DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H17-0874-24**	**Applicant:**	**Mr G & Mrs C Ingamells**
Proposal:	Proposed Replacement Dwelling - Approved H17-0110-24. Modification of Condition 2 to allow amendments to previously approved plans		
Location:	25 The Reservoir Surfleet Spalding		
Terminal Date:	12th December 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
04	Approach to Flood Risk
22	Replacement Dwellings in the Countryside
29	The Historic Environment
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2023

Section 12 - Achieving well-designed and beautiful places
Section 14 - Meeting the challenge of climate change, flooding and coastal change
Section 16 - Conserving and enhancing the historic environment

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This application is a Section 73A seeking to vary Condition 2 of planning approval H17-0110-24 to allow amendments to previously approved plans.

Application H17-0110-24 granted planning permission for a replacement dwelling.

Site Description

The existing property on the site has now been demolished following the planning approval H17-0466-21. The site fronts onto Surfleet Reservoir with a slope to the rear up to the roadway, which is accessed by existing concrete steps. There is approx. 2m high close board and concrete gravel board boundary treatment to the west and east. There is also higher hedging along the eastern boundary. Existing development along The Reservoir is mixed in terms of design and age, with some recent replacements visible.

History

H17-0466-21 - Full - Demolition of existing dilapidated pre-fabricated dwelling and erection of new dwelling - Approved 12.07.2021

H17-1289-21 - Full - Demolition of existing dilapidated dwelling and erection of new dwelling - re-submission of H17-0466-21- Approved 31.01.2022

H17-0110-24 - Full- Proposed Replacement Dwelling - Approved 17.04.2024

H17-0634-24 - S73 - Proposed Replacement Dwelling - Approved under H17-0110-24. Modification of Condition 2 to allow amendments to previously approved plans - Refused 19.09.2024

Consultation Responses

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, no consultee comments or letters of representation have been received.

Evaluation - Section 73

The proposal relates to the variation of Condition 2 of H17-0110-24, 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 Condition 2 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

The principle of development has been accepted by the host application, H17-0110-24.

The site is located outside of any settlement boundary as set out in the South East Lincolnshire Local Plan (2019) (SELLP) and is, therefore, classed as being in the countryside in planning policy terms. Policy 1 of the Local Plan (Spatial Strategy) states that development in the countryside will only be permitted that is necessary to such a location and/or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits.

Notwithstanding the above, Policy 22 of South East Lincolnshire Local Plan (SELLP) 2019 relates to Replacement Dwellings in the Countryside. This policy states that "Proposals for the erection of replacement dwellings outside defined settlement boundaries will be permitted provided that:

1. the residential use of the building to be replaced (the original building) has not been abandoned;

2. the original building is permanent, has not become derelict and is not the result of a temporary permission;

3. the original building is not of architectural or historic merit and is not capable of repair;

4. the replacement building is of a high standard in terms of architectural detailing and materials of construction;

5. the replacement building is positioned on a similar footprint to the original building unless it can be demonstrated that the re-positioning would have beneficial impacts such as improving the character and appearance of the site and its locality; and

6. the replacement building does not exceed the floor area of the original dwelling by more than 40%, unless the development is of exceptional quality or innovative in nature in terms of its design, use of materials and levels of energy efficiency"

The residential use of the building has not been abandoned. The Reservoir is an area of Surfleet that was mostly developed from the 1930s onwards and there are a range of historic temporary properties as well as repurposed and prefabricated single storey buildings in the area, including the application site. A number of these are of relatively poor constructional quality and several have been replaced in recent years due to their deteriorating state. A precedent has therefore effectively been set for the replacement of such buildings at The Reservoir.

The replacement dwelling is positioned on a similar footprint to the original building, although it is larger. The floor area of the replacement dwelling exceeds that of the original dwelling by more than 40%. However, this is partly due to the introduction of an additional storey as recommended by the flood risk assessment. The plot can accommodate a larger dwelling, which the applicant is seeking to make best use of.

In this instance, the site has extant permission as detailed above and can therefore be redeveloped until the expiration of that permission. Therefore, this extant permission holds weight within the consideration of this proposal and its acceptability in principle.

