DECISION DELEGATED TO HEAD OF PLANNING

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|---|---|---|---|
| **Application No:** | **H23-0019-24** | **Applicant:** | **Mr D Ford** |
| **Proposal:** | Residential development (3 Dwellings) involving the demolition of existing buildings - approved under H23-0717-23. Modification of Condition 2 to allow amendments to previously approved plans | | |
| **Location:** | Buildings Adj. Carlton Lodge Oxcroft Bank Shepeau Stow | | |
| **Terminal Date:** | 5th March 2024 | | |

## 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 |
| 28 | The Natural Environment |
| 30 | Pollution |
| 31 | Climate Change and Renewable and Low Carbon Energy |
| 36 | Vehicle and Cycle Parking |
| APPENDIX 6 | Parking Standards |

**National Guidance**

**National Planning Policy Framework 2023**

Section 2. Achieving sustainable development.
Section 5. Delivering a sufficient supply of homes.
Section 9. Promoting Sustainable transport.
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 |
|---|---|---|---|---|
| PARISH COUNCIL | 0 | 1 | 0 | 0 |
| WARD MEMBER | 0 | 0 | 0 | 0 |
| HIGHWAYS & SUDS SUPPORT | 0 | 0 | 0 | 1 |

| | | | | |
|---|---|---|---|---|
| SOUTH HOLLAND INTERNAL DRAINAGE BOARD | 0 | 0 | 0 | 1 |
| SHDC INTERNAL | 0 | 0 | 0 | 1 |
| OTHER STATUTORY BODIES | 0 | 0 | 1 | 0 |

## CASE OFFICER ASSESSMENT

### Proposal

The site has full planning permission for the demolition of existing agricultural buildings and erection of three 4-bed 2-storey detached dwellings with attached garages (ref. H23-0717-23).

This application has been submitted under S73 to move the dwellings on plots 1 and 2 to ensure 9 metre clearance between the brink of the drain to the north of the site and plot 1 to comply with SHIDB byelaws.

### Site Description

The site is located on the eastern side of Oxcroft Bank to the south of Shepeau Stow village. It was formerly occupied by an agricultural building (packing shed and cold store). Glasshouses are situated to the rear which are currently being dismantled.

A dwelling (Carlton Lodge) associated with the holding is situated to the south and a house (Jo-Da) beyond. Dwellings (Applegates and Fern-lea) are located approximately 100 metres to the north.

### Recent History

H23-0089-23 - Prior Approval - Conversion of agricultural buildings to form 5 dwellings - Withdrawn 20 March 2023.

H23-0335-23 - Prior Approval - Conversion of agricultural buildings to form 3 dwellings - Approval 26 May 2023.

H23-0717-23 - Full - Residential development (3 dwellings) involving the demolition of existing buildings - Approved 4 October 2023.

### Consultation Responses

Whaplode Parish Council

Support.

LCC Highways/SUDs

No objections. The proposal is for minor amendments to condition 2 that already has approval under H23-0717-23. The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk.

South Holland Internal Drainage Board

If the applicant proposes to discharge surface or treated foul water to a watercourse, consent would be required under Byelaw 3.

Consent is required under Section 23 of the Land Drainage Act 1991 (and Byelaw 4) to alter riparian watercourse along site's frontage. Consent required under Byelaw 10 for works (fencing, hedging and patio) within 9 metres of a Board maintained watercourse.

Environmental Protection

Request precautionary contaminated land condition.

LCC Archaeology

No archaeological input required.

Lincolnshire Wildlife Trust

No further comments.

Public

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, no letters of representation have been received.

**Key Planning Considerations**

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 (SELLP) 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 (updated 2021) 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.

Section 73 Assessment

The purpose of an application made under Section 73 of the Town and Country Planning Act 1990 is to vary or remove conditions associated with an existing planning permission. These applications are used to allow for amendments to an approved scheme and can be made both retrospectively and prior to a permission being implemented, as long as the permission is extant.

