

Officers Report

Planning Application No: 146685

PROPOSAL: Planning for the erection of 6no. detached bungalow dwellings & associated garages.

LOCATION: Land To The South Of Legsby Road Market Rasen LN8 3DZ

WARD: Market Rasen

WARD MEMBER(S): Cllr S Bunney, Cllr M K Westley and Cllr E L Bennett

APPLICANT NAME: Mr Joseph Robinson

TARGET DECISION DATE: 18/07/2023 (EOT agreed until 6th October 2023)

DEVELOPMENT TYPE: Minor - Dwellings

CASE OFFICER: Dan Galpin

RECOMMENDED DECISION: Grant planning permission, subject to conditions

This application has been referred to the Planning Committee following objections and concerns raised by the Town Council, Ward Members and members of the public, in relation to planning matters.

Following the deferral of this application at the Planning Committee meeting held on November 1st, the applicant provided additional information regarding visibility splays and an amended proposed site plan which mostly retains the existing section of hedgerow and Public Rights of Way. Re-consultations were sent to all relevant technical consultees regarding Rights of Way and any local residents were re-consulted for a period of two-weeks. All of the additional consultation responses have been summarised alongside additional assessment within the '*Public Rights of Way*' section of the report.

Description: The site is located to the rear of dwellings on the south of Legsby Road, on the eastern side of Market Rasen with residential dwellings situated to the north at Legsby Road and to the west at The Ridings and Wetherby Close. A Public Right of Way (footpath MaRa/162/6) runs from north to south through the site on the western edge connecting Legsby Road to the open countryside south of the site. The site comprises of an arable field that is in semi-active use.

Planning permission is being sought for the erection of six residential bungalows with access connecting to Legsby Road to the north. All of the bungalows would have a similar design utilising red facing brick, grey interlocking concrete or pantiles and cream uPVC windows. It is proposed to utilise 1.8 metre boarded timber fencing (Lincolnshire post and rail). Each bungalow would be of a similar form and scale but there are modest variations in the form of each bungalow to result in each design having a degree of

distinctiveness. Parking would be provided via a mix of private driveways, integral and, semi-detached and detached garages.

Relevant history:

140904 – Outline planning application for 4no. dwellings with access and layout to be considered and not reserved for subsequent applications. Granted 14th August 2020.

Representations:

A summary of representations is provided here. Full representations can be viewed on the planning application record.

Chairman/Ward Member(s)

Comments – Representations were received from Cllr Stephen Bunney and Cllr Moira Westley. The following material considerations were raised:

- General comments regarding the previous application (140904) for four dwellings. There was concern that this could constitute overdevelopment and could cause an issue for sewage/surface water drainage. Further development has since taken place on Legsby Road;
- Concerns were raised regarding foul and surface water drainage. It was stated that a full Flood Risk Assessment should be carried out to assess the full effect on sewers in terms of flooding;
- Noted that a Right of Way runs up the drive entrance. At a minimum, the same conditions should be applied;
- Highways – concern was raised regarding further development in the area such as Market Rasen Racecourse, Gold Club and Wild Pines;

Market Rasen Town Council

Comments received in relation to the potential loss of a Public Right of Way, important hedgerow and increased flooding risk. There are also questions relating to housing. There were also concerns in relation to the following:

- Concern regarding overcrowding;
- Comments regarding design, layout, form and scale as outlined in Policies S6, S20 and S53 of the CLLP;
- All conditions placed on the previous outline planning permission should remain in place;

Local Residents

Letters of objection have been received from ten local residents at 2, 3 and 4 Wetherby Close, 1, 3 and 5 The Ridings, 5 Stable Way, 33 Foxglove Road, Clearwell and 33 Lady Frances Drive. The following material considerations were raised:

- The proposal represents a 50% increase from the previous application which was for four dwellings;
- Concern raised regarding flooding, sewage and surface water drainage;
- The development would impact the Public Right of Way;
- Increase in traffic, highway safety, bin collection;
- Concern regarding the potential impact on wildlife;
- Wider infrastructure requirements;

Following a two-week re-consultation period for the amended proposed site plan representations have been received from three local residents at 1 The Ridings, Clearwell and 3 Wetherby Close.

Many of the comments received relate to the amendments to the Right of Way. A general sentiment that has been expressed it is welcomed that the existing route has been retained. However, specific concerns were raised in relation to boundary disputes which is not a material consideration.

Other comments received were technical comments regarding the position of hedgerows, ditches, the access road, amongst other technical matters. There was also a comment raised about visibility splays being blocked.

LCC Highways/Lead Local Flood Authority

No objection – *‘Access to the site, whilst unusual, is considered safe for the development proposed. It is there considered the development does not have a detrimental effect on highway safety.’*

LCC Countryside

Comments – *‘We have been made aware of this planning application for a plot of some 4,720 sq. metres, which although outside of the Lincolnshire Wolds Area of Outstanding Natural Beauty has the potential to impact upon one of our Partnership’s popular Market Rasen Lincolnshire Gateway Walks - “To Legsby & Linwood and Back Again” –*

<https://www.lincswolds.org.uk/exploring/walking/to-legsby-linwood>

I understand that the applicant is proposing to potentially fence/gate across the Definitive Public Footpath No. 162. which provides an important link to one of a series of three circular walks actively promoted and used by local residents and visitors to the area. It is unclear from the application how the definitive Rights of Way will be safely maintained and the plan drawing 1323-003 is unclear but suggests that the line of the footpath will be moved as indicated in the main planning application form, but this would require and be subject to approval via an official Diversion Order. The current definitive route does not appear to be plotted on the 1323-003 drawing so it is difficult to assess how public and private access will be managed, along with the additional boundary treatments including hedge, verge and ditch proposals. We recommend that the applicant undertakes discussions and seeks advice

with LCC's Countryside Section to ensure that the development is fully compliant with the current Rights of Way legislation; it is our understanding for example, that any gating of public rights of way is for the purposes of livestock grazier management of pastureland.'

