

## **Officers Report**

### **Planning Application No: 138377**

**PROPOSAL:** Planning application for change of use from paddock land to residential amenity land, surface water drainage swale and landscaping strip.

**LOCATION:** Land off Lincoln Road Fenton Lincoln LN1 2EP

**WARD:** Torksey

**WARD MEMBER(S):** Cllr S F Kinch

**APPLICANT NAME:** Mr S Kinch

**TARGET DECISION DATE:** 16/11/2018

**DEVELOPMENT TYPE:** Change of Use

**CASE OFFICER:** Ian Elliott

**RECOMMENDED DECISION:** Grant permission subject to conditions

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#### **Description:**

The application has been referred to the Planning Committee as the applicant is an elected member.

The application site is an area of paddock land (1153m<sup>2</sup>) to the east of a small residential development of four houses. The site is located to the east of plot 3 (occupied) and plot 4 (under construction at time of officer site visit). The land is compacted earth and is set lower than the two plots and the adjacent highway. The site is screened to the north by high trees and hedging and open to the east. The south boundary is screened by hedging with an open west boundary. Neighbouring dwellings sit to the north and west with open fields to the east and west. The site is within flood zone 3 and a sand and gravel mineral safeguarding area.

#### **Proposal:**

As the boundary fencing is already in place identifying the extended rear amenity space this is a retrospective application seeking permission to change the use from paddock land to residential amenity land, surface water drainage swale and landscaping strip.

#### **Relevant history:**

131784 - Planning application for change of use from B1 business and B8 storage to housing with the erection of four new houses – 22/01/15 - Granted time limit and other conditions

133055 - Planning application to vary condition 4 of planning permission 131784 granted 22 January 2015-revised surface water drainage details – 30/07/15 - Granted time limit and other conditions

134112 - Application for a non-material amendment to planning permission  
131784 granted 22 January 2015 - changes to plot 3 appearance/fenestration  
– 21/03/16 - Granted with conditions

134115 - Planning application to vary condition 4 of planning permission  
133055 granted 30 July 2015-amendments to appearance, size and scale and  
repositioning of garages of plots 1 and 2 only – 30/06/16 - Granted time limit  
and other conditions

134559 - Planning application to vary condition 4 of planning permission  
133055 granted 30 July 2015-revised plans with amended appearance, size,  
scale and position of plot 4 – 02/18/16 - Granted time limit and other  
conditions

### **Representations**

**Chairman/Ward member(s):** No representations received to date

**Parish/Town Council/Meeting:** No representations received to date

**Local residents:** No representations received to date

**LCC Highways:** No representations received to date

**Environment Agency:** No objections

We consider that the FRA appropriately considers flood risk and do not wish to propose any conditions. The proposed relocation of the swale excavation represents a fairly minor amendment in order to increase the residential amenity land to the properties. This will not result in increased risk to the inhabitants of the new dwellings nor will it increase flood risk to third parties. The FRA recognises that during the most extreme events there could be a small amount of flooding to the expanded residential amenity land.

**LCC Minerals and Waste:** No representations received to date

**LCC Archaeology:** No objections

**Tree and Landscape Officer:** No objections

The revised landscaping plan is suitable and provides the necessary information.

**Trent Valley Internal Drainage Board:** No objections with observations

**IDOX checked:** 26<sup>th</sup> October 2018

### **Relevant Planning Policies:**

Central Lincolnshire Local Plan 2012-2036 (CLLP):

Planning law<sup>1</sup> requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The Development Plan in this location

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<sup>1</sup> [Section 38\(6\)](#) of the Planning and Compulsory Purchase Act 2004 and [section 70\(2\)](#) of the Town and Country Planning Act 1990

comprises the Central Lincolnshire Local Plan (April 2017) and the Lincolnshire Minerals and Waste Local Plan (June 2016).

