

DECISION DELEGATED TO HEAD OF PLANNING

Application No:	H08-0443-22	Applicant:	Mr & Mrs B Tidswell
Proposal:	Erection of Dwelling		
Location:	Corner Of Cheal Road/Saltfleet Lane Gosberton Fen Spalding		
Terminal Date:	5th July 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
17	Providing a Mix of 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

- 5 - Delivering a sufficient supply of homes
- 12 - Achieving well-designed places
- 14 - Meeting the challenge of climate change, flooding and coastal change
- 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
HIGHWAYS & SUDS SUPPORT	0	0	0	1

IAN MARSHMAN, 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

This is a full planning application for the erection of a dwelling on agricultural land at the corner of Cheal Road and Saltfleet Lane in Gosberton Fen. This application follows a prior approval application for the conversion of an agricultural building on site into a dwelling under Class Q legislation on the 7th of October 2021 under reference H08-0861-21.

The proposal seeks to demolish all existing buildings on site and provide a four bedroom dwelling and detached garage. The property will contain a bedroom, lounge, utility, wc, and a combined kitchen / dining area at ground floor level. Three bedrooms and a bathroom will be sited at first floor level. The detached double garage will be sited with storage space above will be sited to the north-west of the dwelling. Proposed materials of construction are red brick with lime mortar with slate roofing. Windows will be top opening mock timber sash windows, with cast iron effect rainwater goods on rise and fall brackets. Exact details on the proposed brick would be addressed via condition.

SITE DESCRIPTION

The site is located in open countryside on the northern side of Cheal Road. It is occupied by the proposal barn and an additional dwelling to the south-west. A pair of semi-detached houses known as Cheal Farm Cottages are located to the east, on the eastern side of Saltfleet Lane. The site is in Environment Agency Flood Zone 3, and not subject to increased hazard or flood depth on the 2115 South Holland Strategic Flood Risk Mapping.

RELEVANT HISTORY

H08-0861-21

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

CONSULTATION RESPONSES

Lincolnshire County Council - Highways & SUDS Officer

No objections. Requests standard access and utility informatives.

Lincolnshire County Council - Historic Environment Officer

"No archaeological input required."

"I request that the standard land contamination conditions be applied at this location."

Welland & Deepings Internal Drainage Board

"I have held informal discussions with the agent who informed me that the treated effluent is to be discharged to a soakaway. If, for any reason, a soakaway is not used at any point in the future and discharge to a watercourse is proposed, then the prior written consent of the Board would be required which is currently subject to a £50 application fee."

Lincolnshire Bat Group

"According to the Decision Notice for the previous barn conversion approval, H08-0861-21, an ecological survey should be carried out prior to any works being carried out (section 9). Has this been done, as there is no reference to it? If not then it needs to be part of the present consultation before any decisions are made."

PLANNING CONSIDERATIONS

The submitted Justification Statement states "The dwelling proposes to be an improvement on the existing barn and allow for the site to be utilised and the construction to allow for a more sustainable and environmentally conscious building on the site."

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. 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, the scheme approved under Class Q is the conversion of a non-typical residential appearance agricultural building into a dwelling. The current proposal is for a detached house that is in keeping with that of the vernacular Fenland Cottage in terms of design, scale and setting.

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 red brickwork, slate roofing and be of a traditional agricultural dwelling 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 plans, it is proposed to include a 1.1 metre high post and rail fence starting at the rear elevation wall of garage and extending eastward to the site boundary. Given the retention of the existing hedged boundary treatments and the distance to the public highways of Cheal Road and Saltfleet Lane, 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 a soakaway to the north 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 objections to the proposal.

Refuse collection

The proposed driveway will be off the existing off site access. The dwelling is well 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.

Lack of an ecology report

It is considered that this matter can be addressed by condition that all information is collected and sent to the Local Planning Authority for assessment and approval prior to any demolition works taking place on site.

Impact on Neighbouring Amenity

During the course of the application, no comments have been received by any neighbouring properties. However, due consideration has been given to the impacts of the proposal on the closest neighbouring residential properties. The closest neighbouring properties are Cheal House Farm to the west and a pair of semi-detached dwellings at Cheal Farm Cottages off Saltfleet Lane to the north-east.

The proposed dwelling is considered to be a sufficient distance away from 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 or greater 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 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 four bedrooms and therefore requires the provision of three off-street car parking spaces under Appendix 6 of the SELLP. The proposed block plan (drawing number J1798A-PL-02) shows the provision of four off-street car parking spaces, 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 an existing agricultural building into a dwelling. 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.

CONCLUSION

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.