DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H14-0654-24**	**Applicant:**	**Mr K Whincup**
Proposal:	Conversion of agricultural building to 1 dwelling		
Location:	Barn On Land On South Side Of Glenside South Pinchbeck Spalding		
Terminal Date:	2nd October 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0
PLANNING LIAISON OFFICER - FLOOD RISK ASSESSMENT	0	0	0	1
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SHDC INTERNAL	0	0	1	0
OTHER STATUTORY BODIES	0	0	0	1
RESIDENTS	0	0	0	1

CASE OFFICER ASSESSMENT

Description of Proposal

This applciation seeks prior approval for the change of use of the exisitng building to a single residential dwelling, under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.

Site Description

The site is located outside of any of the settlement boundaries outlined within the South East Lincolnshire Local Plan, 2019, lying 250 metres west of Pinchbeck. To the north of the site is the river Glen and to its east is a non-nucleated linear pattern of residential developments. To the south is an agricultural field. Three Grade II listed buildings within 200 metres of the site.

The site currently contains an orchard to its east and a grassed area and pond to the west. The orchard appears to be a polyculture, featuring a fairly dense canopy. Little evidence of agriculture/ harvesting was present within the wood during the officer's site visit. Despite being referred to as an orchard here, it did not appear that the solely fruit bearing trees were present, with non-productive species also appearing on the site.

The building itself is a minute store building of brick construction, sited within a thicket of trees. The building appears to be over fifty years old. The building is overgrown with ivy, with much of the pan tiled roof being obscured by vegetation. No footpath or clear route to the structure exists currently and any access would have to be through the wood.

Relevant History

No relevant history

Consultation Responses

The responses received from consultees during the initial consultation exercises, which can be viewed in their entirety through the South Holland website, can be summarised as follows:

Highway and Lead Local Flood Authority

"As Highways and Lead Local Flood Authority we assess all Prior Approval applications as to whether or not Prior Approval is required for Transport/Highways impacts and flooding risks on the site. This proposal is for Conversion of agricultural building to 1 dwelling which will utilise the existing access and meets the guidelines set out in Manual for Streets, adequate parking provision is proposed within the limits of the site and the proposal will not impact flood risk. Therefore, it is considered that the proposals would not result in an unacceptable impact of highway safety and flood risk.

As Lead Local Flood Authority, Lincolnshire County Council is required to provide a statutory planning consultation response with regard to drainage and surface water flood risk on all Major applications. This application is classified as a Minor Application and it is therefore the duty of the Local Planning Authority to consider the surface water flood risk and drainage proposals for this planning application.

No Objections

Having given due regard to the appropriate local and national planning policy guidance (in particular the National Planning Policy Framework), Lincolnshire County Council (as Highway Authority and Lead Local Flood Authority) has concluded that the proposed development would not be expected to have an unacceptable impact upon highway safety or a severe residual cumulative impact upon the local highway network or increase surface water flood risk and therefore does not wish to object to this planning application."

Natural England

"NO OBJECTION

Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites or landscapes."

Environmental Protection

No observations

Environment Agency

"In the absence of an acceptable flood risk assessment (FRA) we object to this application for prior approval.

Reasons:

The submitted FRA dated July 2024, ref: 'ECL1322', prepared by Ellingham Consulting Ltd does not comply with the requirements for site-specific flood risk assessments, as set out in paragraphs 20 to 21 of the Flood Risk and Coastal Change planning practice guidance. In particular, the submitted FRA does not propose adequate flood risk mitigation measures to ensure the development will remain safe for its lifetime.

As shown on the South East Lincolnshire Strategic Flood Risk Assessment hazard maps, the site has a future hazard classification of 'Danger to Most' and could experience flood depths of 0.25-0.5 metre arising from a breach in the defences during a flood that has a 0.1% chance of occurring in any one year up to 2115.

Cell D7 of the South East Lincolnshire flood risk advice matrix states that for change of use applications situated in Danger to Most, proposals 'should aim to identify mitigation measures in line with those required for new build development of the same type, as far as this is practicable.'. For a new build dwelling in this location, we would expect FFLs to be set 500mm above the existing ground level and flood resilient construction to be provided to a height of 300mm above the predicted flood depth.

The submitted FRA proposes that the finished floor level (FFL) of the bedroom will be raised 500mm above the existing ground level; however, the living area FFL is proposed to 150mm above the existing ground level and therefore could be at risk of inundation of flood water up to 350mm depths. We acknowledge that there are constraints due to the existing structure of the building; however, it is unclear whether an FFL of 500mm for the entire dwelling is unachievable. We would expect the proposed dwelling to have FFLs of 500mm above the existing ground level, for the entire building, to ensure the development will remain safe.

