

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H17-0933-21 **Applicant:** Mr M Gray

Proposal: Retention of vernacular style cottage as a dwelling house, contrary to the requirement of Condition 2 of planning permission H17-1188-19 for the dwelling to be demolished

Location: Orchard Cottage Birds Drove Surfleet

Terminal Date: 29th November 2021

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
10	Meeting Assessed Housing Requirements
11	Distribution of New Housing
17	Providing a Mix of Housing
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance**National Planning Policy Framework 2021**

- 5 - Delivering a sufficient supply of homes
- 12 - Achieving well-designed places
- 14 - Meeting the challenge of climate change, flooding and coastal change

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	1	0	0
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
IAN MARSHMAN, HISTORIC ENVIRONMENT OFFICER	0	0	0	1

WELLAND AND DEEPINGS INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	0	0	1	0

CASE OFFICER ASSESSMENT

PROPOSAL

This is a full application at Orchard Cottage, Birds Drove, Surfleet for the retention of a vernacular style cottage as a dwelling house, contrary to the requirement of Condition 2 of planning permission H17-1188-19 for the dwelling to be demolished. The cottage is dilapidated and in need of substantial works inside and out to make it suitable for habitation. The application also seeks to provide a vehicular access and improvements to the appearance of the property. The original owner purchased the cottage in 1990 and gained planning approval in 1992 under reference H17-0500-92 for a replacement dwelling that is in situ and almost complete.

The supporting statement accompanying the application states "Building of the permitted dwelling commenced in 1997, and continued for many years as the then owner was building the property by himself as a self-build. The late Mr Kazmarski remained living in the cottage (which was supposed to have been demolished) for approximately 20 years whilst the slow on-going build continued. Mr Kazmarski sadly became ill and the building of the new dwelling ceased and got to the stage where it still remains today. Effectively, the cottage therefore became lawfully used in breach of the demolition condition of the permission, as a dwelling well past the '10 year rule'."

The application is also supported by a report from a structural engineer, which confirms that the property is capable of repair.

SITE DESCRIPTION

The cottage is located outside of defined settlement limits and the surrounding area is predominately arable land, characterised by non-nucleated, linear development of varying ages and design. The site is within Environment Agency Flood Zone 3, and is in a "Low Hazard" area with a maximum predicted flood depth of 0.5 metres, although the dwelling itself is susceptible to a maximum flood height of 0.25 metres.

The cottage has a render/pebble dash finish with a red clay pantile roof. There is a flat roof single storey structure to the west side of the property. The plot is significantly overgrown with trees, hedges and brambles growing thickly around the cottage. There is a ditch between Birds Drove and the plot.

RELEVANT HISTORY

H17-0500-92

Full - Replacement dwelling - Approved - 04 August 1992. Condition 6 required the existing cottage to be demolished before commencement of development on the new dwelling.

H17-0728-95

Condition Compliance - Details of design and external appearance of replacement dwelling (Condition 2 of H17-0500-92) - Approved - 31 May 1996.

H17-1051-97

Condition Compliance - Details of landscaping and external materials (Conditions 3 & 5 of application H17-0500-92) - Approved - 22 October 1997.

H17-1188-19

Section 73a Continuation - Replacement dwelling - approved under H17-0500-92 - Modification of Condition 6 to allow cottage to be demolished before replacement dwelling is inhabited - Approved - 30 January 2020.

REPRESENTATIONS

LCC - County Highways & SUDS Officer

No objections. Requests standard access and utility informatives.

"For this proposal the new access would be suitable subject to S184 application and off road parking and turning is provided, therefore, it is considered that the proposals would not result in an unacceptable impact on highway safety."

LCC - Historic Environment Officer

This office welcomes proposals to retain and enhance this historic cottage which is of local historical interest and contributes to the character and distinctiveness of the area in line with paragraph 197 of the NPPF.

"In determining applications, local planning authorities should take account of:

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c) the desirability of new development making a positive contribution to local character and distinctiveness."

It is recommended that the local planning authority's conservation officer is consulted on any works to repair the cottage to ensure they can enhance and better reveal its significance. We would also like to note that traditional orchards are an important but threatened part of the fenland historic landscape, which are also worthy of retention and enhancement. Natural England has identified this in their assessment of the 'The Fens' National Character Area which states: "Traditional orchards are inherent to historic landscape character" and recommends that "opportunities to protect orchards and bring them into positive management should be explored, promoted and secured." For more advice on what management would be beneficial we recommend consulting the Tree & Nature Conservation Officer at SHDC, Lincolnshire Wildlife Trust, or the East of England Apples & Orchards Project.

SHDC - Environmental Protection Officer

"No comments or objections."

