

## DECISION DELEGATED TO HEAD OF PLANNING

**Application No:** H20-0343-26      **Applicant:** Belmont UK

**Proposal:** Erection of 3 Dwellings - approved under H20-1258-25. Modification of Condition 1 to allow amendments to previously approved plans and removal of Condition 4 relating to Pilkington Privacy Glass

**Location:** The Orchards Broadgate Sutton St James

**Terminal Date:** 4th June 2026

### 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                |
| 10         | Meeting Assessed Housing Requirements |
| 11         | Distribution of New Housing           |
| 17         | Providing a Mix of Housing            |
| 28         | The Natural Environment               |
| 29         | The Historic Environment              |
| 30         | Pollution                             |
| 36         | Vehicle and Cycle Parking             |
| APPENDIX 6 | Parking Standards                     |

#### National Guidance

#### National Planning Policy Framework December 2024

Section 2 - Achieving sustainable development  
Section 4 - Decision-making  
Section 5 - Delivering a sufficient supply of homes  
Section 9 - Promoting sustainable transport  
Section 11 - Making effective use of land  
Section 12 - Achieving well-designed places  
Section 14 - Meeting the challenge of climate change, flooding and coastal change  
Section 15 - Conserving and enhancing the natural environment  
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 |
| HIGHWAYS & SUDS SUPPORT               | 0 | 0 | 0 | 1 |
| SOUTH HOLLAND INTERNAL DRAINAGE BOARD | 0 | 0 | 0 | 1 |
| OTHER STATUTORY BODIES                | 0 | 0 | 0 | 3 |
| RESIDENTS                             | 1 | 0 | 0 | 0 |

## **CASE OFFICER ASSESSMENT**

### **Proposal**

The application seeks consent to modify condition 1 and remove condition 4 from reserved matters approval H20-1258-25.

Outline planning permission was granted for 3 dwellings within the site under application H20-1073-24 on 03 March 2025.

It should be noted that the application seeks to vary a condition and remove another condition of a reserved matters approval; however, reserved matters approvals are not a grant of planning permission. A Section 73 application seeks permission to modify or remove a condition imposed on a planning permission. Therefore, it is not possible to grant a new approval of reserved matters under a section 73 application. If permission is granted in this case, a new full planning permission would need to be issued. As such, it would be necessary to carry over planning conditions from the outline approval and from the reserved matters approval as necessary.

### **Site Description**

The site comprises an irregularly shaped parcel of land that is located around The Orchards, 4 Broadgate Road. The site is located on the corner of Broadgate Road and the B1165. There are dwellings located around the site and there is a grade II listed monument (St Ives Cross) located to the east of the site on the opposite side of Broadgate Road.

The site is situated within the settlement boundary of Sutton St James, as identified by Policy 1 in the South East Lincolnshire Local Plan (2019) and the accompanying policies map.

The site is located within Flood Zones 2 and 3, as identified by the Environment Agency's flood risk maps. The south-western corner of the site is within Flood Zone 2 whereas the rest of the site is within Flood Zone 3.

### **Relevant Planning History**

H20-1073-24: (Outline Application) Erection of 3 No Dwellings - approved 03 March 2025

H20-0049-26: (Discharge of Conditions) Details of Biodiversity Gain Plan (Condition 10 of H20-1073-24) - pending determination

H20-1258-25: (Reserved Matters) Erection of 3 Dwellings - outline approval H20-1073-24 -

approved 12 February 2026

## **Consultation Responses**

Responses have been received from the below referenced consultees. The responses are summarised below; however, the responses can be viewed in their entirety on South Holland District Council's website.

Lincolnshire County Council - Highways and SUDS: Modification of Condition 1 to allow amendments to previously approved plans and removal of Condition 4 relating to Pilkington Privacy Glass Condition 4 - The proposal is for minor amendments to condition 1 that already has approval under H20-1258-25. The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk.

Conservation Officer: Having reviewed this application, we have no objection on heritage grounds.

