

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Lead Development Management Planner (Interim) - BBC & SHDC

To: Planning Committee - 24 June 2026

(Author: Jess Hill - Senior Planning Consultant)

Purpose: To consider Planning Application H11-0227-26

Application Number: H11-0227-26

Date Received: 10 March 2026

Application Type: S73A CONTINUATION

Description: Change of use of part of existing garden centre (Class E) to use Classes E, F1 & F2 - Retrospective - approved under H11-1210-25. Modification of Condition 2 to amend opening hours and days and modification of Condition 3 relating to garden centre buildings.

Location: Silverwood Garden Centre St James Road Sutton Crosses

Applicant: The Men's Shed (Charity No. 1175464) **Agent:** Cooper Architectural Design

Ward: Long Sutton **Ward Councillors:** Cllr A C Tennant
Cllr J Tyrrell

You can view this application on the Council's web site at

<http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H11-0227-26>

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 The application site is owned by Cllr Tyrrell, who is a member of the Planning Committee. As such, it is deemed necessary for the application to be considered by the Committee.

2.0 PROPOSAL

2.1 The application seeks consent to amend conditions 2 and 3 of permission H11-1210-25. Under permission H11-1210-25, retrospective planning permission was granted for the use of two buildings within the site to be used as community buildings. The buildings are referred to within the location plan as 'Long Sutton Men's Shed' and 'Long Sutton Youth Shed'. The buildings are used by the local community for various activities. No extensions or external alterations were proposed as part of the original application.

2.2 The current application seeks to amend condition 2 by changing the approved opening hours. Consent is also sought to amend condition 3 to allow the retained garden centre buildings to be used under Use Class E by broadening the goods range that is sold within the premises.

3.0 SITE DESCRIPTION

3.1 The site comprises land at Silverwood Garden Centre, located to the south-east of St James Road in Long Sutton. The change of use is proposed within two buildings located on either side of the remaining Garden Centre, diner and retail building. There is a car park area located

within the site and access is taken from St James Road.

3.2 The site is outside the settlement boundary of Long Sutton, as identified by the South East Lincolnshire Local Plan 2011-2036 and accompanying policies map.

3.3 The site is within Flood Zone 3, as identified by the Environment Agency's flood risk maps.

3.4 Sheaf Cottage (grade II listed) is located to the north of the site, on the opposite side of St James Road

4.0 RELEVANT PLANNING POLICIES

4.1 The Development Plan

4.2 South East Lincolnshire Local Plan, March 2019

4.3 Policy 01 - Spatial Strategy
Policy 02 - Development Management
Policy 03 - Design of New Development
Policy 04 - Approach to Flood Risk
Policy 24 - The Retail Hierarchy
Policy 30 - Pollution
Policy 32 - Community, Health and Well-being
Policy 36 - Vehicle and Cycle Parking
Appendix 6 - Parking Standards

4.4 If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, Section 38 (6) of the Planning and Compulsory Purchase Act 2004, states that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

4.5 National Guidance

4.6 National Planning Policy Framework (NPPF), December 2024

4.7 Section 4 - Decision-making
Section 9 - Promoting sustainable transport
Section 11 - Making effective use of land
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
Section 16 - Conserving and enhancing the historic environment

4.8 Planning Practice Guidance (PPG)

5.0 RELEVANT PLANNING HISTORY

5.1 H11-0849-02: (Full Application) Change of use from agricultural nursery to nursery/garden centre, plus additional access and car parking facilities - approved 24 September 2002

5.2 H11-0595-03: (Full Application) Change of use of packhouse to cafe and shop in association with existing garden centre - approved 22 July 2003

5.3 H11-1106-05: (Full Application) Proposed shop unit in association with existing garden centre, relocation of compound and proposed new access - approved 06 October 2005

5.4 H11-0692-07: (Full Application) Earth bank - refused 19 July 2007

- 5.5 H11-0022-07: (Full Application) Kitchen extension to existing cafe - approved 05 March 2007
- 5.6 H11-0792-21: (Full Application) Conversion of packhouse building into dwelling including alterations - approved 01 November 2021
- 5.7 H11-0686-10: (Section 73A Continuation) Extension to cafe opening hours - Monday to Saturday inclusive until 22:00 hours - refused 15 October 2020 - appeal dismissed 26 April 2011
- 5.8 H11-1210-25: (Full Application) Change of use of part of existing garden centre (Class E) to use Classes E, F1 & F2 - Retrospective - approved 18 February 2026

