

DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No: H16-0263-21 **Applicant:** Mr Wilson

Proposal: Residential Development 9 x 1.5 storey houses - approved under H16-0193-19. Removal of Conditions 13, 14 and 15 relating to access roads and drainage.

Location: Land South East Of Littleworth Drove Lucks Bridge

Terminal Date: 21st December 2021

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
06	Developer Contributions
11	Distribution of New Housing
19	Rural Exception Sites
28	The Natural Environment
30	Pollution
31	Climate Change and Renewable and Low Carbon Energy
32	Community, Health and Well-being
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2019

NPPF 2021.

Representations:

	Object	Support	No Obj.	Comments
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
WELLAND AND DEEPINGS INTERNAL DRAINAGE BOARD	0	0	0	1

SHDC INTERNAL	0	0	0	1
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CASE OFFICER ASSESSMENT

Proposal

Residential Development 9 x 1.5 storey houses - approved under H16-0193-19. Removal of Conditions 13, 14 and 15 relating to access roads and drainage.

To support this application a Block Plan was submitted and then revised in June. This revised block plan seeks to resolve the matters of the conditions on the host consent relating to the form of the access road and drainage by setting out in annotation, that

- The access road would be formed of Permeable Block Paving, Load Category 5 permeable paving (infiltration) on subgrade 2% soaked CBR. 80mm Permeable Block, 50mm laying course material comprising mostly passing 6.3mm sieve and mostly retained on a 3mm sieve. 70mm dense bitumen macadam hole punched with 25mm Dia holes at 750mm centres. 650mm Hydraulically bound coarse graded aggregate (TYPE 3) laid in layers not exceeding 100mm thick, each layer to be well compacted. Aggregate wrapped in a permeable geotextile Terram 2000 or similar approved.

- The private drives and parking would be formed of permeable paving. Load Category 5 permeable paving (infiltration) on subgrade 2% soaked CBR. 80mm Permeable Block, 50mm laying course material comprising mostly passing 6.3mm sieve and mostly retained on a 3mm sieve. 70mm dense bitumen macadam hole punched with 25mm Dia holes at 750mm centres. 650mm Hydraulically bound coarse graded aggregate (TYPE 3) laid in layers not exceeding 100mm thick, each layer to be well compacted. Aggregate wrapped in a permeable geotextile Terram 2000 or similar approved.

- a hammerhead is shown for turning and for fire appliances.

- All Foul Water drainage to discharge to new Sewage Treatment Plant suitable for 1no. Domestic Dwelling sited min. 5m away from any building with a drainage field sited min. 5m from any building designed and installed in accordance with BS EN 752-4 1998 and specialist manufacturer's instructions.

- All Rainwater to discharge to Soakaways min.5m from any building

On this drawing there is also a description of site levels, building and external materials. These matters are not covered by this S73 application.

Site Description

The site area is 0.8 ha, and is rectangular in shape. It is currently vacant land once used for horticulture. The entrance to the site has close board fencing to the sides of existing dwellings, and along the frontage to secure the site. Trees and/or hedges are growing along the boundaries of the site, some of which are of high amenity value. The state of the land is currently overgrown. Two storey detached dwellings front the proposed site with open land to the north and south and agricultural land to the east. South Drove Drain runs to the south west of the site beyond South Drove, while Fantail Mill Drain runs immediately to the east.

History

H16-0254-21. CONDITION COMPLIANCE. Details of scheme to deal with contamination, boundary treatment, means of foul water disposal and storage and disposal of refuse and recycling (Conditions 4, 6, 16 and 19 of H16-0193-19). UNDER CONSIDERATION.

H16-1179-20. RESERVED MATTERS. Erection of 9 dwellings - outline approval H16-0193-19. UNDER CONSIDERATION.

H16-0193-19. SEC 73 MODIFICATION. Residential development - 9 x 1.5 storey houses - approved under H16-0621-17 - Removal of Condition 4 to remove the 1.000 square metre floor space element of the condition. APPROVED. 23-04-19.

H16-0621-17. OUTLINE. Residential development - 9 x 1.5 storey houses. APPROVED. 11-01-18.

