

Parish:	Tilney All Saints	
Proposal:	Outline Application: Construction of 5 dwellings and associated external works.	
Location:	Land To the West of Medina Lynn Road Tilney All Saints Norfolk	
Applicant:	Mr & Mrs Goldsmith	
Case No:	17/00027/O (Outline Application)	
Case Officer:	Mrs N Osler	Date for Determination: 9 March 2017 Extension of Time Expiry Date: 9 March 2018

Reason for Referral to Planning Committee – Officer recommendation is contrary to Parish Council recommendation

Neighbourhood Plan: No

Case Summary

Members may recall this application as it came before them in May 2017. The application was deferred to enable further work in relation to drainage.

The application is in outline with all matters reserved for residential development on a site measuring approximately 0.26ha on the corner of School Road and Lynn Road, Tilney All Saints. The site represents the housing allocation in the Site Allocations and Development Management Policies DPD, 2016 (SADMP) and Policy G97.1 relates specifically to development of this allocation.

Key Issues

- Principle of Development
- Form and Character
- Highway Safety
- Neighbour Amenity
- Flood Risk
- Ecology
- Other Material Considerations

Recommendation

APPROVE

THE APPLICATION

The application is made for outline planning permission with all matters reserved for the erection of 5 dwellings on land at School Road and Lynn Road, Tilney All Saints.

The site is allocated within the Site Allocations and Development Management Policies DPD (SADMP) for residential development of at least 5 homes, and SADMP policy G97.1 relates specifically to development of this site.

The site lies in Flood Zones 2 and 3 as depicted on the Environment Agency's Flood Maps.

SUPPORTING CASE

The application submission contained a brief planning statement, a site specific flood risk assessment and a drainage strategy. The Planning Statement states:

Habitats Monitoring

Outline application of 2585m² site consisting of 5 proposed dwellings.
Habitats monitoring fee required £50.00 x 5 = £250.00

Affordable Housing Contribution

Outline application of 2585m² consisting of 5 proposed dwellings falls below dwelling number threshold (6) for affordable housing contribution.

Outline application floor area of plots (all approximate):

- Plot 1: 4 Bed Detached, Double Carport. Approx GIA 125m².
- Plot 2: 3 Bed Semi-Detached, Double Carport. Approx GIA 118m².
- Plot 3: 3 Bed Semi-Detached, Double Carport. Approx GIA 110m².
- Plot 4: 3 Bed Semi-Detached, Double Carport. Approx GIA 110m².
- Plot 5: 3 Bed Semi-Detached, Double Carport. Approx GIA 118m²

Total floor area created approximately 581m², falls below floor area threshold (1000m²) for affordable housing contribution.

Flood Risk Assessment

A separate Flood Risk Assessment prepared by ESP accompanies the application.

PLANNING HISTORY

99/1503/O - Site for construction of 2 dwellings – Refused

RESPONSE TO CONSULTATION

Following the submission of amended plans showing two potential accesses, one from Lynn Road and one from School Road, and additional information in relation to drainage, consultees responded as follows:

Tilney All Saints Parish Council: **OBJECT** to the application as it puts current residents at risk of flooding. The drainage issues need to be resolved in full before any planning permission is granted. This is supported by the objection of the IDB to the proposed draft drainage strategy.

The Parish Council still has the same concerns over access as stated in their Objection to the original application. See below. "There are also Highways issues with safety concerns regarding access to the properties being so close to the junction of School Road and Lynn Road. Existing residents already park on one side of School Road, as there is no off road parking, effectively making the top of School Road a single lane. This route is also regularly used by significantly large agricultural vehicles and school buses".

Access is still being shown via School Road. This was discussed, along with the drainage issues, at a village meeting with the agent on 7th September 2017 and it was agreed access would be best via Lynn Road. This was confirmed in the agents email to Mrs Osler dated 11th September 2017. The addition of a gated access on Lynn Road would not stop use of the School Road access, especially if residents need to pull up on Lynn Road to open a gate before accessing the site.

King's Lynn Drainage Board: Thank you for your re-consultation regarding the above site, received 04/01/2018.

We previously objected to this application, as it was not clear within the draft drainage strategy how the applicant intended to achieve a connection to the wider drainage network. The applicant has since submitted a revised drainage strategy report (Waterco, Drainage Strategy First Issue, January 2018) which clarifies that the intention is to discharge to the drain to the west of the site, adjacent to school road (should infiltration not prove viable). The Drainage Strategy Report has now confirmed that it is understood that the drain adjacent to School Road is under ownership of the applicant.

