

**DECISION DELEGATED TO HEAD OF PLANNING**

**Application No:** H16-1026-24                      **Applicant:** Mr J Tucker  
**Proposal:** Residential Development - 2 Dwellings  
**Location:** Adj The Poplars Cowbit Road Spalding  
**Terminal Date:** 10th 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  
10                      Meeting Assessed Housing Requirements  
11                      Distribution of New Housing  
28                      The Natural Environment  
31                      Climate Change and Renewable and Low Carbon Energy  
33                      Delivering a More Sustainable Transport Network  
36                      Vehicle and Cycle Parking  
APPENDIX 6                      Parking Standards

**National Guidance**

**National Planning Policy Framework December 2024**

Section 5 - Delivering a sufficient supply of homes  
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

**Representations:**

	<b>Object</b>	<b>Support</b>	<b>No Obj.</b>	<b>Comments</b>
WARD MEMBER	0	0	0	1
PLANNING LIAISON OFFICER - FLOOD RISK ASSESSMENT	0	0	0	1
HIGHWAYS & SUDS SUPPORT	0	0	0	1

HISTORIC ENVIRONMENT OFFICER	0	0	0	1
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	0	0	1	0
OTHER STATUTORY BODIES	0	0	0	1

## **CASE OFFICER ASSESSMENT**

### **Description of Proposal**

This proposal seeks planning permission for the erection two, three-bedroom dwellings on the land adjacent to the Poplars, Spalding. The proposal is for two identical houses within the plot. Each dwelling would "Z" shaped, measuring at 9.65m (width) by 11 metres (maximum depth).

The proposal features several intersecting gable roofs. The lowest eaves height would be 4.35m, rising to 7.5m at the lowest ridge. The maximum eaves height would be 5.35m, rising to 7.6m at the ridge. Both dwellings would be constructed of Hampton Rural Blend facing bricks, with Sandtoft Britlock interlocking slate tiles. Cream aluminium windows are proposed, in contrast to the black UPVC rainwater goods. Each property features an oak porch. Each property will have a finished floor level (FFL) of 3.6m OD.

As a full application, details of boundary treatments have been provided. These include a 1.8m boundary fence along the north, east and south boundaries, and a 1.2m high close boarded fence to the west boundary. Hedging is proposed throughout the site, primarily on the north-east garden boundary and the western front boundary.

### **Site Description**

The site is within the settlement boundaries of Spalding, as outlined within the South East Lincolnshire Local Plan, 2019. The plot is currently used as additional garden space for the dwelling to the south, The Poplars. Five tree stumps and an area of bracken feature on an otherwise grassed, sloping lawn. This slope angles sharply down from the roadside to the garden, dropping by approximately 2 metres from the road to the far side of the garden. The height difference is thrown into sharper contrast by the position of The Poplars, which is raised significantly above ground level.

### **Relevant History**

H16-1298-21 - Full. Erection of 2 detached dwellings. Approved 10/02/22.

H16-0549-13 - Permission renewal. Residential development - 1 dwelling (renewal of H16-0417-10). Approved 16/08/13

H16-0276-13 - Full. Two storey side extension with replacement entrance steps and porch with floating rear deck and internal alterations. Approved 28/05/13.

H16-0417-10 - Outline. Residential development - 1 dwelling. Approved 27/07/10.

H16-0602-09 - Outline. Residential development - 2 dwellings. Refused 07/04/10.

## Consultation Responses

The responses received from consultees during the initial consultation exercises, which can be viewed in their entirety through the South Holland website, can be summarised as follows:

### Cllr Ashby

"I notice the turnarounds on drives but there is no provision for visitors as they would have to park on this busy road."

### South Holland Internal Drainage Board

Outline that Land Drainage Consent may be required, and the conditions that would determine this.

### Environment Agency

"The proposed development will only meet the National Planning Policy Framework's requirements in relation to flood risk if the following planning condition is included.