Consultation Responses

SHDC Environmental Services

"As far as I can see, the proposals for this development includes a collection point from where the new road joins with South Drove. I believe that South Drove is an adopted road, whereas this development will remain a private roadway and therefore not accessible by our refuse vehicles. In principle a collection point would be the way to ensure we could collect the waste from these properties, however in this instance there are many difficulties with this proposal including;

- Size of scheme which would result in build-up of large volumes of waste presented at the collection point
- Length of roadway that will mean residents have to carry waste over 30m, as stated on the plans
- Proposal to provide flat beds for waste transportation is problematic and we would be interested to understand who will be responsible for maintenance and replacement of these
- Collection points can be challenging at best of times for early presentation and with a scheme of this size that risk seems to be higher than usual
- Therefore there is likely to be a negative impact on the locality including current neighbours and those passing this collection point"

LCC Highway and Drainage Authority

It is clear from the submitted drawings that when LCC considered the highway and drainage details of the Outline Application H16-0621-17 for this site, the intention was for the estate road to be adopted as public highway.

The Conditions requested, which were then repeated on the Decision Notices for H16-0621-17 and H16-0193-19, are specifically for an adopted road.

The details now submitted in respect of the current Applications clearly show an intention for the estate road to remain private.

Do not believe the highway authority can compel a developer to build an adoptable estate road.

LCC are though likely to serve an Advanced Payments Code Notice on the developer when Building Regulations are passed for the houses on the development - because the road is more than 100 yards long.

The APC Notice will require that the road is built to an acceptable standard, but that might not necessarily be an adoptable standard.

The situation is further complicated by the fact that because the proposed development is for fewer than ten dwellings, it is not a Major Application and the Lead Local Flood Authority do not provide a statutory response on surface water flood risk on Minor Applications.

Condition 13 of H16-0193-19 effectively requires that the roads and footways are brought up to Binder Course level in front of occupied properties - this is always good practice as it means residents are not having to tramp over unsurfaced roads and footways - and to completely finish all road construction within three months of the commencement of the erection of the penultimate dwelling - which is also good practice as it means the completion of the site does not drag on for ages. However, the wording of the Condition refers to enabling the roads and footways to be adopted as highways maintainable at the public expense and of course that will not happen if the developer is to keep the roads private.

Condition 14 of H16-0193-19 precludes the commencement of the development before the submission and approval of full engineering, drainage, street lighting and constructional details of the streets proposed for adoption. It is strongly recommended that these road details are submitted

and approved before a start is made but if the streets will not be adopted, it will not be the highway authority that will be doing the technical compliance check on those details.

Condition 15 of H16-0193-19 I believe is still applicable because the development requires an effective surface water drainage system whether the roads are adopted or are to remain private. Being a Minor Application, it would be for the Local Planning Authority to determine if the drainage proposals are acceptable. If sustainable drainage principles are not to be incorporated into the design, then the Applicant needs to demonstrate why SuDS are not appropriate.

Welland and Deeping Internal Drainage Board

The Board's Fantail Drain bounds the site to the east and is afforded the protection of a nine metre byelaw distance. This is a critical watercourse which will potentially be accessed twice a year by the Board's machinery; because of this nothing permanent will be accepted by the Board within the nine metre easement strip. This includes, but is not limited to, buildings, structures, sheds, fences, hedges, trees, landscaping etc.

Any future homeowners should be made aware of the Board's requirement for no obstructions within the nine metre easement strip, ideally within the property deeds.

On the strict understanding that future homeowners in perpetuity are made aware of the Board's access requirements, will be happy to lift my previous objection made under H16-1179-20 dated 3rd February 2021.

Planning Considerations

Condition 13 of H16-0193-19 states:

Before each dwelling is occupied the roads and/or footways providing access to that dwelling, for the whole of its frontage, from an existing public highway, shall be constructed to a specification, to first be submitted to and approved by the Local Planning Authority, to enable them to be adopted as Highways Maintainable at the Public Expense, less the carriageway and footway surface courses. The carriageway and footway surface courses shall be completed within three months from the date upon which the erection is commenced of the penultimate dwelling.

