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TOWN AND COUNTRY PLANNING ACT 1990

FULL

Reference: H05-0326-20 **Date of Decision:** 10th July 2020

Applicant: Gem-Mix Holdings Ltd
Gemmix Ltd
Eldernell Lane
Coates
Peterborough
PE7 2DD

Location: 37 Fleet Road Fleet Spalding Lincs

Description: Erection of 3 pairs of semi detached 3 bed dwellings along with up graded site entrance and road way, car parking and bin storage - re-submission of H05-0572-19

South Holland District Council hereby give notice that this application has been REFUSED for the above proposal for the following reason(s):

- 1 The application site is adjacent to the premises of JML Henderson Ltd, a business use on the neighbouring Fleet Road Industrial Estate. It is understood that regular HGV and forklift movements take place in the early hours of the morning in the storage facilities on the site. This is alongside its usual daytime business activities.

These facilities are approximately 7.60 metres from the site boundary. In addition, the nearest proposed dwellings to this boundary range between 7.38 metres and 1.09 metres away.

The Environmental Noise Assessment which was submitted in support of the previous application has been re-submitted in support of this application. No alteration has been made to the document to reflect the alterations to the position and orientation of the dwellinghouses.

South Holland District Council's Environmental Health Officer has confirmed that they still

have concerns regarding the fluctuations in the amount of early morning loading/unloading activities at the industrial site and their implication on the amenity of residents of the nearest houses.

Furthermore, Paragraph 182 of NPPF states that "existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established". It also states that "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". It is considered that the proximity of the commercial premises to the application site could result in complaints being made regarding the business' activities from future occupiers, which could result in restrictions being placed on that business.

On this basis, the proposal is considered to be in conflict with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan (SELLP), 2019. These seek, amongst other things, to ensure an acceptable standard of residential amenity. It would also be contrary to Sections 12 and 15 of National Planning Policy Framework (NPPF), 2019.

- 2 The submitted Environmental Noise Assessment recommends the erection of a 2 metre high acoustic barrier (e.g: close boarded fencing) on the western boundary with a minimum mass per unit area of 10 kg/m². Additionally, it is recommended that habitable rooms be faced away from the industrial site and also the most affected house (Plot 1), by reason of predicted internal noise levels, is recommended to have double glazing windows which should remain closed. Acoustic trickle vents for the living room and each bedroom will be the alternative ventilation arrangements.

It is considered that the latter would not result in an appropriate standard of amenity for future occupiers. In coming to this conclusion, consideration has been given to Appeal Decision APP/F6915/A/20/3246041 which concluded that, even though the proposal was accompanied by both external and internal mitigation measures, 'acoustic prisons' would have been created as a result of implementing such measures. In that case, it was considered that the need for every window in a dwelling to be sealed to maintain acceptable noise levels would have been oppressive and failed to create an appropriate living environment for future residents.

On this basis, the proposal is considered to be in conflict with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan (SELLP), 2019, and Section 12 of National Planning Policy Framework (NPPF), 2019. These seek, amongst other things, to ensure an acceptable standard of residential amenity.

- 3 The footprint of the houses in Plots 5 and 6 will only be set back approximately 1.12 metres from the eastern boundary of the site. The nearest properties will be No's. 11 and 12 Grimwood Close. It is considered that, on balance, the maximum height of 8.40 metres of the proposed houses will appear excessive given the separation distance of approximately 10.65 metres to the nearest existing properties.

Throughout consideration of this application, reference has been made by the applicant to an application which was allowed at appeal for the erection of one detached dwelling (application ref. H05-1160-16). Firstly, the application was only in outline and so the layout

plan submitted with the application was indicative only and so the dwelling could have been positioned further away from the eastern boundary than shown.

Secondly, in the Appeal Decision APP/A2525/W/17/3176758, the inspector stated that "a large area of the existing garden at No 37 would be retained as amenity space" and "the future occupants of the dwellings to the east would still experience a relatively open aspect in views from the rear of the dwelling and gardens". The appeal was allowed on the basis of a single dwelling. However, this application will clearly entail the construction of further 5 dwellings across the entire site and consequently the open aspect referred to be the Inspector would not exist and significant harm will occur to the residents of houses in Grimwood Close by reason of overbearing impact, especially due to the positioning of Plots 5 and 6.

Therefore, the proposal is considered to be in conflict with Policies 2 and 3 of the South East Lincolnshire Local Plan (SELLP), 2019, and Section 12 of National Planning Policy Framework (NPPF), 2019. These seek, amongst other things, to ensure an acceptable standard of residential amenity with overbearing effect being one of the key considerations.

Notes:

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. Furthermore, matters of concern with the application have been identified and discussed with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory solution and due to the harm, which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

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

The determined plans are:

SA/MA/04/18 SA PP003

SA/MA/04/20 SA PP02

SA/MA/04/18 SA PP002 (Site Lines)

SA/MA/04/18 SA PP002 (Existing Site Plan)

SA/MA/04/08 SA PP006 Rev B1

Design and Access Statement dated April 2020

Environmental Noise Assessment by Acoustic Associates (Report No: SEM/J3457/17454) dated October 2019;

Flood Risk Assessment by Ellingham Consulting Ltd dated May 2019

Biodiversity Conservation Survey and Report

Phil Norman



**Planning and Building Control Manager
South Holland District Council**

BUILDING REGULATIONS:

This decision refers only to planning permission as granted under the Town and Country Planning Act 1990. The works that you are proposing may also require Building Regulations and this planning permission does not give authority under Building Regulations to commence work. Please contact the Building Control section for further information on 01775 764557 or bcadmin@sholland.gov.uk

RIGHTS OF APPEAL

Appeals to the Secretary of State

If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development or grant consent subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990 or Section 20 of the Planning (Listed Building and Conservation Areas) Act 1990.

Timescales for appealing

The deadlines for appeals are calculated from the **date of decision** and are as follows for the types of applications below:

12 Weeks	6 Months	8 Weeks
Householder Applications	Planning Permission	Consent to Display Adverts
Minor Commercial Development	Listed Building Consent	
Agricultural Determinations	Other Prior Approval Applications	
Householder Prior Approval Applications		

If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.

Enforcement Notices

If an enforcement notice was served prior to the planning application being determined then the deadline for appealing is 28 days from the date of the **planning refusal**.

If an enforcement notice is served after the planning application is determined then the deadline for appealing is 28 days from the date of the **enforcement notice** OR **the timescales stated above for each application type** from the date of the planning refusal - whichever is sooner.

Appeals can be made online at: <https://www.gov.uk/planning-inspectorate>. If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to the Secretary of State that the

Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under the order.

Purchase Notices

If either the Local Planning Authority or the Secretary of State refuses permission to develop land or grant it subject to conditions the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of the Part VI of the Town and Country Planning Act 1990 or Section 32 of the Planning (Listed Building and Conservation Areas) Act 1990.

Compensation

In certain circumstances compensation may be claimed from the Local Planning Authority if permission is refused or granted subject to conditions by the Secretary of State on appeal or on reference of the application to him.

These circumstances are set out in Section 114 and related provisions of the Town and Country Planning Act 1990 and Section 27 of the Planning (Listed Building and Conservation Areas) Act 1990.