

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H23-0407-23 **Applicant:** Mr D Ford
Proposal: Demolition of existing barn and erection of 2 detached dwellings
Location: Carters Farm Oxcroft Bank Shepeau Stow
Terminal Date: 12th October 2023

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
04	Approach to Flood Risk
11	Distribution of New Housing
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 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

SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	0	0	0	1
OTHER STATUTORY BODIES	0	0	0	2
RESIDENTS	1	0	0	0

CASE OFFICER ASSESSMENT

Proposal

Full planning permission is sought for the demolition of an existing agricultural building and erection of 2 no. 5-bed 2-storey detached dwellings.

It should be noted that the site presently has prior approval for a change of use of the existing agricultural building into 2 dwellings under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (ref. H23-1184-22).

Site Description

The building is part of a farmyard located on the eastern side of Oxcroft Bank to the south of Shepeau Stow village. It has a timber frame with corrugated metal cladding and asbestos cement profiled sheets on the roof.

Nook House is situated to the north fronting Oxcroft Bank. Nods Nook Barn is located to the north-east at the rear of Nook House, plus associated equestrian facilities beyond. Agricultural land is located immediately to the south and opposite (west).

Planning History

H23-0943-22 - Prior Approval Application - Change of use of barn to residential dwelling - Refused 21 November 2022

H23-1184-22 - Prior Approval Application - Change of use of barn to 2 residential dwellings - re-submission of H23-0943-22 - Approved 16 February 2023.

Barns to the South-East (rear)

H23-0345-22- Prior Approval Application - Change of Use of Barn into Residential Dwelling - Refused 13 May 2022.

Consultation Responses

Whaplode Parish Council

Support.

LCC Highways/SUDs

No objections subject to informatives.

South Holland Internal Drainage Board

Consent required for alteration of a watercourse under Section 23 of the Land Drainage Act, 1991 and also Byelaw 4 to provide a culverted access. Consent would also be required to discharge surface water or treated foul water to a watercourse under Byelaw 3.

Environmental Protection

Request precautionary contaminated land condition.

Lincolnshire Bat Group

Note that although no evidence of bats was found further surveys are required to confirm this (phase 2).

LCC Archaeology

No archaeological input.

Public

Resident objection received (summarised).

- Policy - Noted that this is entirely predicated on a fallback to an extant class Q consent. There is no implicit or explicit presumption in class Q that it is a steppingstone to secure new isolated dwellings in the open countryside, which would be contrary to both local and national planning policy. Can only be fallback under specific circumstances. There should be a real possibility of Class Q being implanted. It is also legitimate to look at the scale and design to seek visual or environmental impacts within the planning balance for the new dwellings, along with all material planning policy at local and national levels.
- Scale and impact - Proposed dwellings are significantly larger in scale than the permitted class Q - the units are much higher and will have a significantly increased impact on the surrounding rural landscape. In addition, the dwellings are not of a rural character and are incongruous and out of place in this rural setting. Contrary to policies 2 and 3 which seek to maintain appropriate design character and to protect landscape amenity.
- Overlooking and loss of amenity - Excessive and intrusive levels of overlooking from first floor windows on rear of the northern most plot to the private garden area of Nods Nook Barn, which is contrary to policy 3 which seeks to protect residential amenity from unacceptable impacts from new development. In addition to the loss of privacy in the garden, both plots will be able to look into a number of rooms on both ground and first floor level of Nods Nook Barn.
- Piping of drain - Altered access arrangements. Proposal to pipe and fill ditch could have a detrimental impact on local ecology and drainage - it is requested that this matter be further investigated with a phase 1 ecology report. The piping of drainage ditches is generally avoided as it is harmful to the ecology of the ditch, and fundamentally changes the appearance of the site.
- The site frontage was heavily treed, although it is noted that a number of trees have been removed recently. The application form makes reference to a tree report and arboricultural impact assessment, although these are not visible on the public access website. In addition, the application does not appear to be accompanied by a stage 1 ecology report or biodiversity net gains strategy as required by national policy. Even if the LPA considered that there is a viable and credible fallback position, it is clear that the proposal causes material harm and is contrary to policies in the local plan - particularly policies 1, 2 and 3.

Key Planning Considerations

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

- Principle of development and sustainability;
- Other material considerations such as amenity, highway safety, flood risk, contamination and ecology.

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

Furthermore, where a Neighbourhood Plan has been adopted, this alongside the adopted Local Plan, forms part of the Development Plan for the District, and must be considered when assessing development proposals. In this instance, no relevant neighbourhood plans have been adopted. The Authority is able to demonstrate a supply of deliverable sites equivalent to in excess of 5 years through the latest Housing Land Supply Assessment.

Principle of Development and Sustainability

The site is outside a settlement boundary as defined in the SELLP. 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 2 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 2 dwellings (ref. H23-1184-22). 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 a modern utilitarian farm building into 2 dwellings. The approved scheme has few merits in design terms. The current proposal is for 2 no. dwellings, the design and appearance of which is a modern interpretation of a range of traditional two storey barns. Although larger and higher than the existing utilitarian building, they constitute a better scheme from a design perspective.

On this basis, it is considered that the proposed dwellings would deliver some benefits to the appearance of the site compared to the fallback position and the fact that the existing building is of utilitarian appearance. 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 (2023).

Nook House is situated to the north fronting Oxcroft Bank. Nods Nook Barn is located to the north-east at the rear of Nook House, plus associated equestrian facilities beyond. Agricultural land is located immediately to the south and opposite (west).

