DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H06-0754-22**	**Applicant:**	**Mr & Mrs G Merrison**
Proposal:	Demolition of existing barn and erection of dwelling		
Location:	Parsons Yard Middle Drove Gedney		
Terminal Date:	18th November 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
11	Distribution of New Housing
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

Section 2. Achieving sustainable development.
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	0	1
WARD MEMBER	0	0	0	0
PLANNING LIAISON OFFICER - FLOOD RISK	0	0	0	1

ASSESSMENT				
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

Full planning permission is sought for the demolition of an existing agricultural building and erection of a new 5 bed detached house.

It should be noted that the site presently has prior approval for a change of use of an 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 (ref. H06-1043-21).

Site Description

The site is located in open countryside on the northern side of Middle Drove and is currently occupied by an agricultural building of corrugated metal and asbestos/fibre cement construction. Native hedging and a shallow drain are situated along the frontage.

A cottage and associated buildings are situated to the west and a bungalow (Mariern) approximately 190 metres to the south-west on the opposite side of Middle Drove.

Recent History

H06-1043-21 - PAA - Change of use of barn to residential dwelling - Approved 29 November 2021

Reached here 7/11

Consultation Responses

Gedney Parish Council

No objections.

LCC Highways/SUDs

No objections subject to highway conditions/informatives.

South Holland Internal Drainage Board

If infiltration is not feasible at this site, following the drainage hierarchy we would expect the applicant to propose to discharge surface water to a watercourse. In this case, consent would be required under Byelaw 3.

If the applicant proposes to discharge treated foul water to a watercourse, consent would be required under Byelaw 3.

Environment Agency

Request condition.

Public

No comments received.

Planning Considerations

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

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 in open countryside and is physically divorced from a settlement boundary and larger service settlements such as Holbeach and Spalding. In the absence of footways and given the distances involved it would be difficult to access these settlements 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 site has a Class Q consent for a dwelling (ref. H06-1043-21). 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 large detached house of bespoke design with contemporary features. It would be constructed in traditional farmhouse blend facing bricks with a natural slate roof. The windows would be uPVC aluminium grey.

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 that the benefits of the proposed development compared to the identified fallback position are a material consideration that outweighs the conflict with the development plan and justifies granting planning permission for the proposal.

Amenity

Policies 2 and 3 of the South East Lincolnshire Local Plan (2019) set out residential amenity and the relationship to existing development and land uses as main considerations when making planning decisions. They are consistent with advice within the National Planning Policy Framework (2021).

The nearest dwelling is a cottage and associated buildings some 50 metres to the west. A bungalow (Mariern) is located approximately 190 metres to the south-west on the opposite side of Middle Drove. It is considered that the proposal would not materially harm the amenity of neighbouring residents in terms of overlooking, lack of privacy, overshadowing, overbearing effect, noise and disturbance.

The proposal therefore complies with Policies 2 and 3 on amenity grounds.

Highway Safety

Policies 2 and 3 of the SELLP indicate that sustainable development considerations should be met in terms of access and vehicle generation levels and layout of car parking. Policy 36 and Appendix 6 set out the minimum standards for parking provision based upon the use class. Two spaces for dwellings with 3 or less bedrooms should be provided within the curtilage. Three spaces for dwellings with 4 or more bedrooms should be provided within the curtilage.

The existing access would be retained and used to gain vehicular access to the dwelling. Ample car parking facilities have been provided on site. The County Highways Authority does not wish to restrict the grant of permission on highway safety grounds.

The proposal therefore complies with Policies 2, 3 and 36 in this respect.

Flood Risk

The site is located within Flood Zone 3 on the Environment Agency Maps. The sequential test therefore needs to be applied.

The EA maps have been created as a tool to raise awareness of flood risk with the public and partner organisations, such as Local Authorities, Emergency Services and Drainage Authorities. The Maps do not take into account any flood defences. Also, large parts of the South Holland District lie within Flood Zone 3. It is therefore necessary to use the refined flood risk information (Hazard and Depth maps) within the South East Lincolnshire Strategic Flood Risk Assessment (2017) as a basis to apply the sequential test. The hazard mapping within the SFRA designates the site as "Danger for Most".

In terms of the sequential test, the aim is to steer new development to areas with the lowest probability of flooding. The NPPF states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. It is important to note that the Sequential Test does not specifically mean that sites such as this cannot be developed, rather that sites at less risk should be developed first. In this case, the whole of the surrounding area is shown on the Flood Map for Planning to be in Flood Zone 3 and there are no other sites in a lower flood zone. Moreover, there is a fallback position because prior approval has previously been given for conversion of the existing building to a dwelling.

Applying the Flood Risk Vulnerability Classification in Table 2 of NPPG, use as residential is classified as "More Vulnerable". Table 3 of NPPG states that an exception test is therefore required. It is a method to demonstrate and help ensure that flood risk to people and property will be managed satisfactorily, while allowing necessary development to go ahead in situations where suitable sites at lower risk of flooding are not available. The NPPF and the PPG set out two elements to the Exceptions Test.

First, proposed development is required to show that it will provide wider sustainability benefits to the community that outweigh flood risk, and second, that it will be safe for its lifetime without increasing flood risk elsewhere and, where possible, will reduce flood risk overall. This is aimed at allowing necessary development to go ahead in situations where suitable sites at lower risk of flooding are not available whilst helping ensure that flood risk to people and property will be managed satisfactorily.

In terms of the first element, new residential development would not normally be considered appropriate in this location. However, there is a fallback position in the sense that prior approval has previously been given for a residential conversion (ref. H06-1043-21). This has to be given significant weight.

In terms of flood mitigation measures required by virtue of part 2 of the exceptions test, the application is accompanied by a flood risk assessment which recommends that finished floor levels (FFLs) be set at 4.3m aOD with 0.3m of flood resilient construction above FFL.

Concluding, therefore, whilst there is some conflict with SELLP Policy 4 and advice within the Framework it is outweighed by other factors in this case (ie, the fallback position).

Contamination

Environmental Protection previously requested a contaminated land condition due to the former use of the site and the nature of the new development proposed.

Ecology

Policy 3 of the SELLP indicates that development proposals should, where relevant to the proposal, include the incorporation of existing hedgerows and trees and the provision of appropriate new landscaping to enhance biodiversity.

Policy 28 indicates that all development should provide an overall gain in biodiversity. The explanatory text sets out that development can incorporate a number of simple, low-cost measures to deliver biodiversity benefits and enhance priority habitats and species, such as, the use of bat roost boxes, green roofs or walls, and integrating nesting opportunities into buildings and green infrastructure.

The building has no open sides and is fully enclosed with no access for barn owls, etc. The application is accompanied by an ecological survey which indicates that protected species are not present on site, with the exception of nest birds and foraging bats associated with the existing hedgerows. The application is accompanied by an ecology management scheme which indicates that the existing frontage hedge would be retained. Ecological mitigation measures are also proposed. These matters can be addressed by means of conditions.

The proposal satisfactorily complies with Policies 3 and 28 in terms of ecology.

Planning Balance

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.

It has not been demonstrated that a dwelling is necessary in this particular location. Moreover, the site is physically divorced from a settlement and larger service settlements such as Holbeach and Spalding. 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. Caselaw has demonstrated that Class Q consents are a legitimate fallback position when considering alternative proposals for development of the same site.

The proposed dwelling 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 which justify granting planning permission for the proposal.

The scheme is satisfactory on amenity and highway safety grounds. No objections are raised on flood risk grounds given the fallback position.

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

The planning balance lies in favour of the proposal. It is therefore recommended that the application be approved under delegated powers.