

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H09-0912-24 **Applicant:** Bakkavor
Proposal: Demolition of vacant factory building
Location: Building H Sluice Road Holbeach St Marks
Terminal Date: 6th December 2024

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

The Town and Country Planning (General Permitted Development) Order 2015 (as amended)

Schedule 2, Part 11 - Heritage and Demolition

Class B - Demolition of Buildings

Representations:

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

Proposal

This a prior approval application for the demolition of a vacant building at Bakkavor, Holbeach St Marks.

This application is to determine if prior approval is required, under Schedule 2, Part 11, Class B of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), for the proposed method of demolition and any proposed restoration of the site at Bakkavor, Sluice Road, Holbeach St Marks.

Site Description

The application site is located outside any defined settlement boundary and is therefore in the open countryside in policy terms, as stated in Policy 1 of the South East Lincolnshire Local Plan (2019).

The site is located near Holbeach St Marks and is a mainly industrial/commercial area.

History

H09-1112-92 - Provision of additional car parking and resurfacing of existing - Approved

H09-0318-98 - Erect office block and laboratory and re-design of car parking. (Retrospective) - Approved

H09-0009-03 - To provide production facilities for the manufacture of pizzas, together with associated amenities and facilities - Approved

Planning Considerations

Schedule 2, Part 11, Class B - Details

Schedule 2, Part 11, Class B of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), seeks to permit the "demolition of buildings".

Class B details that the following is permitted development:

"B. Any building operation consisting of the demolition of a building".

B.1 sets out where development is not permitted by Class B. This details that:

"Development is not permitted by Class B if:

- (a) the building has been rendered unsafe or otherwise uninhabitable by the action or inaction of any person having an interest in the land on which the building stands and it is practicable to secure safety or health by works of repair or works for affording temporary support;*
- (b) the demolition is "relevant demolition" for the purposes of section 196D of the Act (demolition of an unlisted etc building in a conservation area);*
- (c) the building is used, or was last used, for a purpose falling within - (i) article 3(6)(p) (drinking establishments etc.) of the Use Classes Order; or (ii) article 3(6)(q) (drinking establishments with expanded food provision) of that Order;*
- (d) the building is used, or was last used, for the purpose of - (i) a concert hall; (ii) a venue for live music performance; or (iii) a theatre; or*
- (e) the demolition relates to a statue, memorial or monument ("a commemorative structure") in place for a period of at least 10 years on the date of any proposed demolition, other than a commemorative structure - (i) that is a listed building; (ii) that is a scheduled monument; (iii) within a cemetery, on consecrated land, or within the curtilage of a place of public worship;*
- (iv) within the grounds of a museum or art gallery; or*
- (v) within the curtilage of a dwellinghouse".*

Part 11, Class B of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) also sets out 'Conditions' that the development must comply with, in order for the development to be 'Permitted Development'.

The conditions, as set out with B.2, states that "Development is permitted by Class B subject to the following conditions:

(a) where demolition is urgently necessary in the interests of safety or health and the measures immediately necessary in such interests are the demolition of the building the developer must, as soon as reasonably practicable, give the local planning authority a written justification of the demolition;

(b) where the demolition does not fall within paragraph (a) and is not excluded demolition -

- (i) the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the method of demolition and any proposed restoration of the site;
- (ii) an application described in paragraph (b)(i)(aa) paragraph (b)(i) must be accompanied by a written description of the proposed development, a statement that a notice has been posted in accordance with paragraph (b)(iv) and any fee required to be paid;
- (iii) a request described in paragraph (b)(i)(bb) must include the address of the building, the developer's contact address and, if the developer is content to receive communications electronically, the developer's email address;
- (iv) subject to paragraph (b)(v), the applicant must display a site notice by site display on or near the

land on which the building to be demolished is sited and must leave the notice in place for not less than 21 days in the period of 28 days beginning with the date on which the application was submitted to the local planning authority;

(v) where the site notice is, without any fault or intention of the applicant, removed, obscured or defaced before the period of 21 days referred to in paragraph (b)(iv) has elapsed, the applicant is treated as having complied with the requirements of that paragraph if the applicant has taken reasonable steps for protection of the notice and, if need be, its replacement;

(vii) the development must not begin before the occurrence of one of the following - (aa) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required; (bb) where the local planning authority give the applicant notice within 28 days following the date of receiving the application of their determination that such prior approval is required, the giving of such approval; or

(cc) the expiry of 28 days following the date on which the application was received by the local planning authority without the local planning authority making any determination as to whether such approval is required or notifying the applicant of their determination;

(viii) the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out - (aa) where prior approval is required, in accordance with the details approved;

(bb) where prior approval is not required, in accordance with the details submitted with the application;

(ix) the development must be carried out - (aa) where approval has been given by the local planning authority, within a period of 5 years from the date on which approval was given; (bb) in any other case, within a period of 5 years from the date on which the local planning authority were given the information referred to in paragraph (b)(ii).