6.0 REPRESENTATIONS

6.1 Consultation Responses

- 6.2 Responses have been received from the below referenced consultees. The responses are summarised below; however, the responses can be viewed in their entirety on South Holland District Council's website.
- 6.3 Long Sutton Parish Council: The Council strongly oppose the application and ask that the application be withdrawn and a new application should be submitted removing the Youth Shed building. Any removal of Condition 3 should be specifically applied to the "MEN's Shed" building only and not "The retained garden centre buildings". Leasing evidence should be provided for the businesses within the site. The Parish Council oppose the amendments to Condition 2 of H11-1210-26 relating to the opening hours of the Men's Shed.
- 6.4 Environmental Protection: No comments.
- 6.5 Cllr A C Tennant: No response received.
- 6.6 Cllr J Tyrell: No response received.
- 6.7 Cllr D J Wilkinson: No response received.

6.8 Public Representations

- 6.9 This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, one representation has been received from a member of the public. The following summarises the response:

- The owner and the manager of Silverwood Garden Centre wish to establish an out of town shopping and business centre at this location, in direct contravention of Condition 3 above and in direct contravention of both local and national planning policies. Therefore, the proposal could undermine Long Sutton town centre and other town centres.

- The reason given for applying condition 2 of permission H11 0849 -02 is identical to the reason given for condition 3 of permission H11-1210-25. Based on a review of the site planning history, the LPA has always been of the opinion that Silverwood Garden Centre is not a correct location for the sale of the wide range of goods now allowed under Use Class E, and should be restricted to the sale of garden products, domestic horticultural requisites and horticultural produce. It would be strange to say the least if the LPA now took the opposite view.

7.0 CONSIDERATIONS

7.1 Development Plan

- 7.2 Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that

the Local Planning Authority (LPA) makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

- 7.3 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.
- 7.4 The policies and provisions set out in the National Planning Policy Framework, December 2024 (NPPF) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.
- 7.5 There are no adopted Neighbourhood Plans for the area within which the site is located.
- 7.6 The main issues and considerations in this case include the following:
- 7.7 -Evaluation of Proposals Under Section 73;
-Proposed Changes to Condition 2;
-Proposed Changes to Condition 3; and
-Biodiversity Net Gain.
- 7.8 These matters are assessed in turn below.
- 7.9 Evaluation of Proposals Under Section 73
- 7.10 The proposal relates to the variation of conditions 2 and 3 of permission H11-1210-25, 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.
- 7.11 The Act is very clear that: "On such an application the Local Planning Authority (LPA) shall consider only the question of the conditions subject to which planning permission should be granted." As such, the LPA 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 the relevant conditions amended, together with any other relevant conditions from the original permission, or subsequent relevant revisions since this permission.
- 7.12 Planning Practice Guidance (PPG) 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".
- 7.13 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".
- 7.14 In this instance, the subsequent amendments, submitted under this Section 73 application, have not varied the description of development. The nature of the changes proposed through the current application are also considered to be within the scope of the original permission(s) granted, in that they would not fundamentally alter or materially change the nature of the development as approved.
- 7.15 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 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".

7.16 Proposed Changes to Condition 2

7.17 Condition 2 of permission H11-1210-25 was worded as follows:

"The use hereby permitted shall not be open to visitors except between the hours of 8:30am to 5:30pm Monday to Friday, and not at all on Saturdays, Sundays or Bank Holidays.

Reason: In the interests of the amenity of local residents.

This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019."

7.18 These opening hours were set out within the planning condition as these were the hours that were proposed within the submitted application form for application H11-0227-26. Although the application only sought approval to change the use of two of the buildings within the site to community buildings, the location plan for the proposal included the wider garden centre site, including the central garden centre building. As such, it was considered appropriate to restrict the opening hours of the site in line with the suggested hours that were specified within the submitted application form.

7.19 The current proposal seeks to update the condition to clarify separate opening hours between the community use buildings and the main garden centre building within the site. There are other ancillary garden centre buildings within the site; however, it is not considered that these buildings are generally open to the public and as such, these buildings are not specifically referred to.

