

## DECISION DELEGATED TO HEAD OF PLANNING

**Application No:** H17-1116-25      **Applicant:** Seagate Homes Limited

**Proposal:** Confirmation of lawful development comprising the installing of external foul drainage to Plot 2

**Location:** Beech House 20 Gosberton Road Surfleet

**Terminal Date:** 26th January 2026

### Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

### Representations:

	Object	Support	No Obj.	Comments
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### CASE OFFICER ASSESSMENT

#### Proposal

The application seeks consent to confirm that lawful development, comprising the installation of external foul drainage for Plot 2, has been undertaken with the site. According to the submission, the works have been installed following the approval of planning permission H17-1016-21, which granted consent for 9 dwellings on 20 May 2022.

The application is submitted under Section 191 of the Town and Country Planning Act (1990) (as amended).

#### Site Description

The site comprises land at Beech House, 20 Gosberton Road. Surfleet. The surrounding area is characterised by dwellings of varying ages and designs. There is a grade I listed building, St Laurence's Church, located approximately 50m to the south-east of the site. To the south of the site, there is a cafe a vehicle mechanics site. There are fields to the west of the site, St Laurence Close is located to the north, and Gosberton Road is located to the west.

#### Planning History

H17-1129-17: (Outline Application) Demolition of 20 Gosberton Road and development of up to 10 houses - approved 26 April 2018

H16-0497-19: (S73 Application) Demolition of 20 Gosberton Road and development of up to 10

houses - approved under H17-1129-17. Amendment to site boundary to incorporate right of way to front of site - approved 10 June 2019

H17-0430-21: (Outline Application) Demolition of 20 Gosberton Road and development of up to 10 houses - re-submission of H17-1129-17 - approved 17 June 2021

H17-1016-21: (Full Application) Residential Development of 9 Dwellings - approved 20 May 2022

H17-0913-24: (Discharge of Conditions) Details of external materials, Construction Management Plan and Method Statement (Conditions 3 and 8 of H17-1016-21) - approved 29 November 2024

H17-1024-24: (Discharge of Conditions) Details of written scheme of archaeological investigation and final report (Conditions 5 & 7 of H17-1016-21) - refused 28 January 2025

H17-0121-25: (Discharge of Conditions) Details of contamination of land or pollution of controlled waters (Condition 12 of H17-1016-21) - approved 24 March 2025

H17-0168-25: (Discharge of Conditions) Details of written scheme of archaeological investigation (Condition 5 of H17-1016-21) - approved 26 March 2025

H17-0870-25: (Section 191 Certificate of Lawfulness) Confirmation of implementation of H17-1016-21 for residential development by installing external foul drainage at Plot 1 - not validated

## **Consultation**

There is no statutory obligation for the Local Planning Authority (LPA) to publicise an application for a certificate of lawful development. However, a site notice has been displayed next to the site for 21 days in the interests of transparency. No representations have been received from members of the public during the consultation period.

## **Key Planning Considerations**

### Relevant Legislation

Section 191 of the Town and Country Planning Act (TCPA) (1990) (as amended) - sets out the following:

"(2) For the purposes of this Act uses and operations are lawful at any time if:

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force."

Section 191(4) further sets out that:

"(4) If, on an application under this section, the local planning authority is provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

National Planning Practice Guidance clarifies that it is the responsibility of the applicant to provide sufficient information to support the application (Paragraph 006 Reference ID: 17c-006-20140306). The evidence provided needs to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability rather than beyond reasonable doubt.

### Assessment of Evidence

The application seeks consent to confirm that the installation of external foul drainage to Plot 2 is lawful development.

In order to lawfully 'commence' development, it is necessary to satisfy the legal requirements in section 56(4) of the Town and Country Planning Act 1990. The Act sets out that "development is

taken to be begun on the earliest date on which a material operation is carried out". Section 56(4) sets out that a material operation can include the following:

"(c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);

As such, it is considered that the installation of the foul drainage pipes for plot 2 falls within the definition of a material operation.

Permission H17-1016-21 granted full planning consent for 9 dwellings on 20 May 2022. According to the submitted cover letter, there were 4 pre-commencement conditions included within H17-1016-21 and these conditions have been discharged. The cover letter refers to condition 2 (external materials); however, condition 3 is the relevant condition. Although the relevant decision notices have not been provided, the LPA has checked the relevant references and agrees that the following conditions have been discharged:

- Conditions 3 and 8 were discharged on 29 November 2024 under reference H17-0913-24.
- Condition 12 was discharged on 24 March 2025 under reference H17-0121-25.
- Condition 5 was discharged on 26 March 2025 under reference H17-0168-25.

As such, the relevant pre-commencement conditions were discharged prior to when works commenced for plot 2, which according to the cover letter was on 16 May 2025. The cover letter further sets out that the foul drains were laid within the site for plot 2 by King Civils on behalf of Seagate Homes. The location of the foul drainage pipes is shown on the submitted Site Plan (564-47-PL\_LP01) and the Location Plan (564-47\_PL\_SP01).

The works are subject to a Building Regulations application (reference: B17-0221-25) and the site was inspected by an inspector from South Holland District Council (SHDC) on 16 May 2025. The current application is accompanied by a letter from SHDC's Building Regulations department dated 16 May 2025 within which reference is made to a "recent site visit when it was noted that building work had commenced". Whilst the letter is dated the same day as when works were undertaken, it is reasonable to presume that the letter was issued the same day. Photographs have also been provided showing the works that have been undertaken. Therefore, it is considered that sufficient evidence has been provided to show that foul drainage pipes have been installed for Plot 2.

## **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**

On the basis of the submitted information, it is considered that external foul drainage works have been installed for Plot 2 within the site. Furthermore, the works were undertaken after the relevant pre-commencement conditions from permission H17-1016-21 were discharged. As such, the installation of foul drainage works, appear to have been installed lawfully in planning terms.

## **Recommendation**

It is recommended that a certificate of lawfulness should be issued under S191 of the Town and Country Planning Act, 1990.