

# Officers Report

## Planning Application No: 146151

**PROPOSAL:** Application seeking to vary condition 13 (for the developer to accord with the proposed scheme to prevent vehicles from accessing the private drive that connects in a southerly direction with the A158) of planning permission 133284 (granted on appeal for the erection of up to 130 dwellings and a new building to provide up to 25 apartments for retirement living, associated hard and soft landscaping, together with the change of use of land to provide a new area of open space, including the provision of new footpaths and sustainable drainage infrastructure, and to provide new community allotment facilities)

**LOCATION:** Land adjacent Sudbrooke Park Off West Drive Sudbrooke Lincoln  
**WARD:** Sudbrooke  
**WARD MEMBER(S):** Cllr Robert Waller  
**APPLICANT NAME:** The Parklands Sudbrooke Limited

**TARGET DECISION DATE:** 18/04/2023  
**DEVELOPMENT TYPE:** Major - Dwellings  
**CASE OFFICER:** George Backovic

**RECOMMENDED DECISION:** Refuse permission.

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This application is referred to the planning committee as a result of the planning history, and representations received from concerned third parties including Sudbrooke Parish Council.

### **Introduction:**

This relates to a housing development that was granted permission, on appeal, in Sudbrooke in 2016 that is still under construction. The permission was subject to a number of conditions and this application seeks to amend the following condition:

*“13: No development shall take place until a scheme, including the timing of its implementation, to prevent vehicles from accessing the private drive that connects in a southerly direction with the A158 have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.”*

Main Drive, is the “private drive” which runs a distance of over 400m, connecting Holme Drive in the north (which serves the residential development) to the A158 (Wragby Road) to the south. It directly serves three residential properties – Silvertrees, Park House and The Spinney. Along its entire length runs a Public Right of Way (PRoW) – Sudb/160/1.

Details have previously been submitted to satisfy the requirements of this condition - which were subsequently formally approved in 2019. The scheme approved utilised

demountable bollards, at the northern point of Main Drive, where it connects to Holme Drive.

The applicant now claims that the obstruction of the “highway” that would occur on implementation of the approved bollard scheme may not be lawful.

This it is stated has prompted the current submission which relies on a “psychological” rather than a physical barrier with a “*Change in surface treatment and the use of estate railing to create a gateway feature to further reinforce the public to private transition. Two signs stating “No unauthorised vehicles beyond this point “are to be installed”*”.

The application seeks a new permission with condition 13 to be reworded as per the following:

*“The development shall be carried out in accordance with Drawing Reference 0900F received by the local planning authority on [insert date] in order to deter vehicles from accessing the private drive that connects in a southerly direction with the A158. The scheme detailed in Drawing Reference 0900F shall be implemented within 3-months of the date of this permission and retained for the lifetime of the development, unless otherwise agreed in writing with the local planning authority.”*

#### **Relevant history:**

133284: erection of up to 130 dwellings and a new building to provide up to 25 apartments for retirement living; the extension and widening of West Drive and Holme Drive to serve the development; associated hard and soft landscaping and the demolition of existing poultry sheds; together with the change of use of land to provide a new area of open space, including the provision of new footpaths and sustainable drainage infrastructure, and to provide new community allotment facilities. Appeal against non-determination allowed 27.06.2016.

136348: Request for confirmation of compliance with conditions 7 (Surface water drainage), 8 (Foul water drainage), 13 (scheme to prevent vehicles from accessing the private drive that connects in a southerly direction with the A158) and 16 (Construction Method Statement) of planning permission 133284 allowed on appeal 21 June 2016. Condition 7 (Surface Water drainage) details were approved on 06.12.18. Condition 8 details approved on 13.08.18. Condition 13 details approved on 10.10.19 and condition 16 approved on 17.08.18.

#### **Representations:**

**Chairman/Ward member(s):** No comments received.

**Sudbrooke Parish Council:** Request the application be put to the full Planning Committee for a decision to be made.

Sudbrooke Parish Council wish to **object** to planning application 146151 on the grounds that the proposal completely negates the intention of condition 13 of the appeal decision. Main Drive is a narrow private road maintained by the residents who have a right of way written into the deeds of their properties. It has Footpath 160 running along its length. At its junction with the A158 it has an entrance bordered by

Grade II listed gateway comprising two former estate houses and ornate iron gates. It also has a listed grade II stone parapet bridge spanning the beck to the north of the gates. (Historic England UID 1166024 and 1391395 respectively). Since the initial application to build the Parklands estate was made, Sudbrooke Parish Council has expressed concern over access through Main Drive for vehicular traffic. We have held many discussions with representatives of the developers to seek a solution. Ideas put forward have ranged from lifting barriers, lockable gates, and rising bollards. None have been adopted by the developers, indeed we have been told by the developer on multiple occasions that such a restriction would be illegal because of footpath 160. The Parish Council find it difficult to believe that Her Majesties Inspector should place a condition of appeal that would be illegal.

