

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Development Manager

To: Planning Committee - 13 January 2021

(Author: Polly Harris-Gorf - Principal Planning Officer)

Purpose: To consider Planning Application H04-1086-20

Application Number: H04-1086-20

Date Received: 02 December 2020

Application Type: SEC 73 MODIFICATION

Description: Erection of 2 retail units, car park, landscaping and associated works including demolition of existing buildings - approved under H04-0208-20. Modification of Conditions 3 & 4 relating to hours of delivery and despatch and opening hours.

Location: Land East Of Church Street And South of Bicker Road Donington

Applicant: Minster Commercial Property Ltd.

Agent: Surface Planning

Ward: Donington, Quadring and Gosberton

Ward Councillors: Cllr H J W Bingham
Cllr S C Walsh
Cllr J L King

You can view this application on the Council's web site at

<http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H04-1086-20>

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 The policy issues merit Committee consideration.

2.0 PROPOSAL

2.1 Modification of Conditions 3 & 4 relating to hours of delivery and despatch and opening hours to the planning permission granted for the erection of 2 retail units, car park, landscaping and associated works including demolition of existing buildings. H04-0208-20 refers).

2.2 The wording proposed by the applicant is as follows:

2.3 Condition 3

No deliveries via HGV (>3 tonne vehicles) shall be taken at or dispatched from the site outside the hours of 07.00 and 20.00. On Sundays, Bank or Public Holidays, no deliveries via HGV (>3 tonne vehicles) shall be taken at or dispatched from the site outside the hours of 09.00 and 17.00.

2.4 Justification submitted sets out:

The proposed amendment is necessary because deliveries of certain convenience items including newspapers, bread and certain other fresh produce are made by third-parties on a schedule which cannot be controlled by the site operator. These deliveries are likely to be made

by the same services which deliver to the existing Co-op store in Donington. Without this flexibility, the store would not be able to meet normal customer expectations and could not function viably under its approved use. The amendment is therefore considered to be essential. Nonetheless, we consider that any impacts associated with a limited number of deliveries made by small vehicles outside of the schedule hours will be negligible and would not result in any harm to residential amenity in the locality.

2.5 Condition 4

The shops hereby permitted shall not be open to customers outside the following times:

- 0700 and 2200 hours Mondays to Sundays*
- 0700 and 2200 hours on Bank Holidays*

2.6 Justification submitted sets out:

Maintaining consistent opening hours is more important to the operating capability of the development than the late night trading currently permitted by the condition. Accordingly, it is proposed that the closing time for Bank Holidays is increased from 2100 hours to 2200 hours, in return for a reduction from 2300 hours to 2200 hours on all other days. This will result in a significant net improvement to local amenity insofar as it is impacted by the operation of the store, with a reduction of 357 trading hours annually.

3.0 **SITE DESCRIPTION**

- 3.1 The site is approximately 0.34ha and sits at the junction of Church Street and the A52, and forms a visually prominent entry point to the village. The site is currently in commercial use, by a van sales firm and an asbestos removal company office.
- 3.2 The site immediately adjoins the Donington conservation area and nearby are the listed buildings of the Church of St Mary and the Holy Rood (Grade I).
- 3.3 Donington as a settlement is considered to be a Main Service Centre within the SELLP.
- 3.4 The site is currently in use by a vehicle dealership which is considered to be a sui generis use (not fitting within a defined Use Class).

4.0 **RELEVANT PLANNING POLICIES**

4.1 The Development Plan

South East Lincolnshire Local Plan, March 2019

If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, Section 38 (6) to the Town and Country Planning Act as amended by the 2004 Act states that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

- 1 - Spatial Strategy
- 2 - Development Management
- 3 - Design of New Development
- 4 - Approach to Flood Risk
- 7 - Improving S E Lincolnshire's Employment Land Portfolio
- 24 - The Retail Hierarchy
- 27 - Additional Retail Provision
- 28 - The Natural Environment
- 29 - The Historic Environment
- 30 - Pollution
- 31 - Climate Change and Renewable and Low Carbon Energy
- 36 - Vehicle and Cycle Parking
- APPENDIX 6 Parking Standards

