

DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No: H16-1091-20 **Applicant:** Burmor Construction Ltd.
Proposal: Residential Development of 20 Dwellings - approved under H16-0283-17. Modification of Conditions 2, 12 & 17 relating to highways and levels.
Location: Land Off Willow Walk Spalding
Terminal Date: 10th September 2021

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

02	Development Management
03	Design of New Development
04	Approach to Flood Risk
05	Meeting Physical Infrastructure and Service Needs
06	Developer Contributions
10	Meeting Assessed Housing Requirements
11	Distribution of New Housing
17	Providing a Mix of Housing
18	Affordable Housing
28	The Natural Environment
32	Community, Health and Well-being
33	Delivering a More Sustainable Transport Network
30	Pollution
31	Climate Change and Renewable and Low Carbon Energy
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2021

NPPF 2021.

Representations:

	Object	Support	No Obj.	Comments
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1

SHDC INTERNAL	0	0	0	2
OTHER STATUTORY BODIES	0	0	0	2
RESIDENTS	1	1	0	2

CASE OFFICER ASSESSMENT

PROPOSAL

S73A CONTINUATION - Residential Development of 20 Dwellings - approved under H16-0283-17. Modification of Conditions 2, 12 & 17 relating to the approved plans, highways and levels.

This Section 73 application seeks to regularise the development as it has been built out, as the development was not built in accordance with the approved suite of plans and documents under the host permission H16-0283-17.

Since the submission of this S73 application in December 2020, amended plans and documents have been received from the applicant, following the detailed discussions of SHDC and LCC officers with the applicant, the end user and representations and discussions with local and neighbouring residents.

As a result of the various amendments that have been received, a number of consultation exercises have taken place with residents, notably on 16 Dec 2020 regarding the originally submitted scheme and on the following dates as a result of amendments: 25 Feb 2021, 22 June 2021, 27 July 2021 and 19 August 2021.

A reconsultation was not undertaken regarding the plan referenced 07-0123-005 P8, as this plan set out minor corrections that had been identified.

In addition an indemnity to enable SHDC refuse vehicles on to the private road to collect refuse from the dwellings has been entered in to; this indemnity is dated 19 August 2021 and is to form one of the approved suite of plans and documents.

SITE DESCRIPTION

As host application, however this development is under construction and is reaching completion.

RELEVANT PLANNING HISTORY

H16-0635-20. CONDITION COMPLIANCE. Details of contamination, boundary treatments and refuse arrangements (Condition 3 - Contamination; Condition 7 - Boundary Treatments; Condition 9 - Refuse; of H16-0283-17). APPROVED 7-09-21.

H16-0180-20. Details of full closure report and landscaping (Conditions 3 (iv) and 6 of H16-0283-17). APPROVED 25-03-20.

H16-1234-19. Details of boundary treatment (Condition 7 of H16-0283-17). APPROVED . 05-03-20.

H16-0923-19. NON MATERIAL AMENDMENT. APPROVED 19-09-19.

H16-0686-19. Details of landscaping (Condition 6 of H16-0283-17). APPROVED 21-11-19.

H16-0468-19. Details of external materials (Condition 4 of H16-0283-17). APPROVED 14-05-19.

H16-0197-19. Details of Conditions 3 (contamination of land or pollution of controlled waters), 4 (external materials of construction), 5 (external boxes for gas and electricity supplies and of any gas flues and soil vent pipes), 8 (landscape management and maintenance schedule), 9 (means of storage and disposal of refuse and recycling), 10 (construction management to minimise disturbance during the construction process), 11 (prevent the deposit of mud on public highways), 15 (surface water drainage scheme), 16 (design and location of all lighting) & 17 (existing and proposed site levels and proposed floor levels) of H16-0283-17. APPROVED 26-04-19.

H16-1218-18. SECTION 73 MODIFICATION. Residential Development of 20 Dwellings - approved under H16-0283-17. Modification of Condition 2 to allow amendments to previously approved plans and Conditions 13 and 14 relating to commencement/occupation of dwellings in conjunction with roads and footpaths. APPROVED 06-03-19.

