SOUTH HOLLAND DISTRICT COUNCIL

Report of: **Development Manager**

To: **Planning Committee - 22 June 2022**

(Author: **David Grant - Planning Officer)**

Purpose: **To consider Planning Application H08-0964-21**

Application Number:	H08-0964-21	**Date Received:**	14 September 2021
Application Type:	OUTLINE		
Description:	Demolition of public house and outline permission for residential		
Location:	Duke Of York 106 Risegate Road Gosberton Risegate		
Applicant:	Ms S Goodenough	**Agent:**	Richards Architectural
Ward:	Donington, Quadring and Gosberton	**Ward Councillors:**	Cllr H J W Bingham Cllr S C Walsh Cllr J L King

You can view this application on the Council's web site at
http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H08-0964-21

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 Significant number of comments received and issues raised that merit Committee consideration. A District Councillor has requested that this application be heard at a Committee meeting.

2.0 PROPOSAL

2.1 Outline permission with all matters reserved is sought for demolition of the Duke of York Public house to be replaced with residential development. The public house has been closed for over two years. The Design and Access Statement states *"The site has an existing access that will be widened to allow off road parking for all dwelling houses, there is sufficient space for a safe turning area enabling vehicles to enter and leave the site in a forward gear. It is acknowledged that there is a public right of way adjacent to the site, this is to be maintained and it is proposed that the tree line that shelters the footpath and the site is to remain. Foul water sewage shall be dealt with by mains sewer and surface water disposal shall be by means of soakaways in accordance with Approved Document H1. The indicative site plan shows the terrace dwellings positioned 1m away from the neighbouring cottage. To the rear of the site are views of open country side which shall remain enjoyable for future residents."*

2.2 Indicative plans submitted with the application show a terrace of 4 dwellings to the site frontage with a further 4 detached houses to the rear. The application is accompanied by a Preliminary Ecological Appraisal and a Design and Access Statement which appends a letter from the applicant's accountant dated August 2021, which gives the opinion that it would be uneconomical to re-open the pub.

3.0 SITE DESCRIPTION

3.1 The public house is sited on the road frontage and adjoins a terrace of houses to the west. There are further detached properties to the east of the access which leads to the car park to the rear which is laid to gravel. There is then an area of grass and trees to the rear boundary. There is a public footpath that runs along the eastern boundary adjacent to a drain.

3.2 The vast majority of the site is within defined settlement limits save for the area of land to the south which is grassed and contains trees. The surrounding area is characterised by linear development of varying ages and designs. The site is in Environment Agency Flood Zone 1 and is not subject to increased flood hazard or depth on the 2115 South Holland Strategic Flood Risk Mapping.

4.0 RELEVANT PLANNING POLICIES

4.1 **The Development Plan**

South East Lincolnshire Local Plan, March 2019

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) to the Town and Country Planning Act as amended by the 2004 Act states that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Policy 1 - Spatial Strategy
Policy 2 - Development Management
Policy 3 - Design of New Development
Policy 4 - Approach to Flood Risk
Policy 10 - Meeting Assessed Housing Requirements
Policy 11 - Distribution of New Housing
Policy 17 - Providing a Mix of Housing
Policy 28 - The Natural Environment
Policy 29 - The Historic Environment
Policy 32 - Community Health & Wellbeing
Policy 36 - Vehicle and Cycle Parking
Appendix 6 - Parking Standards

National Guidance

National Planning Policy Framework (NPPF), 2021

Section 2 - Achieving sustainable development
Section 4 - Decision making
Section 5 - Delivering a sufficient supply of homes
Section 6 - Building a strong competitive economy
Section 8 - Promoting healthy and safe communities
Section 9 - Promoting sustainable transport
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

Planning Practice Guidance (PPG)

5.0 RELEVANT PLANNING HISTORY

5.1 None

6.0 REPRESENTATIONS

6.1 Gosberton Parish Council

"*Overdevelopment of site - insufficient parking for 3 houses. Loss of amenity to village.*"

6.2 Ward Councillors

Councillor King

"Unfortunately these days some pubs are not viable businesses anymore and the buildings are left to fall into disrepair, we have had many of these in our area doing just this, as long as any new buildings are in keeping with the rest of the buildings in the area and is not overdeveloped I think this should be allowed, but ask that it go to committee to be fully discussed

Councillor Walsh

"Any development needs to be in keeping with the area, in style of property and numbers allowed and particular attention needs to be paid to the amount of vehicles requiring parking and the affect this on neighbouring properties and maintaining highway access. If the sustainability of a "public house" is not possible then serious consideration needs to be given to this application."

