

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Development Manager

To: Planning Committee - 18 December 2019

(Author: David Gedney - Senior Planning Officer)

Purpose: To consider Planning Application H23-1024-19

Application Number: H23-1024-19

Date Received: 16 October 2019

Application Type: FULL

Description: Erection of earth sheltered dwelling

Location: Homeland Eaugate Road Whaplode Drove

Applicant: Mr S Jeffs

Agent: John Dickie Associates

Ward: Whaplode and Holbeach St Johns

Ward Councillors: Cllr A C Beal
Cllr P A Redgate

You can view this application on the Council's web site at

<http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H23-1024-19>

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 An objection has been received from a SHDC employee.

2.0 PROPOSAL

2.1 Full planning permission is sought for the erection of an earth sheltered home (gross footprint 350 sq m) in connection with a business operation. The scheme includes workspace consisting of a small integral kennel block and training room.

2.2 The application is accompanied by a Design and Access Statement and also a Sustainability Report and Schedule of Renewable Energy Assets. The Design and Access Statement contends that the proposal is a unique, truly outstanding and innovative earth sheltered dwelling that conforms with Paragraph 79. It also states that the design takes due and proper account of the defining characteristics of the local area, including local or regional building traditions and materials. The Sustainability Report makes reference to sustainability principles that have been used to formulate the "bermed" design solution, including an insulated concrete superstructure, potable water supply, Biorock sewage treatment plant, solar arrays, air source heat pumps, wood burners and rainwater harvesting.

3.0 SITE DESCRIPTION

3.1 The site (some 0.18 ha) is an area of grassland located in open countryside on the northern side of Eaugate Road. Its boundaries are delineated predominantly by hedging and a number of mature trees, including along the frontage. A bungalow is located to the east beyond a track and a large house (Homelands) is situated to the west.

4.0 RELEVANT PLANNING POLICIES

4.1 **The Development Plan**

South East Lincolnshire Local Plan, March 2019

Policy 1 - Spatial Strategy
Policy 2 - Development Management
Policy 3 - Design of New Development
Policy 4 - Approach to Flood Risk
Policy 10 - Meeting Assessed Housing Requirements
Policy 11 - Distribution of New Housing
Policy 17 - Providing a Mix of Housing
Policy 19 - Rural Exception Sites
Policy 28 - The Natural Environment
Policy 31 - Climate Change and Renewable and Low Carbon Energy
Policy 36 - Vehicle and Cycle Parking
APPENDIX 6 Parking Standards

If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, Section 38 (6) to the Town and Country Planning Act as amended by the 2004 Act states that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

National Guidance

National Planning Policy Framework (NPPF), 2019

Sections 2, 4, 5, 6, 9, 11, 12, 14 and 15

Planning Practice Guidance (PPG)

5.0 **RELEVANT PLANNING HISTORY**

5.1 H23-0409-11 - O/A - Residential development - erection of one dwelling - Refused 27 July 2011 - Appeal dismissed 20 June 2012.

H23-0985-13 - Full - Erection of dwelling, work space, double garage and associated hard and soft landscaping - Refused 29 January 2014 - Appeal dismissed 29 July 2014.

H23-0172-15 - LDC - Proposed swimming pool - Approved 9 April 2015.

H23-0747-17 - Full - Proposed dwelling (live/work), outbuildings and solar panels - Refused 2 November 2017.

H23-0047-18 - Full - Erection of dwelling and outbuildings (re-submission of H23-0747-17) - Refused 27 April 2018.

6.0 **REPRESENTATIONS**

6.1 Whaplode Parish Council

Support. No further comment.

6.2 Ward Councillor

Cllr A Beal - Whilst out of build area, believes the proposal may meet the exemplar guidelines and is worthy of extended debate at a forthcoming full Planning Committee.

6.3 LCC Highways/SUDS

Request conditions.

6.4 Planning Policy

The proposal is contrary to Planning Policy 1, Spatial Strategy, of the SELLP, and there are no material considerations that should outweigh this consideration.

6.5 SHDC Environmental Protection (Contamination)

No comments with respect to land contamination. Recommend suitable advice from a competent water engineer concerning water supply.

