DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H23-0398-26**	**Applicant:**	**Mr T Dickens**
Proposal:	Demolition of existing barns and construction of 9 new dwellings, 3 x 3 bed houses, 3 x 2 bed bungalows, 1 x 3 bed bungalow and 2 x 4 bed houses including access road		
Location:	Orchard Farm Dowsdale Bank Shepeau Stow		
Terminal Date:	30th September 2026		

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
28	The Natural Environment
30	Pollution
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework August 2026

Section 2 - Plan-making policies (PM1 - 17)
Section 3 - Decision-making policies (DM1 - 10)
Section 4 - Achieving sustainable development (S1 - S6)
Section 6 - Delivering a sufficient supply of homes (HO1 - 13)
Section 12 - Making effective use of land (L1 - 3)
Section 14 - Achieving well-designed places (DP1 - 4)
Section 15 - Promoting sustainable transport (TR1 - 8)
Section 17 - Pollution, public protection and security (P1 - 6)
Section 18 - Managing flood risk and coastal change (F1 - 9)
Section 19 - Conserving and enhancing the natural environment (N1 - 9)

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	2
OTHER STATUTORY BODIES	0	0	0	2

CASE OFFICER ASSESSMENT

Proposal

The proposal seeks full planning permission for the demolition of the existing barns within the application site and the erection of 9 new dwellings. The vehicular access is proposed from Dowsdale Bank which is to the west of the site.

The proposed dwellings include a mixture of single storey and two-storey dwellings. Most of the dwellings are proposed to be detached except for plots 6 and 7 which would be semi-detached. The housing mix is as follows:

-3 x 3-bedroom dwellings;
-3 x 2-bedroom bungalows,
-1 x 3-bedroom bungalow; and
-2 x 4-bedroom dwellings.

Site Description

The application site is located at Orchard Farm, Dowsdale Bank on the south-eastern side of the highway. The site currently accommodates a working farm with various agricultural buildings. Presently, the buildings proposed to be converted share the access with the farm.

There are two dwellings located to the west of the site, two dwellings located further to the south-west of the site, and one dwelling located to the north.

The site is outside any defined settlement boundary, as identified by the South East Lincolnshire Local Plan (2019) and the accompanying policies map. Therefore, the site is within the countryside in planning policy terms.

The site is within Flood Zone 1, as identified by the Environment Agency's flood risk maps.

Planning History

H23-0794-21: (Full Application) Demolition of existing buildings and erection of 4 dwellings - approved 16th November 2021

H23-0835-22: (Prior Approval) Proposed conversion of existing agricultural buildings to 5 dwellings and associated works - approved 16th December 2022

H23-0205-23: (Section 73 Application) 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 20th April 2023

H23-0274-23: (Full Application) Demolition of existing barns and erection of four 4-bed 2-storey detached dwellings - approved 17th July 2023

H23-0216-25: (Prior Approval) Proposed conversion of existing agricultural buildings to 10no. dwellings and associated works - approved 25th April 2025

Land to the West:

H23-0594-20: (Prior Approval) Proposed barn conversion into 5 dwellings - approved 15th October 2020

H23-0794-21: (Full Application) Demolition of existing buildings and erection of 4 dwellings - approved 16th November 2021

H23-0205-23: (Section 73) 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 20th April 2023

H23-0933-23: (Full Application) Erection of 6 bed 3 storey dwelling - approved 27th November 2023

Land to the North:

H23-0358-22: (Full Application) Erection of dwelling - amendment to position of Plot 4 previously approved under H23-0794-21 - approved 23rd May 2022

H23-0532-24: (Full Application) Proposed dwelling including a detached car port - withdrawn 19th August 2024

H23-0705-24: (Section 73) Erection of dwelling - amendment to position of Plot 4 - approved under H23-0358-22. Modification of Condition 2 to allow amendments to previously approved plans and removal of Conditions 3, 4, 5, 6, 7, 11, 13, 14 and 15 - approved 01st October 2024

H23-0238-26: (Discharge of Conditions) Details of contamination of land or pollution of controlled waters, verification report, acoustic fence 2 metres in height shall be erected along the south-eastern and south-western boundaries adjoining the rear garden, ecological biodiversity measures & boundary treatments (Conditions 3, 4, 5, 8 & 9 of H23-0705-24) - approved 23rd April 2026

Consultation Responses

The responses received from consultees during the consultation period are summarised below. The responses can be viewed in their entirety on South Holland District Council's website.

