DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H16-0792-23**	**Applicant:**	**Witteman Nurseries**
Proposal:	Demolition of Class Q consented agricultural buildings and erection of three dwellings, associated hard and soft landscaping and creation of a re-wilding area		
Location:	Witteman Nurseries South Drove Pode Hole		
Terminal Date:	1st November 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
17	Providing a Mix of Housing
22	Replacement Dwellings in the Countryside
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2023

Section 2. Achieving sustainable development.
Section 4. Decision making.
Section 5. Delivering a sufficient supply of homes.
Section 9. Promoting sustainable transport;
Section 11. Making effective use of land.
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
WARD MEMBER	0	2	0	0
PLANNING LIAISON OFFICER - FLOOD RISK ASSESSMENT	0	0	0	1
HIGHWAYS & SUDS	0	0	0	1

SUPPORT				
WELLAND AND DEEPINGS INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	0	0	0	1
OTHER STATUTORY BODIES	0	0	0	3

CASE OFFICER ASSESSMENT

Proposal

This planning application is for the demolition of Class Q consented agricultural buildings and the erection of three dwellings, associated hard and soft landscaping and creation of a re-wilding area.

It should be noted that the site presently has prior approval for a change of use of an existing agricultural building into a set of 3 dwellings, granted under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (ref. H16-0560-23).

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

H16-0560-23

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. Approved on 14-08-23.

Consultation Responses

Lincolnshire County Council Historic Places Team

Recommends that an archaeological trench should be excavated in the pond location ahead of the groundworks in order to identify, and make an adequate record of, any archaeological remains which may be disturbed by the proposed works. This should be undertaken in accordance with a Written scheme of Investigation submitted to and approved by the Historic Places Team on behalf of the Local Planning Authority and should be secured through the use of the standard SHDC conditions AR 01,02 and 03 on any planning permission.

Given that the Local Planning Authority intended to recommend refusal on this application, it was deemed that it was unnecessary and unwarranted to request that the applicant go to the additional personal expense of having the requested documents commissioned.

Lincolnshire Bat Group

Requests a protected species assessment and survey be conducted.

Given that the Local Planning Authority intended to recommend refusal on this application, it was deemed that it was unnecessary and unwarranted to request that the applicant go to the additional personal expense of having the requested documents commissioned.

Network Rail

Supplied a letter proposing conditions. Additionally, they object to the proposed scheme of landscaping due to the proposed species and proximity to the the rail line.

Welland and Deepings Internal Drainage Board

No objections.

Environment Agency

The development shall be carried out in accordance with the submitted flood risk assessment (ref: JDA 2023/720 John Dickie Associates, dated September 2023) and the following mitigation measures it details:

· Finished floor levels to be set no lower than 1m above Ordnance Datum (AOD), equivalent to 2.68m AOD
· Flood resilient construction to a height of 300mm above the predicted flood depth
· The development to have at least two storeys
· Demountable defences/flood doors to be provided to a height of 600mm to cover all ground floor doors.

SHDC Environmental Protection Team

Requests standard contaminated land condition

Cllr Ashby - Ward Member

No objections

Planning Considerations

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

- Principle of Development
- Layout, Design and Impact on the Character of the Area
- Impact upon Neighbouring Residents/Land Users/Land Uses
- Highways Safety
- Flood Risk

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 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 (2023) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

Furthermore, where a Neighbourhood Plan has been adopted, this alongside the adopted Local Plan, forms part of the Development Plan for the District, and must be considered when assessing development proposals. In this instance, no relevant neighbourhood plans have been adopted. 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 - sustainability

The South East Lincolnshire Local Plan sets out the settlement hierarchy in respect of delivering sustainable development that meets the social and economic needs of the area whilst protecting and enhancing the environment; in order to provide enough choice of land for housing to satisfy local housing need, whilst making more sustainable use of land and to minimise the loss of high-quality agricultural land by developing in sustainable locations and at appropriate densities.

Policy 1 of the South East Lincolnshire Local Plan sets out a spatial strategy for delivering sustainable development across South East Lincolnshire to 2036. Policy 1 (Spatial Strategy) expresses this sustainable framework of settlements, ranking the settlements deemed to be most sustainable in descending order. The most sustainable locations for development are situated within the 'Sub-Regional Centres', followed by 'Main Service Centres'. Lower down the hierarchy in respect of sustainable development are areas of limited development opportunity including Minor Service Centres, with areas of development constraint comprising 'Other Service Centres and Settlements'. The countryside is at the bottom of the settlement hierarchy and represents the least sustainable location in terms of sustainability.

