DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H04-0295-25**	**Applicant:**	**Seagate Homes**
Proposal:	Details of proposed boundary treatments and noise & vibration report (Conditions 14 and 19 of H04-0244-16)		
Location:	Land Off Malting Lane (Phase 2) Donington Spalding		
Terminal Date:	19th May 2025		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

02	Development Management
03	Design of New Development
30	Pollution

National Guidance

National Planning Policy Framework December 2024

Section 12: Achieving Well Designed Places
Section 12 - Conserving and enhancing the natural environment

Representations:

	Object	Support	No Obj.	Comments
SHDC INTERNAL	1	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This proposal seeks to discharge Conditions 14 and 19 of planning approval H04-0244-16, relating to details of proposed boundary treatments and noise and vibration report.

Planning approval H04-0244-16 was an Outline Application for residential development.

Site Description

The site is located at the southern side of Donington and is part of a wider area of agricultural land sited between a commercial site and residential properties, including a recently constructed affordable housing development to the south. The site's topography is flat and the site lies on a

lower level than the majority of neighbouring development. Existing dwellings on Malting Lane and William Close (to the north east corner of the site) are built on approximately the same level as the site.

History

H04-0291-25 - Details of proposed boundary treatments, landscape management and maintenance plan (Conditions 3 and 7 of H04-1029-20) - To be determined

H04-0555-24 - Details of full closure report (Condition 8(ii) of H04-0244-16). Refused 14.08.24.

H04-0517-24 - Land off Malting Lane - details of water supplies to the Fire Service (Condition 17 of H04-0244-16). Approved 1.8.24.

H04-0549-24 - Details of schedule of external materials, kerbs and surfacing of roads and design & location of secure cycle storage (Conditions 4, 5 & 13 of H04-0244-16). Approved 30.07.24.

H04-0575-24 - Details of design & position of all external boxes for gas & electricity supplies and of any gas flues & soil vent pipes - Condition 11 (phase 2 only) of H04-0244-16. Approved 02.08.24.

H04-0582-24 - Details of design & positions of all external boxes for gas & electricity supplies & any gas flues & soil vent pipes (Condition 4 of H04-1029-20). Approved 30.08.2024

H04-0548-24 - Details of scheme for the provision of swift nest bricks (Condition 8 of H04-1029-20)- Approved 30.07.2024

H04-0488-24 - Details of construction and traffic management scheme & precautions to prevent the deposit of mud on public highways (Conditions 12 & 15 of H04-0244-16). Approved 22 July 2024.

H04-0359-24 - Details of surface water drainage scheme, existing & proposed site levels & proposed floor levels and means of foul water disposal (Conditions 9, 16 & 18 of H04-0244-16). Approved 28 May 2024.

H04-0038-24 - Details of estate road & associated footways (Condition 7 of H04-0244-16). Approved 13 March 2024.

H04-0728-22 - Details of remediation method statement, surface water drainage scheme, construction and traffic management scheme, noise and vibration report, deposit of mud precautions, existing and proposed site levels/floor levels and foul water disposal (Conditions 8 (Part i), 9, 12, 14, 15, 16 and 18 of H04-0244- 16). Approved 27 October 2023.

H04-1117-22 - Details of external materials, roads and/or footways, external gas and electricity boxes, cycle storage and proposed boundary treatment (Conditions 4, 5, 11, 13 and 19 of H04-0244-16). Approved 27 October 2023.

H04-1139-22 - Details of boundary treatments, gas and electricity external boxes, landscape management and maintenance and swift nest bricks. (Conditions 2, 4, 7 and 8 of H04-0268-20). Approved 27 October 2023.

H04-1071-22 - Non material Amendment - Erection of 32 Dwellings - outline approval H04-0244-16 - approved under H04-1029-20. Amendments to house types A, B and E. - Approved 28.11.2022

H04-1029-20 - Reserved Matters - Erection of 32 Dwellings - outline approval H04-0244-16. Approved 2nd November 2021.

H04-0268-20. Reserved Matters. Erection of 40 Dwellings - outline approval H04-0244-16. Approved 2 November 2021.

H04-0244-16 - Outline planning application for a residential development of approximately 73 dwellings (Class C3), all matters are reserved, except for access. Approved 30th November 2017.

H04-0015-05 - Re-development of industrial Site for Residential. Refused 12 January 2005.

Consultation Responses

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

Environmental Protection

The Environmental Protection Officer Objects to the discharge of these conditions, stating:
I have reviewed the Martec Environmental Consultants Ltd. NOISE IMPACT ASSESSMENT Malting Lane, Donington Spalding, PE11 4XA Report Date: 16th May 2024 Revised: 4th & 10th June 2024 & 27th January 2025 Ref: 20250129 7526 Phase 2 v6.docx

The report details the proposed acoustic corrections required in order to satisfy an historic planning condition relating to a new residential development in close proximity to an operational haulage yard with unrestricted working hours, and a railway line. Since the original planning permission was granted, the agreed site layout has changed considerably and houses are now being constructed significantly closer than originally proposed. The development does not achieve good acoustic design.

The report proposes a 3.25m high bund and acoustic fence in order to reduce the noise impact to the closest residents.
ProPG is clear that where possible, target internal noise levels should be achieved with windows open. It is not possible to achieve this here for all properties.

A number of properties have been identified as requiring the use of constant mechanical ventilation in order to achieve internal noise levels at an acceptable level. Should residents choose to open their windows this will lead to a significant adverse impact overnight. No acoustic design statement has been submitted.

