

[07] Full Planning Permission

S/183/01958/ 23

APPLICANT: Mr. M. Hall,

VALID: 04/10/2023 **AGENT:** Origin Design Studio Ltd,

PROPOSAL: Planning Permission - Erection of 2 no. dwellings.

LOCATION: MILL FARM, LEAGATE ROAD, GIPSEY BRIDGE, BOSTON, PE22
7DA

1.0 REASONS FOR COMMITTEE CONSIDERATION

1.1 The application is referred to Planning Committee for reasons of transparency because the applicant is a close relative of a District Councillor (Councillor Alex Hall).

2.0 THE SITE AND SURROUNDINGS

2.1 The application site lies in the open countryside in the parish of GipseY Bridge and consists of two agricultural buildings set in an open farm yard. There are mature trees and hedging along the front boundary of the site which restricts views into the site. There is a board fence along the northern boundary of the site and the other boundaries are open into the adjoining agricultural fields. Adjoining the site to the north is a detached residential dwelling. The building in the northern part of the site is a corrugated sheet building with a brick base and corrugated sheet roof, and the building in the centre of the site is a partially open sided pole barn currently used for the storage of agricultural machinery and straw.

2.2 The site is located in the open countryside and is surrounded by agricultural open fields with the exception of the adjoining dwelling to the north and some sparsely located dwellings on the opposite side of the road to the south.

2.3 There is an existing access in the southwestern corner of the application site.

2.4 The site is located in Flood Zone 3.

3.0 DESCRIPTION OF THE PROPOSAL

3.1 The proposal is for the erection of two dwellings and construction of a vehicular access with the existing southern agricultural building to be demolished and the northern one to be retained.

3.2 The dwellings are both two storey and face the road. Each dwelling would have a separate access off Mill Road with the southern plot utilising the existing access into the site.

3.3 It is proposed to retain the landscaping along the frontage of the site, except for the formation of the access to the northern plot.

4.0 CONSULTATION

4.1 Set out below are the consultation responses that have been received on this application. These responses may be summarised and full copies are available for inspection separately. Some of the comments made may not constitute material planning considerations.

Publicity

4.2 The application has been advertised by means of a site notice and neighbours have been notified in writing.

Consultees

4.3 PARISH COUNCIL - Support

4.4 LCC HIGHWAYS AND LEAD LOCAL FLOOD AUTHORITY - No objections

4.5 ENVIRONMENTAL SERVICES (Environmental Protection) - No response received at the time of writing this report.

4.6 ENVIRONMENTAL SERVICES (Drainage) - No response received at the time of writing this report.

4.7 ENVIRONMENTAL SERVICES (Contamination) - Site is agricultural so could have contaminants present. Plus there is an identified area of infilled land on the site which requires investigation. Recommend contamination conditions are attached to any approval.

4.8 WITHAM FOURTH DISTRICT INTERNAL DRAINAGE BOARD - Sets out a number of byelaws for the attention of the applicant.

4.9 ENVIRONMENT AGENCY - No objection subject to a condition being attached to any permission regarding mitigation measures.

Neighbours

4.10 One third party representation received regarding the protection of swifts.

4.11 The Ward Councillor is aware of the application via the Weekly List.

5.0 RELEVANT SITE HISTORY

5.1 S/183/1818/23 - Class Q prior approval granted for the conversion of agricultural building into 3no. dwellings. (This approval relates to the building in the northern part of the site)

- 5.2 S/183/1210/23 - Planning permission refused by planning committee, as per officer recommendation, for the erection of 2no. two storey dwellings and construction of a vehicular access, existing agricultural buildings to be demolished.

