

NR/01/n2380

Development Management  
East Riding of Yorkshire Council  
County Hall  
Cross Street  
Beverley  
HU17 9BA

8<sup>th</sup> April 2024

Dear Sir/ Madam,

RE: PLANNING APPLICATION UNDER SECTION 73 OF THE TOWN AND COUNTRY PLANNING ACT (1990) TO REMOVE CONDITION 11 AND VARY CONDITIONS 2, 6, 10, 12 AND 13 PURSUANT TO PLANNING PERMISSION REF: 23/03267/VAR FOR VARIATION OF CONDITION 14 (APPROVED PLANS) OF APPLICATION REFERENCE 17/02706/VAR (VARIATION OF CONDITIONS 7, 8 AND 9 (CODE FOR SUSTAINABLE HOMES) OF PLANNING PERMISSION 09/03961/PLF TO UPDATE THE CONDITIONS TO REFER TO THE LEVEL 5 OF THE CODE FOR SUSTAINABLE HOMES) TO ALLOW FOR MINOR ALTERATIONS TO THE APPROVED HOUSE TYPE ON LAND AT MILL GARAGE, MILL LANE, WALKINGTON.

nineteen47 is instructed by Walkington Ltd [the "Applicants"] to prepare and submit a Minor Material Amendment application to remove Condition 11 and subsequently vary Conditions 2, 6, 10, 12 and 13 of Application ref. 23/0327/VAR following the grant of planning permission for the erection of 4no dwellings to be built to Code Level 5 of the Code for Sustainable Homes ["the Proposed Development"] on land at Mill Garage, Mill Lane, Walkington ["the Site"].

The application fee of £293 plus the Planning Portal's administration fee have been paid via the Planning Portal.

### The Application Site and Background

The Site is located in the open countryside approximately 400m from the northern edge of the village of Walkington. The Site comprises a former commercial and agricultural engineering business, which in April 2010 was granted full planning permission (application ref: 09/03961/PLF) by the East Riding of Yorkshire Council ["the LPA"] for the erection of 4no. live-work units and the construction of 4no. wind turbines following the demolition of the existing industrial buildings on the Site ["the Original Permission"]. The Original Permission also included the delivery of a new footpath to the village.

Planning permission was granted subject to a number of conditions, including a pre-occupation condition (No.16) which required the construction of the approved pedestrian footpath in accordance with details to be submitted to and approved in writing by the LPA.

Following this, a Section 73 application (application ref: 17/02706/VAR) was submitted to the LPA in 2017 which sought to vary conditions 7, 8 and 9 of the Original Permission. The variations sought that the dwellings be constructed to code level 5 of the Code for Sustainable Homes. This application was approved by the LPA on 22<sup>nd</sup> May 2018.

The Original Permission, as varied by the aforementioned S73 application, was implemented following the construction of one of the approved dwellings on the Site, which meant the approved development has commenced. The remainder of the Site has been cleared for the rest of the development to take place. However, the landowner, having implemented the consent and nearly completed one of the four dwellings, ran out of resources to complete the dwelling or any of the other properties and therefore progress has stalled on the Site for many years. The Site and dwelling have continued to deteriorate and are detractors in the landscape.

Subsequently, the original landowner sold the Site to the Applicant who is committed to completing the approved development but wished to bring forward an alternative design scheme which aligns with the vision the Applicant has for the Site. It was also recognised that the Code for Sustainable Homes was an outdated initiative, and therefore a more contemporary approach to achieving sustainable design was recognised to be a positive way forward. An application was therefore progressed (application ref: 22/01590/PLF) for 4no. bespoke dwellings which are considered to be more befitting to the rural setting. Unfortunately, the determination has become protracted and after various updates to the scheme and an initial indication that officers were supportive of the development, officers have since indicated that they are not willing to support the scheme.

As such, the Applicant sought to undertake minor alterations to the dwelling already constructed (Plot 3) with a view to this being replicated across the other 3 plots which are yet to be built. An application was therefore submitted (application ref: 23/03267/VAR) for retrospective consent in relation to the works already carried out as well as seeking permission to build the remaining dwellings in accordance with the revised design. This application was approved on 13<sup>th</sup> March 2024 and represents a variation of the Original Permission, herein referred to as the Approved Consent.

### Proposed Removal of Condition 11 and Subsequent Variation of Conditions

This Section 73 application seeks to remove condition 11 of the Approved Consent, therefore removing the requirement for the Applicant to deliver a pedestrian footpath as part of the development of the Site.