Whaplode Parish Council:

No comments.

Natural England:

Automated response received.

Environmental Protection:

Measures should be put in place during the demolition and construction process to control dust noise and vibration in order to protect the amenity of nearby residents. Working hours should be limited to 07:30-18:00 Monday to Friday and 08:00-13:00 Saturday and no burning on site.

Environmental Protection:

My comment remains the same for this application as I commented under the previous application H23-0216-25 and request a standard land contamination condition be applied at this location.

Lincolnshire County Council - Historic Environment:

The proposal is unlikely to have an impact on significant archaeological remains. Consequently, no further archaeological input is necessary for this application.

South Holland Internal Drainage Board:

Byelaw 3 (Surface Water): The applicant has indicated that they intend to dispose of surface water via infiltration, however I cannot see that the viability of this proposal has been evidenced. We recommend that ground investigation is carried out to determine infiltration potential, followed by testing in line with BRE Digest 365 if onsite material is considered favourable for infiltration. 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. The Board recommend that any discharge is in line with the National standards for sustainable drainage systems (SuDS) published in June 2025. Further to the National Standards for SuDS, the Board's policy is to restrict discharges to 2/l/s/ha or annual average flood flow rate (QBar or QMed), whichever is higher. Please note that any consent granted for the discharge of surface water is likely to be subject to a Surface Water Development Contribution fee (SWDC) as outlined within our Development Control Charges and Fees.

Byelaw 3 (Treated Foul Water): I note that the applicant intends to treat foul waste using a package treatment plant, however I cannot see that the applicant has indicated how they intend to dispose of treated foul water from this development. If the applicant proposes to discharge treated foul water to a watercourse, consent would be required under Byelaw 3. Please note that any consent granted for the discharge of treated foul water is likely to be subject to a Treated Foul Water Development Contribution fee (TFWDC) as outlined within our Development Control Charges and Fees.

Section 23, Land Drainage Act 1991: I note the presence of a watercourse which is not maintained by the Board (a riparian watercourse) adjacent to the northern and southern site boundaries. Whilst not currently proposed, should the applicant's proposals change to include works to alter the riparian watercourse, or if works are proposed to alter the watercourse at any time in the future, consent would be required under the Land Drainage Act 1991 (and Byelaw 4). The Board recommends that adequate space (approximately 5 metres) is left flat and free from obstruction adjacent to the riparian watercourse in order to enable maintenance by future riparian owners or a designated maintenance company/contractor.

Byelaw 10: There are no Board arterial watercourses within or adjacent to the site boundary therefore Byelaw 10 does not apply

Lincolnshire County Council - Highways and SUDS:

The amended vehicular access within the public highway will need to be constructed to Lincolnshire County Council specification under a Section 184 agreement. While this requirement is referenced in the Design and Access Statement, a note should be added to the site plan so that it forms part of the approved drawings. Bin collection points must be indicated on the site plan also, as refuse vehicles will not enter private drives. Please note that residents should not be required to carry waste more than 30 m (excluding any vertical distance) to the storage point and waste collection vehicles should be able to get to within 25 m of the storage point.

Ecology Officer:

We consider the site to have potential suitability for nesting birds. Therefore, we request that a breeding bird survey is undertaken prior to commencement to ensure that no illegal disturbance or harm to nesting birds occurs during demolition and construction works.

We request that a total of 3 integrated universal nest bricks and 3 integrated bat boxes ae included with the development.

