent have been discharged under application references H17-0785-23 and H17-0229-24.

This application is made under Section 73 of Town and Country Planning Act 1990 and seeks to vary conditions 02 (approved drawings) and 03 (external materials) of planning permission reference H17-0130-23.

Site Description

The application site is located within the defined settlement boundary of Surfleet. The site is occupied by two workshop buildings. the remainder of the site has been cleared with the footprint of a dwelling currently under construction. Established trees are located to the northern and eastern boundaries, outside the application site. Residential properties are situated to the west and south on the opposite side of Station Road, along with the Riverside public house. The site is located within Flood Zone 1.

History

H17-0130-23: Demolition of 180 Station Road, associated outbuildings, adjacent shed and erection of 7 two and three bedroom houses. Approved 15th August 2023.

H17-0785-23: Details of schedule of external materials of construction of buildings and hard surfaced areas, landscaping and tree planting for the site and proposed boundary treatments (Conditions 03, 05 and 06 of H17-0130-23). Approved 27.10.2023

H17-0229-24: Details of design and position of all external boxes, gas flues and soil vent pipes, scheme to deal with contamination and ecological biodiversity measures (Conditions 04, 08 and 13 of H17-0130-23). Approved 21st August 2024.

Consultation Responses

Responses Received (consultation period between 25th June 2025 and 16th July 2025)

Surfleet Parish Council

No response received.

Highway and Lead Local Flood Authority

No objection. The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk.

Public Representation

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.

Planning Considerations

The main issues and considerations in this case are:

Principle of Development and Sustainability
Layout, Design and Impact on the Character and Appearance of the Area.
Impact on Residential Amenity
Biodiversity Net Gain
Other Matters

Evaluation- Section 73

The proposal relates to the variation of Conditions 02 and 03 of H17-0130-23, 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.

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'.

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".

Principle of Development and Sustainability

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 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.

The principle of the construction of 7 two and three bedroomed dwellings on the site has been established under the terms of the original permission granted in August 2023 (reference H17-0130-23) which is extant.

This Section 73 application seeks to vary condition 02 (approved plans) and condition 03 (materials) of planning permission H17-0130-23 to amend the siting of two pairs of semi-detached dwellings, Plots 4 and 5 and Plots 6 and 7. The position of the semi-detached properties will in effect be swapped with Plots 4 and 5 (2-bedroomed houses) sited in the approved position of Plots 6 and 7 (3-bedroomed dwellings) and vice-versa. No change is proposed to Plots 1, 2 and 3.

Consent is also sought to amend the brick approved under condition 03 to construct the external walls of the development. The roof tile is to remain as approved under H17-0130-23 and the

subsequent discharge of this condition under application reference H17-0785-23.

No change is proposed to the approved house types for each plot permitted under H17-0130-23, there are also no change proposed to the access, parking or landscaping of the site.

Layout, Design and Impact on the Character and Appearance of the Area

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.

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.

The frontage development approved facing onto Station Road, Plots 1,2 and 3 will remain unchanged as approved under the original planning permission H17-0130-23. To the rear of the site the position of the two pairs of semi-detached dwellings, Plots 4,5,6 and 7 will be handed, Plots 4 and 5 will be re-positioned adjacent to the eastern boundary of the site in the approved position of Plots 6 and 7 and Plots 6 and 7 will be sited in the approved location of Plots 4 and 5. Visually, the change in the position of the plots to the rear of the site will have limited impact on the wider character and appearance of the area. The house types remain as approved as does the access and parking area. There are no further implications for the use of the public footpath along the eastern boundary of the site and landscaping remains as approved.

Consent is also sought to vary condition 03 of application H17-0130-23 relating to external materials. The approved brick to construct the external walls of all dwellings was Vandersanden Bellona, the applicant seeks to change this to Forterra St. Lawrence. A sample of this brick has been submitted as part of the Section 73 application which is considered acceptable and appropriate to the location of the site. The roof tile remains as approved.

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.

Impact on Residential Amenity

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

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.

The closest residential property to the rear of the site is no.176 Station Road. Plot 7 is positioned beyond the rear elevation and garden area of this dwelling and is located no closer to the site boundary than the extant development. The house types, in terms of design, scale and height remain as approved and in this regard there are no further implications for the level of amenity currently afforded to no.176 Station Road and other neighbouring dwellings in terms of loss of light, overlooking, or creating an overbearing or enclosing impact.

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.

Biodiversity Net Gain

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.

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.

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.

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.

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.

Application H17-0130-23 was submitted and approved prior to the mandatory BNG requirement and therefore this Section 73 application is exempt from the mandatory 10% requirement. However, condition 05 of application H17-0130-23 required the submission of a landscaping and planting scheme which should also demonstrate BNG would be achieved on site. This condition was discharged under application H17-0785-23 in October 2023 and therefore the development will provide Biodiversity Net Gain.

Other Matters

Access and Parking

There is no change to the approved access and parking arrangement and the highway authority has no objection to the Section 73 application.

Public Right of Way

The public right of way along the eastern boundary of the site is to remain as approved under H17-0130-23.

Discharge of Conditions

Conditions 03, 04, 05, 06, 08 and 13 of H17-0130-23 have been discharged and it is therefore not necessary to attach these conditions to this Section 73 application.

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 proposed modification of conditions 02 and 03 of planning permission H17-0130-23 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.

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.

Conclusion

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, and 3 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.

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.

Recommendation

Based on the assessment detailed above it is recommended that the proposal should be approved under delegated powers.