7.20 Condition 2 is proposed to be re-worded as follows:

"The buildings labelled as 'Long Sutton Youth Shed' and 'Long Sutton Men's Shed' on approved plan SW-25-01 shall not be open to customers / visitors except between the hours of:

8am and 1pm on Tuesdays, Thursdays and Sundays.

The building labelled as 'Silverwood Garden Centre, Diner & Shops' shall not be open to customers / visitors except between the hours of:

8am and 5pm on Mondays to Saturdays (inclusive).

10am and 4pm hours on Sundays and Bank/Public Holidays.

Reason: In the interests of the amenity of local residents.

This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019."

7.21 As such, the proposed opening hours of the Long Sutton Youth Shed and Long Sutton Men's Shed buildings would be more restrictive under the current application than previously allowed for under the most recent approval as the buildings would only be open on 3 days of the week, rather than on 5 days per week. Therefore, the impact of the proposal would not be greater than the previous approval which was found to be acceptable by the Council. The proposal would result in an overall lower impact by virtue of more restricted opening hours, and would not introduce any new or increased considerations that were not previously assessed as being acceptable, nor any new matter not previously considered under the original scheme. As such, there would be no new considerations or resultant impacts upon the overall character of the site, or to any third parties or members of the public who would be adversely prejudiced by this change.

7.22 The hours for the garden centre building would change from 8:30am to 5:30pm Monday to Friday, to 8:00am to 5pm Monday to Saturday. As such, the building is proposed to be open half an hour earlier than the condition previously allowed for; however, the building would also be closed half an hour earlier. The other change is the proposed opening hours on Saturdays;

however, these hours are also considered to be acceptable. It is likely that the LPA would have accepted these hours as part of the determination of application H11-1210-25 had they been requested. Furthermore, it is noted that the approved opening hours for the garden centre within the site were originally set out within condition 4 of permission H11-0849-02 and included 8am to 5pm Mondays to Saturdays, and 10am to 4pm on Sundays and Bank / Public Holidays. Therefore, the original permitted opening hours were longer than the currently proposed opening hours.

7.23 As set out previously, concerns have been raised by Long Sutton Parish Council and within the public representation regarding the proposed opening hours; however, for the reasons outlined above, the proposed opening hours are considered to be suitable for the location. For example, the opening hours are not considered to be excessively long nor would they extend late into the evening or very early in the morning. The proposed uses are not considered likely to generate significant levels of noise and the Council's environmental protection team have not raised any concerns in terms of noise generation from the proposals nor have they requested any noise mitigation measures. Whilst there is a dwelling located to the east (Silverwood House) and a dwelling located to the south-west of the site (Thistle House), most of the nearby dwellings are located on the opposite sides of the roads that adjoin the site which provide a degree of separation between the site and most of the nearby dwellings. As such, whilst the concerns of the Parish Council and the public representation have been taken into account, it is considered that the proposed changes to condition 2 are acceptable.

7.24 Proposed Changes to Condition 3

7.25 Condition 3 was worded as follows:

"The retained garden centre buildings shall only be used for the sale of horticultural produce, garden related products and other domestic horticultural requisites, as a cafe, and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to those classes in any statutory instrument revoking and re-enacting that Order, with or without modification).

Reason: To ensure the goods range is restricted and does not conflict with national and local policy that directs unrestricted retail outlets towards town centres.

This Condition is imposed in accordance with Policy 24 of the South East Lincolnshire Local Plan, 2019."

7.26 The current application seeks to revise the wording of condition 3 to remove the following text: "shall only be used for the sale of horticultural produce, garden related products and other domestic horticultural requisites, as a cafe, and for no other purpose". Instead, the proposal seeks to insert the following wording: "the retained garden centre buildings shall be used for no other purpose than those set out in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987."

7.27 Condition 3 was included within permission H11-1210-25 largely because the condition was included with the original permission for the site that was granted under application H11-0849-02 in 2002. As the location plan included the garden centre buildings, it was considered appropriate to include the condition again in the interests of clarity. For example, the original permission was granted specifically for a garden centre rather than as a general retail unit and this appears to have been due to the site's location outside of a town centre and within the countryside.

7.28 The wording was revised from the original wording to allow for an ancillary cafe as it was understood that there was an ancillary cafe within the building.