Overall, the biodiversity assessment and metric calculations appear rigorous, and we can have confidence in their conclusions. In this case the metric indicates that 10% mandatory net gain can be achieved on-site with a predicted overall gain of 114.32% in Habitat units and 14.47% gain in hedgerow units.

The ecology officer was re-consulted from 7th September to 21st September following the receipt of a bat survey; however, no further consultation responses were received from the officer.

Cllr A C Beal: No response received.

Cllr P A Redgate: No response received.

Lincolnshire Wildlife Trust: No response received.

Lincolnshire Bat Group: No response received.

Peterborough and Spalding Gliding Club: No response received.

Public Representations

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

Key Planning Considerations

Development Plan

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019 (SELLP), is 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, August 2026 are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

There are no adopted Neighbourhood Plans for the area within which the site is located.

The main issues and considerations in this case include the following:

-Principle of Development;
-Design, Layout and Impact on the Character and Appearance of the Area;
-Impact on Residential Amenity;
-Highway Safety and Parking;
-Flood Risk and Drainage;
-Biodiversity Net Gain; and
-Contamination.

These matters are assessed in turn below.

Principle of Development

Location Outside a Defined Settlement

Policy 1 of the Local Plan sets out the settlement hierarchy in respect of delivering sustainable development, which 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 need, whilst making more sustainable use of land, and to minimise the loss of high-quality agricultural plots by developing in sustainable locations and at appropriate densities.

Policy 1 expresses this sustainable hierarchy 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 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.

The site is outside any defined settlement boundary and the site is within an isolated area. Therefore, the site is within the countryside in planning policy terms. Part D of Policy 1 sets out that within 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.

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 larger service settlements. In the absence footpaths from the site, it is likely that future occupants would be reliant on the use of private cars to access services and facilities. Consequently, the proposal does not accord with Policy 1 and would not normally be considered a suitable site for new housing.

Given the proposed out of settlement location, Policy S5 of the NPPF (Principle of development outside settlements) is considered to be relevant. Policy S5 sets out that only certain forms of development should be approved outside settlements (parts a to j). The policy sets out that these forms of development "should be approved, unless the benefits of doing so would be substantially outweighed by any adverse effects".

During the determination of the application, a revised 5 Year Housing Land Assessment has been published (as of 31 March 2026). According to this assessment, South Holland can only currently demonstrate a supply of 4.6 years. As such, of relevance in this case is part j of Policy S5 which allows for the following:

"Development which would address an evidenced unmet need (including, but no limited to, development proposals involving the provision of housing where the local planning authority cannot demonstrate a five year housing supply of deliverable housing sites or scores below 75% in the most recent Housing Delivery Test), and where the development would:

i. Be physically well-related to an existing settlement (unless the nature of the development would make this inappropriate) and be of a scale which can be accommodated taking into account the existing or proposed availability of infrastructure; or

ii. Comprise major development for freight and logistics purposes which accords with policy E3."

Whilst the development would make a contribution to the area's housing land supply, it is not considered that the site is physically well-related to an existing settlement given the aforementioned distances between the site and the nearest settlement of Spalding. As such, it is not considered that the proposal would accord with Policy S5.

Furthermore, whilst positive weight is attributed to the provision of housing, particularly given the Councils recent position on housing land supply, the Class Q fallback scheme allows for the provision of 10 dwellings and the current proposal allows for 9 dwellings. As such, under either scenario the site could contribute a similar number of dwellings towards the area's supply.

As such, when viewed in isolation, the proposal is not considered to accord with Policy 1 of the Local Plan or Policy S5 of the NPPF.

Whether the Proposal Represents a Betterment over the Class Q Fallback Scheme

The application is accompanied by a Supporting Statement, within which reference is made to Class Q approval H23-0216-25 as a fall-back position. This approval allowed for the conversion of the buildings within the site to form 10 dwellings.

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). This case 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. Therefore, 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 be allowed to proceed.