Policy 1 (Spatial Strategy) of the South East Lincolnshire Local Plan indicates that within the settlement boundaries of Main Service Centres, development will be permitted that supports their role as a service centre for the settlement itself, helps sustain existing facilities or helps meet the service needs of other local communities.

The National Planning Policy Framework (NPPF) outlines, within para 60, that "to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay".

Para 69 of the NPPF also emphasises the importance that the contribution of small to medium sized sites can make in meeting the housing requirements. ("Small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly"). This policy seeks to ensure that there is a sufficient supply of homes and advises that sites of all sizes make a contribution to the housing requirement of an area.

The application site in this instance lies detached from the main built form or built-up area of Spalding, or any built-up settlement and lies beyond the clearly identified settlement boundaries for this settlement, as defined by Policy 1 and its associated inset maps.

Policy 1 states that "the rest of the Local Plan area outside the defined settlement boundaries of the Sub-Regional Centres, Main Service Centres, Minor Service Centre and Other Service Centres and Settlements is designated as Countryside". The site is located outside any Settlement Limits, as defined within the South East Lincolnshire local Plan. It is therefore regarded as being within the countryside in policy terms. As such, the application site should be assessed as a 'Countryside' location, as detailed by the spatial policy.

Principle of Development - self build

The proposal has not been specifically identified as a custom/self-build. In any event, in reviewing local policy in respect of self-build, the Self-build and Custom Housebuilding Act 2015 indicates that authorities must give suitable development permission to enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area.

Explanatory text accompanying Policy 11 (Distribution of New Housing) of the South East Lincolnshire Local Plan specifically refers to self-build & custom build dwellings and indicates at paragraph 5.3.5 that *"within the defined settlement boundaries there will be numerous opportunities for infill and larger-scale housing development that will be available to the local builder, self-builder, custom-builder and larger house-building companies. It is not practical to identify or anticipate all such opportunities; however, the positive tone of the Local Plan encourages such development "provided that the material considerations of the Local Plan and particular sites can be met".*

This latter point is particularly pertinent as it makes clear that permission should only be granted for such sites where there are no material considerations set out within the Local Plan that indicate otherwise. Similarly, an Inspector concluded in a recent appeal decision (APP/A2525/W/18/3218958), despite giving the statutory requirement regarding self-build and custom-build significant weight, that the appeal site was not a suitable location for that type of housing. This demonstrates the above point in practice. The site in this instance lies outside of the defined settlement boundaries and therefore fails to accord with this, in that the text clearly refers to the anticipation of sites being 'within the defined settlement boundaries'.

The South East Lincolnshire Local Plan makes no exceptions to its spatial strategy for previously developed land, for existing plots of residential land being subdivided, or for self-build. Policy 17 outlines that the provision of new houses will seek to meet the long term needs of the plan area. However, with reference to custom and self-builders it suggests that the Local Plan will seek to meet these housing needs. It does not state that this should be done in a manner inconsistent with the Plan's spatial strategy policies, including through granting permissions. As such, regardless of the local authorities consideration of the development as 'custom build' or not, this would not result in the proposal being suitable in an unsustainable location without regard to outweighing benefits.

However, open market housing, which this set of self-build houses would be considered to be, is not a development type that specifically requires a countryside location. This is particularly the case in this instance where the Council has a development plan that has been relatively recently adopted, with a spatial strategy setting out how the housing needs for the area will be met. In addition, the Council has an identified 5-year housing land supply (5.9 years on 31 March 2022); as such, whilst windfall sites would contribute to the housing provision, there is no direct need for unsuitable development or development within the open countryside that conflicts with Local Pan Policies.

Principle of Development - Paragraph 84 Dwelling

Paragraph 84 of the National Planning Policy Framework (December 2023) (NPPF) states the following:

" Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;

b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;

c) the development would re-use redundant or disused buildings and enhance its immediate setting;

d) the development would involve the subdivision of an existing residential building; or

e) the design is of exceptional quality, in that it:

- is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and
- would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area."

