

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H20-0622-24 **Applicant:** Mr F Campling
Proposal: Proposed Residential Development - 2 Bungalows & New Access
Location: Adjacent To 2 Jarvis Gate Sutton St James Spalding
Terminal Date: 7th March 2025

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
29	The Historic Environment
30	Pollution
31	Climate Change and Renewable and Low Carbon Energy
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework December 2024

5 Delivering a sufficient supply of homes
12 Achieving well-designed places
14 Meeting the challenge of climate change, flooding and coastal change
15 Conserving and enhancing the natural environment

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
HISTORIC ENVIRONMENT OFFICER	0	0	0	1

SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	0	0	1	0
OTHER STATUTORY BODIES	0	0	0	1
RESIDENTS	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

Proposed Residential Development - 2 Bungalows & New Access.

Site Description

The site is 0.271 hectares, adjacent to number 2 Jarvis Gate, a residential property on a prominent corner of Jarvis Gate with Chapel Gate in the village of Sutton St. James. The paddock is in the eastern side of Jarvis gate to the north of the main dwelling. The red line boundary separates itself off from the main site, the application form indicating it is no longer owned by the host property, but functionally the paddock has clearly been connected with 2 Jarvis Gate in the past and has a shared access at present.

The site is screened by prominent trees, along the frontage and along the flank northern boundary, with its neighbour, number 12 Jarvis Gate. One tree, situated by the field gate, is an Ash Tree that has a circumference at 1.5m above ground of 3.2m, which makes this tree a Veteran Tree.

The majority of the site is subject to a group Tree Preservation Order (TPO) although the flank northern boundary trees are excluded from this TPO.

The trees are substantial and in full view of the position within the village. They have considerable amenity value.

Further prominent trees are visible from the street from within the central part of the site which are part of the Group TPO.

One central horse chestnut tree should have been replaced as part of a previous TPO tree that was storm damaged but this did not occur.

History

H20-1014-23 - Proposed Residential Development - 3 Bungalows. Refused 13 February 2024.

TPO-20-02-1988 - Sutton St. James Tree Preservation Order No. 2 - 12th September 1988

H20-0044-18 - Works to Sutton St. James Tree Preservation Order No. 2 1988. Application to remove a storm damaged Horse Chestnut within Group 2. Part of the description was to replace the new tree. Condition 1 required works to be carried out within 2 years. Approved 31st January 2018.

H20-0392-19 - Works to Sutton St. James Tree Preservation Order No. 2 1988. Works to T1 - Oak - Fell. Condition 4 required the replacement of a hornbeam. Approved 10th September 2019.

H20-1047-22 - Works to Sutton St. James Tree Preservation Order No. 2 1988. Application to carry out works to three mature trees located on the western boundary of the paddock, Trees T1, T2 and T3 adjacent to Jarvis Gate which lies immediately to the north of the house known as 'The Yews', 2 Jarvis Gate. Approved 19th December 2022.

Consultation Responses

Lead Local Flood and Highway Authority

Recommends approval subject to conditions.

The application is for a proposed Residential Development - 2 Bungalows & New Access. Many of the trees fronting the site have TPO's on them so the access location has been a subject of many conversations and a joint site visit with myself, the Planning Officer, Tree Officer and Consultant. The access location detailed is the best location for a shared drive with the most width between the protected trees. The existing access will need to be formally stopped up. Visibility shall be maintained for the new access. The proposal will not have an adverse impact on the public highway. As Lead Local Flood Authority, Lincolnshire County Council is required to provide a statutory planning consultation response with regard.

This application is classified as a Minor Application and it is therefore the duty of the Local Planning Authority to consider the surface water flood risk and drainage proposals for this planning application.

Planning conditions are suggested.

SHDC Environmental Protection

No comments.