H16-0283-17. FULL. Residential development of 20 dwellings. APPROVED 30-07-18.

CONSULTATION RESPONSES

SHDC Environmental Services

No objection.

SHDC Environmental Services

Regarding noise - no objection.

SHDC Environmental Protection Officer

Comments of 18-03-21:

Are soakaways 1, 2, 4, 5, 15 & 16 as shown on the domestic drainage plan 07-0123-007 rev P7 already installed? If they are, then I have no comments.

If they are not, then the developer will need to take precautions to ensure the cover system already validated remains uncompromised, and a method statement detailing the precautions to be taken will need to be submitted.

The EHO confirmed on 1 Sept 2021 that the details submitted allayed Environmental protection concerns.

LCC Highways & SUDS Support

Response of 11 January 2021

Notice is hereby given that the County Council as Local Highway and Lead Local Flood Authority:

Does not wish to restrict the grant of permission.

We do not object to the modification of conditions 2, 12 & 17 relating to highways and levels. However please consider the following:

- As the road is to remain private and proposed not to be constructed to adoptable standards the road may not be suitable for refuse vehicles.
- The submitted plans do not include a waste collection point.
- The proposed construction of full infiltration through permeable paving and soakaways is not suitable, please refer to Ciria SuDS Manual 2015 Chapter 20.9.3 Subgrade with low CBR (<2.5%) and Chapter 25.3 Infiltration Testing Methods.
- The proposed drainage strategy increases the flood risk elsewhere and in accordance with Paragraph 163 of the National Planning Policy Framework "When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere."

- Lincolnshire County Council as Local Highway and Lead Local Flood Authority does not support the proposed construction and drainage strategy.

The following standard paragraph applies only to the modification of conditions 12 & 17 and condition 2 where conditions 12 & 17 apply.

NO OBS.

Having given due regard to the appropriate local and national planning policy guidance (in particular the National Planning Policy Framework), Lincolnshire County Council (as Highway Authority and Lead Local Flood Authority) has concluded that the proposed development is acceptable and accordingly, does not wish to object to this planning application.

Response of 15 March 2021

ADDITIONAL INFORMATION REQUIRED

Following the amendments submitted to the Local Planning Authority on 23 February 2021 the proposed highway drainage strategy and highway construction is acceptable/satisfactory for a private road subject to third party land agreement/easement and Anglian Water agreement.

However we do not fully accept the whole site drainage as soakaways is proposed for roof surface water runoff. Infiltration test results did not achieve the required minimum three tests in each pit and the trial pit logs show subgrade that is known to be poor for infiltration.

The whole site falls towards existing properties to the rear with an increased risk to flooding.

The applicant needs to provide:

- A suitable drainage strategy for roof surface water.
- A drainage catchment plan for all impermeable surface areas.
- A flood exceedance routing plan - for rainfall in excess of 1in100year + 40% CC

Response of 20 August 2021

This is the final response from Lincolnshire County Council in respect of the highway and surface water flood risk impacts of the residential development Consented under H16-0283-17 for which Modification of Conditions 2, (drawings including drainage strategy), 12 (property occupation) & 17 (levels) are proposed under Application number H16-1091-20.

In respect of the highways;

Because the drainage of the road and footway areas of the development is reliant upon an arrangement of a privately-maintained pump and a piped outfall connection to an Anglian Water sewer which passes through third party land, the Highway Authority has declined to adopt the roads and footways as Public Highway and the responsibility for the future maintenance of the road and footways will therefore rest with owner of the site, Cross Keys Housing or its successors.

Never-the-less, because the Highway Authority has a duty to ensure that new residential developments of a certain size are adequately accessible, the construction of the roads and footways has been undertaken with routine inspections throughout by an officer of the Authority. Material testing has been undertaken throughout by the developer and the results of that testing has been shared with the Authority. The Authority is therefore satisfied that the road and footways have been constructed to a standard which is equal to that of an adoptable estate road and will provide safe, suitable and durable access for residents of the development, their visitors and for service vehicles, such as the refuse collection vehicle and vehicles making deliveries to homes on the development. The turning area on the site is of sufficient size to allow the refuse collection vehicle and delivery vehicles to turn around within the development so that their drivers do not have to reverse out onto the Public Highway (Willow Walk). The construction of the road is adequate to bear the wheel loadings of those service vehicles. The number of off-carriageway parking spaces provided on the development is appropriate for the residential homes within the development.