It is accepted that the recent class Q conversion has established a certain degree of principle of residential use in this isolated setting outside of the settlement boundary. However, this proposal represents a major departure from the previously approved Class Q conversion and of course, all applications must be considered of their own merits. This application seeks consent for a new set of dwellings, with substantially more capacity than the former class Q conversion. Therefore, it is only reasonable that to assess the qualities of this proposed 'betterment' the LPA should employ the standards set forth by Paragraph 84 of the NPPF.

With reference to the above section a of Para. 84, there has been no attempt made to justify the existence of a development of this type in connection to the needs of rural workers.

Concerning sections b, c & d the proposal site contains no heritage assets, and neither does the application seek to utilise any existing structures regardless. Furthermore, the design proposed is

markedly less unique and agricultural in nature compared to the scheme approved under the recent class Q conversion proposal, being comprised of modern, 2 storey large dwellings, which it totally at odds with the surrounding form of development, and would appear monolithic and oversized compared to the nearby built form, which is formed mostly of modest single storey developments, which would be a stark contrast with a proposal of 3 isolated and clustered large two storey dwellings. Nothing about the proposed design can be considered to be "truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas.". This is especially the case when compared to the class Q scheme on site which does represent an interesting and unique utilisation of an otherwise awkward pre-existing agricultural building which would naturally have very little bearing upon the surroundings.

As discussed above, the LPA additionally does not consider the proposal to represent an enhancement of the setting and nor is the proposal sensitive to its surroundings. Therefore, for the preceding reasons, the proposal must be considered to fail to meet section e of Para. 84.

Principle of Development - Open Countryside

Returning to the principal matter in respect of the principle of development in the open countryside, development within the countryside is limited to that where it "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". Independent dwellings within the open countryside, which do not meet a specific housing need as illustrated within the supporting context of Policy 1, would therefore typically be resisted in principle.

The supporting text to Policy 1 states that "housing needs may also, by exception, be justified in the Countryside; for example, for Gypsy, Traveller and Travelling Showpeople accommodation (Policy 20: Accommodation for Gypsies, Travellers and Travelling Showpeople) or to meet the specific housing settlement needs of a settlement (see Policy 19: Rural Exceptions Sites)".

The application site comprises land that currently sites agricultural buildings and is not considered to meet the provisions of either of these policies. The proposal comprises a set of 3 new residential dwelling located within the open countryside, located on land currently occupied by the aforementioned agricultural building, which is yet to be developed and as such, seeks to replace a set of agricultural buildings with a set of residential dwellings. Therefore, when considered in its current form, in isolation of other matters, the proposal would not fall under the provisions of either Policy 22 (Replacement Dwellings in the Countryside) or 23 (The Reuse of Buildings in the Countryside for Residential Use) as the existing buildings are not residential in nature currently and the proposal seeks to entirely demolish the existing agricultural buildings and cannot therefore be considered as a 'conversion'.

The proposal, based on the detail above, therefore conflicts with Policies 1 of the South East Lincolnshire Local Plan, 2019 and therefore is at conflict with the South East Lincolnshire Local Plan. The proposal, for a number of reasons as detailed above, fails to meet the criteria of Paragraph 84 or 135 of the National Planning Policy Framework. As such, the proposal would not be acceptable in principle.

Principle of Development - Class Q Fallback

Further to the above assessment of the principle of development, a significant consideration for this proposal relates to the 'Class Q fallback'. This is further evident given that the site is subject to an extant consent under Class Q, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, which granted permission for the existing agricultural building to be used as a single residential dwelling.

The submission highlights, within the submitted covering statement that:

"It is settled caselaw that demonstrates that a consent under Class Q represents a legitimate and weighty fallback position when considering alternative proposals for the same form of development on the same site. The leading legal principles relating to the use of the 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 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 overarching result of the case law identified by the applicant as detailed above is not disputed by the Local Planning Authority, with a need for 'fallback positions' to be considered.

Beyond this, specifically relating to 'Class Q development and its subsequent fallback, the Court of Appeal case, 'Mansell vs Tonbridge and Malling Borough Council (2017)' provides a significant benchmark and consideration. This case concerned the granting of permission for a four dwelling scheme on land which was presently occupied by a single bungalow and agricultural buildings. The council in this case, granted permission forming the view that a fallback position was present given that the agricultural buildings 'could' be subject to a prior approval under Class Q, which 'could' have provided a resultant development of the same quantum of residential dwellings (three dwellings via Class Q and the retention of the existing bungalow).

