

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H18-1174-21 **Applicant:** Loyd Homes Ltd.

Proposal: Erection of 60 dwellings and associated works - approved under H18-1175-21. Modification of wording of Condition 3 relating to construction phase of estate road.

Location: Land North Of Nightingale Way Sutton Bridge Spalding

Terminal Date: 8th April 2022

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

02 Development Management
03 Design of New Development

National Guidance

National Planning Policy Framework 2021

Section 9 - Promoting sustainable transport

Representations:

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

CASE OFFICER ASSESSMENT

Proposal

This is a s73A application relating to the erection of 60 dwellings and associated works on land north of Nightingale Way, Sutton Bridge, approved under H18-1167-19, and subsequently amended by virtue of H18-1175-21.

The applicant is seeking to amend the wording of Condition 3 relating to construction phase of estate road. This Condition states that:

"No dwelling shall be commenced before the first 50 metres of estate road from its junction with the public highway, have been completed to binder course level.

Reason: To ensure construction and delivery vehicles, and the vehicles of site personnel may be parked and/or unloaded off the existing highway, in the interests of highway safety and the amenity of neighbouring residents."

It is proposed that the wording of this condition be amended to:

"No works beyond piling operations shall commence until such time that the construction haul road has been surfaced with 300mm Type 1 material and the construction compound and parking area laid out and surfaced with 150mm Type 1 material in accordance with the compound layout submitted in Appendix C of the Construction Management Plan dated October 2020. The surfacing of the construction route shall be kept in good repair during the lifetime of the construction works"

Site Description

As host consent.

Relevant History

H18-1175-21 - Erection of 60 dwellings and associated works - approved under H18-1167-19. Removal of Conditions 2 & 5 relating to construction management plan & surface water drainage scheme (approved February 2022).

H18-0859-20 - Details of surface water drainage scheme, foul water strategy, storage and disposal of refuse and recycling, construction management, prevention of mud deposits on road, plan and management plan relating to publicly accessible open space (Conditions 7, 8, 11, 13, 14, 15 and 16 of H18-0435-18) (approved November 2020).

H18-1167-19 - Reserved matters application for the erection of 60 dwellings and associated works - outline approval H18-0435-18 (approved March 2020).

H18-0435-18 - Outline application for residential development - approximately 60 dwellings (approved March 2019).

Consultation Responses

LCC Highways/SUDS - Requests that the application be refused. Condition 4 is applied to the Consent issued under H18-1167-19 'To ensure construction and delivery vehicles, and the vehicles of site personnel may be parked and/or unloaded off the existing highway, in the interests of highway safety and the amenity of neighbouring residents.' Nightingale Road is an adopted residential estate road where any construction vehicle parking or site personnel vehicle parking or materials loading/unloading would unacceptably impact upon highway safety. The applicants' proposal to access the site (for an unspecified period) by means of a temporary construction road is not acceptable. The proposed surface would be of unbound granular material which would, in wet weather, be carried as slurry onto the public highway and in prolonged dry weather, would cause dust problems to neighbours. Also, there is no indication of how the approved estate road, its foul and surface water drainage and the necessary services would be constructed when the route is being used as the temporary construction road.

Planning Considerations

The architectural consultants for the applicant have set out the reasons for requesting the change to the wording in the submitted cover letter. In short, the primary reasons for requesting the change is that, in their opinion:

- hard surfacing the first 50 metres of the estate road to binder course specification is not necessary to ensure that deliveries and site personnel can park and unload safely on the site
- the wording of the condition which seeks to prevent any construction of dwellings before the road surface is in place potentially endangers the permission
- it is a requirement of the applicant to enter into a Section 38 Agreement with the Highway Authority. Whilst the applicant has control over the timing and progression of detailed drawings for the proposed highway works the timing of achieving technical approval and finalising the Section Agreement is beyond the applicant's control. If works progress on the adoptable works without first having entered into a Section 38 Agreement the County Council have the ability to demand

payment of £1,328,325 under their Advanced Payment Code which is untenable.
- the Construction Management Plan submitted and approved as part of application H18-0859-20 provided a detailed construction compound plan showing the creation of a one-way construction traffic route consisting of a site entrance via Nightingale Way and a site egress via Withington Street

Whilst the Council does not agree with the first three points made, and other developers routinely accept the standard wording, it is acknowledged that the arrangement of a temporary haul road extending to the north-eastern corner of the site was approved by virtue of the Construction Management Plan forming part of application ref. H18-0859-20. Legal advice has been sought on the matter and it is the view of the Council's Senior Planning Lawyer that it would be difficult to take enforcement action if this application were to be refused given the approval of those details in that condition compliance application. Therefore, despite the objection from the Highway Authority, Officers are of the opinion that refusal of this application would not be defensible at appeal.

Concern has been raised by the Highway Authority as to how the estate road will be constructed and drainage installed given that the Construction Management Plan indicates that the haul road takes the same route across the site. Whilst that is an approved plan, if the haul route were to be altered marginally to allow construction of these elements, it is unlikely that it would be considered expedient to pursue enforcement action on that basis.

Planning Balance

Given that the arrangement of a temporary haul road extending to the north-eastern corner of the site was approved by virtue of the Construction Management Plan forming part of application ref. H18-0859-20, Officers are of the opinion that refusal of this application would not be defensible at appeal.

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

That the application be approved under delegated powers.