

DECISION DELEGATED TO HEAD OF PLANNING

Application No:	H20-0296-23	Applicant:	Scenic Homes
Proposal:	Residential development comprising 30 dwellings with associated estate roads, landscaping & open space - approved under H20-0947-21. Modification of Condition 6 to allow for occupation of dwellings on part of site that is not classified as contaminated i.e. Plots 1 to 12 inclusive before verification report is submitted.		
Location:	Land Adj. Havencombe Chapelgate Sutton St James		
Terminal Date:	11th August 2023		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

30	Pollution
01	Spatial Strategy
02	Development Management
03	Design of New Development
04	Approach to Flood Risk
06	Developer Contributions
10	Meeting Assessed Housing Requirements
11	Distribution of New Housing
18	Affordable Housing
28	The Natural Environment
29	The Historic Environment
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

- 2 Achieving sustainable development
- 4 Decision-making
- 5 Delivering a sufficient supply of homes
- 8 Promoting healthy and safe communities
- 11 Making effective use of land
- 12 Achieving well-designed places
- 14 Meeting the challenge of climate change, flooding and coastal change
- 15 Conserving and enhancing the natural environment

Planning Practice Guidance

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0
NORTH LEVEL INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	1	0	0	0
SHDC INTERNAL	0	0	0	2

CASE OFFICER ASSESSMENT

Proposal

This proposal is for a modification of Condition 6 to allow for occupation of dwellings on part of site that are not classified as contaminated i.e. Plots 1 to 12 inclusive before a verification report is submitted.

Condition 5 of that same permission required remediation measures to be agreed due to pollution on the site.

The main permission approved under reference H20-0947-21 relates to residential development comprising 30 dwellings with associated estate roads, landscaping and open space, which was approved subject to conditions, including condition 6 as follows:

"Prior to the first occupation of the development, two full copies of a verification report shall be submitted to and approved in writing by the LPA.

The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post-remediation sampling and monitoring results shall be included in the closure report to demonstrate that the required remediation objectives and criteria has been fully met.

Note: The applicant is advised that the phased risk assessment required by the Contaminated Land Scheme Condition should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 11A.

Reason: To ensure the satisfactory remediation of contaminated land and/or waters.
This Condition is imposed in accordance with Condition 30 of the South East Lincolnshire Local Plan, 2019."

The verification report was a document that is produced at the end of the remediation process to establish that the remediation details associated with condition 5 were adhered to, to ensure that pollution is adequately dealt with. The verification report related to parts of the site that were contaminated, it was not concerned with parts of the site which were uncontaminated.

Site Description

The application site is within the Sutton St James settlement boundary as outlined in the adopted

South East Lincolnshire Local Plan, and consists of a former piggery and paddock. There are existing properties adjacent the site to the north on Chapel Gate and to the west on Taylor's Drove. The land directly to the north, which is within the applicant's ownership, consists of two dwellings and a number of agricultural buildings that will continue to be used in association with the existing farm business.

The former paddock area was bordered by trees and post/wire fencing with field drains to the eastern and southern boundaries. There are also a number of trees on site and a pond. There are a number of buildings and areas of hardstanding associated with the piggery and a further field drain on the western boundary.

The boundaries of the main portion of the site are defined by watercourses, one of which is maintained by the North Level Internal Drainage Board.

The site is located behind established properties, which includes large agricultural buildings, and so has little visual aspect onto Chapelgate.

The site is allocated in the SELLP as Suj012, but is incorrectly referenced to be 2.1 hectares in the Local Plan. The gross site area is 1.73 hectares.

Please note, due to the nature of this application a site visit was not undertaken as part of the consideration of this case, because the permission has been established and the case relates to the need for a verification report prior to occupation - site details are not relevant in this particular case as there is nothing physically to see, as any contamination is not above ground.

History

H20-0689-22 - Details of external materials, contamination, external boxes for gas and electricity, construction management Plan/method statement, estate road phasing and completion plan and foul water drainage works (conditions 3, 5, 9, 11, 13 and 14 of H20-0947-21). Approved 9 December 2022.

H20-0947-21 - Residential development comprising 30 dwellings with associated estate roads, landscaping and open space. Approved 24 May 2022.

H20-0043-18. FULL. Residential development for 27 dwellings including roads. Included S106 to provide four affordable dwellings and an education contribution calculated at that time to be £84,957. Approved 25-02-19.

H20-0284-16. OUTLINE. Residential development- up to 42 dwellings. . Included S106 to provide an education contribution calculated at that time to be £137,367. Approved 06-06-17.

Consultation Responses

Internal Drainage Board

My Board has no objections in principle to the above application. Our Baulkins Drove Drain forms the eastern boundary and the byelaw distance agreed on the layout drawings must be adhered to. A formal application for consent to discharge will be required together with payment of a development levy in accordance with the enclosed for dealing with the surface water run-off from the site.

Environmental Health response dated 11 April 2023

No objection subject to a construction management plan.

