

[06] Remove or Vary a condition

N/084/02204/ 23

APPLICANT: Foundations and Buildings

VALID: 13/11/2023 **AGENT:** Steven Dunn Architects Limited,

PROPOSAL: Section 73 application to vary condition no. 1 (approved plans) as imposed on reserved matters approval N/084/00438/19 for the erection of 10 no. houses.

LOCATION: MANOR FARM, SKEGNESS ROAD, HOGSTHORPE, SKEGNESS, PE24 5NR

1.0 REASONS FOR COMMITTEE CONSIDERATION

1.1 The application has been subject to a call in request by Cllr Dawson due to the impact of the raising of the land on the amenity of the neighbours and concerns about overlooking and loss of privacy. Also, the need for landscaping and impact on flood risk.

2.0 THE SITE AND SURROUNDINGS

2.1 The site is situated on the edge of the village of Hogsthorpe which is defined as a large village in the East Lindsey Local Plan. It is also within Flood Zone 3 - High Risk with a hazard rating of Danger to Most. Skegness Road is the south of the site and provides access. To the west of the site is a small estate of dwellings. To the north and east are fields. The site comprises of the applicant's house to the northeast corner. To the south of this is a grassed area with a small pond. The access road through the site separates these areas from the former engineering business which was to the eastern half but the building has been removed and a start made on the development which comprises of ground works for the road and drainage.

3.0 DESCRIPTION OF THE PROPOSAL

3.1 This is a section 73 application which effectively seeks to vary condition no. 1 (approved plans) as imposed on the reserved matters approval N/084/00438/19 granted. That approval was for the erection of 10 no. houses in total and followed the grant of outline planning permission N/084/00876/15 on 11th September, 2015 and subsequent s.73 permissions to vary conditions (the most recent being 0242/17). The approved development provided for siting of a single dwelling to the east of the access road with the remaining units sited to the west. Those dwellings (other than three to the south of the site, which were to front onto the A52) were proposed to front onto the internal access road, with their rear elevation facing across a drainage ditch which formed the site boundary, to the rear of dwellings on St Mary's Close. A 5m maintenance strip between the rear of the proposed dwellings and the ditch was approved as part of the layout.

- 3.2 This application seeks to amend condition 1 (which lists the approved plans) to regularise the raising of the land levels to the western half of the site where the dwellings are sited, towards the ditch. The majority of those works have already been undertaken with the land levels having been raised between 0.43 metres and 0.83 metres above the original ground level. The applicant's position is that these works were undertaken as a practical operational necessity for the development and that their requirement was implicit in the originally approved details. In seeking to implement the permission granted, the applicant has effectively raised levels where not prescriptively referenced on the approved drawings, to maintain a generally level site, avoiding undue and potentially impractical level changes between the approved floor levels, manhole levels and the surrounding ground.
- 3.3 As further clarification, it is confirmed that the details approved under N/084/0438/19 established finished levels for the dwellings themselves and also for the drainage manhole covers and road within the site. Those specific approved levels remain unchanged for this application, such that consideration and regularisation is only in respect of those areas of the site for which precise levels were not confirmed and have been raised. That 'across the site' level of increase was considered by officers to be too significant to be considered as a non material amendment, thus requiring submission of this s.73 application in attempt to regularise the situation. The approved reserved matter details also secured post and rail treatments for the rear western boundaries of dwellings together with structural landscaping.

4.0 CONSULTATION

- 4.1 Set out below are the consultation responses that have been received on this application. These responses may be summarised and full copies are available for inspection separately. Some of the comments made may not constitute material planning considerations.

Publicity

- 4.2 The application has been advertised by means of a site notice and neighbours have been notified in writing.