Councillor Bingham

"I have concerns about the loss of this amenity to the village, once an amenity such as this is lost it is rarely replaced. Although covid has put serious strain on public houses as well as other businesses I cannot see sufficient evidence to be able to support redevelopment of this public house."

6.3 LCC - Historic Environment Officer

"The proposed development involves the demolition of a historic public house, the Duke of York Inn, which may be considered a non-designated heritage asset in the terminology of the National Planning Policy Framework. The Duke of York Inn has been recorded since at least 1820, when it was mentioned in the Stamford Mercury on Friday 07 July. Historically it was also associated with the nearby Surfleet Brewery run by the Smith family until its sale to Batemans of Wainfleet in 1951.

Although it is understood that the building has suffered a lack of maintenance and there have been some unsympathetic alterations in recent years it is clearly of traditional construction. It is understood that the inn is at least 200 years old and has contributed to the social history of the village during this period.

Historic inns such as this are an important element of the Lincolnshire landscape and contribute to the character and local distinctiveness of fenland towns and villages, providing evidence of rural industry and social life which have now largely disappeared. Many such historic inns are increasingly threatened with demolition and conversion as they become redundant."

Requests standard archaeological conditions.

6.4 LCC - County Highways & SUDS Officer

"The principle of development is acceptable. As this is an outline application with all matters reserved, access and layout have not been considered. Please make the applicant aware of the requirements for access, parking, visibility, turning and layout; as detailed within the Lincolnshire County Council Design Approach and Development Road Specification.

Additionally, please be advised of the comments received from the countryside team with regard to the public right of way.

Gosberton Public Footpath No. 5 is affected by the proposed development - plan attached. Please note that the footpath was unofficially diverted a number of years ago and the route on the ground now follows a different alignment to the legal alignment. It would appear that the footpath passes through plots 7 and 8 of the proposed layout. The footpath will therefore require diverting to enable development to take place or alternatively the development layout will require amending and the public footpath reinstating on the correct legal alignment.

Comments;
i/ It is expected that there will be no encroachment, either permanent or temporary, onto the right of way as a result of the proposal. Width to be retained 2m.
ii/ The proposed development should not pose any dangers or inconvenience to the public using the right of way.
iii/ If any existing gate or stile is to be modified or if a new gate (including gate posts) or stile is

proposed on the line of the public rights of way, prior permission to modify or erect such a feature must be sought from the County Council.
iv/ The surface of the public footpath should not disturbed without the prior permission of the highway authority."

6.5 SHDC - Environmental Protection

No comments or objections.

6.6 Welland & Deepings Internal Drainage Board

"We acknowledge that this is only an outline planning application currently but if a full or reserved matters application were to be submitted to the current design, as detailed on the indicative site plan reference: RA/1219/21/05, then the Board would raise an objection.

The Board's Duke of York Arm Drain lies immediately adjacent to the site to the east. This drain is afforded the protection of a nine metre byelaw distance which the current proposed layout seriously contravenes.

Any future submitted site layout should take the above advice into account."

6.7 Lincolnshire Bat Group

"Thank you for referring this ecological assessment to Lincolnshire Bat Group. This is a good report and we would endorse the recommendations in section 5.5, particularly with having personal knowledge of this area, as records show that the linear development along the Risegate Eau and its associated gardens are used extensively by foraging bats, and the suggested improvements should enhance this."

6.8 Members of the public - 4 comments

- Requests installation of swift bricks.

OBJECTING COMMENTS
- The indicative plans are not in keeping - The plans are indicative.
- Loss of privacy - The plans are indicative.
- Insufficient off road parking spaces - The plans are indicative and the number of off road parking spaces accords with Appendix 6 of the SELLP

SUPPORTING COMMENTS
- No amenity is lost as the pub is already closed.
- Reduction in disturbance, noise and traffic.
- Building is deteriorating and will cost a lot of money to repair.
- Site is unoccupied and there is a potential for children to play or squatters to live on site.
- New dwellings will enhance the appearance of the site.