Please note - this consultation response was queried by the case officer back to Environmental Health. It was confirmed this response was in error and that further consideration of the case was required because it related to pollution and contamination.

Environmental Health response 6 July 2023

Objected to the proposal - as validation required in part of the area. Plots 1-12 cover the plans to locate and remove the buried horse and therefore it is not appropriate to remove the condition.

Plot by plot/ 'batch' release is generally acceptable to this department and I would not object to a proposal suggesting a phased approach to condition discharge. However I would request that any proposals are clearly detailed with a plan/ overlay showing exactly which plot is where relative to the

proposed area of remediation, and also a table of plot number and actual address (eg Plot 3 is no. 1 The Street etc) to prevent future confusion.

Agent response to issue of Buried Horse dated 27 July 2023

I have now had a conversation with the former landowner regarding the potential buried horse on the site. is not aware of where the anecdotal information relating to a buried horse has come from. There were certainly pig carcasses in the western portion of the site where the sheds were. Apparently, there was a horse kept in the paddock but not buried. More significantly I have now been able to establish from the developers that Phase 1 is at an advanced stage of construction such that all works involving excavation i.e road and footway construction, driveways, foundations, patios, drains, services, and crate system surface water soakaway system have been carried out with no animal remains encountered.

Correspondence includes signed letter from previous owner confirming there was no buried horse on site.

Environmental Health response dated 31 July 2023

No objection. I request that the letter from the former landowner be uploaded to the planning file for transparency, as this states that the previously specified remediation was not required.

Local Highway Authority and Lead Local Flood Authority

Case officer queried if condition 12 on previous permission was necessary to re-impose. LHA confirmed it was not necessary as intersection between highway and entrance had been completed.

Planning Considerations

The main issue relates to pollution and remediation measures in relation to plots 1-12 as part of this development, and whether or not a remediation report is necessary prior to occupation for these plots. A plan has been produced as part of this application to clearly show the extent of plots 1-12, representing it as Phase 1, whilst plots 13-30 are shown as Phase 2.

Principle of development and Sustainability

The principle for 30 dwellings has been established via the implemented approval reference H20-0947-21 which was granted planning permission on 24 May 2022.

Approved remediation details

The details associated with this approval were approved under reference H20-0689-22 which included remediation of the polluted parts of the site, which were thought to be the western part of the site, and plots 8-9 where it was suspected that a horse had been buried in that area.

Verification Report

Condition 6 as detailed above did not distinguish between the parts of the site that were contaminated, and those that were not contaminated. It actually required a verification report for all of the site prior to occupation.

The agents have requested that parts of the site that were not contaminated be able to be occupied prior to the verification report being submitted, so the plots can be released on a phased basis. The current application focusses on plots 1-12 which occupied the uncontaminated part of the site being the paddock on the east. A verification report would still be required for the remaining plots which were contaminated. These relate to plots 13-30 and part of Phase 2.

It was established that plots 1-7 and 10-12 were not contaminated by the submitted details associated with pollution/contamination. The Environmental Health Officer has confirmed that there is no issue in waiving the requirement for a verification report for these plots because the remediation did not apply to these plots, as they were not polluted.

Plots 8 and 9

The previously approved details suggested and arranged remediation for plots 8 and 9 as it was suspected there was a buried horse on the southern part of the eastern paddock. The previous details estimated that it was on plots 8 and 9.

The Environmental Health Officer would initially not waive the need for a verification report on these plots because of the Written Scheme of Information and Remediation measures suggesting a buried horse in that location.

The agent clarified via a letter from the previous owner that a horse was never buried on the site. The previous owner had had the site in their family for 75 years. He signed the statement to clarify that the buried horse information was not correct.

As a result of the receipt of this information, the Environmental Health is now satisfied that a verification report is not now required for plots 8 and 9, and that the condition can be varied to allow for plots 1-12 inclusive to be occupied without the need for a verification report.

Condition 12 of H20-0947-21

The details discharged from application H20-0689-22 did not include a reference to condition 12 of H20-0947-21. This condition required the part of the estate road that forms the junction with the main road should be laid out and constructed to finished surface levels prior to occupation of any dwelling. The Local Highway Authority was asked if this condition was still relevant. They confirmed that this condition does not need to be re-imposed as the intersection between the highway and the site entrance has been completed in accordance with the condition.

Planning Balance

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, states that the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

The principle of residential development on this site has already been established by virtue of previous consents on the site and the allocation within the SELLP.

The previous details associated with the remediation were agreed and discharged. The remediation for the eastern part of the site was not required, although there was a query with plots 8-9 which has now been resolved. The result is that the application is now considered acceptable to modify condition 6 to allow plots 1-12 to be released without the need for a verification report.

In the planning balance it is considered that the modification of this condition would not result in material harm or result in exposure of pollution to the residents of plots 1-12.

Overall there are no significant factors in this case that indicate against the proposal and outweigh factors in favour of the proposal and the policies referred to above.

Conclusion

That planning permission can be granted subject to modified conditions.

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.