

Date

Dated

2<sup>nd</sup> October

2023

2023

(1) SOUTH HOLLAND DISTRICT COUNCIL of Council Offices, Priory Road, Spalding, PE11 2XE ("the Council"); and

(2) RTW CONSTRUCTION AND DEVELOPMENT LIMITED (Company Registration No. 11685020) of South Line Plant Hire & Sales, Enterprise Way, Pinchbeck, Spalding, PE11 3YR ("the Owner")

(1) South Holland District Council

and

(2) RTW Construction and Developments Limited

## BACKGROUND

(A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated.

(B) On 6 March 2010 the Council, by Special Resolution, adopted the following

## DEED OF VARIATION

### Sections 106 and 106A of the Town and Country Planning Act 1990

(C) The Owner has via their agent submitted to the Council the Section 106A Application to amend Condition 2 of the Original Permission to allow amendments to the approved plans to improve the external appearance and floor plan

Relating to land off Cobgate, Whaplode, Spalding

(D) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of the Original Agreement as set out in this Deed.

(E) The parties have agreed to enter into this Deed to give its consent to the terms of this Deed.

(F) This agreement is made in pursuance of Sections 106 and 106A of the Act and is supplemental to the Original Agreement.

South Holland District Council  
Council Offices  
Priory Road  
Spalding  
PE11 2XE

NOW THIS DEED WITNESSES AS FOLLOWS:

SHDC Reference: LD/H23-0179-23

## 1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

Date 2<sup>nd</sup> October 2023  
**BETWEEN**

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the Council"); and
- (2) **RTW CONSTRUCTION AND DEVELOPMENT LIMITED** (Company Registration No. 11885020) of South Linc Plant Hire & Sales, Enterprise Way, Pinchbeck, Spalding, PE11 3YR ("the Owner")

## **BACKGROUND**

- (A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated.
- (B) On 6 March 2019 the Council, Ian Patrick Brown, Derek Brown and Pamela Brown and Neil Lovell Brown and Sarah Ann Brown entered into the Original Agreement.
- (C) The Owner has via their agent submitted to the Council the Section 73A Application to amend Condition 2 of the Original Permission to allow amendments to the approved plans to improve the external appearance and floor plan layout of the finished dwellings.
- (D) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of the Original Agreement as set out in this Deed.
- (E) The parties have agreed to enter into this Deed to give its consent to the terms of this Deed.
- (F) This agreement is made under Sections 106 and 106A of the Act and is supplemental to the Original Agreement.

## **NOW THIS DEED WITNESSES AS FOLLOWS:**

### **1. DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

|                                  |                                                                                                                                                                                                                                                                                               |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>"Original Agreement"</p>      | <p>means the agreement made under section 106 of the Act relating to land adjacent to 70 Cobgate, Whaplode, Spalding dated 6 March 2019 and made between (1) the Council and (2) Ian Patrick Brown and (3) Derek Brown and Pamela Brown and (4) Neil Lovell Brown and Sarah Ann Brown (4)</p> |
| <p>"Section 73A Application"</p> | <p>means the application under section 73A of the Act for the removal or variation of a condition following grant of the Original Planning Permission and submitted by the Owner and accepted on 27 February 2023 by the Council and allocated the Council's reference number H23-0179-23</p> |

## 2. CONSTRUCTION OF THIS DEED

- 2.1 Unless the context otherwise requires and save as herein varied all words and phrases defined in the Original Agreement shall have the same meaning in this deed.
- 2.2 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it.

- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party to the Land or any part thereof and in the case of the Council, successors to its functions.

### 3. **LEGAL BASIS**

- 3.1 This Deed is made pursuant to Sections 106 and 106A of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers with the intent that the covenants and obligations shall run with the Land.

### 4. **VARIATIONS TO THE ORIGINAL AGREEMENT**

- 4.1 The Following definitions shall be added to the Original Agreement

|                                |                                                                                                                                                                                                                                                                                        |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "Original Planning Permission" | means the planning permission issued by the Council and given reference H23-0714-18                                                                                                                                                                                                    |
| "Section 73A Application"      | means the application under section 73A of the Act for the removal or variation of a condition following grant of the Original Planning Permission and submitted by the Owner and accepted on 27 February 2023 by the Council and allocated the Council's reference number H23-0179-23 |
| "Section 73A Permission"       | means the planning permission issued pursuant to the Section 73A Application                                                                                                                                                                                                           |

- 4.2 The definition of "Application" in Clause 1.1 to the Original Agreement shall be deleted and replaced with the following:

|               |                                                                   |
|---------------|-------------------------------------------------------------------|
| "Application" | means the application for Planning Permission for the Development |
|---------------|-------------------------------------------------------------------|