7.0 CONSIDERATIONS

7.1 PLANNING CONSIDERATIONS

7.2 The main issues in this case are:
-Policy/principle;
-Character/appearance and heritage;
-The likely affect upon the amenity of nearby residents;
-Highway safety;
-Other material considerations, including flood risk, drainage, ecology and archaeology

7.3 Policy/principle

7.4 Section 38 (6) of the Town and Country Planning Act as amended by the 2004 Act states that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

7.5 The site is located within the settlement boundary for Gosberton Risegate as set out in the South East Lincolnshire Local Plan, 2019 (SELLP). Gosberton Risegate sits within the 'Other Services and Settlements' tier of the Spatial Strategy (Policy 1). Policy 1 states that: "Within the settlement boundaries of the Other Service Centres and Settlements (as shown on the Inset Maps) development will be permitted that supports their role as a service centre for the settlement itself, helps sustain existing facilities or helps meet the service needs of other local communities." Clearly the loss of a public house would not 'help sustain existing facilities' and would not support its 'role as a service centre for the settlement itself'. It would result in the loss of one of the few community facilities present in the village. The proposal is therefore considered to be contrary to Policy 1 of the SELLP.

7.6 Furthermore, the loss of a community facility such as a public house is normally resisted by Policy 32 of the SELLP unless certain criteria are met. This policy sets out that:
"The redevelopment or change of use of an existing community facility will be permitted only if:
1. an assessment has been undertaken which has clearly shown that the facility is:
a. surplus to requirements; or
b. not economically viable; or
c. unfit for purpose"

7.7 Assessing the proposal against the above:

a. In other applications for change of use or demolition of public houses, communications from members of the public have been received lamenting the loss of a pub. No such letters have been received for this application.

b. No material financial evidence has been submitted to demonstrate that the public house is not economically viable. The pub has been closed since 2020 and financial records have not been submitted.

c. The supporting information argues that the building is not fit for purpose due to the repairs needed to the building internally and externally. The phrase 'unfit for purpose' is somewhat subjective, however whilst officers can sympathise with the applicant's financial situation and apparent lack of help from the government financially for the business, sufficient evidence has not been provided to demonstrate that the proposal satisfactorily complies with Policy 32 of the SELLP. In addition to the above, an applicant would normally be expected to show that a genuine attempt had been made to sell the facility as a going concern for at least a period of 12 months. Should the property be marketed the supporting information from the applicant's estate agent suggests that due to the unsustainable location and there being more lucrative locations in the district, they do not believe the property should be marketed further.

7.8 Assessment against SELLP Policy 2 - Development Management and Policy 3 - Design of New Development

7.9 Matters of design, character and amenity cannot be accurately assessed against as this application is outline with all matters reserved. The proposal is not in an area of increased flood depth, so there would not be requirement to raise finished floor levels to address flood risk. The application site is served by a pavement to the front and a public right of way which should not be impacted by any future proposal.

7.10 A full examination of residential development of this site against Policies 2 and 3 would be made if a reserved matters or full planning application was forthcoming.

7.11 Assessment against South Holland District Council approach to change of use / demolition of public houses in the district

7.12 It is considered that financial records must be provided to demonstrate the performance of the pubic house, as well as details of marketing with estate agents on a variety of forms of media.

7.13 A response from Ark Estate Agents states:

"Thank you for inviting us to inspect the above property to provide you with an up to date market appraisal. In an assessment of this nature it is impossible to be precise, however our advice is based on research into the current market and extensive local knowledge.

With this in mind, we believe that the business is not viable and that in current commercial circumstances would not attract interest due to the unsustainability of the area and business type.

In light of recent events we have seen a decline in the hospitality sector and within a 10 mile radius of this location there are other public houses available for sale in more lucrative locations. We therefore believe that it is not appropriate to market the property further."

A letter submitted by the accountancy company Bowers, Fleming & Co Limited states *"I fully expect that once the variable and fixed costs of the business for the year to 28 February 2021 have been taken into account that a significant loss will have occurred."* They advise that it would be un-economical to reopen the pub.

7.14 The public house has not been put up for sale. This is because the business is not considered to be viable and would not attract a price that a successful business might generate. Financial records for the last three years have not been provided, however the business has not been open since 2020. The view taken that the area of Gosberton Risegate is unsustainable for a pub to operate would appear to contrary to that of the owners of the Black Horse public house which is also in the settlement of Gosberton Risegate and remains open.

7.15 Support for the retention of community facilities is also provided at a national level in the National Planning Policy Framework (2021) (NPPF). Paragraph 84 of the NPPF sets out that planning policies and decisions should enable the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship. Paragraph 92 sets out that planning policies and decisions should aim to achieve healthy, inclusive and safe places which promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other. Lastly, paragraph 93 states that to provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day to day needs; and ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community. The proposal would be at odds with these provisions. Taking the above assessment into account, the principle of the proposed site redevelopment is not considered to be acceptable.

