

DECISION DELEGATED TO HEAD OF PLANNING

Application No:	H01-0569-24	Applicant:	Mr T Hicks
Proposal:	Change of use of steel portal framed building to residential dwelling		
Location:	104 Barrier Bank Cowbit Spalding		
Terminal Date:	3rd September 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

The Town and Country Planning (General Permitted Development) (England) Order 2015

Class MA - commercial, business and service uses to dwellinghouses

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	1	0	0
WARD MEMBER	0	0	0	0
PLANNING LIAISON OFFICER - FLOOD RISK ASSESSMENT	0	0	0	1
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

The application is for a change of use of a steel portal framed building to residential dwelling, under Schedule 2, Part 3, Class MA, of the Town and Country Planning (General Permitted Development) Order 2015.

Site Description

The site is located on the northern side of Barrier Bank, situated on land to the rear of 104 Barrier Bank in Cowbit. The south, south east and south west are residential dwellings with open land to the north and east.

History

Application Site

H01-0023-12 - Full - Proposed garage/implement store (for domestic purposes) and change of use of agricultural land to residential - Approved 05.04.2012

H01-0050-17 - S73 - Proposed garage/implement store (for domestic purposes) and change of use of agricultural land to residential - approved under H01-0023-12 - Modification of Condition 3 to allow garage to be used for commercial purposes - Approved 08.03.2017

Land adjacent the application site

H01-0040-16 - Full - Single-storey side extension and new garage/store - Approved 24.02.2016

H01-1099-16 - Full - Proposed garage/store - re-application of H01-0040-16 - Approved 30.11.2016

Consultation Responses

The responses received from consultees during the initial consultation exercises, which can be viewed in their entirety through the South Holland website, can be summarised as follows:

Senior Ecologist

Just a quick note to say that should this development require planning permission, it looks like it would be BNG exempt as long as the area of the existing hardstanding and gravel are not cumulatively enlarged by more than 25 sqm.

Environment Agency

The proposed development will only be acceptable in relation to flood risk if the following condition is included.

Condition The development shall be carried out in accordance with the submitted flood risk assessment dated July 2024, ref: 'ECL1275a/JOHN DADGE', prepared by Ellingham Consultants Ltd and the following mitigation measures it details:

- Finished floor levels to be set no lower than 2.6 metres above Ordnance Datum (AOD)
 - Flood resilience and resistance measures shall be set no lower than 2.9 metres AOD
- These mitigation measures shall be fully implemented prior to occupation shall be retained thereafter throughout the lifetime of the development.

Reason

To reduce the risk of flooding to the proposed development and future occupants in accordance with Policy 4 of the South East Lincolnshire Local Plan 2011-2036. Should you require any additional information, or wish to discuss these matters further, please do not hesitate to contact me on the number below.

LCC Highways

ADDITIONAL INFORMATION REQUIRED

A shared access needs to measure a minimum of 4.1m wide - the width needs to be demonstrated in accordance with this.

SHDC Environmental Protection Officer

I request a precautionary land contamination condition be applied at this location as follows:

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported immediately to the Local Planning Authority (LPA). An investigation and risk assessment must be undertaken in accordance with details to be agreed with the LPA. Where remediation is necessary, a remediation scheme must be submitted to and approved in writing by the LPA. Following completion of measures identified in the approved remediation scheme a verification report shall be submitted to and approved by the LPA.

No deviation shall be made from this scheme without the express written agreement of the LPA. If during redevelopment contamination not previously considered is identified, then the LPA shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspected contamination has been submitted to and agreed in writing by the LPA.

Reason: To assess whether the site is polluted and to address any pollution to ensure a satisfactory development. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works.

This Condition is imposed in accordance with Policy 30 of the South East Lincolnshire Local Plan, 2019.

South Holland Drainage Board

Byelaw 3 (Surface Water)

The Supporting Statement (28/06/2024) indicates the applicant's intention to dispose of surface water using an existing soakaway and the Photographs of Building (28/06/2024) show that the building is fitted with rain water goods (query the presence of downpipes). The local soil type is naturally wet and drains to local groundwater. At times, the building's soakaway system could become compromised by prolonged periods of wet weather and high groundwater conditions even if the applicant does soften the landscape by removing some of the existing areas of hardstanding. The proposed residential purpose of the building requires a higher level of protection from flooding than the existing use.