LCC Historic Environment Officer

Thank you for consulting us on this. Having reviewed the application documents and the updated available Historic Environment information for this application, the proposal is unlikely to have an impact on significant archaeological remains. Consequently, no further archaeological input is necessary for this application. It is not necessary to consult us on this application again, unless there are material changes to the proposals. However, if you would like advice from us, please contact us to explain your request. No objection.

Internal Drainage Board

The site is within the Internal Drainage District (IDD) of the South Holland Internal Drainage Board (IDB) and therefore the Board's Byelaws apply. Whilst the Board's regulatory process (as set out under the Land Drainage Act 1991 and the Board's Byelaws) is separate from planning, the ability to implement a planning permission may be dependent on the granting of any required Land Drainage Consents.

Consent may be required under Byelaw 3. Viability of infiltration not evidenced. They recommend ground investigation is carried out to determine infiltration potential, followed by testing in line with BRE Digest 365 if onsite material is considered favourable for infiltration. If infiltration is not feasible, following the drainage hierarchy, the IDB expect the applicant to propose discharge of surface water to a watercourse. In that case consent would be required under Byelaw 3. The discharge rate should be in line with the Non-Statutory technical standards for sustainable drainage systems (SuDs), therefore the Board is unlikely to grant consent for discharges in excess of greenfield rate. A surface water development contribution is likely to be payable as a condition of any consent gained under Byelaw 3 in line with the WMA's Development Control Charges and Fees.

Consent is not required under the 1991 Land Drainage Act.
Consent is not required under Byelaw 10.

Public

A Parish Councillor lives several houses down from this property - they declare an interest and are not commenting further.

Sutton St. James Parish Council

The Parish Council has concerns surrounding the tree and ensuring that necessary preservation orders are being followed.

Ecologist

Response dated 30 September 2024

Lack of BNG assessment and metric information. It is not BNG exempt on de minimis grounds as implied by the BNG exemption statement.

Response dated 18 February 2025

The documents submitted by Arbtech are sufficient to assess the proposal's likelihood of achieving the mandatory 10% biodiversity net gain requirement.

The analysis and conclusions are sufficiently rigorous. The applicants will have to secure approximately 0.64 biodiversity units off-site. This if planning permission is granted then the applicants will have to contact a registered habitat bank to purchase the required number of units and provide evidence of this to the authority pre-commencement.

Alternatively, the applicants could arrange to create/enhance 0.64 habitat units on other land they own or in agreement of another land owner by entering into a section 106 agreement to secure the management of this land over the 30 year BNG period.

Planning Considerations

Evaluation

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

In this case, the adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019, forms the development plan for the District, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework (updated December 2024) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

Furthermore, where a Neighbourhood Plan has been adopted, this alongside the adopted Local Plan, forms part of the Development Plan for the District, and must be considered when assessing development proposals. In this instance, no relevant neighbourhood plans have been adopted.

The Authority is able to demonstrate a supply of deliverable sites equivalent to in excess of 5 years through the latest Housing Land Supply Assessment.

Principle of Development and Sustainability

The South East Lincolnshire Local Plan (2019) sets out the settlement hierarchy in respect of delivering sustainable development that meets the social and economic needs of the area whilst protecting and enhancing the environment; in order to provide enough choice of land for housing to satisfy local housing need, whilst making more sustainable use of land and to minimise the loss of high-quality agricultural land by developing in sustainable locations and at appropriate densities.

Policy 1 of the South East Lincolnshire Local Plan (2019) sets out a spatial strategy for delivering sustainable development across South East Lincolnshire to 2036. Policy 1 (Spatial Strategy) expresses this sustainable framework of settlements, ranking the settlements deemed to be most sustainable in descending order.

The most sustainable locations for development are situated within the 'Sub-Regional Centres', followed by 'Main Service Centres'. Lower down the hierarchy in respect of sustainable

development are areas of limited development opportunity including 'Minor Service Centres', with areas of development constraint comprising 'Other Service Centres and Settlements'. The countryside is at the bottom of the settlement hierarchy and represents the least sustainable location.