In terms of meeting the highway requirements of the NPPF, the Highway Authority is satisfied that the development would not be expected to have an unacceptable impact upon highway safety.

In respect of surface water flood risk;

The principal factor to be born in mind for this development, when considering its potential for creating or increasing surface water flood risk, is that it is constructed on a 'Brownfield Site'. The surface of this site, known as 'Law's Yard', was previously almost entirely covered by commercial buildings and hard-standing areas. This can be seen on the aerial view of the site that has been submitted as the Site Location Plan for this Application. There is understood to have been no positive surface water outfall from the previous developed site to an off-site means of disposal such as a sewer or watercourse - had there been so, then the developer would surely have utilised that means of disposal. Therefore, all surface water falling onto the commercial site would have had to have been disposed of, by un-attenuated infiltration, into the soils beneath what little open space there was on the site that was neither buildings nor hard-standing.

The developed site now has a much greater proportion of its surface area that is permeable lawns and planted areas. These areas allow direct infiltration of rainwater into the underlying soils.

All rainwater falling on those parts of the development that are impervious is now managed.

Rainwater falling onto the site's road and footways is guided by the gradients of the road and footways into road gullies. The water in those gullies is then conveyed by a pipe and manhole network to a pump that lifts the water into a downstream pipe network running through the garden of number 2a Osier Road which then discharges the water off-site into an Anglian Water sewer in Osier Road. Immediately upstream of the pump is an underground cellular crate reservoir that will store storm water during those times when the volume of rainwater coming off the road and footways exceeds the capacity of the pump. The gullies, pipes and the manholes up-stream of the pump have an internal volume that is also able to provide storage of water during heavy storm events. What this means is that the ground beneath the site has to absorb approximately 20% less of the rainwater falling on the site, because the rainwater from the road and footways will now be conveyed away from the site and the ground will thus have an increased capacity for absorbing surface water from other parts of the site.

The site's driveways and car parking areas are constructed with permeable block paving. This not only allows rainwater to infiltrate into the ground directly where it falls but also provides underground storage of surface water in the voids between the Type 3 aggregate that is used as a sub base. This means that in heavier storm events, water that is not able to immediately infiltrate into the ground can be held underground and not therefore build up above ground and potentially overflow onto adjacent land and property.

The remaining significant areas of impermeable surface on the site are the house roofs. Rainwater falling on the roofs is conveyed by guttering, downpipes and underground pipes into eight separate and un-connected soakaways which have been constructed under rear garden areas and under car parking/manoeuvring areas. These are cellular crate type soakaways (rather than simply holes in the ground filled with waste bricks and concrete) and have been individually designed to accommodate the volume of water from the impervious areas that they serve during storm conditions and then infiltrate that water into the surrounding soil. The soakaways were constructed in the virgin ground prior to the building-up of the level of the whole site to address the Environment Agency's coastal and fluvial flood risk requirements.

The submitted details include a flood routing plan. This, together with the submitted External Levels Plan, show how, during severe storm events, any build-up of surface water that is not able to get away from the site via the pumped connection into the Anglian Water sewer or to infiltrate into the sub-soil would be guided towards, and contained within the footprint of the carriageway, which lies lower than all but the rear garden areas of the properties that are on the south-eastern and south western edges of the site (plots 1 to 9). The carriageway has a kerb up-stand of 110mm and would therefore be able to contain a considerable volume of storm water until it is able to be pumped away into the Anglian Water sewer. Whilst this may be a short-term inconvenience, the storm water would thus not be a threat to life, limb or property. Whilst it is acknowledged that the rear gardens of the properties on the south-eastern and south-western edges of the site do slope towards neighbouring properties, the gradient is not at all steep and these garden areas are laid to grass. It is therefore expected that the storm water would infiltrate into the ground rather than flow overland onto neighbouring property.

