

Planning Inspectorate.
Temple Quay
Bristol

25th April 2022

Our Ref: PEJ/LA/1330

Dear Sirs.

LAND WEST OF SCOTER ROAD, MESSINGHAM PA/2021/1330

APPEAL STATEMENT BY JACKSON PHILIPS ASSET SOLUTIONS

OUTLINE PLANNING PERMISSION FOR RESIDENTIAL DEVELOPEMNT FOR UP
TO 20 DWELLINGS WITH ALL MATTERS RESERVED FOR SUBSEQUENT
APPROVAL – LAND EAST OF SCOTER ROAD SOUTH OF EASTFIELD ROAD,
MESSINGHAM

INTRODUCTION

This outline planning application (with all matters reserved) for up to 20 dwellings was recommended for approval to the North Lincolnshire Council's planning committee on 9th March 2022 (PA/2021/1330) this being a resubmission of planning application PA/2020/672.

The committee determined not to endorse the officer recommendation for approval and deferred its decision pending a site visit to consider, a. highways and b. flood issues.

The committee subsequently refused the application on 6th April 2022 on grounds that were completely unconnected with the reasons for the site visit.

The application was refused on two grounds:

1. 'The applicant failed to demonstrate that a sufficient level of amenity exists for future residents' and:
2. 'There is potential that local businesses may have unreasonable restrictions placed on them because of the proposed development'.

The application was considered to be contrary to saved policies DS1 and DS11 of the North Lincolnshire Local Plan and saved policies, policy CS5 of the Core Strategy and paragraph 187 of the National Planning Policy Framework (NPPF).

This appeal statement will demonstrate that the council's reasons for refusal are unreasonable, unevidenced and without foundation. The Council's own committee report considered this application was fully compliant with the NPPF and policies DS1, DS11 and CS5 and local planning policy. The Appellant therefore seeks the award for full costs given that the two reasons for refusal are groundless and unconnected to the aspects of the NPPF and local policy cited in its reasons for refusal.

North Lincolnshire Council's planning officers confirm that this application conforms with the National Planning Policy Framework (NPPF) and North Lincolnshire Council local planning policies and recommended it for approval. This appeal statement will demonstrate that the reasons for refusal are spurious, unevidenced and without justification.

EXECUTIVE STATEMENT OF CASE

Site Location

The application site is located on the western side of Scotter Road within the development boundary of the settlement of Messingham.

Site Description

The application site comprises 0.17 hectares (0.43 acre) brownfield area fronting Scotter Road comprising a derelict agricultural barn and hard standing. The remaining 0.83 hectares ((2.04 acres) to the rear of the barn comprises an unused over-grown area of unmanaged scrubland. The site is in private ownership without authorised public access.

The rear gardens of residential properties bound the curtilage of the site to the north, south and west. The site is bounded to the east by the Stables restaurant (also within the ownership of the applicant), derelict barns and, the Wise Owl's Nursery (that ceased trading in February 2022) which are adjacent to Scotter Road.

Vehicular access into the site is currently provided from Scotter Road to the east of the site (A159) and there is potential for a further access from the west via Willow Drive.

Planning History

The site was the subject of a previous application PA/2020/672. This application was refused by delegated decision by the planning authority on the following grounds:

1. It was considered this application would give rise for the requirement to mitigate the strain it places upon local infrastructure and a failure to agree the (s106 agreement) amounts required to make the application acceptable in planning terms (Policy CS26 of the North Lincolnshire Core Strategy, CS1 and H10 of the North Lincolnshire Local Plan and paragraph 54 of the NPPF).
2. The applicant failed to demonstrate that the proposal would not result in harm to protected species and wildlife value that may be present on the site (Policy CS17 of the Core Strategy, policies LC5 and LC11 of the North Lincolnshire Local Plan and paragraph 170 of the NPPF).
3. Insufficient information has been provided by the applicant to demonstrate that a suitable drainage scheme can be achieved on site that would accord to the principles of Suds and prevent flooding to existing and future residents. Nor has it been demonstrated that the site conditions are not suitable for Suds (Policy CS18 and CS19 of the North Lincolnshire Council Core Strategy, DS14 and DS16 of the North Lincolnshire Local Plan and paragraphs 155, 157, 163 & 165 of the NPPF).