At first floor level, the dwelling on the northernmost plot has bedroom windows on its rear (SE) elevation and a bathroom window on its side (NE) elevation. It is separated from Nook House and Nods Nook Barn by a private roadway serving the aforementioned, plus the farmyard at the rear. Nook House has its principal elevations facing the front and rear and has a high leylandii hedge along its south-western boundary. Nods Nook Barn has openings on its south-western/north-eastern elevations associated with primary rooms such as a living room, kitchen, bedrooms, etc, plus a private garden and 2 metre plus native hedging along its south-western boundary adjoining the farmyard.

Nook House is situated approximately 14 metres from the side elevation of the northernmost plot, which has a bathroom window only at first floor level. The boundary of Nods Nook Barn adjoining its private garden area is approximately 11 metres from the nearest bedroom window serving bed 2 and the converted barn itself some 19 metres. Also, overlooking would be oblique, plus a hedge exists at ground level along with a new close boarded fence serving the development.

Taking all factors into account it is considered that the amenity of neighbouring residents would not be materially harmed 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 part of 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 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 principle of two residential units has already been established. The form of development proposed requires the formation of a new vehicle access crossing in the centre of the site's frontage. This would not be in a position where visibility would be obstructed for drivers emerging from the site into the highway and would therefore be acceptable. The existing vehicle access is to be removed and returned to grass verge.

Adequate space is to be provided within the site for the parking and manoeuvring of residents' vehicles. In view of the above and having given due regard to the appropriate local and national planning policy guidance (in particular the National Planning Policy Framework), Lincolnshire County Council (as Highway Authority and Lead Local Flood Authority) has concluded that the proposed development would not be expected to have an unacceptable impact upon highway safety

and therefore does not wish to object to this planning application.

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

Flood Risk

Policy 4 of the South East Lincolnshire Local Plan relates to flood risk and indicates that development proposed within an area at risk of flooding (Flood Zones 2 and 3 of the Environment Agency's flood map or at risk during a breach or overtopping scenario as shown on the flood hazard and depths maps in the Strategic Flood Risk Assessment) will be permitted in instances where specific criteria is met.

The site is located within Flood Zone 3 on the Environment Agency Maps. The sequential test therefore needs to be applied.

It is worth noting that large parts of the district of South Holland lie within Flood Zone 3. It is therefore necessary to use the refined flood risk information (Hazard and Depth maps) within the South East Lincolnshire Strategic Flood Risk Assessment (2017) as a basis to apply the sequential test. It provides an overview of how flood risk has been considered in shaping the proposals of the Local Plan, including the spatial strategy and the assessment of housing and employment sites.

In this case, the Residual Flood Hazard Map (Year 2115) accompanying the SFRA indicates that the site is within an area of no hazard. The proposal therefore passes the sequential test regarding flood risk.

Annex 3 (Flood risk vulnerability classification) of the National Planning Policy Framework, 2023 defines residential development as "more vulnerable" in flood risk terms. Applying the Flood Risk Vulnerability Classification in Table 2 of NPPG, an exception test is required because the site is in Flood Zone 3. It is a method to demonstrate and help ensure that flood risk to people and property will be managed satisfactorily, while allowing necessary development to go ahead in situations where suitable sites at lower risk of flooding are not available. The NPPF and the PPG set out two elements to the Exceptions Test.

First, proposed development is required to show that it will provide wider sustainability benefits to the community that outweigh flood risk, and second, that it will be safe for its lifetime without increasing flood risk elsewhere and, where possible, will reduce flood risk overall. This is aimed at allowing necessary development to go ahead in situations where suitable sites at lower risk of flooding are not available whilst helping ensure that flood risk to people and property will be managed satisfactorily.

In terms of the first element, the site is within an area of no hazard within the SFRA. Moreover, there is a fallback position in the sense that prior approval has previously been given for a residential conversion of the existing building to two dwellings. This should be given significant weight.

In terms of flood mitigation measures required by virtue of part 2 of the exceptions test, the application is accompanied by a flood risk assessment which recommends that finished floor levels (FFLs) be set 0.3m above surrounding ground level with 0.3m of flood resilient construction above FFL.

Concluding, therefore, the proposal satisfactorily complies with SELLP Policy 4 and advice within the NPPF in terms of flood risk, subject to a condition.

Contamination

The application is accompanied by a Screening Assessment form. This has been assessed by Environmental Protection, who request a precautionary contaminated land condition.

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 application is accompanied by a Preliminary Ecological Appraisal (Phase 1 Ecology Survey). It is the first stage in assessing the ecological value of a site and enables identification of features of particular ecological interest. If it highlights any evidence or potential for protected species or notable habitats to be impacted by the proposals, further Phase 2 protected species surveys are normally required to fully assess the ecological impact of a development.

The PEA report indicates that there may be a local potential significant ecological impact in respect of bats and possibly amphibians within the frontage ditch. In terms of the latter, the applicant no longer proposes to culvert the frontage ditch, other than the access point. The report goes on to stress that no further surveys are required other than a single survey for roosting bats in respect of the barn (low potential) and that two further surveys would be necessary if bats were found to be roosting.

In light of the above, a Phase 2 Bat Survey was recently carried out. Its findings confirmed no bat evidence within the barn and that the building had low bat roosting potential.

SELLP Policy 28 indicates that all development should provide an overall gain in biodiversity. The PEA Report and Phase 2 Bat Survey recommend enhancement measures which can be addressed by means of a condition. Although it is proposed to remove a Leylandii hedge along the frontage it has limited biodiversity benefits. New native hedging is proposed at the rear.

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

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 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 the existing agricultural building into 2 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 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 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 and highway safety grounds. Flood risk, 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

Based on the assessment detailed above, it is recommended that the proposal should be approved conditionally under Delegated Authority.