The local authority considers that there is a realistic prospect that the Class Q conversion could take place. Consent was granted on 25th April 2025, and the developer has three years to complete the development. Therefore, it is necessary to consider if the current proposals offer either an enhancement to the setting or a reduction in density when compared to the fallback position. This is discussed within the remainder of this assessment.

Design, Layout and Impact on the Character and Appearance of the Area

Policy DP3 (Key principles for well-designed places) of the NPPF states that development proposals should respond to their context (the history, character and features of their site and its setting), so that they integrate with and enhance their surroundings; such as through the arrangement of development plots and buildings, the use of materials and architectural features, and the restoration, reuse and integration of heritage assets.

Policy 2 of the 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.

Policy 3 accords with the provisions of Section 12 of the NPPF, requiring development to feature 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.

One of the considerations for betterment is whether the new proposal would enhance the setting of the area. In this case, the surrounding landscape is characterised by flat and relatively open agricultural land; however, there are two dwellings located to the west of the site, two dwellings located further to the south-west of the site, and one dwelling located to the north. Overall, the site is set within a countryside setting.

The prior approval scheme allowed for the partial demolition and conversion of the buildings within the site to form 10 dwellings. Plots 1 to 4 were proposed to be detached single storey dwellings, all of which featured similar appearances. The dwellings were proposed to measure approximately 15m in length by 8m in width. The dwellings were proposed to be single storey dwellings, featuring gable end roof forms that measure 3.6m in height up to the building ridgelines, and 2.2m up to the eaves. The dwellings would have retained the existing cladding facades and roofs.

Plots 5 to 10 were proposed to be accommodated within a larger building located to the south. The retained building would measure 50m in length and 14m in width. The building would measure 6.5m in height up to its ridgeline and 4.5m up to its eaves. The external cladding and brickwork was proposed to be retained.

Despite the inclusion of domestic elements which included new windows and doors, it is considered that the converted buildings that were allowed for as part of the Class Q fallback scheme would retain a utilitarian appearance overall. Whilst the Class Q scheme was considered to be acceptable in terms of its visual impact, it is recognised that there is potentially scope to include a proposal within the site with an improved design. For example, the retained buildings would not contain any features of particular architectural merit.

The current proposal would result in the demolition of the existing buildings within the site, and their replacement with 9 dwellings. The proposed layout includes a shared driveway and the dwellings would be positioned around the driveway. Each of the dwellings is proposed to feature rear gardens.

All of the dwellings are proposed to be detached except for plots 6 and 7 which would be semi-detached. The proposed dwellings vary in terms of their overall scale and appearance. For example, Plots 2, 3, 4 and 9 would comprise single storey dwellings, whereas the remaining plots would comprise two storey dwellings.

Plots 5 and 8 would be the tallest dwellings, measuring 8.8m in height up to their ridgelines. Whilst this would be taller than the existing building where Plots 5 to 10 were proposed within the Class Q fallback scheme, it is considered that the current proposal offers some visual benefits by breaking up the built form within the site. For example, the retained building that was proposed to be converted as part of the Class Q fallback scheme for Plots 5 to 10 was of a significant scale and bulk. Whilst the current proposals would still result in built form within this area of the site, it is considered that the scale and bulk of the dwellings is preferable to the building conversion that was previously allowed for.

The proposed dwellings would feature a more domestic and residential character compared to the Class Q fallback scheme. The overall appearance of the dwellings is considered to be more attractive than the buildings that were permitted to be converted as part of the fallback scheme.

Notwithstanding this, it would be considered appropriate to limit permitted development rights within the site if permission is granted to limit further built development within the site. For example, one of the factors weighing in favour of the current proposals is the overall reduction in the bulk of the large building that would have formed plots 5 to 10. Therefore, it would be considered appropriate to limit further built development within the site that exceeds the current proposed level of built development.

Although the specific external materials are not yet confirmed, the plans show brickwork, cladding and roof tiles. It is considered that further details would need to be secured via a planning condition to ensure the materials are of a suitable quality.