This case, which was quashed by the High Court, was subsequently 'reinstated' through the Court of Appeal. With the Court of Appeal establishing through this case 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. In respect of a 'realistic prospect', this case highlighted that that of 'Sullivan L.J.'s judgement', in that "a 'real' prospect is the antithesis of one that is 'merely theoretical' (paragraph 20). The basic principle is that *'for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice' (paragraph 21)"*. This went on to detail that *"when the court is considering whether a decision-maker has properly identified a 'real prospect' of a fallback development being carried out should planning permission for the proposed development be refused, there is no rule of law that, in every case, the 'real prospect' will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO".*

As such, "in some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker's planning judgment in the particular circumstances of the case in hand". However, in the case of 'Mansell vs Tonbridge and Malling Borough Council', it was stated that to not consider the fallback of Class Q (even if there is not evidence of a specific proposal under Class Q), would "have been a failure to have regard to a material consideration, and thus an error of law". This clearly demonstrates the need to assess and review the fallback position in respect of Class Q development. In this case, the requirement is clearer than that expressed, given that the site is subject to an extent proposal under Class Q, which was approved by the local Planning Authority, with a very real prospect for this development to take place.

In any event, the court decision also reiterated that *"They should remember too that the making of planning policy is not an end in itself, but a means to achieving reasonably predictable decision-making, consistent with the aims of the policy-maker. Though the interpretation of planning policy is, ultimately, a matter for the court, planning policies do not normally require intricate discussion of their meaning"*.

It stands to reason that, where the alternative new-build proposal offers either an enhancement to the setting, a reduction in density or betterment in overall development, when compared to the fallback, the development could (and perhaps should) be allowed to proceed.

In light of the above, it is noted that the application site has the benefit of a permission under Class Q (H16-0560-23) for the conversion of the existing agricultural building to form a terrace of 3 single-bedroom dwellings.

The Local Planning Authority does not consider that the proposal put forward is of such notable improvement in respect of its architectural merit or that in respect of associating the site with its agricultural history, that a betterment has been achieved as to deem the proposal acceptable in light of the aforementioned fallback position.

Whilst it is apparent that the existing Class Q permission could be implemented and therefore, dwellings are most likely to be achieved on site, the replacement dwellings hereby proposed are not considered to be acceptable for their context within such a rural, relatively remote and

unsustainable location. The proposed dwelling comprises a built form that is of a significantly notable increase in height and of such form that the existing agricultural characteristics of the site would be somewhat impacted, whereas the extant Class Q permission, although not of a significant architectural quality, does provide a clear increment of progression and retains its agricultural context. Moreover, the scheme approved under Class Q is the conversion of a farm building into a set of dwellings, which provides a clear transition over time whilst retaining its agricultural context. The current proposal is for a large-detached house, of bespoke design with contemporary features, which, in the opinion of the Local Planning Authority, fails to encapsulate the rural and countryside setting/context to which it would relate.

As such, it is considered that, notwithstanding the extant permission and its resulting fallback consideration, whilst the proposed dwelling may provide some benefits, the proposal fails to provide a betterment that positively reflects the characteristics of the site or the character and context of the surrounding area and fails in this regard to provide a positive contribution to the appearance of the site compared to the fallback position. 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, but in this instance do not outweigh the conflict with the development plan.

The proposal is therefore not considered to be acceptable in principle and conflicts with policies 1, 2, and 3 of the South East Lincolnshire Local Plan and fails to accord with the provisions of the National Planning policy Framework, namely paragraph 84 and 135.

Layout, Design and Consideration of the Character and Appearance of the Area

Section 12 of the National Planning Policy Framework (December 2023) specifically relates to 'Achieving well-designed places' and details that "The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve" and as such, it is generally accepted that good design plays a key role towards sustainable development.

Paragraph 135, contained within section 12 of the National Planning Policy Framework (December 2023), states the following;

"Planning policies and decisions should ensure that developments:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

Proposals for new development would therefore require the aforementioned considerations to be adequately assessed and designed, including the siting, design and scale to be respectful of surrounding development and ensure that the character of the area is not compromised.

