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Your Ref: PA/2021/1330
Our Ref: APP/Y2003/W/22/3297656

Clare Allcock
North Lincolnshire Council
Development Control
Planning Dept
P O Box 42, Church Square House
Scunthorpe
N Lincs
DN15 6XQ

15 July 2022

Dear Mrs Allcock,

Town and Country Planning Act 1990
Appeal by Jackson Philips Asset Solutions
Site Address: Agricultural Barn (Next to the Stables Restaurant), HIGH STREET/
SCOTTER ROAD, MESSINGHAM, NORTH LINCOLNSHIRE

I enclose for your information a copy of the appellant's final comments on the above appeal(s). Normally, no further comments, from any party, will now be taken into consideration.

Yours sincerely,

Sara Burke
Sara Burke

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Planning Inspectorate.
Temple Quay
Bristol

12th July 2022

**REBUTTAL TO NORTH LINCOLNSHIRE COUNCIL STATEMENT OF CASE
BY JACKSON PHILIPS ASSET SOLUTIONS**

**OUTLINE PLANNING PERMISSION FOR RESIDENTIAL DEVELOPEMNT FOR
UP TO 20 DWELLINGS WITH ALL MATTERS RESERVED FOR SUBSEQUENT
APPROVAL – LAND OFF SCOTTER ROAD / HIGH STREET, MESSINGHAM**

Local Planning Authority's Reference: PA/2021/1330

Planning Inspectorate's Reference: APP/Y2003/W/22/3297656

1. Introduction

1.1 North Lincolnshire Council's planning committee refused this proposal for up to 20 dwellings with all matters reserved, against the recommendations of its planning officers to approve the application. The proposal was supported by all the councils' internal consultees and statutory agencies.

1.2 The Appellant submitted evidence that demonstrated that the council's refusal was unreasonable and groundless. The two reasons for refusal are vague, inaccurate, and unsupported by planning policy or fact.

1.3 The council's statement of case in response to this appeal statement is wholly inadequate and fails to properly respond to the appeal statement and it's for these reasons the applicant seeks a full award of costs.



2. Background

2.1 The reason for refusal set out in the decision notice states, -

‘The applicant has failed to demonstrate that a sufficient level of amenity exists for future residents. Furthermore, there is potential that local businesses may have unreasonable restrictions placed on them as a result of the proposed development. The proposal is therefore contrary to saved policies DS1 and DS11 of the North Lincolnshire Local Plan, policy CS5 of the Core Strategy and paragraph 187 of the National Planning Policy Framework’.

2.2 The Appellant’s statement of case contended that the reasons for refusal were vague, unsubstantiated, unevicenced and not supported by the NPPF (para 187) or policies DS1, DS11 and CS5.

2.3 Specifically, the appellant contended that the first reason for refusal, ‘The applicant has failed to demonstrate that a sufficient level of amenity exists for future residents’ is not a requirement of any of the policies referred to in the reasons for refusal. Furthermore, the council failed to identify what it meant by ‘sufficient level of amenity’, or why the applicant had failed to show that there was not enough of it currently or what this ‘amenity’ actually related to. The council have failed to specify why and what level of amenity would be ‘insufficient’ to exist for future residents as a consequence of the proposed development.

2.4 The councils second reason for refusal stated that there’ ‘is potential that local businesses may have unreasonable restrictions placed on them as a result of the proposed development’. The council fail to be definitive in its opinion in stating the proposal only has ‘potential’ and ‘may’ cause unreasonable restrictions. The council fail to identify the businesses it considers to be affected by the proposal, why the proposal could lead to unreasonable restrictions being placed on these unidentified businesses and what these restrictions could be. The council also failed to demonstrate why the imposition of planning conditions could not resolve the issues relating to these unidentified and ‘unreasonable restrictions’.

2.5 The appellant also made clear that of the only two businesses within the area, one had ceased trading on February 20th, 2022 (Wise Owls Nursery) and the second business (Stable Restaurant) was a restaurant that operated from leased premises owned by the applicant who therefore had no interest in imposing new developments that could cause ‘unreasonable restrictions on his tenant.

2.6 The Applicant also demonstrated that the council had previously supported and approved a proposal for 8 dwellings that immediately surrounded the now closed Wise Owls nursery, and that was also immediately adjacent to the Stables restaurant, without any concern. The Applicant had demonstrated that this development was much closer in proximity to both businesses than this appeal site and therefore much more likely to conflict with these uses, creating the need for 'unreasonable. restrictions' The council were therefore entirely inconsistent in its decision making and its reasons for refusal was at odds with this decision.

