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Mrs L Morton
North Lincolnshire Council
Development Control
Planning Dept
Church Square House
P O Box 42
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DN15 6XQ
N Lincs

Your Ref:

2003/0851

Our Ref:

APP/Y2003/X/05/2001350

Date:

30 March 2006

Dear Mrs Morton

Town and Country Planning Act 1990
Appeal by Mr R Crow
Site at Middle Lane, Crowle Moors, Crowle, DN17 4BI

I enclose a copy of our Inspector's decision on the above appeal.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

If you have any queries relating to the decision please send them to:

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Yours sincerely

pp Craig Maxwell

EDL1(BPR)

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Appeal Decision

Site visit made on 20 March 2006

by Alan Upward BA(Hons) MCD MRTPI

an Inspector appointed by the First Secretary of State

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Date

30 MAR 2006

Appeal Ref: APP/Y2003/X/05/2001350

The Peat Works, Middle Lane, Crowle Moors, Crowle, North Lincolnshire DN17 4BI

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal in part to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr R Crow against the decision of North Lincolnshire Council.
- The application (Ref.2003/0851), dated 6 June 2003, was refused in part by the Council by notice dated 27 August 2004.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The uses for which the application sought a certificate of lawful use or development were "**REF: ATTACHED PLAN PW/03**
 - (i) **STORAGE OF BULK PEAT AND ADDITIVE MATERIALS PRIOR TO PROCESSING, BLENDING AND BAGGING.**
 - (ii) **STORAGE AND SALE OF MATERIALS FOR HORTICULTURAL AND LANDSCAPE MARKETS.**
 - (iii) **PLANT HIRE DEPOT**
 - (iv) **ADMINISTRATION OFFICE.**

Summary of Decision: The appeal is allowed and the certificate of lawful use or development is modified, in the terms set out below in the Formal Decision.

1. By letter dated 12 August 2004 the LDC application was modified by the Appellant in 2 respects. These were as follows:
 - "(a) by inserting at the beginning of section 6 and before (i) - (iv) the words "Growing media factory including" and
 - (b) by adding after item (iv) the words: "(v) Classes B1, B2 and B8".
2. The Council considered that the application had also effectively been amended to include a new item (ii) for "The processing, blending and bagging of peat." The Council's decision on 27 August 2004 was to grant a LDC for uses in terms set out in its First Schedule as follows:

"Use comprising:

 - (a) the storage of bulk peat, a substantial part of which is sourced from the adjoining site edged blue on the plan attached to this Certificate but including in addition peat imported to the Certificate Land from other sources;
 - (b) the processing, blending and bagging of peat, with or without the addition of additive materials such as wood bark, farmyard manure, grit, fertilisers and mushroom compost, so as to produce peat or peat based composts;
 - (c) the storage of such products prior to sale;
 - (d) the sale of such products mainly wholesale but including as a minor element retail sales to visiting members of the public; and
 - (e) the use of an administration office ancillary to (a) to (d) above;
 - (f) without prejudice to the terms of (a) to (e) above, the distribution of activities within the Certificate Land on 6 June 2003 was generally as indicated on application drawing number PW/03, a copy of which is attached to this Certificate marked "Plan B".

The basis for consideration of the appeal

3. The terms of the LDC application had been amended during the course of its consideration. The wording of the LDC, as issued, modified this further. The appeal against the decision sought further change to the terms granted, which represented modification of the application. That appeal was itself then amended, and the subsequent written representations altered the Appellant's requests still more. These alterations represented attempts to clarify the form of modification sought by the appeal process, including withdrawal of individual components of use claimed to be lawful. Although the Council criticised changes introduced during this whole process by the Appellant, these matters are capable of falling within the overall powers within the amended 1990 Act.
4. The appeal, as lodged, had sought amendment of the terms of the LDC to include at (iii) the "Storage and sale of materials for the horticultural and landscape markets", at (iv) a "Plant Hire Depot", reference to a "Growing Media Factory", and expressly to identify item (b) as the primary use as a B2 General Industrial Use. This last item would be different from the likely effect of the amended application where a separate clause (v) had been proposed referring to "Classes B1, B2 and B8". From that form of words as an extra item it would be unclear whether these would have been separate lawful uses or a recognition that what had preceded them amounted to those Use Classes, either individually as primary uses or as parts of a composite use.
5. In appeal representations the Appellant withdrew challenge to the "Plant Hire Depot" element at (iv), and sought amendments of LDC para 8 and the First Schedule to define site use, and item (b) to be a B2 General Industrial Use with items (a), (c), (d) & (e) ancillary to it. This request appeared to accept the failure to incorporate the words "Growing Media Factory" and the application item (iii).
6. The main issue is whether the activities listed (a) - (e) amount to a single primary use of the site, and if so whether this should be identified as falling within Use Class B2 General Industrial.

Site uses and the planning unit

7. Having regard to para (f) of Schedule 1 of the LDC as issued, I saw at my visit that the various parts of the site and buildings within it continued to be used on the basis shown on Plan PW/03. Areas for peat storage (together with items of mobile plant) took in most of the back half of the defined site. They comprised separate stockpiles of different materials and differently sourced peats. There was no boundary demarcation on the northern edge to divide peat stockpiles from the adjacent field, the access roadway leading northwards to areas of continuing peat extraction, and the lengthy strip alongside the road where machinery and equipment was being stored.
8. The effect of the LDC, as issued, would be that this distribution of activities had not materially differed over the 10 years preceding 6 June 2003. The Council accepted that the defined LDC site represented a single planning unit, which was separate from the wider area owned and controlled by the Appellant and used in connection with peat extraction. This would suggest that uses of the appeal site were not functionally linked to a significant degree with peat extraction. This would acknowledge that there was not a use for the stockpiling of extracted material separate from the processes being carried out on the appeal site for the processing and bagging of peat or peat based composts. Nothing that I saw at the site, or have read in the representations, would be inconsistent with such a conclusion.