The Act is very clear that: "On such an application the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted." As such, the Local Planning Authority are not able to revisit the principle of development and only matters relevant to the specific conditions can be considered.

The Planning Practice Guidance, under Paragraph 31, details this further by stating that "In deciding an application under Section 73, the Local Planning Authority must only consider the disputed condition/s that are the subject of the application - it is not a complete re-consideration of the application".

For the purpose of clarity, decision notices for the grant of planning permission under Section 73 should set out all of the conditions imposed on the new permission, and reinstate the conditions

imposed on earlier permissions that continue to have effect.
Taking all of the above into account, the Local Planning Authority are content that the proposed amendments can be considered under a variation application, via a Section 73 application.

In light of the above, therefore, the main issue in this case is whether the proposed re-siting of plots 1 and 2 is acceptable on visual and residential amenity grounds. There is no significant impact in respect of other matters such as highway safety, flood risk, ecology, etc.

Character and appearance

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 (Dec 2023), 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 (December 2023) 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.

Section 12 of the Framework specifically relates to 'achieving well-designed and beautiful 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.

Permission was granted for the original scheme (ref. H23-0717-23) on grounds that the proposed dwellings would deliver some benefits to the appearance of the site, compared to the fallback position of the former farm buildings having prior approval, and the fact that the original farm buildings were of utilitarian appearance. This carried significant weight in favour of the proposal. On balance, taking account of the above considerations, it was considered that the benefits of the proposed development compared to the identified fallback position were a material consideration that outweighed the conflict with the development plan and which justified granting planning permission for the proposal. The current proposal is a relatively minor revision to the approved scheme to comply with SHIDB Byelaws and is considered acceptable on visual amenity grounds.

Amenity

Policies 2 and 3 of the South East Lincolnshire Local Plan (2019) set out residential amenity and the relationship to existing development and land uses as main considerations when making planning decisions. They are consistent with advice within the National Planning Policy Framework (2023).

An associated dwelling (Carlton Lodge) is situated to the south and a house (Jo-Da) beyond. Dwellings (Applegates and Fern-lea) are located approximately 100 metres to the north.

The dwelling on plot 3 has bedroom, ensuite and bathroom windows at first-floor level on its southern elevation facing the side of Carlton Lodge, which is presently owned/occupied by the applicant. The latter has secondary lounge windows and a first-floor bathroom window on its northern elevation. Overlooking of the rear garden area would be oblique in respect of bedroom 2 and leylandii hedging exists along the rear section of the boundary. 1.8m high close boarded fencing is proposed along the rear section of this boundary. Other neighbouring properties are further away. Taking all factors into consideration it is considered on balance that the amenity of neighbouring residents would not be harmed to such a degree as to justify refusal in terms of overlooking, lack of privacy, overshadowing, overbearing effect, noise and disturbance, etc. In terms of the latter, consideration has been given to the fact that the site was formerly a working agricultural holding/nursery.

It is accepted that there would be some disturbance during the construction stage. However, it would be temporary in nature. If any issues were to arise, they could be dealt with through separate environmental legislation. In terms of the relationship of the development to remaining agricultural buildings at the rear, a 1.8m high close boarded fence is proposed.

The proposal satisfactorily complies with Policies 2 and 3 of the SELLP on amenity grounds.

Planning Balance

As detailed above, 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.

The current proposal is a relatively minor revision to the approved scheme to comply with SHIDB Byelaws and is considered acceptable on visual and residential amenity grounds.

There is no significant change in terms of highway safety, flood risk, contamination, ecology, etc. These matters have previously been addressed.

## Conclusion

The modification satisfactorily complies with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019 and advice within the Framework (December 2023). There are no adverse impacts in this case which outweigh factors in favour of the proposal.

## 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

Based on the assessment detailed above, it is recommended that the proposal should be approved

conditionally under Delegated Authority.