An appeal against this refusal was dismissed by the Planning Inspectorate on April 26TH 2021. On dismissal of the appeal the appellant resubmitted the planning application and overcame the reasons for refusal to the satisfaction of the planning department.

This application was recommended for approval by the council's planning department but was refused by the planning committee. The two reasons stated in the refusal of this application were not previously identified as issues of concern or grounds for objection in the consideration of previous application PA/2020/672 by the planning authority or the Planning Inspectorate in its dismissal of the appeal. There has been no material change in circumstances since the consideration of application PA/2020/672 by the council or the Planning Inspectorate.

Planning Policy

The committee evidenced its reasons for refusal based on paragraph 187 of the National Planning Policy Framework (NPPF) saved policies DS1 and DS11 of the North Lincolnshire Local Plan and saved policy CS5 of the Core Strategy (Appendix 1). Paragraph 187 of the NPPF requires new developments to be integrated effectively with existing businesses and community facilities such as pubs, sports clubs, and places of worship or to provide suitable mitigation where required to overcome any adverse impacts.

Policy DS1 sets out general development standards that relate to quality of design, amenity, conservation, resources and utilities and services. This policy seeks to ensure that any detailed proposals for design, layout, and appearance of a site enhance an area. The policy prevents developments from emitting pollutants, seeks to protect amenity space where possible and requires the imposition of landscaping planning conditions to improve the appearance of developments. Policy DS1 prevents adverse impact upon local wildlife, archaeology, scheduled ancient monument, listed buildings, conservation areas and the retention of features that contribute to local character. The policy also requires the provision of satisfactory drainage (on-site where possible) and that developments do result in the need for publicly funded infrastructure.

Policy DS11 prevents developments that result in potentially polluting activities.

Policy CS5 requires developments to be well designed, attractive, safe, sustainable, and accessible.

Assessment of the Reasons for Refusal

The Councils Planning Committee refused this application because ‘the applicant failed to demonstrate that a sufficient level of amenity exists for future residents’ and that ‘there is potential that local businesses may have unreasonable restrictions placed on them as a result of the proposed development’. The applicant does not consider either reason to be soundly based or relate to the NPPF para 187 or the three planning policies cited Appendix 1).

Turning to the first point of refusal, none of the policies referred to require the demonstration of a ‘sufficient level of amenity’ and the planning authority have failed to clearly identify as to what this ‘sufficient level of amenity’ refers. Paragraph 187 is silent on matters relating to ‘sufficient amenities as are policies DS11 and CS5. Policy DS1 makes no mention of requiring the demonstration of a ‘sufficient level of amenity’ and this application is fully compliant with the policies references to amenity where it requires no loss of amenity due to overshadowing, overlooking, polluting activities, detrimental environmental conditions, and amenity space. The reference to ‘sufficient level of amenities’ is vague, lacks clarity and fails to clearly state what deficit the application has failed to address.

The second reason for refusal is also unreasonable. This states that the application only has the 'potential' and 'may' result in local businesses having 'unreasonable restrictions placed upon them'. The planning committee have failed to identify which businesses may be affected or to define these unreasonable restrictions. It is not acceptable for a reason for refusal to be based upon unstated impacts upon undefined users nor is it reasonable to be so inconclusive as to be unable to confirm whether this proposal 'will' actually have adverse impacts.

This reason for refusal is also not supported by the NPPF and the three local plan policies cited in support of this decision.

NPPF paragraph 187 requires new development to be integrated with existing businesses and community facilities. The only businesses within the vicinity of the site, are the Wise Owls Pre-School Nursery, this closed in February 2022, and the Stables restaurant. The Stables is within the ownership of the applicant. It is located adjacent to the site on Scotter Road and was not included within this residential application because the applicant intends to continue its use as a restaurant and therefore has no intention or material interest in placing any unreasonable restrictions upon this business. There are no community uses within the vicinity.