Policy 1 (Spatial Strategy) of the South East Lincolnshire Local Plan (2019) indicates that within 'Minor Service Centres', development will be permitted that supports their role as a service centre for the settlement itself, helps sustain existing facilities or helps meet the service needs of other local communities. This policy goes on to detail that development within 'Minor Service Centres' will normally be limited to Allocated and Committed sites and infill.

The National Planning Policy Framework, (NPPF) (December 2024) outlines, within Paragraph 61, that "To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay".

Para 73 of the National Planning Policy Framework (December 2024) also emphasises the importance that the contribution of small to medium sized sites can make in meeting the housing requirements. This states that "Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, are essential for Small and Medium Enterprise housebuilders to deliver new homes, and are often built-out relatively quickly". This policy seeks to ensure that there is a sufficient supply of homes and advises that sites of all sizes make a contribution to the housing requirement of an area.

The application site in this instance is within Sutton St, James, a Minor Service Centre, and lies within the defined settlement boundaries as detailed by Policy 1. In context of this, the principle of residential development within this location is considered to be appropriate, comprising an appropriate form of development for the location and would be in accordance with the overall principles of the spatial strategy.

As such, the proposal is considered to be in accordance with the requirements of Policy 1 of the South East Lincolnshire Local Plan (2019) when viewed in principle. This is subject to the assessment against site specific criteria; including (but are not limited to) the impact of the proposal on the character or appearance of the area, impact on the residential amenities of neighbouring occupiers, impact on highway safety and flood risk, which are discussed in turn as follows.

Layout, Design and Consideration of the Character and Appearance of the Area

Section 12 of the National Planning Policy Framework (December 2024) specifically relates to 'Achieving well-designed places' and details that the "creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve" and as such, it is generally accepted that good design plays a key role towards sustainable development.

Paragraph 135, contained within Section 12 of the National Planning Policy Framework (December 2024), states that new development should function well and add to the overall quality of the area (beyond the short term and over the lifetime of the development) and should be visually attractive as a result of good architecture, layout and appropriate landscaping. This goes on to establish that it is important that new development should be of the highest quality to enhance and reinforce good design characteristics, and that decisions must have regard towards the impact that the proposed development would have on local character and history, including the surrounding built environment and landscape setting such as topography, street patterns, building lines, boundary treatment and through scale and massing.

Development proposals should also ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users, among other considerations.

Likewise, Policy 2 of the South East Lincolnshire Local Plan (2019) outlines sustainable development considerations for development proposals, providing a framework for an operational policy to be used in assessing the sustainable development attributes of all development proposals. Furthermore, Policy 3 accords with the provisions of Section 12 of the National Planning Policy Framework (December 2024), in that it requires development to comprise good design; identifying

issues that should be considered when preparing schemes so that development sits comfortably with, and adds positively to, its historically-designated or undesignated townscape or landscape surroundings.

These policies accord with the provisions of the National Planning Policy Framework (December 2024) and require that design which is inappropriate to the local area, or which fails to maximise opportunities for improving the character and quality of an area, will not be acceptable.

Proposals for new development would therefore require the aforementioned considerations to be adequately assessed and designed, including the siting, design and scale to be respectful of surrounding development and ensure that the character of the area is not compromised.

The main issues to consider in the context of this policy relates to the presence of prominent trees and the need to comply with Biodiversity Net Gain. A great many of trees on site are mature, or provide significant screening providing a positive contribution to the street scene, the majority of which are subject to a current group Tree Preservation Order. Whilst the trees along the flank with the neighbour are not subject to the TPO, they provide a valuable screen in addition. Planning permission under H20-1014-23 was refused previously due to the impact on trees. However, this was for 3 houses with numerous access points which ultimately meant the root protection areas would be adversely affected by the development. This was also considered prior to mandatory biodiversity net gain.