The full justification for the development granting planning permission for application H17-0110-24 can be viewed in the officer's report, as can the officer's assessment of the proposal against the National Planning Policy Framework (at the time of the previous decision), and the South East Lincolnshire Local Plan (2019).

In any event, as outlined within the report above, the principle of development has been

established, and therefore, remaining extant. When viewed as a whole, coupled with the proposal comprising a section 73 application to vary Conditions 2, the proposal is acceptable in principle.

Layout, Design and Consideration of the Character and Appearance of the Area

Section 12 of the National Planning Policy Framework (December 2023) specifically relates to 'Achieving well-designed and beautiful places' and details that the "creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve" and as such, it is generally accepted that good design plays a key role towards sustainable development.

Paragraph 135, contained within Section 12 of the National Planning Policy Framework (December 2023), states that new development should function well and add to the overall quality of the area (including beyond the short term) and should be visually attractive as a result of good architecture and appropriate landscaping. This goes on to establish that it is important that new development should be of the highest quality to enhance and reinforce good design characteristics, and that decisions must have regard towards the impact that the proposed development would have on local character and history, including the surrounding built environment and landscape setting such as topography, street patterns, building lines, boundary treatment and through scale and massing.

Development proposals should also ensure that developments 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, among other considerations.

Likewise, Policy 2 of the South East Lincolnshire Local Plan 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, in that it requires development to comprise good design; identifying issues that should be considered when preparing schemes so that development sits comfortably with, and adds positively to, its historically-designated or undesignated townscape or landscape surroundings.

These policies accord with the provisions of the National Planning Policy Framework and require 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.

Proposals for new development would therefore require the aforementioned considerations to be adequately assessed and designed, including the siting, design and scale to be respectful of surrounding development and ensure that the character of the area is not compromised.

This application is to modify Condition 2 of planning approval H17-0110-24 to allow amendments to previously approved plans. The amendment is to include a raised walkway along the entire length of the northeast elevation to connect the raised terraces on the rear and front elevation. The amendment is considered to be modest in nature and the context of the overall scheme.

Taking account of the design, scale and nature of the development, as detailed above, the proposal is considered to be acceptable. The proposal would not cause an adverse impact to the character or appearance of the area and would therefore be in accordance with policies 2 and 3 of the South East Lincolnshire Local Plan and Section 12 of the National Planning Policy Framework (December 2023).

Impact on Residential Amenity/Land Users

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.

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 amendment is to include a raised walkway along the entire length of the northeast elevation to

connect the raised terraces on the rear and front elevation. An obscure glass balustrade of 1.6m heigh is proposed along the north east section of the terrace, reducing in height to 1.1m and changing to clear glass toward to the north west. The obscure glass was proposed to reduce any potential overlooking into the neighbouring property to the east of the site. However, 1.6m in height would not prevent people overlooking from the site, that being said, there is no neighbour immediately to the north east and residents are only going to be on the walk way for such a short period of time to gain access to the living accommodation and given the terrace already has permission to the south east, there would be no additional loss of privacy.

It is considered that the proposed walkway is acceptable and would not have an adverse impact to the neighbouring property given the proposed mitigation.

As detailed above, the scale and design of the proposal is considered to be such that there would be significant and unacceptable impact on the residential amenities of the occupiers of adjacent properties and land users. As such, the proposal is not considered to accord with the provisions of the Section 12 of the National Planning Policy Framework (December 2023), and Policies 2 and 3 of the Local Plan.

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 does not materially harm the character or appearance of the locality, or amenity of nearby residents, whilst conforming with the South East Lincolnshire Local Plan and the provisions of the National Planning Policy Framework when viewed as a whole.

Taking into consideration these factors, the proposal is considered to comply with Policies 2 and 3 of the South East Lincolnshire Local Plan (SELLP), 2019, plus advice within the National Planning Policy Framework (NPPF), 2023. There are no significant issues in this case that would outweigh factors in favour of the proposal; therefore, in considering all the matters raised above the planning balance is in favour of the proposal and the policies referred to above.

Conclusion

Taking the above considerations into account, the proposal is considered to be in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan (SELLP) (2019), along with the identified sections contained within the National Planning Policy Framework (2023). There are no significant issues in this case that indicate against the proposal and outweigh factors 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.