

## DECISION DELEGATED TO HEAD OF PLANNING

**Application No:** H23-0744-26      **Applicant:** Mr & Mrs R Balding

**Proposal:** Erection of 2 Houses with Garage - Approved under H23-1272-25.  
Modification of Conditions 2, 4, 6 & 17 - all changes relate to Plot 1 only -  
and Conditions 3, 7, 8, 9, 11, 12 and 14 to allow the conditions to relate to  
Plots 1 & 2 separately

**Location:** Plot 1 Adj. Carlton Lodge Oxcroft Bank Shepeau Stow

**Terminal Date:** 8th October 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                          |
| 28         | The Natural Environment                         |
| 30         | Pollution                                       |
| 33         | Delivering a More Sustainable Transport Network |
| 36         | Vehicle and Cycle Parking                       |
| APPENDIX 6 | Parking Standards                               |

#### National Guidance

#### National Planning Policy Framework August 2026

Section 4 - Achieving sustainable development  
 Section 14 - Achieving well-designed places  
 Section 15 - Promoting sustainable transport  
 Section 17 - Pollution, public protection and security  
 Section 20 - Conserving and enhancing the historic environment

### Representations:

|                            | Object | Support | No Obj. | Comments |
|----------------------------|--------|---------|---------|----------|
| PARISH COUNCIL             | 0      | 1       | 0       | 0        |
| WARD MEMBER                | 0      | 0       | 0       | 0        |
| HIGHWAYS & SUDS<br>SUPPORT | 0      | 0       | 0       | 1        |
| SOUTH HOLLAND              | 0      | 0       | 0       | 1        |

|                         |   |   |   |   |
|-------------------------|---|---|---|---|
| INTERNAL DRAINAGE BOARD |   |   |   |   |
| SHDC INTERNAL           | 0 | 0 | 0 | 1 |
| OTHER STATUTORY BODIES  | 0 | 0 | 0 | 1 |

## **CASE OFFICER ASSESSMENT**

### **Description of Proposal**

This application is made under Section 73 of the Town and Country Planning Act, 1990, seeking to vary conditions 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 14 and 17 of H23-1272-25. Primarily this would allow for minor changes to the approved plans, and would allow for the separation of conditions so that they can be discharged for an individual plot.

### **Site Description**

The site is located outside of any of the settlement boundaries outlined within the South East Lincolnshire Local Plan, 2019. It is located approximately 115m south of Shepeau Stow, on the site of a former agricultural nursery. These agricultural buildings have been recently demolished, leaving a concrete pad. Greenhouses are present to the east, with residential dwellings to the south. To the north and west are agricultural fields.

### **Relevant History**

H23-0089-23 - Prior Approval - Conversion of agricultural buildings to form 5 dwellings - Withdrawn 20 March 2023.

H23-0335-23 - Prior Approval - Conversion of agricultural buildings to form 3 dwellings - Approval 26 May 2023.

H23-0717-23 - Full - Residential development (3 dwellings) involving the demolition of existing buildings - Approved 4 October 2023.

H23-0019-24 - S73 - Residential development (3 Dwellings) involving the demolition of existing buildings - approved under H23-0717-23. Modification of Condition 2 to allow amendments to previously approved plans - Approved 5 March 2024.

H23-1272-25 - Full - Erection of 2 Houses with Garages - Approved 18 March 2026.

### **Consultation Responses**

The responses received from consultees during the initial consultation exercises, which can be viewed in their entirety through the South Holland website, can be summarised as follows:

#### **South Holland Internal Drainage Board**

Whilst the Board has no comments to make regarding the proposed modification of conditions under planning case reference H23-0744-26, it would like to draw the applicant's attention to the requirement for consent to alter the watercourse. As stated in the planning comments dated 04/02/2026 in relation to planning case H23-1272-25 (our reference: 26\_34337\_P), the proposed alteration of the watercourse requires prior written approval from the Board for consent under Section 23 of the Land Drainage Act 1991.

## Whaplode Parish Council

Support - no comment

## SELCP Ecologist

We are happy with the proposed ecological enhancements provided for this application and therefore support the condition discharge of condition 14 for this application.

