DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H23-0794-21**	**Applicant:**	**Mr Dickens**
Proposal:	Demolition of existing buildings and erection of 4 dwellings		
Location:	Orchard Farm Dowsdale Bank Shepeau Stow		
Terminal Date:	19th November 2021		

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
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 3. Plan Making;
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
IAN MARSHMAN, HISTORIC ENVIRONMENT OFFICER	0	0	0	1
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	2
NORTH LEVEL INTERNAL DRAINAGE BOARD	0	0	0	2
SHDC INTERNAL	0	0	0	2
RESIDENTS	0	0	0	1

CASE OFFICER ASSESSMENT

PROPOSAL

Full planning permission is sought for the demolition of existing agricultural buildings and the erection of 2 no. 4 bed houses and 2 no. 5 bed houses (total 4).

It should be noted that the site presently has prior approval for a change of use of 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. H23-0594-20). They would consist of one large dwelling of just under 465sqm and 4 dwellings of just under 100sqm.

SITE DESCRIPTION

The buildings, which are part brickwork and part fibre cement, are located on the eastern side of Dowsdale Bank and are currently part of a farmyard. An existing access is located immediately to the north. The nearest dwellings are "Willowdale" and "Sunnydale" located to the south-west.

RELEVANT PLANNING HISTORY

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

REPRESENTATIONS

Whaplode Parish Council

Support.

LCC Highways/SUDs

No objections subject to highway informatives.

North Level Internal Drainage Board

No objections.

South Holland Internal Drainage Board

Recommend drainage strategy.

Environmental Protection

Noise - No objections.

Contamination - Request standard land contamination condition.

LCC Archaeology

No archaeological impact.

Public

Comments received (summarised):
Request installation of swift nesting boxes.

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 4 dwellings are necessary in this particular 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 Crowland, Spalding, Wisbech and Peterborough. 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 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. 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 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. H23-0594-20). 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 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 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).

The site is presently part of an existing farmyard, which would be retained at the rear. To protect the amenity of future occupiers it is recommended that 2 metre high acoustic fencing be erected along the rear boundary. Acoustic glazing should also be installed on the rear elevation within noise sensitive rooms such as living rooms and bedrooms.

The nearest dwellings are "Willowdale" and "Sunnydale" located to the south-west. "Willowdale" has a garage nearest the site and high hedging/planting along part of the common boundary. No resident objections have been received. The houses on plots 1 and 2 have bedroom, landing, en-suite and bathroom windows on their south-western elevations at first floor level and are located away from the boundary. 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, etc, subject to satisfactory boundary screening.

The proposal therefore complies with Policies 2 and 3 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 upgraded to gain vehicular access to the dwellings and farmyard at the rear via a gated access. Sufficient 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 and within an area designed 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.

Existing trees should be retained on site where possible and ecology measures incorporated within the new development.

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

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 4 dwellings are necessary in this particular location. Moreover, the site is physically divorced from Shepeau Stow and larger service settlements such as Crowland, Spalding, Wisbech and Peterborough. 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 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 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 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 justifies granting planning permission for the proposal.

There are no objections to the scheme on amenity, highway safety and flood risk grounds.

Conclusion

The planning balance lies in favour of the proposal.

Additional Considerations

Public Sector Equality Duty

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

discharging its functions) to:
A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

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

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

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

Human Rights

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

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

RECOMMENDATION

The application be approved under delegated powers.

The application was referred to Chairman's Panel on 12 November 2021 where it was agreed the decision may be delegated.