LCC Rights of Way

No objection – Whilst an objection to the amended proposed site plan was initially received, following the receipt of further information by the applicant regarding ongoing maintenance, the Senior Definitive Maps Officer confirmed the following on November 14th 2023:

Thank you for your email of 14 November 2023 concerning the County Council's Public Rights of Way and Access Section's objection to the above scheme.

Having considered Mr Hyde's response of 14 November 2023, I can confirm that the County Council is satisfied that the issues outlined in my email of 13 November 2023 have been addressed satisfactory to warrant the withdrawal of our objection to the scheme.

I should clarify that whilst the route on the ground may diverge from the legal line of the public footpath recorded in the Definitive Map (the legal record of public rights of way), the Definitive Map ultimately takes precedent as the route of the public footpath recorded in it is the one over which the public have a legal right to use and enjoy. This route is denoted by the solid purple line shown in the attached plan. Given that the scheme, and particularly a garden proposed for plot 6, would affect the legal line of the public footpath, provision must either be made to accommodate the legal line of the public footpath within the scheme or on an alternative route which would require the making of a public path diversion order under section 257 of the Town and Country Planning Act 1990 ("the 1990 Act").

Any public path order be needed to divert the legal line of the public footpath must be made, confirmed and come into operation before the completion of the development. I wish to draw your attention to section 257(1A) of the 1990 Act which allows for the making of a public path diversion order before any decision is taken on the granting of planning permission. This may provide clarity on the outcome of the diversion before any decision is taken on the granting of planning permission.

*Please take this email as a **withdrawal of our objection** to the scheme.*

WLDC Archaeology

Comments – LCC Archaeology commented that there was insufficient site-specific archaeological information. It was recommended that a Heritage Impact Assessment is provided that includes a geophysical survey and trial trench evaluations.

Environment Agency

Does not wish to offer any comments.

Lincolnshire Wildlife Trust

No objection – The Lincolnshire Wildlife Trust raised a holding objection to the proposed development due to the absence of Preliminary Ecological Appraisal that deliver a 10% net gain.

A Preliminary Ecological Appraisal has since been submitted by the applicant and the Lincolnshire Wildlife Trust commented as follows:

For what it's worth the BNG tables don't look too bad (slightly ambitious urban tree condition but downgrading those to 'moderate' still yields around 9% gain. Always suspicious of creation tables that lack a ukhab map for the proposed site plan. This seems to be a trend though I do remember having to do this myself during my time in consultancy.

The Lincolnshire Wildlife Trust have also explicitly confirmed that they have no objection to the proposed development and have no further comments to make.

The Ramblers Association

Comments were received stating that the consultation request had been received and the following was stated on September 27th 2023:

Looking at the proposed plans further, it appears the developer proposes to uproot the existing hedge on the eastern side of Public Right of Way 162 enlarging the site to be built on. I am querying his ownership of that P.R.O.W. as I believe it was donated to the Ramblers in 1986 by the then Landowner Mr. Hugh Bourne. Regardless of ownership I strongly object as this route would totally be changed as walkers would have to share with traffic and it would destroy the rural nature of the Footpath.

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 (CLLP) (adopted in April 2023); and the Lincolnshire Minerals and Waste Local Plan (adopted June 2016).

Development Plan

- **Central Lincolnshire Local Plan (Adopted April 2023)**

Relevant policies of the CLLP include:

Policy S1: The Spatial Strategy and Settlement Hierarchy
Policy S2: Growth Levels and Distribution
Policy S3: Housing in the Lincoln Urban Area, Main Towns and Market Towns
Policy S6: Design Principles for Efficient Buildings
Policy S7: Reducing Energy Consumption – Residential Development
Policy S14: Renewable Energy
Policy NS18: Electric Vehicle Charging
Policy S20: Resilient and Adaptable Design
Policy S21: Flood Risk and Water Resources
Policy S47: Accessibility and Transport
Policy S49: Parking Provision
Policy S53: Design and Amenity
Policy S57: The Historic Environment
Policy S60: Protecting Biodiversity and Geodiversity
Policy S61: Biodiversity Opportunity and Delivering Measurable Net Gains
Policy S67: Best and Most Versatile Agricultural Land

- **Lincolnshire Minerals and Waste Local Plan (LMWLP) (Adopted June 2016)**

The site is not in a Minerals Safeguarding Area and Policy M11 of the Core Strategy does not apply.

National Policy & Guidance (Material Consideration)

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

Main issues

- Principle of Development
- Visual Amenity
- Residential Amenity
- Heritage Conservation
- Highways
- Archaeology
- Ecology & Biodiversity
- Flood Risk
- Other Matters

Assessment:

Principle of Development

The site is located within the settlement of Market Rasen which sits within Tier 3 of the settlement hierarchy which is established by Policy S1 of the CLLP. The previous planning permission (140904) determined that the site was not located within the developed footprint of Market Rasen due to it being on an arable field that relates more to the open countryside than the continuous built-up area of Market Rasen. However, due to Market Rasen being designated as a 'Market Town' that sits within Tier 3 of the settlement hierarchy, residential development that is directly adjacent to the developed footprint is acceptable in principle providing that a proposal accords with the following provisions within Policy S3:

To further bolster supply at the top three tiers of the settlement hierarchy, proposals on sites outside of but immediately adjacent to the developed footprint will be considered on their individual merits and will:

- *Be fully policy compliant, including meeting in full the affordable housing provisions set out in Policy S22;*
- *Result in no significant harm (such as to landscape, townscape, heritage assets and other protected characteristics of the area);*
- *Be suitably serviced with infrastructure;*
- *Be subordinate in size and scale to the community they adjoin and will not harm the settlement form, character or appearance of the area;*
- *Integrate successfully with the community they adjoin having regard to the mix of uses proposed and the design, layout and accessibility of the scheme; and*
- *Promote active travel patterns including access by walking, cycling and public transport.*

Any such proposal must not compromise the delivery of any other site allocations in the settlement.

