

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H04-1069-24 **Applicant:** Seagate Homes (UK) Ltd

Proposal: Details of proposed boundary treatments (Condition 2 of H04-0268-20)

Location: Land Off Malting Lane (Phase 1) Donington Spalding

Terminal Date: 14th February 2025

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

- 01 Spatial Strategy
- 02 Development Management
- 03 Design of New Development
- 04 Approach to Flood Risk
- 30 Pollution
- 31 Climate Change and Renewable and Low Carbon Energy
- 32 Community, Health and Well-being

National Guidance

National Planning Policy Framework December 2024

- 8 Promoting healthy and safe communities
- 12 Achieving well designed places
- 14 Meeting the challenge of climate change, flooding and coastal change
- 15 Conserving and enhancing the natural environment

Representations:

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

Proposal

Details of proposed boundary treatments (Condition 2 of H04-0268-20).

Whilst this is the application, the proposal involves increasing the garden areas of plots 31 to 33. This is actually a change of use from previously approved open space. The boundary treatments have been put in place retrospectively and are in position.

Site Description

As host consent.

History

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 30.8.2024.

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

H04-0556-24 - Details of noise & vibration report & boundary treatment (Conditions 14 & 19 of H04-0244-16). Refused 29.08.2024.

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 2.8.2024

H04-0517-24 - Details of water supplies to the Fire Service (Condition 17 of H04-0244-16). Approved 1.8.2024.

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 30.7.2024.

H04-0548-24 - Details of scheme for the provision of swift nest bricks (Condition 8 of H04-1029-20). Approved 30.7.2024.

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 22.7.2024.

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 28.5.2024.

H04-0038-24 - Details of estate road & associated footways (Condition 7 of H04-0244-16). Approved 13.3.2024.

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 27.10.2023.

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 27.10.2023.

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 27.10.2023.

H04-1029-20 - RESERVED MATTERS - Erection of 32 Dwellings - outline approval H04-0244-16. Approved 2.11.2021.

H04-0268-20. RESERVED MATTERS. Erection of 40 Dwellings - outline approval H04-0244-16. Approved 2.11.2021.

H04-0244-16 - Outline planning application for a residential development of approximately 73 dwellings (Class C3), all matters are reserved, except for access. Approved 30.11.2017.

H04-0015-05 - Re-development of industrial Site for Residential. Refused 12.1.2005.

Consultation Responses

Internal Drainage Board

There is a pipe which continues from the drain along the boundary of these properties which the Board requires access to and therefore the easement needs to be reinstated.

Planning Considerations

This application seeks to discharge details of boundary treatment in relation to condition 2 of H04-0268-20 which is worded as follows:

"Notwithstanding the details submitted, prior to its installation, details of the proposed boundary treatments to the northern and southern boundaries to the site, including a schedule of fencing levels, heights and 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 and retained thereafter. The submission shall be supported by cross-sectional drawings showing the relationship with adjoining uses and buildings to enable the Local Planning Authority to be satisfied that sufficient mitigation measures will be in place.

The fencing shall ensure that no overlooking is possible from the ground floor windows of any property hereby approved to the gardens and/or ground floor windows of the existing dwellings bordering the site within William Close, Malting Lane, Barnes Road, Arnhem Way or Cowley's Road.

Reason: In the interests of the character and appearance of the development and the amenity of the area in which it is set including the amenity and privacy of nearby occupiers. This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019."

For information, Condition 7 of H04-0268-20 is as follows:

"Notwithstanding the plans and documents provided, prior to the commencement of the development hereby permitted beyond oversite, a detailed scheme for a landscape management and maintenance plan is produced for the development that integrates the surrounding wildlife habitats with those created on site shall be submitted to and approved by the Local Planning Authority. The scheme shall be implemented and retained in accordance with the details so approved.

Reason: In the interests of biodiversity. This Condition is imposed in accordance with Policy 28 of the South East Lincolnshire Local Plan, 2019."

Approval has been given previously for a condition compliance application in relation to Condition 2 (including other conditions as well as condition 7) of H04-0268-20 under reference: H04-1139-22, approved on 27 October 2023.