Currently there are signs at either end of Main Drive stating that it is a private road and that construction traffic are not to use it. The visual deterrent to entry that these signs offer is ineffective. Google maps shows Main Drive as an accessible road and is the most direct route to the Parklands development from the A158. As such it is an easy route for delivery drivers from the supermarkets and online firms. It is also now being used as a rat run by current village residents to circumvent traffic problems at the junction of Scothern Lane and the A158. Sudbrooke Parish Council believes that the historic listed gates and bridge on Main Drive are in danger of being damaged by increased use of Main Drive if the “deter” amendment is accepted to replace “prevent”. The additional use by unauthorised vehicles is damaging the road surface and causing confrontation by Main Drive residents with said drivers. The only way to prevent further use and reduce tensions is to complete condition 13 of the appeal which should have been done before commencement of the development. Sudbrooke Parish Council asks the planning committee to reject this application.

### **Local residents:**

#### Objections to Condition 13 alteration:

Silvertrees, West Drive; (x3), Headway, West Drive; Garden House West Drive; Southlawn 3 West Drive (x2); The Lodge 63 Wragby Road; The Spinney Main Drive; Willowside West Drive; Southlawn;

### **Summary of objections, with full details available on website:**

The traffic increase through the park gates is not acceptable and requires bollards to limit traffic and to preserve amenity;

Concerns that bollards are not in place:

All 23 properties holding the right of way along Main Drive have signed the petition in favour of bollard control in December 2021 and issued to the developer and planning officer in January 2022;

Application lacks credibility

Submitted legal opinion is belated

Financial motive for the application:

Inability to satisfy required conditions reflects poorly on developer and lack of enforcement reflects poorly on the planning process;

### **Summary of objections with full details available on website:**

Objection to more houses:

1 Windsor Close; 20 Northfield Avenue; 12 Park Close Sudbrooke;  
43 St Edwards Drive; 12 Broad Dale Close;

Roads serving used by construction vehicles as a cut through resulted in deep holes and very dangerous for families and children biking and walking;  
Increased housing will cause increased traffic and place strains on primary school and Nettleham surgery;  
Existing issues with speeding along West Drive increasing the existing already dangerous situation;  
Will lead to a further loss of woodland

**LCC Highways:**

30.03.23: The intent is to protect the public right of way from illegal misuse. There is only so much capacity for vehicles on Main Drive and little safe capacity for contra-directional traffic to pass without causing edge over-run and the likelihood of associated deterioration. The value of a public footpath to the public is as a safe, lowly trafficked pedestrian route, and that value is essentially and proportionately compromised as the volume of vehicular traffic increases. Furthermore, the route is not and will not be maintained for vehicles by the highway authority, rather there is an expectation that those limited numbers of homes enjoying private vehicular rights will collectively attend to the repair of any potholes attributable to their domestic vehicular access. Any unchecked surface deterioration caused by the illegitimate vehicular use you propose to facilitate will be to the further detriment of the walking public.

In granting the appeal PINS imposed a condition to safeguard the public right of way from misuse and to prevent increased access along the footpath and through the ornate gateway, which is considered by the Highway Authority as not an appropriate means of safely accessing the new development.

20.02.23: The Highway Authority objects to the planning application in its current form. The condition of a bollard solution must remain to prevent conflict arising through unauthorised vehicular access by the new households. This should be delivered through a legal narrowing of the highway (public right of way) through the Highways Act s.118 so that whatever solution is not sited in the public highway. This will still require the consent of any household(s) with existing private vehicular access rights via Main Drive.

**Environment Agency:** No objections

**Lincolnshire Police:** No objections

**Anglian Water:** No comments

**Historic England:** We suggest that you seek the views of your specialist conservation and archaeological advisers

**Relevant Planning Policies:**

Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Here, the Development Plan comprises the provisions of the Central

Lincolnshire Local Plan (adopted in April 2023); the Sudbrooke Neighbourhood Plan (made 2020); and the Lincolnshire Minerals and Waste Local Plan (adopted June 2016).

## **Development Plan**

On the 28th March, the Planning Inspectorate published their "Report on the Examination of the Central Lincolnshire Local Plan Review". The report concludes that the Central Lincolnshire Local Plan Review provides an appropriate basis for the planning of the City of Lincoln and the districts of North Kesteven and West Lindsey, provided that a number of main modifications are made to it (supplied by the Inspectors).

At the time of writing - The Central Lincolnshire Local Plan Review is expected to be considered at the meeting of the Central Lincolnshire Joint Strategic Planning committee (CLJSPC), scheduled for Thursday 13th April. In the event the Committee resolve to adopt the new Plan, it will become the Development Plan against which planning decisions must be considered and taken against.