Welland & Deepings Internal Drainage Board

"I note that the existing footbridge access over the roadside dyke is to be replaced by a three metre wide vehicular access crossing. If planning permission is granted then an application for consent to alter a watercourse would need to be submitted to the Board in advance of any site works and are subject to the agreement of technical details."

Surfleet Parish Council

No comment.

PLANNING CONSIDERATIONS

Principle

This proposal is assessed against SELLP Policy 1 titled - Spatial Strategy. The relevant section in

this policy is titled Countryside. This section of the policy states:

"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.

In the Countryside development will be permitted that is necessary to such a location and/or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits."

When assessed against the above criteria the following can be observed:

Economic - There are no material economic benefits to retaining this dwelling. Save for short term employment for persons renovating and doing structural work to the dwelling.

Community - The dwelling is outside of defined settlements and the surrounding area is characterised by linear non-nucleated development. The nearest services and goods are located in Surfleet which is one mile away as the crow flies, but approximately two miles by foot / vehicle. There are no social benefits to retaining this dwelling other than a continued contribution to housing stock.

Environmental - The nearest services and goods are located in Surfleet which is one mile away as the crow flies, but approximately two miles by foot / vehicle. It is highly likely that most journeys will be made by private vehicle due to the remote, unsustainable location, which will generate additional carbon emissions beyond what was originally considered.

In light of the above, it is considered that the retention of the cottage does not satisfactorily accord with SELLP Policy 1.

Assessment against SELLP Policy 2 - Development Management

This proposal is assessed against SELLP Policy 2 titled - Development Management. This policy states:

"Proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met, specifically in relation to:

1. size, scale, layout, density and impact on the amenity, trees, character and appearance of the area and the relationship to existing development and land uses;
2. quality of design and orientation;
3. maximising the use of sustainable materials and resources;
4. access and vehicle generation levels;
5. the capacity of existing community services and infrastructure;
6. impact upon neighbouring land uses by reason of noise, odour, disturbance or visual intrusion;
7. sustainable drainage and flood risk;
8. impact or enhancement for areas of natural habitats and historical buildings and heritage assets;
9. impact on the potential loss of sand and gravel mineral resources."

When assessed against the above relevant criteria the following can be observed:

1. The size, scale and layout was appropriate for the site at the time of construction. The proximity of the dilapidated cottage adjacent to the dilapidated replacement dwelling materially impacts the character and appearance of the surrounding area. Whilst there is an argument to be made that the retention and refurbishment of the cottage would improve the character of the surrounding area, it is not considered that it would be to a level that would justify retention. No evidence has been brought to demonstrate that the orchard to the rear of the cottage was ever within the legal residential curtilage of the dwelling.

2. The quality of the design and orientation of the cottage was appropriate at the time of construction.

3. The proposal seeks a traditional post and rail fence which is a common feature in the open countryside but also seeks a closeboarded fence at the boundary with Mala Wala which is out of keeping with the predominately open character of the surrounding area.

4. The proposed access is appropriately sited and off road parking provision is provided for two

vehicles. This accords with Appendix 6 of the SELLP. The County Highways & SUDS Officer has no objections to the submitted details.

5. The proposal will not impact the capacity of existing community services and infrastructure.

6. The proposal is not considered to materially impact neighbouring land uses from noise, odour, disturbance or visual intrusion.

7. The cottage is located outside of defined settlement limits and the surrounding area is predominately arable land, characterised by non-nucleated, linear development of varying ages and design. The site is within Environment Agency Flood Zone 3, and is in a "Low Hazard" area with a maximum predicted flood depth of 0.5 metres, although the dwelling itself is susceptible to a maximum flood height of 0.25 metres.

8. The cottage has never been listed, nor subject to an Article 4 direction or considered during any previous application to be worthy of retention as a non-designated heritage asset, despite the County's Historic Environment Officer's comments.

The retention of the cottage does not accord with SELLP Policy 2.

Assessment against SELLP Policy 3 - Design of New Development

This proposal is assessed against SELLP Policy 3 titled - Design of New Development. This policy states:

All development will create distinctive places through the use of high quality and inclusive design and layout and, where appropriate, make innovative use of local traditional styles and materials. 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.

