DECISION DELEGATED TO HEAD OF PLANNING

| | | | |
|---|---|---|---|
| **Application No:** | **H16-0736-22** | **Applicant:** | **Mr G Simpson** |
| **Proposal:** | Proposed dwelling and associated garage | | |
| **Location:** | Rear Of 175 Hawthorn Bank Spalding | | |
| **Terminal Date:** | 16th September 2022 | | |

## 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 |
| 10 | Meeting Assessed Housing Requirements |
| 11 | Distribution of New Housing |
| 17 | Providing a Mix of Housing |
| 36 | Vehicle and Cycle Parking |
| APPENDIX 6 | Parking Standards |

**National Guidance**

**National Planning Policy Framework 2021**

05 - Delivering a sufficient supply of homes
12 - Achieving well-designed places
14 - Meeting the challenge of climate change, coastal change and flooding
15 - Conserving and enhancing the natural environment

## Representations:

| | Object | Support | No Obj. | Comments |
|---|---|---|---|---|
| WARD MEMBER | 0 | 0 | 0 | 0 |
| HIGHWAYS & SUDS SUPPORT | 0 | 0 | 0 | 1 |
| SHDC INTERNAL | 1 | 0 | 0 | 1 |
| OTHER STATUTORY BODIES | 1 | 0 | 0 | 0 |
| RESIDENTS | 14 | 0 | 0 | 2 |

## CASE OFFICER ASSESSMENT

### PROPOSAL

This is a full planning application for erection of a detached dwelling and garage on garden land to the rear of 175 Hawthorn Bank, Spalding. The proposal seeks to provide a three storey dwelling with a detached double garage to the front. At ground floor level of the dwelling an entrance hall, wc, pantry, utility, snug / office, living room and a kitchen / dining room. At first floor level four bedrooms, two en-suites, a dressing room and a bathroom will be provided. A bedroom, dressing room and en-suite will be provided at second floor level. The detached garage will have two parking bays and a storage area in the roof space above.

Proposed materials of construction are Kempston Antique/Camtech Old (or similar) facing brickwork. Dark grey timber cladding to the front projecting gable, and black slate roof tiles.

The dominant feature of this site are the trees, two mature horse chestnuts and a pine tree. These trees that were conditioned for retention under previously approved application H16-0935-21 are all proposed to be removed under this new application.

### SITE DESCRIPTION

The proposal site is within defined settlement limits to the rear of the existing dwelling and is substantially overgrown, with neighbouring properties to the north, east, south and west. A chestnut tree that is subject to a preservation order is located to the north of the proposal site in the garden of 6 Town End Manor. The site is in Environment Agency Flood Zone 3 and is not subject to increased flood hazard or flood depth on the 2115 South Holland Strategic Flood Risk Mapping.

### HISTORY

H16-0856-19

Full - Proposed pair of semi-detached houses - Refused - 24 October 2019

H16-0029-20

Full - Erection of detached house - re-submission of H16-0856-19 - Approved - 17 April 2020

H16-0935-21

Full - Erection of detached dwelling and garage - Approved - 10 November 2021.

### CONSULTATION RESPONSES

Lincolnshire County Council - County Highways & SUDS Officer

No objections - Requests access and utility informatives.

South Holland District Council - Environmental Protection - Objection

*"We understand that a former ditch on the plot is suspected to have been backfilled with potentially asbestos containing materials that would not be suitable for retention in a 'residential with gardens' setting. I request that further information be provided prior to determination to show that the developer can fulfil their requirements under NPPR paragraphs 183 & 184 to ensure a safe development. I would envisage that, as a minimum, proportionate but sufficient site investigation would include machine excavated trail pits, described and sampled by an appropriately qualified independent geoenvironmental consultant, and soil sampling for asbestos. The results should be set within a simple conceptual model ad any potential risks discussed. Once the situation is clearer, I am confident that any remedial action could be dealt with by condition."*

South Holland District Council - Trees & Conservation Officer - Objection

Newts may be present on site.