Whilst the submitted FRA proposes flood resilient construction to a height of 300mm above the predicted flood depth, no details on the proposed methods have been provided. We would expect details of how the flood resilience is intended to be achieved, to be outlined in any amended FRA.

To overcome our objection, the applicant should submit a revised FRA which addresses the points highlighted above. If this cannot be achieved, we are likely to maintain our objection"

Public Representations

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, one letter of representation has been received.

This can be summarised as:

-Concerns regarding the small size of the building
-Concerns this development may lead to a larger development in time
-No provisions have been made within the plans as to how waste would be disposed of
-Potential for overlooking
-Glasswork out of keeping with the existing building
-The site was previously used for vintage and collectible rural memorabilia
-Access track is not in the ownership of the applicant
-Lack of parking
-Increase in traffic

-Flood risk
-Pond onsite has increased in size
-Potential the site has been used for bat roosts

Key Planning Considerations

The Town and Country Planning (General Permitted Development) (England) Order 2015, Part 3 Permitted Development

The introductory text of the Permitted Development Order outlines generic provisions, applicable to the Order. Paragraph 9A of Part 3 "Permitted Development" reads as follows:

" Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse
(a) where the gross internal floor area is less than 37 square metres in size; or
(b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015"

This is expanded upon by 9B, which states:

"The reference in paragraph (9A) to the nationally described space standard is to that standard read together with the notes dated 19th May 2016 which apply to it"

The floor area of the building is 13.7sqm (although once building works are complete, this figure may be lower). In any event, this falls far below the 37sqm threshold outlined within Paragraph 9A (a) and the nationally described space standards. Moreover, the floor area of the proposed bedroom is approximately 3.2sqm and only approximately 1.85 metres in width. Both these measurements fall far below the required 7.5sqm of floor space and 2.15 metres width.

The proposal therefore fails to adhere to the provisions of Part 3, Paragraph 9A and 9B of the General Permitted Development Order. As such, regardless of the below assessment, permission cannot be granted under this Order for the change of use of the building.

Overall, the development is therefore not permitted under Part 3 of the general permitted development Order.

This being said, notwithstanding that the development cannot be permitted under Class Q for the above reason, for the sake of completeness, the below assessment has been provided.

Schedule 2, Part 3, Class Q - Context

The Town and Country Planning (General Permitted Development) Order 2015 was amended, in respect of Part 3, Class Q, in May 2024. Amongst other matters, the amendments to the legislation included (in short) an increase in the number of dwellings permitted under Class Q, a reduction in the extent of floor space permitted per dwelling to a maximum of 150sqm, and an allowance for extensions, comprising specific scales, to be permitted.

However, Article 10 of the 'Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2024', which came into force on 21st May 2024, introduced a 'Transitional Period'.

This 'Transitional Period' allows the submission of Class Q proposals, until May 2025, under the amended legislation(i.e. that of 21st May 2024) and that of the prior legislative requirements (i.e. that as of 20th May 2024). As such, during this 'Transitional period', proposals can be submitted with a view to applying the amended or previous Class Q limitations.

It is worth noting that, the 'Transitional period' does not allow for a mix of both legislative criteria.

Notwithstanding the concerns raised above, as the internal floor area of the existing building is 13.7sqm, the proposal cannot be assessed under the provisions introduced in May 2024. Q.1 (o) requires the building to conform to the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015 as read with the notes dated 19th May 2016 which apply to it. The floor space of 13.7sqm falls far below the 37sqm threshold.

Therefore, the below assessment is made under the previous legislation.

Schedule 2, Part 3, Class Q

Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 indicates that the following is permitted development:

a)a change of use of a building and any land within its curtilage from a use as an agricultural building to use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and

b)building operations reasonably necessary to convert the building referred to in paragraph a) to a use falling within Class C3 (dwellinghouses) of that schedule.

Paragraph Q.1 sets out the circumstances where development is not permitted. In this instance, the proposal is being assessed against the previous legislation, which reads as follows:

(a)the site was not used solely for an agricultural use as part of an established agricultural unit;
(i)on 20th March 2013, or
(ii)in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or
(iii)in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins;

(b)in the case of
(i)a larger dwellinghouse, within an established agricultural unit
(aa)the cumulative number of separate larger dwellinghouses developed under Class Q exceeds 3; or
(bb)the cumulative floor space of the existing building or buildings changing use to a larger dwellinghouse or dwellinghouses under Class Q exceeds 465 square metres;
(ba)the floor space of any dwellinghouse developed under Class Q having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeds 465 square metres;