The proposed development is for the erection of six residential dwellings and the total site area is under 0.5 hectares and as such there are no affordable housing requirements associated with this application (it falls under the qualifying criteria in policy S22). All relevant technical material planning considerations will be assessed throughout this report. However, it is considered that the proposed development is of a proportionate nature and scale that would not compromise any residential development on the closest allocated housing sites. It would be situated between established residential development to the west at Wetherby Close and the north and east at Legsby Road. There would be both a road and footpath access to Legsby Road allowing for the development to be integrated successfully into its surroundings.

Furthermore, it is considered that the development would be served by sufficient infrastructure. No objection been raised by the relevant technical statutory or non-statutory consultees in this regard (foul sewage and surface water drainage will be addressed later in this report). The site is within a 15-

minute walk of Market Rasen Town Centre and the topography is sufficiently flat to allow for cycling to a viable mode of transport.

It is noted that the previous scheme was reduced from five to four dwellings but the superseded layout of 140904 differed in the sense that it was for five dwellings that were arranged in a curvy-linear fashion and the dwelling furthest south protruded further into open countryside. Therefore, the application was amended to prevent the developed footprint Market Rasen extending further to the south beyond Wetherby Close.

Although this proposal would see a 50% increase in the total number of approved dwellings, this is from a low baseline of four dwellings. The overall density of housing on the site is still low at around 11 dwellings per hectare (dph). Despite the overall increase of two dwellings, this is not considered to be a disproportionate level of housing growth given the constraints of the site. Development on unallocated sites in Large and Medium Villages is up to 10 dwellings, albeit on sites that fall within the development footprint and are in an appropriate location. Whilst this is not a perfect comparison as this site is directly adjacent to the developed footprint of a Market Town, Market Rasen is a Tier 3 settlement within the settlement hierarchy and therefore is naturally expected to accommodate a higher level of development overall.

The size of a settlement is not a justification in itself but it will be demonstrated through this report that it is the professional view of the Officer that the proposed development is acceptable on its merits, subject to the imposition of the relevant conditions and on the balance of material considerations outlined in this report.

Loss of Best and Most Versatile (BMV) Land:

The site is located on an arable field that is in semi-active use. However, notwithstanding this, the site is only 0.4 hectares in scale and Policy S67 only requires the submission of an Agricultural Land Classification (ALC) Report where a site is larger than one hectare in scale.

The site is allocated as Grade 3 on the Natural England Agricultural Land Classification Map for East Midlands (ALC005), as is all agricultural land surrounding Market Rasen.

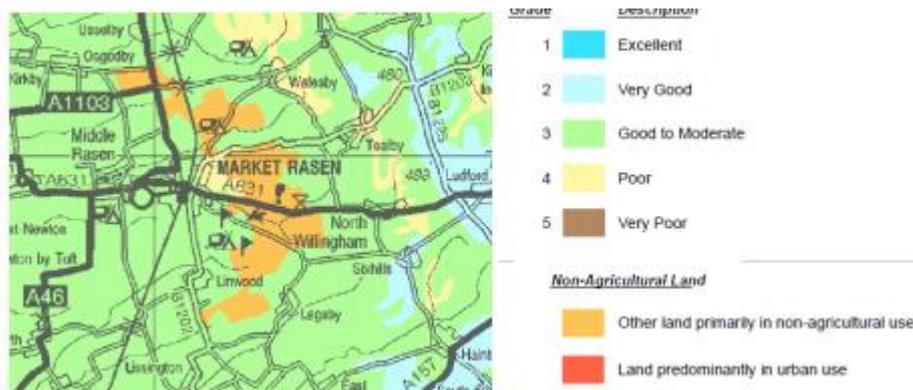


Figure 1: – <https://www.gov.uk/government/publications/agricultural-land-assessment-proposals-for-development/guide-to-assessing-development-proposals-on-agricultural-land>

The map (shown above) does not distinguish between Grade 3a (good) which qualifies as BMV Land and Grade 3b (moderate) which does not qualify as BMV Land. Natural England is only a statutory consultee when the loss of agricultural land over 20 hectares. Standing advice from Natural England states the following:

You should take account of smaller losses (under 20 hectares) if they're significant when making your decision. Your decision should avoid unnecessary loss of BMV land.

Reflecting on the above and in context of Policy S67 of the CLLP, it is not considered that the loss of this land would either be significant or unjustified. The site area at 0.4 ha is well below the one-hectare threshold and given that the principle of residential development on this site was previously established, it is considered that the proposal is broadly consistent with the requirements of Policy S67 of the CLLP. Although the proposal would see an overall increase in the number of dwellings, it is considered that this proposal makes a more efficient use of land and does not extend the *developed footprint* of Market Rasen further to the south. In this context, the loss of agricultural land is not unjustified.

In respect of the above, it is therefore considered that the proposed development is acceptable in principle. The relevant material considerations will be assessed in the remainder of this report.

Visual Amenity

Policy S53 of the CLLP requires 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 which demonstrates a sound understanding on their context. As such, and where applicable, proposals will be required to demonstrate, to a degree proportionate to the proposal, that they are well designed in relation to siting, height, scale, massing, and form. Important views into, out of and through a site should also be safeguarded.

The proposed development would see the introduction of six detached bungalows that would comprise a mixture of materials, built forms, integral garages, driveways and semi/detached garages. The dwellings would be arranged in two rows with the principal elevations facing towards the access road and the shared private drive. This is considered to be an acceptable layout as it would achieve both an active frontage with the main architectural detailing facing towards the more prominent public vantage points, creating a sympathetic street scene. With the exception of Plot 1 which has an integral garage, each individual plot would have a semi-detached/detached garage with drive access in front. The garages would be set the side of the dwellings prevent a visually cramped form of development. Plot 3 would be the exception to this with the detached garage set forward of the building but this is in the middle of the site and would also provide additional privacy to Plot 1 to the north. This layout overall resembles a rural-suburban cul-de-sac that creates a new visual context but in way that is not harmful to the character and appearance of the area.

