DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H23-0368-25**	**Applicant:**	**Mr & Mrs S Steward**
Proposal:	Erection of Salon - Retrospective - Approved under H23-0259-24. Modification of Conditions 2 & 3 to allow the reposition of staff and visitor parking for the salon and amended layout plan		
Location:	Springway Stockwell Gate Whaplode		
Terminal Date:	9th June 2025		

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
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 6 - Building a strong, competitive economy
Section 9 - Promoting sustainable transport
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

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
RESIDENTS	1	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This is an application made under Section 73 of the Town and Country Planning Act 1990 (as amended). The applicant is seeking the Modification of Condition 3 to allow the reposition of staff and visitor parking for the salon.
The terms of the original permission (allowed under H23-0259-24) was for:

Erection of Salon - Retrospective

This application does not seek to alter that permission and is subject to the same red line boundary.

Site Description

The application site is located outside the defined settlement for Whaplode and located within the open countryside for planning purposes. The application site is also located within flood zone 3 in accordance with the Environment Agencies Mapping System. The flood hazard and depth maps show that the site is located in an area at low risk of flooding.
The existing salon is located in the rear garden of Springway, it is accessed through a side gate located to the south of the dwelling. Under permission H23-0259-24 this salon was granted permission. Part of the permission, which included information of how the salon operated was reinforced through condition. Part of this was that staff and customers were to use the existing parking to the fore of Springway and walk past the side of the house to access the salon.

History

H23-0905-23 - Proposed dwelling with garage, swimming pool and storage building. Refused 15-11-23
H23-0402-21 - Demolition of dwelling and erection of 2 houses. Approved 07-07-21
H23-0722-23 - Extension & Alterations - Resubmission of H23-0278-23. Approved 04-10-23.
H23-0259-24 - Erection of Salon - Retrospective. Approved 17-05-24
H23-0264-24 - Change of Use of Land to Domestic and Erection of Family Games Room, including Security Camera (Retrospective). Approved 04-06-24
H23-0267-24 - Erection of dwelling, garage, and swimming pool - Re-submission of H23-0905-23. Approved 26.07.24
H23-0428-24 - Change of use of agricultural land to storage of building materials and equipment including erection of 2.4m high fence (retrospective). Approved 15-10-24
H23-0889-24 - Proposed Car Port. Refused 09-12-24

Consultation Responses

Highways & SuDs Support

No objections - The proposal is for minor amendments to condition 3 that already has approval under H23- 0259-24. The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk.

Representations

The application has been advertised in accordance with the requirement of the Development Management Procedure Order 2015. One objection has been received, of which the material points can be summarised:
-More staff working than suggested by the planning statement.
-Issues with parking noise and disturbance
-Insufficient parking spaces at present

Evaluation - Section 73

The proposal relates to the variation of Condition 3 of H23-0259-24, 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 3 varied, 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 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 conditions 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".

Planning Considerations

Permission has already been granted for the use of the salon and this application seeks only to relocate the parking associated with the development, there is therefore no requirement to revisit matters of planning principle.
The following issues are therefore relevant to this case:

Highway Safety
Residential Amenity
Re-attachment of Planning Conditions.

Highway Safety

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.

Policy 36 is concerned with Vehicle and Cycle Parking it states that "All new development, including change of use, should provide vehicle and cycle parking, in accordance with the minimum Parking Standards adopted by the Local Planning Authorities (in Appendix 6).

The salon and client parking is shown on the proposed plan to be located to the front of the dwelling (Springway) located to the northern area of the front curtilage. Previously the parking was located along the southern boundary. The pedestrian entrance to the salon is retained in the same location.

Objection have been received in relation to vehicle numbers, however those in relation to the salon are controlled by condition, by compliance with the planning statement. This condition will be reapplied.

LCC Highways have been consulted and have no objections.

On this basis it is considered that the proposals would accord with the aforementioned policies of the South East Lincolnshire Local Plan.

Residential Amenity

Policy 2 and 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.

Policy 30 is concerned with pollution and places impacts in relation to noise, disturbance and air quality as important consideration when considering proposals for planning.

The proposal only seeks to make changes to the location of the parking. There are no other changes. Any submission granted will be subject to the operational details of the salon provided within eth previous planning statement, this includes:

-The salon will be managed by two persons (one being Mrs Steward).
-The Salon will only have two customers at anyone time. Opening hours:- Monday to Friday 9:30am to 2:30pm, with one person staying to 6pm, if required. Saturday 8:30am to 6pm. No opening on Sunday and Bank Holidays.
-The Salon is appointment only. Any customer using the salon will arrive via the existing access and parking on the drive.
-There is a pedestrian side gate to the rear of the domestic fence which takes you to the entrance of the salon building. All treatments will take place inside the building.

Subject to this continued mitigation, the proposal would accord with policies 2 and 30 of the South East Lincolnshire Local Plan 2019.

Re-attachment of planning conditions

The previous permission was subject to 4 number conditions. The first condition related to approved plans; this will change to reflect the new location of the parking. The second condition linked the use of the Salon to Sprinway and will be reattached. The third condition stipulated that parking was in accordance with the site plan (this will be updated) and lastly the final condition tied the operation of the salon to the planning statement, this will be reattached.

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 proposal represents appropriate development within the defined settlement boundary. The development hereby proposed subject to the conditions outlined within this report does not materially harm the character or appearance of the locality, or amenity of nearby residents, and provides adequate parking, whilst conforming with the South East Lincolnshire Local Plan and the provisions of the National Planning policy Framework when viewed as a whole. In this instance, there are no material considerations that weigh against the proposal and as such, the planning balance is in favour of 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 into consideration these factors, the proposal is considered to accord with Policies 1, 2, 3, 30 and 36 of the South East Lincolnshire Local Plan (SELLP), 2019; in addition to the identified sections contained within the National Planning Policy Framework (NPPF) (December 2024). These factors in this case would outweigh any harm brought about by the scheme.