Condition 11 of ref: 23/03267/VAR states the following:

*No dwelling shall be occupied until the pedestrian facilities to connect the development with the existing footway network in Walkington, as shown on drawing '2022-050 01 D' (received on 23/02/2024) have been constructed in accordance with details that shall be first submitted to and approved in writing by the Local Planning Authority and shall thereafter be retained.*

*Reason: This condition is imposed in accordance with Policy EC4 of the East Riding Local Plan and in the interests of highway safety and to ensure a pedestrian access to Walkington.*

Following their purchase of the Site, the Applicant approached a number of companies to begin the process of delivering the trod footpath, as required by the Original Permission (and as varied). As part of this process, the Applicant sought clarification from the Local Highways Authority on the required specification to which the path should be delivered.

In their response, the Highways Development Management Team Leader has notified the Applicant that they would prefer the trod path not to be constructed. They have further recommended that the Applicant should approach the LPA to remove the condition. Please see email correspondence received from the Highway Development Management Team Leader at Appendix 1.

Further to the above, this Application proposes to vary Conditions 2, 6, 10, 12 and 13. This relates to the inclusion of reference to a previously approved plan, which is proposed to be replaced as part of this Application. To clarify, the aforementioned conditions all refer to the previously approved Proposed Site Plan, Location Plan, Proposed Footway Plan, Surface and Foul Water Outline Strategy document (ref. 2022-050 01 D, received on 23/02/2024).

Due to the proposed removal of Condition 11, reference to the trod footpath has been removed from this plan, and therefore an updated plan of the same title but different reference (2022-050 01 E) is submitted. Should the Council be minded to approve the proposed removal of Condition 11, the aforementioned conditions should be updated to reflect the amended plan.

### Justification

The Committee Report for the Original Permission includes a number of consultation responses which were received during the determination of the application, this includes comments received from Highway Control. Within their response, the Highways Control Officer noted the inclusion of a new pedestrian facility to connect the development to Walkington, and subsequently proposed the appropriate conditions to implement this. The Committee Report also noted that the Parish Council had queried the necessity of the proposed footpath, but on the basis of no objection from the Highway Control Officer, the application was not considered to be unacceptable as a result of its inclusion.

Based upon this, it is understood that the delivery of the footpath was conditioned on the Original Permission as a result of no objections being received from the Highways Control Officer. Furthermore, condition 11 (formerly condition 16) was written and proposed by this Officer. However, the Applicant has now received confirmation from the Highways Development Management Team that the condition should be removed on the basis that they would prefer the footpath not to be delivered.

Conclusively, in their determination of the Original Permission, the LPA correctly based the inclusion of the footpath upon the fact that no objection was received by the Highways Control Officer. Since the application was approved, the Applicant has been notified that the relevant Local Highways Management Team would prefer to see the removal of the condition.

From a planning perspective, the inclusion of the footpath is not a matter that was determinative to principle of the Original Permission. The Original Permission was granted consent on the basis of the 'Code for Sustainable Homes' dwellings that it would deliver, as well as making use of the brownfield site.

It is also worth noting that the wider site already accommodates a small number of dwellings which operate successfully without the need for a footpath. The removal of the condition therefore does not materially impact on the reasons why planning permission was originally granted consent by the LPA.

The Applicant is therefore seeking to remove condition 11 of the Approved Consent which requires submission of details for the construction of a footpath, and its subsequent delivery. Pursuant to this, the Applicant is also seeking to vary conditions 2, 6, 10, 12 and 13, to align with the updated plan which is submitted as part of this Application.

The proposed removal of condition 11, and the subsequent variation of Conditions 2, 6, 10, 12 and 13, is considered to be acceptable and it is respectively requested that the application is supported.

I trust that the information provided is satisfactory, however please do not hesitate to get in touch should you require further information.

Yours faithfully



Nathan Rillie  
Graduate Planner

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Appendix 1 –

Email Correspondence from the Highway Development Management Team Leader

Good morning Ethan

sorry about the delay in getting back to you.

I have discussed the application with the Area Engineers and they would prefer the trod not to be constructed.

It will be best if you discuss it with your client and get them to contact the planning department with a view to having the condition removed

Kind regards

Andy

**Andrew Forsey FIHE**

Highway Development Management Team Leader

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From: ethan.griffiths [redacted]  
Sent: Tuesday, September 19, 2023 11:02 AM  
To: Andrew Forsey [redacted]  
Subject: 09/03961/PLF

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Morning Andrew

My name is Ethan Griffiths from East Yorkshire Groundwork Solutions LTD

We have been contacted to tender for the Trod footpath between Mill Lane and Walkington on Copleflat Lane as per the attached drawing

Planning permission reference 09/03961/PLF

Please could you provide any further information ?

Many Thanks

Ethan Griffiths

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