However it remains ambiguous as to who is responsible for the third party asset (culvert) beneath Lynn Road. We previously stated that should the intention be to discharge to this drain a survey would be required, establishing the capacity and state of this system, including the mechanism by which it connects to the wider drainage network. The Drainage Strategy Report has now stated that a drainage survey will be undertaken at the detailed design stage to establish the condition and size of the culvert. Surface water should be discharged to the land drain to the west of the site at a restricted rate of 2 l/s. If required, land drain and culvert improvement works will be undertaken by the developer prior to undertaking any building works.

There remains a risk that should this site obtain outline planning permission, and it was not possible for the applicant to undertake the required remedial works to the culvert (or if the survey showed that there was insufficient capacity in the system), that the Board would not be able to issue consent to discharge, and as such it would not be possible to implement the outline planning permission. It is our opinion that ability of the site to drain is a material consideration to this planning permission.

One way to negate this risk would be to ask to applicant to undertake the survey work, and propose the required remedial works (along with any required consents, e.g. support from Norfolk County Council Highways Department) as part of the outline application. However, it is for you, the Local Planning Authority, to determine whether this is reasonable as part of an outline application.

As stated within our previous correspondence, the aforementioned survey will assist the Board in assessing the rate of discharge acceptable to the board, as this is dependent on

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the constraints within the system (although it is our preference, in all cases, that discharge is reduced to as close to the greenfield runoff rate as is possible). Therefore, we are not able to advise on the rate of discharge to this watercourse prior to the survey taking place, and it is possible that a discharge rate of 2l/s will not be acceptable to the Board.

Finally, we expect that should the applicant be dependent on the culvert beneath Lynn Road, a maintenance schedule should formalise maintenance arrangements for the culvert, including acknowledging who will be responsible for this maintenance (again this should be approved by Norfolk County Council's Highways Department). This may involve adoption of the asset, or clarification of responsibilities.

Therefore, subject to you accepting the aforementioned risk, we have removed our objection subject to conditions being attached to any consent if this application is approved.

Natural England: No comment

Local Highway Authority: Continues to have **NO OBJECTION** at this stage

Environment Agency: No further comments to make to our letter dated 17 February 2017

Environmental Health & Housing – Environmental Quality: No comments to make regarding contaminated land or air quality.

REPRESENTATIONS

Two letters of **objection** have been received following the submission of amended plans and drainage strategy. The reasons for objection relate to:

- Highways safety - entry and exit on Lynn Road is much safer than on School Road
- Medina own land to the other side of property and it would be better to build further away from the busy junction of School Road
- Drainage and risk of flooding to property to immediate north of site (which already suffers from severe flooding due to drainage issues in the locality). Author considers that a shared pumping station should be utilised for both surface water and treated effluent and that consent should not be granted until further survey work is done and the road access is changed

ORIGINAL RESPONSE TO CONSULTATION

Tilney All Saints Parish Council: At the Parish Council meeting held on 9th February 2017, councillors unanimously **OBJECTED** to the above application because of the drainage effect and flood risk to existing properties in School Road.

There are ongoing drainage problems in that area of the village.

There is no main sewage in the village as stated in the report.

The height of the proposed dwellings would be above existing properties causing them to be overlooked with a loss of privacy and sunlight.

There are also Highway issues with safety concerns regarding the access to the properties being so close to the junction of School Road and Lynn Road.

Existing residents already park on one side of School Road, as there is no off road parking, effectively making the top of School Road a single lane.

This route is also regularly used by significantly large agricultural vehicles and school buses.

The drainage and access issues with this site were raised by the Parish Council during the Local Plan consultation, and do not appear to have been addressed.

Highways Authority: NO OBJECTION subject to condition

Kings Lynn Drainage Board: NO OBJECTION subject to compliance with the board bylaws

Environmental Health & Housing – Environmental Quality: No comments to make regarding contaminated land or air quality.

Natural England: No comment

Environment Agency: NO OBJECTION subject to condition

REPRESENTATIONS

Five letters of **objection** have been received in relation to scale and impact of the dwellings on residential amenity, land levels, drainage, access and highway safety.

LDF CORE STRATEGY POLICIES

CS01 - Spatial Strategy

CS02 - The Settlement Hierarchy

CS08 - Sustainable Development

CS09 - Housing Distribution

CS11 – Transport

SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016

DM1 – Presumption in Favour of Sustainable Development

DM2 – Development Boundaries

DM15 – Environment, Design and Amenity

DM17 - Parking Provision in New Development

DM21 - Sites in Areas of Flood Risk

NATIONAL GUIDANCE

National Planning Policy Framework (NPPF)
Planning Practice Guidance (PPG)

National Planning Practice Guidance - Provides National Planning Practice Guidance, in support of and in addition to the NPPF
National Planning Policy Framework – sets out the Government’s planning policies for England and how these are expected to be applied.

