DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H16-0560-23**	**Applicant:**	**Witteman Nurseries**
Proposal:	Conversion of existing agricultural building into 3 dwellings		
Location:	Witteman Nurseries South Drove Pode Hole		
Terminal Date:	14th August 2023		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2021

National Guidance
National Planning Policy Framework 2021
T & CP (GPD) Order 2015 - Class Q

Representations:

	Object	Support	No Obj.	Comments
WARD MEMBER	0	0	0	0
PLANNING LIAISON OFFICER - FLOOD RISK ASSESSMENT	0	0	0	1
HIGHWAYS & SUDS SUPPORT	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
RESIDENTS	1	0	0	0

CASE OFFICER ASSESSMENT

Proposal

The application is for a change of use of an existing agricultural building into 3 1-bedroom dwelling under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.

Site Description

Witteman Nurseries is a small agricultural/horticultural commercial facility, currently occupied by a large amount of commercial-scale greenhouses. Within the plot is a single dwelling in association with the commercial use. An adjacent plot to the site also hosts a single residential dwelling. Apart from this, the general theme of the setting is that of open countryside. South Drove does feature a small amount of other residential and commercial sites along its length. However, density along South Drove is exceptionally low. A rail line runs diagonally, directly to east-north of the site.

History

None relevant.

Consultation Responses

Residents

1 Letter of objection was received from a member of the public. Its contents can be summarised like so:

- No information provided for how the leftover structures on site will be demolished.
- No confirmation of whether the existing buildings contain asbestos
- Development of the site could lead to loss of trees (including those subject to a TPO) and local wildlife.
- Loss of privacy
- Impact of overlooking and overshadowing on nearby residences.
- The proposal does not fit within the character of the area.
- The proposal will have a negative visual effect.
- South Drove is a B-road. It is, therefore, unsuited to accommodate the increase in traffic capacity.

Lincolnshire County Council as Lead Local Highways and Flood Authority

No objections, subject to the imposition of LCC highways standard condition 13.

Welland and Deepings Internal Drainage Board

No comments

Environment Agency

No objections subject to the imposition of the following condition:

"The development shall be carried out in accordance with the submitted flood risk assessment (ref JDA/2022/720, compiled by John Dickie Associates, dated June 2023) and drawing (ref: JDA/2023/720/PROP/001, compiled by John Dickie Associates, dated April 2023) and the following mitigation measures they detail:

· Finished floor levels shall be set no lower than 2.68 metres above Ordnance Datum with flood resilient construction to a height of 300mm above the predicted flood depth, and demountable defences to 600mm above finished floor level.
· The development must be a minimum of 2 storeys (as shown in drawing ref: JDA/2023/720/PROP/001).

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/ phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

SHDC Environmental Protection

Requests standard full land contamination condition.

Network Rail

Due to the proximity of the proposed development to the operational railway boundary, it will be imperative that the
developer liaise with our Asset Protection Team (contact details below) prior to any work taking place on site to
ensure that the development can be undertaken safely and without impact to operational railway safety. Details to be discussed and agreed will include construction methodology, construction traffic routing, earthworks and excavations, use of crane, plant and machinery, drainage and boundary treatments. It may be necessary for the developer to enter into a Basic Asset Protection Agreement (BAPA) with Network Rail to ensure the safety of the operational railway during these works. As a result, Network Rail requests that a construction management plan be agreed prior to construction and that they shall be consulted.

Additionally, in order to prevent trespass upon the rail line, Network Rail requests that the applicant be required to install a 1.8m tall trespass-proof boundary treatment along their boundary.

Lastly, Network Rail raises concerns about the impact of noise upon the proposed dwellings, and requires the applicant to take mitigating steps against the impact of noise.

Planning Considerations

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. The information provided by the applicant appears to satisfactorily demonstrate that the provisions of criteria (a) - (h) and (j) to (m) have been met.

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 existing building is a single storey, agricultural steel framed barn structure. The overall structure comprises 2 main sections, the 'higher' barn which comprises a gambrel shaped steel lattice structure set upon a breezeblock plinth, and the 'lower' shed structure constructed entirely using breezeblock, with mono-pitched roof. The barn building is entirely glazed to the east and west gable elevations. The remainder of this structure is clad in steel sheets, with no tanslucent panels to the sides or roof. Internally, the structure is timber-clad. The building has a

substantial concrete floor slab throughout. It is used for general agricultural storage. The building is in good overall condition with no significant damage.