- 4.3 The definition of "Planning Permission" in Clause 1.1 to the Original Agreement shall be deleted and replaced with the following:

|                       |                                                                                                                                                                                                                                                            |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "Planning Permission" | means the Original Planning Permission or the Section 73A Permission granted by the Council for the Development pursuant to the Applications or such other planning permissions for the Development granted pursuant to sections 73 or 96A of the 1990 Act |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

- 4.4 The following Clause shall be inserted after Clause 8.12 of the Original Agreement to the Original Agreement:

*"8.13 It is agreed between the parties that where planning permission is issued in relation to the Development pursuant to an application under section 73 of the Act this Deed shall continue to bind the Development and shall be in full force and effect subject to and in accordance with the provisions contained herein and shall in addition bind the Development in respect of any subsequent planning permission granted pursuant to section 73 of the Act **AND PROVIDED THAT** in the event that upon receipt of an application under section 73 of the Act the Council considers that the obligations contained in this Deed should be varied or amended it is agreed and acknowledged that the Council should retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations."*

- 4.5 The draft decision notice for the Section 73A Permission annexed to this Deed at Schedule 1 shall be added as Schedule 2A of the Original Agreement.
- 4.6 In all other respects the Original Agreement (as varied by this Deed) shall remain in full force and effect.

**5. THE OWNERS' COVENANTS**

- 5.1 The Owners covenant to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this Deed.

**6. LOCAL LAND CHARGE**

- 6.1 This Deed shall be registerable as a local land charge by the Council.

**7. COUNCIL'S COSTS**

- 7.1 The Owners shall pay to the Council on or before the date of this Deed:
- (a) the Council's reasonable legal costs of £500 together with all disbursements (if any) incurred in connection with the preparation, completion and registration of this Deed; and
  - (b) the sum of £400 as a contribution towards the Council's costs in monitoring the implementation of this Deed.

**8. VAT**

- 8.1 Any consideration given under this Deed shall be done in such a way that the VAT liability is borne by the Owner and not the Council.

**9. THIRD PARTY RIGHTS**

- 9.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

**10. JURISDICTION**

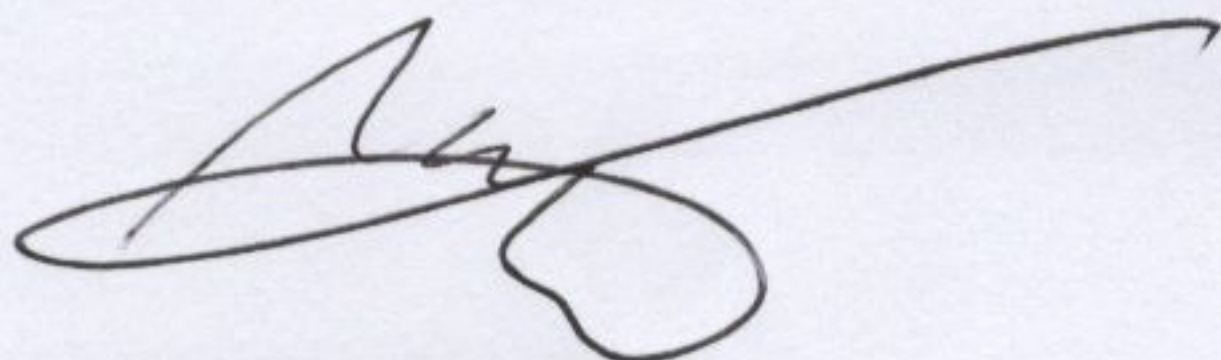
- 10.1 This Deed is governed by and interpreted in accordance with the laws of England and Wales

**11. EXECUTION AND DELIVERY**

This Deed is executed as a deed by the parties and is delivered on the date first hereinbefore written

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written.

The **COMMON SEAL** of **SOUTH HOLLAND DISTRICT COUNCIL** was hereunto affixed in the presence of:-