The objection e-mail from residents of a neighbouring property in Cley Hall Drive, has been referred to the highway authority. In it, reference is made to an earlier response from a fellow highways

officer about the drainage proposals for the development. The objectors are understandably concerned about any increase in flood risk to their property. It is reported that in separate correspondence or conversation between the residents and the fellow highways officer, reference was made to surface water coming onto their property, from the Application Site, being contaminated. The highway authority has neither the expertise nor the jurisdiction in matters of site contamination and therefore any such comment, written or verbal, is clearly outside of the professional competence of a highways officer and of course wholly inappropriate. Such matters are for the expertise of the Local Authority's Environmental Protection Officer and apologies are offered to the residents and to the Local Planning Authority for the unnecessary concern and additional work that this ultra vires comment has caused. In respect of the perceived increase in surface water flood risk to the neighbours' property from the Application Site; scaling from Ordnance Survey plans, the part of the neighbours' property boundary that is shared with the Application Site is just under 7 metres in length (although there does appear to be an area of undeveloped 'no man's land' lying between the red outline of the Application Site and curtilage of the neighbouring property). Whilst the gradient of the post-demolition/pre-development site may have been generally towards the south-east, towards properties on Cley Hall Drive and Rutland Close, the residential development now on the site slopes in numerous directions but, as can be seen on the submitted External levels Plan, almost entirely towards the carriageway in the centre of the site. The only elements of the development that, by proximity, could conceivably pose a surface water flood risk to the neighbouring property would be Soakaway 8, in the garden of Plot 5, and the rear garden area of Plot 5. As indicated above, the soakaways on the site were excavated in the virgin ground of the Application Site, before the levels of the site were built-up. Soakaway 8 will be wholly below the level of the neighbouring property and cannot therefore discharge water onto that neighbouring property. The design and provision of private domestic soakaways fall under the jurisdiction of Building Control. Whilst it may not be possible for a Building Control Officer to be present on site to witness the construction of every soakaway on a development site, the Local Authority Building Control officer has advised that the footings for the pathway at the rear of Plot 5 were inspected and at that time Soakaway 8 was completed in the virgin ground. The Highway Authority is therefore satisfied that this soakaway is constructed below the level of the neighbouring property. It is understood that there is currently no prescribed standard for the design of domestic soakaways. There would therefore appear to be no cause to reject the design of the soakaways on this development by reason of their design being based upon a 1 in 30 year storm event. Soakaway 8 accepts the rainwater from just the rear roofs of plots 5, 4 and half of plot 3.

This is a plan area of approximately 55 square metres. The volume of surface water run-off from this area will not be great and therefore any flows that might, in an extreme storm event, overwhelm the design capacity of soakaway 8 would not be expected result in any significant overland flow onto neighbouring land and property. Going back to the comment at the beginning of this response on the site's impact for creating or increasing surface water flood risk, the Application Site had previously been almost entirely covered by buildings and hard-standing areas and the site's surface water run-off would have been completely un-managed. If there had been no flows of surface water from that commercial development onto adjacent land and property, it is extremely unlikely that there would be any such flows with the residential development that is there now with a significant proportion of the site's water being taken off the site into the Anglian Water sewer, an increase in the proportion of the site that is directly permeable and with an effective infiltration-based drainage system that also has capacity to safely store the water from heavier storm loadings either by containing it within the footprint of the carriageway or underground in the voided stone sub base, the crate attenuation tank or modular crate soakaways.

Anglian Water

Foul Water Comments: The foul strategy as outlined in 07-0123-020 P1 is acceptable to Anglian Water. We can therefore recommend discharge of condition 2.

Surface Water Comments: The surface water strategy as outlined in 07-0123-020 P1 is acceptable to Anglian Water. We can therefore recommend discharge of condition 2. Evidence that the surface water hierarchy has been followed must be presented upon application at S106 stage.

Officer comment: The S.106 process is a separate statutory regime.