Consultees

- 4.3 PARISH COUNCIL - Having looked into this matter, we can understand that there may have been confusion over the ground levels on the original plans. It would certainly appear that ground levels had to be increased to comply with the level of the road and the drainage required on the site. We have met with Mr Joyce who has assured us that he has adhered to the planning permission given at that time. Planning applications for this development have been ongoing since 2015. However, the neighbours on St Mary's

Close are concerned that the level of the new ground has a detrimental effect on their property by the increase in ground level and concerned about their loss of privacy. They had no objection to this development but were perhaps unaware of the implications of raising floor levels in accordance with flood defence requirements. Obviously, they are also concerned about flooding in the future and we would like to be assured by the Environmental Office and the Drainage Board that this is an extremely unlikely event, even given the latest flooding issues in various parts of the country. We understand that there is a dyke between the new builds and St Mary's Close properties which Mr Joyce has cleared in the past but the dyke is actually the responsibility of the properties adjacent to the dyke. Provided this dyke is kept clear, this should alleviate any risk of flooding. A 5 meter stretch of land is left clear from the bottom of the new build gardens in order that machinery can be brought in to clear the dyke in the future. We would be pleased if you would ask the relevant authorities to give their assurances that in their opinions there is very little chance of flooding due to the raised land.

- 4.4 LCC HIGHWAYS AND LEAD LOCAL FLOOD AUTHORITY - No objection.
- 4.5 ENVIRONMENTAL SERVICES (Environmental Protection) - Not received at the time of preparing this report.
- 4.6 ENVIRONMENTAL SERVICES (Drainage) - Not received at the time of preparing this report.
- 4.7 ENVIRONMENTAL SERVICES (Contamination) - Not received at the time of preparing this report.
- 4.8 ANGLIAN WATER SERVICES - No comment.
- 4.9 LINCOLNSHIRE POLICE - No objections.
- 4.10 ENVIRONMENT AGENCY - No objections.
- 4.11 LCC EDUCATION - No comments.
- 4.12 ELDC (WASTE SERVICES) - Not received at the time of preparing this report.

Neighbours

- 4.13 1 no. representation received requesting provision of Swift boxes.

2 no. representations of objection received on the grounds of:
 - Loss of privacy and overlooking into property and garden;
 - Increase in flood risk to neighbours where land is lower;
 - Can understand confusion of plans;
- 4.14 The Ward Councillor is aware of the application via the Weekly List.

5.0 RELEVANT SITE HISTORY

- 5.1 N/084/00876/15 - Outline erection of 10 no. dwellings (with means of access to be considered) on the site of existing engineering workshop, associated storage containers and parking in accordance with amended plans received by the Local Planning Authority on 19th August, 2015, amended Flood Risk Assessment and Design and Access Statement received on 29th June, 2015, and Surface Water Drainage Report received on 19th August, 2015. Approved 11/09/2015.
- 5.2 N/084/00625/16 - S.73 application to remove condition no. 12 which secured "affordable housing" as imposed on outline planning permission ref no. N084/0876/15. Approved 25/05/2016.
- 5.3 N/084/00100/17 - Reserved matter approval relating to the layout of roads and boundaries of the plots for the erection of 10 no. dwellings. Approved 28/04/17.
- 5.4 N/084/00242/17 - S.73 application to vary condition no. 1. (standard time condition), and 2. (Appearance, landscaping, layout and scale condition) as imposed on planning permission reference no. N/084/00625/16. Approved 27/04/2017.
- 5.5 N/084/00438/19 - Reserved matters approval relating to the erection of 10 no. houses in total. Approved 15/07/2019.
- 5.6 N/084/00126/23 - Planning Permission - Erection of 4no. dwellings. Approved 11/04/2023.

6.0 PLANNING POLICY & BACKGROUND DOCUMENTS

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan comprises of the East Lindsey Local Plan (adopted 2018), including the Core Strategy and the Settlement Proposals Development Plan Document; and any made Neighbourhood Plans. The Government's National Planning Policy Framework (NPPF) is a material consideration.

East Lindsey Local Plan

SP1 - A Sustainable Pattern of Places
SP2 - Sustainable Development
SP17 - Coastal East Lindsey
SP18 - Coastal Housing
SP22 - Transport and Accessibility
SP23 - Landscaping
SP24 - Biodiversity and Geodiversity
SP26 - Open Space, Sport and Recreation

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

7.0 OFFICER ASSESSMENT OF THE PROPOSAL

Main Planning Issues

7.1 The main planning issues in this case are considered to be:

- **The scope of the application**
- **Impact on neighbouring amenity and quality of development**

The scope of the application

7.2 This is an application made under Section 73 of the Town and Country Planning Act 1990 to vary or remove a condition imposed on a planning permission. Section 73 of the Town and Country Planning Act 1990 relates to applications to develop land without compliance with conditions previously attached. It states in part that:

“(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and –

- (a) If they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
- (b) If they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.”