In terms of scale, each bungalow would have a ridge height of just over six metres and an eaves height of just over four with projecting gables having a lower ridge height but a similar eaves height. This is also acceptable given the relatively low density of housing that would occupy the site. Given that the bungalows are detached, this would also match the nature of the dwellings that are being proposed. The scale would be sufficiently in keeping with the type of detached bungalows that exist on The Ridings and Wetherby Close and would not visually dominate any adjacent dwellings. The bungalows would not be visually prominent from public vantage points on Legsby Road and would appear as a sympathetic infill development to the south. The proposed development utilises a combination of boundary treatments that balances both the privacy of the occupiers with the need to respect the landscape character. The southern boundary treatment of Plot 5 and Plot 6 prevents a visually monolithic appearance which could occur if close boarded fencing was utilised on the rear elevations as well as the side elevations of Plot 5 and Plot 6. Close boarded fencing and hedgerows is acceptable on the northern and eastern boundaries as these do not face towards the main public vantage points to south and west of the site. The garages would be a similar height to that of the eaves of their host dwellings which would achieve both visual subservience and visual integration into the street scene. This prevents the garages looking disjointed from the bungalows.

The design approach attempts to create a semblance of visual heterogeneity which is achieved by utilising a mixture of materials in the roof and also in the overall form of the dwellings. There is a combination of hipped and gable roofing proposed on both the bungalows and garages. It is proposed to finish the dwellings and garages in red facing brick, cream uPVC and either grey interlocking concrete tiles or clay pantiles. This material specification is considered to be acceptable in a rural location. The clay pantiles are especially appropriate on the southernmost plots as these face towards open countryside where clay pantiles are the most appropriate. This variation in terms materials and form is both sympathetic to the established character of the area but also prevents a uniform appearance that would fail to enhance

local distinctiveness. The form of Plots 1 and 5 whilst not standard gives the impression that a pedestrian is entering and leaving the site as the roofline rises or falls depending on the direction that a pedestrian would be walking. This aids in the visual transition from urban to suburban/rural and suburban/rural to open countryside respectively. The application form notes that the finish of the doors on the dwellings and garages is to be confirmed. A condition will be attached to the decision notice requiring these details of their materials, finish and external appearance to be provided prior to their installation.

It is considered that the overall proposal would respect the character and appearance of the area whilst creating a degree of visual distinctiveness that is based on a sound understanding of its context. The impact on the wider landscape character is considered acceptable. From the south, these dwellings would be seen within the context of existing built development and would be well concealed beyond the immediate proximity of the site to the north and would well concealed from Legsby Road.

For the reasons explained above, it is considered that the proposed development is in accordance with Policy S53 of the CLLP and Section 12 of the NPPF.

Residential Amenity

Policy S53 of the CLLP requires that development proposals do not have an unacceptable impact on residential amenity. This includes considerations such as compatibility with neighbouring land uses, noise, vibration, odour, and the creation of safe environments amongst other things. Furthermore, paragraph 130 f) of the NPPF requires that development proposals provide a high standard of residential amenity for both existing and future users.

The total site area is 0.4 hectares and it is therefore considered that the proposal would result in a relatively low-density form of housing (15 dph gross). This is reflected in the scale of the dwellings which are slightly over six metres in height. It is noted that the proposed development would result in a 50% increase in the number of dwellings from that previously granted permission. However, whilst representations concerned with over-development are noted 15dph is considered to be a low density. By way of an example, the calculation used to identify site capacity in the Central Lincolnshire Local Plan would assume 35dph on a site that is 85% developable¹ - around 11 dwellings. The proposal would achieve a lower density of housing than the bungalows on The Ridings or Wetherby Close.

The dwellings would provide both a high standard of residential amenity to both the future users and the adjacent dwellings. The closest separation distance to a dwelling not on the site is at least nine metres which is considered to be acceptable given the single storey nature of the proposal.

¹ HOU002a – Central Lincolnshire Policies S76-S82 Evidence Report (March 2022) <https://www.n-kesteven.gov.uk/central-lincolnshire/planning-policy-library>

The separation distances on site are in excess of 10 metres with the exception of Plot 3 and Plot 4 but given that these are located in a linear fashion, this is considered acceptable as the principal and rear elevations are parallel to one another. The separation distance combined with the boundary treatments and overall scale of the plots with respect to the host dwellings is considered acceptable. The smallest amount of amenity space appears to be on Plot 4 which has at least 80 square metres of rear garden space.

All of the principal and rear elevations have been designed to face away from each other which also helps to improve privacy and largely removes the risk of overlooking, overshadowing and overbearing forms of development. The windows are all relatively low to the ground which also improves privacy. The dwellings to the north may partially overlook the site, but the separation distance which is in excess of 10 metres and perpendicular spatial relationship is acceptable and this is only applicable to Plot 1. The rest of the dwellings have a much greater separation distance to off-site dwellings. The separation distances were not found to be unacceptable in the previous application (layout was not a reserved matter) and there is no reason to come to a contrary conclusion in this circumstance.

Finally, the low density of the plots and relatively large scale of the bungalows would comply with the national technical space standards alongside providing a good amount of exterior amenity space.

One condition will be attached requiring the submission of a Construction Method Statement. This was placed on the previous outline planning consent and is considered appropriate to ensure that there are not any unacceptable impacts on the amenity of the occupiers of neighbouring dwellings during the construction period. Subject to this condition, it is considered that the proposed development would accord with Policy S53 of the CLLP and paragraph 130 f) of the NPPF.

Highways

Policies S47, S48 and S49 collectively require that development proposals do not have an unacceptable impact on highway safety or a severe cumulative impact on the wider highway network. Policy S48 requires that development proposals should facilitate active travel. It also requires that first priority should be given to pedestrians, cyclists, and people with impaired mobility. Policy S49 of the CLLP sets out minimum parking standards that are required for residential and non-residential development within Central Lincolnshire.

