



**S21/0021**

Proposal: Creation of tracks / internal access roads to serve dwelling and paddocks. Surfacing of existing tracks. Formation of new access onto Spa Road.

Location: Spa House, Spa Road, Braceborough, PE9 4NS

Applicant: Mr D Ivtsan

Agent: Mr Mike Sibthorp

Application Type: Full Planning Permission

Reason for Referral to Committee:

Key Issues: Residential amenity  
Potential light pollution  
Character and appearance of the area  
Potential impacts on wildlife

Technical Documents: Supporting statement

**Report Author**

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**Corporate Priority:**

**Growth**

**Decision type:**

**Regulatory**

**Wards:**

**Dole Wood**

**Reviewed by:**

Jeff Upton, Interim Head of Planning

19 May 2021

**Recommendation (s) to the decision maker (s)**

**That the application is approved conditionally**



## **Addendum to Committee Report S21/0021**

### **1 Introduction**

- 1.1 Members will recall that this application was previously discussed at the Planning Committee meeting on 14 April 2021 (report at Appendix 1). At the meeting, the Committee resolved it was minded to refuse the application contrary to officer recommendation. Those Members who voted for the proposition were required to submit their reasons for refusal for consideration at a future Planning Committee meeting.
- 1.2 The relevant minutes of that meeting were as follows:
- 1.3 *In considering the application, Members raised some concerns, including:*
- *The proposed lighting scheme along the new track was found to be excessive and Members suggested that low-level downwards facing lighting should be used.*
  - *The impact on the residential amenity of the neighbouring property was considered to be detrimental.*
  - *Members suggested that the application did not comply with policy DE1 due to the impact of light, the impact of residential amenity of the neighbouring property and the loss of privacy.*
- 1.4 *Following the concerns raised during the debate, Members were advised that the points raised could be robustly addressed and mitigated through conditioning.*
- 1.5 *A proposition was put forward that the Committee be minded to refuse the application. As the proposition to refuse the application was contrary to officer recommendations, the cooling off period set out in Article 9.1.9 (c) of the Council's Constitution was invoked, in line with the meeting procedure for virtual Planning Committee meetings.*
- 1.6 *As Councillor Mrs Jacky Smith had experienced technical issues and had not been present for the full discussion of this item, she did not participate in the vote.*
- 1.7 *In accordance with the Constitution, a recorded vote was taken:*
- For: Councillors Bellamy, Bisnauthsing, Dilks, Kaberry-Brown and Milnes (5)*  
*Against: Councillor Reid (1)*  
*Abstain: Councillors Crawford, Exton, Selby and Adams (4)*
- 1.8 *The vote was carried and those Committee Members who voted in favour of the proposition had five working days to provide the Interim Head of Planning with the planning reasons for their view, together with supporting evidence. The application would be placed on the agenda for consideration at a future meeting of the Planning Committee when the Interim Head of Planning would provide his opinion on whether the reasons advanced were substantial enough for the authority to defend the decision at an inquiry.*
- 1.9 *In light of any additional information, the Committee would then be empowered to determine the application without being fettered by their vote at the previous meeting.*

## 2 Reasons for Refusal Assessment

- 2.1 Following the resolution of minded to refuse application S21/0021 at the Planning Committee meeting of 14 April 2021, Councillors Bellamy, Bisnauthsing, Dilks, Kaberry-Brown and Milnes submitted reasons for refusal.
- 2.2 In line with paragraph 9.1.9 (c)(v) of Article 9 of the Council's Constitution, this report sets out the reasons for refusal together with the Interim Head of Planning's opinion on whether the reasons advanced are substantial enough for the authority to defend the decision at an appeal.
- 2.3 Cllr Bellamy – Proposed reasons for refusal:
- 2.3.1 *The development fails to comply with policy EN4, as it sets a precedent for lighting in open country which would damage the character of the area and cause further and unnecessary degradation to wildlife habitat.*
- 2.3.2 *The track as it was before the development provided a corridor for local wildlife networks 2.104 Local Plan and does not achieve any net gain in biodiversity.*
- 2.3.3 *The development will cause harm to the neighbouring properties amenity by noise and light pollution and fails to make a positive contribution to local distinctiveness of the area by damaging the landscape policy DE1.*
- 2.4 Cllr Bisnauthsing – Proposed reasons for refusal:
- 2.4.1 *This development does not comply with our Policy EN4, in the way that it will allow 'Light Pollution' in the open countryside. This, I believe will disturb and degrade the Wildlife Habitat.*
- 2.4.2 *Also Policy EN3, where this application is destroying the Green Infrastructure around the settlement. Already there is substantial removal of green vegetation close the Newly Laid Track, which has caused substantial thinning of the Shrubs and trees, hence loss of privacy for the occupants of the White House.*
- 2.4.3 *The New Track causes loss to biodiversity and the corridor for the wildlife is loss. Also Policy EN3 2.111 refers to Light Pollution to the effect of excessive or intrusive lighting arising from poor or insensitive design.*
- 2.4.4 *Also 2.109 which refers to the Aim of NPPF is to ensure that new development do not Harm existing Resident, Future Residents or the natural environment. This new Track as laid out, close to the existing residents' boundary has caused Harm. Also the Drive and the Wider Gate to accessing the Field where it is expected to Run Events will cause further Harm to the Tranquil Environment in the countryside and neighbouring property by Noise and Light Pollution.*