(c)in the case of
(i)a smaller dwellinghouse, within an established agricultural unit
(aa)the cumulative number of separate smaller dwellinghouses developed under Class Q exceeds 5; or
(bb)the floor space of any one separate smaller dwellinghouse having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeds 100 square metres;

(d)the development under Class Q (together with any previous development under Class Q) within an established agricultural unit would result in either or both of the following
(i)a larger dwellinghouse or larger dwellinghouses having more than 465 square metres of floor space having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;
(ii)the cumulative number of separate dwellinghouses having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeding 5;

(e)the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;

(f)less than 1 year before the date development begins
(i)an agricultural tenancy over the site has been terminated, and
(ii)the termination was for the purpose of carrying out development under Class Q,unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural use;

(g)development under Class A(a) or Class B(a) of Part 6 of this Schedule (agricultural buildings and operations) has been carried out on the established agricultural unit
(i)since 20th March 2013; or
(ii)where development under Class Q begins after 20th March 2023, during the period which is 10 years before the date development under Class Q begins;

(h)the development would result in the external dimensions of the building extending beyond the

external dimensions of the existing building at any given point;

(j)the site is on article 2(3) land;

(k)the site is, or forms part of
(i)a site of special scientific interest;
(ii)a safety hazard area;
(iii)a military explosives storage area;

(l)the site is, or contains, a scheduled monument; or

(m)the building is a listed building.

While the submitted design and access statement has declared that the building is agricultural, it is not considered that this is the case. Section 336 of the Town and Country Planning Act (1990) states the following:

"*"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly;"*

The site does not appear to have been used for agriculture in the conventional sense. Furthermore, it does not appear to have been used for commercial fruit growing, as evidenced by the scale and state of the orchard and the lack of clear infrastructure associated with fruit harvest. During the Officer's site visit, there was no evidence of grazing on the site. Moreover, the site cannot be said to be woodland ancillary to the farming of land for agricultural purposes as no such relationship to an agricultural unit exists. The rear boundary to the field is obstructed via a fence, overgrowth and a drainage dyke, all of which demonstrate no clear functional relationship.

The submitted design and access statement reads as follows:

"actual farming on site in the past 50+ years has been limited. The site has been largely vacant because it is no longer suitable for modern agricultural processes due to its size and features"

This strongly evidences that the building has not been used for agricultural purposes within the required time frame of Class Q and would therefore fall short of the requirements of the Order.

The design and access statement states:

"When the applicants purchased the site, the building was surrounded by and filled with the previous owner's agricultural farming equipment, serving as good evidence towards its former use"

The submission later displays an image of labelled as farming equipment, which shows a clearly disused and rusted piece of equipment. The officer also noted within their site visit rusted metal and a saw blade, all of which point towards a site which has not been used for supposed agricultural purposes for an extended period of time.

As such, it is not considered that the proposal would conform to the definition of agriculture within the Town and Country Planning Act, and therefore, the proposal fails to adhere to the provisions of Class Q.

In the interest of completeness, the report continues to assess against the prior approval topics set out under part 3 of Class Q.

Schedule 2, Part 3, Class Q - Conversion vs Rebuild

Development is not permitted if the development under Class Q(b) would consist of building operations other than i) the installation or replacement of windows, doors, roofs, or exterior walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwelling house; and ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i).

Planning Practice Guidance (PPG) provides advice on the interpretation of Class Q(b). Paragraph 105 indicates that "it is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. Therefore, it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right".

The guidance of the PPG is therefore clear and accords with the High Court judgement Hibbitt v Secretary of State for Communities and Local Government, and Rushcliffe Borough Council. The latter concludes that Part 3 Class Q of the GPDO allows a "conversion" but does not allow a "re-build" or "fresh build".

The building is of brick construction with pan tiles on the roof. The roof is severely overgrown, with ivy entering the interior of the building. It has not been evidenced that the building is capable of conversion without significant building works to ensure structural security. As such, it has not been demonstrated that the conversion could occur without exceeding the limitations of Class Q.

Schedule 2, Part 3, Class Q - Prior Approval Considerations

Paragraph Q.2 indicates that where a proposal is permitted development, it is subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the Authority will be required as to:
(a) Transport and highways impacts.
(b) Noise impacts.
(c) Contamination risks.
(d) Flood risks on the site.
(e) Location and siting.
(f) Design/external appearance.
(g) The provision of adequate natural light in all habitable rooms.

Paragraph W(3) of the GPDO states that an application for prior approval may be refused where it does not comply with any conditions or limitations applicable to Class Q or where there is insufficient information to establish such compliance.

Addressing the above;

(a)Transport and highways impact - Due to the small scale of the proposal, it is unlikely that the works would have a significant detrimental impact upon the existing highway infrastructure of the area. This has been confirmed by the response from the Highway Authority.

