DECISION DELEGATED TO HEAD OF PLANNING

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| **Application No:** | **H03-0353-22** | **Applicant:** | **Mr J Wyers** |
| **Proposal:** | Proposed 4 bed detached dwelling | | |
| **Location:** | East Reach Farm Main Road Hop Pole | | |
| **Terminal Date:** | 10th June 2022 | | |

**Planning Policies**

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

| | |
|---|---|
| 01 | Spatial Strategy |
| 02 | Development Management |
| 03 | Design of New Development |
| 04 | Approach to Flood Risk |
| 10 | Meeting Assessed Housing Requirements |
| 28 | The Natural Environment |
| 30 | Pollution |
| 31 | Climate Change and Renewable and Low Carbon Energy |
| 36 | Vehicle and Cycle Parking |
| APPENDIX 6 | Parking Standards |

**National Guidance**

**National Planning Policy Framework 2021**

NPPF 2021.

Section 2. Achieving sustainable development.
Section 3. Plan Making;
Section 4. Decision making.
Section 5. Delivering a sufficient supply of homes.
Section 9. Promoting Sustainable transport;
Section 11. Making effective use of land.
Section 12. Achieving well-designed places.
Section 14. Meeting the challenge of climate change, flooding and coastal change.
Section 15. Conserving and enhancing the natural environment.

**Representations:**

| | Object | Support | No Obj. | Comments |
|---|---|---|---|---|
| PARISH COUNCIL | 0 | 0 | 1 | 0 |
| WARD MEMBER | 0 | 0 | 0 | 0 |

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|---|---|---|---|---|
| HIGHWAYS & SUDS SUPPORT | 0 | 0 | 0 | 1 |
| IAN MARSHMAN - HISTORIC ENVIRONMENT OFFICER | 0 | 0 | 0 | 1 |
| WELLAND AND DEEPINGS INTERNAL DRAINAGE BOARD | 0 | 0 | 1 | 0 |
| SHDC INTERNAL | 0 | 0 | 0 | 1 |

CASE OFFICER ASSESSMENT

Proposal

This is a full planning application for the erection of a four bedroom detached dwelling at East Reach Farm, Main Road, Hop Pole. This application follows a prior approval for the conversion of an existing barn to form two dwellings that was granted on 12th January 2022.

The proposal includes the demolition of an existing barn and the erection of a detached, two storey dwelling that would be of a gable design and constructed with a facing brick finish and red clay pantile roof tiles.

Site Description

The site currently comprises of two agricultural buildings that are located along the north-west end of the site. The site benefits from two access points off Littleworth Drove (Classified A road) that serve East Reach House and Fen Fields which are located south and south-east respectively.

History

-H03-0452-22 - Details of landscaping, boundary treatments, proposed means of foul & surface water disposal and ecological biodiversity measures (Conditions 3, 4, 7 & 9 of H03-1182-21) - Pending Consideration

-H03-1182-21 - Conversion of barns to form 2 dwellings - Approved 12 January 2022.

Consultation Responses

Deeping St Nicholas Parish Council
Have no objections to this application.

Welland and Deepings Internal Drainage Board
Have no comments to make with regard to this application.

Lincolnshire County Council Highways and SUDS
Have no objection.

Lincolnshire County Council Historic Environment Officer
No archaeological input required.

South Holland District Council's Environmental Protection Officer

Advises a condition to be imposed on any planning permission granted regarding land contamination.

## Planning Considerations

The application describes this scheme as "...a fall back betterment scheme for the asbestos covered barn that was granted planning permission under reference HO3-1182-21 Dated 12th January 2022."

The main issues in this case are:
· Housing policy/principle;
· Other material considerations such as design, refuse collection, amenity, highway safety and flood risk.

Housing policy/principle

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, states that the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

The site is outside a settlement boundary as defined in the South East Lincolnshire Local Plan (SELLP), March 2019. It is therefore within an area regarded as countryside.

SELLP Policy 1 indicates that development in the countryside will be permitted that is necessary to such a location and/or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits.

Addressing the first element, it has not been demonstrated that a dwelling is necessary in this particular location; for example, in conjunction with agriculture or other rural based business. Moreover, the site is physically divorced from any settlement. In the absence of footways and given the distances involved to any settlement it would be difficult to access a settlement for the day to day needs of the occupants without use of a private car. Consequently, the proposal is not in accordance with Policy 1 of the SELLP and would not normally be considered a suitable site for new housing.

However, the site presently has prior approval for a change of use of the existing agricultural building into a dwelling under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015. Caselaw has demonstrated that Class Q consents are a legitimate fallback position when considering alternative proposals for development of the same site.

The relevant legal principles relating to fallback were set out in R v Secretary of State for the Environment and Havering BC (1998) EnvLR189. In that case Mr Lockhart-Mummery QC, sitting as a Deputy High Court Judge, accepted submissions that there were three elements to the fallback test:

"First whether there is a fallback use, that is to say whether there is a lawful ability to undertake such a use; secondly, whether there is a likelihood or real prospect of such occurring. Thirdly, if the answer to the second question is "yes", a comparison must be made between the proposed development and the fallback use."