- 2.4.5 *Policy DE1 Refers here, it is supposed to make ‘a positive contribution to the Character of the Area’ but it does not it has removed a number of trees and therefore has affected the Character and Appearance of the area.*
- 2.4.6 *Also Policy EN2 s supposed to be protecting Biodiversity and Geodiversity, in the interest of the natural environment, i.e the local wildlife site will be affected.*
- 2.4.7 *I would also like to add Article 8 of the Human Rights, that the Right to a private family life and Home is affected here. The Resident’s of the White House is affected.*
- 2.4.8 *Finally, I strongly believe this is a ‘Retrospective Planning App’. Due to work already carried out, which will be difficult to reinstate.*
- 2.5 Cllr Dilks – Proposed reasons for refusal:
- 2.5.1 **CONTRARY TO LOCAL PLAN POLICIES DE1 AND EN4:**
- 2.5.2 *Extract from DE1 (my capitals)*
- 2.5.3 *“To ensure high quality design...ALL development proposals will be expected to:*
- Make a positive contribution to the local distinctiveness, vernacular and character of the area. Proposals should reinforce local identity and not have an adverse impact on the ....settlement pattern or the landscape...character of the surrounding area. Proposals should be of an appropriate scale, density, massing, height and material, given the context of the area:*
- ENSURE THERE IS NO ADVERSE IMPACT ON THE AMENITY OF NEIGHBOURING USERS IN TERMS OF NOISE, LIGHT POLLUTION, LOSS OF PRIVACY....”**
- 2.5.4 *This application clearly fails on almost every aspect of paragraph A, and every aspect of paragraph B.*
- 2.5.5 *The officer report clearly accepted that there would be adverse impact, but that it was considered to be an acceptable level of adverse impact. However, DE1 makes it clear there should “NO” adverse impact.*
- 2.5.6 *The development is totally out of context of the rural area given that Spa House is already served with a perfectly adequate access.*
- 2.5.7 *There has been no evidence presented to justify either the application generally nor the use of ‘street lighting’ within the application.*
- 2.5.8 *In addition, I support colleagues further reasons for refusal, notably, failure to comply with EN4 –lighting in open countryside,*
- 2.6 Cllr Kaberry-Brown – Proposed reasons for refusal:

- 2.6.1 *The development does not comply with policy EN4 due to setting a president for lighting in open country; which not only upsets the character of the countryside, but also effects the development of wildlife habitat.*
- 2.6.2 *The track provided a corridor for local wildlife and this planning application does will not achieve the requirements of the Local Plan with no net gain in biodiversity.*
- 2.6.3 *The neighbouring properties will suffer from noise and light pollution because of this development and the landscape and local distinctiveness will be lost if this goes ahead – see landscape policy DE1.*
- 2.7 Cllr Milnes – Proposed reasons for refusal:
- 2.7.1 *The proposed access to the South of Spa Holt is additional to the existing access to the north which currently serves the property, with no clear justifiable need submitted. This is excessive and creates a negative change to the countryside character and setting of Spa Holt and results in an adverse impact on the residential amenity in terms of privacy and noise and light pollution and does not make a positive contribution to the local distinctiveness of the area.*
- 2.7.2 *Contrary to Local Plan Policies: DE1 a) b) d), EN4 and NPPF Section 12*
- 2.7.3 *Both the proposed track and the lighting proposed will have an adverse impact on wildlife habitat corridors and networks in the area as well as the character of the dark open countryside. There are no net gains in biodiversity.*
- 2.7.4 *Contrary to Local Plan Policy: EN2, EN3, EN4 and NPPF Section 1*