The reasons for refusal were:

1. The proposal is for the erection of two dwellings in the open countryside, outside of a recognised settlement, with no footpath or public transport links. The site therefore amounts to an unsustainable location for residential development and does not comply with the housing policies of the East Lindsey Local Plan and the aims of the National Planning Policy Framework (NPPF), nor does the proposal amount to an exception as outlined in paragraph 80 of the NPPF. Although the existing site is occupied by agricultural buildings, with one having prior approval to be converted into a dwelling, there is no "realistic" fallback position that this scheme would be developed, and no evidence has been submitted to show how the existing building could be converted into more than one dwelling which further shows there is no "realistic" fallback position. Notwithstanding this, the proposal represents unsustainable development and is contrary to SP1, SP2, SP3 and SP4 of the East Lindsey Local Plan and paragraph 80 of the National Planning Policy Framework.
 2. The application site lies in Flood Risk Zone 3, a high category of flood risk. The application has failed to demonstrate that the proposal passes the Sequential Test and prove that there are no other reasonably available sites for development at a lesser risk of flooding as required by paragraph 162 of the National Planning Policy Framework which aims to direct new development away from areas of high flood risk to areas of lower flood risk. Moreover, the proposal does not comply with SP16 which seeks to support housing in inland flood risk areas where sites are brownfield and have become disused and are in need of regeneration.
- 5.3 S/183/0722/22 - Prior Approval refused for the conversion of the building to change from agricultural use to provide a dwelling under Class Q (this application relates to the building in the southern part of the site)
- 5.4 S/183/1451/21 - Prior Approval not required in relation to the conversion of the building to change from agricultural use to provide a dwelling under Class Q (this application relates to the building in the northern part of the site)

6.0 PLANNING POLICY

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance

with the development plan unless material considerations indicate otherwise. The Development Plan comprises of the East Lindsey Local Plan (adopted 2018), including the Core Strategy and the Settlement Proposals Development Plan Document; and any made Neighbourhood Plans. The Government's National Planning Policy Framework (NPPF) is a material consideration.

East Lindsey Local Plan

SP1 - A Sustainable Pattern of Places
SP2 - Sustainable Development
SP4 - Housing in Medium and Small Villages
SP10 - Design
SP16 - Inland Flood Risk
SP22 - Transport and Accessibility
SP25 - Green Infrastructure

National Planning Policy Framework

7.0 OFFICER ASSESSMENT OF THE PROPOSAL

Main Planning Issues

7.1 The main planning issues in this case are considered to be:

- **Principle of development when considering local and national policy;**
- **Fallback position;**
- **Impact on character of area;**
- **Impact on neighbours;**
- **Flood risk and the Planning Balance;**
- **Legal matters.**

Principle of development when considering local and national policy

7.2 The site is located in the parish of Gipsey Bridge which is defined as a medium village in SP1 of the East Lindsey Local Plan. SP4 of the Local Plan is concerned with housing in medium and small villages. It sets out that housing will be supported in the medium and small villages where it is in an appropriate location within the developed footprint of the settlement as infill, frontage development of no more than 2 dwellings, and where it conforms with clause 2 of SP25. The policy defines an appropriate location as a location which does not conflict, when taken as a whole, with national policy or policies within the Local Plan. The policy defines the developed footprint as the continuous built form of the settlement and excludes individual buildings or groups of dispersed buildings which are detached from the continuous built up area of the settlement. It excludes gardens, community and recreation facilities, land used for an active employment use.

7.3 The application site lies in an open countryside location, away from the

settlement of Gipse Bridge. The settlement itself lies to the south of the site, approximately 625m away. There is no footpath link from the application site to the village. The application site, therefore, does not lie within the medium village of Gipse Bridge and so does not comply with the locational requirements of SP4.

- 7.4 The proposal therefore represents the provision of dwellings in the open countryside. The National Planning Policy Framework (NPPF) seeks to permit sustainable development and so encourages residential development in sustainable locations such as existing settlements with facilities available. The application site is not connected to any nearby settlement by way of public transport and there are no footways available. It is considered therefore that the application does not represent a sustainable location for residential development.
- 7.5 Paragraph 80 of the NPPF is concerned with dwellings in rural locations and states that planning decisions should avoid the development of isolated homes in the countryside unless: there is an essential need for a rural worker to live at/near their place of work; the development would represent the optimal viable use of a heritage asset; the development would re-use redundant or disused buildings and enhance its immediate setting; the development would involve the subdivision of an existing residential building; or the design is of exceptional quality and would significantly enhance its immediate setting.
- 7.6 No justification has been put forward that the dwellings are needed for a rural worker. There is no heritage asset at the site and the proposal is not for the re-use of existing buildings. The proposal does not involve the sub-division of a residential building and the application has not been submitted on the grounds of it being of exceptional quality. The proposal does not therefore comply with the requirements of paragraph 80 of the NPPF.
- 7.7 In terms of the principle of development in relation to planning policy, the proposal would not therefore constitute sustainable development as the proposal is for two dwellings in an open countryside location, away from local services so the residents would be reliant on the private motor vehicle. The principle of development in this location is therefore demonstrably in conflict with the aims of the Local Plan and the NPPF.