#### Condition

The development shall be carried out in accordance with the submitted flood risk assessment dated November 2024, ref: 'ECL0662a/G R MERCHANT LTD', prepared by Ellingham Consultant Ltd and the following mitigation measures it details:

- Finished floor levels shall be set no lower than 0.3 metre above the existing ground level, equivalent to 3.6 metres above Ordnance Datum.

These mitigation measures shall be fully implemented prior to occupation and subsequently shall be retained and maintained thereafter throughout the lifetime of the development.

Reasons: To reduce the risk of flooding to the proposed development and future occupants in accordance with Policy 4 of the South East Lincolnshire Local Plan 2011-2036"

### Highway and Lead Local Flood Authority

No objection. "The proposal is for Residential Development - 2 Dwellings and it does not have an impact on the Public Highway. Sufficient parking provision has been provided in accordance with SELLP with turning facility on both plots to allow vehicles to enter and leave in a forward gear, including adequate visibility splays for a 30mph speed limit in accordance with Manual for Streets."

### Environmental Protection

No observations, "No comments regarding land contamination and environmental protection."

### Historic Environment Officer

"Thank you for consulting us on this application. It is noted that the applicant has not provided an assessment of the archaeological or heritage potential of the site, as outlined in the NPPF (paragraph 207). This site is located in an area of archaeological potential, south of Monument Record MLI23602: the Medieval Settlement of Spalding, and in proximity to Monument Record MLI23605: cropmarks of probable Roman origin.

Previous evaluation conducted before development in 45 and 47a Cowbit Road, EL114147 revealed medieval finds. Additionally, evaluation at Locksmill Farm, Cowbit Road, EL113700 exposed an undated linear feature as well as redeposited Early Bronze Age, medieval, and post-medieval finds, including pottery, flint tools, tile, clay pipe, and 20th-century glass.

The proposed development comprises 'Residential Development - 2 Dwellings Plots'. The proposed development groundworks and any temporary works associated with the development will have a significant impact on any surviving archaeological remains, resulting in total or partial loss, if present.

As mentioned above, there is potential for development on this site to have an impact on buried remains that should be recorded prior to their destruction - NPPF (paragraph 218). I recommend that if permission is granted, there be an archaeological condition for a mitigation strategy to

effectively deal with this site. This will comprise a phased approach of archaeological investigation and mitigation work.

This will initially comprise but may not be limited to a trial trench evaluation of the site which should aim to determine the presence, absence, significance, depth and character of any archaeological remains which could be impacted by the proposed development as noted above and to inform a programme of further archaeological mitigation work which may be required if archaeological remains are identified in the evaluation.

This will enable any remaining archaeology which currently survives on this site to be properly assessed and recorded prior to their alteration or destruction. This should be secured by South Holland District Council's standard conditions AR01, 02 and 03 and is in accordance with National Planning Policy Framework paragraphs 207 and 218 and the South East Lincolnshire Local Plan (Policy 29).

With respect to the attached archaeological conditions, please contact the Historic Places team at Lincolnshire County Council, Lancaster House, 36 Orchard Street, Lincoln, LN1 1YL, 07386 656079, email [ruben.lopez@lincolnshire.gov.uk](mailto:ruben.lopez@lincolnshire.gov.uk) to discuss the requirements and request preparation of a brief for the works.

It is recommended the resulting mitigation strategy and Written Schemes of Investigation are approved by the LCC Historic Environment Officer prior to formal submission to the Local Planning Authority. Ten days' notice is required before commencement of any archaeological works"

### Senior Ecologist

"I've reviewed the biodiversity net gain assessment and small-sites metric submitted with the application above and wish to draw attention to a few issues that will need addressing. Broadly, I believe the issues suggest that the person(s) carrying out the biodiversity assessment were not entirely knowledgeable/experienced to do so. However, the pictures provided in the assessment do provide additional information and I believe the corrections I've outlined below result in a robust BNG assessment of the site

1. In the baseline habitat section of the "area-habitats" tab, I would argue that the most accurate/suitable base-line habitat classification for this site would be "vegetated garden", rather than "modified grassland" given its urban context and its connectivity to adjacent gardens and boundary hedges. There are also 761.18 sqm entered in the "enhanced" column of this row, however, this is inappropriate in this instance and the 761.18 should be entered in the habitat retained column. See point 3 below.