## Highway and lead Local Flood Authority

The proposal is for the variation of Conditions 2, 4, 6 and 17 in relation to Plot 1 and the amendment of Conditions 3, 7, 8, 9, 11, 12 and 14 to allow separate discharge for Plots 1 and 2, and there is no impact to the highway or surface water subject to the revised wording continuing to secure delivery of the approved access works, closure of the existing accesses, and appropriate drainage arrangements

## Environmental Protection

I have reviewed Goldfinch Environmental Limited Tier 1 Contamination Risk Assessment for proposed residential land adjacent Carlton Lodge, Oxcroft Bank, report ref: 107/1, Dated: May 2026. I am in agreement with the findings of this report. However I request a precautionary land contamination condition be applied at this location as follows:

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported immediately to the Local Planning Authority (LPA). An investigation and risk assessment must be undertaken in accordance with details to be agreed with the LPA. Where remediation is necessary, a remediation scheme must be submitted to and approved in writing by the LPA. Following completion of measures identified in the approved remediation scheme a verification report shall be submitted to and approved by the LPA.

No deviation shall be made from this scheme without the express written agreement of the LPA. If during redevelopment contamination not previously considered is identified, then the LPA shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspected contamination has been submitted to and agreed in writing by the LPA.

Reason: To assess whether the site is polluted and to address any pollution to ensure a satisfactory development. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of work

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

## 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, no letters of representation have been received.

## **Key Planning Considerations**

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## Evaluation - S73

The proposal seeks to vary Conditions 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 14 and 17 of planning approval H23-1272-25, 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 Conditions 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 14 and 17 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 S73 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".

Paragraph 13 of the relevant section of the PPG states "In contrast to section 96A, 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."

### Evaluation - Key Considerations

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 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, 2026 (NPPF) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

### Principle of Development

The principle of development has been established under H23-1272-25. As such, there is no need to revisit this point here.

### Layout, Design, Scale and Consideration of the Character of the Area

Section 14 of the NPPF, "Achieving well-designed places", outlines that planning decisions and policies should "promote high quality, healthy, inclusive and sustainable places".

Paragraph 1 of DP3 outlines that "development proposals should respond to their context (the history, character and features of their site and its setting), so that they integrate with and enhance their surroundings; such as through the arrangement of development plots and buildings, the use of materials and architectural features, and the restoration, reuse and integration of heritage assets".

In order to create well-designed places, Paragraph 2 outlines that proposals should reflect seven

key principles, as appropriate to the nature of the development and its location. These are: liveability, climate, nature, movement, built form, public space, and identity.

Paragraph 3 of DP3 is explicit that proposals which conflict with paragraph 1, the relevant aspects of paragraph 2 of DP3, or relevant development plan policies and guidance, should be refused. Conversely, substantial weight should be given to compliance with relevant development plan policies when assessing the design quality of proposals.

Likewise, Policy 2 of the SELLP outlines sustainable development considerations for proposals; providing a framework for an operational policy to be used in assessing the sustainable development attributes of all development proposals. Furthermore, Policy 3 of the SELLP 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.

These policies accord with the provisions of the NPPF and require that design which is inappropriate to the local area, or which fails to maximise opportunities for improving the character and quality of an area, will not be acceptable. Proposals for new development would therefore require the aforementioned considerations to be adequately assessed and designed, including the siting, design, and scale to be respectful of surrounding development and ensure that the character of the area is not compromised.

The changes proposed to the elevations of Plot 1 are minor. They show slightly altered window designs. The changes to the landscaping are similarly minor and have no significant effect on the overall appearance of the dwelling.

Details of hard and soft landscaping for Plot 1 have been provided. These are considered to be acceptable, and would provide suitable landscaping for the site. On that basis Condition 4 should be updated to reflect the amended plans.

Details of materials for Plot 1 have been provided. These details are considered to be acceptable, and will ensure a consistent and high quality appearance for the Plot. Whilst the splitting of the condition may result in a slightly discordant development, it is not considered that this would be especially harmful. Moreover, enabling a variation in materials within plots would enable more distinct finishes, creating a high quality overall appearance.