Overall, it is considered that the proposal represents a betterment over the previously approved scheme for the site. As such, the proposed development would have an acceptable impact on the character and appearance of the area, in accordance with Policies 2 and 3 of the Local Plan, and Section 14 of the NPPF.

Impact on Residential Amenity

Policy P3 (Living conditions and pollution) of the NPPF sets out that development should provide healthy living conditions for occupiers and users in terms of adequate access to light and avoiding exposure to levels of air, noise, artificial light or other sources of pollution. The policy also sets out that proposals should not give rise to, or contribute to, an unacceptable level of access to daylight and sunlight for neighbouring residents and occupiers, or unacceptable levels of air, noise, artificial light, water, soil or other forms of pollution on or beyond the site.

Policies 2 and 3 of Local Plan set out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.

It is considered that sufficient internal living space and external amenity space is proposed for each of the dwellings. For example, all of the dwellings accord with the nationally described space standard.

Overall, it is considered that there would be sufficient separation distance between the dwellings within the site and the nearest dwellings to the site to prevent an unacceptable degree of overlooking.

The rear garden for plot 9 is relatively shallow in parts; however, the amount of amenity space provided is considered to be sufficient. A dwelling has been permitted to the west of plot 9, most recently under permission H23-0358-22. This dwelling would be angled to face towards the side and front of plot 8 rather than directly towards plot 9 and as such, this dwelling should not overlook the rear garden of plot 9 to an unacceptable degree.

Therefore, the proposed development would not result in an unacceptable impact on the residential amenity of neighbouring dwellings or future occupants. As such, in amenity terms, the proposal accords with Policy P3 of the NPPF and Policies 2 and 3 of the Local Plan.

Highway Safety and Parking

Policy TR6 (Assessing transport impacts) of the NPPF sets out that development proposals should only be refused on highways grounds if they would have a severe adverse impact on the transport network (in terms of capacity and congestion, including cumulative impacts), or an unacceptable impact on highway safety; taking into account any mitigation measures proposed as well as any wider network improvements, including measures to support sustainable patterns of movement.

Policy 2 of the Local Plan sets out 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.

Policy 36 and Appendix 6 of the Local Plan, set out minimum vehicle parking standards. The standards require at least two spaces for dwellings of up to three bedrooms, and three spaces for dwellings with four or more bedrooms.

It is considered that there is sufficient room for parking and turning within the site.

Lincolnshire County Council's (LCC) highways team requested that a note was added to the site layout plan clarifying that the access will be constructed to LCC's specification and as such, a note was added. The team also set out that bin collection points needed to be indicated on the site plan as refuse vehicles will not enter private drives. A bin collection area has been added to the site plan.

Therefore, the proposals would have an acceptable impact in terms of highway safety in accordance with Local Plan Policies 2, 3 and 36, and Section 15 of the NPPF.

Flood Risk

Section 18 of the NPPF sets out guidance relating to how local authorities should assess and determine applications which are subject to flood risk concerns.

Policy 2 of the Local Plan requires proposals to meet sustainable development considerations including in relation to sustainable drainage and flood risk (part 7).

Policy 4 of the Local Plan requires proposals in Flood Zones 2 and 3 to be supported by sufficient information relating to flood risks associated with the development; however, in this case the site is within Flood Zone 1.

Within the SFRA, areas across South Holland have been identified according to the level of hazard that is posed in terms of flood risk. Appendix C of the SFRA sets out guidance in terms of the minimum measures that are required according to what hazard category areas fall under. The site is not within a hazard area and as such, the SFRA does not recommend any specific mitigation in this case.

The application form indicates that the proposed means of discharging surface water is via soakaways. Whilst this is supported in principle as soakaways represent a sustainable means of drainage, it is unclear if this is feasible at this stage and as such, further details would be required to be provided via a planning condition.

Therefore, it is considered that the proposal accords with Policy 4 of the Local Plan and the intentions of the NPPF in terms of flood risk.