2. Based on the photos provided, it is unclear to me which trees have been included in the assessment, but within vegetated gardens, only trees that have a diameter at breast height greater than 30 cm must be included in the baseline assessments. I suspect that most/all of the trees onsite are smaller than this and therefore can be left out of the baseline and post-development calculations. However, if a medium or large sized tree (diameter at breast height = 30+ cm) has been cut down/removed after 30 Jan 2020, then it should be included in the baseline habitat calculation (see paragraph: 035 on <https://www.gov.uk/guidance/biodiversity-net-gain>).

3. The value (from point 1) inserted in the "habitats to be enhanced" section is inappropriate to be included as "enhanced" and instead should be entered as "retained" as noted above. The target "lowland acid grassland" habitat proposed is entirely inappropriate here, and the only "green" area-habitat category that can be suitably recorded within the domestic curtilage of a dwelling is "urban-vegetated garden". Please see page 51 of the Statutory Metric User Guide for further clarification.

4. On the "desktop assessment" tab of the metric, there are two pieces of Deciduous Woodland, priority habitat listed within 500 m of the site, however, I am unsure what woodland blocks these are referring to? In any case, I'm certain that there is no designated priority woodland in the area.

If I make the above corrections to the small-sites metric (assuming all the entered area estimates are correct), the metric estimates that the site will require 0.1083 additional habitat units to achieve the 10% net gain requirement. If a medium-large tree was removed post 20 Jan 2020, then this figure becomes 0.2569 units. In all likelihood these will have to be obtained off-site by purchasing biodiversity units from a habitat bank with registered units for sale. The applicants will then have to submit evidence of this purchase along with a biodiversity gain plan when they are applying to discharge the general biodiversity gain condition pre-commencement "

## Public Representations

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, no letters of representation have been received.

## **Key Planning Considerations**

### Evaluation

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019 (SELLP), is the development plan for the district, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework, 2024 (NPPF) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

### Principle of Development

Policy 1 of the SELLP sets out the settlement hierarchy in respect of delivering sustainable development, which meets the social and economic needs of the area whilst protecting and enhancing the environment; in order to provide enough choice of land for housing to satisfy local need, whilst making more sustainable use of land, and to minimise the loss of high-quality agricultural plots by developing in sustainable locations and at appropriate densities.

Policy 1 expresses this sustainable hierarchy of settlements, ranking the settlements deemed to be most sustainable in descending order. The most sustainable locations for development are situated within the 'Sub-Regional Centres', followed by 'Main Service Centres'. Lower down the hierarchy are areas of limited development opportunity including Minor Service Centres, with areas of development constraint comprising 'Other Service Centres and Settlements'. The countryside is at the bottom of the settlement hierarchy and represents the least sustainable location.

The site is within the settlement of Spalding which is classed as sub-regional centre within Policy 1. As such development will be permitted that supports Spalding's role as a service centre, helps sustain existing facilities or helps meet the service needs of other local communities.

The NPPF outlines, within Paragraph 61, that "to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The overall aim should be to meet an area's identified housing need, including with an appropriate mix of housing types for the local community."

Paragraph 73 of the NPPF also emphasises the importance that the contribution of small to medium sized sites can make in meeting the housing requirements. ("Small and medium sized sites can make an important contribution to meeting the housing requirement of an area (..) and are often built-out relatively quickly"). This paragraph seeks to ensure that there is a sufficient supply of homes and advises that sites of all sizes make a contribution to the housing requirement of an area.