7.3 To further clarify the process, the Planning Practice Guidance (NPPG) advises: "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. A decision notice describing the new permission should clearly express that it is made under section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect."

7.4 The legislation makes it clear that in considering such an application a local planning authority may only consider the "question of the conditions". However, in terms of decision-making, a Section 73 application should be treated just like any other application, and due regard paid to the development plan and other material considerations. In granting permission under Section 73 the local planning authority may also impose new conditions, provided the conditions do not materially alter the development that was subject to the original permission.

- 7.5 The Planning Practice Guidance further states: "There is no statutory limit on the degree of change permissible to conditions under Section 73, but the change must only relate to conditions and not to the operative part of the permission."
- 7.6 As noted above, this application effectively seeks to regularise the raising of land levels in so far as they relate to areas of land surrounding the approved dwellings and up to the western site boundary. The original reserved matters approval was supported by details of some site levels, including those of the floor levels for the dwellings and the drainage levels. It is emphasised that those levels, as approved, and as implemented on site are unaltered by this application. Consideration of this application, therefore should reasonably be limited to consideration of the differences between the 'as approved' scheme and this proposal only.
- 7.7 In other words, the principle, quantum, dwelling design and layout (including the finished floor levels for the houses) remain as approved and are not a consideration for this proposal.
- 7.8 Review of the approved reserved matter details, does indicate a lack of prescriptive detail for the levels to the western most parts of the site, but does clarify intentions for grading the land levels between the road and the house footprints. It is the lack of prescriptive reference to any altered levels that has determined the need for this application in seeking to regularise the increase over this part of the site when compared to the original site levels.

Impact on neighbouring amenity and quality of development

- 7.9 The key consideration arising from the increase in the land levels is therefore considered to be that of impact on the amenities of neighbours.
- 7.10 As noted earlier in this report, the siting, design detail and floor levels for the proposed dwellings are unaltered from the approved scheme such that the amenity impacts from the dwellings themselves will be unchanged. The distances from the closest proposed dwellings to nos. 9 and 10 St Marys Close would be a minimum of 20 metres away; a distance that has already been accepted, in accordance with accepted best practice guidelines as being reasonable and appropriate for ensuring adequate levels of amenity between the dwellings themselves. The matter requiring specific consideration therefore is whether there would be any greater or unacceptable level of additional amenity impacts on those immediate neighbours as a result of the raising of garden levels and that of the drainage maintenance strip.
- 7.11 Two neighbours who live in properties along St Mary's Close have raised objections in that regard. The area of the application site

closest to those two properties has been raised approximately 0.83 metres (ie adjacent to 9 and 10 St Marys Close). Those properties, along with others along St Marys Close, are positioned reasonably close to the application site, having modest depth to their rear gardens. No. 10 varies between 4.5 and 9.2 metres (approximately) from the site boundary and no. 9 between 6.6 and 10.7 metres away (approximately) on account of the boundary alignment. These measurements are to the edge of the dyke on the application site and so do not include the proposed 5 metre maintenance strip. Moving further north nos. 8, 7 and 6 St Marys Close have slightly larger rear gardens, so the potential impacts will be less.

7.12 It is considered that the effective raising of the land up to the boundary could have a greater impact on the amenities of neighbours given its elevated status and possibilities for overlooking to the rear gardens of those properties. However, the immediate area of land would comprise a 5m linear maintenance strip. Accessibility here would be very limited requiring only occasional maintenance access (presumably in similar manner to historic requirements). The strip would not form part of any garden area such that it would not be available as a play area for benefit of any individual dwelling and therefore would not be subject to any intensive or invasive level of use. A management plan in that respect can be secured by planning condition. Furthermore, as per the previous approved detail, defined boundary treatments to delineate the approved dwelling curtilages together with suitable landscaping can be secured by condition (as these are consequential reserved matter issues) as mitigation to further safeguard reasonable amenity provision.