The supporting Flood Risk Assessment 5.2 Mitigation Measures states that surface water should be managed so that stormwater from the development will not affect any adjoining properties or increase the flood risk elsewhere. To ensure that the soakaway will function effectively under a worst case scenario we recommend that ground investigation is carried out to determine infiltration potential, followed by testing in line with BRE Digest 365 if onsite material is considered favourable for infiltration. If satisfactory infiltration cannot be achieved at this site, following the drainage hierarchy we would expect the applicant to propose to discharge surface water to a nearby watercourse. In this case, consent would be required under Byelaw 3. Please note that we recommend that any discharge is in line with the Non-Statutory technical standards for sustainable drainage systems (SuDS) so the Board is unlikely to grant consent for discharges in excess of greenfield rate. A surface water development contribution would likely become payable as a condition of any consent granted under Byelaw 3 in line with the WMA's Development Control Charges and Fees.

Byelaw 3 (Treated Foul Water)

The existing building has no toilet/bathroom facilities. The proposed change of use will require a waste water disposal system. The applicant's intentions are unclear in this respect. We note the presence of a nearby main sewer which could offer a route for connecting-in with the undertaker's agreement.

If the applicant elects to discharge treated foul water from an on-site package treatment plant to a watercourse then the Board's consent will be required under Byelaw 3.

Section 23, Land Drainage Act 1991

We are not aware of any riparian owned/maintained watercourses within or adjacent to the site boundary outlined red, however this should be confirmed by the applicant. Should the applicant's proposals include works to alter a watercourse, or if works are proposed to alter a watercourse at any time in the future, consent would be required under the Land Drainage Act 1991 (and Byelaw 4).

Byelaw 10

There are no Board maintained watercourses within or adjacent to the site boundary therefore Byelaw 10 does not apply.

Cowbit Parish Council

The Parish Council has no objections to this application

Public Representation

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, two letters of representation have been received.

Planning Considerations

Town and Country Planning (General Permitted Development) Order 2015, Schedule 2, Part 3, Class MA - commercial, business and service uses to dwellinghouses, states the following:

Permitted Development:

"MA. Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order".

Class MA permits the above development, subject to specific criteria as outlined within the class. However, prior to the need to assess this criteria, it must first be established that the use of the site comprises Class E.

As such, an assessment of the planning history of the site has taken place. Of most note is application H01-0050-17.

Planning application H01-0050-17 granted planning permission for the change of use of an existing building to be used for the storage of marquees including canvases and aluminium framing, through a Section 73 application. Within the application it was confirmed that the applicant is the sole proprietor and does not employ site based staff.

Condition 2 of planning approval H01-0050-17 stated that "The garage store shall not be used for any purposes other than the existing **marquee storage business** currently operating on site and shall be operated solely in conjunction with the occupation of 104 Barrier Bank, Cowbit". Confirming further that the Use of the building is solely for a marquee storage business and therefore comprising a storage building, falling within Class B8, and not Class E.

Photos of the inside of the existing building have been submitted to support the current application; however, provides further evidence that the building is solely being used for storage and clearly illustrates that the above permission was implemented. This can be further viewed given that this permission was a Section 73 application, with the time limit for commencement having been omitted, given that the development had already occurred prior to determination of the Section 73 application.

The assessment of the history of the site concluded that the existing Use Class of the application site is Class B8 (Storage or distribution) and not Class E (commercial, business and service).

Therefore, irrespective of the proposal meeting all other criteria of Class MA, the development

proposed is not permitted by this Class, as the use of the building as existing is not considered to be Class E.

Other Matters

It is noted that LCC Highways requested the following further information:

"A shared access needs to measure a minimum of 4.1m wide - the width needs to be demonstrated in accordance with this."

Following a measurement of the plan the access is currently 3.5m wide. This has not been raised with the applicant given that the Local Planning Authority considers that there is fundamental issues with the proposal.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).

C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Conclusion

When assessing all of the above it is concluded that given the Use Class of the building is currently Use Class B8 and not Use Class E, the change of use of a steel portal framed building to residential dwelling is not permitted by Class MA of the Town and Country Planning (General Permitted Development) Order 2015.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be refused under Delegated Authority.