Lincolnshire County Council - Historic Environment Officer: Thanks for consulting us on this. We reiterate our previous comments dated 13/01/2026 in relation to H20-1073-24, and dated 23/01/2025 in relation to H20-1258-25. The staged archaeological evaluation is currently underway and will establish whether any subsequent archaeological mitigation is required.

South Holland Internal Drainage Board: No objections raised. Infiltration is recommended as the means of disposing of surface water run-off.

Ecology Officer: No comments.

Sutton St James Parish Council: No response received.

Cllr L J Eldridge: No response received.

Environmental Protection: No response received.

## **Public Representations**

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, one representation has been received from a member of the public:

-If condition 4 relating to the removal of the privacy glass is allowed to go ahead, it will result in a neighbouring property and garden being overlooked and therefore result in a loss of privacy.

## **Key Planning Considerations**

### **Development Plan**

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 response sets out c

The adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019 (SELLP), is 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 2024 (NPPF) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

There are no adopted Neighbourhood Plans for the area within which the site is located.

The principle of development for 3 dwellings within the site has already been established as acceptable through the approval of the outline permission for the site under reference H20-1073-24. Reserved matters approval has also subsequently been granted under application H20-1258-25. The current application seeks to amend condition 1 by changing the approved plans and to remove condition 4 and the other approved parts of the development would remain unchanged. As such, the

main issues and considerations in this case are considered to include the following:

- Evaluation under Section 73
- Proposed Changes to Condition 1; and
- Proposed Removal of Condition 4.

These matters are assessed in turn below.

### Evaluation under Section 73

The proposal relates to the variation of condition 1 and the removal of condition 4 from reserved matters approval H20-1258-25, 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 the relevant 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 effect of the change will be significant".

### Proposed Changes to Condition 1

The current application seeks to modify the approved site plan and the plans for plot 1.

For plot 1, the proposed change includes shortening the front projection of the dwelling by approximately 0.5m. This would ensure the plans are consistent with the site plan. The change is considered to be acceptable. The inconsistent version of the plan was only approved as part of H20-1258-25 because the agent did not submit an amended version of the plan when they submitted an amended site plan. The position of plot 1 was amended on the site plan during the determination of application H20-1258-25 to move the dwelling further back from the road frontage to enable the dwelling to be positioned within the existing building line along the street scene. The front projection was also shortened to help bring the building line backwards. As such, the change is considered to be both minor and acceptable.

The current application also seeks to amend the site plan by making the garden for plot 3 approximately 6m longer at the rear of the plot. This would result in the loss of some of the garden space for plot 1; however, a very large garden would be retained for plot 1, providing occupants with ample outdoor amenity space. As such, the proposed lengthening of the rear garden of plot 3 is

acceptable.

#### Proposed Removal of Condition 4

Condition 4 sets out the following:

*"Notwithstanding the details submitted, before any part of the development hereby permitted is occupied, the following window(s) shall be installed with obscure glazing (to a minimum level of Pilkington - Privacy Level 3 or an equivalent product) and shall have no opening part being less than 1.7m above the floor level immediately below the centre of the opening part.*

- *The western side elevation windows and rooflights on the western roof slope of Plot 1.*
- *The side elevation windows and rooflights of Plot 3.*

*Once installed, the windows shall thereafter be retained as such.*

*Reason: To prevent overlooking in the interests of the amenity of nearby residents. This Condition is imposed in accordance with Policy 3 of the South East Lincolnshire Local Plan, 2019 and Section 12 of the National Planning Policy Framework, December 2024."*

The proposal seeks to remove this condition.

According to the submitted planning statement the removal of condition 4 is justified for plot 1 as follows:

- "The two high level windows are at a height of 2.1m from FFL and are only 450mm deep. A 6ft tall person will struggle to see over the fence into garden as it is 2.7m away. The view will be to the sky. The windows are to let in natural light.
- The roof lights are set at 1.8m from FFL on the first floor, again a 6ft tall person will only see sky and not into the rear garden of the neighbours. The roof light is over 5m away from the boundary."