The current proposal is retrospective and seeks consent for a different boundary treatment arrangement for plots 31 to 33, than that approved under H04-1139-22. The current application not only seeks approved for fencing that is much closer to 19a Barnes Road, but the gardens of plots 31 to 33 have been extended retrospectively. The former 9m easement to the west of the open drain is now enclosed with extended gardens and new boundary treatments are not in accordance with the approved plans. The current proposal seeks to regularise the boundary treatments as built.

In the approved scheme plots 31 to 33 had shorter rear gardens with a 9m easement sat behind the rear boundary treatment for these plots, together with a shared footpath, as shown on the approved layout plan and maintenance responsibilities plan approved under reference H04-1139-22. The IDB easement is clearly shown in brown on plan MLD-SH-MRP-AR-1007 of the approved scheme, overlaying a section of open space along the northern boundary which continues around the back of plots 18 to 24. The easement related to both an open IDB drain along the northern boundary and an enclosed, piped drain continuing west alongside number 19a Barnes Road under the open space/easement. This easement facilitated access by the Internal Drainage Board to be able to maintain both the open drain to the east and also to ensure that the piped drain close to the northern boundary, inside the 9m easement, and on the open space was still accessible should maintenance be required. This is presumably one reason why the easement extended across the entire boundary as shown in the approved plans beyond the open drain.

Flood Risk and Drainage Implications

The approved layout showed a continuous 9m easement along the northern boundary, which was

commented upon in the delegated report for H04-1029-20 - Reserved Matters - Erection of 32 dwellings - outline approval H04-0244-16. Approved 02.11.21. Phase 2, which stated that "the applicant should therefore ensure that the maintenance of these watercourses is included within any future grounds maintenance for the lifetime of the development. It is the Board's recommendation that the ownership of the access strips around the northern and western boundaries is retained by the applicant and not transferred to any property owners."

It was also reported in this report that "The applicant is also reminded that they remain responsible for the ownership and maintenance of any structures within any watercourse bounding the site, unless proved otherwise. Under Section 23 of the Land Drainage Act 1991, the prior written consent of the Board is required for any permanent or temporary works or structures, within any watercourse, including infilling or diversion. This includes the replacement of any existing structures."

Proposed Site layout

In the present arrangement, the 'as built' condition shows the 9m easement terminating adjacent to plot 25, with plots 31, 32 and 33 having extended, longer gardens, almost entirely up to the boundary with number 19a Barnes Road. A footpath outside the rear boundaries of numbers 31, 32 and 33 running parallel to the fencing along 19a Barnes Road has been installed, together with a gap, and around the flank of plot 33 along the boundary of number 3 William Close. However, essentially, the wider 9m easement is now absent. There is an underground drainage pipe beneath the gardens of 31 to 33 and now within the fencing of plots 31 to 33.

This now makes it difficult for the IDB, should a maintenance issue to occur, to be able to easily access the underground drainage pipe. They have machines that would flatten the proposed boundary treatments in order to dig up the gardens to access the pipe. This would be made much more difficult if sheds, greenhouses or other domestic garden structures were added. This therefore means that changing the use of the land, and installing revised boundary fencing from public open space to private amenity space within the 9m easement adversely affects the ability of the site to maintain drainage, and in turn increases the risk of flooding. It is considered that the proposed boundary treatments, because they impinge on land that was previously both open space and within a 9m easement is unacceptable due to the effects on flooding.

The IDB has been consulted as to whether or not the extension of the gardens, the erection of fencing and the installation of a shared footpath in this area is acceptable. They object to the proposals and need the easement to be reinstated as approved.

The change of use from drainage easement and former public open space requires planning permission, but a condition compliance approval is not the correct application type to regularise this breach of planning control. In any case, however, it is evident that should a section 73 application be submitted to regularise the layout which is at odds with the approved scheme, this is unlikely to be forthcoming because of the need for the IDB to maintain access to ensure drainage of the IDB drain is maintained. It is more difficult and potentially not possible to be able to maintain the buried drainage pipe should failure of the pipe occur and the IDB would need to dig up gardens and remove the fencing or other domestic storage such as sheds or greenhouses if approved.

The proposals are therefore contrary to policy 4 of the SELLP which requires that 'development will not increase risk elsewhere and that opportunities through layout, form and green infrastructure have been considered as a way of providing flood betterment and reducing flood risk overall. In addition, policy 4 clearly states that proposals should ensure suitable access is safeguarded for the maintenance of water resources, drainage and flood risk management infrastructure. The proposal is contrary to policy 4 of the SELLP.