Taking account of the design, scale, and nature of the development, 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 SELLP and Section 14 of the NPPF.

#### Impacts Upon Resident Amenity

DP3 of the NPPF outlines that development should create places that are safe, inclusive, and accessible and which promote health and well-being, with a focus on promoting liveability.

Likewise, Policy P3(1) outlines that development proposals should be appropriate for their location, taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, whether these effects are on or off-site. This point is expanded upon in P3(2) which states all development proposals should "provide healthy living conditions for occupiers and users in terms of adequate access to light and avoiding exposure to levels of air, noise, artificial light or other sources of pollution which could have an unacceptable adverse effect on health and the quality of life".

Policies 2 and 3 of SELLP sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.

The proposed alterations would not exacerbate any amenity impact.

Details of a preliminary assessment of contaminated land have been provided. These relate to Condition 8 of the host permission. The relevant consultee from the Environmental Protection Department has indicated that they are satisfied with the findings of the assessment, and recommend that the condition is replaced with a precautionary condition, in line with the wording providing. The assessment provided appears to relate to the site as a whole; and therefore, there is

no requirement to "split" the condition to enable partial discharge. Condition 8 can instead be replaced by a precautionary condition, as per the conclusions of the Environmental Protection Department.

As detailed above, the scale and design of the proposal is considered to have 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 Sections 14 and 17 of the NPPF and Policies 2 and 3 of the Local Plan in terms of impact upon residential amenity.

### Highway Safety and Parking

Section 15 of the NPPF is titled 'Promoting sustainable transport'. Within this, Policy TR6(4) advises that "development proposals should be refused if they would have a severe adverse impact on the transport network (in terms of capacity and congestion, including cumulative impacts), or an unacceptable impact on highway safety; taking into account any mitigation measures proposed as well as any wider network improvements, including measures to support sustainable patterns of movement. This applies both during the construction phase and following completion."

Policy TR3 of the NPPF outlines that development should be located where it can support sustainable patterns of movement, enable good accessibility for different users and make the most of existing and proposed transport infrastructure. The policy outlines a series of principles to achieve these aims, with the expectation that all proposals should, so far as is relevant, conform to them. Policy TR3(2) is explicit that "The Connectivity Tool should be used alongside other relevant quantitative or qualitative evidence in assessing the connectivity of particular locations proposed for development."

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. Policy 33 further reinforces the need for developments to be accessible via sustainable modes of transport.

Policy 36 of the SELLP, in conjunction with Appendix 6, sets out minimum vehicle parking standards and requires at least two spaces for dwellings of up to three bedrooms and three spaces for dwellings with four or more bedrooms.

Details have been provided relating to Condition 7 and the blocking up of the existing access. The details provided are considered acceptable and the condition can be amended to reflect the details provided.

The other proposed alterations would have no effect upon parking or highway safety.

### Flooding Considerations

Section 18 of the NPPF relates to "Managing flood risk and coastal change". It requires a sequential approach to flood risk, in accordance with the decision making policies contained within this section. Policy F7 is clear that "development proposals should not present a risk from flooding to potential occupiers, users, or visitors, and should not increase flood risk elsewhere."

Policy F5(1) outlines that:

"The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Where the test applies, development proposals should not be located in areas at risk of flooding where alternative sites, appropriate for the development, are reasonably available in areas with a lower risk of flooding. The area to which the test is applied should not be greater than the anticipated catchment of the development in terms of its likely occupiers or users."

Paragraph 3 expands on this, stating that:

"The strategic flood risk assessment covering the area of the proposed development and the Flood Map for Planning should provide the evidential basis for applying the sequential test."

The site lies within Flood Zone 3 of the Environment Agency's Flood Maps. These have been

created as a tool to raise awareness of flood risk with the public and partner organisations, such as Local Authorities, Emergency Services and Drainage Authorities. The Maps do not take into account any flood defences.