An acoustic design statement should include details of how the residents will be protected from noise impact during overheating conditions.

Building regulations Code O advises on the risk of overheating to protect the health and welfare of the occupants.
In terms of exposure to noise in the garden areas, predicted daytime noise levels are considered acceptable when considered in terms of BS8233:2014, however there is a suggested significant adverse impact in the evening/overnight.
The condition to be satisfied states that: 'Before the commencement of the development hereby permitted, a noise and vibration report prepared by a suitably qualified consultant shall be submitted to and approved in writing by the Local Planning Authority. This report shall identify any measures or works necessary to ensure that there is no possible nuisance caused to the proposed residential properties from noise or vibration' Where a significant adverse impact was experienced, we would anticipate receiving complaints alleging nuisance. As the residential properties would be the 'agent of change', it is the developers responsibility to mitigate this appropriately through good acoustic design which we consider has not been met at present.

Planning Considerations

This proposal seeks to discharge Conditions 14 and 19 of planning approval H04-0244-16, relating to details of proposed boundary treatments and noise and vibration report.

Condition Details

Condition 14 - Noise & Vibration Report

The condition requires:

Before the commencement of the development hereby permitted, a noise and vibration report prepared by a suitably qualified consultant shall be submitted to and approved in writing by the Local Planning Authority. This report shall identify any measures or works necessary to ensure that there is no possible nuisance caused to the proposed residential properties from noise or vibration.

Those measures and works so approved by the Local Planning Authority shall be implemented in

full before the development hereby granted is first brought into use.

Reason: To ensure that there is no noise nuisance to nearby residents. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works.

The applicant has provided the following information:

-Noise Impact Assessment - 16th May 2024
-TM59 Assessment (Noise) - Type E - Plots 21, 22
-TM59 Assessment (Noise) - Type G - Plots 25, 26, 27, 28
-TM59 Assessment (Noise) - Type A - Plots 19, 20, 23, 24, 29, 30, 31, 32

Environmental Protection have reviewed the information and have objected, the main concern appear to relate to *'Should residents choose to open their windows this will lead to a significant adverse impact overnight'*. The officers have confirmed that the internal noise environment is acceptable with the windows closed and that external noise (in amenity areas) during daytime hours is also acceptable. This is based upon the 3.25m acoustic protection also being implemented at the boundary.

Additional information has been sought from the applicant as regards temperature control, in to address the topic of overheating. The applicant has provided a series of documents (TM59 Assessments). The TM59 calculations for each of the affected housetypes (type A, E and G) labelled 'noise', show that they require 10l/s of extra ventilation to each bedroom to overcome the overheating.

Building Regulations Approved Document Part O, Section 3 (Ensuring the overheating mitigation strategy is usable). Paragraph 3.2 states that:

In locations where external noise may be an issue (for example, where the local planning authority considered external noise to be an issue at the planning stage), the overheating mitigation strategy should take account of the likelihood that windows will be closed during sleeping hours (11pm to 7am).

Such a strategy therefore needs to pass the requirements of Part O (section 3) given the LPAs concerns over noise. The TM59 calculations, highlight that increased ventilation, is in affect an attempt to control overheating. Whilst it is not clear whether this is appropriate, it is not for planning to assess the technical strategy for overheating, instead planning need only to be sure that this topic is mitigated, in this instance the topic of overheating (where noise is an issue and windows are likely to be closed) is governed by building regulations.

On the basis then, notwithstanding Environmental Protection objections the internal noise environment is acceptable with the windows closed and the noise environment in external areas in the daytime is also acceptable. The issue of overheating is controlled by external regimes (building regulations) and the mechanical ventilation also provided future residents with an acceptable internal environment.

The condition can therefore be discharged.

Condition 19 - Boundary Treatments

The condition requires:

Prior to any development commencing on site, details of the proposed boundary treatment, including a schedule of materials, and details of the size and species of any hedging, shall be submitted to and approved in writing by the Local Planning Authority, and the details so approved shall be implemented in full before the development is first brought into use.

Reason: In the interests of the character and appearance of the development and the visual amenity of the area in which it is set.

The applicant has provided:

- Boundary and External Works Plan (1 and 2)
- Planting Plan
- Email dated 18th June which expands upon the 3.25m acoustic protection

Drawing number 1 of 2 shows the northern side of the site, where all dwellings are shown to be treated with a 1.8m solid timber fence.

Drawing number 2 of 2 gives an option either a 2.4m acoustic fence is to the rear of plots 21 - 32 or a 3.5m acoustic fence located 'between landscaping'. Beyond the 2.4m acoustic fencing to the rear of the plots listed above is a further 2.5m acoustic fence along with substantial tree planting with a mix of trees behind the garden fences to create a woodland buffer.

It is of note that the noise report is based upon a 3.25m mound/fence combination. This fence cannot be seen of the plan. However following clarification the mound which measures 0.85m in addition to the 2.4m fence represent the total 3.25m acoustic protection. The NIA is based upon this height of protection and therefore this option is acceptable. There doesn't appear to be any technical support as to why the 3.5m fence would be proposed, this sat on top of the mount is likely to carry wider amenity impacts in any case.

On this basis the proposal is considered acceptable and condition 19 is discharged subject to the 3.25m (made up of mound and fence) of acoustic protection being implement.

Conclusion

Conditions 14 and 19 of planning approval H04-0244-16 are hereby discharged.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:
A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

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

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to

respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.