

## DECISION DELEGATED TO DEVELOPMENT MANAGER

**Application No:** H07-0974-19                      **Applicant:** Mr & Mrs Merrison  
**Proposal:** Erection of detached dwelling and garage (retrospective)  
**Location:** West Drove South Gedney Hill Spalding  
**Terminal Date:** 21st November 2019

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### 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      |
| 11         | Distribution of New Housing |
| 29         | The Historic Environment    |
| 36         | Vehicle and Cycle Parking   |
| APPENDIX 6 | Parking Standards           |

#### National Guidance

#### National Planning Policy Framework 2019

Sections 2, 3, 4, 5, 12 and 14

### Representations:

|                            | Object | Support | No Obj. | Comments |
|----------------------------|--------|---------|---------|----------|
| PARISH COUNCIL             | 0      | 0       | 0       | 0        |
| WARD MEMBER                | 0      | 0       | 0       | 0        |
| HIGHWAYS & SUDS<br>SUPPORT | 0      | 0       | 0       | 1        |
| SHDC INTERNAL              | 0      | 0       | 0       | 1        |
| OTHER STATUTORY<br>BODIES  | 0      | 0       | 0       | 1        |

## **CASE OFFICER ASSESSMENT**

### **Proposal**

Outline planning permission was granted on appeal for residential development on 21 March 2017 (ref. H07-0821-16). Reserved matters approval was subsequently granted on 3 January 2019 (ref: H07-1136-18).

This application is to discharge all the conditions of the outline permission and omit condition 7, which required a programme of archaeological work to be submitted to and approved in writing by the Local Planning Authority.

It should be noted that construction of the dwelling is practically complete.

### **Site Description**

The site is located on the western side of West Drove South and fronts an existing nursery. A roadway serving the latter is situated to the south and pairs of semi-detached houses to the north. Residential is also situated opposite.

### **Planning History**

H07-0821-16 - Outline - Residential development - Allowed on appeal 21 March 2017.  
H07-0880-18 - RM - Erection of detached house - Approved 6 December 2018  
H07-1136-18 - RM - Erection of detached dwelling - Approved 3 January 2019  
H07-0272-19 - C/C - Condition 7 of H07-0821-18 - Granted 24 April 2019.  
H07-0547-19 - RM - Erection of detached dwelling - re-submission of H07-1136-18 - W/D  
H07-0322-19 - S73 - Residential Development - approved under H07-0821-16 (appeal decision) - Removal of Condition 7 relating to Archaeological Watching Brief - Granted 21 May 2019

### **Consultation Responses**

LCC Highways/SUDs - No objections subject to conditions.

Environmental Protection - Request note Re: unexpected contamination.

### **Material Considerations**

#### **Housing Policy/Sustainability**

As indicated in paragraph 47 of the National Planning Policy Framework, 2018, planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

The appeal site is located outside of Gedney Hill Settlement Boundary as defined in the recently adopted South East Lincolnshire Local Plan (SELLP), 2019. For the purposes of the SELLP, the site lies within the countryside.

SELLP Policy 1 directs developments within settlement boundaries and states that development in the Countryside will only be permitted that is necessary to such a location and/or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits.

The proposal is not in accordance with the above policy. However, the site has outline planning permission and reserved matters approval for residential development and construction of the dwelling is well underway. This fallback position is a material consideration that outweighs the development plan in this particular case. No objections are therefore raised in principle to the modification.

#### **Character/Appearance**

Existing dwellings along West Drove South are varied in terms of design and appearance. Reserved matters approval was recently granted for a 4 bed house on the northernmost plot. Existing development beyond that consists of pairs of semi-detached houses. Although a detached bungalow is situated opposite other properties either side of it are houses. It is considered that the proposed development would not materially harm the street scene.

### Amenity

Any overlooking of neighbouring property would be at a distance (opposite) or oblique, synonymous to a normal frontage situation. It is considered that the amenity of neighbouring residents would not be materially harmed in terms of overlooking, lack of privacy, overshadowing, overbearing effect, noise and disturbance, etc.

### LCC Highways/SUDs

The application is for a 4 bed house. At least three parking spaces have been provided to accord with Policy 36. County Highways Authority raises no objections subject to the provision of a footway in accordance with the terms of the original outline permission (ref: H07-0821-16).

### Flood Risk

No objections are raised on flood risk grounds because the site is located in an area of no hazard within the South East Lincolnshire Strategic Flood Risk Assessment, 2017. The proposal therefore passes the sequential test.

### Drainage

Surface water would be disposed of via soakaways. Foul water would be disposed of to a package treatment plant with outfall to a frontage drain.

### Archaeology

Development was commenced without complying with an archaeological condition. LCC Archaeology have previously indicated (ref. H07-0322-19) that they would not usually consider recommending that an archaeological condition be removed or discharged on the basis of that it had not been complied with, which represents a serious breach of planning control.

The original outline permission was granted only to adherence to a number of conditions needed to make it acceptable. Condition 7 was needed in order ensure that irreplaceable archaeological remains were not destroyed without record, which would be in contravention of the National Planning Policy Framework Section 16, paragraph 199, and would thus not represent sustainable development.

However, condition 7 applied to both house plots granted consent together, and the required archaeological monitoring and recording was undertaken throughout the groundworks carried out on the first plot. This did not disturb archaeological material, suggesting either that groundworks did not reach the depth of the remains in this area or that they had previously been disturbed.

LCC Archaeology indicated that it would usually recommend that where a developer has breached their conditions in this way that they carry out additional excavation in order to assess what had already been destroyed without record. Yet as half of the work required was completed (albeit by a different developer), and as the results were negative, it is not considered reasonable in this particular case to enforce additional archaeological work because of the non-compliance.

In this circumstance it can be considered that the archaeological condition is no longer required.

### **Conclusion**

The principle of a dwelling upon the site has previously been established. The proposed house is considered acceptable on visual and residential amenity grounds and the sequential test has been satisfied in respect of flood risk. LCC Highways has raised no objections subject to conditions. LCC Archaeology has previously indicated that an archaeological condition is no longer required.

### **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.