### **3 Comments of the Interim Head of Planning**

- 3.1 The proposed reasons for refusal relate to the following key points:
- Light pollution
  - Adverse impact on the character of the area
  - Adverse impact on residential amenity
  - Adverse impact on ecology and biodiversity
  - Lack of need for an additional access
  - Retrospective nature of application
- 3.2 **Light pollution**
- 3.2.1 Since the Planning Committee on 14 April, the applicant has amended the proposal to completely remove the lighting element from the proposal, so light pollution is no longer a factor that needs to be considered as part of the proposal.
- 3.3 **Adverse impact on the character of the area**
- 3.3.1 This is a matter requiring a degree of planning judgment. The applicant has amended the proposal to include landscaping in the form of a native hedge along the southern boundary of Spa Holt, and a field maple adjacent the gates on Spa Road. Images of the site prior to the commencement of development show only a single mature (multi-stemmed) tree, and

no hedge at the front. With the new planting in place therefore, any harm to the character of the area is not considered to be sufficient to justify a refusal.

### 3.4 **Adverse impact on residential amenity**

3.4.1 Again, this is a matter of planning judgement. The existing access passes closer to Spa Holt than the proposed access and there would be no additional traffic as a result of this proposal. The amended proposal, including planting of the hedge at the southern boundary with Spa Holt would provide protection for the privacy afforded to this neighbouring dwelling. The revised proposal is therefore not considered to be harmful to residential amenity.

### 3.5 **Adverse impact on ecology and biodiversity**

3.5.1 Officers made an additional visit to the site on 28<sup>th</sup> April, and the site was inspected for evidence that any hedgerows had been removed. While there were clear signs that plants and shrubbery had been removed from around the northern and eastern boundaries surrounding Spa Holt, there was no sign of either the linear rows of stumps, or of the substantial disturbance of ground, which would indicate hedgerow removal. The removal of lighting from the proposal would avoid potential harm to nocturnal wildlife such as bats. The inclusion of a new indigenous hedge (of hawthorn, blackthorn and holly) along the southern boundary of Spa Holt, together with the replacement tree at the junction would mitigate any loss of biodiversity, and this is not therefore considered to provide sufficient grounds for refusal.

### 3.6 **Lack of need for an additional access**

3.6.1 This is not considered to provide valid grounds for a refusal. Neither national planning policy (in the form of the NPPF) or the South Kesteven Local Plan require an assessment of need for proposed development. This issue has arisen previously at an appeal against the Council's refusal of permission for an access track (see SKDC ref S19/1753, Appeal ref APP/E2530/W/20/3250813), and the Planning Inspector considered that this was not relevant in the determination of the application.

### 3.7 **Retrospective nature of application**

3.7.1 This is not considered to provide valid grounds for a refusal. Planning applications should be considered individually on their planning merits whether they are retrospective or not.

## 4 **Additional Consultation Responses**

4.1 Following receipt of amended plans, the Council has re-consulted neighbours and the Parish Council. One additional representation has been received since the previous planning committee meeting, raising the following issues:

- i) Noise from vehicles waiting outside the proposed gates would harm residential amenity.
- ii) Vehicle traffic would harm residential amenity through loss of privacy.
- iii) There might be increased traffic in future.

## 5 Conclusion

- 5.1 In reaching a decision on the application, the Committee must consider the proposals in the round having regard to relevant Local Plan and national policies together with any other relevant material considerations. The Committee must also consider whether any proposed reasons for refusal are substantive enough to be defensible at appeal.
- 5.2 In conclusion, and in line with the Council's Constitution, the Interim Head of Planning has considered fully the written reasons for refusal provided by the Councillors who wished to refuse the application. The application has been amended since the previous report to remove the proposed lighting and to provide additional landscaping near the boundary of the neighbouring residential property. These amendments have been the subject of further consultation. The application, as amended, is considered to address any legitimate reasons for planning permission being refused. This takes into account the reasons put forward by members and the additional representation received in response to additional consultation on the amended proposals. Therefore, members are advised that planning permission should be granted, subject to the following conditions.

### Approved Plans

- 1 The development hereby permitted shall be carried out in accordance with the following list of approved plans:
- i. Drawing No. MSP.239/002C received on 19 April 2021
  - ii. Drawing No. MSP.239/004B received on 20 April 2021

Unless otherwise required by another condition of this permission.

Reason: To define the permission and for the avoidance of doubt.

### Before the Development is Brought into Use

- 2 Before the end of the first planting/seeding season following the first use of any part of the development hereby permitted, all soft landscape works shall have been carried out in accordance with the approved soft landscaping details.