National Guidance

National Planning Policy Framework (NPPF), 2019

Section 2 - Achieving sustainable development

Section 4 - Decision-making

Section 6 - Building a strong competitive economy

Section 12 - Achieving well-designed places

Section 14 - Meeting the challenge of climate change, flooding and coastal change

Section 16 - Conserving and enhancing the Historic Environment

Planning Practice Guidance (PPG)

5.0 RELEVANT PLANNING HISTORY

- 5.1 H04-0208-20. Erection of 2 retail units, car park, landscaping and associated works including demolition of existing buildings. Approved 16-11-20.
- 5.2 H04-0807-18. Proposed residential development - up to 8 dwellings (including access). Approved. 05-11-18.

6.0 REPRESENTATIONS

6.1 Donington Parish Council

No representations submitted at the time of writing the report.

6.2 Ward Councillors

Cllr J L King - "I think the conditions imposed by SHDC and parish council should be kept in place. I still don't see how this development will enhance the village as it is away from the main shopping area."

Cllr H J W Bingham - "The condition relating to deliveries was I believe put in place to protect the residential amenity of the neighbouring property's and as such I believe this should not be changed just to be convenient to the operator.
I have little objection to the change in proposed opening times."

6.3 SHDC Environmental Protection

No objection.

6.4 LCC Highways and SUDS

Does not wish to restrict the grant of permission.

6.5 Public

No representations made at the time of writing the report. (Closing date for representations is 18 January 2021).

7.0 CONSIDERATIONS

7.1 **Planning Considerations**

7.2 Principle of Development

- 7.3 The principle of this development is agreed by the extant planning permission granted in Nov 2020 (H04-0208-20 refers).

7.4 Change of hours

7.5 This application proposes to alter the two conditions appended to the host consent. Conditions 3 and 4 currently are worded as follows:

7.6 Condition 3

No deliveries shall be taken at or dispatched from the site outside the hours of 07.00 and 20.00 nor at any time on Sundays, Bank or Public Holidays.

Reason: In the interests of the amenity of local residents.

This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019 and the provisions of the National Planning Policy Framework, 2019.

7.7 The applicant seeks amendment to the following wording:

No deliveries via HGV (>3 tonne vehicles) shall be taken at or dispatched from the site outside the hours of 07.00 and 20.00. On Sundays, Bank or Public Holidays, no deliveries via HGV (>3 tonne vehicles) shall be taken at or dispatched from the site outside the hours of 09.00 and 17.00.

7.8 It is considered that the impact of this change to this condition, to include the delivery by vehicles of a size up to 3 tonnes outside the hours above would bring deliveries of early morning items such as newspapers in line with similar shops, such as the co-operatives within the District. It is considered that this would accord with the policies of the SELLP and the intentions of the NPPF 2019.

7.9 Condition 4

The shops hereby permitted shall not be open to customers outside the following times:

- 0700 and 2300 hours Mondays to Sundays.
- 0700 and 2100 hours on Bank Holidays.

Reason: To safeguard the amenities of nearby residents.

This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019 and the provisions of the National Planning Policy Framework, 2019.

7.10 The applicant seeks amendment to the following wording:

The shops hereby permitted shall not be open to customers outside the following times:

- 0700 and 2200 hours Mondays to Sundays
- 0700 and 2200 hours on Bank Holidays

7.11 This proposed change in hours of opening would be a net improvement to the hours experienced by residents, and the additional hour on Bank Holidays would have a negligible impact. It is considered that this would accord with the policies of the SELLP and the intentions of the NPPF 2019.

7.12 Heritage Impact

It is not considered that the proposals would have an adverse impact on the conservation area and would not have a detrimental impact on the setting of the nearby listed buildings. As such it is considered that the development proposals are in accordance with the intentions of Policy 29 of the SELLP and the NPPF.

7.13 Highway Safety and Parking

7.14 No change is proposed to the parking regime for the site. The parking layout approved 34 spaces, which accords with the SELLP requirements.

