

## DECISION DELEGATED TO HEAD OF PLANNING

**Application No:** H02-0849-23      **Applicant:** Mr L Johnson

**Proposal:** Demolition of existing garage and erection of new dwelling - retrospective - re-submission following appeal decision APP/A2525/W/22/3308445

**Location:** Adj. 26 West Bank Crowland Peterborough

**Terminal Date:** 20th November 2023

### Planning Policies

#### South East Lincolnshire Local Plan - Adopted: March 2019

02                      Development Management  
03                      Design of New Development  
04                      Approach to Flood Risk

#### National Guidance

#### National Planning Policy Framework 2023

Section 2 - Achieving sustainable development  
Section 4 - Decision-Making  
Section 12 - Achieving well-designed places  
Section 14 - Meeting the challenge of climate change, flooding and coastal change

### Representations:

|                                           | Object | Support | No Obj. | Comments |
|-------------------------------------------|--------|---------|---------|----------|
| PARISH COUNCIL                            | 0      | 0       | 0       | 1        |
| WARD MEMBER                               | 0      | 0       | 0       | 0        |
| NORTH LEVEL<br>INTERNAL DRAINAGE<br>BOARD | 0      | 0       | 0       | 1        |
| RESIDENTS                                 | 2      | 0       | 0       | 0        |

### CASE OFFICER ASSESSMENT

## Proposal

This is a full planning application for retrospective planning permission for the demolition of an existing garage and erection of a new dwelling.

A dwelling has already been constructed upon the site following a grant of planning permission in 2021. However, a condition related to finished floor levels and flood resilient construction was not complied with and external facing materials were utilised that had not been formally approved. That application was the subject of an appeal followed, this was dismissed based upon the impact of the dwelling on character. This application provides an updated palette of external facing material as well as flood risk measures.

## Site Description

The application site originally formed part of the residential curtilage of number 26 West Bank, which is located to the west. Now a dwelling is in situ. Access is gained from the Willows with a parking space to the site for residents and a visitor parking space to the front. There is a rear amenity area and some to the eastern side of the dwelling.

The application site is within the settlement boundary for Crowland and located within flood zone 1 in accordance with EA Mapping systems. The area is considered to be a 'danger for most' under the depth and flood hazard maps associated with the South East Lincolnshire SFRA 2017.

## History

H02-0009-12 - Proposed detached bungalow. Approved 08-03-12

H02-0574-21 - Demolition of existing garage and construction of new dwelling - re-submission of H02-0671-20. Approved 05-08-21

H02-0671-22 - Demolition of existing garage and erection of new dwelling - re-submission of H02-0574-21 (retrospective). Appeal Dismissed 06-10-22

H02-0296-22 - Demolition of existing garage & construction of new dwelling - approved under H02-0574-21 (Variation to brick bonding used). Withdrawn 14-07-22

H02-0671-20 - Demolition of existing garage and construction of a bungalow. Refused 19-10-20

## Consultation Responses

IDB - No comments to make.

Crowland Parish Council - Providing the newly proposed facing blocks are a close match to the adjoining properties in the Willows, and other design aspects are in accordance with the original planning approval, the Parish Council has no objection to this re-application

## Representations

Two number objections have been received that express concerns in relation to the appearance of the dwelling, this includes the roof tiles. Other concerns relate to overdevelopment of the site and amenity concerns.

## Planning Considerations

This planning application is a resubmission of H02-0671-22, which was refused by Planning committee for the following two reasons:

*1. Whilst the application site is located in Environment Agency Flood Zone 1 and would therefore appear to be within an area of low flood risk, the site also falls within an area identified in the South East Lincolnshire Strategic Flood Risk Assessment (March 2017) (SFRA) as being at increased*

flood risk in the future, in case of a breach in the tidal defences. The SFRA mapping shows that the site lies within a "Danger for Most" hazard zone, with potential flood depths of up to 1m (based on the Residual Peak Depth - 1% Fluvial/0.5% Tidal scenario for 2115). The Standing Advice Matrix which supports the SFRA requires that properties in the "Danger for Most" hazard zone, with potential flood depths of up to 1m, have finished floor levels a minimum of 1m above ground level, with flood resilient construction to a height of 300mm above the predicted flood depth. The application form states that the finished floor levels for the dwelling as built are 750mm above ground level (originally stated to be 650mm by the Applicant), which is clearly contrary to the above advice.