Paragraph 136 of the National Planning Policy Framework, December 2024 states: "Trees make an important contribution to the character and quality of urban environments, and can also help to mitigate and adapt to climate change.....existing trees ...retained where possible." A key aspect in layout terms is to ensure that the root protection areas are not adversely affected or impinged upon.

Paragraph 187 of the National Planning Policy Framework, December 2024 states that "Planning Policies and decisions should contribute to and enhance the natural and local environment" by, in section b) "recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services - including the economic and other benefits..... of trees and woodland."

The proposed development is only acceptable if the dwellings can be designed outside of the root protection areas, and not inside them, as this would fail to overcome the previous reason for refusal.

As the site has extensive tree cover at the front, flank, central section and rear portion of the site, the root protection areas overlap. Taking into account root protection areas, there is very little of the site that would be able to be built on which do not affect some of the trees. Whilst the submitted drawing is indicative, it has been subject to extensive pre-application discussion following the earlier refusal. The conclusion was that two bungalows were possible on site but with just one access only that was shared, in order to minimise impacts on preserved trees. The existing field gate next to the very prominent Ash Tree at the front would need to be closed aswell, using a 'no dig' solution so that the root protection area of that tree is not adversely affected. The depth of the roots of this tree has been checked by the Tree Officer who has concluded that the stopping up of the access is possible and can be controlled via a condition. Therefore, whilst the layout is indicative, conditions should be attached to any approval to fix the access point and stop up the field gate access in order to minimise the impacts on trees.

In terms of impact on the street scene, some of the non preserved bushes at the front of the site have been removed, and this will mean that there will be a change to the street scene. The dwellings will also be more visible in the street scene and will be set further forward of the building line compared with the dwelling at 2 Jarvis Gate. Despite this, given that they are bungalows, it is considered that subject to a condition retaining the preserved trees at the front, the impact on the street scene for 2 bungalows would not be so severe as to warrant refusal. It would also be important to retain the trees along the flank to protect views of the neighbour and to preserve biodiversity on the site.

It is likely that there would be post development pressure to remove the protected trees in the centre of the site, as future occupiers are highly likely to complain of shading and overshadowing of the remaining preserved trees. A note on the decision notice should highlight this issue to prospective buyers - that removing the preserved trees would not be acceptable. Additional built development including patios should also be restricted by condition in order to preserve the root protection area of the trees. This is important due to the high amenity value of the trees along

multiple views into and out of the site as they are highly visible in the street scene. Only retaining the trees and having the two bungalows 'nestling' in between the trees would the development be considered acceptable.

Taking account of the design, scale and nature of the development, as detailed above, the proposal is considered to be acceptable. The proposal would not cause an adverse impact to the character or appearance of the area and would therefore be in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan (2019) and Section 12 of the National Planning Policy Framework (December 2024).

Impact on Residential Amenity/Land Users

Paragraph 135 of the National Planning Policy Framework (December 2024) states that development should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Policies 2 and 3 of South East Lincolnshire Local Plan (2019) sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.

As the proposals are for bungalows, and are centrally located, as long as the flank and front boundary trees are preserved, it is unlikely that significant loss of light or outlook would occur. It is correct that they are forward of the building line. Two storey developments would be too prominent on the street scene as they are forward of the building line. However, as bungalows it is not expected the impact would be severe. A condition is suggested to ensure only bungalows are created.

As detailed above, the scale and design of the proposal is considered to be such that there would be no significant or unacceptable impact on the residential amenities of the occupiers of adjacent properties or land users, when also taking account of the conditions recommended. As such, the proposal is considered to accord with the provisions of the Section 12 of the National Planning Policy Framework (December 2024), and Policies 2 and 3 of the South East Lincolnshire Local Plan (2019).

Highway Safety and Parking

Section 9 of the National Planning Policy Framework (December 2024) specifically relates to 'Promoting sustainable transport'. Paragraph 116 of the National Planning Policy Framework (December 2024) advises that "development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios".

