DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H08-0949-23**	**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 - approved under H08-0271-23. Modification of Condition 2 to allow amendments to previously approved plans and modification of Condition 5 relating to preliminary ecological appraisal		
Location:	Tawny Lodge Cheal Road Gosberton		
Terminal Date:	28th December 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
29	The Historic Environment
30	Pollution
31	Climate Change and Renewable and Low Carbon Energy
36	Vehicle and Cycle Parking

National Guidance

National Planning Policy Framework 2023

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.
Section 16. Conserving and enhancing the historic 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
SHDC INTERNAL	0	0	0	2
OTHER STATUTORY BODIES	0	0	0	1

CASE OFFICER ASSESSMENT

PROPOSAL

The site has full planning permission for a one and a half storey 3 bed dwelling, plus conversion/extension of the existing brick agricultural cold store to form a domestic store/car port (ref. H08-0271-23). Work has commenced on site. This application is to modify the scheme, including the following:
- Addition of an orangery.
- Alterations to the main entrance.
- Revised fenestration.
- Alterations to the store/carport, including revised materials and omission of an external staircase.

It should be noted that the site also has prior approval for the conversion of a brick agricultural building/cold store into a dwelling under Class Q (reference H08-0861-21).

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, plus a former timber agricultural building. Access is off Cheal Road.

A dwelling (Cheal House - Grade 2 listed) is situated to the west beyond tree/hedge planting. 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.

H08-0271-23 - Full - 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 - Approved 11 September 2023.

H08-0882-23 - Cond Comp - Details of contamination of land or pollution of controlled waters (Conditions 10 and 11 of H08-0271-23) - Approved 27 November 2023

H08-0974-23 - Cond Comp - Details of external materials, landscaping, tree planting, ecological biodiversity measures, barn owl nest box and foul & surface water disposal (Conditions 3, 4, 6, 7 and 12 of H08-0271-23) - Under consideration.

CONSULTATION RESPONSES

Gosberton Parish Council

No response.

Lincolnshire County Council - Highways & SUDS Officer

No objections.

SHDC Environmental Protection Officer

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

SHDC Conservation Officer

No objections. The proposed amendments to the design are fairly minor in nature and therefore do not substantially alter the manner in which the building would be appreciated in public realm views. This means that, whilst the site is adjacent to a listed building, this amendment bears no impact upon the designated heritage asset.

Lincolnshire Bat Group

Note recommendations in section 5.4.2 with reference to lighting and installation of a bat box in the new build.

Public

No responses 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.

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. Policy 29 indicates that proposals should preserve or enhance the setting of listed buildings.

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 since been granted for a new dwelling (H08-0443-22 and H08-0271-23). The principle of a new dwelling has therefore been established, subject to it constituting an enhancement.

This proposal is for a modification of the latest approved scheme (ref. H08-0271-23). The latter was approved because it was of simple but bespoke design with some interesting architectural features and constituted an enhancement. The proposed modifications are relatively minor and do not affect the architectural integrity of the dwelling or outbuilding to be retained and converted to a domestic store, etc.

Concluding, therefore, the proposal constitutes an enhancement over the fallback position. The latter 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 which outweighs the conflict with the development plan and justify granting planning permission for the proposal.

It should be noted that a S106 planning obligation was previously entered into alongside application ref. H08-0271-23 to revoke a previous planning permission for a dwelling elsewhere on the site (ref. H08-0443-22). A Deed of Variation is not required due to a clause within the agreement relating to S73 applications of this nature.

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) is situated to the west beyond tree/hedge planting. 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 previously recommended a condition to this effect, plus removal of the static caravan upon occupation of the dwelling.

Drainage details have been submitted and are considered acceptable.

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.

Contamination

This issue has previously been satisfactorily addressed as part of condition compliance application ref. H08-0882-23. A contamination condition(s) is no longer necessary therefore.

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 revised 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

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 limit. 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 an 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 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 which outweighs the conflict with the development plan and justifies granting planning permission for the proposal.

There are no objections to the scheme on amenity, highway safety, flood risk and contamination grounds, subject to conditions.

CONCLUSION

The proposal satisfactorily complies with Policies 2, 3, 4, 28, 29, 30 and 36 of the South East Lincolnshire Local Plan, 2019, subject to appropriate conditions. Although there is conflict with Policy 1 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.

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.

RECOMMENDATION

That the application be approved under delegated powers.