7.29 Planning permission was originally granted under permission H11-0849-02 for the site to be used as a garden centre in 2002. At that time, there was a different development plan in place and different national policies. Notwithstanding this, the site was within the countryside in planning policy terms at that time and as such, there appears to have been a presumption against retail development outside town centres, as is the case under the current development plan and the NPPF.

7.30 Garden centres can be a justifiable form of retail outside of town centres due to their operational

needs, such as the need for space to grow plants. Evidently, the garden centre was deemed to be an acceptable form of retail within this location; however, it was deemed necessary to restrict which goods could be sold to ensure the site remained in use as a garden centre rather than for more general retail purposes.

- 7.31 Under permission H11-0849-02, the proposed use of the site fell under Use Class A1, as identified within condition 2 of the original permission. Use Class A1 covered general retail uses and as such, condition 2 of the permission was included to restrict the use as a garden centre by restricting which type goods could be sold within the site.
- 7.32 Since permission H11-0849-02 was granted, there have been various changes to the Use Classes Order, including the introduction of Use Class E in September 2020. Use Class E amalgamated several previous use classes (A1, A2, A3, B1 and parts of D1 and D2) into a single classification. Therefore, Use Class E includes retail sites in addition to a variety of other uses.
- 7.33 Garden centres generally fall under Use Class E or they are identified as a sui generis use. Determining the use class of a garden centre depends on various factors such as their daily usage, the scale of operations and the range of products that are sold. Garden centres generally fall under Use Class E if they are predominantly used as retail sites for visiting members of the public. Garden centres can be considered as a sui generis use where their character is more heavily influenced by agricultural activities. For example, within sites that are primarily used for growing, propagating and selling plants rather than being used principally for public retail, these site are typically considered to fall under the sui generis Use Class.
- 7.34 In this case, it is understood that the garden centre is principally used for retail in addition to other ancillary uses such as a cafe and a hairdressers. Therefore, it is considered that the garden centre within the site falls under Use Class E.
- 7.35 The current proposal seeks to remove the restrictive wording of the condition which prevents any goods other than "horticultural produce, garden related products and other domestic horticultural requisites, as a cafe". The proposal seeks to instead allow the site to be used more generally under Use Class E.
- 7.36 It is considered that as the original permission was for a garden centre, the site should be retained principally as a garden centre. This is because the retail hierarchy for the district seeks to encourage retail firstly within Sub-Regional Centres, then within District and Local Centres; and subsequently outside the retail hierarchy where retail uses can be justified. The site is outside the retail hierarchy and as such, more general retail uses would generally need to pass a sequential test in order to be justified. The principle of general garden centre sales in this rural locality has previously been considered acceptable by the LPA. Furthermore, it is generally accepted throughout the district and at a national level that garden centres often need to be located outside of settlements and outside of primary retail centres. As such, the change proposed by this application is considered to be acceptable.
- 7.37 Therefore, it is instead considered appropriate to insert the following wording at the beginning of the condition: "With the exception of an ancillary hairdressers, tanning salon and cafe". This would allow for ancillary uses, but still restrict the site principally to its original purpose as a garden centre.
- 7.38 Concerns have been raised within the public representations regarding the proposed change to Condition 3 partly due to concerns that this would undermine the retail hierarchy within the district and allow for an alternative retail use within the site. With the revised wording, it is considered that the proposals would not undermine the retail hierarchy of the district.
- 7.39 Biodiversity Net Gain
- 7.40 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 (BNG) using standardized biodiversity units measured by statutory biodiversity metrics. This is often referred to as the mandatory requirements for Biodiversity Net Gain.

- 7.41 "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".
- 7.42 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.
- 7.43 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".
- 7.44 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.
- 7.45 It is considered that the proposal would be exempt from the requirement to provide BNG as no extensions are proposed, nor is any operational development proposed. As such, the proposal is considered to fall under the de minimis exemption.
- 7.46 **Planning Balance**
- 7.47 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.
- 7.48 The proposed development is appropriate and would not materially harm the character or appearance of the locality, or the amenity of nearby residents. Overall, the proposed development accords with the Local Plan and the NPPF.
- 7.49 **Additional Considerations**
- 7.50 Public Sector Equality Duty
- 7.51 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:
- 7.52 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- 7.53 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).
- 7.54 C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.55 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.56 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.

7.57 It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

7.58 Human Rights

7.59 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).

7.60 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.