A site-specific Flood Risk Assessment (FRA) has been provided in support of the application. Policy 4 of the South East Lincolnshire Local Plan (2019) requires a site specific FRA to: "- identify the relevant predicted flood risk (breach/overtopping) level, and mitigation measures that demonstrate how the development will be made safe and that occupants will be protected from flooding from any source; - propose appropriate flood resistance and resilience measures (following the guidance outlined in the Strategic Flood Risk Assessment), maximising the use of passive resistance measures (measures that do not require human intervention to be deployed), to ensure the development maintains an appropriate level of safety for its lifetime" The submitted FRA concludes that finished floor levels of 500mm above ground level would be acceptable. However, this level of mitigation is based on incorrect flood depths for the site and is therefore inappropriate. The Applicant has not been invited to submit a revised FRA to overcome the above mentioned incorrect mitigation measures for the site. This is because the EA maintain an objection to the proposal as built i.e. any such FRA would not overcome their objection. Consequently, the Environment Agency have objected to the application, with their objection being based upon Policy 4 of the Local Plan and conflict with the SFRA Standing Advice Matrix. Overall, it is not considered that the dwelling would be guaranteed to be safe for its lifetime as built and the retention of the dwelling with lower floor levels than required would go against the principle of ensuring an appropriate level of safety. On this basis, the flood risk exception test cannot be passed. It is therefore contrary to Policy 4 of the Local Plan and advice within Section 12 of the National Planning Policy Framework (2021) relating to the siting of development in areas at risk of flooding.

2. The dwelling as built is visually out of keeping with other properties on The Willows by virtue of the brick type and windows / doors used, which represent a contrast to the lighter buff brick and white windows / doors on the remainder of the cul-de-sac. The materials used have a material adverse impact on the character / street scene of The Willows. The dwelling that is the subject of this application does not therefore accord with Policies 2 and 3 of the South East Lincolnshire Local Plan (2019). Policy 2 of the Local Plan requires development proposals to take into account sustainable development considerations such as: quality of design; impact on character and appearance of the area; and the relationship to existing development. Policy 3 requires development proposals to respect the character of the location. It is also contrary to Paragraph 130 of the National Planning Policy Framework (2021) which states that planning decisions should ensure that developments are sympathetic to local character and add to the overall quality of the area.

A Planning Appeal (PP/A2525/W/22/3308445) was lodged and dismissed on 9th May 2023. In arriving at the decision, the inspector did not agree with the flooding reasons for refusal but upheld the impact upon character. This report therefore focuses on the following issues:

Flood Risk  
Character and Appearance  
Other Issues

### Flood Risk

Policy 4 of the South East Lincolnshire Local Plan sets out the districts approach to flood risk. The application site is located within flood zone 1 in accordance with Environment Agency mapping systems. Notwithstanding this The South East Lincolnshire SFRA 2017 'depth mapping' shows that the area has a peak depth of 1-2m which under the Hazard mapping is classed as a 'danger for most'.

In such areas the standing advice matrix states that ground floor habitable accommodation is not acceptable and that first floor living accommodation must be above the highest predicted flood depth.

The applicant has provided an FRA (dated 26th October 2022, by RM Associates), It states that "The site levels for the site shown on Plan 1 are post development undertaken by Prism Surveys Ltd, reveals that the existing ground levels around the dwelling average 3.60mODN and that the FFL for the as built property is 4.14mODN some 540mm above the existing average ground level" And

"The site is well protected from fluvial flooding by the Crowland Washes which will regulate the flood level in the River Welland The bank crest has a road level (West Bank) of circa 6.10mODN and is of considerable width, which for the risk of a breach occurring is very low"

This application is a resubmission of H02-0671-22 which was refused by planning committee in part based upon EA objection. The EA had stated that potential mitigation measures to reduce the risk of flooding to the dwelling were discussed, the success of which would be reliant upon active intervention following receipt of adequate flood warning, however these were only discussed should the LPA be minded to grant permission contrary to EA objection. The LPA despite the planning history on site allowing for the erection of a dwelling, reaffirmed the EA concerns and refused (in part) on flood safety grounds.

Notwithstanding this approach the inspector under point 7 stated "However, the potential for flood doors to be retrospectively fitted to the property in the interests of offering protection up to a flood level in excess of 1m above average ground level has been raised as a possible solution. Moreover, through direct reference to a relevant peak velocity forecast map appended to the SFRA, it has been demonstrated that the anticipated velocity of potential flood waters would not be at such speed to necessarily discount this approach as a justifiable option."