Biodiversity Net Gain

Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) requires developers to deliver a minimum of 10% Biodiversity Net Gain (BNG) using standardized biodiversity units measured by statutory biodiversity metrics. This is often referred to as the mandatory requirements for Biodiversity Net Gain.

"Under the statutory framework for biodiversity net gain, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met ("the biodiversity gain condition"). This objective is for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat. This increase can be achieved through onsite biodiversity gains, registered offsite biodiversity gains or statutory biodiversity credits".

The biodiversity gain condition is a pre-commencement condition. This relates to a condition that seeks, once planning permission has been granted, a Biodiversity Gain Plan that must be submitted and approved by the planning authority before commencement of the development, alongside the need to submit a Habitat Management and Monitoring Plan.

The effect of Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission is deemed to have been granted subject to the "biodiversity gain condition".

The effect of this "biodiversity gain condition" is that development granted by this notice must not begin unless:
(a) a Biodiversity Gain Plan has been submitted to the planning authority, and
(b) the planning authority has approved the plan, or
(c) the development is exempt from the biodiversity gain condition.

The current application is accompanied by a Preliminary Ecological Appraisal (PEA) and a Biodiversity Net Gain (BNG) metric calculation.

The BNG calculation indicates that the proposal can deliver a net gain of at least 10% on-site, with a predicted overall gain of 114.32% in Habitat units and 14.47% gain in hedgerow units. The council's ecology officer agrees with the calculations and conditions could be included to secure the provision of BNG.

The submitted PEA indicates that there are bird nests within some of the trees within the site and as such, a condition would be deemed appropriate to restrict works during the nesting season unless further information and mitigation measures are proposed.

The PEA also concluded that bat surveys were required as the site was deemed to contain potential roosting habitat. The application was not accompanied by an up-to-date bat survey and as such, the LPA was not provided with sufficient information to assess the proposals. LPA have a strict legal duty to consider protected species legislation before determining any planning application where wildlife impacts may reasonably arise. Although the application could have been refused due to the lack of information provided, the applicant's agent was given the opportunity to provide an up-to-date survey. The results of the survey were subsequently submitted, and bat roosts were found. As such, bat roost mitigation is required, and any development of the site must take reasonable measures to protect bats. For example, A European Protected Species Licence is required to legally permit the works. This requirement exists independently of the planning system and is required whether planning permission is needed or not, and whether this is listed as a condition of planning or not.

The ecology officer was re-consulted from 7th September to 21st September following the receipt of a bat survey; however, no further consultation responses were received from the officer. Notwithstanding this, it is considered that appropriately worded conditions could be included to secure protection measures for bats during construction works and bat mitigation measures once the development is complete. With the inclusion of such conditions, it is considered that the development would have an acceptable impact on protected species.

Contamination

Policy 30 of the Local Plan requires proposal not to be permitted if they would result in an unacceptable adverse impact upon the health and safety of the public or on land quality.

The application is not accompanied by any contamination assessment information. The council's environmental protection team have requested a contamination condition which has been agreed with the applicant's agent. With the inclusion of this condition, it is considered that the proposal accords with Policy 30 in terms of managing contamination risks.

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.

Although the proposal conflicts with Policy 1, it is considered that the proposed development would represent a betterment in comparison with the Class Q approval. As such, in line with relevant caselaw, it is considered that the benefits of the proposal outweigh the conflict with Policy 1 in this instance. The proposed development is also considered to be acceptable in terms of other relevant considerations such as highway safety, flood risk and ecology. As such, the planning balance is in favour of the proposals overall in this case.

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

Taking the above considerations into account, the proposal is considered to accord with Policies 1, 2, 3, 4, 11, 17, 28, 30 and 36 of the Local Plan, along with the identified sections contained within the NPPF. There are no significant factors in this case that indicate against the proposal and outweigh the consideration in favour of the proposal and the policies referred to above.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be approved under delegated authority.