The South-East Lincolnshire Strategic Flood Risk Assessment (SFRA) provides an overview of how flood risk has been considered in shaping the proposals of the Local Plan, including the spatial strategy and the assessment of housing and employment sites. Policy 4 of the SELLP is clear in that "Development proposed within an area at risk of flooding (Flood Zones 2 and 3 of the Environment Agency's flood map or at risk during a breach or overtopping scenario as shown on the flood hazard and depths maps in the Strategic Flood Risk Assessment) will be permitted" in instances where specific criteria is met.

As explicitly stated within Policy F5(3), the SFRA should be used in conjunction within the Environment Agency's maps to assess the sequential test. Within the SFRA the site is outside of any identified hazard zone.

Details of the finished floor levels of Plot 1 have been provided, showing that they will be raised by approximately 300mm, thereby satisfying the requirements of condition 11 for Plot 1. A 300mm rise is appropriate given the flood risk on the site, and would not result in an additional amenity or visual impacts.

Drainage information for Plot 1 has been provided. Foul water is to be disposed of to a sewage treatment system before being discharged into the adjacent IDB drain. This is considered appropriate given the scale and location of the development.

Surface water is also to be disposed of to an IDB drain. Again, this is considered acceptable, particularly in light of the existing use and development of the site, which is primarily hard standing.

On that basis, Condition 12 can be augmented to reflect the details provided, with a secondary condition requiring further details for Plot 2 being imposed.

### Biodiversity Net Gain

Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) requires developers to deliver a minimum of 10% Biodiversity Net Gain using standardized biodiversity units measured by statutory biodiversity metrics. This is often referred to as the mandatory requirements for Biodiversity Net Gain.

"Under the statutory framework for biodiversity net gain, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met ("the biodiversity gain condition"). This objective is for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat. This increase can be achieved through onsite biodiversity gains, registered offsite biodiversity gains or statutory biodiversity credits".

The biodiversity gain condition is a pre-commencement condition. This relates to a condition that seeks, once planning permission has been granted, a Biodiversity Gain Plan that must be submitted and approved by the planning authority before commencement of the development, alongside the need to submit a Habitat Management and Monitoring Plan.

The effect of Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission is deemed to have been granted subject to the "biodiversity gain condition". The effect of this "biodiversity gain condition" is that development granted by this notice must not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan, or
- (c) the development is exempt from the biodiversity gain condition.

Schedule 7A of the Town and Country Planning Act is clear that a Section 73 application would not alter the need for the standard BNG condition. Therefore, whilst details of the purchasing of credits have been provided, these are not relevant to this proposal and should be discharged separately.

Details of bat and bird boxes have been provided for Plot 1. The details provided are considered acceptable, and would ensure the appropriate uplift required. Condition 14 can therefore be split to

reflect the details of Plot 1, with details to be required for Plot 2.

### Conditions

Conditions 2, 4, and 6 of H23-1272-25 should be updated to reflect the amendments to the approved plans. Condition 7 should be updated to reflect the details provided, requiring development in accordance with these plans.

Condition 3 of H23-1272-25 should be split into two separate conditions, requiring Plot 1 to be carried out in accordance with the plans provided and for further details to be provided for Plot 2.

Conditions 8 and 9 have been satisfied. That being said, to ensure no harm via contaminated land, a precautionary condition is recommended.

Condition 11 of H23-1272-25 should be split, requiring Plot 1 to be carried out in accordance with the details provided and for further details to be provided for Plot 2. The same approach should be taken for Conditions 12 and 14 of H23-1272-25.

All other conditions will remain unchanged and undischarged where relevant.

### **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 would represent appropriate alterations to an approved scheme. The proposal would not exacerbate any previously raised concerns or create further conflict on the site.

### **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 these factors into consideration, the proposal is considered to comply with Policies 2, 3, 4, 33 and 36 of the SELLP, as well as Sections 14, 15, 17, and 18 of the NPPF. There are no significant factors in this case that would outweigh the benefits of the proposal; therefore, the planning balance is in favour of the proposal.

## **Recommendation**

Based on the assessment detailed above, it is recommended that the proposal should be approved under Delegated Authority.