7.16 Character/appearance and heritage

7.17 The existing public house is of some age and although currently painted green is a traditional building with a pantile roof and clearly forms a significant feature within both the history of the settlement and contributes to the character of the area. Although not listed, not within a conservation area or subject to an article 4 direction, the County Historic Environment Officer does consider it to be a non-designated heritage asset, a view which is shared by officers. This is clearly a material consideration, which needs to be taken into account in the determination of the application. The demolition of public houses is not permitted development and does require planning permission. Policy 28 of SELLP and Section 15 of the NPPF a clear explanation and justification for the proposal in order for the harm to be weighed against public benefits. In this case it is considered there is insufficient justification for the demolition of the public house and the public benefits of a new residential development do not outweigh the harm which would be caused by the loss of a non-designated heritage asset.

7.18 The likely impact upon the amenity of nearby residents

The present use is a public house. It could thus be argued its redevelopment for housing would have less of an impact upon the occupiers of nearby residential properties in terms of noise and general disturbance. This is subject to future dwellings being designed so as not to overlook neighbouring properties, which would be determined at reserved matters or full application stage.

7.19 Highway Safety

7.20 There is no objection from the Highway Authority. Matters of detail relating to parking layout

and the access driveway would form of any future reserved matters or full application. This would also inform how the refuse/recycling would be collected.

7.21 Other Material Considerations

7.22 Flood Risk - The site is within Flood Zone 1 and within an area of no hazard.

7.23 Drainage - Foul and surface water can be addressed by means of a condition. The Internal Drainage Board have commented that the indicative layout submitted would not be acceptable as it sites dwellings within 9 metres of the drain.

7.24 Archaeology - as stated above, LCC Historic Environment has requested the imposition of archaeology conditions.

7.25 Ecology - Preliminary Ecological Assessment submitted and the findings welcomed by the Lincolnshire Bat Group. Recommendations of the report including ecological enhancements may be conditioned.

7.26 Planning Balance

7.27 In other applications for change of use or demolition of public houses, communications from members of the public have been received lamenting the loss of a pub. No such letters have been received for this application. Additionally another public house named The Black House remains open in the defined settlement limits of Gosberton Risegate. Therefore it is considered that a community venue remains nearby within the settlement.

7.28 The principle of development is acceptable in this location, and the submitted indicative design does not generate material amenity or character concerns. However, because the public house has not been put up for sale and substantive financial information has not been forthcoming despite numerous requests, it is considered that it has not been demonstrated that the Duke of York cannot once again become a viable business if a new owner is found and investment is made in the fabric of the building.

7.29 Conclusion

7.30 The planning balance is considered not to be in favour of the proposal. It is therefore recommended that the application be refused.

7.31 **Additional Considerations**

7.32 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.

7.33 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.

8.0 RECOMMENDATIONS

8.1 **Refuse permission for the reasons listed in Section 9.0 of this report.**

9.0 REASONS FOR REFUSAL

1. The proposal is considered to be unacceptable in principle when considered in the context of Policies 1 and 32 of the South East Lincolnshire Local Plan, 2019.

The loss of the public house would not help 'sustain existing facilities' and would not support the village's 'role as a service centre for the settlement itself'. It is therefore contrary to Policy 1 in this regard.

Furthermore, financial records have not been provided to demonstrate that the business is not financially viable and it is not considered that it has been satisfactorily demonstrated that the premises is unfit for purpose or surplus to requirements. For these reasons it is also considered to be contrary to Policy 32.

Additionally, no marketing exercise has been undertaken to demonstrate that no individual would be willing to purchase the business as a going concern.

The proposal is also at odds with the provisions of the National Planning Policy Framework, 2021, which seeks to protect valued community facilities such as public houses (Paragraphs 84, 92 and 93).

2. The proposed development would result in the demolition of a building that can be considered a Non-Designated Heritage Asset by virtue of its aesthetics and historical importance. In this case it is considered there is insufficient justification for the demolition of the public house and the public benefits of a new residential development do not outweigh the harm which would be caused by the loss of a non-designated heritage asset and as such is contrary to Policy 28 of the South East Lincolnshire Local Plan, 2019 and Section 15 of the National Planning Policy Framework, 2021.