Fallback Position

- 7.8 The application has been submitted with suggested justification being that there is a 'fall back' position for residential development on the site by virtue of a conversion under Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 and that this fallback position carries significant weight. Case law has provided a basis for this approach (Mansell v Tonbridge and Malling BC [2017]). Under Class Q, agricultural buildings can be converted into three larger dwellings of up to 465 square metres in floor area or five smaller dwellinghouses, each

with a floor area no greater than 100 square metres. Under Class Q, works cannot exceed the external dimensions of the existing building and partial demolition is allowed to allow building operations. Building operations are not permitted other than the installation or replacement of windows, doors, roofs or exterior walls and the installation of services such as water and drainage.

- 7.9 The previous planning application for a similar proposal on this site was recently refused by Planning Committee (reference S/183/1210/23). As part of that application, it was also, then suggested as part of the application that there was a fallback position that an agricultural building on the site could be converted into three dwellings by virtue of Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015. A Class Q approval was in place for the building in question to be converted into a single dwelling but not three and limited information had been put forward as part of the application to indicate that the building could realistically be converted into three dwellings through use of Class Q provisions. This meant that it was considered that there was not a realistic fallback position for development of three dwellings against which the submitted proposal could be considered.
- 7.10 The first reason for refusal for that previous application was as follows:
- 7.11 The proposal is for the erection of two dwellings in the open countryside, outside of a recognised settlement, with no footpath or public transport links. The site therefore amounts to an unsustainable location for residential development and does not comply with the housing policies of the East Lindsey Local Plan and the aims of the National Planning Policy Framework (NPPF), nor does the proposal amount to an exception as outlined in paragraph 80 of the NPPF. Although the existing site is occupied by agricultural buildings, with one having prior approval to be converted into a dwelling, there is no "realistic" fallback position that this scheme would be developed, and no evidence has been submitted to show how the existing building could be converted into more than one dwelling which further shows there is no "realistic" fallback position. Notwithstanding this, the proposal represents unsustainable development and is contrary to SP1, SP2, SP3 and SP4 of the East Lindsey Local Plan and paragraph 80 of the National Planning Policy Framework.
- 7.12 Since that application was considered by the planning committee, a further Class Q prior approval application has been submitted for the conversion of the northern building on the site into three dwellings. This application demonstrated compliance with Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 and as such, prior approval was granted. There is now effectively an approval in place on the site for the conversion of the northern building into three dwellings

and it is accepted that this is a material consideration relevant to the consideration of this current application.