As the site is within Spalding, development within this location is considered appropriate. The proposal would support the settlement's role as a sub-regional centre and make a positive contribution to local housing stocks.

It should also be noted that there is an extant permission on the site, which lends further weight to the proposal.

Therefore, the proposal is considered to be in accordance with Policy 1 of the SELLP, as well as Paragraphs 61 and 73 of the NPPF. The principle of development on this site is considered

acceptable subject to other material considerations being met.

### Layout, Design, Scale and Consideration of the Character of the Area

Section 12 of the NPPF, "Achieving well-designed places", states that the "creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve" and as such, it is generally accepted that good design plays a key role towards sustainable development.

Paragraph 135, contained within Section 12 of the NPPF, states that new development should function well and add to the overall quality of the area (including beyond the short term) and should be visually attractive as a result of good architecture and appropriate landscaping. This goes on to establish that it is important that new development should be of the highest quality, to enhance and reinforce good design characteristics, and that decisions must have regard towards the impact that the proposed development would have on local character and history, including the surrounding built environment and landscape setting such as topography, street patterns, building lines, boundary treatment and through scale and massing. Developments should create places that are safe, inclusive, and accessible and which promote health and well-being, with a high standard of amenity for existing and future users, among other considerations.

Likewise, Policy 2 of the SELLP outlines sustainable development considerations for proposals; providing a framework for an operational policy to be used in assessing the sustainable development attributes of all development proposals. Furthermore, Policy 3 of the SELLP requires development to comprise good design; identifying issues that should be considered when preparing schemes so that development sits comfortably with, and adds positively to, its historically designated or undesignated townscape or landscape surroundings.

These policies accord with the provisions of the NPPF and require that design which is inappropriate to the local area, or which fails to maximise opportunities for improving the character and quality of an area, will not be acceptable. Proposals for new development would therefore require the aforementioned considerations to be adequately assessed and designed, including the siting, design, and scale to be respectful of surrounding development and ensure that the character of the area is not compromised.

The dwellings are located significantly below road level, therefore reducing the visual impacts of the development. In any event, the scale of the dwellings is broadly consistent with those to the north of Cowbit Road, and therefore, the visual intrusion as a result is low.

The positioning and orientation of the dwellings would be largely consistent with the linear built of the area, and while there is a greater degree of set back presented here, it would not be to such a great extent as to be considered a break from the pattern of development.

The overall design of the dwellings is typical of the Cowbit Road area, and Spalding as a whole. The use of mirrored designs for each plot further ensures a sense of place is created as a result of this development.

The materials selected are considered appropriate given the fairly eclectic array present in the wider area currently. Likewise, the boundary treatments are considered appropriate from a character and visual standpoint, given the constraints of the site.

Taking account of the design, scale, and nature of the development, as detailed above, the proposal is considered to be acceptable. The proposal would not cause an adverse impact to the character or appearance of the area and would therefore be in accordance with Policies 2 and 3 of the SELLP and Section 12 of the NPPF.

### Impacts Upon Resident Amenity

Paragraph 135 of the NPPF states that development should create places that are safe, inclusive, and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Policies 2 and 3 of SELLP sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.

Significant boundary treatments are present along the northern boundary. These will largely obscure any views or overshadowing that may occur here. In any event, any shadow which would be cast would fall on a path and a blank elevation, thereby ensuring no significant harm occurs.

The proposal would be overlooked to a certain extent. Likewise, it would also overlook properties to a degree. That being said, this application has been assessed previously under the same Local Plan and within the same broad principles of the NPPF. As the proposal would not materially worsen overlooking or overshadowing compared to the extant approval on the site, it is considered that the level of amenity provided is acceptable.

As detailed above, the scale and design of the proposal is considered to have no significant or unacceptable impact on the residential amenities of the occupiers of adjacent properties or land users, when also taking account of the conditions recommended. As such, the proposal is considered to accord with the Section 12 of the NPPF and Policies 2 and 3 of the Local Plan in terms of impact upon residential amenity.

