

DECISION DELEGATED TO HEAD OF PLANNING**DECISION DELEGATED TO HEAD OF PLANNING**

Application No:	H23-0179-23	Applicant:	RTW Construction & Development Ltd.
Proposal:	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		
Location:	Land Off Cobgate Whaplode Spalding		
Terminal Date:	13th October 2023		

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
05	Meeting Physical Infrastructure and Service Needs
10	Meeting Assessed Housing Requirements
11	Distribution of New Housing
17	Providing a Mix of Housing
18	Affordable Housing
19	Rural Exception Sites
28	The Natural Environment
30	Pollution
31	Climate Change and Renewable and Low Carbon Energy
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards
APPENDIX 8	Developer Contributions for Education Facilities
APPENDIX 9	Developer Contributions for Health Care Facilities

National Guidance**National Planning Policy Framework 2023**National Planning Policy Framework 2023

Section 2 Achieving sustainable development
Section 4 Decision-making
Section 5 Delivering a sufficient supply of homes
Section 8 Promoting healthy and safe communities
Section 9 Promoting sustainable transport
Section 11 Making effective use of land
Section 12 Achieving well-designed places

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	1	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	2
RESIDENTS	1	0	0	1

CASE OFFICER ASSESSMENT**Proposal**

This application is a Section 73A seeking to vary Condition 2 of planning approval H23-0714-18 to allow amendments to previously approved plans. This initial application comprised proposed residential development of 28 bungalows, including estate roads, public open space and landscaping.

The purpose of the S73 application is to amend the elevations of plot 1 to 7 and to amend the floor plan layouts and elevations of plots 8 to 28. The general layout form remains the same and the roads/ Public Open Space remain the same.

Site Description

As host application. The site is outside the settlement boundary of Whaplode, as indicated in the SELLP.

History

H23-0180-23. Details of lighting, finished surface levels, estate road phasing and completion plan, surface water drainage scheme and foul water disposal. (Conditions 6, 8, 9, 11 and 12 of H23-0714-18). Undecided.

H23-0714-18. FULL Proposed Residential Development of 28 Bungalows including estate roads, public open space and landscaping. APPROVED 06-03-19, with S106. This development has commenced.

H23-0495-17 - Outline Planning for up to 18 dwellings granted 19 Jan 2018.

H23-0018-17 - Outline Planning consented for 5 dwellings and access road from Cobgate granted 6/3/17.

Consultation Responses

Whaplode Parish Council

Support with no comment.

LCC Local Highway and Lead Local Flood Authority

LCC has no comments.

South Holland Drainage Board

Byelaw 3 (Surface Water)

I note the applicant intends to discharge surface water to the Board maintained watercourse (F45 Millars Lane & Turnpike Drain, Drain ID: DRN197P4503) at a rate of 5 l/s. I can confirm that the Board has received an application for consent to enable this proposal. This is currently being determined under the reference 23_21216_C.

Byelaw 3 (Treated Foul Water)

I note that the applicant intends to dispose of foul water to a main sewer. Should the applicant's proposals change to include the discharge of treated foul water to a watercourse, consent would be required under Byelaw 3.

Section 23, Land Drainage Act 1991

I note the presence of a watercourse which is not maintained by the Board (a riparian watercourse) adjacent to the eastern site boundary. Whilst not currently proposed, should the applicant's proposals change to include works to alter the riparian watercourse, or if works are proposed to alter the watercourse at any time in the future, consent would be required under the Land Drainage Act 1991 (and byelaw 4).

We recommend that the riparian watercourse along the eastern site boundary is restored to increase flood storage capacity, and a gradient is re-established to ensure that the fall is in the direction of the Board maintained watercourse, located to the north of the site (F31 Greens Drain, Drain ID: DRN197P3101). Reconnecting this riparian drain to the Board maintained watercourse at the north-east corner of the site will ensure that surface water flows will be conveyed into the wider drainage network. We also recommend that any restorative works should be preceded by an environmental survey. The applicant is currently liaising with the Board's officers regarding this suggested remediation.

As mentioned above, the site is adjacent to two Board maintained watercourses, F31 Greens Drain to the northern boundary and F45 Millars Lane & Turnpike Drain to the west. Whilst not currently proposed, should the applicant's proposals change to include works to alter these watercourse, or if works are proposed to alter these watercourse at any time in the future, consent would be required under the Land Drainage Act 1991 (and byelaw 4).