Public

Representations have been received from four households, setting out the following concerns:

One objection to the original submission:

- Concern regarding the levels in the area between Plots 1-5 and Plots 6+7 and the landfall towards adjoining property
- The depth of Soakaway 6 being fed by this area at 400mm would appear to be shallow
- No indication of the drainage to the main road area

Three objections to the revisions and additional details submitted:

- Levels around property boundaries in Osier Road - Will there be a retaining wall built to hold back the land away from my fencing or will it slope down to the same level?
- Plot 10 and Plot 11 are not disabled accessible due to the passage to the rear of the property's where the disabled ramp is located being too narrow for a wheelchair.
- Drainage of the hardstanding area between Plots 5 & 6
- Although there is a Soakaway in this area (Soakaway 6) this predominantly is collecting the surface water from the adjacent plots and would not be sufficient to collect the majority of rainwater from a flash flood / storm from spilling into and flooding part of a neighbouring garden. Consider that additional drainage is required in this area.
- Flood Risk to a property in Cley Hall Drive
- Ground Contamination potential for gardens in Cley Hall Drive
- Lack of soft landscaping hereby increasing both the flood risk and the risk of run-off/contamination to Cley Hall Drive
- Privacy to Cley Hall Drive as result of land level changes
- Details of the soakaways
- Impact on Sycamore Tree covered by TPO
- Concerned that the last statement from Lincolnshire County Council, which is on public record on the SHDC website, indicates that there is an increased flood risk unless changes are made, and that this could impact both the insurability and saleability/resale value of our property in the future.
- Note that the soakaway calculations submitted with these amended plans are based on 1 in 30 year calculations rather than 1 in 40 years. The calculations are dated 05/05/2019 when I understand building regulations were different to those today, over 2 years later.
- No objection to the fence and it is required as are the privacy screens. Strongly object to the submitted plans minus the privacy screens on plots 10 to 14

One objector subsequently to remove objection provided the 1.8m screens are reinstated. This was confirmed by a representation of support dated 31 August 2021, stating "I am in support of the proposal and have no objection to the changes made."

No objection to the location of the surface water drainage locations as proposed.

PLANNING CONSIDERATIONS

Section 38 (6) sets out that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Modification of Conditions 2, 12 & 17 of H16-0283-17, relating to highways and levels.

The purpose of this report is to discuss whether the submitted details are acceptable in order to enable the grant of this application and modify conditions 2, 12 and 17 of H16-0283-17. These conditions were appended to the original permission as a result of the complexity of the site, the detailing of the highway, that was originally to be adopted, the location of the site within the flood zone and the impact this has upon levels.

A further level of complexity has been introduced as the development was not constructed to the approved levels and after commencement it became apparent that the developer no longer intended for the highway to be adopted. This has had impacts upon the form of boundary treatments required, the levels across the site and the resultant impacts on neighbouring amenity, as well as drainage detailing.

The effect of approving this application would result in a new planning permission governing the site (securing all details approved pursuant to condition discharges under the current permission H16-0283-17) which will have the effect of retrospectively authorising the development undertaken so far and governing future development of the site.

Condition 2

The purpose of condition 2 is to set out the approved plans and documents, and this is informed by the plans and documents discussed in relation to Conditions 12 and 17 below, as well as the details approved relating to other conditions, as set out in the site history above.

The plans and documents approved by H16-0283-17 are Dwg. Nos: 358.SL.01A, 358.P1.01A, 358.P1.02A, 358.P6.01A, 358-P8-01A, 358.P10.01A, 358-P10-02A, 358.P15.01A, 358.P17.01A, 358.P17.02A, 358.DSP.01A, 358.LP.01. Drainage Strategy Rev A (Hemmings, 17th July 2017). Flood Risk Assessment Rev C (Hemmings, 27th March 2017).

The revised suite of plans and documents considered to be the final version of this application are as follows:

H16-1091-20 Residential Development of 20 Dwellings - approved under H16-0283-17. Modification of Conditions 2, 12 & 17 relating to highways and levels.