PLANNING CONSIDERATIONS

The main issues for consideration in the determination of this application are:

Principle of Development
Form and Character
Highway Safety
Neighbour Amenity
Flood Risk
Ecology
Other Material Considerations

Principle of Development

The site represents the housing allocation in the adopted SADMP, 2016. Policy G97.1 states: Land amounting to 0.25ha, as shown on the Policies Map, is allocated for residential development of at least 5 dwellings. Development will be subject to compliance with all of the following:

1. Submission of a Flood Risk Assessment (FRA) that should address all forms of flood risk (coastal inundation, fluvial, pluvial and groundwater). The FRA should explain how surface water drainage will be managed. The FRA must demonstrate how the development would provide wider sustainability benefits to the community that outweigh the risk associated with flooding and that the development would be safe for its lifetime without increasing flood risk elsewhere and, where possible, would reduce flood risk overall. The FRA should also suggest appropriate mitigation (flood resiliency measures);
2. Submission of details showing how sustainable drainage measures will be incorporated into the development to avoid discharge to the public surface water network, and also to the amenity and biodiversity of the development. A suitable plan for the future management and maintenance of the SUDS should be included with the submission;
3. Provision of affordable housing in line with the current standards.

In relation to this a suitable FRA has been submitted; further drainage work has been undertaken and would be conditioned. This is discussed in more detail later in the report. With regard to affordable housing, as long as the GIA is below 1000m² GIA, affordable housing would not be required. This can be suitably conditioned.

It is therefore considered that the principle of development is acceptable.

Form and Character

All matters are reserved for future consideration, although the amended plans show an indicative scheme much more in keeping with the general characteristics of the locality. The indicative scheme also shows much greater separation between the northern most plot and No.6 School Road with the addition of a retaining wall and drainage area between.

Notwithstanding this, layout is for future consideration although due to the risks associated with flooding the new dwellings would need to be at least 1.5 storeys in height to enable first floor sleeping accommodation. This can be suitably conditioned.

Highway Safety

Access is also a reserved matter and will be dealt with at the detailed stage. However, the amended plans indicatively show the site being served by two accesses; one from Lynn Road and one from School Road. Whilst the Parish and third parties suggest that access to and egress from the site should only be from Lynn Road the Local Highway Authority (LHA) has no objection to the indicative accesses. This element is however not for full consideration at this outline stage. The applicant has nevertheless shown that the site can be accessed in a manner that the LHA considers to be safe.

Neighbour Amenity

Whilst layout, scale and appearance are reserved matters, it is considered that any material overlooking, overbearing or overshadowing impacts could be designed out, and will be dealt with at the detailed stage.

Flood Risk and Drainage

The site lies in an area at potential risk of flooding. Both national (the NPPF and NPPG) and local (the Development Plan) policy seeks to steer new development away from areas at risk of flooding by virtue of applying the sequential test.

However it is not necessary to undertake the sequential test on allocated sites (as it is considered that this occurred during the allocation process (NPPF paragraph 104)). Further, and in line with Development Plan Policy DM21, only the second element of the exception test is required (as it is likewise considered that the first element (wider sustainability benefits) is deemed to be met by the allocation process).

The second part of the exception test requires that a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and where possible, will reduce flood risk overall.

The submitted Flood Risk Assessment has satisfied the Environment Agency (EA) that the development can be made safe and the EA has no objection (subject to conditions) in relation to the risks associated with flooding. Any permission will need to be conditioned to be carried out in accordance with the recommendations and mitigation suggested in the Revised Flood Risk Assessment that accompanied the application.

There are known drainage issues in the locality of the site and as such further drainage work was requested. The latest drainage strategy has enabled the King's Lynn Drainage Board (KLIDB) to remove their objection subject to conditions being appended. KLIDB does however stress that the further works required by condition may not overcome the issues

with the site. In this regard, in planning terms, there is little risk. That is to say if the conditions cannot be discharged (because the site cannot be suitably drained) then the permission cannot be implemented. Your officers consider, given the outline nature of the application, and the fact that any outline permission can be suitably conditioned, that sufficient information has been submitted to allow determination of the application.

Ecology

A Phase 1 Ecology Report has been submitted. The conclusions of this report are that a further survey for great crested newts (GCNs) is advised and that in relation to breeding birds that the areas of hedging to be removed (to make way for the new accesses) should not be removed during the breeding season. Both these elements can be suitably conditioned.