Paragraph 92 of the NPPF supports development proposals that allow for the creation of healthy and safe places. This is reinforced by paragraph 110 of the NPPF which requires that development proposals provide safe and suitable access to all users. Paragraph 111 of the NPPF in turn states that development proposals can only be refused on highways grounds where there is an unacceptable impact on highway safety, or the wider cumulative impact would be severe.

The proposal would see the introduction of an additional six dwellings with access being obtained to the north from Legsby Road. The Local Highway Authority at Lincolnshire County Council has stated that whilst the access to the site is unusual, it is not considered that the proposed development would result in either an unacceptable impact on highway safety or a severe cumulative impact on the wider highway network.

Concerns raised by local residents are noted. However, the emphasis on new housing development within Market Towns is that growth on unallocated sites should be proportionate. Whilst the proposal would represent an increase of two dwellings from the four permitted via 140904, this is not considered to be unacceptable and the overall cumulative impact resulting from six new dwellings (a net increase of two from 140904) would not be unacceptable. Given the overall size of the site, it is considered that the development of six residential dwellings on 0.4 ha of land is an appropriate scale and density of development with respect to highway safety.

All of the new dwellings would have sufficient off-street parking that meets the requirements of Policy S49 of the CLLP. In addition, the access is sufficiently wide enough to allow for two vehicles to safely pass each other. Visibility from the access to the site is also sufficient and would not conflict with the guidance in the Manual for Streets. Comments in relation to aspects such as bin collection and carrying distances are noted but the CLLP does not set formal standards on carrying distance and bin collection would be a matter that is required to be resolved prior to the occupation of the new dwellings.

As part of the re-consultation period, the applicant submitted visibility splay drawings. One local resident has commented stating that cars turning into the new access would block the view of cars existing on Legsby Road. It should be noted that visibility splays are indicative drawings that demonstrate that acceptable visibility can be achieved, depending on the speed limit and the standards outlined in the Manual for Streets. No objection has been received from the Local Highway Authority and there is no reason to conclude that the proposed development would be unacceptably different from any other junction on a suburban cul-de-sac.

It is therefore considered that the proposed development would accord with Policies S47 and S49 of the CLLP and paragraphs 92, 110 and 111 of the NPPF.

Archaeology

Policy S57 of the CLLP requires that development proposals should take opportunities to protect and where possible, enhance the significance of heritage assets. Appropriate assessment proportional to the significance of a potential heritage asset should be submitted and where this is still sufficient, appropriate intrusive and non-intrusive mitigation should be undertaken. Similar guidance is also contained within paragraph 205 of the NPPF.

The comments received by LCC Archaeology are noted. However, the previous application 140904 stated that no archaeological input was required. Whilst it is conceivable that new evidence may have been provided since, no further justification for requiring a full Heritage Impact Assessment to include trial trenching and a geophysical survey has been provided in the response. The previous outline planning consent only lapsed in August 2023 and given that archaeology is a principle consideration, it is not considered reasonable to impose a requirement for further archaeological information given that the applicant would have had the option to discharge conditions and make a material start when this application was submitted in May 2023.

Notwithstanding the above, the site is a semi-active arable field which still would still retain an access for agricultural machinery from Legsby Road, should it be minded that to grant planning permission. Taking paragraph 205 of the Framework into account, it is considered that it would not be proportionate to request any further information with regard to this planning application.

The basis for requesting this information is not clear given the previous outline planning consent and any archaeological remains that may have previously been present, are very likely to have been disturbed. LCC Archaeology were also subsequently notified of this previous response and have stated that given the above considerations that these recommendations do not need to be actioned as they were unaware of the previous recommendations. No new information has come to light since 2020.

As such, it is considered that the proposed development is in accordance with Policy S57 of the CLLP and paragraph 205 of the NPPF.

Climate Change

Policy S6 sets out the overarching principles that relate to design of energy efficient buildings. In turn, Policy S7 outlines a specific requirement for all new residential development to be accompanied by an Energy Statement. This sets out two criteria which require that new residential development provides generates at least the same amount of on-site renewable energy as the dwelling consumes. The second criteria sets out that no single dwelling should exceed a total energy demand of 60 kWh/m²/yr with a site average of 35 kWh/m²/yr.

This application has been accompanied by an Energy Statement which concludes that the average total energy demand of the new dwellings would be 35.1 kWh/m²/yr. The space heating demand for the dwelling would be 14.52 kWh/m²/yr which is an improvement on the 15-20 kWh/m²/yr required by Policy S7. The average total energy demand would very marginally exceed the requirement of Policy S7 but there would be a marginal improvement on the average space heating demand.

Some caution should be exercised as the submitted u-values that are outlined in the Energy Statement are at the upper end of the recommended range for

compliance with Policy S7 as set out in the Energy Efficiency Design Guide which has been produced to assist both applicants and LPAs alike. Nevertheless, it is conceded that the submitted Energy Statement mostly complies with the overarching criteria of Policy S7 and are a significant improvement on current Building Regulations standards. The Energy Efficiency Design Guide does not form part of the development plan so can only be taken as guidance.

In addition, substantial weight is attached to the benefits of the provision of renewable energy as stated within Policy S14 of the CLLP. Paragraph 158 of the NPPF in turn recognises that even small-scale renewable energy production is invaluable in achieving reductions in carbon emissions. Another important consideration is that the principle of development has already been established on this site via 140904 which only lapsed in August 2023. This proposal if granted, would achieve a material improvement on development that has been previously approved by allowing for all dwellings to be largely energy independent from low carbon sources. This is in accordance with the ambition of paragraph 152 of the NPPF which seeks to achieve radical cuts in greenhouse gas emissions. This proposal would see the introduction of between 10 and 15 photovoltaic solar panels on each individual dwelling. The amended Energy Statement has outlined that the proposed development would be able to generate up to 57 kWh/m²/yr which would significantly exceed the total energy demand of the dwellings and is therefore considered to be acceptable subject to the additional details which would be secured by condition (outlined in the final paragraph of this section).

