DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H18-0674-23**	**Applicant:**	**Port of Sutton Bridge Ltd.**
Proposal:	Proposed fencing, gates, earth bund and associated landscaping		
Location:	Sutton Bridge Port Ltd West Bank Sutton Bridge		
Terminal Date:	22nd September 2023		

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
28	The Natural Environment

National Guidance

National Planning Policy Framework 2023

Sections 12, 14 and 15 of the National Planning Policy Framework (2023) (NPPF)
The Town and Country Planning Act 1990

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	1	0	0
WARD MEMBER	0	0	0	1
ENVIRONMENT AGENCY	0	0	0	1
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	0	0	0	2
OTHER STATUTORY	0	1	1	1

BODIES				
RESIDENTS	1	0	0	2

CASE OFFICER ASSESSMENT

Reason for Chairman's Panel

Recommendation contrary to objection and advice received from the Lincolnshire County Council Public Rights of Way Team, as a statutory consultee.

Proposal

This planning application is for the erection of a proposed fence and gates, as well as minor alterations to the roadway through the site.

The proposed 2m tall metal palisade fence will entirely enclose the existing quayside portion of the site apart from the eastern edge which interfaces with the waterside. Various gates for both vehicle and foot traffic will be featured along its span.

Additionally, a layby is proposed to be installed into the Western side of the road at the north end of the site, which would be 3m deep.

Site Description

Sutton Bridge Port is an industrial/commercial zone and as such is broadly characterised by the existence of a large quantity of warehouses and commercial structures. To the south is a further industrial area, characterised by similar structures. To the North of the site, however, lays open countryside. The port itself contains a public byway with a right of way through the port which which extends to the north into the open countryside.

History

H18-0104-11

Construction of 2 floating pontoons and use of land for stationing portable offices and 4 storage containers and associated parking. Approved on 26-04-11

H18-0605-11

Details submitted of external illumination of all structures and flood warning and evacuation plan (Conditions 4 and 5 of H18-0104-11). Approved on 05-09-11.

H18-0358-16

Installation of a Pontoon and Stationing of Portable Buildings and Associated Containers. Approved on 31-05-16.

Consultation Responses

Local Residents

3 comments were received from local residents. Among which was 1 letter of objection was submitted, which outlaid an objection to supposed encroachment upon neighbouring land, and the fact that proposed works to the road had become retrospective.

Another letter received emphasised the importance of maintaining the right of way through the site.

Finally, 1 letter of support was received which stated that the plans were in the best interest of the business upon the site and the public, and that the securing of the quayside area of the port would enhance the safety of the site. It further explained that it was considered that this proposal was in the economic interest in the site.

Cllr Brewis - Local Ward Member

The right of way through the port to Petts Lane and beyond was established by a major public inquiry into it a third of a century ago.

It was established, even though it was considered to exist already, as a byway open to all traffic, by that inquiry, after an illegal attempt to close it by the then owners of the Port. Clearly it is necessary that it be sufficiently wide to allow passing of vehicles and persons using it, who may be meeting in opposite directions 'en route'.

It needs to be of materials and finishing to a standard to ensure complete ease and safety of passage to all users at all times. There must, at all times, be no obstructions which could prevent the legally established right of passage through the right of way open to all traffic

Sutton Bridge Parish Council

The applications maintains and improves the public right of way through the port and supports employment in the area.

Natural England

No objection.

Port of Wisbech Authority

happy to support this application for the safety of the site and he public.

South Holland Internal Drainage Board

No comment.

Environment Agency

The Environment Agency initially provided a comment of objections on the grounds that they felt that

"The proposed development is likely to adversely affect the construction and stability of the flood defence which will compromise its function. The proposal will therefore increase the risk of flooding."

However, following consultation between the applicant, the case officer and the Environment Agency, this objection was withdrawn and further comments of no objection were issued.

Lincolnshire County Council Historic Environment Officer

No Archaeological Input required.

