

**[07]** Remove or Vary a condition

N/084/02040/ 23 **APPLICANT:** Mr. P. Joyce,

**VALID:** 16/10/2023 **AGENT:** Steven Dunn Architects,

**PROPOSAL:** Section 73 application to vary condition no. 2 (approved plans) as previously imposed on planning permission reference N/084/00126/23 for the erection of 4no. dwellings.

**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 in relation to possible 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 which is situated on the edge of the village of Hogsthorpe (which is defined as a large village in the East Lindsey Local Plan) benefits from an extant planning permission for the erection of 10 dwellings and a separate permission (N/084/00126/23) for varied house types to four of those dwellings. That larger permission has been commenced through implementation of various groundworks. The site lies 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, buffered from the site boundary by a drainage ditch. 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 PROPOSED DEVELOPMENT**

3.1 This is a section 73 application seeking to vary condition 2 imposed on planning permission N/084/00126/23 which as noted above, effectively secured varied house designs for four of the dwellings permitted under an earlier outline permission and associated reserved matters approval. Plots 1 and 2 of that larger scheme were effectively amended to two detached houses and Plots 7 and 8 were amended to two detached houses each with integral garages. The larger approved development provided for siting of a single dwelling to the east of the access road with the remaining units (including the 4 approved under 0126/23) 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 As set out for the previous application (2204/23) on this agenda, the circumstances for this proposal are essentially the same. In essence, the application seeks to amend condition no. 2 (which lists the approved plans) in attempt to regularise the raising of the land level to the western half of the site where the approved dwellings are proposed. The land level is proposed to be raised between 0.43 metres and 0.83 metres above the existing ground.
- 3.3 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.
- 3.4 Finished floor levels for the dwellings themselves and also for the drainage manhole covers and road within the site were effectively secured through consideration of the 10 dwelling, larger scheme. Those specific approved levels are not proposed for amendment and remained unchanged for the larger development proposal, such that consideration and regularisation of revised levels was only required and a consideration in respect of those areas of the site for which precise levels were not confirmed and have been raised.
- 3.5 In the context of the larger development, there is in effect, an agreed levels position for the eastern section of the site, but no permitted raising of levels for the western section closest to neighbours on St Mary's Close and an intervening drainage ditch. The applicant has clarified (as noted above) a practical intention for raising the levels, but it is not considered that they were a part of the approved scheme, such that there is need for them to be potentially regularised. For this application, relating to the four amended dwelling types, the permission granted, equally did not specify increased levels for the site. this application, therefore seeks regularisation of that position to ensure consistency across the site and enable the development to continue.

#### **.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 - Not received at the time of preparing this report.
- 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 ENVIRONMENT AGENCY - No comments.
- 4.9 DRAINAGE BOARD - The Board maintained Town Common Drain, an open watercourse, exists to the southern boundary of the site. Advisory comments regarding consent required from Drainage Board and request for cross section drawings.

### **Neighbours**

- 4.10 5 representations of objection received on the grounds of:
- Raising of the land will result in overlooking and loss of privacy;
  - Potential for flood risk;
  - Land should be sloped down from the approved houses to the boundary which would lessen the impact;
  - Loss of trees;

4.11 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. Approved 11/09/2015
- 5.2 N/084/00625/16 - Application to remove condition no. 12 which states "affordable housing" as imposed on outline planning permission ref no. N/84/0876/15. Approved 25/05/2016.
- 5.3 N/084/00100/17 - Reserved matters 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 - 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 relating to the erection of 10 no. houses . 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**

### **Planning Practice Guidance**

## **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**

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 4 dwellings and up to the western site boundary. Although reserved matters approval N/084/00438/19 was supported by details of some site levels, including those of the floor levels for the dwellings, the road and drainage levels, this separate amended dwelling type permission did not contain that detail. It is considered important to emphasise that those levels, as approved, have in part been implemented on site and as a permitted element of the larger scheme effectively establishes a lawfully agreed position in terms of acceptability. The intention for this application is therefore, effectively to secure that agreement for these plots as well as the increased levels for the western part of the site. Mindful of that position, in similar vein to N/084/02204/23, consideration of this application, therefore should reasonably be focussed consideration of the differences between the larger 'as approved' scheme and the further level changes in considering planning implications.
- 7.7 In other words, the principle, quantum, dwelling designs and layout (including the finished floor levels for the houses) for the larger site have relevant approvals and are not a consideration of weight for this proposal.
- 7.8 It is considered therefore, that the principal focus for this application should be in assessing the altered levels for the western garden and maintenance strip areas of the site that have primarily determined the need for this application in seeking to regularise the increase over this part of the site when compared to the extant permissions collectively.