It is therefore considered that whilst the Energy Statement is very slightly above the 35 kWh/m²/yr and does not contain a specification of solar panels, the proposal is broadly consistent with the requirements of Policies S6 and S7 of the CLLP. Any departure from these policies is minimal and is greatly outweighed by the other economic and environmental benefits associated with the proposed development.

This is subject to the imposition of the standard conditions that ensure compliance with the relevant policies outlined in this section. An additional condition will also be attached requiring further details on the specification of solar panels to be provided with the discharge on the pre-commencement condition (Condition 3).

Ecology & Biodiversity

Policies S60 and S61 of the CLLP requires that development proposals do not have an unacceptable impact on ecology or biodiversity and should take opportunities to provide a net gain in biodiversity wherever possible. These requirements are also contained within paragraph 174 of the NPPF. Paragraph 180 states further that some harm to biodiversity is permitted but where there is significant harm, planning permission should be refused.

This application has been accompanied by a Preliminary Ecological Appraisal (PEA) which includes a Biodiversity Net Gain calculation that outlines the

proposed development would achieve a 30% net gain in habitat units and a 34% net gain in hedgerow units. This is sufficiently in excess of the minimum 10% net gain that is required by Policy S61. The site is an active agricultural field and therefore very little vegetation was present at the time of my site visit which would have yielded a low ecological baseline allowing for a significant net gain to be achieved. This is also aided by the relatively low density of the proposed dwellings allowing for more planting to be proposed.

The net gain figures are afforded modest weight in favour of the proposed development. There are no concerns regarding the Biodiversity Metric 4.0 calculations but no specification of the planting proposals has been submitted alongside the application. The submitted Site Plan shows the locations and broad type of planting that would be undertaken but no details on the species have been provided. It is therefore appropriate to attach a pre-commencement condition requiring the submission of a landscaping scheme in order to fully demonstrate the figures that have been outlined within the PEA.

The other relevant consideration is that the site has been determined to have potential for nesting birds. However, an additional survey would only be required if the development was to commence in the bird nesting season (March to August). The recommendations of the PEA will therefore be conditioned as part of a grant of planning permission. It is not considered necessary to require a separate pre-commencement condition for nesting bird surveys. Nesting birds are a protected species under the Wildlife and Countryside Act 1981. Therefore, it is an offence to cause undue harm to protected species independent of the planning process.

The Lincolnshire Wildlife Trust did not raise any objection/holding objection in their follow-up response to proposal. There was some doubt expressed about the quality of urban trees. However, even assuming that all of the trees would only be of a moderate quality, this would still yield a 9% net gain in biodiversity, and this in itself is only an assumption. BNG calculations are by their very nature proposals are based on assumptions. The final details will also be secured via a pre-commencement condition that is detailed at the end of this report. Given that a 9% can be assumed as a worst case scenario and the calculations were undertaken by a suitably qualified professional, it is considered that the proposed development is in accordance with S60 and S61 of the CLLP and paragraph 174 of the NPPF in light of the material considerations outlined in this report.

Flood Risk

Policy S21 of the CLLP requires that development proposals do not have an unacceptable impact on flood risk and implement appropriate mitigation (such as the use of SuDS) wherever possible. Paragraphs 159 and 167 of the NPPF respectively require that development should be diverted away from areas at the highest risk of flooding and that all development proposals should not increase the risk of flooding elsewhere.

The site is located within Flood Zone 1 which is considered to be at the lowest risk of flooding. This is sequentially preferable and the proposed development does not need to pass either the sequential or exceptions test. Footnote 55 of the NPPF requires the submission of a site-specific Flood Risk Assessment (FRA) for all development within Flood Zones 2 and 3. There is also a requirement for all development over 1 hectare in area in Flood Zone 1 or where there are critical drainage problems that have been identified by the EA. Following concerns raised by Cllr Stephen Bunney and a number of local residents, the applicant submitted a site-specific FRA. This concluded that the risk of flooding from all sources was **low** with the exception of pluvial flooding which was identified as having a **medium risk**. Page 8 (Figure 4.1) contains a map of the site and shows that the risk of surface water flooding was medium in a small area towards the north-eastern edge of the site near Plots 1 and 3. The FRA also contains an indicative drainage strategy. For a development to comply with Policy S21 and Section 14 of the NPPF, both the drainage of surface water and foul water/sewage must be acceptable.

Surface Water Drainage

In terms of surface water drainage, the type(s) of management systems required will inevitably depend upon the site-specific planning constraints. In some circumstances, a multi-functional drainage strategy may be required. The PPG establishes a hierarchy of drainage options which is as follows (the higher on the list, the more sequentially preferable):

- 1) *into the ground (infiltration);*
- 2) *to a surface water body;*
- 3) *to a surface water sewer, highway drain, or another drainage system;*
- 4) *to a combined sewer.*

Data from the British Geological Survey indicates that the site is located on superficial deposits of blown sand. The results from the percolation tests are outlined in Appendix 1 of the FRA. The indicative drainage strategy includes the provision of a new swale near the western boundary of the site alongside the provision of two new soakaways. The size of the soakaways has been calculated for a 1:100-year return period with a 40% climate change allowances in peak rainfall intensity. This would put indicative drainage strategy towards the top of the surface water drainage hierarchy. No objection has been raised from any statutory or non-statutory technical consultees in relation to this drainage strategy which will also be subject to a pre-commencement condition so the proposed drainage strategy can be formalised.

The floor levels of Plots 1 and 3 will also be raised to 28.6 metres AOD to account for water 'ponding' on site (see Sections 5.2 to 5.4 of the FRA).

Foul Sewage

It is proposed to send foul water/sewage to the closest Anglian Water facility for proper disposal. The indicative drainage strategy includes a hydro-brake to limit discharge to the mains sewer to 2lt per second. Anglian Water and Shire Group Internal Drainage Board (Ancholme) were both consulted as part of the statutory consultation process but no replies with received from either consultee. This does not necessarily indicate support for the proposal but in the absence of any specific concerns, the indicative drainage strategy is considered acceptable. Discharge of foul water/sewage to a mains sewer is sequentially preferable and all relevant consultees will be consulted when a discharge of condition application comes forward.