6.6 SHDC Environmental Protection (Noise)

No objections

6.7 Public

Resident objections received (summarised):

- Site outside a settlement boundary in open countryside; Council has an up-to-date Local Plan (2019) and a 5 year housing land supply.
- The Local Plan sets out policies which seek to avoid new dwellings in the countryside unless there is a specific need. In this case, no evidence of a specific need, other than a general preference for the applicant to live 'off grid', has been provided. Out of character;
- If the application is to be considered in relation to NPPF para 79 a) then the applicant needed to provide evidence to demonstrate that it is essential for the dwelling to be located in the rural area.
- If the application is considered in relation to NPPF para 79 e) then the highest levels of design should be demonstrated. Proposal not of 'exceptional quality', 'truly outstanding' or 'innovative' and fails to reflect the highest standards in architecture. The development is also of limited visual presence such that it would not 'significantly enhance its setting' and views of the property from the north would be of windows which would be highly visible at night and would detract from the intrinsic quality of the countryside.
- The NPPF has a presumption in favour of sustainable development (para 11), seeks to protect the intrinsic character of the countryside (para 131 and 170) and minimise reliance on the private motor vehicle (para 103) within the overarching aim to 'meet the needs of the present without compromising the ability of future generations to meet their own needs' (para 1). The remote location of the dwelling fails to achieve an outstanding or innovative standard of design, is not in a sustainable location which would result in a reliance on the private motor vehicle for day-to-day journeys negating any 'green' credentials, would result in an adverse impact on the appearance of the countryside and would not fit in with the overall form and layout of their surroundings.
- Removal of established trees; Construction noise; Traffic hazard, including heavy plant; Light pollution; Lack of privacy; Set a precedent.

6.8 Information from Applicant (summarised)

The proposal is a unique, truly outstanding and innovative earth sheltered dwelling that conforms with Paragraph 79. The design takes due and proper account of the defining characteristics of the local area, including local or regional building traditions and materials. Sustainability principles have been used to formulate the "bermed" design solution.

The site is not designated as a Site of Special Scientific Interest; Green Belt; Local Green Space; an Area of Outstanding Natural Beauty; within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding), it is therefore submitted that the "presumption in favour of sustainable development" can be applied in full - subject to any adverse impacts not significantly and demonstrably outweighing the benefits.

The planning system should recognise the intrinsic character of the countryside and support the transition to a low carbon future whilst encouraging the effective use of land by reusing land that has been previously developed provided it is not of high environmental value. This is the balancing exercise that needs to be undertaken in the consideration of this application.

7.0 **CONSIDERATIONS**

7.1 **Planning Considerations**

- 7.2 The main issues in this case are:
- Whether the appeal site would be suitable for a dwelling, having regard to policies for the location of new housing, accessibility to services and facilities, and the character and appearance of the area;
- Other material considerations such as Amenity, Highway Safety, Flood Risk and Ecology.
- 7.3 Housing Policy/Sustainability
- 7.4 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.
- 7.5 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.
- 7.6 SELLP Policy 1 directs developments within settlement boundaries. It defines Whaplode Drove as an area of development restraint or "Other Service Centre and Settlement". Development within the settlement is normally limited to committed sites and infill. Policy 1 indicates that development in the countryside will be permitted that is necessary to such a location.
- 7.7 In terms of the above, it has not been demonstrated that a dwelling is necessary in this particular location, for example, in conjunction with a rural business. The current application includes few details of the applicant's business which is understood to involve the training of gun dogs. It has not been demonstrated that there is an essential or functional need for a dwelling in this particular location in the countryside.
- 7.8 Also, no evidence has been submitted indicating that the business would be viable and sustain the cost of the new building. The applicant has previously indicated that there is a lack of appropriate alternative premises in the requisite rural setting. However, no conclusive evidence has been submitted indicating that this is the case. The applicant previously sold Homeland and there is evidence that there are existing properties within the general area that would be available to rent or buy and be capable of fulfilling the needs of the enterprise. Although it is appreciated that the applicant owns the land this is not considered to be sufficient justification.
- 7.9 Policy 1 also indicates that development will be permitted in the countryside where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits. Addressing this matter:
- 7.10 An Economic Role - In considering the economic benefits of the development, it is stated within the Design and Access Statement that the development, "will enable a well established rural business to endure and indeed expand". The statement goes on to suggest that this will be a 'live work' property and should allow for the business to grow. It is understood that the applicant trains gun dogs. However, as previously indicated, no detailed information has been submitted with the application indicating why the business needs to be in this specific location, other than the fact that the applicant owns the land. Also, it gives no clear indication of what economic benefits it would bring.
- 7.11 A Social/Community Role - The proposal would make a small contribution towards the supply of housing required to meet the needs of present and future generations. However, whilst the site is not isolated, it is not closely related to an existing defined settlement limit and is not readily accessible to existing local services and facilities. Although it is on a bus route it is infrequent. In locational terms, therefore, it is not considered to be appropriate for housing.
- 7.12 An Environmental Role - The proposal would have a low carbon footprint. However, this would be offset by the fact that future occupiers would be likely to have a day-to-day reliance on the use of motor vehicles to access local services and the majority of their day-to-day needs, contrary to the requirements of the environmental role of planning (para 103). It would also be contrary to core planning principles within paragraph 17 of the Framework.
- 7.13 Moreover, the site is located within the countryside where existing development is well spaced. Notwithstanding the characteristics of the site the proposed earth sheltered dwelling would still

be visible and would have a rather alien appearance within the flat fenland landscape. It would be out of character with and consolidate existing development and would also domesticate and materially change the present rural character of the site. Also, any impact on the intrinsic quality of the countryside should take into account visibility of the site when internally lit. As such, it would be significantly harmful to the prevailing rural character of the countryside.