The notion of the Class Q fallback position was also comprehensively dealt with at the landmark Court of Appeal case, Mansell vs Tonbridge and Malling Borough Council (2017). It established that that where there is demonstrably a realistic prospect of a permitted development scheme being implemented, and where an alternative proposal would normally conflict with the development plan insofar as it being an unsuitable location for housing, the potential for the fallback position to outweigh that conflict must be considered by the local authority. It stands to reason that, where the alternative new-build proposal offers either an enhancement to the setting or a reduction in density when compared to the fallback, the development could (and perhaps should) be allowed to proceed.

In this case, the application property has a Class Q consent for a dwelling (ref. H03-1182-21). It seems likely that there is a clear desire by the landowner to develop and maximise the value of the site. Moreover, the scheme approved under Class Q is the conversion of a modern utilitarian farm buildings into a dwelling. The current proposal is for a detached house to match the height of the

existing barn on the property.

The proposal would deliver some benefits to the appearance of the site compared to the fallback position. This carries significant weight in favour of the proposal. On balance, taking account of the above considerations, it is considered in this particular case that the benefits of the proposed development compared to the identified fallback position are a material consideration which outweighs the conflict with the development plan and justifies granting planning permission for the proposal.

Scale, Design and Layout

The proposal involves the demolition of the existing barns and the erection of a two storey dwelling. The proposed dwelling would be constructed using facing brickwork, red clay pantile roof tiles and be of a gable design.

The scale and design of the proposed dwelling is considered to reflect the character and appearance of dwellings in the immediate vicinity and would be of a scale commensurate to that of the site. Whilst the proposed dwelling would include a large residential garden, it is considered to be acceptable given that it would utilise existing boundaries and would reflect the scale of residential gardens in the area. Following the receipt of amended plans, it is proposed to include a 0.9m high fence along the north, east and part of the southern boundary with a proposed 2m high fence along the western boundary. Given the existing boundary treatments as part of the wider East Reach Farm site and the distance to the public highway of Littleworth Drove, this is considered to be acceptable.

Overall, the proposed development is considered to be of an acceptable design that would accord with Policies 2 and 3 of the adopted Local Plan and the guidance within the NPPF.

Flood Risk and Drainage

The site is within Flood Zone 3 of the Environment Agency Flood Maps and is not impacted by increased hazard or flood risk on the 2115 South East Lincolnshire Strategic Flood Risk Mapping. Finished floor levels would be sited at 300mm above existing ground level. For this reason, a sequential or exceptions flood test is not required. Surface water will be collected by soakaways to the west of the dwelling, with foul water to be collected by package treatment plant.

It is also worth noting that Welling and Deepings Internal Drainage Board have no comments on the proposal.

Refuse collection

The application states that a paved area will be provided within the curtilage to store the waste bins, which would be taken to a collection point designated by the local authority on collection days.

As the driveway would exceed the 30m carrying distance within the SHDC Guidance Note regarding Private Drives - Waste Vehicle Collection Service the agent has agreed in writing that a private waste collection arrangement can be conditioned. It has been noted that this is not a planning policy document, but is a material consideration and refuse collection is to be considered within this application.

Impact on Neighbouring Amenity

During the course of the application, no comments have been received by any neighbouring property. However, due consideration has been given to the impacts of the proposal on the closest neighbouring residential properties. The closest neighbouring properties are East Reach House and Fen Fields, Littleworth Drove.

The proposed dwelling is considered to be a sufficient distance away from both neighbouring residential properties in order to avoid any potential overbearing, overshadowing or overlooking impacts. Furthermore, the proposed dwelling would replace existing barns of the same height with a smaller footprint.

Overall, the proposal is considered to be in accordance with Policy 3 of the adopted Local Plan and would not result in detrimental impacts on neighbouring amenity.

Highways and Parking

The proposed dwelling would be accessed via an existing access off Littleworth Drove, a classified A road, which currently serves two properties (East Reach House and Fen Fields). Given the proposal involves the erection of one dwelling, it is considered that this would not result in a significant intensification of the existing access. It is also worth noting that there is sufficient space within the site for turning provision to allow vehicles to enter the highway in a forward gear and adequate visibility splays in both directions.

The proposed dwelling would have four bedrooms and therefore requires the provision of three off-street car parking spaces. Whilst the proposed block plan (drawing number JW/04/A) only shows the provision of two off-street car parking spaces, there is adequate space within the proposed hardsurfacing to provide a third. As such, it is considered the parking provision of the proposed dwelling is acceptable.

It is worth noting that Lincolnshire County Council Highway Authority have no objections with the proposed development.

**Planning Balance**

While the proposed dwelling would be located outside the nearest settlement boundary and would contribute very little to the sustainable development needs of the area, it is noted that the site benefits from an extant prior approval for the conversion of existing barns to two dwellings. On balance, it is considered that it would be unreasonable to refuse permission for the erection of one dwelling in this instance given the fall-back position. Furthermore, the proposal is considered acceptable in terms of design and layout, there are no highway impact concerns and sufficient parking space would remain. It is also acceptable on flood risk and drainage grounds.

The planning balance is therefore considered to be in favour of 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.