In respect of highway matters, Policy 2 details that proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met, specifically in relation to access and vehicle generation. Policy 3 details that development proposals will demonstrate how accessibility by a choice of travel modes including the provision of public transport, public rights of way and cycle ways will be secured, where they are relevant to the proposal.

Further, Policy 36, to be read in conjunction with Appendix 6, of the South East Lincolnshire Local Plan (2019), sets out minimum vehicle parking standards and requires at least two spaces for dwellings of up to three bedrooms and three spaces for dwellings with four or more bedrooms.

The proposals incorporate garages and as a result this is considered to be compliant with policy. Any cycle parking can be accommodated within the garages.

The Local Highway Authority specified a shared access to be a minimum of 4.1metres. This is considered achievable. The existing field gate access will need to be stopped up which is required in highway terms but also required in terms of ensuring that only one access to the site is possible to minimise the adverse impact on preserved trees. Other conditions are suggested by the Local Highway Authority which suitably control the scheme with respect to highway matters.

The proposal would therefore be acceptable and would not have an unacceptable adverse impact on highway safety in accordance with Policies 2, 3 and 36 the South East Lincolnshire Local Plan (2019), and Section 9 of the National Planning Policy Framework (December 2024).

Flooding Considerations

Section 14 of the National Planning Policy Framework (December 2024) explains that "Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere".

This goes on to state, within Paragraph 172, that all plans "should apply a sequential, risk-based approach to the location of development - taking into account all sources of flood risk and the current and future impacts of climate change - so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by: a) applying the sequential test and then, if necessary, the exception test as set out below".

Paragraph 173 of the National Planning Policy Framework (December 2024) goes on to state that "A sequential risk-based approach should also be taken to individual applications in areas known to be at risk now or in future from any form of flooding", by following the steps set out within Section 14 of the National Planning Policy Framework (December 2024).

Paragraph 174 goes on to state that, "Within this context the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding", with the strategic flood risk assessment being the tool to demonstrate this.

Paragraph 175 details that "The sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk)".

If, following the application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in Zones with a lower probability of flooding, the Exceptions Test can be applied if appropriate.

The site lies within Flood Zones 2 and 3 of the Environment Agency's Flood Maps. These have been created as a tool to raise awareness of flood risk with the public and partner organisations, such as Local Authorities, Emergency Services and Drainage Authorities. The Maps do not take into account any flood defences.

The South East Lincolnshire Strategic Flood Risk Assessment (SFRA) provides an overview of how flood risk has been considered in shaping the proposals of the Local Plan; including the spatial strategy and the assessment of housing and employment sites. Policy 4 of the South East Lincolnshire Local Plan (2019) is clear in that "Development proposed within an area at risk of flooding (Flood Zones 2 and 3 of the Environment Agency's flood map or at risk during a breach or overtopping scenario as shown on the flood hazard and depths maps in the Strategic Flood Risk Assessment) will be permitted" in instances where specific criteria is met.

It is worth noting that large parts of the district of South Holland lie within Flood Zone 3. It is therefore necessary to use the refined flood risk information (Hazard and Depth maps) within the South East Lincolnshire Strategic Flood Risk Assessment (2017) as a basis to apply the sequential test.

The SFRA map shows a Residual Flood Hazard Map for the 1% fluvial and 0.5% tidal event as being outside the 'low hazard' area for the present day and in 2116. The site is outside the area at risk in both the present day and in 2116 in terms of the Residual Peak Depth Map for the 1% fluvial and 1.5% tidal.