Byelaw 10

I note that the applicant intends to install a pipe within 9m of the aforementioned Board maintained watercourse F45 Millars Lane & Turnpike Drain (S104 Layout, 11748-WMS-ZZ-XX-DR-C-39210-S2-P7, William Saunders, 28/01/19). The applicant has approached the Board to make an application for consent under Byelaw 10, which is currently being determined under the reference 23_21199_C.

By engaging with the planning process the Board is seeking to:

- Reduce flood risk to communities within the Internal Drainage District
- Promote sustainable development in sustainable locations by supporting sound planning decisions in accordance with the National Planning Policy Framework (especially Paragraph 167) and the Non-standard technical standards for SuDS.
- Reduce the potential for conflict between the planning process and the Board's regulatory process.

Anglian Water

There is no connection to the Anglian Water sewers, therefore have no comments.

Lincolnshire Police

Lincolnshire Police do not have any objections to this application.

Third Parties

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

This can be summarised as:

- Cobgate inadequate for traffic it has now and for further traffic
- Impact on vehicular and pedestrian safety

Evaluation - Section 73

The proposal relates to the variation of condition 2 of H23-0714-18, 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. Likewise, the red outline provided with the ordnance survey site location plan has not been altered and matches that of the initial submission.

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".

Taking all of the above into account, the Local Planning Authority are content that the proposed amendments can be considered under a variation application, via a Section 73 application.

Planning Considerations

The main issues in this Section 73 case are:

Principle of Development and Sustainability
Layout and Design
Refuse collection
Highway safety and parking
Impact of neighbouring Residents/land users
Flooding considerations
Foul and Surface Water Drainage
Contaminated Land
Lighting
Developer Contributions

Principle of Development and Sustainability

The principle of development has been accepted by the host application, H23-0714-18. However, it is noted that since that approval, the South East Lincolnshire Local Plan (SELLP) has been adopted and the current national guidance is set out in the National Planning Policy Framework 2023.

As clarified by the SELLP, Whaplode is considered to be a Minor Service Centre. Within the settlement boundaries of the Minor Service Centres development will be permitted that supports their role as a service centre for the settlement itself, helps sustain existing facilities or helps meet the service needs of other local communities. Development will normally be limited to Allocated and Committed sites and infill. Within the life of the SELLP Whaplode is expected to deliver a minimum of 130 new dwellings. This specific site is outside the settlement boundary; however, consideration is to be given to the fall back position of the extant permission on the site, indicated above, that has commenced development.

At the time of granting consent SHDC did not have a 5-year housing land supply. The justification for the development can be viewed in the officer's report, as can the officer's assessment of the proposal against the National Planning Policy Framework 2019 (at the time of the previous decision), and the emerging South East Lincolnshire Local Plan.

It was considered at that time that the development would be sustainable for the following reasons:

"An Economic Role - the proposal would contribute towards housing supply and future occupants may well work locally and support local services and make a contribution to the local economy. There may also be employment opportunities associated with the construction, albeit in the short term.

A Social Role - the proposal would help to provide the supply of housing required to meet the needs of present and future generations.

Also, Whaplode is defined as a Group Centre in the South Holland Local Plan, 2006 and a Minor Service Centre in the emerging South East Lincolnshire Local Plan. It has local services and facilities such as a junior school, garage/petrol filling stations, shops, post office, etc. The village is also on a public transport route. The site is considered to be fairly accessible to these services.

An Environmental Role - The site is located against existing development and relates fairly well with the existing settlement, including Abbots Gardens to the east. Although it is not within the defined settlement limit within the emerging Local Plan it was nevertheless identified as suitable within the South East Lincolnshire Strategic Housing Land Availability Assessment (July 2016). The latter indicated that it would not place undue burdens on existing infrastructure and community facilities. It does not immediately adjoin existing industrial premises to the east.

The proposal would result in the loss of high-quality agricultural land to housing. However, in order to deliver the Council's required 'objectively assessed housing need,' as per the provisions of the Framework, it is inevitable that some high-grade agricultural land will be lost.