That being said, it has not been demonstrated how access to the dwelling itself would be secured. While two access points to the site are shown, neither link to the building itself. Based upon the current state of the site, in order for the building to be connected to either access point, a significant level of work would be required. This would include the felling of a significant number of trees and essentially the creation of an internal access road. The creation of this access road would far exceed the level of construction which could reasonably expected under Class Q.

Furthermore, this access would have to be located outside of the defined curtilage of the building. In this instance, the definition of curtilage is found within Class X of the Permitted Development Order. While the definition of curtilage found here was altered within the May 2024 amendments, it is still relevant under the previous legislation which this proposal is assessed under. Class X states that:

"curtilage" means, for the purposes of Class Q, R or S only
(a)the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or
(b)an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser;

As such, the proposal would involve development outside of the defined curtilage of the dwelling; thereby exceeding the limits of Class Q. The proposal is therefore unacceptable on these grounds.

(b)Noise Impacts - Due to the relative isolation of the plot and its positioning next to a main road, it is unlikely that the introduction of a dwelling here would have a significant detrimental impact with regards to noise pollution.

(c) Contamination - Due to the nature of the site and the development, it is not considered that there is a significant risk of contamination. The site is not within an area identified as at risk of contamination. The response from the Environmental Health department has reaffirmed this view.

(d) Flood Risk - The site is within Flood Zone 3. Within the South East Lincolnshire Strategic Flood Risk Assessment, 2017, the site is labelled as "danger for most" with flood depths expected to reach at least 0.5 metres. It is proposed that finished floor levels are raised internally within the bedroom by 0.5 metres, while the living room would be raised by 0.15 metres. As a result, in the event of a flood, the vast majority of the dwellinghouse (approximately 75%) would be inundated with water. Despite it being possible for residents to obtain safe refuge in the bedroom, the tangible impacts of any flooding would be severe and unacceptable.

The Environment Agency have objected to the proposal on the grounds of flood risk, stating that significant portions of the building would be below flood depths. It would not be possible to increase the finished flood level of the whole dwelling to the necessary level while maintaining an adequate floor to ceiling height in line with the requirements of the Nationally Described Space Standards. As a result, the necessary amendment to achieve suitable flood risk mitigation would have significant detrimental impacts upon other aspects of the scheme.

The submitted flood risk assessment recommends flood resilient construction to a height of 0.8 metres. It is not clear as to how this would proceed and the level of works or construction which would be required. There is the possibility that these works would result in rebuilding which exceeds the limits of Class Q.

(e) Location and Siting - The site is outside of any defined settlement. However, the PPG is clear that location outside of settlement boundaries cannot be considered inappropriate in the case of a Class Q conversion.

That being said, the site is within an orchard, with no clear access to the building itself. This is considered to be an impractical location for a permanent dwellinghouse.

The site is within a "Local Wildlife Survey Site" (date of notice 2009). While not formally registered as a Local Wildlife Site, this survey does indicate that the proposed site is of significant biodiversity and ecological value. The relationship to the adjacent nature corridor, outlined within the Local Plan, further emphasises the potential ecological value of the site. The addition of a dwelling here, and the necessary accoutrements that come with a dwelling, stand to significantly impact the ecological value of the site.

(f) Design/external appearance - The building would retain a similar appearance to present, albeit with alterations. The architectural features of the building would remain legible. The building is well screened and low lying, thereby reducing the potential visual impacts of the development.

(g) The provision of adequate natural light in all habitable rooms - The proposal is satisfactory in this respect.

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 proposal does not constitute permitted development under Class Q of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order, 2015.

The scale of the building falls under the nationally described space standards, to which conformity is required under Paragraph 9A of 3 (Permitted Development) of the Permitted Development Order; and therefore, the proposal cannot be considered permitted development.

In any event, the building itself is not considered to be agricultural in nature, nor is it considered to be within an agricultural unit. The orchard does not appear to be used for agricultural or fruit growing purposes and is evidently not used in conjunction with an existing agricultural unit. The submitted design and access statement states that agricultural use on the site has not been prevalent for at least 50 years.

Notwithstanding the above, it has not been demonstrated that the building is suitable for conversion via the submission of a structural survey. Significant works would be required in order to make the space habitable. The location of the dwelling itself is impractical, due to restricted access and existing uses of the site. The site is at a significant flood risk, which, due to the small scale of the building and height limitations associated with this, cannot be adequately accommodated for. Finally, in order to create an access to the building, significant building works would be required, the vast majority of which would be located outside of the defined curtilage, thereby directly contradicting the provisions of the Order.

Recommendation

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