Policies DS1, DS11 and CS5 are silent on matters of adverse impacts upon businesses and community facilities but DS1 and CS5 provide safeguards to ensure that developments do not have adverse impacts (layout, pollution, design etc) on neighbouring land uses. Policy DS1 requires that: -

'There should be no conflict with an allocated or approved land-use proposal in the locality nor should the reasonable potential for development of a neighbouring site be prejudiced'. There is no conflict between a small restaurant and residential uses and detailed matters relating to layout, parking proximity to the restaurant can all be controlled at the detailed design stage.

The council's spatial plans officer and the case officer consider this application to be fully compliant with the NPPF and local plan policy.

Conclusion

North Lincolnshire Council's planning committee have refused this application and rejected its planning departments recommendation to approve the application who consider that it confirms with the NPPF and local planning policy.

The planning committee have refused this application for two reasons that are groundless, vague and without justification. The reasons are unclear, unevidenced. The reasons for refusal are not supported by the referenced NPPF paragraph 187 or Local plan policies DS1, DS11 and Core Strategy CS5.

The applicant considers that local planning authority have unreasonable delayed the determination of this application by deferring its decision subject to a site visit on grounds in contravention of its own policy for site visits. This states that “site visits are ‘expensive and time consuming and delay the determination of the application. They should be viewed as an exception to the usual process which can be justified only by the complexity of the application. A site visit is only likely to be necessary if: the impact of the proposed development is difficult to visualise from the plans and any supporting material... and Any member proposing a site visit will be arranged only by resolution of the committee’ who ‘should identify the benefit that will accrue from such a visit”

This application was deferred by the Planning Committee of 9th March pending a site visit the purposes that were recorded in the council minutes in order because of ‘concerns about the entrance being so close to the B1400, and ongoing flooding issues in Messingham with no mention of surface water within the report.

This application was for outline consent only with no detailed highway proposals and only an indicative Sustainable Drainage Strategy – the latter was incapable of being viewed on site. The councils’ highways officer and Local Flood Lead Officer had raised no objections to the proposal. The appellant contends that a site visit afforded no benefit and furthermore the committee did not base its refusal on either highway, flood, or drainage grounds.

The council’s refusal is also unreasonable as the applicant considers it not possible to provide substantive evidence for each of its reasons for refusal.

The decision to refuse this application is also unreasonable because the reasons are vague, generalised, and unsupported by the statutory planning policy referenced by the planning authority.

Finally, the reasons for refusal are unreasonable because any concerns relating to impacts upon local businesses could have been capable of being dealt with by planning condition that would have enable the development to proceed.

The council’s planning committee has not provided any sound justification for the refusal of this application nor have properly referenced the refusal against existing national or local planning policy.

Appendix 1 – NPPF and Local Plan Policies referred to in the Council’s justification for Refusal.

National Planning Policy Framework Paragraph 187

Paragraph 187 of the National Planning Policy Framework states:

‘Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.

Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed'.

Policy DS1 North Lincolnshire Local Plan

Policy DS1 General requirements states:

'A high standard of design is expected in all developments in both built-up areas and the countryside and proposals for poorly designed development will be refused. All proposals will be considered against the criteria set out below:

Quality of Design

- i) The design and external appearance of the proposal should reflect or enhance the character, appearance and setting of the immediate area; and
- ii) the design and layout should respect and where possible retain and/or enhance the existing landform of the site.

Amenity

- iii) No unacceptable loss of amenity to neighbouring land uses should result in terms of noise, smell, fumes, dust or other nuisance, or through the effects of overlooking or overshadowing; and
- iv) amenity open space in the area should be retained, wherever possible; and
- v) no pollution of water, air or land should result which poses a danger or creates detrimental environmental conditions. Where appropriate, conditions will be imposed requiring the provision of landscaping to enhance new development.