The structural report accompanying the application indicates that the building could accept additional loading to accommodate change of use to form suitable domestic occupation without significant improvements. Based on this advice, it is considered that the proposal constitutes a conversion, as opposed to a re-build or fresh build, since it does not involve a substantial rebuilding of the pre-existing structure. As such, it is considered that the proposal satisfies the requirements of paragraph Q.1(i) and PPG.

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.

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/Highways - The existing access to the site is via South Drove. The change in use from agricultural to residential would not result in any material issues regarding highways or transportation, given the existing use and the traffic generation associated with the agricultural use. Visibility along South Drove from the site access point is good in both directions, though to the North, long-range vision is hampered by the mound and associated earthwork which hosts the rail line. LCC Highways raised no objections to this proposal subject to the imposition of requested conditions. In terms of parking, it is proposed to use the 'lower' shed structure as two-car garages. This applies to the east and western proposed units, though the shed structure would be partially demolished to allow side access to the central unit, leaving an open air driveway, sufficient for 2 cars. This is considered to be sufficient for these single-bed dwellings, as defined by the parking standards established under Appendix 6 of the South East Lincolnshire Local Plan.

(b) Noise Impacts - The site does sit close to the rail line, which could be considered to be a substantial source of noise generation. However, the infrequency and short span of noise generation instances suggests that there would be no issues of compatibility from the perspective of residential use. There are other residential properties along South Drove, the closest being a bungalow directly adjacent to the North East of the site, called 'Three Ways'. Therefore, the conversion of the building from agricultural to residential will be very compatible in this location. In terms of amenity generally, 'Three Ways' is situated to the Northeast of the site. It is proposed that ground floor windows and glazed doors will be situated on the eastern and northern elevations, as well as roof lights on the Northern elevation. Given the positioning of any glazing on the proposed dwellings, the design of the dwellings, separation distances from nearby dwellings and the established boundary wall, between the two sites, it is considered that the amenity of occupiers of neighbouring properties would not be materially harmed in terms of overlooking, lack of privacy, overshadowing, overbearing effect, noise and disturbance, etc, subject to a construction management condition.

(c) Contamination - The building is in agricultural use, and this has been the case since its construction. The applicant has not indicated that the site has been used for the storage of fuel or any hazardous substances or materials and that it has not been occupied for hazardous processes. Nevertheless, SHDC Environmental Protection has been consulted and raised no express objections, however, due to the former agricultural use of the land and buildings and in light of the above a contaminated land condition is requested. Mention has been made of the presence of asbestos on site, by third parties. Whilst this is likely incorrect, this can be addressed as part of the contaminated land condition. Disposal of asbestos falls within the remit of the Health and Safety Executive.

(d) Flood Risk - The site to which the application relates is within Flood Zone 3 and is within risk category 2 as identified by the South East Lincolnshire Strategic Flood Risk Assessment, 2017.

However, the proposal is a conversion so, in accordance with Paragraph 167 of the National Planning Policy Framework, 2021, the proposal should not be subject to the sequential or exception tests. However, it should still meet the requirements for a site-specific flood risk assessment. The FRA states that the site could experience potential flood depths of 0.5-1 metre arising from a breach in the defence during the 2115 1% fluvial and 0.5% tidal scenario. The Environment Agency was independently consulted by the applicant and confirmed that they were satisfied with the mitigation proposed, the FRA confirms the dwelling will be two storey, with finished floor levels set 1 metre above the existing ground level, equivalent to 2.68 metres above Ordnance Datum (AOD). The FRA also proposes flood resilient construction to a height of 300mm above the predicted flood depth and the use of demountable defences to a height of 600mm above the finished floor levels. The Environment Agency have corroborated this with a consultation response, returning no objections to the proposal, subject to the conduction of the proposal in line with the provided FRA and the mitigation methods included therein.

(e) Location and Siting - The site is relatively isolated. However, it has previously been established that applications such as this cannot be resisted on these grounds. The site has a satisfactory relationship with neighbouring dwellings/development.

(f) Design/external appearance - The submitted drawings demonstrate that the external appearance of the building will remain largely unaltered, other than for the inclusion of doors and windows to facilitate the conversion, and the installation of solid cladded walls to the eastern and western gable elevations. The extent of the works proposed fall within what is permitted within the regulations. The proposed external works are considered acceptable in terms of design/appearance.

Conclusion

The proposal constitutes permitted development and complies with the relevant conditions under Class Q of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order, 2015.

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.