Central Lincolnshire Local Plan 2012-2036 (CLLP):

Following adoption on 24<sup>th</sup> April 2017 the CLLP forms part of the statutory development plan. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The policies considered relevant are as follows:

LP1 A Presumption in Favour of Sustainable Development

LP2 The Spatial Strategy and Settlement Hierarchy

LP14 Managing Water Resources and Flood Risk

LP17 Landscape, Townscape and Views

LP25 The Historic Environment

LP26 Design and Amenity

LP55 Development in the Countryside

<https://www.west-lindsey.gov.uk/my-services/planning-and-building/planning-policy/central-lincolnshire-local-plan/>

Lincolnshire Minerals and Waste Local Plan (Core Strategy and Development Management Policies):

<https://www.lincolnshire.gov.uk/residents/environment-and-planning/planning-and-development/minerals-and-waste/88170.article>

The site is within a Sand and Gravel Mineral Safeguarding Area. Policy M11 (Safeguarding of Mineral Resources) applies.

In accordance with paragraph 213, the above policies are consistent with the NPPF and are attached full weight.

Neighbourhood Plan

Fenton has to date not declared any interest in starting the process of creating a neighbourhood plan.

National Guidance

National Planning Policy Framework

<https://www.gov.uk/government/collections/planning-practice-guidance>

National Planning Practice Guidance

<https://www.gov.uk/government/collections/planning-practice-guidance>

## **Main issues**

- Principle of the Development  
*Planning Permission 133055 dated 30<sup>th</sup> July 2015*  
*National Planning Policy Framework*  
*Flood Risk*  
*Concluding Assessment*
- Visual Amenity

- Residential Amenity
- Surface Water Drainage
- Landscaping
- Minerals and Waste
- Archaeology

## **Assessment:**

### Principle of the Development

Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.

#### *Planning Permission 133055 dated 30<sup>th</sup> July 2015:*

Planning permission 133055 was submitted to vary condition 4 (plans) of planning permission 131784 dated 22<sup>nd</sup> January 2015 and is the most recent planning permission for this site. Permission 133055 included site plan 2624-106 Rev B dated 17<sup>th</sup> October 2014 and drainage plan 001 dated 7<sup>th</sup> April 2015.

When compared with the site plan ARQ/1164/03 Rev B dated 25<sup>th</sup> October 2018 submitted in this application the rear garden spaces are extended across the position of the swale and landscaping approved in 133055. This then requires the relocation of the swale and landscaping to the east therefore the overall site is only extended by the area covered by the relocated swale and landscaping.

The extended garden spaces to plot 3 and plot 4 will be within the site boundaries which was previously approved as part of a residential use on a modest residential development. Therefore the principle for residential use on the extended garden spaces has already been established on planning permissions 131784 and most recently 133055.

The proposed position of the swale and landscaping will technically be located in an open countryside location on the edge of the Fenton settlement measuring approximately 10 metres in length and 95 metres in width. The development will intrude further into the open countryside, however the extended area will be extensively landscaped to retain the character and appearance of the area. Therefore whilst this development does not specifically accord with the criteria of LP55, it is considered that nevertheless due to the specific characteristics of the proposal which includes no new built development that on balance on this occasion it is considered acceptable.

#### *National Planning Policy Framework:*

Paragraph 213 of the NPPF states that '*However, existing [development plan] policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)*'.

### *Flood Risk:*

The application site is situated in flood zone 3 and a Flood Risk Assessment has been submitted with the application. In summary the Environment Agency have no objections to the development as the Flood Risk Assessment appropriately considers flood risk and the proposed relocation of the swale excavation represents a fairly minor amendment in order to increase the residential amenity land to the properties.

Residential amenity space is not classified in table 2 (Flood Risk Vulnerability Classification) of paragraph 66 (Reference ID: 7-066-20140306) of the NPPG. However amenity open space and swales (water transmission infrastructure) are classified as water-compatible development.

Guidance contained within paragraph 155 of the NPPF indicates that development should be directed away from areas at highest risk from flooding. Guidance notes states that the application of the Sequential Test should be applied first to guide development to Flood Zone 1, then Zone 2, and only Zone 3 if there are no other readily available sites in any of the less vulnerable locations.

However guidance contained within paragraph 67 (Reference ID: 7-067-20140306) of the NPPG states that '*The Sequential and Exception Tests do not need to be applied to minor developments and changes of use, except for a change of use to a caravan, camping or chalet site, or to a mobile home or park home site*'. As this is a change of use application the passing of the sequential and exceptions test is not required.