Likewise, policy 2 of the South East Lincolnshire Local Plan outlines sustainable development considerations for development proposals, providing a framework for an operational policy to be used in assessing the sustainable development attributes of all development proposals. Furthermore, policy 3 accords with the provisions of section 12 of the National Planning Policy Framework, in that it requires development to comprise good design; identifying issues that should be considered when preparing schemes so that development sits comfortably with, and adds positively to, its historically-designated or undesignated townscape or landscape surroundings.

These policies accord with the provisions of the National Planning Policy Framework and require that design which is inappropriate to the local area, or which fails to maximise opportunities for improving the character and quality of an area, will not be acceptable.

The existing site comprises a set of single storey agricultural building that has evolved overtime. Whilst the building is not of significant quality, it clearly reflects the agricultural context of its surroundings. The extant class Q permission is is almost entirely contained within one of the existing agricultural buildings and therefore comprises rural characteristics and allows the evolution to be clearly demonstrated.

The proposed development is a terrace of 3 large, two storey dwellings and is relatively modern in design with red brick proposed with contemporary features including a black cladding and floor to ceiling 2 storey glazed elements. The proposed building is not considered to reflect the agricultural and rural characteristics of the site.

With this in mind, Paragraph 139 of the NPPF (December 2023) states the following;

"Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design taking into account any local design guidance and supplementary planning documents such as design guides and codes. Conversely, significant weight should be given to:

a) development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or

b) outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings."

As discussed above, the proposed design is not considered to be acceptable, and as covered under the this section and the above 'Principle of Development - Paragraph 84 Dwelling' section of the report, the design is not considered to be compliant with local policy under the SELLP and neither is the design considered outstanding or innovative, and therefore, significant weight is not given in favour of this proposal.

Taking account of the design, scale and nature of the development, as detailed above, the proposal is not considered to be acceptable. The proposal would cause an adverse impact to the character or appearance of the area and would therefore not be in accordance with policies 2 and 3 of the South East Lincolnshire Local Plan and Section 12 of the National Planning Policy Framework.

Impact on Residential Amenity/Land Users

Paragraph 135 of the National Planning Policy Framework (December 2023) states that development should *"create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience."*

Policies 2 and 3 of South East Lincolnshire Local Plan (2019) sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.

The proposed development proposes a layout that would ensure adequate separation distances to the neighbouring property. The proposed development is considered to form an appropriate design in respect of residential amenity, as to minimise the potential for overlooking to the existing neighbouring dwelling, seperated by a substantial distance, and an approx. 2m brick garden wall from the rear elevations of the closest residential property - Lakefield.

Furthermore, the dwelling within the surrounding context also benefits from sizeable amenity spaces. These garden spaces to neighbouring properties, whilst potentially being impacted to a minimal degree of overlooking which could be afforded to the ends of the rear garden of the adjacent Lakefield, it is considered that sufficient private amenity space will be retained by adjoining occupiers, and the development would not result in overlooking or loss of privacy or amenity that would otherwise warrant refusal of planning permission on amenity concerns.

As detailed above, the scale and design of the proposal is considered to be such that there would

be no significant or unacceptable impact on the residential amenities of the occupiers of adjacent properties; and as such accords with the provisions of the Section 12 of the National Planning Policy Framework, and Policies 2 and 3 of the Local Plan in respect of residential amenity.

Highway Safety and Parking

Section 9 of the National Planning Policy Framework (December 2023) specifically relates to 'Promoting sustainable transport'. Paragraph 115 of the National Planning Policy Framework (December 2023) advises that *"development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe".*

In respect of highway matters, Policy 2 details that proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met, specifically in relation to access and vehicle generation. Policy 3 details that development proposals will demonstrate how accessibility by a choice of travel modes including the provision of public transport, public rights of way and cycle ways will be secured, where they are relevant to the proposal.

Further, policy 36, to be read in conjunction with Appendix 6 of the South East Lincolnshire Local Plan, sets out minimum vehicle parking standards and requires at least two spaces for dwellings of up to three bedrooms and three spaces for dwellings with four or more bedrooms.