### **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. 7, 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 Three 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 7, 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, no. 9 between 6.6 and 10.7 metres away (approximately) and no. 7 between 9.4 and 12.2 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 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 with elevated overlooking of the rear gardens of those properties. However, the closest 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 unneighbourly level of use. In any event, that maintenance strip was always envisaged as part of the permission granted and 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 and loss of trees. 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 modest 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. Relevant conditions on the original permission relating to landscaping, materials, footway and road provision and finished floor levels will also need to be repeated. Subject to such conditions, it is considered that the proposal complies with relevant policies and Government guidance and is recommended for approval.
- 8.2 Other concerns which have been raised relate to loss of trees and flood risk. The surface water drainage scheme for the whole site has already been approved under a previous Section 73 approval reference N/084/00242/17 which varied the outline approval. Surface water drainage from the proposed dwellings and road is shown to 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. A condition requiring a landscaping scheme for these four plots was included previously and can be repeated to secure additional new planting.
- 8.3 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. Full Permission  
The development hereby permitted must be begun not later than the expiration of 10th April 2026.

Reason: In order to comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.



- 2 The development hereby permitted shall only be undertaken in accordance with the following approved plan numbers:

Plan No. 2682-A2-09b Received by the LPA on 23/02/2024.  
Plan No. 2682-A1-10c Received by the LPA on 23/02/2024.

Plans approved under planning permission reference N/084/00126/23.  
Plan No. 2682-A2-01 Received by the LPA on 20/01/2023.  
Plan No. 2682-A1-03 Received by the LPA on 20/01/2023.  
Plan No. 2682-A1-05 Received by the LPA on 20/01/2023.  
Plan No. 2682-A1-06 Received by the LPA on 20/01/2023.

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

- 3 Before any works are undertaken above the damp proof course level a schedule of external materials, including samples where requested, to be used in the construction of each dwelling and hard surfaced 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.

- 4 The approval of the Local Planning Authority is required to a scheme of landscaping and tree planting for the site indicating, inter alia, the number, species, heights on planting and positions of all the trees, together with details of post-planting maintenance for each dwelling. Such scheme as is approved by the Local Planning Authority shall be carried out in its entirety within the first planting season following the date on which the dwelling to which it relates is completed or in line with a timetable 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.

- 5 The 1.8 metre wide footway which shall connect the proposed site to the existing footway along the A52 adjacent to the access to St. Mary's Close shall be provided and certified complete by the Local Planning Authority prior to the occupation of any dwelling hereby permitted.

Reason: In the interests of safety of the users of the public highway and the safety of the users of the site and to accord with SP10 and SP22 of the East Lindsey Local Plan.

- 6 No dwelling shall be occupied until the estate streets affording access to

that dwelling has been fully completed in accordance with the Estate Street Development Plan approved as part of planning permission reference N/084/00242/17.

Reason: To ensure that the estate streets serving the development are completed and maintained to the approved standard, and are available to use by the occupants, and other users of the development, in the interest of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the approved development; and to safeguard the visual amenities of the locality and users of the highway, in accordance with SP10 and SP22 of the East Lindsey Local Plan.

- 7 The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (AF Architecture, dated April 2015 submitted as part of planning permission reference N/084/00242/17) and in particular the following mitigation measures:
- Finished floor levels shall be set no lower than 1.0 metre above the existing ground level;
  - Flood resilient construction measures shall be incorporated to a height of 600mm above finished floor levels;
  - The dwellings shall be a minimum of two storeys.

The mitigation measures shall be fully implemented prior to the occupation of the dwelling.

Reason: To reduce the risk of flooding to the proposed development and future occupants. This condition is imposed in accordance with paragraph 167 of the National Planning Policy Framework.

- 8 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.