- 7.13 The applicant has suggested that the current proposal would represent a betterment compared with what could be constructed as part of Class Q. It is put forward that the proposed dwellings would have better thermal efficiency and airtightness and the existing buildings on the site have limited contribution historically or architecturally and so are not worthy of retention. It is also suggested that the proposal would result in an enhancement to the site. However, the existing buildings on the site are typical agricultural buildings and do not appear out of place within the landscape. The site also has the appearance of a farmyard which is not uncommon in a countryside location and the buildings have not fallen into disrepair. It is not therefore considered that the status and appearance the existing buildings is harmful to the character of the area. Furthermore, some of the measures put forward as a betterment are features that are now required under building regulations in any case. One accepted additional betterment is the provision of air source heat pumps for the dwellings, but it is not considered that this alone is sufficient to demonstrate that the proposed scheme would provide a betterment beyond that of the Class Q approval to override adopted planning policy.
- 7.14 However, a further matter to consider is that of flood risk. The site lies in Flood Zone 3 which is an area at high risk of flooding. The site currently has approval in place for the conversion of one of the existing buildings through Class Q provisions, to create three dwellings. That approval would result in three households being at risk of flooding. The application currently being considered is for the erection of two dwellings only which, it is accepted, could be considered to provide betterment in terms of flood risk due to there being one less household at risk of flooding. The proposed new properties would be constructed using modern building practices and would incorporate the relevant flood mitigation measures as currently required by the Environment Agency. This betterment in terms of flood risk is a material consideration and one for which notable weight can be given.
- 7.15 It is therefore considered that, notwithstanding the fallback position of the Class Q permission is specific to a *conversion* of existing and appropriate rural buildings, and not of new build dwellings, the erection of two dwellings on this site could result in a betterment in terms of flood risk in this particular case. The improvements in terms of energy efficiency and renewable energy technology are also noted and worthy but are considered to provide only limited further support to the proposal. Notwithstanding the conflict with adopted planning policy, it is on balance considered that the betterment in terms of flood risk considerations, allows for the principle for this proposed development to be potentially supported.

Impact on character of area

- 7.16 SP10 of the East Lindsey Local Plan states that the Council will support well-designed sustainable development which maintains and enhances the character of the area and uses high quality materials. The layout, scale, massing, height and density should also reflect the character of the surrounding area.
- 7.17 The Planning Statement submitted with the application sets out that the design approach for the proposed dwellings is taken from agricultural buildings. It is put forward that the proposed layout is one that is commonly seen in farmyards. The design of the proposed dwellings do reflect agricultural buildings to a certain extent and the layout and siting of the dwelling would not adversely affect the character of the area. It is proposed to retain the landscaping along the frontage of the site which would screen the development to a large extent in any case.
- 7.18 There is a mix of dwelling designs in the locality, many of which are well screened from the road.
- 7.19 Notwithstanding the observations in relation to the existing buildings made earlier in this report, it is equally accepted and considered that the proposed development would not result in any unduly adverse impact on the character of the area.

Impact on neighbours

- 7.20 SP10 of the East Lindsey Local Plan sets out that development will be supported if it is designed to or unacceptably harm any nearby residential amenity.
- 7.21 A residential property adjoins the site to the north and is separated from the site by a board fence. There would be sufficient separation distance between the northern proposed dwelling (which would be the closest dwelling to this neighbour) and the neighbour to ensure that there would not be any adverse overlooking or loss of privacy. The existing site is used as a working farmyard so a certain amount of noise will be generated from the site through traffic movements and the proposal would actually improve this as the site would no longer be used by tractors and other large machinery.
- 7.22 No neighbour representations have been received. It is therefore also accepted and considered that the proposal would not result in an adverse impact on the amenities of neighbours.

Flood risk and the Planning Balance

- 7.23 The application site is located in Flood Zone 3 and in 'inland' East Lindsey and so SP16 of the Local Plan is of relevance to the proposal. This policy states that:
- 7.24 "The Council will support housing in areas of inland flood risk, providing all the following criteria are complied with:

- A site is in need of regeneration and is not suitable for a business, leisure and commercial use.
- The site is brownfield and has become empty, buildings have become disused and run down or a combination of both.
- Applications should evidence that they have tried to develop/market sites for a business, leisure or commercial use, this includes active marketing for a minimum of 12 months.