7.13 Other concerns have been raised in relation to flood risk. A detailed surface water drainage scheme has been previously approved under N/084/00242/17. That scheme, indicated that surface water drainage from the proposed dwellings and road would go to the swale on the east side of the road and then to an attenuation pond to the south-east of the site with an overflow to the dyke which runs along the road side. The dyke between the site and St Marys Close remains and this proposal would not impact on the acceptability of that scheme. It is also relevant to note that no objection or concern has been raised by any of the drainage consultees to the proposal.

8.0 CONCLUSION

8.1 In conclusion, although the concerns of local residents are noted, and it is accepted that the raising of the land could result in some additional impact on the amenity of the neighbours along St Marys Close, that impact is not considered to be significant and would be mitigated by use of conditions to ensure retention/management of the 5 metre maintenance strip and use of suitable landscaping and boundary treatments. It is therefore concluded that the

development would be acceptable for the reasons outlined in detail above. Conditions 2 and 3 on the previous reserved matters approval relating to materials and landscaping will need to be repeated on any permission. The proposal complies with the policies and Government guidance mentioned previously and is recommended for approval subject to conditions set out below.

- 8.2 This conclusion has been arrived at having taken into account all other relevant material considerations, none of which outweigh the reasons for the officer recommendation made below.

10.0 OFFICER RECOMMENDATION

RECOMMENDATION: Approve

subject to the following conditions:

- 1 The development hereby permitted shall be completed in accordance with the following approved plan numbers:

Plan No. 2682-A2-11 Received by the LPA on 23/02/2024.
Plan No. 2682-A1-12 Received by the LPA on 23/02/2024.

The following plan numbers are on planning reference N/084/00438/19.

Plan No. 15/123/RM/20 Received by the LPA on 12/03/2019.
Plan No. 15/123/RM/21 Received by the LPA on 12/03/2019.
Plan No. 15/123/RM/22 Received by the LPA on 12/03/2019.
Plan No. 15/123/RM/23 Received by the LPA on 12/03/2019.
Plan No. 15/123/RM/24 Revision A
Received by the LPA on 15/04/2019.

Plan No. 15/123/RM/25 Received by the LPA on 12/03/2019.
Plan No. 15/123/RM/26 Received by the LPA on 12/03/2019.
Plan No. 15/123/RM/27 Received by the LPA on 12/03/2019.
Plan No. 15/123/RM/28 Received by the LPA on 12/03/2019.
Plan No. 15/123/RM/29 Received by the LPA on 12/03/2019.

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

- 2 Before any works above the damp proof course of each dwelling a schedule of external materials, including samples where requested, to be used in the construction of that dwelling and hard surfaced areas shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.

Reason: 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 SP10 of the East Lindsey Local Plan and paragraph 135 of the National Planning Policy Framework.

- 3 The scheme of landscaping and tree planting shown on approved drawing nos: 15/123/10 Revision B, 15/123/11 Revision A and 15/123/12 Revision

B received by the Local Planning Authority on 12/03/2019 and 15/123/13 Revision E received by the Local Planning Authority on 04/06/2019 under reference N/084/00438/19 shall be carried out in its entirety prior to occupation of the first dwelling, or in line with a timetable/phasing strategy to be agreed in writing by the Local Planning Authority. All trees, shrubs and bushes shall be maintained by the owner or owners of the land on which they are situated for a minimum 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 appropriate landscaping is provided to integrate the site into the local area. This condition is imposed in accordance with SP10 of the East Lindsey Local Plan.

- 4 Prior to the occupation of any of the dwellings to which this reserved matters approval relates, the 5 metre wide maintenance strip alongside the dyke on the western boundary shall be provided and safeguarded in accordance with a scheme of management to be submitted to the Local Planning Authority and agreed in writing. The maintenance strip shall thereafter be managed and maintained in accordance with the details so approved.

Reason: In order to protect the amenity of the neighbours and reduce the risk of flooding in accordance with paragraphs 135 and 173 of the National Planning Policy Framework.