3. Council (Planning Committee) Response – Statement of Case

3.1 The council's response to the appeal statement considers that its reasons for refusal were not vague, unevidenced, unsubstantiated and inaccurate on the following grounds:

- i. The minutes of the planning committee meeting on 6th April 2022 states 'concerns were raised by members that, following the site visit it was considered the proposal would have a significant impact on the surrounding properties.
- ii. That 'it could be argued that by introducing dwellings on this site there could be the potential for impact on the amenity of the future occupants (through noise and other disturbance) of said dwellings arising from the proximity to existing businesses.
- iii. It 'could be argued' that existing businesses could impact on future residents that 'could result in unreasonable restrictions placed on nearby businesses'. The council consider the businesses that could be affected are identified for the first time in its statement of case as the Wise Owls Nursery and the Stables restaurant.
- iv. That the council's Environmental health department assessment of the application in supporting the application noted that the 'site is located adjacent to The Stables restaurant and Wise Owl Farm Nursery which has an outdoor play area. These sources have the potential to cause an adverse noise impact for the proposed dwellings.

- v. The policies referred to in the LPA's reason for refusal refers to impacts on residential amenity and pollution control and are considered relevant to refusal of planning permission in that regard; this is contrary to the view of the appellant; these planning policies were sent with the appeal questionnaire.
- vi. The 'appeal proposals could result in unreasonable restrictions placed on nearby businesses' and 'could include the requirement to install noise mitigation measures, re-consideration of hours of operation or reduced use of outdoor spaces.
- vii. The nature of the adverse impacts and the businesses, neither of which have been previously identified in the decision notice, planning committee and subsequent meeting minutes should have been obvious to the appellant. This is because an Environment Health internal council consultee who supported the application subject to condition, raised these matters as potential issues for mitigation.
- viii. The 'appeal proposals could result in unreasonable restrictions placed on nearby businesses' and whilst paragraph 187 considers that where 'the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed' the planning committee consider that without stating the nature of these unreasonable restrictions, consider them to be so unreasonable to justify refusal within the context of para 187 of the NPPF.
- ix. The appeal 'impacts on residential amenity and pollution control and are considered relevant to refusal of planning permission in that regard; this is contrary to the view of the appellant; these planning policies were sent with the appeal questionnaire'.

4. Response to North Lincolnshire Council Planning Committees Appeal Statement

4.1 The council consider that its reasons for refusal resulting from the applicant failing to 'demonstrate a sufficient level of amenity' were not vague or sufficiently clear as stated in its decisions notice because the *'the minutes of the planning committee meeting on 6th April 2022 (which were sent with the appeal questionnaire) which states "concerns were raised by members that following the site visit it was considered the proposal would have a significant impact on the surrounding properties"*.

4.2 The council minutes make no such reference to adverse impacts upon surrounding properties, and this is not correct. No such evidence was provided in the Planning Committee minutes of the 6th April 2022 which in relation to this application states verbatim:

'Prior to consideration of the application, Councillor N Poole spoke as the local ward member. He referred to the previous application that was refused and indicated that this application was just the same as the old one and should also be refused. He stated the only difference was the reduction in density, but it was still to be developed on amenity land outside of the local plan.

Councillor R Hannigan had concerns following the site visit as it was the last piece of undeveloped land in Messingham and would have a significant impact on the surrounding properties. He stated it was against several planning policies and felt permission should be refused.

It was then moved by Councillor R Hannigan and seconded by Councillor C Ross –

4.3 The reasons for refusal are required to be clearly set out in the decision notice and not delegated to hearsay or meeting minutes, but in any event the council minutes do not reference such concerns.

4.4 The council justify refusal because 'it could be argued that by introducing dwellings on this site there could be the potential for impact on the amenity of the future occupants (through noise and other disturbance) of said dwellings arising from the proximity to existing businesses. The council did not hitherto identify 'noise and other nuisances' within its reasons for refusal and are introducing new reasons not previously stated. However, the council are unable to provide a definitive reason for refusal and in suggesting the application 'could be argued' and might have the 'potential' and are not stating with any certainty and therefore evidence that the application will cause such impacts.

4.5 The proposal is for outline consent only and any such concerns of noise can be more properly considered at the detailed matters application given that the council are unable to categorically substantiate that the principle of this development in terms of noise and nuisance is not considered definitively unacceptable. However, given that the council previously consented 8 new dwellings immediately adjacent to the closed nursery and restaurant the appellant does consider that the potential for this development to locate residential units much further away from these businesses will not cause any greater adverse impacts.

4.6 The council repeats this concern in relation to the proposals adversely affecting local businesses. The council are unable to definitively state this application will adversely affect local businesses stating that it “could be argued” that existing businesses could impact on future residents that “could” result in unreasonable restrictions placed on nearby businesses. This is not a valid and justified reason for refusal.