### Highway Safety and Parking

Section 9 of the NPPF is titled 'Promoting sustainable transport'. Within this, Paragraph 116 advises that "development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios".

In respect of highway matters, Policy 2 details that proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met, specifically in relation to access and vehicle generation. Policy 3 details that development proposals will demonstrate how accessibility by a choice of travel modes including the provision of public transport, public rights of way and cycle ways will be secured, where they are relevant to the proposal. Policy 33 further reinforces the need for developments to be accessible via sustainable modes of transport.

Policy 36 of the SELLP, in conjunction with Appendix 6, sets out minimum vehicle parking standards and requires at least two spaces for dwellings of up to three bedrooms and three spaces for dwellings with four or more bedrooms. Adequate parking has been provided on the site, in line with the above standards.

The proposed access would offer sufficient visibility for vehicles entering the road. The turn space provided ensures all vehicles can exit in a forward gear, further ensuring safety is ensured.

The proposal would therefore be acceptable and would not have an unacceptable adverse impact on highway safety in accordance with Policies 2, 3, 33 and 36 of the SELLP, as well as Section 9 of the NPPF.

### Flooding Considerations

Section 14 of the NPPF requires development plans to "apply a sequential, risk-based approach to the location of development - taking into account all sources of flood risk and the current and future impacts of climate change - so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by: (...) applying the sequential test and then, if necessary, the exception test as set out below".

Paragraph 174 of the NPPF states "the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding". The strategic flood risk assessment provides the basis for applying this test.

Paragraph 175 of the NPPF states that "the sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk)."

If, following the application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exceptions Test can be applied if appropriate. The process for applying the Exception Test is outlined within Paragraphs 177, 178 and 179 of the NPPF. Paragraph 178 states "to pass the exception test it should be demonstrated that: a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall"

The site lies within Flood Zones 3 of the Environment Agency's Flood Maps. These have been created as a tool to raise awareness of flood risk with the public and partner organisations, such as Local Authorities, Emergency Services and Drainage Authorities. The Maps do not take into account any flood defences.

The South-East Lincolnshire Strategic Flood Risk Assessment (SFRA) provides an overview of how flood risk has been considered in shaping the proposals of the Local Plan, including the spatial strategy and the assessment of housing and employment sites. Policy 4 of the SELLP is clear in that "Development proposed within an area at risk of flooding (Flood Zones 2 and 3 of the Environment Agency's flood map or at risk during a breach or overtopping scenario as shown on the flood hazard and depths maps in the Strategic Flood Risk Assessment) will be permitted" in instances where specific criteria is met.

It is worth noting that large parts of the district of South Holland lie within Flood Zone 3. It is therefore necessary to use the refined flood risk information (Hazard and Depth maps) within the SFRA as a basis to apply the sequential test.

Within the SFRA, the site is not classed as at risk of flooding. Applying the sequential test, as the SFRA places the site outside of the hazard zone, it is considered an appropriate location for development in line with being sequentially preferable.

If a fluvial flood were to occur, as a result of overtopping of the river Welland, the dwelling would likely be in the path of the flood waters. Therefore, while the dwelling would not be at risk of conventional standing water flooding, it may still be impacted by water damage etc. As a result, it is considered necessary to raise finished floor levels to a minimum of 3.6m OD and flood resilient construction is used to the same level. These measures would ensure that the development would be safe from the impacts of flooding for its lifetime, without increasing flood risk elsewhere. Therefore, while it is not necessary to apply the exceptions test in this instance, the proposal would still conform to the requirements of Paragraph 178 and the proposal considered acceptable.

Overall, when considering the development on balance, it is considered, given the mitigation measures detailed and recommended by condition, that the proposal accords with Policies 2, 3 and 4 of the SELLP and the intentions of the NPPF with regards to flood risk.

### Biodiversity Net Gain

Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) requires developers to deliver a minimum of 10% Biodiversity Net Gain using standardized biodiversity units measured by statutory biodiversity metrics. This is often referred to as the mandatory requirements for Biodiversity Net Gain.