Application Form received 4.12.20

Indemnity dated 19 August 2021

07-0123-005 P8 received 26.8.21

8011 1004 P07 received 19.8.21

07-0123-020 P4 received 19.8.21

07-0123-011 P4 received 19.8.21

07-0123-010 P4 received 19.8.21

07-0123-008 P4 received 19.8.21

07-0123-007 P9 received 19.8.21

07-0123-006 P8 received 19.8.21

18011 1010 P01 received 23.7.21

18011 4000-P04 Elevations - Plots 01-05 received 21.6.21

18011 4002-P04 Elevations - Plots 10-14 received 21.6.21

18011 4003-P03 Elevations - Plots 17-20 received 21.6.21

07-0123-001 P2 received 14.6.21

07-0123-009 P4 received 14.6.21

07-0123-019 P2 received 14.6.21

Soakaway 1 received 14.6.21

Soakaway 2 received 14.6.21

Soakaway 3 received 14.6.21

Soakaway 4 received 14.6.21

Soakaway 5 received 14.6.21

Soakaway 6 received 14.6.21

Soakaway 7 received 14.6.21

Soakaway 8 received 14.6.21

Highways Surface Water Drainage System - 1 in 100 year + 40% Climate Change Prepared by G30 Consulting Dated 18th February 2021 received 23.2.21

07-0123-012 P4 received 23.2.21

07-0123-018 P3 received 23.2.21

H16-0180-20 CONDITION COMPLIANCE Details of full closure report and landscaping (Conditions 3 (iv) and 6 of H16-0283-17)

Application Form received 25.2.20

Topsoil Report BS3882 Total Aggregates Ltd received 25.2.20

Topsoil Analysis Report Landscape 20/Nov 2019 received 25.2.20

H16-1234-19 CONDITION COMPLIANCE Details of boundary treatment (Condition 7 of H16-0283-17)

NONE

H16-0923-19 NON MAT AMENDMENT Residential development of 20 dwellings - approved under H16-0283-17 - Amendment to window details on Plots 6, 7, 8, 9, 15 and 16

18011 4001 P04 received 13.9.19

H16-0686-19 CONDITION COMPLIANCE Details of landscaping (Condition 6 of H16-0283-17) - Residential development of 20 dwellings

Application Form received 12.7.19

19.1446.001A received 25.10.19

Geomatters Letter 10 September 2019 JR/AT/GML18246/TL1Rev1 received 13.9.19

Geomatters Letter 17 September 2019 AT/GML18246/RS/1 received 13.9.19

H16-0468-19 CONDITION COMPLIANCE Details of external materials (Condition 4 of H16-0283-17)

Materials Schedule Job No: 18011

H16-0197-19 CONDITION COMPLIANCE Details of Conditions 3 (contamination of land or pollution of controlled waters), 4 (external materials of construction), 5 (external boxes for gas and electricity supplies and of any gas flues and soil vent pipes), 8 (landscape management and maintenance schedule), 9 (means of storage and disposal of refuse and recycling), 10 (construction management to minimise disturbance during the construction process), 11 (prevent the deposit of mud on public highways), 15 (surface water drainage scheme), 16 (design and location of all lighting) & 17 (existing and proposed site levels and proposed floor levels) of H16-0283-17

Application Form received 22.2.19

Email of agent Burmor Projects dated 15 April 2019 13:37 confirming hours of working received 22.2.19

Traffic Route Map (large scale) received 22.2.19

Traffic Route Map (small scale) received 22.2.19

SITE SET UP PLAN received 22.2.19

1001 P04 (layout) received 22.2.19

Remedial Method Statement GML18246/4/1 Revision 1 received 22.2.19

Construction Management Plan received 22.2.19

1830 LTG 5000 Street Lighting Layout received 22.2.19

Lighting Design Report 1830 12 February 2019 received 22.2.19

Drainage Strategy Report by G30 Consulting Document Reference DSR/001 Dated 22nd November 2018 received 22.2.19

Environmental Factual & Interpretive Report Project No.: 4926 received 22.2.19

Exploratory Hole Layout Plan GML18246 005 received 22.2.19

H16-1218-18 SEC 73 MODIFICATION. Residential Development of 20 Dwellings - approved under H16-0283-17. Modification of Condition 2 to allow amendments to previously approved plans and Conditions 13 and 14 relating to commencement/occupation of dwellings in conjunction with roads and footpaths

None. Overtaken by current application.