*"With appropriate management it is likely the trees could contribute to the amenity of the area for many years to come. At some point the horse chestnuts have had their crowns heavily reduced and have regrown. Any cavities in the trees may provide nest sites for birds and potentially sites where bats may roost. Both nesting birds and roosting bats are protected under the Wildlife and Countryside Act 1981 (As amended)."*

*"Whilst the trees are not perfect specimens of their species, and in spite of their past management; they are of tremendous amenity value locally. Those living in properties nearby have shown great appreciation of their presence. Sadly they are not something which can readily be recreated with an equivalent."*

*"The proposed development shows not the slightest appreciation of the significance of these trees in a local context. No effort has been made to attempt to incorporate them in the scale of the proposal. If significant cavities are present, have they been surveyed for Protected Species? If present it is unlikely the trees can just be removed for convenience. "*

*"The removal of these significant trees and the planting of replacements should only be a last resort. If it is proved that the trees cannot be retained with any amenity value due to their condition. The trees and their Root Protection Areas will not have not noticeably altered throughout the period of determination of recent Planning Applications."*

*"The variable present, is the designing of a dwelling which will accommodate the presence of these trees or at least some of them."*

*"In this District where mature trees all have a significance in the landscape the removal of any should not be taken lightly."*

*"Should permission be granted to allow the proposed development to proceed, then consideration should be given to the establishing of replacement trees of significant size on planting. 13-15ft in height would not be out of place. These would need appropriate staking as recommended by the tree nursery where they were grown. They will also need regular watering, particularly if a dry period for at least the first two years of establishment."*

*"Species to be chosen following discussion/approval with the Local Planning Authority to be large or medium growing trees. A condition must ensure that if for some reason the new trees fail to establish at any point equivalent replacement trees are planted until the requirement is fulfilled. Such trees with a full life ahead of them, could then be considered to be made the subject of a Tree Preservation Order."*

*"The proposed construction of the house and patio must take into account the presence of the newly planted trees when they reach maturity."*

*"Whatever the future plans for this site, the presence of significant trees will not be forgotten."*

Sir John Hayes MP

Overdevelopment
Overbearing
Overshadowing
Loss of trees
Dyke filled in
Asbestos in the dyke

Members of the public - Objections - 13

Comments which do not carry material planning weight:

The plans have changed from those that were originally approved

Loss of property value
Impact on the climate from building a new dwelling
Disturbance during construction
Filling in off dyke by previous owners
Dyke is contaminated with asbestos
Who is going to maintain the dike if the applicant is claiming not to own it?
Incorrect showing of boundary
Enough houses are being built for Spalding elsewhere in the settlement
Impact on mental health

Comments which carry material planning weight:

Noise
Overdevelopment
Overbearing
Overshadowing
Overlooking
Loss of trees
Loss of wildlife
Increased flood risk
Design is not in keeping
Access too narrow
Set a precedent in the area

## PLANNING CONSIDERATIONS

Assessment against SELLP Policy 1 - Spatial Strategy

This proposal is assessed against SELLP Policy 1 titled - Spatial Strategy. The relevant section in this policy is titled Sub-Regional Centres. This section of the policy states:

"Within the settlement boundaries of Boston and Spalding (as shown on the Inset Maps) development will be permitted that supports their roles as Sub-Regional Centres."

When assessed against the relevant criteria the following can be observed:

This application is for housing development on residential garden land, which is no longer classified as brownfield land. The reason for this change is to give Local Planning Authorities the opportunity to resist inappropriate development of residential gardens where it would cause harm to the local area. However, the proposal site is within the largest settlement limit in the district, within defined settlement limits and therefore the principal of development is agreed. Whilst there is little in the immediate vicinity, "backland" development is a fairly regular occurrence in Spalding and therefore this would not set a precedent for the area. It is considered that the proposed dwelling would support Spalding's role as a sub-regional centre.

This application accords with SELLP Policy 1.