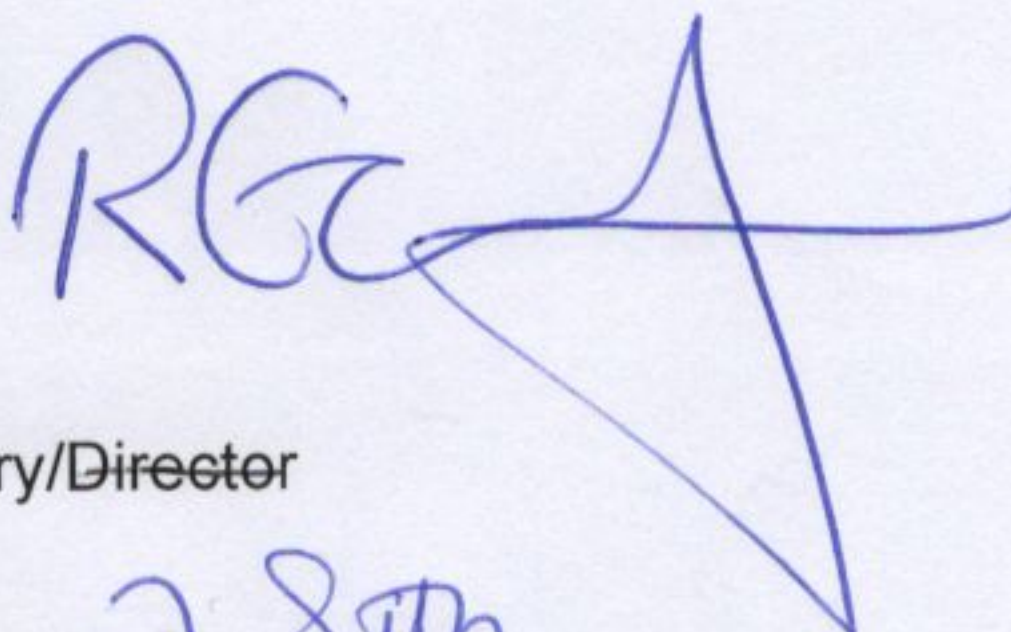


Authorised Signatory



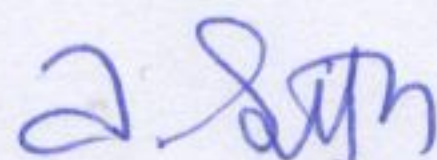
**EXECUTED** as a **DEED** by  
**RTW CONSTRUCTION AND DEVELOPMENTS LIMITED**  
acting by a Director and its  
Secretary or two Directors

Signature of Director



(RICKIE CAUNT,  
DIRECTOR)

Signature of Secretary/Director



(ALLISON SMITH,  
COMPANY SECRETARY)

**SCHEDULE 1**

**DRAFT S.73A PLANNING PERMISSION (H23-0179-23)  
TO BE ISSUED UNDER THE SECTION 73A APPLICATION**

Studio 11 Architecture  
King'S Lynn Innovation Centre  
Harbour Square  
Innovation Drive  
King'S Lynn  
PE30 5BY

Council Offices  
Priory Road  
Spalding  
Lincolnshire  
PE11 2XE

Admin 01775 764723  
DC Officers 01775 761161  
Facsimile 01775 762937

[planningadvice@sholland.gov.uk](mailto:planningadvice@sholland.gov.uk)

[www.sholland.gov.uk](http://www.sholland.gov.uk)

## TOWN AND COUNTRY PLANNING ACT 1990

### DRAFT APPROVAL

**Reference:** H23-0179-23 **Date of Decision:**

**Applicant:** Rtw Construction & Development Ltd.  
C/O Studio 11 Architecture  
Kings Lynn Innovation Centre  
Innovation Drive  
Kings Lynn  
PE30 5BY

**Location:** Land Off Cobgate Whaplode Spalding

**Description:** Proposed residential Development of 28 bungalows including estate roads, public open space and landscaping - approved under H23-0714-18 -  
Modification of Condition 2 to allow amendments to previously approved plans

**South Holland District Council hereby give notice that permission has been GRANTED (or equivalent) subject to the following condition(s):**

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

H23-0179-23

Application form  
COB01/pl/location  
5895-2  
544.BT.01  
544.CSL.01  
544.LD.01 Rev:C - External Materials Plan  
544.LD.01 - Landscaping Detail  
544.LD.02

544.LD.03  
544.MRP.01  
Management Plan December 2022  
Phase 1 (Desk Study) Report 1059/4540/P/P1 dated May 2018  
544.DG.WD.01  
544.Dun.P8.01  
544.Dun.P11.01  
544.Sto.P12.01  
544.Jay.P13.01  
544.Jay.P20.01  
544.Mag.P1.01  
544.Mag.P3.01  
544.Nig.P10.01  
544.Nig.P24.01  
544.Per.14.01  
544.Per.P16.01  
544.San.P9.01 Plot 25  
544.San.P9.01 Plot 9, 15

H23-0714-18

Application form  
PLANNING STATEMENT July 2018  
C0B01/pl/location  
Topographical Survey 5985-2 SHEET 1  
Topographical Survey 5985-2 SHEET 2  
11748-WMS-ZZ-XX-RP-C-39201-S2-P3-DRAINAGE\_STATEMENT. October 2018  
HUMBERSIDE MATERIALS LABORATORY LIMITED Phase 1 (desk study) report  
1059/4540/P/P1  
HUMBERSIDE MATERIALS LABORATORY LIMITED Phase 2 (site investigation) report  
059/4540/P/P2  
FLOOD RISK ASSESSMENT. 15th May 2017

Reason: For the avoidance of doubt and in the interests of proper planning.