Appraisal

9. The LDC, as issued, referred to "the certified use is...", but was not clear as to whether individual activities were being treated as part of a single primary use, bearing in mind the express mention in (e) of an administration office being "ancillary to (a) to (d) above", or certifying as lawful separate primary uses under (a) to (d). The format might indicate the intention to certify a form of composite use as lawful. Although para 8 of the LDC was part of the statement of reasons for the LDC, it had identified the "use" as "sui generis". The Council did not clarify their position further in representations following the change in procedure for conduct of the appeal from local inquiry to written representations. A pre-inquiry statement had referred only to the intention to produce inquiry evidence to substantiate the Certificate by reference to all the written material by then submitted.

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10. The request in the 12 August 2004 letter to include the words "Growing Media Factory" appeared to be an attempt to recognise a single primary use, although the separate item (v) referring to 3 Use Classes confused the position. I agree with the Council that the words "Growing Media Factory" would be vague, adding potentially to difficulties of interpretation, and might be construed more widely than the facts of site use might justify. The item for 3 Use Classes would apply a very wide lawful use of the site without explicit justification for the B1 and B8 components as primary uses in their own right. Having regard to the appeal representations, I shall treat this also as a matter modified during the process on the basis of a single B2 use of the site, to which other uses (which might on their own be B1 or B8) are ancillary.
 11. Within the appeal site as a planning unit there were differently defined areas where the individual activities listed as (a) to (e) were carried out. The peat storage areas were a large proportion of the total site. The Appellant's evidence that the various stockpiles of different materials (including both different peats and other materials used in blending horticultural composts) were present entirely as raw materials for the compost making process was clear and not contradicted by any other information. The amounts and range of materials stored were not out of proportion to such a function so as to represent a separate primary use. There was nothing to indicate that peat extracted in the locality had been stored on the site over the 10 year period for any other purpose than peat compost making within the unit. On this basis, the materials storage areas were at all stages ancillary to the peat processing, blending and bagging activity.
 12. The processes carried out on the site both within the open sided buildings and in the open for the mixing and blending of peats and other compost materials, the incorporation of nutrient and other chemical additives and the packaging of a range of finished products for sale are clearly industrial processes involving the making, adapting for sale and packing of articles. By virtue of the extent and nature of facilities required for handling raw materials, at least partly in the open, and the nature of machinery required for the production processes, I consider that the activity would not fall within Use Class B1 as an Industrial process which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. As another industrial process, the production of peat or peat based composts falls within Use Class B2 General industrial.
 13. It is clear that the manufacture of these products represents the primary use of the planning unit. Without it the other activities on the site would not be present. Those other activities would include the uses identified in the LDC for the storage of finished products, the sale of those products mainly by wholesale (but including a minor element of retail sales), and the administrative office building. They serve purposes to enable the manufacturing use to take place; there was no evidence to suggest that they are conducted more widely in connection with other business activities on this or other sites; and they are not thereby severable from the General industrial use of the site. Together with the materials storage areas they amount to ancillary uses which are needed to allow the primary industrial use to take place. They do not as a whole amount to a composite use of the site which might be categorised as *sui generis* in nature, but a Class B2 one.
 14. My conclusion is that the appeal is well-founded to that extent, and will be allowed with the LDC modified as part of my decision in exercise of the powers under S195(4) of the amended 1990 Act. I shall modify the detailed wording of the Issued LDC where required to give effect to this decision. Paragraph 8 forms part of the statement of reasons for the Council's decision rather than the Certificate itself. All that I need to do is to delete this text and its reference to use being *sui generis*. Other paragraphs within the statement covering matters not pursued during this appeal remain valid. A revised First Schedule will be substituted to describe the single primary use found to be lawful.
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Formal Decision

15. I allow the appeal, and I hereby modify the Certificate of Lawful Use or Development issued by North Lincolnshire Council (Ref.2003/0851) on 27 August 2004 as follows:

- (a) by the deletion in full of numbered paragraph 8; and
- (b) by the deletion in full of the First Schedule and the substitution of the following:

First Schedule:

Use for the processing, blending and bagging of peat, with or without the addition of additive materials such as wood bark, farmyard manure, grit, fertilisers and mushroom compost, so as to produce peat or peat-based composts, being a use falling within Class B2 General industrial. This primary use includes the following ancillary uses:

- (i) the storage of bulk peat, a substantial part of which is sourced from the adjoining site edged blue on the plan attached to this Certificate but including in addition peat imported to the Certificate Land from other sources;*
- (ii) the storage of peat or peat-based compost products prior to sale;*
- (iii) the sale of such products mainly wholesale but including as a minor element retail sales to visiting members of the public; and*
- (iv) the use of an administration office.*

Without prejudice to the terms above, the distribution of activities within the Certificate Land on 6 June 2003 was generally as indicated on application drawing numbered PW/03, a copy of which is attached to this Certificate marked "Plan B".



INSPECTOR

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