"Under the statutory framework for biodiversity net gain, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met ("the biodiversity gain condition"). This objective is for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat. This increase can be achieved through onsite biodiversity gains, registered offsite biodiversity gains or statutory biodiversity credits".

The biodiversity gain condition is a pre-commencement condition. This relates to a condition that seeks, once planning permission has been granted, a Biodiversity Gain Plan that must be submitted and approved by the planning authority before commencement of the development, alongside the need to submit a Habitat Management and Monitoring Plan.

The effect of Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission is deemed to have been granted subject to the "biodiversity gain condition".

The effect of this "biodiversity gain condition" is that development granted by this notice must not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan, or
- (c) the development is exempt from the biodiversity gain condition.

The proposal in this instance is not exempt from the BNG requirements. The development has demonstrated a net gain of 25.56% for habitat units and 24.88% in hedgerow units.

However, the relevant consultee has raised concerns regarding the validity of these conclusions, querying whether appropriate habitat types had been selected. Following these comments, it is unlikely that the submitted metric is accurate. That being said, Paragraph 19 of the relevant section of the Planning Practice Guidance states: "it would generally be inappropriate for decision makers, when determining a planning application for a development subject to biodiversity net gain, to refuse an application on the grounds that the biodiversity gain objective will not be met." Accordingly, it would be inappropriate to refuse the application on this basis, and instead it is expected that the required net gains are demonstrated via the standard condition and thoroughly vetted at that stage.

### Heritage and Conservation

Policy 29 of the SELLP, alongside Section 16 of the NPPF, relates to the preservation of the historic environment. The NPPF expresses the importance of considering the impact of development on the significance of designated heritage assets; advising that development and alterations to designated assets and their settings can cause harm. These policies ensure the protection and enhancement of the historic buildings and environments. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance should be treated favourably. These provisions extend to archaeological remains.

Paragraph 207 of the NPPF states: "Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation".

The Lincolnshire County Council Historic Places Team, who act as advisors on archaeological matters within the District, have highlighted the potential for the site to be of archaeological interest. Accordingly, the body has recommended the imposition of the standard suite of archaeological conditions, amounting to a written scheme of investigation and exploratory trenches prior to the commencement of development.

Considering the extent of development and the potential harm which may arise as a result of these works commencing unchecked, it is considered appropriate to recommend the imposition of these conditions in this instance.

### Other Matters

A previous decision, H16-1298-21, has granted permission for a near identical proposal. The major difference between the two is the inclusion of biodiversity measures within this proposal; however, fundamentally the two applications are the same, and would deliver the same end product. With the exception of the need for biodiversity net gain introduced via the Environment Act, 2021, the assessment has been made under comparable legislation as before. The NPPF has not fundamentally altered with regards to amenity or design considerations, and the Local Plan has not been altered. The primary change emerging from revised NPPFs is greater weight being given in favour of housing developments.

This previous decision is still extant and will be extant once the 8 week period for a decision to be made has finished. Therefore, regardless of the outcome of this decision, a comparable scheme could occur. This matter carries significant weight.

### **Planning Balance**

As detailed above, Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

As an extant permission for fundamentally the same proposal exists on the site, it would be inappropriate to refuse this application, irrespective of the above narrative. Therefore, despite there being some degree of amenity impact arising from the proposal, the application is considered to be acceptable in this instance.

## **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.

## **Conclusion**

Taking these factors into consideration, the proposal is considered to comply with Policies 1, 2, 3, 4, 28, 29, 31, 33 and 36 of the SELLP, as well as Sections 9, 12, 14, 15 and 16 of the NPPF. There are no significant factors in this case that would outweigh the benefits of the proposal; therefore, the planning balance is in favour of the proposal.

## **Recommendation**

Based on the assessment detailed above, it is recommended that the proposal should be approved under Delegated Authority.