- 2 The scheme of landscaping and tree planting for the site (including screening of bin collection points) shall be undertaken in accordance with the Management Plan December 2022, Hard & Soft Landscaping Details 544.LD.01, 544.LD.02 & 544.LD.03, the Boundary Treatment Plan 544.BT.01 and the Maintenance Responsibilities Plan 544.MRP.01, which shall be carried out and completed in its entirety during the first planting season following practical completion of the development. All trees, shrubs and bushes shall be maintained by the owner or owners of the land on which they are situated for the period of five years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary.

Reason: To ensure that the development is adequately landscaped, in the interests of its visual amenity and that of the area in which it is set, and that Biodiversity Net Gain will be achieved.

This Condition is imposed in accordance with Policies 2, 3 and 28 of the South East

Lincolnshire Local Plan, 2019 and the Environment Act 2021.

- 3 Prior to the occupation of each dwelling, the boundary treatments shall be installed in accordance with drawing reference 544.BT.01 and retained thereafter.

Reason: In the interests of the character and appearance of the development and the amenity of the area in which it is set including the amenity of nearby occupiers.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 4 The development hereby permitted shall be constructed in accordance with the materials set out within drawing reference 544.LD.01 Rev:C.

Reason: To ensure that the Local Planning Authority retains control over the external materials of construction of the development in the interests of the character and appearance of the development and the visual amenity of the area in which it is set.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 5 Before the commencement of the development hereby permitted beyond oversite, the detailed design and location of all lighting to be provided to roads and footpaths within the development shall be submitted to and approved in writing by the Local Planning Authority and all lighting utilised in the development shall conform to the details so approved.

Reason: To ensure that the Local Planning Authority retains control over these matters, in the interests of the visual amenity of the overall development, to prevent light pollution and to ensure that the development is adequately lit.

This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019.

- 6 The areas of publicly accessible open space and any outdoor play areas shall be managed in accordance with the Management Plan December 2022, Hard & Soft Landscaping Details 544.LD.01, 544.LD.02 & 544.LD.03, the Boundary Treatment Plan 544.BT.01 and the Maintenance Responsibilities Plan 544.MRP.01.

Reason: To ensure that adequate open space provision is made available for the occupiers of the development hereby permitted and that provision is made for the management and maintenance of the open space.

This Condition is imposed in accordance with Policy 32 of the South East Lincolnshire Local Plan, 2019.

- 7 Before any dwelling is occupied, all of that part of the estate road and associated footways that forms the junction with the main road and which will be constructed within the limits of the existing highway, shall be laid out and constructed to finished surface levels in accordance with details to be submitted and approved by the local planning authority.

Reason: In the interests of safety, to avoid the creation of pedestrian trip hazards within the public highway from surfacing materials, manholes and gullies that may otherwise remain for an extended period at dissimilar, interim construction levels.

This Condition is imposed in accordance with Policy 2 of the South East Lincolnshire

Local Plan, 2019.

- 8 The permitted development shall be undertaken in accordance with an Estate Road Phasing and Completion Plan, which shall first be approved in writing by the Local Planning Authority. The Plan shall set out how the construction of the development will be phased and standards to which the estate roads on each phase will be completed during the construction period of the development.

Reason: To ensure that a safe and suitable standard of vehicular and pedestrian access is provided for residents throughout the construction period of the development.

This Condition is imposed in accordance with Policy 2 of the South East Lincolnshire Local Plan, 2019.

- 9 The development hereby permitted shall be carried out in accordance with the measures set out in the Flood Risk Assessment FLOOD RISK ASSESSMENT. 15th May 2017, forming part of this planning application, unless otherwise agreed in writing by the Local Planning Authority, in particular the following measures shall be fully implemented before the properties are first occupied:

Finished floor levels will be set a minimum of 300mm above existing ground level.

Note: The above approved plan does not constitute final approval of detailed site levels or finished floor levels.

Reason: To ensure that the development does not increase the risk of flooding or be at risk of flooding.