The probability of this development flooding from localised drainage systems is low. Failure of Sutton St. James Pumping Station or Sutton Bridge Outfall Sluice could increase the risk at this site. The SFRA considers the residual risk associated with overtopping and a breach in the defences in 2116. The maps show that the site is not at risk. The proposal increases the impermeable area and therefore there will be an increased volume of surface water that has the potential to increase flood risk. It is recommended that the floor level of the dwellings is 0.3m above surrounding level and there is a 0.3m of flood resilient construction above finished floor levels. It is noted that the IDB require evidence if infiltration testing.

Subject to a condition requiring adherence to the Flood Risk Assessment it is considered that the scheme does not conflict with Policy 4 of the South East Lincolnshire Local Plan and the intentions of the National Planning Policy Framework in terms of flooding.

Overall, when considering the development on balance, it is considered that given the mitigation measures detailed and recommended by condition, the proposal accords with Policies 2, 3 and 4 of the South East Lincolnshire Local Plan (2019) and the intentions of the National Planning Policy Framework (December 2024) in this regard.

Impacts of Climate Change

In respect of the climate emergency, Section 14 of the National Planning Policy Framework (December 2024) states that new development should be planned for in ways that: "avoid increased vulnerability to the range of impacts arising from climate change" with care taken to ensure that, where development is brought forward in areas which are vulnerable, "risks can be managed through suitable adaptation measures, including through incorporating green infrastructure and sustainable drainage systems; and help to reduce greenhouse gas emissions, such as through its location, orientation and design".

Paragraph 166 of the National Planning Policy Framework (December 2024) details that when determining planning applications, Local Planning Authorities should "expect new development to: a) comply with any development plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable; and b) take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption", with 'significant weight' given to "the need to support energy efficiency and low carbon heating improvements to existing buildings, both domestic and non-domestic (including through installation of heat pumps and solar panels where these do not already benefit from permitted development rights)".

The development upon the site will decrease the landscaped area and will therefore would impact climate change as a result of increased development. However, the need to minimise the built footprint on this site so as not to impinge on the root protection areas of the trees is paramount. Restricting the footprint also benefits climate change. It is therefore suggested that a number of conditions are imposed restricting permitted development rights to avoid the addition of extensions, patios, enlarged garages, garden structures or anything that would harm the root protection areas of the trees.

Taking the above into account it is considered that given the details submitted and those required by suitably worded condition, the proposal is acceptable in this regard. The proposal would therefore be in accordance with Policy 31 of the South East Lincolnshire Local Plan (2019) and Section 14 of the National Planning Policy Framework (December 2024).

Biodiversity Net Gain

Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) requires developers to deliver a minimum of 10% Biodiversity Net Gain using standardized biodiversity units measured by statutory biodiversity metrics. This is often referred to as the mandatory requirements for Biodiversity Net Gain.

"Under the statutory framework for biodiversity net gain, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met ("the biodiversity gain condition"). This objective is for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat. This increase can be achieved through onsite biodiversity gains, registered offsite biodiversity gains or statutory biodiversity credits".

The biodiversity gain condition is a pre-commencement condition. This relates to a condition that seeks, once planning permission has been granted, a Biodiversity Gain Plan that must be submitted and approved by the planning authority before commencement of the development, alongside the need to submit a Habitat Management and Monitoring Plan.

The effect of Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission is deemed to have been granted subject to the "biodiversity gain condition". The effect of this "biodiversity gain condition" is that development granted by this notice must not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan, or
- (c) the development is exempt from the biodiversity gain condition.

For applications that are submitted prior to the introduction of this requirement, the development would exempt from the mandatory 10% requirement and as such, the Biodiversity Gain Condition would not apply.

The agents initially submitted a BNG exempt statement, but this was not accepted as the area taken up by the two dwellings exceeds that where an exemption can be made.

This application was submitted following the introduction of BNG legislation. The development is not exempt from this mandatory Biodiversity Net Gain (10%), and as a result, a condition would be required, as mandatorily set.

When taking the above into account, the development in this instance is not exempt from the statutory 10% Biodiversity Net Gain requirements.