4.7 The council had failed to identify those businesses that could be adversely affected, but they went on to identify these for the first time in its statement of case as being, the ‘Wise Owls Nursery’ and the ‘Stables Restaurant’ The Appellant previously pointed out and confirmed that the Wise Owls Nursery had ceased trading on 20th February 2022 and was closed at the time this application was refused. The premises have undergone substantial refurbishment and reopened on 17th May 2022 as the ‘Sit Dog Café’ a canine friendly café (see image below). It is unreasonable, inaccurate, and entirely false for the council to claim the Wise Owls pre-school nursery was in operation at the time of the decision of this application or that it could have been adversely affected by this development or that it could affect the amenity of future residents of this development.

4.8 The Stables barn is identified as being within the ownership of the applicant within the planning application. The Applicant did not seek to include this part of the site within this application for residential development as he wishes to continue to lease the premises as a viable restaurant. The applicant therefore has no material interest in introducing any activities that would undermine the viability of the restaurant and will ensure at the reserved matters application stage that no adverse impacts from the residential development will affect the restaurant or vice versa. The council are also capable of imposing planning conditions to prevent such impacts. But it can be clearly seen that this development could only be more beneficial to this and other businesses in the area.



Former Wise Owls Nursery (closed 20th February 2022 – Now trading as the 'Dog Sit Café' as of 17th May 2022

- 4.9 The council statement of case attempts to justify its refusal based upon the comments of the council's Environmental health Officer stating that 'The council's Environmental Health department has assessed the application and has stated, '...This site is located adjacent to The Stables restaurant and Wise Owl Farm Nursery which has an outdoor play area. These sources have the potential to cause an adverse noise impact for the proposed dwellings. This statement is correct, but the health department continues to state *'Therefore, subject to a noise impact assessment being agreed at condition stage, as well as conditions mitigating the construction phase, the proposal is considered to accord with both DS11 and DS1 in this regard'*.
- 4.10 The council have intentionally and misleadingly referenced the Environmental Health Departments Report to suggest that it supported a refusal of this application on grounds of Policies DS 1 and DS11 when it clearly advised the exact opposite for approval with the imposition of planning conditions. The council consider that the 'nature of the adverse impacts and the businesses, neither of which had been previously identified in the decision notice, or planning committee meeting, and the subsequent meeting minutes should have been obvious to the appellant'. This is unreasonable, and the applicant had no reason to consider this to be the case when the Health Department dismissed these as issues that could substantiate refusal and given that the council failed to identify these businesses in the first place.

4.11 Similarly, the council cites NPPF para 187 to justify refusal on the basis that it 'could result in unreasonable restrictions placed on nearby businesses. This states that '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'.

4.12 The NPPF clearly requires and accepts new development to be permitted and to be 'integrated effectively' with existing businesses. Residential and restaurant uses are compatible uses and the council have failed to demonstrate why this is not the case in this instance. The council have failed to demonstrate why 'suitable mitigation' could not satisfactorily overcome any concerns of noise or other impact particularly as this application is for outline consent only. The Stables is a small family restaurant of circa 20 covers and closes at 11pm. Dwellings on the adjacent McLean estate at Gelder Beck Drive are located only circa 30 metres from the restaurant and there is no history of reported noise or other nuisance from local residents.

4.13 The council also considers that the appeal proposal 'impacts on residential amenity and pollution control and are considered relevant to refusal of planning permission in that regard; this is contrary to the view of the appellant, these planning policies were sent with the appeal questionnaire'. The council have failed to make clear what pollution control it is concerned with and how the proposed development contravenes this or what is being referred to in the appeal statement. Residential and restaurant uses (particularly a small restaurant of less than 25 covers) are not incompatible uses and as this application was for outline only with all matters reserved, it is unreasonable for the council to determine that the principle of 20 dwellings on a site adjacent to the restaurant could result in unacceptable polluting activities incapable or mitigation by way of planning condition.

It is worth pointing out at this stage, regarding point 4.2 and the comments of Councillor Poole.

The appellant has stated in the planning application, that an area of the development would be set aside as amenity land for the use of the residents, and that this area would be maintained by a management company set up by the applicant.

5. Conclusion

5.1 The council have failed to justify its reasons for refusal within its statement of case. The councils' reasons for refusal are unreasonable and are not corroborated by Policies DS1, DS11, CS5 and paragraph 187 of the NPPF. The council's statement of case is misleading and fails to be equivocal as to whether the proposal will, might, or could have adverse impacts and therefore is incapable of being definitive as to why and how it is so. The council remains vague as to the reasons for development which remain unsubstantiated or properly evidenced.

Given the facts presented, the appellant respectfully asks the planning inspector to grant planning permission and that full costs be awarded based on sound planning practice.

This appeal is submitted by

Philip Jackson On Behalf of: -

Jackson Philips Asset Solutions
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