H16-0283-17 FULL Residential development of 20 dwellings

Application form received 28.3.17

358.SL.01A received 8.8.17

358.P1.01A received 8.8.17

358.P1.02A received 8.8.17

358.P6.01A received 8.8.17

358-P8-01A received 8.8.17

358.P10.01A received 8.8.17

358-P10-02A received 8.8.17

358.P15.01A received 8.8.17

358.P17.01A received 8.8.17

358.P17.02A received 8.8.17

358.DSP.01A received 8.8.17

358.LP.01. received 26.2.18

Drainage Strategy Rev A (Hemmings, 17th July 2017).

Flood Risk Assessment Rev C (Hemmings, 27th March 2017)

Condition 12

In granting the host permission for this development it was intended that the access road become part of the adopted highway within Spalding.

The condition appended to the host consent is worded as follows:

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.

The reason for this condition was to ensure safe access to the site and each dwelling/building in the interests of residential amenity, convenience and safety.

It became apparent during construction and the consideration of this site that the road was not to be adopted, and further consideration was required by SHDC as Local Planning Authority and LCC as Lead Highway and Flooding Authority. The results of the consultation process are set out above.

The non-adoption of the highway has had significant knock on effects to the functioning of the site with regard to the structure of the road and its drainage and refuse collection arrangements with the District Council.

As a result the detailed technical details for the road construction and drainage have been submitted to support this application, SHDC Building Control and LCC have confirmed that the highway and drainage details were based upon a sound methodology and are acceptable. Officers are therefore satisfied that the road specification is acceptable and enables appropriate and safe access in accordance with the relevant planning policies both in the Local Plan and NPPF.

Condition 17

The condition appended to the host consent is worded as follows:

Before the commencement of the development hereby permitted, full details of the existing and proposed site levels and proposed floor levels of the buildings and hard surfaced areas shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the details so approved.

The reason for this condition is to ensure that the Local Planning Authority retains control over the finished site and floor levels of the development, in the interests of the amenity of adjacent residents and its visual and architectural relationship with adjacent development. This issue is considered to be integral to the development and therefore full details needed to be finalised prior to the commencement of works.

Details were formally submitted to discharge this condition under reference H16-0197-19, set out above, and approved on 26-04-19. Subsequently it became apparent that the development was not being constructed in accordance with the approved levels, and this has had the impacts that are discussed below.

Accurate drawings showing the levels for this development, including spot levels and gradients of the garden areas have now been submitted to support this application. These levels have been considered in conjunction with the interlinked boundary treatment changes and following revisions of the boundary treatment proposals the levels are considered to be acceptable in terms of impacts upon the amenities of neighbouring residents. These levels, together with the boundary treatment changes and the reintroduction of visibility screens to Plots 10, 11, 12, 13 and 14 overcomes a wider matter of perception of overlooking, and this needs to be read in conjunction with the details of the boundary treatments, and those details submitted alongside condition discharge application H16-0635-20 and the relevant Officer's report. This explains why the revised boundary details are considered to be acceptable taking into account all concerns from local residents in terms of overlooking and otherwise. Officers remain comfortable that the retrospective approval of site levels through this application, coupled with the approval of the revised boundary treatments, ensures that the development would not unacceptably impact upon the amenity of neighbouring residents or their amenity.

The changes to the boundary treatments has led to the increase in height of some boundary treatments to over the standard 1.8m in height, to the heights and forms specified in the description of the development above.

Disabled access to the rear of certain plots has been raised as an objection. SHDC Building Control have been involved in the detail of this scheme and are satisfied with the layout and arrangements with regard to Part M of the Building Regulations.

The grading of the gardens along the external boundaries of the site has been the source of objections with regard to the potential for surface water run off and flooding, as well as the possibility of passing contaminants to adjoining land. A high level of additional information was requested of the developer to clarify matters relating to the treatment of existing and imported soils and this is addressed in detail in the responses of the SHDC Environmental Protection Officer set out above.

It is considered that the development accords with the requirements of SHDC regard to contamination matters.