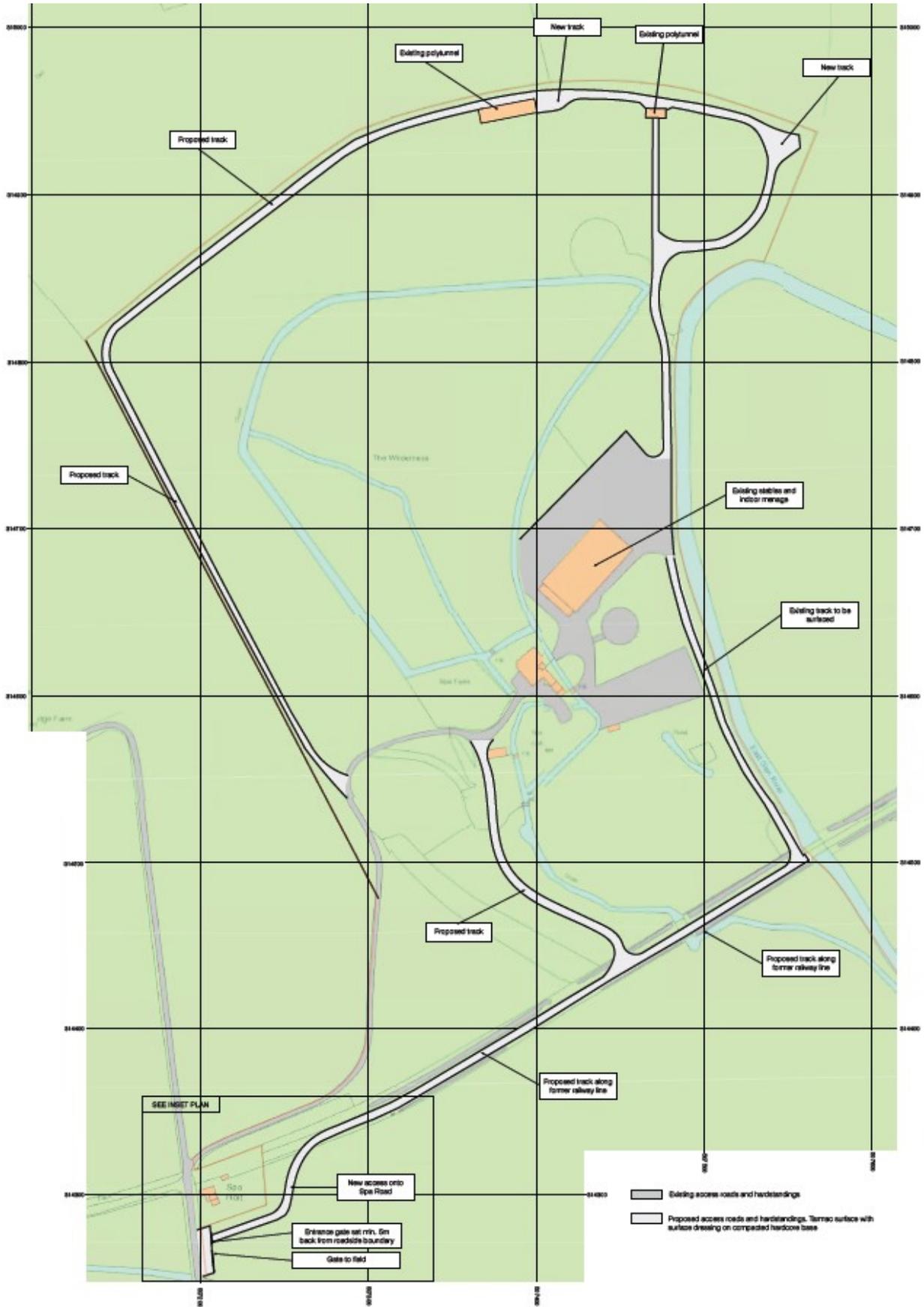
Reason: Soft landscaping and tree planting make an important contribution to the development and its assimilation with its surroundings and in accordance with Policies DE1, EN3 and OS1 of the adopted South Kesteven Local Plan.

### Ongoing Conditions

- 3 Within a period of five years from the development hereby permitted being brought into use, any trees or plants provided as part of the approved soft landscaping scheme, that die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced in the first planting season following any such loss with a specimen of the same size and species as was approved in condition above unless otherwise agreed by the Local Planning Authority.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscape in accordance with the approved designs and in accordance with Policies DE1, EN3 and OS1 of the adopted South Kesteven Local Plan.

# Block Plan



# Entrance detail