Reason: To ensure safe access to the site and each dwelling/building in the interests of residential amenity, convenience and safety.

This Condition is imposed in accordance with Policies 2 and 3 South East Lincolnshire Local Plan 2019 and national guidance contained in the National Planning Policy Framework, 2019.

As can be seen above, the purpose of this enablement condition is clear and unambiguous; for reasons of residential amenity, convenience and safety.

Condition 14 of H16-0193-19 states:

No development shall be commenced until full engineering, drainage, street lighting and constructional details of the streets proposed for adoption have been submitted to and approved in writing by the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details, unless otherwise agreed in writing with the Local Planning Authority.

NB: The applicant is advised to obtain a technical approval for all street details from the Local Highway Authority prior to the submission of such approved details to the Local Planning Authority to discharge condition 12 of this decision notice.

Reason: In the interest of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the development; and to safeguard the visual amenities of the locality and users of the highway. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works.

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

As can be seen above, the purpose of this condition is clear and unambiguous; for reasons of visual amenity and safety.

As can be seen from the outline consent, the Section 73 consent and the conditions set out above, it was intended that this development would be served by an access road that would be adopted by the highway authority, for clear reasons.

The consequence of the removal of these conditions and reliance on the annotation and specification submitted on the block plan, would be that the access road would not be adopted, or built to a standard that would enable access for the Council's refuse vehicles to serve the properties from within the site.

An alternative has been offered to the applicant, that an indemnity is entered in to to enable refuse vehicles to enter the site provided the road is constructed to an acceptable standard, however this has not been taken up by the applicant. The applicant's alternative, that refuse is collected from a communal point on private land at the entrance of the site is not acceptable in terms of visual appearance or in practical terms, as set out in the response of the SHDC Environmental Service.

It is therefore considered that the proposal to remove these conditions and replace with the specification on the block plan would result in an unacceptable development, contrary to Policies 2 and 3 South East Lincolnshire Local Plan 2019 and national guidance contained in the National Planning Policy Framework, 2019.

Condition 15 of H16-0193-19 states:

No development shall take place until a surface water drainage scheme for the site, based on sustainable urban drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority.

The scheme shall:

- a) Provide details of how run-off will be safely conveyed and attenuated during storms up to and including the 1 in 100 year critical storm event, with an allowance for climate change, from all hard surfaced areas within the development into the existing local drainage infrastructure and watercourse system without exceeding the run-off rate for the undeveloped site;*
- b) Provide attenuation details and discharge rates which shall be restricted to 1.4 litres per second per hectare;*
- c) Provide details of the timetable for and any phasing of implementation for the drainage scheme; and*
- d) Provide details of how the scheme shall be maintained and managed over the lifetime of the development, including any arrangements for adoption by any public body or Statutory Undertaker and any other arrangements required to secure the operation of the drainage system throughout its lifetime.*

The development shall be carried out in accordance with the approved drainage scheme and no dwelling shall be occupied until the approved scheme has been completed or provided on the site in accordance with the approved phasing. The approved scheme shall be retained and maintained in full in accordance with the approved details.

Reason: To ensure that the site is adequately drained, to avoid pollution, and to prevent increased risk of flooding. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works.

This Condition is imposed in accordance with Policies 2, 3 and 4 South East Lincolnshire Local Plan 2019 and national guidance contained in the National Planning Policy Framework, 2019.

As can be seen above, the purpose of this condition is clear and unambiguous; to ensure adequate drainage, to avoid pollution and to prevent an increase in flooding.

The applicant has not provided evidence to prove that a sustainable drainage scheme can be provided for the site, and as such the provisions of the original permission should remain in place.

It is therefore considered that the proposal to remove this condition and replace with the specification on the block plan, and in the absence of clear evidence that a sustainable drainage system cannot be provided, would result in an unacceptable development, contrary to Policies 2 and 3 South East Lincolnshire Local Plan 2019 and national guidance contained in the National Planning Policy Framework, 2019.

Conclusion

Refuse for the reasons set out above.

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.