7.15 **Additional Considerations**

7.16 Public Sector Equality Duty

7.17 In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).

C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.18 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.19 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

7.20 It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

7.21 Human Rights

7.22 In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

7.23 It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

7.24 **Planning Balance**

7.25 The impact of this proposal on neighbouring residents is to be weighted against the impact on the operation of the proposed shops, and on balance it is considered that the proposals would have a negligible impact on the amenities of residents. Policies 2, 3, 7, 24, 27 and 30 of the SELLP are in balance with regard to this proposal, and the application is considered to be acceptable.

Conclusion

7.26 In the light of the above it is recommended that permission be granted, subject to the conditions set out in the report. The proposal is considered to be compliant with the policies of the SELLP.

7.27 The statutory press and site notices for this application expires on 18 Jan 2021 (including 3 additional days for Public Holidays), and therefore it is recommended that the decision is delegated to the Interim Executive Manager (Head of Planning & Building Control).

8.0 RECOMMENDATIONS

- 8.1 Grant permission subject to those Conditions listed in Section 9.0 of this report.**

9.0 CONDITIONS

1. The development must be begun not later than 15 November 2023.

Reason: As required by Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Application Form

19045 004 P02

19045 005 P08

Proposed layout dated July 2020

19045 003 P07

19045 006 P05

Heritage Impact Assessment by Archaeological Project Services Report No. HS/116

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

3. No deliveries via HGV (>3 tonne vehicles) shall be taken at or dispatched from the site outside the hours of 07.00 and 20.00. On Sundays, Bank or Public Holidays, no deliveries via HGV (>3 tonne vehicles) shall be taken at or dispatched from the site outside the hours of 09.00 and 17.00.

Reason: In the interests of the amenity of local residents.

This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019 and the provisions of the National Planning Policy Framework, 2019.

4. The shops hereby permitted shall not be open to customers outside the following times:
- 0700 and 2200 hours Mondays to Sundays
- 0700 and 2200 hours on Bank Holidays

Reason: To safeguard the amenities of nearby residents.

This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019 and the provisions of the National Planning Policy Framework, 2019.

5. Before the access is brought into use all obstructions exceeding 0.6 metres high shall be cleared from the land adjacent to the access and thereafter the visibility splays shall be kept free of obstacles exceeding 0.6 metres in height.

Reason: In the interests of safety of the users of the public highway and the safety of the users of the site.

This Condition is imposed in accordance with Policy 2 of the South East Lincolnshire Local Plan, 2019 and the provisions of the National Planning Policy Framework, 2019.

6. No development shall take place until a written scheme of archaeological investigation has been submitted to and approved in writing by the Local Planning Authority. This scheme should include the following and should be in accordance with the archaeological brief supplied by the Lincolnshire County Council Historic Environment advisor on behalf of the Local Planning Authority:

1. An assessment of significance and proposed mitigation strategy (i.e. preservation by record, preservation in situ or a mix of these elements).
 2. A methodology and timetable of site investigation and recording
 3. Provision for site analysis
 4. Provision for publication and dissemination of analysis and records
 5. Provision for archive deposition
 6. Nomination of a competent person/organisation to undertake the work
 7. The scheme to be in accordance with the Lincolnshire Archaeological Handbook.
- The archaeological site work shall only be undertaken in accordance with the approved written scheme.

Reason: To ensure the preparation and implementation of an appropriate scheme of archaeological mitigation in accordance with national guidance contained in Section 16 of the National Planning Policy Framework, 2019. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works.
This Condition is imposed in accordance with Policy 29 of the South East Lincolnshire Local Plan, 2019.

7. The applicant shall notify the Lincolnshire County Council Historic Environment Department in writing of the intention to commence at least fourteen days before the start of archaeological work required in connection with Condition 6 above in order to facilitate adequate monitoring arrangements.

Reason: To ensure satisfactory archaeological investigation and retrieval of archaeological finds in accordance with national guidance contained in Section 16 of the National Planning Policy Framework, 2019.
This Condition is imposed in accordance with Policy 29 of the South East Lincolnshire Local Plan, 2019.

8. A copy of the final report required in connection with Condition 6 above shall be submitted within three months of the work being carried out to the Local Planning Authority and the Lincolnshire Historic Environment Record. The material and paper archive required as part of the written scheme of investigation shall be deposited with an appropriate archive in accordance with guidelines published in The Lincolnshire Archaeological Handbook.