The submitted Flood Risk Assessment concludes that '*The development of the site would not increase the risk of flooding to third party properties and therefore meets the requirements of the NPPF in this regard. The recent re-profiling the site using free-draining topsoil will now allow rainwater to permeate into the surface rather than shed off the hard clay soils on the site and may reduce the run-off from the site*'.

The extension of residential amenity space and relocation of the swale/landscaping area will not increase the flood risk on the site or the dwellings. Flood risk is not a reason to withhold consent.

### *Concluding Assessment:*

Therefore the principle of the development is acceptable subject to meeting all other material considerations.

### Visual Amenity

Local Policy LP17 of the CLLP states that '*To protect and enhance the intrinsic value of our landscape and townscape, including the setting of settlements, proposals should have particular regard to maintaining and responding positively to any natural and man-made features within the landscape and townscape which positively contribute to the character of the area*'

Local policy LP26(c) of the CLLP states that *All development proposals must take into consideration the character and local distinctiveness of the area (and enhance or reinforce it, as appropriate) and create a sense of place. As such, and where applicable, proposals will be required to demonstrate, to a degree proportionate to the proposal, that they:*

*c. Respect the existing topography, landscape character and identity, and relate well to the site and surroundings, particularly in relation to siting, height, scale, massing, form and plot widths;*

The site will not introduce any additional built form and will simply push the rear boundary of plot 3, the side boundary of plot 4 and the swale further east. The strip of land which includes the swale will be landscaped with a number of trees and extensive shrub planting which once established will soften the appearance of the site from the east.

The proposal will not have an adverse visual impact on the site or the surrounding area and accords to LP17 and LP26 of the Central Lincolnshire Local Plan and the provisions of the NPPF.

#### Residential Amenity

The proposal will provide a benefit to the living conditions of plot 3 and plot 4 by increasing the size of their garden spaces. The development does not include any further built form therefore the amenity of the neighbouring dwellings will not be affected in terms of overlooking, overbearing and loss of light.

The proposal will therefore not have an adverse impact on the living conditions of neighbouring dwellings and accords to LP26 of the Central Lincolnshire Local Plan and the provisions of the NPPF.

#### Surface Water Drainage

The application has included a drainage plan ARQ/1164/02A dated 25<sup>th</sup> October 2018. This plan is identical to the approved foul and surface drainage plan from planning permission 133055 apart from the extension of the pipework to reach the new position of the swale.

The proposed drainage plan is therefore acceptable and accords to LP14 of the Central Lincolnshire Local Plan and the provisions of the NPPF.

#### Landscaping

The application has included landscaping details on block plan ARQ/1164/03 Rev B dated 25<sup>th</sup> October 2018. The Authority's Tree and Landscape has no objections to the plan and its detail.

The proposed landscaping plan is therefore acceptable and accords to LP17 and LP26 of the Central Lincolnshire Local Plan and the provisions of the NPPF.

### Minerals and Waste

Guidance contained within paragraph 142-149 of the NPPF sets out the needs to safeguard mineral resources through local plan policies 'to support sustainable economic growth and our quality of life'.

Policy M11 of the Lincolnshire Minerals and Waste Local Plan (Core Strategy and Development Management Policies) states that:

*'Applications for non-minerals development in a minerals safeguarding area must be accompanied by a Minerals Assessment. Planning permission will be granted for development within a Minerals Safeguarding Area provided that it would not sterilise mineral resources within the Mineral Safeguarding Areas or prevent future minerals extraction on neighbouring land. Where this is not the case, planning permission will be granted when:*

- *the applicant can demonstrate to the Mineral Planning Authority that prior extraction of the mineral would be impracticable, and that the development could not reasonably be sited elsewhere; or*
- *the incompatible development is of a temporary nature and can be completed and the site restored to a condition that does not inhibit extraction within the timescale that the mineral is likely to be needed; or*
- *there is an overriding need for the development to meet local economic needs, and the development could not reasonably be sited elsewhere; or*
- *the development is of a minor nature which would have a negligible impact with respect to sterilising the mineral resource; or*
- *the development is, or forms part of, an allocation in the Development Plan.*

The Minerals and Waste Planning Team at Lincolnshire County Council has to date not commented or requested a Minerals Assessment on the application.