Development proposals will demonstrate how the following issues, where they are relevant to the proposal, will be secured:

1. creating a sense of place by complementing and enhancing designated and non designated heritage assets; historic street patterns; respecting the density, scale, visual closure, landmarks, views, massing of neighbouring buildings and the surrounding area;
2. distinguishing between private and public space;
3. the landscape character of the location;
4. accessibility by a choice of travel modes including the provision of public transport, public rights of way and cycle ways;
5. the provision of facilities for the storage of refuse/recycling bins, storage and/or parking of bicycles and layout of car parking;
6. the lighting of public places;
7. ensuring public spaces are accessible to all;
8. crime prevention and community safety;
9. the orientation of buildings on the site to enable the best use of decentralised and renewable low-carbon energy technologies for the lifetime of the development;
10. the appropriate treatment of facades to public places, including shop frontages to avoid visual intrusion by advertising, other signage, security shutters, meter boxes and other service and communication infrastructure;
11. residential amenity;
12. the mitigation of flood risk through flood-resistant and flood-resilient design and sustainable drainage systems (SuDS);
13. the use of locally sourced building materials, minimising the use of water and minimising land take, to protect best and most versatile soils;
14. the incorporation of existing hedgerows and trees and the provision of appropriate new landscaping to enhance biodiversity, green infrastructure, flood risk mitigation and urban cooling;
15. the appropriate use or reuse of historic buildings.

When assessed against the above relevant criteria the following can be observed:

1. The size, scale and layout was appropriate for the site at the time of construction. The proximity of the dilapidated cottage adjacent to the dilapidated replacement dwelling materially impacts the character and appearance of the surrounding area. Whilst there is an argument to be made that the retention and refurbishment of the cottage would improve the character of the surrounding area, it is not considered that it would be to a level that would justify retention. No evidence has been brought

to demonstrate that the orchard to the rear of the cottage was ever within the legal residential curtilage of the dwelling. A sense of place is considered to be materially impacted by retention of the cottage.

2. The character of the surrounding area is materially impacted by the siting of a closeboarded fence to differentiate between public and private space.
3. The landscape character of the area is predominately open. The proposed boundary treatment will create a jarring, discordant feature in the landscape.
4. The cottage can only realistically be accessed by private vehicle use.
5. The site has adequate space for bin and cycle storage. The proposed access is appropriately sited and off road parking provision is provided for two vehicles. This accords with Appendix 6 of the SELLP. The County Highways & SUDS Officer has no objections to the submitted details.
9. The orientation of the cottage is already set.
11. The proposal is not considered to materially impact neighbouring land uses from noise, odour, disturbance or visual intrusion.
12. The cottage is located outside of defined settlement limits and the surrounding area is predominately arable land, characterised by non-nucleated, linear development of varying ages and design. The site is within Environment Agency Flood Zone 3, and is in a "Low Hazard" area with a maximum predicted flood depth of 0.5 metres, although the dwelling itself is susceptible to a maximum flood height of 0.25 metres.
14. The proposal does not seek to enhance biodiversity from what already exists on site.
15. The cottage has never been listed, nor subject to an Article 4 direction or considered during any previous application to be worthy of retention as a non-designated heritage asset. Therefore the cottage cannot be considered to be a historic building as successive Local Planning Authority Conservation Officers and County Council Historic Environment Officers have not considered it to be worthy of retention.

The retention of the cottage does not accord with SELLP Policy 3.

PLANNING BALANCE

The supporting statement argues that the cottage should remain on site as the previous occupant had lived there for more than 10 years after the condition compliance application of 1997, thereby making the retention of the cottage 'lawful'. This is a very unusual application that is not fully covered by local or national policy. No comparable planning case law cases can be sourced by the Local Planning Authority.

The supporting statement states "The cottage will provide a great characteristic dwelling without impacting on any surroundings, another home towards the much needed supply of housing, on the back of this very unusual situation which should not be compared to 'similar situations' or other 'replacement dwelling' situations in general terms, purely due to the time duration since the development commenced." The Local Planning Authority can demonstrate a five year housing land supply of 8.5 years under the Liverpool Method as of March 2021. Therefore, retention of the dilapidated cottage, which is of no great historical character is not considered necessary. However, the Senior Planning Lawyer for South Holland District Council states "They are not in breach of a condition, so no enforcement can be taken. However the Lawful Development Certificate guidance would still apply."

It is considered that based on the information provided, whilst not extensive, that on the balance of probability the use of the cottage would meet the criteria for being granted a lawful development certificate under The Town and Country Planning Act 1990: Section 191 as amended by section 10 of the Planning and Compensation Act 1991. It would therefore be unreasonable to refuse this application.

CONCLUSION

Notwithstanding the previous conditional requirements to demolish the cottage to prevent an additional dwelling in the countryside, it is evident that this was not complied with and the cottage remained lived in for many years after the 1992 permission was granted. Given this situation that the balance of probability is that this has resulted in a situation where the retention of the cottage as a dwelling is exempt from enforcement action, the balance lies in favour of granting permission, subject to conditions relating to the details of renovation.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).

C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

RECOMMENDATION

Delegated approval.

N.B. The application was presented to Chairman's Panel on 29th October 2021 and Members were content for the application to be approved under delegated powers.