In addition, it should be noted that the management of foul sewage with respect to new development also requires regulatory approval that is independent from the requirements of the Town and Country Planning Act (e.g. Section 104 of the Water Industry Act 1991).

Summary

It is noted that there are concerns regarding the capacity of the existing infrastructure to handle new development. However, subject to a pre-commencement condition requiring the submission of a formal foul sewage and surface water drainage strategy and the lack of any objections from the relevant consultees, it is considered that the proposed development would accord with Policy S21 of the CLLP and paragraphs 159 and 167 of the NPPF. A second condition will also be imposed requiring that the development is undertaken in accordance with the recommendations in the submitted FRA.

Other Matters:

Public Rights of Way

The comments relating to the existing Right of Way (MaRa/162/6) are noted. However, when considering the requirements of paragraph 100 of the NPPF, it is not considered that the proposed development would have an unacceptable harm on the integrity of MaRa/162/6. The current Right of Way is partially overgrown and not particularly well defined. The amended Site Plan would have a footpath running along the western edge of the site, separating footpath users from vehicular traffic, which would have a timber gate access to the south.

This is considered to be a potential enhancement to the existing Right of Way. The amended Site Plan also retains the existing agricultural access. The following sections from the Planning Practice Guidance are also relevant:²

7.8 In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable

² <https://www.gov.uk/guidance/open-space-sports-and-recreation-facilities-public-rights-of-way-and-local-green-space#public-rights-of-way>

to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.

7.11 The grant of planning permission does not entitle developers to obstruct a public right of way. It cannot be assumed that because planning permission has been granted that an order under section 247 or 257 of the 1990 Act, for the diversion or extinguishment of the right of way, will invariably be made or confirmed. Development, in so far as it affects a right of way, should not be started and the right of way should be kept open for public use, unless or until the necessary order has come into effect. The requirement to keep a public right of way open for public use will preclude the developer from using the existing footpath, bridleway or restricted byway as a vehicular access to the site unless there are existing additional private rights. Planning authorities must ensure that applicants whose proposals may affect public rights of way are made aware of the limitations to their entitlement to start work at the time planning permission is granted. Authorities have on occasion granted planning permission on the condition that an order to stop-up or divert a right of way is obtained before the development commences. The view is taken that such a condition is unnecessary in that it duplicates the separate statutory procedure that exists for diverting or stopping-up the right of way, and would require the developer to do something outside his or her control.

For these reasons, it is not considered that the proposed development would conflict with paragraph 100 of the NPPF. An informative to the decision relating the potential requirement for a Footpath Diversion Order.

Assessment of Amended Proposed Site Plan

Notwithstanding the above assessment that was made above, the applicant has submitted an amended proposed site plan. Although the assessment above was favourable of the creation of a new dedicated footpath, the applicant submitted this information due to the number of comments received both from local residents and consultees. These concerns stemmed from the diversion of the existing route which is used by many local residents but also from technical consultees (summarised above) but for slightly different reasons such as a lack of detail of ongoing maintenance and the impact on an established route that links to the Lincolnshire Wolds. The amended site plan illustrated below but this also contains the definitive route for the Right of Way (the purple line):



Figure 2: Definitive Route (Footpath 162).

The amended site plan would retain more of the original route of the footpath but would still deviate from the definitive route. This would therefore require a formal diversion order (most likely under Section 257 of the Town and Country Planning Act 199) which is an independent decision-making process that is not impacted by this decision. Three objections were received to the amended site plan (compared to the previous 10 objections) and whilst these were still objections, the overall sentiment of was that this represented an improvement on the previous proposed footpath route.

With additional details of ownership and ongoing maintenance of the footpath, the Senior Definitive Map Officer withdrew the objection on behalf of Lincolnshire County Council Public Rights of Way & Access team. Some of the confusion in the consultation responses received appears to stem from the existing definitive route being different from both the proposed route but also the route which is utilised by existing residents.

The presence of contradictory information in the form of there effectively being a definitive route, a route that is actually used by residents and the route being proposed by the applicant. This is not to dismiss the concerns raised, but it is considered that the contradictory information would have caused more objection than would have otherwise been the case.

A remaining concern for the Local Planning Authority is that the definitive route runs through the garden space of Plot 6, which would be both a substantial detriment to the residential amenity of future occupiers if the definitive route was utilised but would also obstruct a Right of Way. Therefore, it is considered that a Grampian-style condition should be imposed relating to ensuring that a new route is created and the existing one is extinguished prior to the commencement of any development on Plot 6. This would not stop development commencing on the wider site but would require a diversion order to be in place prior to any development taking place on Plot 6.

In the light of new information and consultation responses, it is considered appropriate to impose an additional condition as there is a clear justification for doing so that is considered to meet the six tests in paragraph 56 the NPPF. Therefore, subject to this condition, it is considered that the proposed development is in accordance with paragraph 100 of the NPPF.

Other considerations

The comments regarding boundary disputes are noted. However, boundary disputes are a civil matter between relevant parties and therefore is not a material planning consideration and no weight can be afforded any comments in this regard.

Conclusion:

The proposal has been considered in light of relevant development plan policies namely S1: The Spatial Strategy and Settlement Hierarchy, S3: Housing in the Lincoln Urban Area, Main Towns and Market Towns, S6: Design Principles for Efficient Buildings, S7: Reducing Energy Consumption – Residential Development, S14: Renewable Energy, Policy NS18: Electric Vehicle Charging, S20: Resilient and Adaptable Design, S21: Flood Risk and Water Resources, S47: Accessibility and Transport, S49: Parking Provision, S53: Design and Amenity, S57: The Historic Environment, S60: Protecting Biodiversity and Geodiversity, S61: Biodiversity Opportunity and Delivering Measurable Net Gains and S67: Best and Most Versatile Agricultural Land of the Central Lincolnshire Local Plan.

