

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H23-0274-23 **Applicant:** Mr A Dickens

Proposal: Demolition of existing barns and erection of four 4-bed 2-storey detached dwellings.

Location: Orchard Farm Dowsdale Bank Shepeau Stow

Terminal Date: 20th July 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
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 2021

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
PARISH COUNCIL	0	1	0	0
WARD MEMBER	0	0	0	0

HIGHWAYS & SUDS SUPPORT	0	0	0	1
MATTHEW ADAMS - HISTORIC ENVIRONMENT OFFICER	0	0	0	1
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	0	0	0	1
OTHER STATUTORY BODIES	2	0	0	0
RESIDENTS	3	0	0	0

CASE OFFICER ASSESSMENT

Proposal

Full planning permission is sought for the demolition of existing agricultural buildings and erection of four 4-bed 2-storey detached dwellings.

It should be noted that the site presently has prior approval for a change of use of two existing agricultural buildings into 5 dwellings under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (ref. H23-0835-22).

Site Description

The application site is located at Orchard Farm, Dowsdale Bank on the south-eastern side of the highway. It is part of an agricultural holding with various agricultural buildings. Presently, the buildings proposed to be converted share the access with the farm. Native hedging is situated along the northern boundary.

New residential properties are under presently construction along the frontage. The nearest residential properties other than the aforementioned are "The Gatehouse" some 230m to the north-east and "Willowdale" to the south-west on the opposite side of Orchard Farm.

Recent History

H23-0352-03 - Out - Erection of agricultural dwelling (siting committed) - Withdrawn.

H23-0511-04 - Full - Use of building to establish farm plant to produce poultry and horse bedding - Approved 8 September 2004.

H23-0174-06 - Agri Determination - Erection of steel framed agricultural building (1,284 square metres) - Approved 6 March 2006.

H23-0594-20 - Prior approval - Proposed barn conversion into 5 dwellings - Approved 15 October 2020.

H23-0794-21 - Full - Demolition of existing buildings and erection of 4 dwellings - Approved 16 November 2021.

H23-0358-22 - Full - Erection of dwelling - amendment to position of Plot 4 previously approved under H23-0794-21 - Approved 23 May 2022.

H23-0545-22 - Cond Comp - Details of external materials, landscaping, boundary treatments, acoustic fence, means of foul & surface water disposal, a scheme to deal with contamination and ecological biodiversity measures (Conditions 3, 4, 6, 7, 9, 11 & 13 of H23-0794-21) - Approved 24 February 2023.

H23-0835-22 - Prior approval - Proposed conversion of existing agricultural buildings to 5 dwellings and associated works - Approved 16 December 2022.

H23-0205-23 - S73A - Demolition of existing buildings and erection of 4 dwellings - approved under H23-0794-21. Removal of Condition 5 to allow uPVC windows with wood grain effect in lieu of timber windows - Approved April 2023.

Consultation Responses

Whaplode Parish Council

Support.

LCC Highways/SUDs

No objections subject to informatives.

South Holland Internal Drainage Board

If infiltration is not feasible at this site, following the drainage hierarchy we would expect the applicant to propose to discharge surface water to a watercourse. In this case, consent would be required under Byelaw 3.

Environmental Protection

Request standard land contamination condition.

Lincolnshire Bat Group

Protected species survey should be carried out prior to determination.

Lincolnshire Wildlife Trust

Register a holding objection on this application until further ecological surveys are conducted and biodiversity enhancement measures for the site submitted for comment.

LCC Archaeology

No archaeological impact.

Public

Resident objections received (summarised).

- Extra burden on infrastructure such as doctors, schools, etc.
- Out of character with insufficient outside space and play area.
- Dowsdale Bank and local roads unsuitable in terms of width and construction for additional development/traffic. No footways.
- Increased noise, disturbance and pollution.
- Overbearing.
- Overlooking/lack of privacy.
- Poor public transport facilities so have to rely on car.
- No consideration for wildlife such as bats. Barns home to Barn and Little Owls.
- No commitment to green/renewable energy.

- Set precedent for further homes.

Planning Considerations

The main issues in this case are:

- Housing policy/principle;
- Other material considerations such as amenity, highway safety, flood risk and ecology.

Housing policy/principle

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, states that the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

The site is outside a settlement boundary as defined in the South East Lincolnshire Local Plan (SELLP), March 2019. It is therefore within an area regarded as countryside.

SELLP Policy 1 indicates that development in the countryside 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.

Addressing the first element, it has not been demonstrated that residential development is necessary in this location; for example, in conjunction with agriculture or other rural based business. Moreover, the site is physically divorced from Shepeau Stow and larger service settlements such as Gedney Hill, Holbeach and Spalding. In the absence of footways and given the distances involved it would be difficult to access these settlements for the day to day needs of the occupants without use of a private car. Consequently, the proposal is not in accordance with Policy 1 of the SELLP and would not normally be considered a suitable site for new housing.

However, the site presently has prior approval for a change of use of the existing agricultural building into 5 dwellings under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015. Caselaw has demonstrated that Class Q consents are a legitimate fallback position when considering alternative proposals for development of the same site.

The relevant legal principles relating to 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 submissions 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 notion of the Class Q fallback position was also comprehensively dealt with at the landmark Court of Appeal case, *Mansell vs Tonbridge and Malling Borough Council* (2017). It established that 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. It stands to reason that, where the alternative new-build proposal offers either an enhancement to the setting or a reduction in density when compared to the fallback, the development could (and perhaps should) be allowed to proceed.

In this case, the site has a Class Q consent for 5 dwellings (ref. H23-0835-22). It seems likely that there is a clear desire by the landowner to develop and maximise the value of the site. Moreover, the scheme approved under Class Q is the conversion of modern utilitarian farm buildings into 5 dwellings. The current proposal is for 4 no. dwellings with a design concept loosely based upon a traditional barn.