- 7.25 The site is an existing farmyard which is still in use. The site is not in need of regeneration and no evidence has been submitted to show that it would not be suitable for other uses. The site has not become empty or disused and no marketing has been carried out for the site.
- 7.26 Consequently, as a matter of fact, the proposal would not comply with the requirements of adopted policy. However, in this case, there is a material consideration in that there is effectively permission in place for a conversion to provide three dwellings on the site and this proposal would result in fewer dwellings on the site which would be a betterment in terms of flood risk. As such, although the proposal does not comply with SP16, there are other material considerations in this case to consider.
- 7.27 Paragraph 165 of the NPPF states that "Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere." The NPPF also sets out the requirements for applications for development in high-risk flood areas to pass the Sequential and Exception Tests. The aim of the Sequential Test aims to steer new development towards areas at least risk of flooding.
- 7.28 It is put forward as part of the application submission that the Sequential Test is passed because the proposed two dwellings are not considered to pose a greater risk than that which have been approved via a Class Q conversion. That suggestion is not accepted. As an aside, it should firstly be noted however, that, as advised in the NPPF, sequential test requirements for conversions/change of use, do not apply, but that is not the same situation for new build proposals and that exercise needs to be considered. The site is located in flood zone 3 in an open countryside location where the Council would expect the sequential test to be potentially applied at a district level. There are consequently and undoubtedly, other plots available for development, in more sustainable locations in areas at a lesser risk of flooding and as such it is considered that the proposal cannot pass the sequential test. Government advice confirms that the Exception Test should only be applied when following application of the Sequential Test, it has been demonstrated that it is not possible for development to be located in areas with a lower risk of flooding. Consequently, for this application, because the Sequential Test is failed, there is no need to consider whether the proposal could pass the Exception Test.

- 7.29 To reiterate, the proposal does not comply with adopted policy relating to the distribution of housing in the district nor to adopted flood risk policy requirements. However, a fallback position exists that would allow for the creation of three dwellings such that there would be betterment from the implementation of this proposal alone, in terms of fewer people being at risk of flooding on the site.
- 7.30 This is considered in these circumstances to be a material consideration of significant weight, and which, on balance, given the practical outcomes can be accepted as outweighing the 'in principle' objections of the adopted policies.

Legal matters

- 7.31 As referred to within this report, the agricultural building in the northern part of the site has the benefit of a Class Q prior approval for three dwellings. The current scheme includes the retention of this building for use as a domestic store, so it is important to ensure that the Class Q approval is not implemented as well as this new permission. If it was implemented, it would result in five dwellings on the site which is more than the fallback position available and would undermine the argument of betterment from this proposal. The applicant has consequently accepted that position and agreed to offer a Unilateral Undertaking (UU) to ensure that the Class Q approval is not implemented. At the time of writing this report, officers have been advised that work is underway on this legal undertaking and members will be updated on the supplementary agenda on the matter. It is recommended that planning permission is only issued with this UU in an acceptable form having been provided.

8.0 CONCLUSION

- 8.1 The proposal, when considered against adopted planning policy, does not comply with national and local policies because the scheme would result in the erection of two dwellings in the open countryside. However, as a material consideration for this site, that being the existence of a Class Q prior approval for three dwellings, weight can be given to the betterment in terms of flood risk reduction that would result. This is a material difference in circumstances since the last planning application was considered by members (reference S/183/1210/23). The proposal now being considered would represent a betterment at the site in terms of flood risk and the new dwellings would also provide improved renewable energy provision compared with the Class Q conversion.
- 8.2 Based on this, it is now recommended that the proposal should be approved.
- 8.3 This conclusion has been arrived at having taken into account all other relevant material considerations, none of which outweigh the reasons for the officer recommendation made below.

10.0 OFFICER RECOMMENDATION

10.1 Approve with conditions subject to receipt of a suitable unilateral undertaking.

RECOMMENDATION: Approve

subject to the following conditions:

1. Full Permission
The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this permission.

Reason: In order to comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall only be undertaken in accordance with the following approved plans;

Plan No. J1944-PL-01 Received by the LPA on 04/10/23.
Plan No. J1944-PL-02 P03 Received by the LPA on 30/11/23.
Plan No. J1944-PL-10 P02 Received by the LPA on 15/11/23.
Plan No. J1944-PL-11 P02 Received by the LPA on 15/11/23.
Plan No. J1944-PL-20 P02 Received by the LPA on 15/11/23.
Plan No. J1944-PL-21 P02 Received by the LPA on 15/11/23.
Plan No. J1944-PL-22 P02 Received by the LPA on 15/11/23.

Reason: For the avoidance of doubt and the interests of proper planning.

- 3 Before any works above the damp proof course a schedule of external materials, including samples where requested, to be used in the construction of buildings and hard surfaced areas shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.