Assessment against SELLP Policy 2 - Development Management

When assessed against the relevant criteria the following can be observed:

1. The size, scale and layout is not considered to be appropriate for the site and is materially different to that of the approved plans under H16-0935-21. The dominant feature of this site are the trees, two mature horse chestnuts and a pine tree. These trees that were conditioned for retention under previously approved application H16-0935-21 are all proposed to be removed under this new application. The Trees and Conservation Officer objects to the removal of these trees, as do a number of residents who have expressed concerns that the removal of trees will destabilise ground and increase surface water flooding. The appearance and character of the surrounding area will be materially impacted.

2. The design and orientation is materially different to that of the previous design with both the footprint and height being increased.

3. Proposed materials of construction are Kempston Antique/Camtech Old (or similar) facing brickwork. Dark grey timber cladding to the front projecting gable, and black slate roof tiles. The proposed materials are considered to be appropriate for the character of the surrounding area.

4. The adjacent ditch beyond the western boundary has been filled by the previous owner and the access width has been widened at the request of highways. The site can accommodate four vehicles for off road parking. This accords with Appendix 6 of the SELLP.

5. This proposal will not materially impact existing community services and infrastructure.

6. Despite concerns expressed by members of the public there is not considered to be a material noise, odour or disturbance impact from this proposal. The application is for a single residential dwelling in an existing residential area. With regard to visual intrusion the following can be observed:

Overdevelopment - The proposal is considered to constitute overdevelopment. The dwelling would constitute and overly dominant and incongruous building amongst the surrounding dwellings which are a mixture of single and two storey. The proposed dwelling has a footprint of 14.37 metres width, 11.18 metres in depth and in maximum height of 9.12 metres. The proposed garage is 6.5 metres in width, 6 metres in depth and has a ridge height of 5.50 metres. The previously approved dwelling under reference H16-0935-21 is 14.04 metres in width, 10.08 metres in depth and has a maximum height of 7.58 metres. The garage measured 6 metres in depth, 6.5 metres in width and had a ridge height of 5.44 metres. Both of the new dwelling and garage are larger than that previously approved. The previously approved dimensions were considered to be at the limits of acceptability when compared to the built dimensions of other dwellings in all directions of the site. The dwelling is visually prominent from a number of adjacent dwellings and due to the increased height difference with neighbouring properties is considered to have a material overbearing impact.

Overlooking - The proposed dwelling is 9.1 metres from the rear boundary of 175 Hawthorn Bank and 19 metres from the dwelling. This separation distance from the first floor windows is considered to constitute a material overlooking impact. The proposed dwelling is 6.5 metres from the side boundary of 177 Hawthorn Bank when a 45 degree angle is drawn from Bedroom 2 at first floor level. The dwelling at 177 is 19.2 metres away. This separation distance from the first floor windows is considered to constitute a material overlooking impact. Case law has established that an acceptable separation distance between the habitable room windows of neighbouring properties is 21 metres. This proposal does not comply with these requirements.

Overshadowing - There will be level of light loss from the proposed garage to the rear garden of 175, as there will to other neighbouring gardens due to the 9.12 metre dwelling ridge height. However, when right to light lines are drawn no habitable room windows of nearby dwellings will be materially impacted by the proposed dwelling or garage.

7. The site is in Environment Agency Flood Zone 3 and is not subject to increase flood hazard or flood depth on the 2115 South Holland Strategic Flood Risk Mapping. There is not considered be a need to raise finished floor levels to address flood risk in this location. The County Highways & SUDS Officer has no surface water drainage concerns.

This application does not accord with SELLP Policy 2.

Assessment against SELLP Policy 3 - Design of New Development

When assessed against the relevant criteria the following can be observed:

1. The size, scale and layout is not considered to be appropriate for the site and is materially different to that of the approved plans under H16-0935-21. The dominant feature of this site are the trees, two mature horse chestnuts and a pine tree. These trees that were conditioned for retention under previously approved application H16-0935-21 are all proposed to be removed under this new application. The Trees and Conservation Officer objects to the removal of these trees, as do a number of residents who have expressed concerns that the removal of trees will destabilise ground and increase surface water flooding. The appearance and character of the surrounding area will be materially impacted, as will a sense of place.