This Condition is imposed in accordance with Policies 3 and 4 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 14 of the National Planning Policy Framework, 2021.

- 10 The permitted development shall be undertaken in accordance with a surface water drainage scheme which shall first have been approved in writing by the Local Planning Authority.

The scheme shall:

- be based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development;
- provide details of how run-off will be safely conveyed and attenuated during storms up to and including the 1 in 100 year critical storm event, with an allowance for climate change, from all hard surfaced areas within the development into the existing local drainage infrastructure and watercourse system without exceeding the run-off rate for the undeveloped site;
- provide attenuation details and discharge rates which shall be restricted to 1.4 litres per second;
- provide details of the timetable for and any phasing of implementation for the drainage scheme; and
- provide details of how the scheme shall be maintained and managed over the lifetime of the development, including any arrangements for adoption by any public body or Statutory Undertaker and any other arrangements required to secure the operation of the drainage system throughout its lifetime.

No dwelling shall be occupied until the approved scheme has been completed or provided on the site in accordance with the approved phasing. The approved scheme shall be retained and maintained in full, in accordance with the approved details.

Reason: To ensure that the permitted development is adequately drained without creating or increasing flood risk to land or property adjacent to, or downstream of, the permitted development.

This Condition is imposed in accordance with Policies SG11 and SG12 of the South Holland Local Plan, 2006 and national guidance contained in the National Planning Policy Framework, 2019.

- 11 Before the commencement of the development hereby granted, details of the means of foul water disposal shall be submitted to and approved in writing by the Local Planning Authority. The details so approved shall be implemented in full before the development hereby permitted is first brought into use.

Reason: To ensure that the site is adequately drained and to avoid pollution.

This Condition is imposed in accordance with Policy 30 of the South East Lincolnshire Local Plan, 2019.

- 12 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order or Statutory Instrument revoking and re-enacting that Order), none of the following developments or alterations shall be carried out.

- i) the erection of raised decks;
- ii) alterations including the installation of replacement or additional windows or doors and the installation of roof windows.

Reason: To ensure that the Local Planning Authority retains control over the future extension and alteration of the development, in the interests of its architectural and visual integrity, levels of residential amenity and the visual amenity and character of the area within which it is set.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

#### Notes:

The Local Planning Authority has acted positively and proactively in determining this application by assessing it against all material considerations, including national guidance, planning policies and representations that have been received during the public consultation exercise, and by identifying matters of concern within the application and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal.

This decision notice, the relevant accompanying report and the determined plans can be viewed online at <http://planning.sholland.gov.uk/OcellaWeb/planningSearch>

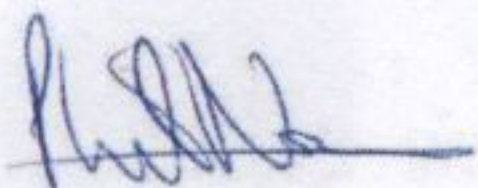
This planning permission is subject to an Agreement under Section 106 of the Town & Country

Planning Act 1990 dated 6 March 2019 and Deed of Variation dated xxxxxx can only be implemented as a consequence of meeting the provisions of that Agreement.

All roads within the development hereby permitted must be constructed to an engineering standard equivalent to that of adoptable highways. Those roads that are to be put forward for adoption as public highways must be constructed in accordance with the Lincolnshire County Council Development Road Specification that is current at the time of construction and the developer will be required to enter into a legal agreement with the Highway Authority under Section 38 of the Highways Act 1980. Those roads that are not to be voluntarily put forward for adoption as public highways, may be subject to action by the Highway Authority under Section 219 (the Advance Payments code) of the Highways Act 1980. In all cases, the developer is advised to undertake early discussions with statutory undertakers to co-ordinate the laying of utility services under the highway.

Please contact the Lincolnshire County Council Streetworks and Permitting Team on 01522 782070 to discuss any proposed statutory utility connections and any other works which will be required within the public highway in association with the development permitted under this Consent. This will enable Lincolnshire County Council to assist in the coordination and timings of these works.

The highway improvement works referred to in the above condition are required to be carried out by means of a legal agreement between the landowner and the County Council, as the Local Highway Authority.



**Phil Norman**  
**Head of Planning**  
**South Holland District Council**

31st July 2023

**BUILDING REGULATIONS:**

This decision refers only to planning permission as granted under the Town and Country Planning Act 1990. The works that you are proposing may also require Building Regulations and this planning permission does not give authority under Building Regulations to commence work. Please contact the Building Control section for further information on 01775 764557 or [bcadmin@sholland.gov.uk](mailto:bcadmin@sholland.gov.uk)