The proposal offers a reduction in density and the proposed dwellings would deliver some benefits to the appearance of the site compared to the fallback position. This carries significant weight in favour of the proposal. On balance, taking account of the above considerations, it is considered in this case that the benefits of the proposed development compared to the identified fallback position

are a material consideration which outweighs the conflict with the development plan and justifies granting planning permission for the proposal.

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 (2021).

New residential properties are under presently construction along the frontage. The nearest residential properties other than the aforementioned are "The Gatehouse" some 230m to the north-east and "Willowdale" to the south-west on the opposite side of Orchard Farm.

The dwelling on plot 1 has an ensuite window only at first floor level on its north-western elevation. Plot 4 has a blank elevation at first floor level on its north-western elevation. Overlooking of neighbouring dwellings would either be oblique or at a distance. The dwelling on plot 1 is some 40 metres from Willowdale to the south-west. It is considered that the proposal would not materially harm the amenity of neighbouring residents in terms of overlooking, lack of privacy, overshadowing, overbearing effect, noise and disturbance. In terms of the latter, consideration has been given to the fact that the site was formerly a working farm.

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 farm 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.

Highway Safety

Policies 2 and 3 of the SELLP indicate that sustainable development considerations should be met in terms of access and vehicle generation levels and layout of car parking. Policy 36 and Appendix 6 set out the minimum standards for parking provision based upon the use class. Two spaces for dwellings with 3 or less bedrooms should be provided within the curtilage. Three spaces for dwellings with 4 or more bedrooms should be provided within the curtilage.

The existing access would be retained and re-aligned/upgraded to gain vehicular access to the development. Ample car parking facilities have been provided on site. The County Highways Authority does not wish to restrict the grant of permission on highway safety grounds.

The proposal therefore complies with Policies 2, 3 and 36 in this respect.

Flood Risk

The site is within Flood Zone 1 of the Environment Agency Maps and within an area designated as "no hazard" within the Strategic Flood Risk Assessment. It is therefore considered satisfactory on flood risk grounds. Finished floor levels should be set at 300mm, plus flood resilient construction measures.

Contamination

Environmental Protection have requested a contaminated land condition due to the former use of the site and the nature of the new development proposed.

Ecology

Policy 3 of the SELLP indicates that development proposals should, where relevant to the proposal, include the incorporation of existing hedgerows and trees and the provision of appropriate new landscaping to enhance biodiversity.

Policy 28 indicates that all development should provide an overall gain in biodiversity. The explanatory text sets out that development can incorporate a number of simple, low-cost measures to deliver biodiversity benefits and enhance priority habitats and species, such as, the use of bat roost boxes, green roofs or walls, and integrating nesting opportunities into buildings and green

infrastructure.

The submitted block plan seems to indicate that existing trees would be retained on site where possible and bio-diversity enhancement measures are recommended, including additional planting. This matter can be addressed by means of conditions.

Issues have been raised over likely the presence of owls and bats upon the site. Lincolnshire Wildlife Trust has registered a holding objection until further ecological surveys are conducted and biodiversity enhancement measures for the site submitted for comment. The Lincolnshire Bat Group has recommended that a protected species survey should be carried out prior to determination. However, there is a fall back position because the site has prior approval for conversion of two of the existing agricultural buildings to 5 dwellings without an ecological assessment since this matter does not fall within the remit of the prior approval process. Consequently, work could be carried out on the buildings without the need for an ecological survey. Nevertheless, the applicant does have a statutory duty with respect to protected species such as bats and owls under the Wildlife and Countryside Act, 1981. With this in mind, it is considered that a pre-commencement condition should be imposed requiring an ecological survey to be carried out.

The proposal satisfactorily complies with Policies 3 and 28 in terms of ecology, subject to conditions.

Planning Balance

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, states that the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

The site is outside a settlement boundary as defined in the South East Lincolnshire Local Plan (SELLP), March 2019. It is therefore within an area regarded as countryside.

SELLP Policy 1 indicates that development in the countryside 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.

It has not been demonstrated that residential development is necessary in this particular location. Moreover, the site is physically divorced from Shepeau Stow and larger service settlements such as Gedney Hill, Holbeach and Spalding. Consequently, the proposal is not in accordance with Policy 1 of the SELLP and would not normally be considered a suitable site for new housing.

However, the site presently has prior approval for a change of use of two existing agricultural buildings into 5 dwellings under Class Q. Caselaw has demonstrated that Class Q consents are a legitimate fallback position when considering alternative proposals for development of the same site.

The proposed dwelling would deliver some benefits to the appearance of the site compared to the fallback position. This carries significant weight in favour of the proposal. On balance, taking account of the above considerations, it is considered in this particular case that the benefits of the proposed development compared to the identified fallback position are a material consideration which outweighs the conflict with the development plan and which justify granting planning permission for the proposal.

There are no objections to the scheme on amenity, highway safety and flood risk grounds. Contamination and ecology can be addressed by means of conditions.

Additional Considerations

Public Sector Equality Duty

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

- A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- B. Advance equality of opportunity between people who share a protected characteristic and those

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

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

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

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

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

Human Rights

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

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

Conclusion

The proposal satisfactorily complies with Policies 2, 3, 4, 28, 30 and 36 of the South East Lincolnshire Local Plan, 2019, subject to appropriate conditions. Although there is conflict with Policy 1 the benefits of the proposed development compared to the identified fallback position are a material consideration which outweighs the conflict with the development plan and which justify granting planning permission for the proposal.

Recommendation

That the application be approved under delegated powers.