Reason: To ensure satisfactory arrangements are made for the recording of possible archaeological remains in accordance with national guidance contained in Section 16 of the National Planning Policy Framework, 2019.
This Condition is imposed in accordance with Policy 29 of the South East Lincolnshire Local Plan, 2019.

9. Before the commencement of the development hereby granted beyond oversight, full details of the proposed means of foul and surface water disposal to separate systems shall be submitted to and approved in writing by the Local Planning Authority and the details so approved shall be implemented in full before there are any flows into the receiving systems.

Reason: To ensure that the site is adequately drained, to avoid pollution, and to prevent increased risk of flooding.
This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 14 of the National Planning Policy Framework, 2019.

10. No part of the development hereby permitted shall be occupied before details of the means of storage and disposal of refuse and recycling have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before any of the development is brought in to use and shall thereafter be retained.

Reason: To ensure that adequate facilities are made available for refuse storage and disposal to avoid pollution, to protect residential amenity, and in the interests of the appearance of the site and the area within which it is set. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works.

This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019 and the provisions of the National Planning Policy Framework, 2019.

11. Before the commencement of the development hereby permitted, full details of the existing and proposed site levels and proposed floor levels of the 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 details so approved.

Reason: To ensure that the Local Planning Authority retains control over the finished site and floor levels of the development, in the interests of the amenity of adjacent residents and its visual and architectural relationship with adjacent development. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works. This Condition is imposed in accordance with Policies 2, 3 and 4 of the South East Lincolnshire Local Plan, 2019.

12. Before the commencement of the development hereby permitted beyond oversite a schedule of external materials of 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 materials so approved.

Reason: To ensure that the Local Planning Authority retains control over the external materials of construction of the development in the interests of the appearance of the development, and the character and visual amenity of the adjacent Conservation Area.

This Condition is imposed in accordance with Policies 2, 3 and 29 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 16 of the National Planning Policy Framework, 2019.

13. A detailed scheme of construction management to minimise disturbance during the construction process through noise, dust, vibration and smoke shall be submitted to and approved in writing by the Local Planning Authority before the development commences beyond oversite and the construction process shall be carried out in accordance with the scheme so approved. It shall also include hours of working, a method statement, detailing how construction traffic, site personnel vehicles, materials deliveries and site accommodation will be managed to safeguard highway safety, free passage along the local road network and residential amenity.

Reason: In the interests of the amenity of local residents. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works. This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

14. Details of the external illumination of all buildings and areas of the site including details of luminance and fields of illumination shall be submitted to and approved in writing by the Local Planning Authority prior to the first use of those buildings and areas and there shall be no external illumination other than that so approved.

Reason: To ensure that the Local Planning Authority retains control over these matters, in the interests of the visual amenity of the overall development, to prevent light pollution and to ensure that the development is adequately lit.

This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019 and the provisions of the National Planning Policy Framework, 2019.

15. Before the development hereby permitted is first brought into use, the associated plant/machinery, air conditioning and chiller units shall be enclosed with sound-insulating material in accordance with a scheme which shall be submitted to and approved in writing by the Local Planning Authority. The plant/machinery and chiller units shall be installed and retained in accordance with the approved details.

Reason: To ensure that there is no noise nuisance to nearby residents.

This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019 and the provisions of the National Planning Policy Framework, 2019.

16. The Local Planning Authority has acted positively and proactively in determining this application by assessing it against all material considerations, including national guidance, planning policies and representations that have been received during the public consultation exercise, and by identifying matters of concern within the application and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal.

This decision notice, the relevant accompanying report and the determined plans can be viewed online at <http://planning.sholland.gov.uk/OcellaWeb/planningSearch>

17. Please contact the Lincolnshire County Council Streetworks and Permitting Team on 01522 782070 to discuss any proposed statutory utility connections and any other works which will be required within the public highway in association with the development permitted under this Consent. This will enable Lincolnshire County Council to assist in the coordination and timings of these works.

Background papers:- Planning Application Working File

Lead Contact Officer

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Appendices attached to this report:

Appendix A Plan A

MapThat Scale Print Title