No Mineral Assessment has been submitted with the planning application to date, however this is not considered necessary given the type and scale of the development which includes no built form plus the benefits of the proposal in terms of additional garden space and the use of a sustainable urban drainage scheme.

Therefore the proposal does not significantly sterilise the minerals resources in West Lindsey. The development therefore accords with policy M11 of Lincolnshire Minerals and Waste Local Plan (Core Strategy and Development Management Policies) and the provisions of the NPPF.

### Archaeology

The Historic Environment Officer at Lincolnshire County Council has no objections to the proposal therefore the proposal accords to local policy LP25 of the CLLP and the provisions of the NPPF.

**Other Considerations:**

Community Infrastructure Levy (CIL)

The proposed development is not liable to CIL payment

**Conclusion and reasons for decision:**

The decision has been considered against policies LP1 A Presumption in Favour of Sustainable Development, LP2 The Spatial Strategy and Settlement Hierarchy, LP14 Managing Water Resources and Flood Risk, LP17 Landscape, Townscape and Views, LP25 The Historic Environment, LP26 Design and Amenity and LP55 Development in the Countryside of the Central Lincolnshire Local Plan 2012-2036 in the first instance and guidance contained within the National Planning Policy Framework and National Planning Practice Guidance. In light of this it is considered on balance that the principle of the development is acceptable. The proposal will not have a significant adverse visual impact on the site or the surrounding area. It will not have a harmful impact on the living conditions of neighbouring dwellings, increase the risk of flooding, or sterilise mineral resources

**Human Rights Implications:**

The above objections, considerations and resulting recommendation have had regard to Article 8 and Article 1 of the First Protocol of the European Convention for Human Rights Act 1998. The recommendation will not interfere with the applicant's and/or objector's right to respect for his private and family life, his home and his correspondence.

**Legal Implications:**

Although all planning decisions have the ability to be legally challenged it is considered there are no specific legal implications arising from this report

**Representors to be notified -**

*(Highlight requirements):*

**Standard Letter**       **Special Letter**       **Draft enclosed**

**Conditions stating the time by which the development must be commenced:**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To conform with Section 91 (1) of the Town and Country Planning Act 1990 (as amended).

**Conditions which apply or require matters to be agreed before the development commenced:**

NONE

**Conditions which apply or are to be observed during the course of the development:**

2. With the exception of the detailed matters referred to by the conditions of this consent, the development hereby approved shall be carried out in accordance with the following drawings (all dated 25<sup>th</sup> October 2018):
  - ARQ/1164/01 REV A – Location Plan
  - ARQ/1164/02 Rev B - Proposed Block Plan with Surface Water Drainage Details
  - ARQ/1164/03 Rev B - Proposed Block Plan with Landscaping Details

The works shall be carried out in accordance with the details shown on the approved plans and in any other approved documents forming part of the application.

Reason: To ensure the development proceeds in accordance with the approved plans and to accord with the National Planning Policy Framework and local policies LP14, LP17 and LP26 of the Central Lincolnshire Local Plan 2012-2036.

3. Prior to occupation of plot 4 the foul and surface water drainage must be completed in accordance with the details shown on the Proposed Block Plan with Surface Water Drainage Details ARQ/1164/02 Rev B dated 25<sup>th</sup> October 2018.

Reason: To ensure adequate drainage facilities are provided to serve the development, to reduce the risk of flooding and to prevent pollution of the water environment to accord with the National Planning Policy Framework and policy LP14 of the Central Lincolnshire Local Plan 2012-2036.

**Conditions which apply or relate to matters which are to be observed following completion of the development:**

4. All planting or turfing comprised in the approved details of landscaping on plan ARQ/1164/03 Rev B dated 25<sup>th</sup> October 2018 must be carried out in the first planting and seeding season following the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. The landscaping should be retained thereafter.

Reason: To ensure that any planting which fails to establish or dies within the first five years is replaced to accord with the National Planning Policy Framework and local policies LP17 and LP26 of the Central Lincolnshire Local Plan 2012-2036.