The documents submitted by Arbtech demonstrate that 0.64 biodiversity units are required to be purchased off site, as they cannot achieve the full 10% Biodiversity Gain on site. Evidence of their purchase would be required when discharging the mandatory biodiversity net gain pre-commencement condition.

The applicants will have to contact a registered habitat bank to purchase the required number of units and provide evidence of this to the authority pre-commencement.

Alternatively, the applicants could arrange to create/enhance 0.64 habitat units on other land they own or in agreement of another land owner by entering into a section 106 agreement to secure the management of this land over the 30 year BNG period.

As a result it is considered that the current design will be capable of achieving the 10% Biodiversity Net Gain requirement if evidence of the purchased credits can be demonstrated at the condition compliance application stage.

Biodiversity, Ecology and Impacts on Trees

Beyond this, Section 15 of the National Planning Policy Framework (December 2024) seeks to protect sites of biodiversity value, and minimise and provide net gains for biodiversity, including establishing coherent ecological networks that are more resilient to current and future pressures, including the need to incorporate features which support priority or threatened species such as swifts, bats and hedgehogs.

Paragraph 193 of the National Planning Policy Framework (December 2024) details that Local Planning Authorities should apply the following principles:

- "a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
- c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and
- d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for

biodiversity or enhance public access to nature where this is appropriate".

Policy 28 of the South East Lincolnshire Local Plan (2019) seeks to protect ecological networks of interconnected designated sites and wildlife-friendly greenspace and promote biodiversity net gain by protecting the biodiversity value of land, maximising opportunities to enhance and connect natural habitats, incorporate biodiversity conservation features to enhance green infrastructure and ecological corridors, and conserve or enhance habitat to adapt to climate change.

The scheme has been designed to retain the preserved trees on site. Whilst the flank trees are not preserved, they still have biodiversity and amenity value, and as such a specific condition to retain them post development is suggested. A note on the decision is also suggested to make it clear that the trees should not be felled due to post development pressure.

The access and hard surface areas which are within the root protection zones should be hand dug, with minimal digging and cellular material beneath the finished surfaces should be used to minimise adverse effect on the roots of the preserved trees. These mitigations would assist with preserving the biodiversity of the site, particularly as additional credits are required in order to achieve 10% Biodiversity Net Gain. Restrictions on extensions are also required to ensure roots are protected from further development.

Two frontage trees were agreed to be felled as part of H20-1047-22. They are situated at the front of the site, one in the corner and another a few metres along the boundary. The decision notice was dated 19 December 2022 and condition 1 stated that the proposed work is carried out within 2 years of the date of that decision. As the trees remain this decision has therefore lapsed and the trees can no longer be removed. In view of the current application, it is considered that their retention is imperative since they assist in reducing the impact on the street scene given that the dwellings are set forward of the building line of the adjoining property. A condition is suggested therefore to retain them.

Application H20-0044-18 related to the removal of a storm damaged horse-chestnut tree, which was part of the group TPO, in the central portion of the plot. Part of the permission involved replacing the horse-chestnut tree in the centre of the site. This has not occurred. In effect, therefore, a further horse chestnut tree should be provided as part of landscaping for the current scheme. It is suggested that a condition is imposed to replant a horse chestnut tree in a position which does not affect the layout of the two properties.

When taking the above into account, subject to conditions the proposal does not significantly conflict with Policy 28 of the South East Lincolnshire Local Plan (2019).

Planning Balance

As detailed above, Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The proposal represents appropriate development within the defined settlement boundary. The development hereby proposed does not materially harm the character or appearance of the locality, or amenity of nearby residents, and provides adequate parking, whilst conforming with the South East Lincolnshire Local Plan (2019) and the provisions of the National Planning Policy Framework (December 2024) when viewed as a whole.

In this instance, there are no material considerations that weigh against the proposal and as such, the planning balance is in favour of the development.

Conclusion

It is recommended that the application can be approved under delegated authority.

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.