Schedule 2, Part 11, Class B - Assessment

Condition (b)(i) details that: *the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the method of demolition and any proposed restoration of the site*

- During the course of the application, correspondence between the Applicant's Agent and Case Officer determined that development has already begun, with correspondence dating 04th December 2024 stating that "Demolition works have begun. They are however limited to internal strip out and removal of dangerously loose external cladding".

- In addition to this, the site notice provided; albeit considered inadequate as detailed further below, outlined that "The proposed date of the demolition is late October". However, the application was not submitted the Local Planning Authority until 30th October and as such, it is reasonable to suggest that the demolition would have been commenced prior to the submission of the application.

Condition (b)(iv) details that: *subject to paragraph (b)(v), the applicant must display a site notice by site display on or near the land on which the building to be demolished is sited and must leave the notice in place for not less than 21 days in the period of 28 days beginning with the date on which the application was submitted to the local planning authority*

- It is considered that the site notice that was erected/displayed by the applicant fails to comply with the interpretation of a site notice as stated within Part 11, Class B of the General Permitted Development Order; a matter that is addressed further below. In addition, the site notice fails to provide a specific date for its display and as such, the Local Planning Authority are unable to determine whether or not the site notice was displayed for a period of not less than 21 days, in accordance with the requirements of (iv). In any event, the 'site notice' fails to comply with the interpretation of a site notice under B.3 (Interpretation of Class B) of Schedule 2, Part 11, Class B.

Condition (b)(v) details that: *where the site notice is, without any fault or intention of the applicant, removed, obscured or defaced before the period of 21 days referred to in paragraph (b)(iv) has elapsed, the applicant is treated as having complied with the requirements of that paragraph if the applicant has taken reasonable steps for protection of the notice and, if need be, its replacement;*

- In a similar light to the above, the 'site notice' that was displayed failed to comply with the interpretation of a site notice as stated within Part 11, Class B of the General Permitted Development Order. In any event, due to the case officers correspondence highlighting the concerns and failure of the submission to meet the requirements of Part 11, Class B and specifically the requirements of the site notice, it is believed that the notice was intentionally removed by the

applicant. Whilst this was carried out with the intention to display a new site notice for the purposes of a new fresh submission outside of this Prior Approval, this fails to comply with the requirements of (b)(v) as a result.

- In addition, the notice failed to state a date in which the 'notice' was placed and therefore the Local Planning Authority are unaware of its exact erection.

Condition (b)(vii) details that: the development must not begin before the occurrence of one of the following -

(aa) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;

(bb) where the local planning authority give the applicant notice within 28 days following the date of receiving the application of their determination that such prior approval is required, the giving of such approval; or

(cc) the expiry of 28 days following the date on which the application was received by the local planning authority without the local planning authority making any determination as to whether such approval is required or notifying the applicant of their determination

- The application is considered to fail to comply with any of the above points outlined within (b)(vii). The date shown on the site notice for when the works are to be carried out, clearly specifies a date prior to that of the Prior Approval submission to the Local Planning Authority. Furthermore, the works were started prior to the expiry of 28 days.

Based on the information provided, it is reasonable to assume that the works have commenced prior to the expiry of 21 days of the site notice, and prior to one of the occurrences detailed within (vii)(aa), (vii)(bb) or (vii)(cc).

In addition to the conditions outlined above, Schedule 2, Part 11, Class B also comprises a list of 'Interpretations' for this section of the Order. Contained within this 'Interpretation of Class B', is a clear interpretation of the meaning of a site notice for this part of the order.

This details that: "Interpretation of Class B: B.3 For the purposes of Class B -

(a) the name of the applicant,

(b) a description, including the address, of the building or buildings which it is proposed to be demolished,

(c) a statement that the applicant has applied to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the method of demolition and any proposed restoration of the site,

(d) the date on which the applicant proposes to carry out the demolition, and

(e) the name and address of the local planning authority".

The following can be considered in relation to the site notice displayed by the applicant on site:

-The site notice provided fails to provide a specific description of the building proposed to be demolished (criteria b), having only referred to the address as 'Building H', which fails to provide a clear or accurate description as to where the building is located.

- The notice did not comprise a statement that the applicant has applied to the local planning authority for a determination as to whether the prior approval of the authority will be required (criteria c).

- The notice fails to provide a precise date in which the applicant proposes to carry out the demolition and states that the date for demolition is such that pre-dates when the prior approval application was submitted to the Local Planning Authority (criteria d).

- The site notice did not contain the name and address of the Local Planning Authority (criteria e).

It is therefore considered that this is not an acceptable or adequate site notice and fails to adequately comply with the requirements of B.3 (Interpretation of Class B) of Schedule 2, Part 11, Class B of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

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

In light of the above, the proposal fails to comply with the requirements of Schedule 2, Part 11, Class B of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Specifically, the proposal fails to comply with points B.2 (b)(i), (b)(iv), (b)(iv), (b)(v), and (b)(vii), along with the requirements of B.3 (Interpretation of Class B).

As such, the proposal is not permitted development under Schedule 2, Part 11, Class B of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

The recommendation is therefore that the proposal is refused under delegated authority.