

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H23-0717-23 **Applicant:** Mr D Ford

Proposal: Residential development (3 Dwellings) involving the demolition of existing buildings

Location: Buildings Adjacent Carlton Lodge Oxcroft Bank Shepeau Stow

Terminal Date: 9th 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
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	1

CASE OFFICER ASSESSMENT

Proposal

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

It should be noted that the site presently has prior approval for a change of use of the existing agricultural buildings into 3 dwellings under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (ref. H23-0335-23).

Site Description

The buildings (packing shed and cold store) form part of an agricultural holding located on the eastern side of Oxcroft Bank to the south of Shepeau Stow village. Glasshouses are situated to the rear.

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.

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H23-0089-23 - Prior Approval - Conversion of agricultural buildings to form 5 dwellings - Withdrawn 20 March 2023.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

Associated buildings to South

H23-1184-22 - Prior approval - Change of use of barn to 2 residential dwellings (Mr & Mrs D Ford) - re-submission of H23-0943-22 - Approved 16 February 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.

Note the presence of a watercourse which is not maintained by the Board (a riparian watercourse) within the site boundary and that works are proposed to alter this watercourse including installation of a culvert to allow for construction of new access to the site. To enable this proposal consent is required under Section 23 of the Land Drainage Act 1991 (and byelaw 4).

Environmental Protection

Request precautionary contaminated land condition.

Lincolnshire Bat Group

As the buildings appear to be all steel the potential for bat use would probably be assessed as low. Developers should follow national guidelines re: biodiversity and protected species.

LCC Archaeology

No archaeological input required.

Public

No comments received.

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 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 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.

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 buildings into 3 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 3 dwellings (ref. H23-0335-23). 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 3 dwellings. The current proposal is for 3 no. dwellings with a layout and design concept loosely based upon a range of traditional barns.

Given the aforementioned, 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 buildings are 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).

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. 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.

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 three units of residential development 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

The South East Lincolnshire Strategic Flood Risk Assessment (SFRA) 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. Policy 4 of the South East Lincolnshire Local Plan is clear in 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 to which the application relates is within Flood Zone 2, an area with a medium probability of flooding. However, the Residual Flood Hazard Map for the 1% fluvial and 0.5% tidal event accompanying the South East Lincolnshire Strategic Flood Risk Assessment, 2017 indicates that it outside the area of risk. The site is therefore sequentially suitable, also having regard to the fallback position.

Nevertheless, the proposal is a "more vulnerable development". Consequently, the Flood Risk Assessment recommends that finished floor levels be 300mm above existing ground level and that floor resistant/resilient construction be incorporated. This is considered acceptable.

Contamination

The application is accompanied by a Phase 1 Geo-environmental Desk Study which indicates that there were no notable features present in the context of land contamination other than inert made ground. It concludes that there is an overall low risk associated with the site. On this basis, Environmental Protection have requested an unanticipated 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 Preliminary Ecological report accompanying the application indicates that the building on site has negligible bat roosting potential and there was no evidence of breeding birds. It recommends the incorporation of roosting/nesting facilities for bats and birds. This can be addressed by means of a condition.

The proposal satisfactorily complies with Policies 3 and 28 in terms of ecology.

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 buildings into 3 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 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

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