

# **North Lincolnshire Council**

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Church Square House  
30-40 High Street  
Scunthorpe  
North Lincolnshire  
DN15 6NL

**TOWN AND COUNTRY PLANNING ACT 1990**

**APPEAL STATEMENT**

**APPEAL BY MR GURMEET SINGH ATHWAL**

**AGAINST THE REFUSAL BY NORTH LINCOLNSHIRE COUNCIL TO GRANT  
PLANNING PERMISSION FOR PROPOSED CHANGE OF USE FROM A  
STOREROOM TO A COMMERCIAL CAR REPAIRS AND TYRE  
REPLACEMENT GARAGE.**

**SITE ADDRESS:**

**312 Messingham Road, Bottesford, DN17 2QY**

**Local Planning Authority's Reference:  
PA/2023/311**

**Planning Inspectorate's Reference:  
APP/Y2003/W/23/3335074**

**December 2023**

## **1. INTRODUCTION**

- 1.1 This appeal relates to the refusal of planning permission for the proposed change of use from a storeroom to a commercial car repairs and tyre replacement garage at 312 Messingham Road, Bottesford, DN17 2QY.
- 1.2 The application was refused on 8 December 2023 for the following reason:
1. The proposed development would result in inappropriate adverse impacts on the amenity of surrounding residents in terms of noise and fumes. The proposals are therefore contrary to policies DS1 and DS4 of the North Lincolnshire Local Plan, and paragraphs 174 and 185 of the National Planning Policy Framework.

## **2. APPEAL SITE**

- 2.1 The site is within the development boundary of Scunthorpe. The surrounding area is characterised by mixed uses comprising residential properties and shops. The site is at the rear of the convenience store, and it is bounded by residential properties to the north, east and south.
- 2.2 In support of the proposal, the applicant has indicated that the site is a warehouse/workshop used by a convenience shop. However, it is currently vacant. It consists of a large open-plan warehouse space in a brick and steel-clad building, with extensive hardstanding and vehicle and pedestrian access taken from Messingham Road.
- 2.3 The warehouse/workshop would be used for commercial activities (commercial car repairs and tyre replacement garage) offering opportunities for small businesses. The applicant has also indicated that the proposal would provide investment, support the local and wider area in terms of boosting the economy, and offer employment opportunities.
- 2.4 The footprint of the building is 151 square metres. There are no proposed changes to the layout of the site or the existing access. The external hardstanding area will be designated as shared parking, turning arrangements and delivery areas.

## **3. PLANNING POLICY**

The policies below are the most relevant concerning the current appeal proposal.

### **National Planning Policy Framework:**

- 2 Achieving sustainable development.
- 6 Building a strong, competitive economy.
- 11 Making effective use of land.
- 12 Achieving well-designed places.

#### **North Lincolnshire Local Plan:**

- DS1 General requirements
- DS4 Changes of use in residential areas
- DS14 Foul sewage and surface water drainage
- DS16 Flood risk
- T2 Access to development
- T19 Car parking provision and standards

#### **North Lincolnshire Core Strategy:**

- CS2 Delivering more sustainable development.
- CS3 Development limits
- CS5 Delivering quality design in North Lincolnshire
- CS19 Flood risk

#### **New North Lincolnshire Local Plan Submission:**

The new North Lincolnshire Local Plan was submitted for public examination to the Planning Inspectorate on 11 November 2022. Examination of the Plan has therefore commenced, although public hearing sessions are not anticipated until early 2024.

The Submitted North Lincolnshire Local Plan can be given some weight as a material planning consideration in the determination of planning applications. The relevant policies concerning this application are:

- SS1 Presumption in favour of sustainable development
- SS2 A Spatial Strategy for North Lincolnshire
- SS3 Development principles
- SS11 Development limits
- DQE5 Managing flood risk.
- DQE6 Sustainable drainage systems

### **4.0 Statement of Case North Lincolnshire Local Planning Authority**

- 4.1 Policy DS1 (General Requirements) requires that all developments in both built-up areas and the countryside are considered against amenity impact. The policy requires that 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.
- 4.2 The proposal is in a residential area, and it is considered that the proposal may have the potential to create noise through customer/staff activity.

- 4.3 The Environmental Protection team was consulted on the proposal and had no concerns regarding potential noise/nuisance from the proposed (B2) use of this industrial unit.
- 4.4 They have confirmed that they have received and reviewed the following report.
- Environmental Noise Solutions Limited, Noise Impact Assessment, dated: 25 August 2023, ref: NIA-11051-23-11225-v1 Messingham Road.
- 4.5 They have commented that noise monitoring was undertaken at two locations on 4 August 2023: MP1 was located on the eastern boundary of the site adjacent to the nearest residential receptor, and MP2 was located internally to measure noise from simulated vehicle repairs.
- 4.6 A BS4142:2014 + A1:2019 assessment has been undertaken and found the specific sound level at the nearest residential receptor was 27dB LAeq 1hr. A penalty of +3dB has been added to give a rating level of 30dB LAeq 1hr. The background sound level was recorded at 43dB LA90 15min. The resultant excess of the rating level above the background level is -13dB and is reported as a low impact.
- 4.7 Given the above, Environmental Protection recommends the inclusion of conditions should the application be approved.
- 4.8 From the above, it is considered the proposal would raise no significant concerns over potential greater noise/nuisance that would warrant refusal of the application.
- 4.9 In terms of overbearing impact, overshadowing and privacy, as indicated earlier, this is an existing storage building; there would be no extension of the building and no changes would be made to the external appearance. It is therefore judged that any unanticipated impact would be no worse than existing.

