DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H08-0271-23**	**Applicant:**	**Mr & Mrs C Wheeler**
Proposal:	Proposed dwelling, extension/conversion to the existing cold store barn and demolition of existing agricultural barn, change of use of additional land to residential garden curtilage and temporary siting of caravan during construction phase		
Location:	Corner Of Cheal Road/Saltfleet Lane Surfleet Spalding		
Terminal Date:	12th September 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
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 5. Delivering a sufficient supply of homes.
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	0
WARD MEMBER	0	0	0	0
PLANNING LIAISON OFFICER - FLOOD RISK	0	0	0	1

ASSESSMENT				
HIGHWAYS & SUDS SUPPORT	0	0	0	1
HISTORIC ENVIRONMENT OFFICER	0	0	0	1
WELLAND AND DEEPINGS INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	0	0	0	1
OTHER STATUTORY BODIES	0	0	0	1

CASE OFFICER ASSESSMENT

PROPOSAL

The site has prior approval for the conversion of a brick agricultural building/cold store into a dwelling under Class Q (reference H08-0861-21) and a subsequent permission for demolition of the agricultural cold store and erection of a new dwelling (ref. H08-0443-22). This application is for a one and a half storey 3 bed dwelling located in a different position on site, plus conversion/extension of the existing brick agricultural cold store to form a domestic store/car port. An existing timber agricultural building on site would be demolished. A temporary static caravan is also proposed whilst the dwelling is under construction.

SITE DESCRIPTION

The site is located in open countryside on the corner of Cheal Rd/Saltfleet Lane, Surfleet. It is currently occupied by a brick agricultural cold store and timber agricultural building. Access is off Cheal Road.

A dwelling (Cheal House Farm) is situated to the west beyond vegetation. A pair of semi-detached houses known as Cheal Farm Cottages are located to the east, on the eastern side of Saltfleet Lane.

RELEVANT HISTORY

H08-0861-21 - Prior Approval - Conversion of agricultural building into dwelling - Approved - 07 October 2021.

H08-0443-22 - Full - Erection of a dwelling - Granted 4 July 2022.

CONSULTATION RESPONSES

Surfleet Parish Council

No response.

Lincolnshire County Council - Highways & SUDS Officer

No objections. Requests standard access and utility informatives.

Welland & Deepings Internal Drainage Board

If a discharge of either surface water or treated effluent are proposed to any watercourse then the prior written consent of the Board will be required, which is currently subject to fees and the agreement of technical details.

South Holland District Council - Environmental Protection Officer

Request that the standard land contamination conditions be applied at this location.

LCC Historic Environment Officer

No archaeological input.

Environment Agency

Request conditions.

Lincolnshire Bat Group

This is a sound report from an area I know well, with past surveys nearby over a number of years. Note Recommendations 5.4.2 with reference to lighting and installation of a bat box in the new build.

PLANNING CONSIDERATIONS

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

Policies 2 and 3 of the SELLP essentially indicate that new development should be in character and appearance and have a satisfactory relationship with existing development.

Addressing the first element of Policy 1, 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 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 brick agricultural building/cold store 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. H08-0861-21). It seems likely that there is a clear desire by the landowner to develop and maximise the value of the site. Moreover, planning permission has been granted for demolition of the existing brick agricultural building/cold store and erection of new dwelling (ref. H08-0443-22). The current proposal is for a one and half storey dwelling that is relatively small and commensurate to the site. It of simple but bespoke design with some interesting architectural features. The existing brick agricultural building/cold store would be retained and converted/extended to form a domestic store and a carport. Whilst the proposed dwelling would include a large residential garden, it is acceptable given that it would utilise existing boundaries and would reflect the scale of residential gardens in the area.

The proposal would not materially harm the character or appearance of the countryside bearing in mind 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 justify granting planning permission for the proposal. This is subject to a S106 in respect of the previously approved dwelling (ref. H08-0443-22) since it is in a different position on site.

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). Paragraph 130, amongst other matters, seeks places with a high standard of amenity for existing and future users.

A dwelling (Cheal House Farm) is situated to the west beyond vegetation. A pair of semi-detached houses known as Cheal Farm Cottages are located to the east, on the eastern side of Saltfleet Lane.

There is a degree of separation from neighbouring dwellings, plus existing landscaping to the west. It is considered that the amenity of neighbouring residents would not be materially harmed in terms of overlooking, lack of privacy, overbearing effect, overshadowing, noise and disturbance, etc, also bearing in mind the site was previously a farmyard.

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 in terms of amenity.

Highways and Parking

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.

The proposed dwelling would be accessed via an existing access off Cheal Road. 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 three bedrooms and therefore requires the provision of two off-street car parking spaces under Appendix 6 of the SELLP. The proposed block plan includes satisfactory parking provision. Lincolnshire County Council Highway Authority have no objections with the proposed development.

The proposal satisfactorily accords with Policies 2, 3 and 36 of the adopted Local Plan and the guidance within the NPPF in terms of highway safety.

Flood Risk and Drainage

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 within Flood Zone 3 of the Environment Agency's Flood Maps. However, the South East Lincolnshire Strategic Flood Risk Assessment (SFRA - 2017) is now being used to undertake the Sequential Test for flood risk in South Holland. In this respect the site is within an area of no hazard. Consequently, the proposal passes the sequential test.

Nevertheless, given that the proposal is a more vulnerable development the framework indicates that an exceptions test is required. In this respect, the Flood Risk Assessment accompanying the application indicates that the calculated 1:100-year flood level including allowances for climate change is +0.209m above the existing site ground level. On this basis the ground floor should be set at +0.300m above the existing ground level in accordance with EA standing advice. The Environment Agency has recommended a condition to this effect, plus removal of the static caravan upon occupation of the dwelling.

Specific drainage details have not been submitted. This matter should therefore be subject to conditions.

The proposal satisfactorily accords with Policy 4 of the adopted Local Plan and the guidance within the NPPF in terms of flood risk/drainage, subject to conditions.

Refuse collection

The proposed driveway will be off the existing access. The dwelling is within a 30 metre carry distance to the access point. There is not considered to be an amenity or highway safety impact from collecting refuse in this location.

Ecology

Policy 2 of the South East Lincolnshire Local Plan (SELLP), 2019 states that sustainable development considerations should be met in relation to such matters as impact or enhancement for areas of natural habitats. Policy 3 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 application is accompanied by a Preliminary Ecological appraisal that recommends precautionary measures, plus ecological enhancements including tree/hedge planting, wildlife areas, creation of a wildlife pond, swift nesting features and a barn owl box. These matters can be addressed by means of conditions.

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 an existing agricultural building into a dwelling and also for demolition of the barn and erection of a new dwelling. On this basis, it is considered that it would be unreasonable to refuse permission for the erection of an alternative dwelling in this instance given the fall-back position, subject a revocation order in respect of the previous permission for a dwelling. 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.

CONCLUSION

The application is recommended for approval, subject to revocation of planning permission ref. H08-0443-22.