Whilst the rooflights would not look directly onto habitable rooms within Norvale, it would be considered appropriate to retain the requirement for obscure glazing within the rooflights and the side windows at the ground floor level of the dwelling to reduce the potential for overlooking between the properties.

The roof lights are approximately 5m from the neighbouring boundary. Generally, it is considered that there should be a separation distance of 10m between habitable windows and garden boundaries to prevent an unacceptable degree of overlooking.

Whilst the planning statement sets out that the windows would be 2.1m from the finished floor level, the submitted sections plans appear to show that the bottom of the window would be 1.7m from the ground level

Permitted development rights often require obscure glazing on side elevations or side roof slopes. For example, Class A (Schedule 2, Part 1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) sets out the following:

- "(b)any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse must be
- (i)obscure-glazed, and
  - (ii)non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed;"

Whilst Class A relates to householder extensions, it is considered that condition 4 aligns with this requirement. The requirement for obscure glazing is considered necessary on side elevations and roof slopes for permitted development extensions and as such, the requirement is considered to be appropriate in this case.

According to the submitted planning statement the removal of condition 4 is justified for plot 3 as follows:

- "The three ground floor windows to Plot 3 are an average of 2.6m away from the boundary fence. The existing property to the East has a higher ground level and fence level, their existing windows

are not habitable and are obscure.

-All roof lights are at a minimum height of 1.7m from FFL on the first floor, again a 6ft tall person will only see the sky and not into the rear garden of the neighbours. The roof light is over 5m away from the boundary."

The southern side elevation of plot 3 is between 2m and 3m from the boundary with Homelea which is the nearest dwelling to the south. The planning statement refers to a property to the east; however, it is presumed that this means Homelea.

Although there is a close boarded fence between the dwellings, it is nonetheless considered that there would be a degree of overlooking if no obscure glazing is proposed. For example, there are habitable room windows proposed at the ground floor level including a kitchen and a playroom. The separation distances would be very small between the properties, and it is considered appropriate to retain the requirement for obscure glazing on these windows.

The planning statement sets out that only a very tall person would be able to see out of the room windows at the first-floor level. The LPA considers that 1.7m is not particularly tall and it is considered that occupants could see out of the windows. The roof lights would be approximately 5m from the site boundaries beyond which there are neighbouring gardens. As set out previously, it is considered that there should be a separation distance of 10m from habitable windows such as bedrooms and garden boundary to prevent an unacceptable degree of overlooking. The smaller separation distance was only accepted in this instance due to the inclusion of condition 4 which was considered a reasonable compromise and would have prevented the need for the applicant to completely revised the plot layout.

Paragraph 135 of the NPPF 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 Local Plan set out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.

It is considered that the proposed removal of condition 4 would have an unacceptable impact on the amenity of future occupants and neighbouring properties as a result of an unacceptable degree of overlooking. As such, the proposal is considered to be contrary to Policies 2 and 3 of the Local Plan and Paragraph 135 of the NPPF, which amongst other things, seek to ensure that proposals result in a suitable standard of amenity for residents.

## **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.

Whilst the proposed changes to condition 1 are considered to be acceptable, the proposed removal of condition 4 is considered to be unacceptable as a result of an unacceptable degree of overlooking that would be caused. The applicant has failed to demonstrate or justify why the mitigation protection offered by the obscure glazing is no longer needed. As such, in amenity terms, the proposal is considered to be contrary to Policies 2 and 3 of the Local Plan and Paragraph 135 of the NPPF.

There are significant material considerations that weigh against the proposal and as such, the planning balance is against the development.

## **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.

### **Conclusion**

Taking the above considerations into account, the proposal would be contrary to Policies 2 and 3 the Local Plan, along with Paragraph 135 of the NPPF.

### **Recommendation**

Based on the assessment detailed above, it is recommended that the proposal should be refused under delegated authority.