SHDC Environmental Protection Officer

Requests that the standard management plan condition be applied should the application be approved. However, following the amendment of the application to remove the proposed bund, and in view of the scale of the site and the resulting distance of the now much less invasive proposal to any neighbouring residential properties, it is no longer considered that this is a reasonable request.

SHDC Trees and Nature Conservation Officer

The Trees and Nature Conservation Officer recommends the imposition of conditions. The relevant conditions would be applied to an approval of this application.

Lincolnshire County Council as Lead Local Highways and Flood Authority

The Lincolnshire County Council Public Right of Way team objected to this proposal on the following grounds:

- The proposal would involve byway users and HGVs utilising the same restricted corridor which would be fenced on one side. The described layout would be inherently dangerous given the restricted width of the byway and the proposed 140 HGV movements each day. HGV vehicles have a limited visibility range, a large turning circle requirement and a long stopping distance which places pedestrians and cyclists at particular risk around moving HGV vehicles. The proposal will increase the potential conflict between users and vehicles along the byway and present a significant safety hazard. Accordingly, it is considered that the development runs contrary to NPPF Para 100 detailed above as it does not protect or enhance the existing public right of way, and would have a significant detrimental impact. Additionally, the proposal runs contrary to Policy 33 of the SE Lincs Local Plan (2019) as it does not protect the right of way from the development, and does not contribute towards the safe operation of the Port of Sutton Bridge.

- The proposal would involve the provision of four passing places which would be positioned at the existing junctions to the Warehouse complex. It is considered that positioning the passing places would not contribute to the safety of path users. There are no safe refuge areas within the plan that would assist people looking to avoid moving HGV vehicles.

- Sutton Bridge Public Byway No. 503 forms part of the King Charles III England Coast Path and it is likely that the section of byway which passes through the Port of Sutton Bridge will see a notable increase in users in the coming years. It is therefore important to ensure that any developments in the port complex do not compromise the use of the national trail.

- HGVs exiting the quayside via Gate 4 would have limited visibility of byway users travelling in a southerly direction along the route. Measures would therefore need to be put in place to mitigate the risks associated with this HGV manoeuvre.

- The proposed planting strip may potentially limit visibility for HGVs exiting through the electric gates from the quayside. It would therefore be desirable to ensure that shrubs are selected which do not grow more than 500mm in height.

- Further assessment will be required regarding the legal alignment of the section of Sutton Bridge Public Byway No. 503 which passes through the Port of Sutton Bridge. This may then require the formal diversion of the public byway. Previous surveys have highlighted the centre line of the byway in a significantly different position to that marked on the development proposal plans.

- The proposed development involves amending the junction of BOAT 503 and Pett's Lane. Pett's Lane is HMPE and the southern section adjoining the public byway will require stopping up or diverting.

- The section of byway which is currently unsurfaced would require surfacing with a suitable material to be
agreed by the highway authority.

The applicant has since amended the proposal to remove the once proposed earth bund which addresses some of the safety concerns relating to vehicle visibility along the PROW.

Planning Considerations

Flood Risk

The Local Planning Authority does not consider there to be any negative impact upon flood risk as a result of this proposal.

The environment agency were consulted on this application and, whilst having originally objected to the proposal, have since withdrawn their objection, stating that they have no objection to the proposal, therefore indicating they have no concerns about the proposal's impact upon local flood risk and flood defences.

For this reason, the Local Planning Authority finds no grounds upon which to base a material concern regarding impact on flood risk in this locale.

Design and Layout

The Local Planning Authority does not wish to object to the design or layout of the proposal. The proposed metal palisade fence is typical of such a commercial/industrial site and is a feature commonly visible even within sites within a close proximity to the proposal site, and the proposed bund would be respectful of the general character of the area, not appearing to encroach unduly upon any neighbouring land uses either visually or in terms of amenity.

The proposed layout of the palisade fence is deemed to be appropriate, as it is the minimum as would be required to secure the sensitive element of the site.