With regard to the potential for water run-off and flooding, the surface water drainage details have been submitted and SHDC Building Control and LCC as Local Highway and Lead Local Flood Authority consider that the details submitted, are acceptable.

Other matters

With regard to a statement from Lincolnshire County Council, regarding impacts to the insurability and saleability/resale value of property in the future, this statement was overtaken by the consultation response from LCC of 19-08-21. Any recourse or complaint regarding this statement by an LCC officer is to be addressed by LCC. With regard to this application, the LCC officer's opinion regarding non-planning matters are not relevant to the consideration of this application and can be given no weight. Officers have therefore paid no regard to this statement from LCC and only considered and applied those representations from LCC that are relevant to the subject matter of the conditions being discharged.

CONCLUSION

After detailed consideration of the submissions, the development as it now is on site and the responses of consultees, officers conclude that in totality the package of measures cover all amenity and technical concerns as far as practicable given constraints of site.

The application and details provided to amend Conditions 2, 12 and 17 are considered to be acceptable and are considered to satisfactorily address the representations made by local residents; consultees; and meet the requirements of the relevant planning policies as detailed above.

The consequence of the S73 application is to create a new permission. The section 38 (6) exercise to address each relevant policy of the SELLP is set out below:

Policies 2: Development Management and 3: Design of New Development - The design approach to the development in terms of architectural approach is not altered by this S73 application. The wider impacts that have resulted as a result of the alterations to the scheme are addressed above in full.

Policy 4: Approach to Flood Risk - Matters relating to flood risk are addressed in full above.

Policies 5: Meeting Physical Infrastructure and Service Needs, 6: Developer Contributions and 10: Meeting Assessed Housing Requirements, are addressed by the host consent and the S73 scheme. Responsibilities under the host scheme are transferred to the S73 scheme by the imposition of conditions and a Deed of Variation.

The S73 development is in accordance with Policies 11: Distribution of New Housing, 17: Providing a Mix of Housing and 18: Affordable Housing. No changes have been made to the substantive issues relating to these policies by the S73 scheme.

Policy 28: The Natural Environment. Whilst this policy has introduced additional considerations than

previously considered at the time of the original host consent (e.g. bio-diversity net gain), this is not a specific matter that is relevant to the determination of this application or the amendments to the planning conditions proposed. Officers are mindful however that this is the development of this former brownfield site to a residential development with shared green spaces as well as private gardens, that officers consider should have a positive impact upon the wildlife and biodiversity of the area, in comparison to the previous buildings and extent of hard standing on the site. In any event, even if this policy was not complied with, for the reasons explain in this report it is not considered that this should prejudice approval.

Policies 32: Community, Health and Well-being and 33: Delivering a More Sustainable Transport Network are not impacted by the S73 application and the scheme delivers the same benefits as the host consent or in any event is considered to remain acceptable.

Matters relating to Policy 30: Pollution are discussed in full above. The development is now compliant with the expectations of the SHDC Environmental Health and the Planning Service.

Policy 31: Climate Change and Renewable and Low Carbon Energy is addressed via the substantial measures in place to protect this development and neighbouring properties from the impacts of flooding and climate change over time.

Policy 36: Vehicle and Cycle Parking and the associated APPENDIX 6: Parking Standards do not differ from the host scheme and are acceptable.

In conclusion, it is considered that as a matter of planning judgment the development plan is complied with fully (or at least as a whole) for the reasons set out in this report and officers' consideration of the relevant planning policies, and that there are no material considerations to justify refusal. Even though an existing breach of planning control is a negative material consideration that has been considered in the balance, this does not justify refusal, particularly as the grant of the application is considered acceptable and will enable delivery and occupation of this scheme which will make a meaningful contribution to housing supply in the District. In any event, officers have considered the site characteristics, history and planning policies carefully. If however it was found that the development plan was not complied with, officers remain of the view that this application should be approved as the revised details are considered acceptable and again in light of enabling the delivery of this site and housing for the District.

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.

RECOMMENDATION

That the application be approved under delegated powers, subject to the completion of a Deed of Variation to the S106 agreement.

The application was considered by the Chairman's Panel meeting of 3 September 2021 and it was agreed that a delegated determination was appropriate.