8.0 RECOMMENDATIONS

8.1 Based on the assessment detailed above, it is recommended that the proposal should be approved subject to conditions.

9.0 CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans and/or documents:

- SW-25-01 - Site & Location Plans

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

2. The buildings labelled as 'Long Sutton Youth Shed' and Long Sutton Men's Shed' on approved plan SW-25-01 shall not be open to customers / visitors except between the hours of:

- 8am and 1pm on Tuesdays, Thursdays and Sundays.

The building labelled as 'Silverwood Garden Centre, Diner & Shops' shall not be open to customers / visitors except between the hours of:

- 8am and 5pm on Mondays to Saturdays (inclusive).
10am and 4pm hours on Sundays and Bank/Public Holidays.

Reason: In the interests of the amenity of local residents.

This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019.

3. With the exception of an ancillary hairdressers, tanning salon, and cafe as existing on site, the retained garden centre buildings shall only be used for the sale of horticultural produce, garden related products and other domestic horticultural requisites, and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to those classes in any statutory instrument revoking and re-enacting that Order, with or without modification), unless comprising an ancillary use associated with the garden centre use.

Reason: To clarify the proposed Use Class within the site.

This Condition is imposed in accordance with Policy 24 of the South East Lincolnshire Local Plan, 2019.

4. The Local Planning Authority has acted positively and proactively in determining this application by assessing it against all material considerations, including national guidance, planning policies and representations that have been received during the public consultation exercise, and subsequently determining to grant planning permission.

This decision notice, the relevant accompanying report and the determined plans can be viewed online at <http://planning.sholland.gov.uk/OcellaWeb/planningSearch>

5. Biodiversity Net Gain

The applicant's attention is drawn to the following Biodiversity Net Gain requirement.

The effect of Paragraph 13 of Schedule 7A of 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.

For guidance on the contents, in respect of the details that must be submitted and agreed by the Local Planning Authority, prior to the commencement of the consented development, please see the GOV.uk website and Planning Practice Guidance.

Statutory exemptions and transitional arrangements

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These can be found at Paragraph: 003 Reference ID: 74-003-20240214 of the Planning Practice Guidance, which can be found at <https://www.gov.uk/guidance/biodiversity-net-gain>.

Based on the information available and submitted in support of this application, the Local Planning Authority considers that the development hereby permitted is exempt and therefore will not require the approval of a biodiversity gain plan, prior to the commencement of development; with the development comprising a statutory exemption as listed below: -

The proposal is considered to fall under the de minimis exemption.

As such, the development hereby permitted will not be subject to the biodiversity gain condition.

Irreplaceable habitat

If the onsite habitat includes irreplaceable habitat (within the meaning of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) there are additional requirements for the content and approval of Biodiversity Gain Plans.

For clarity the LPA do not consider that irreplaceable habitats are present at this site.

The Biodiversity Gain Plan must include, in addition to information about steps taken or to be taken to minimise any adverse effect of the development on the habitat, information on arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat.

The planning authority can only approve a Biodiversity Gain Plan if satisfied that the adverse effect of the development on the biodiversity of the irreplaceable habitat is minimised and appropriate arrangements have been made for the purpose of compensating for any impact which do not include the use of biodiversity credits.

Effect of Section 73(2D) of the 1990 Act

Under Section 73(2D) of the Town and Country Planning Act 1990 (as amended) where

- (a) a biodiversity gain plan was approved in relation to the previous planning permission ("the earlier biodiversity gain plan"), and
- (b) the conditions subject to which the planning permission is granted:
 - (i) do not affect the post-development value of the onsite habitat as specified in the earlier biodiversity gain plan, and
 - (ii) in the case of planning permission for a development where all or any part of the onsite habitat is irreplaceable habitat within the meaning of regulations made under paragraph 18 of Schedule 7A, do not change the effect of the development on the biodiversity of that onsite

habitat (including any arrangements made to compensate for any such effect) as specified in the earlier biodiversity gain plan.

- the earlier biodiversity gain plan is regarded as approved for the purposes of paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990 (as amended) in relation to the planning permission.

Background papers:- Planning Application Working File

Lead Contact Officer

Name and Post: Nick Atkinson - Lead Development Management Planner (Interim) - BBC & SHDC

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Appendices attached to this report:

Appendix A - Plan A

MapThat Scale Print Title