3. 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. Furthermore, matters of concern with the application have been identified and discussed with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory solution and due to the harm, which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

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

4. The determined plans are:
   RA/1219/21/07
   RA/1203/21/06
   Design and Access Statement
   RA/1219/21/05
   RA/1219/21/03
   RA/1219/21/01
   Application Form
   Letter from Nathan Marshall of Ark Property Estate Agents - 01 February 2022.

Background papers:- Planning Application Working File

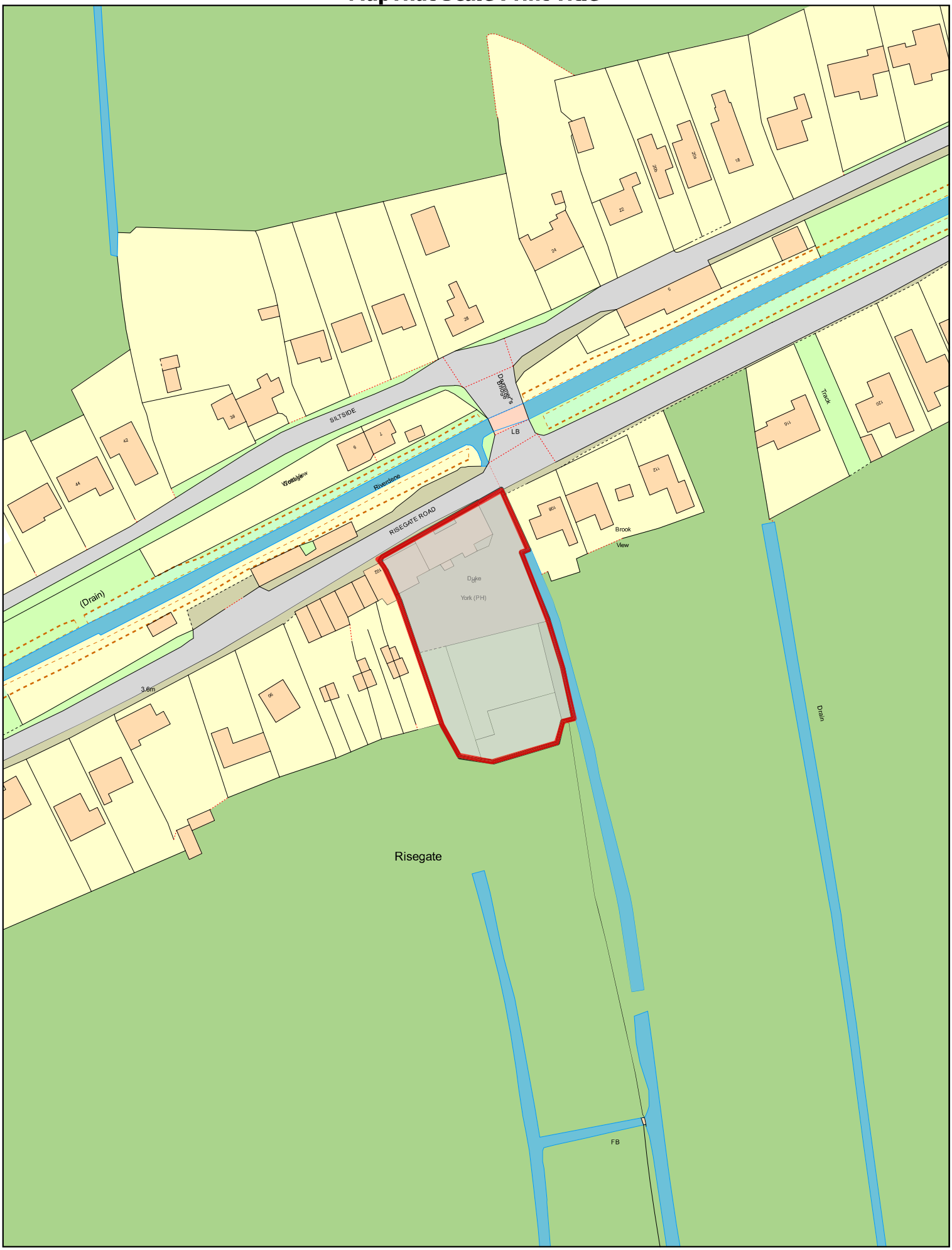
Lead Contact Officer

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Appendices attached to this report:

Appendix A Plan A

MapThat Scale Print Title



SOUTH HOLLAND DISTRICT COUNCIL

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MAP SCALE 1:1250
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