

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H20-0457-22 **Applicant:** Mr & Mrs J Powley

Proposal: Residential Development - approved under H20-0062-18. Removal of Condition 7 relating to construction of footway (re-submission of H20-1267-21)

Location: Adj. 23 Fishergate Sutton St James Spalding

Terminal Date: 9th August 2022

Planning Policies**South East Lincolnshire Local Plan - Adopted: March 2019**

- 01 Spatial Strategy
- 02 Development Management
- 03 Design of New Development

National Guidance**National Planning Policy Framework 2021**

Section 2. Achieving sustainable development.
Section 9. Promoting sustainable transport.
Section 12. Achieving well-designed places.

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	1
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

The site has outline planning permission and reserved matters approval for a two and a half storey 6 bedroom house (ref. H20-0062-18 and H20-0410-20). This application is to remove condition 7 of outline permission ref. H20-0062-18 relating to the provision of a new frontage footway.

Site Description

The application site is former agricultural land located on the western fringe of the village. A drain runs along the frontage.

A house is located to the south-east (Greensleeves, 23 Fishergate) and a bungalow (no 28) opposite.

Relevant Planning History

H20-0062-18 - Out - Residential development - Granted 26 March 2018

H20-0410-20 - RM - Erection of detached dwelling - outline approval H20-0062-18 - Approved 21 July 2020

H20-1267-21 - S73A - Residential Development - approved under H20-0062-18. Modification of Condition 7 relating to construction of footway - Withdrawn 3 May 2022

Consultation Responses

Sutton St James Parish Council

The Parish Council given the speed of the road would like to see a footpath maintained on either side of the road where possible.

LCC Highways/SUDS

Request refusal.

South Holland Internal Drainage Board

If the requirement to build a new footpath is removed the applicant would no longer require consent from the Board to comply with/relax Byelaws 3 and 10 and our previous concerns would be resolved.

Public

No comments received.

Information from Applicant

Condition is becoming impossible to achieve and at a very high price. Attached is a series of emails of a conversation between the client, Anglian Water and Parsons (structural engineers) showing the difficulty of establishing a footpath as shown on drg no. 3257-17-02B as cited in condition no. 7.

Once it was established that this was proving difficult to achieve, discussions took place to move the footpath to the other side of the road. Drawings have been drawn up and an application made on this basis (now withdrawn), however this seems to have hit problems (see letter from Anglian Water).

Therefore because of the rising price of this scheme, the client wanted a clear way forward that could be achieved and at present it seems to be a very complicated proposal with no clear idea of the final cost.

The conclusion of this is we ask for the footpath condition 7 to be removed, because it cannot be satisfactorily met, particularly the drawing 3257-17-02. B.

Planning Considerations

The principle of residential development has already been established upon the site. The determining issue in this case is whether the frontage footway is necessary/justifiable on highway safety grounds.

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.

Policies 2 and 3 of the South East Lincolnshire Local Plan (SELLP), 2019 promote good design, which is a key aspect of sustainable development. The National Planning Policy Framework, 2021 stresses that the only reasons for restricting or refusing development on highway grounds are if a proposal would have an unacceptable impact upon highway safety or a severe residual cumulative impact on the highway network.

Lincolnshire County Council (as Highway Authority and Lead Local Flood Authority) has been consulted. It has indicated that the reason given for condition 7 was to provide safe access to the site. The condition was required because the application site is beyond the end of the existing village footway network, but adjacent to the edge of the settlement. Future occupiers and their visitors would therefore be likely to walk between the village and the site. Without the required footway extension, pedestrians would have to share the carriageway of this un-lit section of the B1165 Fishergate with vehicles and would thus be at risk of conflict with those passing vehicles and may consequently suffer injury. Notwithstanding the information submitted by the applicants' agent the Highway Authority is nevertheless of the opinion that removal of condition 7 would mean that the development approved under H20-0062-18 would fail to ensure that safe and suitable access was provided for all users.

The applicants' agent has referred to sites elsewhere where a similar condition has been removed because the County Highways Authority has determined that the impact upon highway safety from not having the footway would not be unacceptable. In response, each case is assessed on its own merits. In the case of the current application, Fishergate is the B1165 and the principal route into Sutton St James. It therefore carries quite a lot of traffic. In the opinion of the Highway Authority, pedestrians walking along the carriageway here would therefore be at risk of injury.

Therefore, 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 removal of condition 7 from the outline permission would have an unacceptable impact upon highway safety.

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

The removal of condition 7 from the outline permission would have an unacceptable impact upon highway safety. The proposal therefore fails to accord with Policies 2 and 3 of the SELLP and advice within the Framework. It is therefore recommended that the application be refused under delegated powers.