## **5.0 APPRAISAL**

- 5.1 As outlined in the decision notice, the main reason for the refusal of the application is the adverse impacts on the amenity of surrounding residents in terms of noise and fumes.
- 5.2 The appellant's case against the refusal of the application addresses the adverse impacts of the proposal on the amenity of surrounding residents in terms of noise and fumes, among others such as the principle of the development, layout, siting and design, drainage matters, parking matters, and employment matters.

- 5.3 Regarding the adverse impacts of the development on neighbouring amenity, the appellant has indicated that they are overstated because the submitted Noise Impact Assessment Report confirms, that it could be avoided through the imposition of appropriate conditions. In addition to the above, the Council failed to consider the recommendations of the submitted Noise Impact Assessment Report. Further, the Council has failed to demonstrate how it has considered the public benefits of the proposal in terms of creating accessible local employment facility provision and jobs in the planning balance.
- 5.4 It is worth noting that the proposal was refused based on potential adverse impacts on the amenity of surrounding residents in terms of noise and fumes. The other matters raised in the appellant case were discussed in the report but were not considered a reason for refusal.
- 5.5 At the heart of the appellant case is the alleged unfairness in the planning process because the adverse impacts of the development on neighbouring amenity have been overstated and the council failed to take into account the recommendations of the submitted Noise Impact Assessment Report as well as failure to consider the public benefits of the proposal in terms of creating accessible local employment facility provision and jobs.
- 5.6 Contrary to the alleged failures, it is evident in the planning committee report that the council has carried out consultations as part of the planning process for public consultations and consultation with statutory and non-statutory consultees to ensure that all those affected by the planning decision have an opportunity to make representation. The representations were considered in the assessment of the application in the interest of fairness.
- 5.7 Regarding the reason for the refusal, which is the impact of the development on the amenity of the surrounding properties, the Environmental Health team was consulted. It is worth noting that consultees play an important part in ensuring that planning decision-making is informed, fair and effective and 'such importance is demonstrated by the fact that a decision-maker is required to give the views of consultees great or considerable weight.' Therefore, if the consultation must be conscientiously considered and given great weight then it follows that it must be 'an intelligible response which is adequately reasoned, bearing in mind its purpose of providing advice to the decision-maker, and informing its decision.' In this case, the local planning authority remains responsible for planning decisions.
- 5.8 Policy DS1 requires that all developments in both built-up areas and the countryside are considered against amenity impact. The policy requires that 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.
- 5.9 Environmental Health initially raised concerns about the proposal because the proposed vehicle repair and tyre replacement garage is located directly adjacent to residential properties. There is therefore the potential for the proposed use to have a detrimental impact on the nearby residential

properties, additionally, the proposed B2 class use is not considered compatible within a residential area.

The Environmental Health officer requested the Noise Impact Assessment to provide details of existing background noise levels, noise sources which will impact upon the proposed development, mitigation methods to be employed and the resulting predicted level of noise at sensitive locations.

Following the submission of the Noise Impact Assessment the Environmental Health officer removed the holding objection. The officer commented that a BS4142:2014 + A1:2019 assessment had been undertaken and found the specific sound level at the nearest residential receptor was 27dB LAeq 1hr. A penalty of +3dB has been added to give a rating level of 30dB LAeq 1hr. The background sound level was recorded at 43dB LA90 15min. The resultant excess of the rating level above the background level is -13dB and is reported as a low impact. Given the above the department recommended the inclusion of conditions should the application be approved.

The Planning Committee Members had the opportunity to review the committee report together with all representations as well as all documents submitted together with the application.

The members make decisions on planning applications in accordance with the development plan unless material considerations indicate otherwise. The Members considered the impact on the neighbouring amenity, which includes noise, smell, fumes, dust, or other nuisance relevant to the planning application and decided that overturning the officer's recommendation to approve and refusing permission is founded upon valid material planning reasons.

The planning committee members gave due weight to all the issues of the siting, layout, design and proximity of the proposed dwellings, and noise, smell, fumes, dust, or other unexpected nuisances and judged that this proposal would harm the amenity of neighbouring properties.

While the proposal could be a condition as recommended by the Environmental Health officer, the committee is not convinced that their concerns can be mitigated by conditions. The committee also believe that the public benefits of the development in terms of creating accessible local employment and jobs do not outweigh the harm it would cause to the neighbouring properties.

## **6.0 CONCLUSION**

On balance, the planning committee judged that the proposal would not meet the terms of Policy DS1, which requires that all developments in both built-up areas and the countryside are considered against amenity impact. The policy requires that 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.

The planning committee, therefore, decided to overturn the case officer's recommendation to approve the application and refused it.

Disagreement between the appellant and the local authority on policy interpretation and assessment of proposals is common and very much part of the planning process and therefore the appellant is entitled to his opinion as highlighted in the appellant's appeal statement.

Although a decision was made against the officer's recommendation, the Council's position is the planning committee's position on the site. It is worth noting that the planning committee position is consistent with the North Lincolnshire Local Plan and the Core Strategy for refusal of planning permission.

The local planning authority believes that the decision to refuse planning permission is fair and reasonable in this case and the reasons for refusal are valid. The Planning Inspector is respectfully requested to dismiss the appeal.