In relation to the potential for GCNs the European Habitats Directive (the Directive) prohibits activities such as the deliberate capturing, killing or disturbance of protected species, subject to derogation in specific and limited circumstances. These requirements are enforced in England and Wales by the Conservation of Habitats and Species Regulations 2010 (the Regulations) and any derogation is regulated and overseen by a system of licensing administered by Natural England (NE).

In exercising its functions, including determining planning applications, a Local Planning Authority (LPA) is required to have regard to the requirements of the Habitats Directive in so far as they may be affected by the exercise of those functions. It is not the role or responsibility of the LPA to monitor or enforce NE's obligations under the Regulations. However, if a development proposal could potentially result in a breach of the Directive, the LPA is required to form a view on the likelihood of a licence being granted under the Regulations by NE in order to fulfil its own obligation to have regard to the Directive requirements.

NE will only grant a licence if satisfied that the three statutory tests prescribed under the Directive and the Regulations have all been met.

The tests are:

1. There are imperative reasons of overriding public interest (IROPI);
2. There are no satisfactory alternatives; and
3. It would not be detrimental to the maintenance of the population of the species at favourable conservation status.

It is understood that the level of detail required for a licence application to NE under the Regulations may not yet be available at the planning application stage. Also, the level of detail required for NE to satisfy the tests of derogation will usually be higher than that required in the planning consent process. However, the obligation on the LPA is to consider the likelihood of a licence being granted by NE, not to determine definitively whether or not the licence will, in fact, be granted. It therefore has to review the three tests, in the context of a planning application, to then form a view on the likelihood of NE granting a derogation licence under the Regulations.

In this case, a Phase 1 Ecology Survey concluded that the potential for impacts to local wildlife is almost negligible, with the possible exception being great crested newts (GCN), whose absence cannot be confirmed without further surveys.

The LPA can therefore conclude that there is the possibility that GCN are present and that if development were to proceed there is the possibility of a breach of the Directive. Therefore the LPA is required to consider the tests:

1. IROPI - NE's guidance advises that IROPI can potentially include developments that are required to meet or provide a contribution to meeting a specific need such as complying with planning policies and guidance at a national, regional and local level. The Local Plan shows a need for additional housing in the Borough over its fifteen year life (2011 - 2026).

Additionally, the site represents one of the housing allocations in the recently adopted Site Allocations and Development Management Policies DPD (SADMP)

2. No satisfactory alternatives – as mentioned above the site represents the allocation for housing development in Tilney All Saints.
3. Population maintenance - it appears to be unlikely that development of such a small parcel of land, with appropriate mitigation, will detrimentally impact the conservation status of GCNs.

The LPA can therefore reasonably form the view, from the information submitted to it for this planning application that NE would not be unlikely to grant a derogation licence under the Regulations in relation to this development and that planning permission should not be refused for this reason.

Other Material Considerations

Crime and Disorder - The proposal raises no specific issues in relation to crime and disorder. Due to the outline nature of the proposed development it is not possible to consider Secured by Design issues.

Parish Council and Third Party Representations

All the issues raised by the Parish Council and third parties have been covered in the main body of this report.

CONCLUSION

The site is within one of the borough's Rural Villages where residential development of an appropriate scale will be supported. Additionally this site represents the housing allocation in the adopted SADMP.

The application is in outline form with all matters reserved for future consideration. Basically the principle of residential development of the site is being sought. The site represents the housing allocation in the adopted SADMP and no objections have been received from statutory consultees on technical grounds.

It is therefore considered that the principle is acceptable and the application should be supported subject to the following conditions.

RECOMMENDATION:

APPROVE subject to the imposition of the following condition(s):

- 1 Condition: Approval of the details of the means of access, layout, scale, appearance and landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority before any development is commenced.
- 1 Reason: To comply with Section 92 of the Town and Country Planning Act, 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act, 2004.
- 2 Condition: Plans and particulars of the reserved matters referred to in Condition 1 above shall be submitted to the Local Planning Authority in writing and shall be carried out as approved.
- 2 Reason: To comply with Section 92 of the Town and Country Planning Act, 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act, 2004.
- 3 Condition: Application for the approval of reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
- 3 Reason: To comply with Section 92 of the Town and Country Planning Act, 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act, 2004.
- 4 Condition: The development hereby permitted shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the latest such matter to be approved.
- 4 Reason: To comply with Section 92 of the Town and Country Planning Act, 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act, 2004.
- 5 Condition: The development hereby permitted shall be carried out in accordance with the recommendations contained in the Flood Risk Assessment that accompanied the application (carried out by ESP).
- 5 Reason: To reduce the risks associated with flooding in accordance with the NPPF, NPPG and Development Plan.
- 6 Condition: The development hereby permitted shall comprise of residential units that are no lower than 1.5-storeys in height and no higher than 2 storeys in height.
- 6 Reason: In the interests of the visual amenity of the locality and to reduce the risks associated with flooding in accordance with the NPPF, NPPG and Development Plan.
- 7 Condition: There shall be no ground-floor sleeping accommodation.
- 7 Reason: to reduce the risks associated with flooding in accordance with the NPPF, NPPG and Development Plan.
- 8 Condition: The development hereby approved shall comprise of no more than 5 residential units.
- 8 Reason: To define the terms of the permission.

