DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H23-0135-24**	**Applicant:**	**Mrs K Cleary**
Proposal:	Erection of directors house including garage, office & conference room - approved under H23-0342-87. Removal of Condition 6 restricting a person or persons employed either directly or engaged in a management capacity with the adjacent fertilizer & cereal seed storage & distribution centre (together with their family) approved under H23-0343-87		
Location:	Eastern Forge Stockwell Gate Whaplode		
Terminal Date:	8th April 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
28	The Natural Environment
30	Pollution
36	Vehicle and Cycle Parking

National Guidance

National Planning Policy Framework 2023

Section 2 - Achieving sustainable development
Section 4 - Decision-Making
Section 9 - Promoting sustainable transport
Section 12 - Achieving well-designed & beautiful places
Section 15 - Conserving and enhancing the natural environment

Representations:

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

CASE OFFICER ASSESSMENT

Proposal

This is a section 73 application which seeks to remove condition 6 attached to planning permission H23/0342/87. The condition states:

The occupancy of the dwelling hereby permitted shall be restricted to a person or persons employed either directly or engaged in a management capacity with the adjacent fertilizer and cereal seed storage and distribution centre, granted planning permission under H23/0343/67, together with their family.

The reason for the condition was so *the occupancy of the dwelling is not separated from the adjacent business use because of the possibility of its disturbance that may occur due to the proximity of the dwelling and the storage and distribution unit.*

Site Description

The application site is located outside of the defined boundary for Whaplode, to its north east. The dwelling is set back from Stockwell Gate accessed by a drive that leads to an existing rural business and the dwelling itself. The drive runs along the side of a neighbouring residential dwelling.

The house which is detached is made up of a red facing brick, with white Upvc windows and doors. The property benefits from gardens to the front and rear, with ample off-street parking.

The application site is located within flood zone 3 in accordance with EA Maps for Planning, the South East Lincolnshire SFRA shows the application site to be 'Danger for Some' (Hazard Mapping).

History

H23/0342/87 - Erection of directors House including garage, office and conference room. Approved 30th June 1987.

Consultation Responses

Environment Agency
No comments to make.

Representations

A letter of representation has been received which raises some questions in relation to the proposal.
- Is this application solely to change the existing house/dwelling title from pig unit to fertiliser/cereal/seed storage and distribution unit.

- Please confirm no additional/other homes/dwellings will be built.

Response
This application is for the removal of an occupancy condition attached to the fertilizer/cereal store. There applicant is not seeking the erection of an additional dwelling.

LCC Highways

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

Planning Considerations

An application made under section 73 of the Town and Country Planning Act 1990 can be used to make a material amendment by varying or removing conditions associated with a planning permission.

There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission. 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.

In this instance the applicant seeks to remove condition 6 attached to planning permission H23/0342/87. The reason for the condition was to protect the amenity of the residents of the dwelling from noise and disturbance related activities of the adjacent fertilizer and cereal store, there is no mention within the reason of the condition that its purposes was to uphold strategic countryside planning policies.

The applicant has provided a supporting statement which explains that the business no longer exits and the applicant and his wife at the time are now sadly deceased, the estate is no longer owned by them. Furthermore considering the reasoning set out for the condition, since more residential properties have been approved in the area.
Also a robust argument is made as to the appropriateness of the associated agricultural business which, with all due respect is very small in scale. Given the type of business once provided from these premises and when considering how modern agricultural practices have evolved it is highly unlikely that the business or something similar could be continued.

NPPF Paragraph 47 states that *Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.*

NPPF Paragraph 57 states that *Planning obligations must only be sought where they meet all of the following tests24: a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development*

Assessment

The applicants supporting statement puts forward two solid arguments, firstly that the business is no longer in existence (and the applicant and widow no longer own the estate) and secondly that the actual business which in effect is a modest barn building with limited land around would no longer be fit to serve the agricultural industry of today.

It is on the basis of these arguments that condition is is considered firstly to be no longer necessary and secondly the dwelling (and so the condition) are no longer related to the fertilizer and cereal store in a business capacity. Moreover the reasoning for the condition was to protect amenity, however since the 1987 permission more residential properties have been erected close to the fertilizer and cereal store, this undermines somewhat the purpose of the occupancy condition.

Notwithstanding the fact that no information has been presented in terms of finding a continuing market for the dwelling and store, it is considered that the facility is no longer fit for its original purpose, and that justification exists to remove the condition and its original reasoning is undermined by the erection of newer residential properties located close to teh application site. The condition is in effect now both unnecessary and unreasonable.

Conclusion

Condition 6 attached to planning permission H23/0342/87 is therefore removed.

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.