Point 8 of the Inspectors Report states "Planning Practice Guidance is clear that resistance measures, such as flood doors, are unlikely to be suitable as the only mitigation measure and should only be used to address residual risks remaining after the use of avoidance and control measures. I acknowledge that the success of flood doors would be at least partly dependent upon periodic maintenance to ensure full functionality." And point 9 which is conclusive states;

"However, of relevance here, a two-storey dwelling offering an upper-floor safe haven is under consideration and the property has been constructed with a finished floor level that exceeds, by a not insignificant extent, the existing average ground level. Further, although a flood breach could occur without prior warning, the potential to receive Environment Agency flood warnings does offer some further assurance that an unacceptable risk to life would not ensue should the dwelling become occupied. This is not least due to the degree of physical separation from a Main River (located beyond the intervening Crowland Washes) that applies here."

The appeal decision (APP/A2525/W/22/3308445) which was decided on 9th May 2023 is a material consideration. Under the appeal therefore the inspector disagreed with the refusal on flood risk grounds and considered "subject to potential planning conditions being imposed to secure full details of the intended flood doors (as well as their subsequent implementation and retention) and full compliance with the various measures set out in the FRA, I am satisfied that, on balance, the development is acceptable having particular regard to flood risk."

The clear instruction then in flooding terms is to remove the previous refusal relating to flooding subject to the full details of intended flood doors (implementation and retention) and compliance with the resilience and evacuation measures set out within the FRA.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 states that "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise." This is reaffirmed under paragraph 2 of the NPPF.

Therefore, despite being contrary to policy 4 of the South East Lincolnshire Local Plan it is considered that material considerations do exist in the form of the appeal decision (referenced above) that would suggest a departure from this policy, (subject to conditions requested by the inspector) is supported in this instance. Therefore a condition requiring the submission of details relating to flood doors and mitigation will be attached to any permission. These details will be submitted to and agreed in writing with the LPA, within 3 months of this permission.

## Character & Appearance

Policy 2 of the SELLP states that design which is inappropriate to the local area, or which fails to maximise opportunities for improving the character and quality of an area, will not be acceptable. Policy 2 point 1 states that proposal should meet with sustainable development considerations specifically in relation to 'size, scale, layout, density and impact on the amenity, trees, character and appearance of the area and the relationship to existing development and land uses'.

Policy 3 sets out the 'Design of new development' in part it states that "Design which is inappropriate to the local area, or which fails to maximise opportunities for improving the character and quality of an area, will not be acceptable".

The previous planning application was refused in part upon the effect on character. This related to an overly 'yellow' brick (in comparison to other dwellings on The Willows) and anthracite treated openings. The officer consulted that this effect upon character was 'unacceptable' and this was upheld by planning committee.

In turn the inspector states under paragraph 13 of the appeal "As such, particularly upon entry to the cul-de-sac and when viewed in the context of (and against the backdrop of) other dwellings within The Willows, the appeal property's elevations can be experienced as discordant, monotonous, and unsympathetic to their immediate surroundings." As regards openings the inspector stated:

*Notwithstanding the undoubted prevalence of white-coloured windows and doors in the locality, I was able to identify replacement windows and doors of differing colours and specific designs near to the site. This included properties on The Willows. In this context, noting that a condition could be imposed to secure that the dwelling's front door is replaced so as to be of matching colour and specification to other front-facing openings, I do not consider that the anthracite grey colour used can be fairly resisted.*

The applicant has provided a proposed elevations plan which shows that the external brick skin will be removed and replaced with 'aggregate industries stonemaster facing masonry 'rough dressed buff' which is of a more greyish appearance. At present they are Bradstone Marshlite Rustic Walling in Buff The plans also show that a new door will be inserted (replacing the white door) that would correspond with the colour of the openings. This approach, giving weight to the inspectors report is considered acceptable. A condition will be applied that within 3 months from the date of the permission the existing facing materials shall be replaced with the proposed facing materials including door shall. The materials shall be retained thereafter.

Comments have been made regarding the roof tile in that it is not in-keeping. The area has a double pan concrete interlocking tile at present, this is a dark material. The proposal offers a slate like appearance, this is considered appropriate in this instance as it sits well against the proposed gable dormers

On this basis it is considered that the proposal would accord with policies 2 & 3 of the South East Lincolnshire Local Plan.

## Other Issues

The proposal is already built and parking is already laid out and therefore conditions in relation to time limits for development to begin as well as highway related conditions are not considered necessary. Furthermore given its presence it is clear that a surface water and drainage strategy have already been agreed and implemented.

## **Conclusion**

The proposal subject to being compliant with the implementation and retention of flood doors (that are to be submitted and agreed in writing with the LPA) and resilience measures described within the FRA and that the external facing materials including door are replaced in accordance with the approved elevation plans (and retained thereafter) then this application is recommended for approval.

## **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.