- 7.14 It is noted that the applicant received a Lawful Development Certificate for erection of a swimming pool in April 2015. However, he no longer owns Homeland so could no longer erect a pool under permitted development.
- 7.15 The proposal is not, therefore, in accordance with Policy 1 of the South East Lincolnshire Local Plan, 2019. This policy is in accordance with advice within the Framework. Paragraph 58 indicates that new development should respond to local character, whilst paragraphs 131 and 170 seek to protect the intrinsic character of the countryside. Paragraph 103 indicates that development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offer a genuine choice of transport modes.
- 7.16 Paragraph 79 of the Framework states that planning policies and decisions should avoid the development of isolated homes in the countryside unless certain circumstances apply. They include the following:
a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;
e) the design is of exceptional quality, in that it is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area."
- 7.17 Firstly, it needs to be assessed whether the proposal falls within paragraph 79. It cannot be applied if the dwelling is not isolated. The word isolated is not defined in the Framework. However, in *Braintree District Council v SSCLG & Ors* (2017) the judge found that "isolated" should be given its ordinary meaning of "far away from other places, buildings or people; remote". The Appeal Court Judge held that isolated "simply connotes a dwelling that is physically separate or remote from a settlement". He goes on to stress that this is "a matter of fact and planning judgment for the decision-maker" in the particular circumstances of the case in hand.
- 7.18 For the purposes of the Framework, the site cannot be considered isolated because, although obviously rural, there are dwellings nearby and this site is within a loose cluster that characterises this part of Eaugate Road.
- 7.19 In terms of the special circumstances set out in paragraph 79 of the Framework, part (a), refers to a rural worker and the needs of a farming enterprise. As previously indicated, there is no proof or evidence in this case. There is no evidence that the 'live-work' unit needs to be in this location. Criteria (b) (c) and (d) refer to heritage assets and existing buildings, issues that do not apply to this case.
- 7.20 In terms of part (e), it would have to be that the design is of exceptional quality in that it: is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area
- 7.21 The Design and Access Statement indicates that the design is a unique, truly outstanding and innovative earth sheltered dwelling. Whilst the environmentally sustainable design approach is commendable, the indicative design of the proposal is relatively simple in form with a basic internal layout and the features proposed are relatively well known techniques for achieving sustainable construction. The mere application of well-known building techniques and disguising the dwelling under a contoured earth sheltered roof is not sufficient to demonstrate 'truly outstanding' or 'innovative design'. The covering with earth effectively camouflages the development such that it has does little to enhance its setting and, if anything, is essentially a massive mound/hill that is not sensitive to the flat farm countryside characteristics of the local area. Consequently, the proposal is not considered to be of exceptional quality or of truly outstanding innovative design.