This assessment has therefore been made against the provisions of the 2023 Central Lincolnshire Local Plan, in anticipation that it will be part of the statutory development plan against which the Planning Committee will need to make its decision, at its meeting on 26th April 2023.

Relevant policies include:

Policy S47: Accessibility and Transport  
Policy S53: Design and Amenity

- *Sudbrooke Neighbourhood Plan (NP)*

Relevant policies of the NP include:

Policy 7 Rights of Way

- *Lincolnshire Minerals and Waste Local Plan (LMWLP)*

The site is not within a Minerals Safeguarding Area, Minerals or Waste site / area.  
National policy & guidance (Material Consideration)

- ***National Planning Policy Framework (NPPF)***

The NPPF sets out the Government's planning policies for England and how these should be applied. It is a material consideration in planning decisions. The most recent iteration of the NPPF was published in July 2021.

- ***National Planning Practice Guidance***
- ***National Design Guide (2019)***
- ***National Design Model Code (2021)***

## **Main issues**

Under s73 (2), *“the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted”*.

As Planning Practice Guidance ([Use of Planning Conditions Paragraph: 031 Reference ID: 21a-031-20140306](#)) states, *“In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application.”*

The National Planning Policy Framework states planning conditions should only be imposed if they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. These are referred to as “the six tests” in planning practice guidance.

## **Assessment:**

A letter expressing a legal view has been submitted by the applicant, as part of the application submission that purports to demonstrate that the original condition was not lawful.

Notwithstanding this it is still lawful as the opportunity to seek a judicial review of it would have been within 6 weeks of the date of the decision in 2016. The applicant did not seek a Judicial Review of the Appeal decision or seek to challenge its perceived lawfulness at that time. They are now out of time for doing so. The argument advanced is that installation of a barrier in itself may be unlawful. This is on the grounds that under s137 of the Highways Act, it is a criminal offence for any person to *‘without lawful authority or excuse, wilfully obstruct the free passage along a highway’*. On this basis it is argued that it would be unlawful and unenforceable, failing the six tests for the imposition of conditions.

Legal Advice was subsequently sought by WLDC which did not confirm these findings indicating that the matter was not as clear cut as presented. Having reviewed the case law they consider it is important to determine whether there is a significant interference in order to determine whether it is an offence. As can be noted below the previously approved bollard scheme is actively supported by the local highways authority who have proactively put forward suggestions to prevent interference. It is important to note that the legal advice referred to the approved scheme in terms of a “barrier” rather than the actual condition itself and appears more to be an argument against implementation of the approved bollard scheme.

The inspector in his decision letter addressed the issue at paragraph 53:

*“Access is before me at this stage and conditions are needed to stop up any direct access from the site to the A158, to ensure that estate roads and footways are laid out before dwellings they serve are first occupied; and to protect and improve the existing Public Right of Way (PROW) that crosses the site.” (Officer underlining).*

It was therefore considered necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Furthermore, it is to be noted that the Local Highways Authority – responsible for the Public Right of Way – actively support the previously approved bollard solution and in fact object to this application to remove it – citing concerns with conflict that would arise between additional vehicular traffic, and users of the public right of way. They advise:

*“The Highway Authority objects to the planning application in its current form. The condition of a bollard solution must remain to prevent conflict arising through unauthorised vehicular access by the new households. This should be delivered through a legal narrowing of the highway (public right of way) through the Highways Act s.118 so that whatever solution is not sited in the public highway. This will still require the consent of any household(s) with existing private vehicular access rights via Main Drive.”*

It is noted that the potential adverse impacts on the existing right of way feature prominently in the objection from the Highways Authority. Impacts on public rights of way are a material planning consideration. Approval of the condition as proposed would have an adverse impact on Sudb/160/1 as set out in the most recent response from Highways above.

LCC Highways have also suggested an alternative route to delivering the approved scheme, namely “a legal narrowing of the highway (public right of way) through the Highways Act s.118 so that whatever solution is not sited in the public highway”.

Consequently, the previously approved bollard scheme has been approved under the remit of the Planning Acts, and is actively supported by the Local Highways Authority in order to protect the PRow. The applicant has not therefore demonstrated that they are unable to obtain “lawful authority” for the proposed bollard scheme or that the scheme would actively invoke separate provisions under the Highways Act that would prevent the development being able to take place, and therefore render the condition no longer reasonable.

### **Conclusion and planning balance**

The original condition meets the six tests and the alternative condition would undermine the original intent of this condition in terms of protection of rights of way and refusal is recommended.

### **Recommendation**

That the application be refused permission, for the following reason:

1. The original Condition 13 is still considered to be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The proposed amendment would undermine the intent of this condition, the protection of public rights of way, in particular public footpath Sudb/160/1. It would lead to a conflict between users of the public right of way and vehicular traffic.