Given this context, it is not considered that the loss of this amount of agricultural land in this location is an issue that would significantly and demonstrably outweigh the benefits of housing development, and thus represent a valid reason for refusal in this instance.

Having regard to the above, therefore, it is considered that there is not sufficient reason to refuse the application on principal and/or sustainability grounds".

In any event, as outlined within the report above, the principle of development has been established, with the development having commenced and therefore, remaining extant. When viewed as a whole, coupled with the proposal comprising a section 73 application to vary the approved plans, the proposal is acceptable in principle

Layout and Design

Section 12 of the National Planning Policy Framework (2023) specifically relates to 'Achieving well-designed 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 130, contained within section 12 of the National Planning Policy Framework (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.

The purpose of this Section 73 application is to amend the elevations of plot 1 to 7 and to amend the floor plan layouts and elevations of plots 8 to 28. The general layout form remains the same and the roads/ Public Open Space remain the same.

The design form would provide a pleasant low density form of development, consisting of 28 bungalows, of traditional construction, with feature horizontal cedar cladding to some elevations to provide visual interests. It is considered that the changes proposed are an improvement to the original designs.

Taking account of the design, scale and nature of the proposed variations, 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.

Impact of neighbouring Residents/land users

Paragraph 130 of the National Planning Policy Framework (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.

It is not considered that any adverse impacts would arise from the development. The proposed variations, when assessed in comparison to that of the extant permission, is not considered to give rise to an increased impacts to residential amenities of either existing or future occupants.

As detailed above, the scale and design of the proposal is considered to be such that there would be no significant or unacceptable impact on the residential amenities of the occupiers of adjacent properties or land users, when also taking account of the conditions recommended. As such, the

proposal is considered to accord with the provisions of the Section 12 of the National Planning Policy Framework, and Policies 2 and 3 of the Local Plan.

Refuse collection

Refuse collection arrangements have not changed, and were dealt with via the host application.

Highway safety and parking

Section 9 of the National Planning Policy Framework (2023) specifically relates to 'Promoting sustainable transport'. Paragraph 111 of the National Planning Policy Framework (2023) advises that "development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe".

In respect of highway matters, Policy 2 details that proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met, specifically in relation to access and vehicle generation. Policy 3 details that development proposals will demonstrate how accessibility by a choice of travel modes including the provision of public transport, public rights of way and cycle ways will be secured, where they are relevant to the proposal.

It is not considered that the proposal would have any detrimental impact on highway safety and this view is shared by Highway officers at Lincolnshire County Council. The objection received from a third party is noted; however, there has not been such significant change in traffic patterns in Whaplode since the granting of the host consent to warrant refusal of this Section 73 application and as such, the variations hereby proposed are not considered to give rise to an unacceptable increase in highway impacts in comparison to that of the extant permission.

The proposal would therefore be acceptable and would not have an unacceptable adverse impact on highway safety in accordance with Local Plan Policies 2, 3 and 36, and Section 9 of the National Planning Policy Framework.

Flooding considerations

The host application was supported by a flood risk assessment and the development is to be controlled via a condition to ensure adherence to the recommendations of this document.

Foul and Surface Water Drainage

These matters have been considered by the statutory undertakers and can be controlled via conditions.

Contaminated Land

Contaminated land was addressed via the host application and the SHDC Environmental Health officers raised no objections.

Lighting

The details of street lighting are required to be submitted and approved via condition.

Developer Contributions

A Deed of Variation is proposed to ensure the contributions ensured by the host scheme are delivered.

Planning Balance

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, states that the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

The proposed development does not materially harm the character or appearance of the locality, or

amenity of nearby residents, and provides adequate parking. Taking into consideration these factors, the proposal is considered to comply with Policies 1, 2, 3, 4,, 5, 10, 11, 17, 18, 19, 28, 29, 30, 31 and 36 and Appendices 6, 8 and 9 of the South East Lincolnshire Local Plan (SELLP), 2019, plus advice within the National Planning Policy Framework (NPPF), 2023.

The are no significant factors in this case that indicate against the proposal and outweigh factors in favour of the proposal and the policies referred to above.

Conclusion

It is recommended that the Section 73 permission should be granted, subject to a S106 Deed of Variation for Affordable Housing, education and NHS contributions.

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.