

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H09-0740-23 **Applicant:** Mr D Ling

Proposal: Demolition of agricultural barn and erection of two dwellings - approved under H09-0021-23. Modification of Condition 2 to allow amendments to previously approved plans.

Location: Rosedale Farm Chapel Drove Holbeach Drove

Terminal Date: 22nd 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
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 2023

Section 2. Achieving sustainable development.
Section 5. Delivering a sufficient supply of homes.
Section 9. Promoting Sustainable transport.
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	1	1	0
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1

SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	0	0	0	2

CASE OFFICER ASSESSMENT

Proposal

The site has full planning permission for the demolition of an existing agricultural building and erection of 2 no. 5-bed 2-storey detached dwellings (ref. H09-0021-23). This application is to revise the design and appearance of the dwelling on plot 1.

It should be noted that the site also has prior approval for a change of use of existing agricultural buildings into 4 dwellings under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (ref. H09-0548-22).

Site Description

The current building is located within an existing farmyard on the western side of Chapel Drove. The lower section is of blockwork construction with a concrete frame. The upper section/roof is mainly asbestos clad, with some timber slatting at the rear. The doors are of metal construction.

A residential property (Ivory Cottage) is situated some 30 metres to the south-west and an associated dwelling (Rosedale) to the north-east beyond the farmyard. A nursery and associated dwelling (Pentland House) are situated opposite to the east/north-east.

Planning History

H09-0548-22 - PAA - Conversion of agricultural building into 4 dwellings - Approved 25 July 2022.

H09-0021-23 - Full - Demolition of agricultural barn and erection of two dwellings - Approved 17 April 2023.

H09-0739-23 - Cond Comp - Details of landscaping, foul and surface water disposal, contamination of land or pollution of controlled waters & ecological biodiversity measures (Conditions 3, 6, 8 and 11 of H09-0021-23) - Under consideration.

Consultation Responses

Holbeach Parish Council

No objections.

Whaplode Parish Council

Support.

LCC Highways/SUDs

No objections.

South Holland Internal Drainage Board

We recommend that ground investigation is carried out to determine infiltration potential, followed by

testing in line with BRE Digest 365 if onsite material is considered favourable for 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.

Environmental Protection

Have reviewed the Goldfinch Limited report 'Proposed residential development at Rosedale Farm, Chapel Drove, Holbeach Drove Geo-environmental Desk Study re. 0914/1' Dated August 2023 and make no further comments on this application.

Public

No comments received.

Key Planning Considerations

The main issues in this case are (but not limited to):

- Principle of development and sustainability;
- Other material considerations such as amenity, highway safety, flood risk, contamination and ecology.

Evaluation

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

In this case, the adopted South East Lincolnshire Local Plan (SELLP) 2011-2036, adopted March 2019, forms the development plan for the District, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework (updated 2023) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

The Authority is able to demonstrate a supply of deliverable sites equivalent to in excess of 5 years through the latest Housing Land Supply Assessment.

Principle of Development and Sustainability

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 2 dwellings are necessary in this location; for example, in conjunction with agriculture or other rural based business. Moreover, the site is physically divorced from Holbeach Drove and larger service settlements such as Crowland, Spalding, Wisbech and Peterborough. 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 existing agricultural buildings into 4 dwellings 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 4 dwellings (ref. H09-0548-22). 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 modern utilitarian farm buildings into 4 dwellings. The current proposal is for 2 no. dwellings with a design concept based upon a traditional barn.

The proposal offers a reduction in density and the proposed dwellings 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 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.

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, (2023).

The site is presently part of an existing farmyard, which would be retained to the north-east. To protect the amenity of future occupiers it is recommended that 1.8m metre high closeboarded fencing be erected along the north-eastern boundary.

The nearest dwellings are Ivory Cottage some 30 metres to the south- west and an associated dwelling (Rosedale) to the north-east beyond the farmyard. A nursery and associated dwelling (Pentland House) are situated opposite to the east/north-east. No resident objections have been received.

Plot 1 has a bedroom window (bed 5) on its north-eastern elevation at first floor level. Plot 2 has a bathroom and bedroom (bed 3) window on its south-western elevation at first floor level facing Ivory Cottage. Overlooking of neighbouring property would be at a 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, etc, subject to satisfactory boundary screening.

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 principle of residential development on this site has already been established by reason of a prior approval consent to convert the existing agricultural buildings into four dwellings. Numerically, this application to demolish the same agricultural buildings and to replace them with two new

dwelling would halve the vehicular movements along what is a very minor rural road. Satisfactory car parking would be available on site.

The application also proposes changing the access arrangement so as to provide two new vehicle access crossings - which would need to be constructed to the current highway authority specification.

In highway terms, this amended proposal therefore constitutes betterment over the development that has previously been granted consent. Consequently, LCC Highways does not wish to object to the grant of permission.

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

Flood Risk

Policy 4 of the South East Lincolnshire Local Plan relates to flood risk and indicates that "development proposed within an area at risk of flooding (Flood Zones 2 and 3 of the Environment Agency's flood map or at risk during a breach or overtopping scenario as shown on the flood hazard and depths maps in the Strategic Flood Risk Assessment) will be permitted" in instances where specific criteria is met.

The site is partially within Flood Zones 1 and 2, but within an area designed as no hazard within the South East Lincolnshire Strategic Flood Risk Assessment. It is therefore considered acceptable on sequential grounds, also bearing in mind the fall-back position.

The proposal should still meet the requirements for a site-specific flood risk assessment since it is a more vulnerable development. The accompanying flood risk assessment recommends that floor levels be raised by 300mm above existing ground level and that floor resistant/resilient construction be incorporated.

Contamination

The application is accompanied by a Geo-Environmental Desk Study which indicates that the need for a Phase II intrusive investigation is considered unwarranted. Environmental Protection are in general agreement with the findings and have no further comments to make.

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 Ecological Impact Assessment accompanying the application indicates that there would be no significant effect upon protected species, subject to mitigation measures. Bio-diversity enhancements are also required, which can be addressed by means of conditions.

The proposal satisfactorily complies with Policies 3 and 28 in terms of ecology, subject to 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 2 dwellings are necessary in this particular location. Moreover, the site is physically divorced from Holbeach Drove and larger service settlements such as Crowland, Spalding, Wisbech and Peterborough. 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 existing agricultural buildings into 4 dwellings 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 offers a reduction in density and the proposed dwellings 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, 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

Based on the assessment detailed above, it is recommended that the proposal should be approved conditionally under Delegated Authority.