In light of the assessment outlined in this report, it is considered that subject to conditions, the proposed development is acceptable on its merits. It is therefore recommended that planning permission is granted subject to conditions.

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:

2. No development shall take place until a scheme of foul and surface water drainage have been submitted to and approved in writing by the Local Planning Authority. The approved details shall thereafter be implemented in accordance the approved details.

Reason: To ensure appropriate foul sewage and surface water drainage in accordance with the National Planning Policy Framework and Policy S21 of the Central Lincolnshire Local Plan.

3. Prior to the commencement of construction works on any dwelling, including footings being commenced, a scheme shall be agreed in writing with the Local Planning Authority relating to the verification of the post-construction energy performance of the dwelling(s) to be constructed under this permission, including a mechanism for the provision of the verification to individual home owners. The approved scheme shall be implemented in full, including mechanisms by which any shortfall in performance against the updated Energy Statement received 13th September 2023 will be mitigated.

Reason: To ensure that the development takes place in accordance with the approved details and in accordance with the provisions of Policies S6 and S7 of the Central Lincolnshire Local Plan (2023).

4. Prior to the commencement of the development, a scheme of landscaping shall be submitted to and approved in writing by the Local Planning Authority. This shall include the following details:

- Details of the size, species, planting arrangement and position of all trees, hedgerows and other vegetation to be planted in accordance with the details in the submitted Preliminary Ecology Appraisal and Biodiversity Net Gain Assessment and Biodiversity Metric 4.0 Calculation dated August 2023.

The development shall be carried out in accordance with the approved scheme.

Reason: To ensure that a landscaping scheme to enhance the development is provided in accordance with Policies S53, S60 and S61 of the Central Lincolnshire Local Plan and Sections 12 and 15 of the National Planning Policy Framework.

5. No development hereby permitted shall take place unless a Construction Method Statement has been submitted to, and approved by, the Local Planning Authority. The statement shall include the following:

- Construction working hours;
- Measures for the routing and parking of construction related traffic;
- Indicate areas for the loading and unloading of materials;
- Measures to prevent the obstruction of the Public Right of Way during construction;

The development shall thereafter be undertaken in accordance with the approved Method Statement.

Reason: In order to minimise the disruption that may arise through the construction period to residential amenities, and to ensure that the Public Right of Way is not unduly obstructed, in accordance with Policies S47 and S49 of the Central Lincolnshire Local Plan.

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

6. The scheme referred to in Condition 3 shall also include a specification of solar panels to demonstrate the total energy output outlined in the submitted Energy Statement and on the submitted Site Plan 1323/003 REV B, received 15th August 2023.

Reason: To ensure that the development takes place in accordance with the approved details and in accordance with the provisions of Policies S6 and S7 of the Central Lincolnshire Local Plan (2023).

7. 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: 1323-005, 1323-006, 1323-007, 1323-008, 1323-009, 1323-010 and 1323-0011 received, 23rd May 2023 and 1323/003 REV B received 15th August 2023. 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 Policy S53 of the Central Lincolnshire Local Plan.

8. The development must be completed in strict accordance with the external materials listed on the application form received, 29th August 2023.

Reason: To ensure the use of appropriate materials to accord with the National Planning Policy Framework and Policy S53 of the Central Lincolnshire Local Plan.

9. No development shall take place on Plot 6 unless a formal diversion order for footpath 162 has been granted by virtue of Section 119 of the Highways Act 1980 or Section 257 of the Town and Country Planning Act 1990.

Reason: To ensure that the proposed development protects and enhances the existing Public Right of Way (Footpath 162) and that the existing route does not have a detrimental impact on residential amenity to accord with Policy S53 of the Central Lincolnshire Local Plan and the National Planning Policy Framework.

10. The development hereby permitted shall be undertaken in accordance with the recommendations in Section 5 and 6 of the submitted Flood Risk Assessment received, 30th June 2023.

Reason: To ensure that the development does not result in an unacceptable impact on flood risk in accordance with Policy S21 of the Central Lincolnshire Local Plan and the National Planning Policy Framework.

11. The development hereby permitted shall be carried out in accordance with the details set out in the updated Energy Statement received 13th April 2023 unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the development takes place in accordance with the approved details and in accordance with the provisions of Policies S6 and S7 of the Central Lincolnshire Local Plan (2023).

12. No services shall be laid within the development for the provision of piped natural gas.

Reason: In the interests of energy efficiency to accord with Policies S6 and S7 of the Central Lincolnshire Local Plan (Adopted 2023).

13. The development hereby permitted shall be undertaken in accordance with the mitigation and enhancements in the following ecological documents:

- Preliminary Ecology Appraisal and Biodiversity Net Gain Assessment and dated August 2023

Reason: To ensure that a landscaping scheme to enhance the development is provided in accordance with Policy S60 of the Central Lincolnshire Local Plan and Sections 12 and 15 of the National Planning Policy Framework.

14. Any site clearance or works to vegetation should be undertaken outside of the bird nesting season (March to August) unless otherwise given the all clear by a suitably qualified professional and subsequently agreed in writing with the Local Planning Authority.

Reason: In the interests of protecting biodiversity and protected species in accordance with Policy S60 of the Central Lincolnshire Local Plan and Section 15 of the National Planning Policy Framework.

15. Prior to their installation details of the external appearance of all doors and garage doors including materials and finish shall be submitted to and agreed in writing with the Local Planning Authority. The development thereafter shall be undertaken in strict accordance with the approved details.

Reason: To ensure that the development does not have an unacceptable impact on the character and appearance of the area in accordance with the National Planning Policy Framework and Policy S53 of the Central Lincolnshire Local Plan.

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

16. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no domestic oil tanks or domestic gas tanks shall be placed within the curtilage of the dwelling(s) hereby approved.

Reason: In the interests of energy efficiency to accord with Policies S6 and S7 of the Central Lincolnshire Local Plan (Adopted 2023).

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 their private and family life, their home, and their 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.

Decision Level

- ✓ Committee