9 Condition: The Gross Internal Area of the development hereby permitted shall not exceed 1000m².

9 Reason: To define the terms of the permission in accordance with the national indicative thresholds for affordable housing as specified in the NPPG.

10 Condition: No development shall commence until full details of the foul and surface water drainage arrangements for the site have been submitted to and approved in writing by the Local Planning Authority. The detailed designs of the surface water drainage scheme shall incorporate the following measures and the approved scheme will be implemented prior to the first occupation of the development. The scheme shall address the following matters:

I. Infiltration testing in accordance with BRE Digest 365. This should include detailed testing along the length of any proposed attenuation features.

II. If a strategy wholly reliant on infiltration does not prove viable, a drainage survey shall be carried out that establishes the condition and size of the culvert beneath Lynn Road and shall identify required remedial works. Confirmation is then required from Kings Lynn Internal Drainage Board that any proposed rates and volumes of surface water runoff from the development are acceptable.

III. Provision of surface water attenuation storage, sized and designed to accommodate the volume of water generated in all rainfall events up to and including the critical storm duration for the 1 in 100 year return period, including allowances for climate change, flood event.

IV. Detailed designs, modelling calculations and plans of the drainage conveyance network in the:

- 1 in 30 year critical rainfall event to show no above ground flooding on any part of the site.
- 1 in 100 year critical rainfall plus climate change event to show, if any, the depth, volume and storage location of any above ground flooding from the drainage network ensuring that flooding does not occur in any part of a building or any utility plant susceptible to water (e.g. pumping station or electricity substation) within the development.

V. A maintenance and management plan detailing the activities required and details of who will adopt and maintain the all the surface water drainage features for the lifetime of the development. This will also include the ordinary watercourse and any structures such as culverts within the development boundary.

VI. A maintenance and management plan detailing the activities required and details of who will maintain the culvert beneath Lynn Road for the lifetime of the development.

10 Reason: To ensure that there is a satisfactory means of drainage in accordance with the NPPF.

This needs to be a pre-commencement condition as drainage is a fundamental issue that needs to be planned for and agreed at the start of the development.

11 Condition: No development shall commence on site until full details of the land drainage arrangements for the site have been submitted to and approved in writing by the LPA. The drainage details shall be constructed as approved before any part of the development hereby permitted is brought into use.

11 Reason: To ensure that there is a satisfactory means of drainage in accordance with the NPPF.

This needs to be a pre-commencement condition as drainage is a fundamental issue that needs to be planned for and agreed at the start of the development.

12 Condition: Prior to the commencement of the development hereby permitted a survey to identify the extent of any Great Crested Newt populations on or adjacent to the development site shall be undertaken in accordance with a written survey proposal which shall have been submitted to and approved in writing by the Local Planning Authority prior to the survey taking place.

12 Reason: To identify the extent of any Great Crested Newt populations in accordance with the NPPF and NPPG.

13 Condition: The results of the survey required under Condition 12 above shall be submitted to and agreed in writing by the Local Planning Authority prior to the commencement of the development hereby permitted, including site clearance works. The results shall also provide for any mitigation / enhancement measures appropriate to the extent of any Great Crested Newt populations recorded in order to minimise the impact of the development upon the newts both during construction and upon completion. A timetable for the implementation/completion/maintenance of the mitigation / enhancement works shall also be submitted with the results. The mitigation/enhancement works shall be completed and maintained in accordance with the agreed details and timetable other than with the prior written approval of the Local Planning Authority or where a different mitigation scheme or timetable scheme is required under any Great Crested Newt license issued by Natural England.

13 Reason: To ensure that the impact of the development upon protected species is minimised in accordance with the NPPF and NPPG.

14 Condition: Other than in relation to Great Crested Newts that are covered under separate conditions, the development hereby permitted shall be carried out in accordance with the recommendations contained in the Ecology Report that accompanied the application (dated April 2017 undertaken by Wild Frontier Ecology).

14 Reason: To ensure that the impact of the development upon protected species is minimised in accordance with the NPPF and NPPG.