Trees and Nature

Consideration must be given to the prior removal from site of trees protected under Sutton Bridge Tree Preservation Order No. 6 1985 without appropriate Application being made. The trees the subject of the Order which were removed require replacements planting.

As such, it will be important to ensure that the necessary steps are taken to replant/replace the trees which were lost. As per the comment of the Trees and Nature Conservation Officer, in order to achieve compliance with Section 206(I) of the Town and Country Planning Act (1990) (TCPA), in addition to Policy 28, Section 3(a.i) of the South East Lincolnshire Local Plan (2019), it will be necessary to ensure that those trees subject to a TPO which have been lost are replanted and maintained and therefore, should the application be approved, a condition requiring the full scheme of planting to be submitted and approved prior to the commencement of the development shall be included which also mandates the maintenance of said scheme indefinitely.

Impact upon the public right of way

The Lincolnshire County Council Public Rights of Way Team have objected to the proposal, however, the Local Planning Authority does not consider the objections raised to be reasonable.

The public right of way is already utilised by substantial HGV traffic, and the dockside to the west of the PROW is not public land, meaning it should not be considered to be a safe and integral part of the PROW, therefore, the Local Planning Authority considers that the proposal to fence off the dockside would not lead to an enhancement of the safety risk of the extant HGV traffic to public users of the PROW. In fact, the Local Planning Authority considers that by fencing off the dockside, within which hazardous processes are expected to take place, would actually enhance the safety of the PROW, as in its current open state, HGVs can enter and exit the dockside onto the PROW at any point along its span in a totally unpredictable manner. By fencing off the dockside, the risk of pedestrians walking onto the operational dockside is reduced. So too is the risk of HGVs entering the PROW at random locations. By fencing off the dockside and restricting vehicular access to and out of the dockside, the proposal adds an element of predictability for users of the PROW to assess

where vehicular entrances and exits may take place, where this is not possible currently.

As it stands currently, there are no established passing places. By adding these to the site, the Local Planning Authority can only conclude on at least a partial enhancement to safety on the PROW.

As West Bank runs directly through the application site as a public right of way, impacts upon this byway are considered to be a material planning consideration. Great Importance has been assigned locally to ensuring continued free access to this public right of way. The local Planning Authority does not consider that the proposal would have an undue negative impact upon the free and safe use of the public right of way. The proposed fencing does not in any sense restrict access or use of the public right of way, being formed exclusively, clear to the east of West Bank, running parallel to its course.

Furthermore, it is not felt that the earth bund would have a substantial negative effect upon vehicle safety.

The LCC PROW team has raised concerns that the Public Right of Way intersects with the proposed fencing. Whilst, based on a desk based assessment, with views only of the mapped route, this could reasonably be concluded, the reality of the PROW is that it follows the line of west bank road which kinks to the west of the dockside and therefore the proposed fencing. Nevertheless, the Local Planning Authority can proceed to issue a decision regardless of this specific objection, simply informing the applicant of their legal duty to apply to have the PROW re-routed to reflect the updated reality of the site, since the provision of an open PROW would still be in place.

Planning Balance

In this instance, it is considered that the proposal satisfies SELLP policies 2, 3 and 4 quite clearly, with provisions included within proposed conditions to ensure compliance with Policy 28, regarding the replanting of replacements for TPO trees previously lost. The LCC public rights of way team have objected to the proposal on the grounds of PROW safety, citing Policy 33 of the SELLP, however, as demonstrated above, the Local Planning Authority does not concur with the assessment provided, in that it is not considered that the proposal would represent an undue effect upon the use and enjoyment of the PROW as extant.

Therefore, whilst, clearly the LCC PROW team have presented a case against the proposal, in this instance, it is concluded that the balance of probabilities lies firmly in favour of approval.

Conclusion

For the reasons listed above, this application is considered to be in accordance with Policies 1, 2, 3, 4, 28 and 33 of the South East Lincolnshire Local Plan (2019) as well as Sections 12, 14 and 15 of the National Planning Policy Framework (2023).

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.