Conservation

- vi) There should not be an adverse effect on features of acknowledged importance, on or surrounding, the site, including species of plants and animals of nature conservation value (particularly species protected by Schedules 1, 5 and 8 of the Wildlife and Countryside Act 1981), Scheduled Ancient Monuments, archaeological remains, listed buildings and Conservation Areas or trees and woodland covered by Tree Preservation Orders; and
- vii) the development must ensure the retention of those existing site features that make an important contribution to the character or amenity of the site or the surrounding area; and b) the location of development; and c) improvements to the transport network and in the management of traffic.

- viii) development proposals should include the results of archaeological assessment, where appropriate, and adequate measures to ensure that there would be no unacceptable impacts on archaeological remains. Conditions will be imposed to secure suitable mitigation at the appropriate time in the development process.

Resources

- ix) There should be no conflict with an allocated or approved land-use proposal in the locality nor should the reasonable potential for development of a neighbouring site be prejudiced; and
- x) the location and design of developments on the urban fringe (sites adjoining settlement development limits) should take into account the need to minimise the impact of the development on adjoining agricultural land or other countryside interests; and
- xi) measures to conserve energy will be expected in, a) the design, orientation and layout of buildings; and b) the location of development; and c) improvements to the transport network and in the management of traffic.

Utilities and Services

- xii) There should be no reliance on public finances being available to provide infrastructure and services; and
- xiii) suitable on-site drainage should be provided and where there are off-site drainage problems the developer will be expected to overcome them.

Policy DS11 Polluting Activities

Policy DS11 states

‘Planning permission for development, including extensions to existing premises and changes of use, will only be permitted where it can be demonstrated that the levels of potentially polluting emissions, including effluent, leachates, smoke, fumes, gases, dust, steam, smell or noise do not pose a danger by way of toxic release; result in land contamination; pose a threat to current and future surface or underground water resources; or create adverse environmental conditions likely to affect nearby developments and adjacent areas’.

CS5 Core Strategy Delivering Quality Design in North Lincolnshire

Policy CS5 of the North Lincolnshire Core Strategy states:

All new development in North Lincolnshire should be well designed and appropriate for their context. It should contribute to creating a sense of place. The council will encourage contemporary design, provided that it is appropriate for its location and is informed by its surrounding context. Design which is inappropriate to the local area or fails to maximise opportunities for improving the character and quality of the area will not be acceptable.

New development in North Lincolnshire should:

- Contribute towards creating a positive and strong identity for North Lincolnshire by enhancing and promoting the image of the area through the creation of high-quality townscapes and streetscapes.
- Ensure it takes account of the existing built heritage from the earliest stages in the design process, in particular terms of scale, density, layout and access.
- Incorporate the principles of sustainable development throughout the whole design process. This will include site layout, minimising energy consumption, maximising use of on-site renewable forms of energy whilst mitigating against the impacts of climate change, for instance flood risk.
- Create safe and secure environments, which reduce the opportunities for crime and increase the sense of security for local residents through the use of Secured by Design guidance.
- Consider the relationship between any buildings and the spaces around them, and how they interact with each other as well as the surrounding area. The function of buildings should also be considered in terms of its appropriateness for the context in which it is located.
- Create attractive, accessible and easily distinguished public and private spaces that complement the built form.
- Support sustainable living and ensure that a mix of uses, which complement one another are incorporated.
- Provide flexibility in that new and existing buildings and spaces are able to respond to future social, technological, environmental and economic needs.

- Be easily accessible to all users via recognisable routes, interchanges and landmarks that are suitably connected to public transport links, community facilities and services and individual communities and neighbourhoods in North Lincolnshire. Buildings and spaces should be accessible by all sections of the community and ensure that the principles of inclusive design are reflected.
- Incorporate appropriate landscaping and planting which enhances biodiversity or geological features whilst contributing to the creation of a network of linked greenspaces across the area. Tree planting and landscaping schemes can also assist in minimising the impacts of carbon emissions upon the environment.
- Integrate car parking provision within the existing public realm and other pedestrian and cycle routes

This appeal is submitted by

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