- 7.22 Therefore, it is considered that the proposal fails to meet the exceptions provided for by Paragraph 79, even if it were to be considered that that paragraph should be engaged.
- 7.23 The Design and Access Statement makes reference to a recent approval (reference H20-0882-17) under Section 79. However, the application adjacent to the existing Lift and Shift business was for a 'passivehaus' design dwelling on brownfield land adjacent to an existing operational business premises. Each case should be assessed on its own merits.
- 7.24 Amenity
- 7.25 When the previous application was considered it was indicated that there could be up to 5 dogs at the facility at any one time - three of which would be owned by the applicant. The nature and level of the activity is considered to be such that the amenity of nearby residents would not be materially harmed in terms of noise and disturbance. Nor would the proposal harm the amenity of nearby residents in terms of overlooking, lack of privacy, overbearing effect, etc. Environmental Protection has raised no objections on noise/disturbance grounds.
- 7.26 Highway Safety
- 7.27 The County Highways Authority does not wish to restrict the grant of permission on highway safety grounds subject to a construction management condition.
- 7.28 Other Material Considerations
- 7.29 Flood Risk - The site is within Flood Zone 1 (Low Risk) as defined on the Environment Agency Flood Maps. The Strategic Flood Risk Assessment identifies it as "No Hazard".
- 7.30 Ecology - Trees front the site and there is also perimeter hedging. A protected species condition could be imposed if permission was forthcoming.
- 7.31 Conclusion
- 7.32 The proposal would make a small contribution to the supply of housing required to meet the needs of present and future generations within the district and its design would also have a low carbon footprint. It may also bring small economic benefits to the area. However, these factors are outweighed by the harm that the proposal would cause in terms of other social and environmental factors such as the distance from local services and facilities, reliance upon the motor car and the development's effect upon the character and appearance of the countryside.
- 7.33 The site is located within the countryside where existing development is well spaced. Notwithstanding the design of the property the proposed earth sheltered dwelling would be visible and would have a rather alien appearance. It would be out of character with and consolidate existing development and would also domesticate and materially change the present rural character of the site. As such, it would be significantly harmful to the prevailing rural character of the countryside.
- 7.34 The site is located within the countryside where existing development is well spaced. Notwithstanding the characteristics of the site the proposed earth sheltered dwelling would still be visible and would have a rather alien appearance within the flat fenland landscape. It would be out of character with and consolidate existing development and would also domesticate and materially change the present rural character of the site. Also, any impact on the intrinsic quality of the countryside should take into account visibility of the site when internally lit. As such, it would be significantly harmful to the prevailing rural character of the countryside.
- 7.35 The site is not, therefore, considered to be a suitable site for housing with particular regards to the principles of sustainable development and the protection of the rural character of the countryside. It is, therefore, contrary to Policy 1 of the South East Lincolnshire Local Plan, 2019. This policy is in accordance with advice within the National Planning Policy Framework. Paragraphs 127 and 131 indicate that new development should respond to local character, whilst paragraph 170 seeks to protect the intrinsic character of the countryside. Paragraph 103

indicates that development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offer a genuine choice of transport modes. Paragraph 79 is not considered to be applicable in this case because the site is not regarded as "isolated".

7.36 Paragraph 79 of the Framework exceptionally makes provision of isolated homes in the countryside, where they are for rural workers to live permanently at or near their place of work in the countryside, and also for dwellings of exceptional or innovative design. However, it is not considered applicable in this case because the site is not isolated. Even if paragraph 79 was to be engaged it has not been demonstrated that there is an essential need for a rural worker in this specific location. Moreover, the design of the dwelling is not considered to be exceptional, in that it is truly outstanding or innovative.

7.37 **Additional Considerations**

7.38 Public Sector Equality Duty

7.39 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.

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

7.41 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.

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

7.43 Human Rights

7.44 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).

7.45 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.

8.0 **RECOMMENDATIONS**

8.1 **Refuse Permission for the reason listed in Section 9.0 of this report.**

9.0 REASONS FOR REFUSAL

1. The proposal would make a small contribution to the supply of housing required to meet the needs of present and future generations within the district and its design would also have a low carbon footprint. It may also bring small economic benefits to the area. However, these factors are outweighed by the harm that the proposal would cause in terms of other social and environmental factors such as the distance from local services and facilities, reliance upon the motor car and the development's effect upon the character and appearance of the countryside.

the site is located within the countryside where existing development is well spaced. Notwithstanding the characteristics of the site the proposed earth sheltered dwelling would still be visible and would have a rather alien appearance within the flat fenland landscape. It would be out of character with and consolidate existing development and would also domesticate and materially change the present rural character of the site. Also, any impact on the intrinsic quality of the countryside should take into account visibility of the site when internally lit. As such, it would be significantly harmful to the prevailing rural character of the countryside.

The site is not therefore considered to be a suitable site for housing with particular regards to the principles of sustainable development and the protection of the rural character of the countryside. It is therefore contrary to Policy 1 of the South East Lincolnshire Local Plan, 2019. This policy is in accordance with advice within the National Planning Policy Framework. Paragraphs 127 and 131 indicate that new development should respond to local character, whilst paragraph 170 seeks to protect the intrinsic character of the countryside. Paragraph 103 indicates that development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offer a genuine choice of transport modes. Paragraph 79 is not considered to be applicable in this case because the site is not regarded as "isolated".

Paragraph 79 of the Framework exceptionally makes provision isolated homes in the countryside where they are for rural workers to live permanently at or near their place of work in the countryside and also for dwellings of exceptional or innovative design. However, it is not considered applicable in this case because the site is not isolated. Even if paragraph 79 was to be engaged it has not been demonstrated that there is an essential need for a rural worker in this specific location. Moreover, the design of the dwelling is not considered to be exceptional, in that it is truly outstanding or innovative.

Background papers:- Planning Application Working File

Lead Contact Officer

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Appendices attached to this report: Appendix A - Plan A

