

**DECISION DELEGATED TO HEAD OF PLANNING**

**Application No:** H07-0112-23      **Applicant:** Mr N Shortland  
**Proposal:** Demolition of existing barn and erection of dwelling  
**Location:** West Drove South Gedney Hill Spalding  
**Terminal Date:** 3rd April 2023

**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                        |
| 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:**

|                            | <b>Object</b> | <b>Support</b> | <b>No Obj.</b> | <b>Comments</b> |
|----------------------------|---------------|----------------|----------------|-----------------|
| PARISH COUNCIL             | 0             | 0              | 0              | 0               |
| WARD MEMBER                | 0             | 0              | 0              | 0               |
| HIGHWAYS & SUDS<br>SUPPORT | 0             | 0              | 0              | 1               |

|                                                  |   |   |   |   |
|--------------------------------------------------|---|---|---|---|
| IAN MARSHMAN,<br>HISTORIC<br>ENVIRONMENT OFFICER | 0 | 0 | 0 | 1 |
| SOUTH HOLLAND<br>INTERNAL DRAINAGE<br>BOARD      | 0 | 0 | 0 | 1 |
| SHDC INTERNAL                                    | 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 4 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. H07-0583-22).

### **Site Description**

The existing building, which is asbestos/fibre cement clad, is part of Windy Nook Nursery located on the western side of West Drove South. Glasshouses are located to the north and west and an associated dwelling to the south. New houses are situated to the east fronting West Drove South.

### **Recent History**

H07-0244-20 - PAA - Change of use of barn to residential - Approved 4 June 2020.

H07-0583-22 - PAA - Change of use of barn to residential dwelling - previously approved under H07-0244-20 - Approved 3 August 2022.

### **Consultation Responses**

#### Gedney Hill Parish Council

No response.

#### LCC Highways/SUDs

No objections subject to highway informative.

#### South Holland Internal Drainage Board

The applicant has indicated that they intend to dispose of surface water via infiltration. 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.

#### Environmental Protection

Request unexpected contamination condition.

LCC Historic Environment Officer

No archaeological impact.

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/drainage, contamination 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 location; for example, in conjunction with agriculture or other rural based business. Moreover, the proposal would constitute a form of backland development that would fail to respect the historic character of West Drove South. As such, it would be detrimental to the prevailing rural character of the area on the south-western fringe of the settlement where existing development meets the countryside. 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. H07-0583-22). 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 of bespoke design with some features that reflect a barn conversion. It would be constructed in Desimpel Heathfield Red bricks with a Calderdale Slate roof (dark 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).

An associated dwelling is located to the south. New houses are situated to the east fronting West Drove South. The proposed dwelling has a blank eastern elevation and overlooking at first floor level would either be oblique or at an acceptable distance. 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.

Vehicular access would be via an access roadway off West Drove. Ample car parking facilities have been provided on site. The County Highways Authority raises no objections on highway safety grounds.

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

### Flood Risk

Policy 4 of the SELLP is concerned with flood risk management and states, inter alia, that new development within Flood Zones 2 and 3 should pass the sequential test and be accompanied by a site specific flood risk assessment which should propose appropriate flood resistance and resilience measures to ensure the development maintains an appropriate level of safety for its lifetime. The development should also incorporate the use of Sustainable Drainage Systems (SuDS) and demonstrate that adequate foul water treatment and disposal already exists or can be provided in time to serve the development.

The site is located within Flood Zone 1 on the Environment Agency Maps and within an area of no hazard within the South East Lincolnshire Residual Flood Hazard Map (2115). The proposal is therefore acceptable on flood risk grounds and the sequential test does not need to be applied.

Concerning drainage, foul water would be discharged to a package treatment plant and surface water to a soakaway. More specific details are required in this case given the soil structure in Gedney Hill.

### Contamination

Environmental Protection have requested an unexpected 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.

Paragraph 174 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.

The Preliminary Ecological Appraisal indicates that there are no protected species on site. The present building has no open sides and is fully enclosed with no access for barn owls, etc. The proposal needs to demonstrate a biodiversity net gain, as indicated within the report. This 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 location. Moreover, the proposal would constitute a form of backland development that would fail to respect the historic character of West Drove South. As such, it would be detrimental to the prevailing rural character of the area on the south-western fringe of the settlement where existing development meets the countryside. 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.