Reason: In the interests of the character and appearance of the development and the visual amenity of the area in which it is set. This condition is imposed in accordance SP10 of the East Lindsey Local Plan and paragraph 127 of the National Planning Policy Framework.

- 4 Prior to first occupation of the development hereby permitted, the approval of the Local Planning Authority is required to a scheme of landscaping and tree planting for the site indicating, inter alia, the number, species, heights on planting and positions of all the trees, together with details of post-planting maintenance. Such scheme as is approved by the Local Planning Authority shall be carried out in its entirety within the first planting season following the date on which development is commenced or in line with a phasing strategy agreed in writing by the Local Planning Authority. All trees, shrubs and bushes shall be maintained by the owner or owners of the land on which they are situated for a minimum of five years beginning

with the date of completion of the scheme and during that period all losses shall be made good as and when necessary.

Reason: To ensure that appropriate landscaping is provided to integrate the site into the local area. This condition is imposed in accordance with SP10 of the East Lindsey Local Plan.

- 5 Prior to first occupation of any dwelling the details of the boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. This shall include the number, species, spacing and height at planting of any new hedges, and details of any fencing and walls where appropriate. The approved details shall be completed prior to the occupation of each dwelling and thereafter retained and maintained.

Reason: In the interests of the character and appearance of the development and the visual amenity of the area in which it is set. This condition is imposed in accordance with SP10 of the East Lindsey Local Plan.

- 6 The development hereby permitted shall be constructed to Building Regulation Part G(2)(b) standards limiting water consumption to 110 litres per person per day.

Reason: To reduce demand for finite resources as the district is in a water scarce area. This condition is imposed in accordance with SP10 of the East Lindsey Local Plan.

- 7 The development shall be carried out in accordance with the submitted flood risk assessment (compiled by Origin Design Studio dated 09 June 2023 ref: J1944 - Gipsey Bridge Revision A01) and the following mitigation measures it details:

- Finished floor levels to be set no lower than 2.30m above Ordnance Datum (AOD).

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: To reduce the risk of flooding to the proposed development and future occupants. This condition is imposed in accordance with paragraph 167 of the National Planning Policy Framework.

- 8 The development hereby permitted shall not be commenced until further investigation has been carried out to fully and effectively characterise the nature and extent of any land contamination, and/or pollution of controlled waters. It shall specifically include a risk assessment that adopts the Source-Pathway-Receptor principle, in order that any potential risks are adequately assessed taking into account the sites existing status and proposed new use. Two full copies of the site investigation and findings shall be submitted to and approved in writing by the Local Planning Authority prior to the

commencement of works.

Reason: To ensure potential risks arising from previous site uses have been fully assessed in accordance with Paragraph 183 of the National Planning Policy Framework.

- 9 Where the risk assessment identifies any unacceptable risk or risks, a detailed remediation strategy to deal with land contamination and/or pollution of controlled waters affecting the site shall be submitted and approved by the Local Planning Authority. No works, other than investigative works, shall be carried out on the site prior to receipt of written approval of the remediation strategy by the Local Planning Authority. Remediation of the site shall be carried out in accordance with the approved remediation strategy. No deviation shall be made from this scheme.

Reason: To ensure adequate and appropriate remediation of the site in accordance with Paragraph 183 of the National Planning Policy Framework.

- 10 On completion of remediation, two copies of a validation report shall be submitted to the Local Planning Authority. The report shall provide validation and certification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post remediation sampling and monitoring results shall be included in the closure report.

Reason: To ensure that the remediation strategy has adequately mitigated against the contamination in accordance with paragraph 183 of the National Planning Policy Framework.

- 11 If during redevelopment contamination not previously considered is identified, then the Local Planning Authority shall be notified immediately, and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspect contamination has been submitted to and agreed in writing with the Local Planning Authority. On completion of the development the Local Planning Authority shall be notified in writing if no additional contamination was identified during the course of the development and the dwellings hereby permitted shall not be occupied until the Local Planning Authority has acknowledged receipt of the same.

Reason: To ensure adequate and appropriate remediation of the site in accordance with paragraph 183 of the National Planning Policy Framework.