5. There is ample space on site for cycle and bin storage. The adjacent ditch beyond the western boundary has been filled by the previous owner and the access width has been widened at the

request of highways. The site can accommodate four vehicles for off road parking. This accords with Appendix 6 of the SELLP.

11. Despite concerns expressed by members of the public there is not considered to be a material noise, odour or disturbance impact from this proposal. The application is for a single residential dwelling in an existing residential area. With regard to visual intrusion the following can be observed:

Overdevelopment - The proposal is considered to constitute overdevelopment. The dwelling would constitute and overly dominant and incongruous building amongst the surrounding dwellings which are a mixture of single and two storey. The proposed dwelling has a footprint of 14.37 metres width, 11.18 metres in depth and in maximum height of 9.12 metres. The proposed garage is 6.5 metres in width, 6 metres in depth and has a ridge height of 5.50 metres. The previously approved dwelling under reference H16-0935-21 is 14.04 metres in width, 10.08 metres in depth and has a maximum height of 7.58 metres. The garage measured 6 metres in depth, 6.5 metres in width and had a ridge height of 5.44 metres. Both of the new dwelling and garage are larger than that previously approved. The previously approved dimensions were considered to be at the limits of acceptability when compared to the built dimensions of other dwellings in all directions of the site. The dwelling is visually prominent from a number of adjacent dwellings and due to the increased height difference with neighbouring properties is considered to have a material overbearing impact.

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12. The site is in Environment Agency Flood Zone 3 and is not subject to increase flood hazard or flood depth on the 2115 South Holland Strategic Flood Risk Mapping. There is not considered be a need to raise finished floor levels to address flood risk in this location. The County Highways & SUDS Officer has no surface water drainage concerns.

This application does not accord with Policy 3 of the SELLP.

Dyke ownership and clearance

The originally submitted plans registered on the 25th of July show the dyke as being within the red line ownership boundary of the applicant.

On the 16th of August following complaints and video / photo submissions the Environmental Protection Officer stated *"We understand that a former ditch on the plot is suspected to have been backfilled with potentially asbestos containing materials that would not be suitable for retention in a 'residential with gardens' setting. I request that further information be provided prior to determination to show that the developer can fulfil their requirements under NPPR paragraphs 183 & 184 to ensure a safe development."*

On the 26th of August the agent sent amended plans showing the ditch area as being outside of the ownership of the applicant. "Following our phonecall, please find attached email proof from the Sellers solicitor that makes it clear that the ditch is not included."

Kelly Eagers of Roythornes Solicitors stated in an email on 03 May 2022 "In response to point 1 below, we are advised that this is a dyke that is jointly owned by the Seller and the neighbour and it was specially excluded as nothing can be done in respect of it being infilled or used as part of the site - it simply has to be maintained."

The submitted email does not show what Point 1 is, however, this statement does not remove

responsibility for maintenance of the dyke from the applicant and therefore they should have responded to the request of the Environment Protection Officer whether or not they had included the dyke within the red line boundary. Additionally, whether or not they were responsible for infilling the dyke, between themselves and 173 Hawthorn Bank they have a responsibility to maintain it.

The dyke is not within the red line boundary of the site and has no influence on the planning officer recommendation. The submitted information does not in the view of the local planning authority remove responsibility for maintenance of the dyke by the applicant and the Environmental Protection team has been passed the submitted information.

## PLANNING BALANCE

The proposed dwelling by virtue of the scale and siting leads to a material overlooking and overbearing impact on neighbouring properties. The alien and incongruous design is considered to have a material impact on the character and amenity of the surrounding area. Therefore, this application is not considered to accord with Policies 1, 2, 3, 4, 10, 11, 17, 36 and Appendix 6 of the South East Lincolnshire Local Plan, 2019, as well as Sections 5, 12, 14 and 15 of the National Planning Policy Framework, 2021.

## CONCLUSION

This application is recommended for refusal.

## 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.