Given that the access would be utilised by the occupants of the dwellings and their visitors, the volume of traffic is not considered to be significant. Likewise, the resultant development is not considered to result in a significant mark rise in vehicular traffic, albeit this would introduce additional traffic. The vehicular access or subsequent pedestrian access, along with movements to, from or nearby to the sites, is not considered to cause detrimental harm to vehicular or pedestrian safety to this part of South Drove. Lincolnshire County Council Highways/SuDS, as Local Highway Authority, were consulted as part of the application process and submitted no objections, subject to conditions.

Policy 36, to be read in conjunction with Appendix 6 of the Local Plan, sets out minimum vehicle parking standards and requires at least two spaces for dwellings of up to three bedrooms and three spaces for dwellings with four or more bedrooms. The dwelling has adequate provision for parking. It is considered that, overall, the development has more than adequate parking is shown within the curtilage of the dwellings.

The proposal would therefore be acceptable and would not have an unacceptable adverse impact on highway safety in accordance with Local Plan Policies 2, 3 and 36, and Section 9 of the National Planning Policy Framework.

Flooding Considerations

Section 14 of the NPPF requires development plans to "apply a sequential, risk-based approach to the location of development - taking into account all sources of flood risk and the current and future impacts of climate change - so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by: a) applying the sequential test and then, if necessary, the exception test as set out below".

Paragraph 168 details "The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding", with the sequential approach being required in areas known to be at risk now or in the future from any form of flooding, with the flood risk assessment being the tool to demonstrate this.

If, following the application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exceptions Test can be applied if appropriate.

The site lies within Flood Zone 3 of the Environment Agency's Flood Maps. These have been created as a tool to raise awareness of flood risk with the public and partner organisations, such as Local Authorities, Emergency Services and Drainage Authorities. The Maps do not take into account any flood defences.

The South East Lincolnshire Strategic Flood Risk Assessment (SFRA) provides an overview of how flood risk has been considered in shaping the proposals of the Local Plan; including the spatial strategy and the assessment of housing and employment sites. Policy 4 of the South East Lincolnshire Local Plan is clear in 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.

It is worth noting that large parts of the district of South Holland lie within Flood Zone 3. It is therefore necessary to use the refined flood risk information (Hazard and Depth maps) within the South East Lincolnshire Strategic Flood Risk Assessment (2017) as a basis to apply the sequential test.

The building to which the application relates is within Flood Zone 3. However, it is within an area of "Hazard to Most" within the Strategic Flood Risk Assessment. The flood risk assessment accompanying the application recognises that the proposal is a more vulnerable development. Consequently, it recommends that floor levels be 2.67m above existing ground level and that floor resistant/resilient construction be incorporated. This is considered unacceptable, creating a set of dwellings which would have an unacceptably harmful visual impact upon the surroundings, leading to a development which appeared completely at odds with its surroundings, and potentially creating elevated risk to residential amenity of both of the existing nearby homes.

Overall, when considering the development on balance, it is considered that in order to achieve compliance with Policy 4, an excessive quantity of flood resilient development is required, and therefore the proposal cannot be considered to satisfactorily comply with Policies 2, 3 or 4 of the SELLP.

Planning Balance

On balance, taking account of the above considerations, it is noted that the benefits of the proposed development compared to the identified fallback position are a material consideration. Likewise, the economic benefits in respect of the resultant development phase is also apparent.

Overall, the proposal fails to provide a betterment that positively reflects the characteristics of the site or the character and context of the surrounding area and fails in this regard to provide a positive contribution to the appearance of the site compared to the fallback position.

The benefits associated with the development phase are temporary and would hold minimal weight in this instance. Likewise, the development is not considered, as highlighted within the report above, to comprise a betterment to that of the extant permission given that it fails to reflect or comprise an appropriate form of development in relation to its rural and countryside context. As such, the benefits of the proposal are not considered to outweigh the clear conflict with the adopted development plan, notwithstanding the fallback position that exists.

The proposal is therefore not considered to be acceptable in principle and conflicts with Policies 1, 2, and 3 of the South East Lincolnshire Local Plan 2019 and fails to accord with the provisions of the National Planning Policy Framework (December 2023), namely paragraphs 84 and 135 and 139.

Conclusion

The proposal is considered to be at conflict with Policies 1, 2, 3 and 4 of the South East Lincolnshire Local Plan (2019) and section 12 and paragraph 84 of the National Planning Policy Framework (December 2023). There are no material considerations that outweigh this conflict in this instance.

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.