In addition, Paragraph 181 of the National Planning Policy Framework (NPPF), December 2024, states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere, and that development should only be allowed in areas at risk from flooding where it can be demonstrated that within the site, the most vulnerable development is located in areas of lowest flood risk, the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment and it incorporates sustainable drainage systems. The proposal does not comply with this paragraph.

Furthermore, paragraph 182 of the NPPF (December 2024) states that applications which could

affect drainage on or around the site should incorporate sustainable drainage systems to control flow rates and reduce volumes of runoff. The paragraph goes on to say that there should be multi-functional benefits wherever possible, such as combined public open space and the 9m easements which also provide landscaping benefits. This paragraph seeks to facilitate improvements in water quality, biodiversity, amenity, and it stresses that sustainable drainage systems should have appropriate minimum operational standards and "have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development." The proposals worsen the maintenance arrangements for the site and as such are unacceptable.

The proposals are considered contrary to paragraphs 181 and 182.

Open Space

The proposals result in a reduction of open space on the site, as part of the land associated with Plots 31 to 33 have been incorporated into private gardens, away from public amenity space. This also means the green infrastructure, which formed a continuous linkage across the northern boundary of the site has been disrupted.

For Phase 1 of this development (H04-0268-20 - Residential Development of 40 dwellings - outline approval H04-0244-16. Approved 02.11.21), open space was shown westwards behind plots 18 to 24 from the northern boundary, extending southwards to the attenuation pond. It also stretched eastwards immediately south of the IDB controlled drain along the northern boundary which continued for the same 9m width to the south of 19a Barnes Road, with a 'kink' in the boundary in the north east corner which followed the line of a buried IDB drainage pipe.

However, the approved layout for Phase 2 of this scheme - H04-1029-20 - Reserved Matters - Erection of 32 dwellings - outline approval H04-0244-16. Approved 02.11.21, has the area shown west of plots 18 to 24 as having plots 01 to 05 on the exact same area - thereby removing a significant amount open space approved as part of Phase 1. In this way Phase 1 and 2 overlapped showing development on one phase, and open space on the other.

Collectively, the amount of public open space for both Phase 1 and Phase 2 has been significantly been reduced compared with the approved Phase 1 scheme and Phase 2. Whilst it could be argued that this open space reduction was approved as part of approving Phase 2, the fact that both Phase 1 and Phase 2 were approved on the same day, suggests this was an error.

Whilst the distance between properties and adjoining occupiers has not changed, increasing the gardens makes potential loss of amenity from the rear gardens of 31 to 33 to adjoining properties more likely, if residents stand at the bottom of their gardens and peer into the adjoining neighbouring properties. However, the existing of a boundary hedge and vegetation means it is not considered, in itself, to represent such a severe issue to warrant refusal in itself. It is still, however, a negative impact in amenity terms.

Whilst it is accepted that the loss of this small section of open space, at approximately 173.19 square metres, is insufficient to justify refusal under Policy 32 of the SELLP, in design terms, the loss of this section is at odds with the overall pattern of green infrastructure along the northern boundary of the site. This had the multi-functional purpose of providing both a green infrastructure corridor, open space, and a 9m easement to the IDB drain. The loss of one section renders the landscaping incongruent and incomplete. This is considered contrary to policy 3 of the SELLP which seeks to distinguish between private and public open space, seeks to ensure public spaces are accessible to all. Policy 2 of the SELLP seeks to mitigate impacts on amenity, the appearance of the area and to ensure that the relationship to existing development and land uses is acceptable, particularly by ensuring the quality of design is appropriate. In this case, the proposal fails to conform to these qualities by enclosing a section of green infrastructure that should, in design terms, and in amenity terms to the public, be kept open. This should be landscaped in an open manner in conjunction with the functional landscaping for the northern portion of the site. It is therefore considered unacceptable.

The proposals are also contrary to paragraphs 96 b) and c) of the National Planning Policy Framework, December 2024, which seek developments provide safe and accessible green infrastructure, well designed, clear and legible pedestrian routes and layouts that encourage walking.

Conclusion

The proposals are not considered acceptable to discharge condition Condition 2 of H04-0268-20 for due to flood risk, design and loss of open space.

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.